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AMENDED BILL OF COMPLAINT.

(Filed January 31, 1944.)

IN CHANCERY OF NEW JERSEY.
149/696.

Between
GRACE MCNEAL BROWN,
Complainant,
and
CORN EXCHANGE NATIONAL BANK AND TRUST COMPANY, PHILADELPHIA, a Corporation of the State of Pennsylvania, Trustee under the Will of Frederick G. Brown, et al.,
Defendants.

On Bill, &c.
Amended Bill of Complaint.

The complainant, Grace McNeal Brown, of the City of Atlantic City in the County of Atlantic and State of New Jersey, respectfully shows that:

1. Frederick G. Brown, late of the Borough of Riverton, County of Burlington and State of New Jersey, died on the 3rd day of November, 1932, leaving a last will and testament and codicil thereto which were on November 18, 1932, duly admitted to probate by the Surrogate of the County of Burlington, and letters testamentary thereon issued to complainant, Marie Brown Sheble and Corn Exchange

National Bank and Trust Company, Philadelphia, a corporation of the State of Pennsylvania, the executors therein named, who have taken upon themselves the burden of administering the said estate. True copies of said will and codicil are hereunto annexed and made a part hereof, and respectively marked Exhibits A and B.

2. Said executors have duly accounted to the Burlington County Orphans Court and as a result of said accounting the assets of said estate, in accordance with the terms of said will and codicil were transferred unto the said Marie Brown Sheble and the said Corn Exchange National Bank and Trust Company, Philadelphia, and complainant, trustees under said will and codicil.

3. The active management of the trust estate created by said will and codicil and also the management of the estate prior to the creation of said trust estate has always been in the hands of said Corn Exchange National Bank and Trust Company, Philadelphia, and the said Marie Brown Sheble, in which management complainant has participated only to the extent of executing necessary documents under the direction and at the instance of her co-executors and co-trustees.

4. Complainant is entitled under the terms of paragraph Fifth of said last will and testament to receive two-fifths of the net income of the trust estate created under the terms of said paragraph for and during the term of her natural life. Paragraph Sixth of said will reads as follows:

> "Sixth: Any payment or payments of either income or principal from my residuary estate hereinbefore directed to be made to any one or

all of the beneficiaries hereinbefore named, shall not be subject to the debts, engagements, anticipation or alienation of any beneficiary or beneficiaries, nor shall the same be subject to judgment, attachment or other process of law at the hands of anyone whomsoever."

5. Complainant's co-executors and co-trustees have, against the expressed opposition of complainant, constantly maintained that complainant is indebted to the said trust estate upon two certain notes—one dated August 9, 1932, payable on demand in the sum of $19,000.00 with interest at 6% and the other note bearing the same date, payable on demand, in the sum of $29,669.44, with interest at 4% and have, from time to time, charged against the income granted unto complainant under the terms of paragraph Fifth of said will, interest upon said obligations.

6. Complainant's co-executors and co-trustees hold, against the expressed objection of complainant, certain collateral as security for the repayment of the alleged obligation existing by virtue of the notes aforesaid.

7. Complainant's co-trustees have prepared and signed an accounting of their administration of said trust estate which said accounting is now on file in the office of the Surrogate of Burlington County and has been scheduled for audit on January 27, 1944.

8. Complainant has not joined in said accounting but has requested from the Orphans Court of Burlington County, leave to join in said account, reserving for herself the right to except thereto, with relation to the alleged obligation created by the existence

of the notes aforesaid and also to the charges made against her for interest upon said notes.

9. The Orphans Court of Burlington County by Order, a copy of which is hereto annexed, refused to grant complainant the right to join in said account and at the same time reserve unto herself the privilege of excepting to the portions thereto hereinabove adverted to.

10. Complainant's co-trustees have, from time to time, credited complainant with payments on account of the alleged principal obligation represented by said notes and now allege that there is due thereon a total of $41,699.44.

11. Complainant is entitled, under the provisions of aforesaid paragraph Sixth of said last Will and testament, to receive two-fifths of the net income from said trust estate without any deductions of interest upon the said notes aforesaid.

12. Under the terms of said last will and testament any obligation to repay the notes aforesaid has been duly forgiven.

13. During his life-time, the said Frederick G. Brown released complainant from any obligation to repay the notes aforesaid.

14. On January 13, 1944, there was entered in the Burlington County Orphans Court an order to show cause based upon a petition filed in said court by the said Marie Brown Sheble individually and as one of the trustees of the estate of Frederick G. Brown and Corn Exchange National Bank and Trust Company, Philadelphia, as one of the trustees of Frederick G.

Brown, true copies of said order to show cause and said petition being hereunto annexed and made a part hereof, wherein and whereby complainant herein is ordered to appear before said Burlington County Orphans Court to make discovery and to account to her co-trustees for alleged assets which have come into the possession of complainant.

15. Such alleged assets consist only of certain securities owned by complainant which are alleged by complainant's co-trustees to be collateral security for the payment of the notes aforesaid.

16. Complainant, by virtue of the fact that she is a trustee under said will and codicil, is unable to join in the accounting and at the same time take exceptions thereto with relation to the account now pending before the Orphans Court of Burlington County.

17. The entry of a decree confirming said account will bar complainant from a determination of her rights under the will and codicil of said deceased.

18. The persons in interest under the terms of said will and codicil and by virtue of the trust provisions thereof are Corn Exchange National Bank of Philadelphia, a Corporation of the State of Pennsylvania, Marie Brown Sheble, a complainant as trustee thereunder, and the said Marie Brown Sheble, Elaine Sheble, Harold W. Sheble, a minor, and complainant.

Complainant is without adequate remedy in the courts of law and therefore prays:

1. That Corn Exchange National Bank and Trust Company, Philadelphia, and Marie Brown Sheble,

trustees of the last will and testament of Frederick G. Brown, and the said Marie Brown Sheble individually, Elaine Sheble and Harold W. Sheble, a minor, who are the defendants to this suit, may answer this bill, the complaint and each statement therein made.

2. That this court may construe the said last will and testament of the said Frederick G. Brown, deceased, and declare complainant's rights thereunder.

3. That a decree may be made declaring that any obligation on the part of complainant by reason of the aforesaid notes is released by the said Frederick G. Brown during his lifetime and commanding complainant's co-trustees to surrender said notes to complainant and to return to complainant such securities as are alleged held as collateral security for the payment of said notes or in the alternative that this court will decree that any obligation to repay said notes has been duly forgiven under the terms of the last will and testament of the said Frederick G. Brown.

4. That a decree may be made commanding complainant's co-trustees to pay to complainant such sums of money as have been withheld as alleged on said notes.

5. That pending the decree of this court that the said Corn Exchange National Bank and Trust Company, Philadelphia, and Marie Brown Sheble, trustees under the last will and testament and codicil of the said Frederick G. Brown, deceased, be enjoined from proceeding with the accounting of the trust estate created under the last will and testament of the

said Frederick G. Brown, deceased, and the petition and order to show cause for discovery, accounting and relief hereinabove mentioned, now pending in the Orphans Court of Burlington County.

6. That this complainant may have such further relief as this court may deem equitable and just.

7. That a writ of subpoena may issue commanding said defendants to answer this bill of complaint and to abide by such decree as this court may make in the premises.

ARTHUR W. LEWIS,
Solicitor for Complainant.
DONALD R. TAGGART,
Of Counsel with Complainant.

EXHIBIT A.

I, FREDERICK G. BROWN, of the Borough of Riverton, County of Burlington, State of New Jersey, being of sound and disposing mind, memory and understanding, do hereby make, publish and declare this writing as and for my last will and testament, hereby revoking, annulling and making void any and all wills by me heretofore made.

FIRST: I direct my Executors hereinafter named to pay all my just debts and funeral expenses as soon as conveniently can be done after my death.

SECOND: I give and bequeath all my personal effect, including household goods, clothing, jewelry, automobiles, books, and all such chattels of the same or similar nature, to my daughter, Marie Brown

Sheble, and my wife, Grace McNeal Brown, absolutely, to be divided between them in such manner as they may agree, or in case of the death of either of them in my lifetime, then I give and bequeath all my said personal effects to the survivor of my said wife and my said daughter, absolutely.

THIRD: I give and devise the lot of land with the dwelling and other building or buildings thereon erected, known and designated as No. 414 Lippincott Avenue, in the Borough of Riverton, County of Burlington, and State of New Jersey, and in which my daughter now resides, to my said daughter, Marie Brown Sheble, for and during the term of her natural life, without the payment of any rent therefor, and I direct that all charges and expenses of maintenance in the nature of repairs, taxes, municipal charges and assessments, and the premiums required to keep the building or buildings thereon erected insured against loss by fire or windstorm, be charged to and paid from the income from my residuary estate.

Upon the termination of the aforesaid life estate of my said daughter, Marie Brown Sheble, either by her consent or upon her death, I direct that said property shall be added to and become a part of my residuary estate.

FOURTH: I give and devise my residence in the Borough of Riverton, County of Burlington and State of New Jersey, and known and designated as No. 802 Main Street, to my wife, Grace McNeal Brown, for and during the term of her natural life, without the payment of any rent therefor, and I direct that all charges and expenses of maintenance in the nature of repairs, taxes and municipal charges and assessments, and the premiums required to keep

the building or buildings thereon erected insured against loss by fire or windstorm, be charged to and paid from the income from my residuary estate.

Upon the termination of the aforesaid life estate of my said wife, Grace McNeal Brown, either by her consent, or upon her death, I direct that said property shall be added to and become a part of my residuary estate.

FIFTH: All the rest, residue and remainder of my estate, real, personal and mixed, or whatsoever kind and wheresoever situate, I give, devise and bequeath to Camden Safe Deposit and Trust Company, its successors and assigns, my wife, Grace McNeal Brown, and my daughter, Marie Brown Sheble, or the survivors or survivor of them, IN TRUST NEVERTHELESS, to retain any and all investments that I may own at the time of my death, or to sell and dispose of any portion or all of the same, if in their judgment, or in the judgment of the survivors or survivor of them it shall seem advisable so to do, and to invest, reinvest and keep invested the proceeds of any such sale and any cash, in such securities as to them, or the survivors or survivor of them seems advisable, whether they are such securities as are prescribed for the investment of trust funds under the laws of the State of New Jersey, or otherwise, and to collect the income thereon, and after deducting all taxes, expenses and commissions, to pay two-fifths part of the net income to my wife, Grace McNeal Brown, for and during the term of her natural life, and to pay the remaining three-fifths part of the net income, and at and after the death of my said wife, all of the net income, to my daughter, Marie Brown Sheble, for and during the term of her natural life.

At and after the death of my said daughter, Marie

Brown Sheble, I direct the survivors or survivor of my said Trustees to thereafter use and apply, in their discretion, or in the discretion of the survivor of them, any part or all of the net income which my said daughter received during her lifetime and also, if my said wife survives my said daughter, then at and after the death of my said wife, the net income which my said wife received during her lifetime, to or for the maintenance, support, education, health and comfort of my grandchildren, children of my said daughter, Marie Brown Sheble, until such time as each grandchild shall attain the age of twenty-one years, said net income to be used for the general benefit of my grandchildren without taking into consideration the amount expended or paid for any one grandchild, and to add any excess of income not used as aforesaid, to the principal and invest it as hereinbefore directed.

When and as each of my said grandchildren shall attain the age of twenty-one years, I direct the survivors or survivor of my said Trustees to thereafter pay to each of my said grandchildren, an equal proportionate share of said net income collected subsequent to that time, until such time as each of them shall attain the age of thirty years, or shall die before that time, but not for a longer time than twenty-one years after the death of my said daughter, at which time, either upon his or her attainment of the age of thirty years, or upon the expiration of twenty-one years after the death of my said daughter, if any grandchild shall not attain the age of thirty years within that time, or upon his or her death within that time, the principal of my residuary estate shall vest in and be payable to my said grandchildren and the issue of any grandchild who may be deceased at that time, said issue taking his or her parent's share, and I direct the survivors or sur-

vivor of my said Trustees to thereupon pay over, transfer and deliver to my said grandchildren, and the issue of any grandchild who may be deceased, said issue representing one share, and equal proportionate share at that time of the principal of my residuary estate, and all accumulated income thereon, absolutely and in fee, freed and discharged of the trust hereinbefore created.

If any grandchild shall die before the time hereinbefore provided for the distribution of my residuary estate to my grandchildren, without leaving any issue him or her surviving, his or her share of the principal of my residuary estate shall be held, retained, invested, used, applied, or paid over, together with the income thereon, in the same manner as if said grandchild had died without issue, before my said daughter.

SIXTH: Any payment or payments of either income or principal from my residuary estate hereinbefore directed to be made to any one or all of the beneficiaries hereinbefore named, shall not be subject to the debts, engagements, anticipation or alienation of any beneficiary or beneficiaries, nor shall the same be subject to judgment, attachment or other process of law at the hands of anyone whomsoever.

LASTLY: I nominate, constitute and appoint Camden Safe Deposit and Trust Company, its successors and assigns, my wife, Grace McNeal Brown, and my daughter, Marie Brown Sheble, or the survivors or survivor of them, Executors of and Trustees under this my last will and testament, hereby giving to my said Executors and my said Trustees, or the survivors or survivor of them, power to sell and dispose of any and all parts of my estate, real,

personal and mixed, at public or private sale, on such terms and at such prices as to them, or the survivors or survivor of them, seems advisable, and to give to the purchaser or purchasers good and sufficient deeds or conveyances in the law for the same without any liability on the part of said purchaser or purchasers as to the application, non-application or mis-application of the purchase price.

IN WITNESS WHEREOF I have hereunto set my hand and seal this 5th day of August, A. D. One thousand nine hundred and twenty-five.

FREDERICK G. BROWN (Seal)

Signed, sealed, published and declared by the said Testator, as and for his last will and testament, in the presence of us, who at his request, in his presence, and in the presence of each other, all being present at the same time have hereunto subscribed our names as witnesses.

RACHEL C. COWGILL,
MARGARETTA F. ESCHEMAN.

EXHIBIT B.

I, FREDERICK G. BROWN, of the Borough of Riverton, in the County of Burlington and State of New Jersey, do hereby make, publish and declare this as and for a First Codicil to my last Will and Testament, bearing date the fifth day of August, A. D. 1925.

I hereby revoke the appointment of Camden Safe Deposit and Trust Company as one of the Executors and Trustees under my said Will, and nominate, constitute and appoint Corn Exchange National

Bank of Philadelphia, its successors and assigns, Co-Executor and Co-Trustee with my wife and my daughter, hereby giving to said Corn Exchange National Bank of Philadelphia all powers in my said Will contained.

Frederick G. Brown

I further give my Executors and Trustees full power and authority to pay over and deliver from time to time to the person or persons who may at the time be the beneficiary of all or any part of my estate, any or all of the principal (in addition to the income) of that part of my estate in which the particular person or persons may be interested. My idea in making this provision is to enable members of my family or other beneficiary to provide for their suitable support, comfort and maintenance or for the education of any dependent beneficiary, or to meet any emergency such as illness, loss or misfortune that may befall them or any of them. The payment of the principal is to rest solely within the discretion of my Trustees and cannot be enforced by any person or persons whomsoever.

I hereby ratify and confirm my said Will except as the same is hereby modified and altered.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 29th day of August in the year of our Lord One Thousand Nine Hundred and Twenty-five (1925).

FREDERICK G. BROWN (Seal)

Signed on the margin of the preceding page and at the end hereof, sealed, published and declared by FREDERICK G. BROWN, the Testator above named, as and for a first codicil to his last Will and Testament, in the presence of us, who at his request, in his presence and in the presence of each

other have hereunto subscribed our names as witnesses.

E. H. Holbrook
Address: 4618 Cedar Ave., Phila.
Lillian N. Atchison
Address: 4924 Sansom St., Phila.

ANSWER AND COUNTERCLAIM OF DEFENDANTS CORN EXCHANGE NATIONAL BANK AND TRUST COMPANY, PHILADELPHIA AND MARIE BROWN SHEBLE, TRUSTEES UNDER THE WILL OF FREDERICK G. BROWN, DECEASED.

(Filed February 28, 1944.)

IN CHANCERY OF NEW JERSEY.
149/696.

Between GRACE MCNEAL BROWN, Complainant, and CORN EXCHANGE NATIONAL BANK AND TRUST COMPANY, PHILADELPHIA, a Corporation of the State of Pennsylvania, Trustee under the Will of Frederick G. Brown, et al., Defendants.	On Bill, &c. Answer and Counterclaim of Defendants Corn Exchange National Bank and Trust Company, Philadelphia and Marie Brown Sheble, Trustees under the Will of Frederick G. Brown, Deceased.

The answer of the defendants, Corn Exchange National Bank and Trust Company, Philadelphia, and

Marie Brown Sheble, Trustees under the last Will of Frederick G. Brown, deceased.

These defendants, Corn Exchange National Bank and Trust Company, Philadelphia, and Marie Brown Sheble, Trustees under the Will of Frederick G. Brown, deceased, answering the amended Bill of Complaint, say that:

1. Paragraph 1 is admitted.

2. Paragraph 2 is admitted.

3. Paragraph 3 is denied. The active management of the trust estate created by said will and codicil, has been and is now jointly in the hands of the complainant and these two answering defendants. In said management, complainant has participated actively and as one of the trustees. Complainant has from time to time prevented changes in investments from being made contrary to the recommendations of the two defendant trustees, which refusals by the complainant, have resulted in substantial losses to the estate.

4. Paragraph 4 is admitted.

5. Paragraph 5 is denied except that these answering defendant trustees state that in protecting the corpus of the trust estate, they have maintained and do maintain complainant is indebted to the trust estate upon the two certain notes more particularly set forth in Paragraph 5 of the complaint, and have from time to time with the consent and approval of the complainant, charged against the income, granted unto the complainant under the terms of the decedent's will, interest upon said obligations. Com-

plainant prior to the year 1941, did not attempt to deny her liability on the said notes.

6. Paragraph 6 is denied except that these answering defendant trustees admit that they hold certain collateral as security for the repayment of the notes of complainant, more particularly referred to in Paragraph 5 of the amended Bill of Complaint, and further state that such collateral is properly held by them, having been pledged as security for said notes by the complainant during the lifetime of said decedent, Frederick G. Brown.

7. Paragraph 7 is admitted.

8. Paragraph 8 is admitted.

9. Paragraph 9 is admitted except that a copy of the opinion, not the order, of the Burlington County Orphans' Court is attached to the bill of complaint. These answering defendant trustees further show that the said order of the Burlington County Orphans' Court is in all ways correct and according to law.

10. Paragraph 10 is admitted.

11. Paragraph 11 is denied.

12. Paragraph 12 is denied.

13. Paragraph 13 is denied.

14. Paragraph 14 is admitted.

15. Paragraph 15 is denied except it is admitted that such securities are pledged for such notes.

16. Paragraph 16 is admitted.

17. Paragraph 17 is denied.

18. Paragraph 18 is admitted, except that the sole interest in this matter of the Corn Exchange National Bank and Trust Company, Philadelphia, is, as a trustee under the last will of Frederick G. Brown, deceased, and said Marie Brown Sheble, one of these answering trustees, is not a complainant and Harold W. Sheble is not a minor.

19. Complainant has heretofore, as an executor under the last will of Frederick G. Brown, deceased, and also as a trustee thereof, executed and filed numerous documents, tax returns, and papers wherein she has recognized her obligation to pay the principal and interest due under the two said notes, copies of which are attached hereto and made part hereof and marked Exhibits A and B respectively. In reliance upon the tax returns duly signed and sworn to by complainant, wherein her said notes were valued at the market value of the collateral pledged by her for such notes, the estate has paid taxes to both the United States government and the State of New Jersey, substantially higher than would have been the case had such notes not been recognized as assets of the estate. Furthermore, at the allowance of the account of the executors by the Orphans' Court of Burlington County, commissions and other charges were duly allowed by the Court based on the valuation of the estate, including said notes as assets valued at the value of the collateral pledged therefor, the account of said executors having been duly signed and sworn to by complainant and presented for allowance to the said Burlington County Orphans' Court by the three executors, in-

cluding complainant. By reason of the aforesaid actions of complainant, complainant is now estopped from denying her legal obligation to pay to the estate the principal and interest due under the terms of said notes. Complainant is further estopped from denying her obligations hereunder by reason of the fact that she has heretofore recognized said obligations and has voluntarily made payments on account of the principal thereof, thereby procuring the release of certain of the securities originally pledged by her as collateral therefor.

20. Over a period of many years, complainant has recognized her obligation on the notes aforesaid, and has consented to the trustees, of which she was one, deducting from her share of the income from the trust estate, the interest owed by her on said notes, and acting in reliance on complainant's said approval and acquiescence, the said trustees, of which the complainant is and was one, have not heretofore taken legal action to compel the sale of the collateral held for said notes, have not sought to deprive complainant of the income and dividends received by her from said collateral securities registered in her individual name, and have distributed income to the beneficiaries of said trust and have included in such income so distributed, the interest so paid by complainant, whereby complainant is estopped now from denying her obligation to pay the principal and income due on the aforesaid notes.

21. Complainant from 1932 until 1941, recognized her obligation to pay the principal and interest due on the aforesaid notes and by reason thereof, and by reason of her acquiescence in various activities of the trustees recognizing the validity of said notes, the complainant is in laches and cannot now deny

her obligation in this Court to pay the principal and interest on said notes.

22. Complainant is one of the three trustees under the last will and testament of Frederick G. Brown, deceased and as such, is charged with the sacred duty and obligation to protect the principal and income of said trust estate, a part of which principal or corpus of such trust estate is represented by her promissory notes, copies of which are attached hereto as Exhibits A and B. After recognizing for many years that said notes constituted a part of the corpus of the trust estate, and were valid obligations of hers, complainant now, contrary to her duty as a trustee under said will, alleges in her own individual interest that said notes are not valid obligations of hers and that interest has been improperly paid thereon by her. In making such allegations, complainant fails to recognize and flatly disregards her duty as one of the trustees of said trust estate and does not come into this Court with clean hands. So long as complainant is one of the trustees of this estate, she cannot properly ask the assistance of this Court to relieve her of her individual obligations to the very great detriment and loss of said trust estate. In so asking, complainant is requesting this Court to ratify and approve self dealing on her part as a trustee with herself in her individual capacity. Complainant does not come into Court with clean hands and is therefore, not entitled to the assistance of this Court.

By way of Counter-Claim against complainant, the defendants, Corn Exchange National Bank and Trust Company, Philadelphia, and Marie Brown Sheble, Trustees under the will of Frederick G. Brown, deceased, say that:

1. On August 9, 1932, the complainant, Grace McNeal Brown made and delivered to her husband, Frederick G. Brown, her two notes of that date, one for $19,000.00 bearing interest at the rate of 6% per annum, and one for $27,669.44, bearing interest at the rate of 4% per annum, both of said notes being payable on demand at the Cinnaminson Bank and Trust Company, Riverton, New Jersey, to the order of said Frederick G. Brown, copies of which are attached hereto and made a part hereof.

2. On or about November 3, 1932, the said Frederick G. Brown died leaving a last will and testament and codicil thereto, naming Grace McNeal Brown, the complainant, Corn Exchange National Bank and Trust Company, Philadelphia, and Marie Brown Sheble, his executors and trustees. On or about November 18, 1932, said will was duly probated and his said executors duly qualified and took upon themselves the administration of his estate. Among the assets received by said executors were the aforesaid notes of Grace McNeal Brown and certain securities pledged by her during the lifetime of her said husband, as collateral for said notes.

3. The securities pledged by the complainant with the decedent during his lifetime for her said notes, were the following:

40 shs. Advance-Rumley Corp. common
100 shs. Consolidated Gas Utilities Co. Class "A"
200 shs. Electric & Musical Industries Ltd. "American Shares"
100 shs. General Motors Corp. common
250 shs. Kennecott Copper Corp.
150 shs. Mother Lode Coalition Mines Co.

100 shs. Montgomery Ward & Co., Inc. common
33 shs. Niagara Hudson Pr. Corp. common
300 shs. The Pennroad Corp. Voting Trust
100 shs. The United Corporation common
930 shs. The United Gas Improvement common

4. At the time of the decedent's death, all the aforesaid securities, with powers of attorney signed by the complainant, were found in the decedent's safe deposit box along with the notes aforesaid of the complainant to the decedent.

5. Said executors duly administered said estate and at the completion of their administration, transferred the residuary assets of said estate, including the aforesaid notes and collateral held therefor, to the aforesaid trustees under the last will and codicil of Frederick G. Brown, deceased and said trustees still hold said notes of said Grace McNeal Brown.

6. No part of the principal of said note of $27,669.44, has been paid by said Grace McNeal Brown and the full principal thereof, with interest at the rate of 4% per annum from the ninth day of February 1944, is owed by said Grace McNeal Brown, individually, to the trustees of the estate of said Frederick G. Brown, deceased, the present holders of said notes.

7. On or about July 11, 1934, said Grace McNeal Brown paid to said trustees the sum of $2,230.00, on account of the principal of said note of $19,000.00, and in consideration of such payment, the trustees released to her and she received from the trustees, a part of her aforesaid collateral, namely:

200 shs. Electric & Musical Industries Ltd.
"American Shares"
300 shs. The Pennroad Corp.

On or about April 30, 1935, said Grace McNeal Brown made a further payment of $2,770.00, to the trustees, on account of the principal of said note and in consideration of such payment, the trustees released to her and she received from the trustees, a part of her aforesaid collateral, namely:

40 shs. Advance-Rumley Corp. common
100 shs. Consolidated Gas Utilities "A"
150 shs. Mother Lode Coalition Mines Co.
33 shs. Niagara Hudson Pr. Corp. common
100 shs. United corporation common
45 shs. United Gas Improvement common

By reason of these payments, the principal of said note of $19,000.00 was reduced to $14,000.00, which sum with interest at the rate of 6% per annum from February 9, 1944, is owed by said Grace McNeal Brown, individually, to the trustees of the estate of said Frederick G. Brown, deceased, who are the present holders of said note.

8. Demand for the payment of said notes has been made but except as hereinabove stated, the sums due thereunder, are still owing and unpaid.

9. Among the securities held by the aforesaid trustees of the estate of Frederick G. Brown, as collateral, for said notes are:

Certificates for 885 shares of Common Stock of United Gas Improvement Company

This stock, as well as the other collateral held by the decedent for the aforesaid notes of Grace McNeal Brown, was held by the executors of the estate

as collateral for said notes and was accounted for by them in such fashion. In fixing the valuation of said notes, said executors used the value of the said collateral. Upon the completion of the administration by the said executors, said notes, along with their supporting collateral, were duly transferred to the trustees under the decedent's will and have been held and administered by the trustees as a part of the trust estate.

10. During the year 1943, proceedings were taken to dissolve the United Gas Improvement Company and in the course thereof, common stock of the Philadelphia Electric Company and of the Public Service Corporation of New Jersey was distributed to the common stock holders of the United Gas Improvement Company.

11. At the time of such distribution of said Philadelphia Electric Company common stock and said Public Service Corporation of New Jersey common stock, the trustees aforesaid of the estate of Frederick G. Brown, deceased, holding as collateral as aforesaid, 885 shares of the United Gas Improvement Company common stock, were entitled to receive in such dissolution proceedings, 295 shares of Philadelphia Electric Company common stock and 73-9/12s shares of the Public Service Corporation of New Jersey common stock as collateral for the said notes of said Grace McNeal Brown. Because the said 885 shares of United Gas Improvement Company common stock pledged as aforesaid, with powers of attorney attached, were still registered in the name of Grace McNeal Brown, the said 295 shares of common stock of the Philadelphia Electric Company and 73-9/12s shares of common stock of the Public Service Corporation of New Jersey,

were by error delivered by United Gas Improvement Company to said Grace McNeal Brown, individually, registered in her individual name, although they properly belong in the possession of the trustees to be held as collateral in the same manner as the said 885 shares of United Gas Improvement Company stock had heretofore been held.

12. These defendant trustees have attempted to procure the return of the said shares of the Philadelphia Electric Company common stock and the Public Service Corporation of New Jersey common stock from said Grace McNeal Brown, through requests and demands made for such return to her directly and to her attorneys but said Grace McNeal Brown has not returned said stocks to be held with the other assets of the trust estate and has not caused them to be registered in the name of the trustees, or to indicate that the trustees hold them as collateral, but on the contrary, has wrongfully and willfully retained said shares of stock, registered in her own individual name, claiming the same to be her own individual property, free and clear of any and all liens of the trustees.

13. Your defendant trustees show and aver that said Grace McNeal Brown, has misapplied the aforesaid 295 shares of common stock of the Philadelphia Electric Company and the 73-9/12s shares of the common stock of the Public Service Corporation of New Jersey, in that prior to the determination of her rights by this Court, she has willfully and wrongfully held said shares of stock registered in her own individual name as her own individual property and has not turned over the certificates thereof to be held by the trustees as collateral along with the other trust assets of the estate.

14. These defendant trustees have felt that for the protection of the trust estate, the collateral of the complainant still held for said notes, consisting of 100 shares General Motors Corporation common stock; 250 shares Kennecott Copper Corporation stock; 100 shares Montgomery Ward & Co., Inc. common stock and 885 shares United Gas Improvement common stock, including the aforesaid Public Service Corporation of New Jersey stock and Philadelphia Electric Company stock as the proceeds thereof, should have been sold and the proceeds thereof applied against complainant's notes aforesaid. But complainant, because of her individual desire to repossess said securities for her own use, has refused to consent to the liquidation of said collateral and has used her power as a trustee to prevent the sale of said collateral, thereby violating her duties as a trustee.

These defendants, Marie Brown Sheble and the Corn Exchange National Bank and Trust Company, Philadelphia, two of the trustees under the last will and testament of Frederick G. Brown, deceased, are without adequate remedy in the Court at law and therefor pray:

1. That said complainant, Grace McNeal Brown, may answer this counter claim under oath and each statement herein made.

2. That said complainant, may be decreed to pay to the trustees of the estate of Frederick G. Brown, deceased, the full amount of principal of $27,669.44, due under her aforesaid note dated August 9, 1932, with interest thereon at 4% per annum from the ninth day of February, 1944, to date of payment, and the amount of $14,000.00 principal, presently

due and owing on the other aforesaid note, dated August 9, 1932 (in the fact amount of $19,000.00), with interest at the rate of 6% per annum, on said sum of $14,000.00, from the ninth day of February, 1944, to the date of payment.

3. That said complainant, Grace McNeal Brown, be ordered and decreed to deliver forthwith to the trustees of the estate of Frederick G. Brown, deceased, the said 295 shares of common stock of the Philadelphia Electric Company and the said 73-9/12s shares of common stock of the Public Service Corporation of New Jersey, duly endorsed by her to be held as collateral by said trustees for the payment of her aforesaid two notes dated August 9, 1932.

4. That complainant may be ordered and decreed to join with the other trustees in taking such action as may be necessary to sell all the aforesaid collateral of complainant pledged for her said notes and to apply the proceeds thereof against the principal due on said notes.

5. That these defendant trustees may have such further relief as this Court may deem equitable and just.

BOYLE and ARCHER,
Solicitors and of Counsel with Defendants, Marie Brown Sheble, and Corn Exchange National Bank and Trust Company, Philadelphia, Trustees under the Will of Frederick G. Brown, Deceased.

ANSWER OF THE DEFENDANTS, MARIE BROWN SHEBLE (INDIVIDUALLY), ELAINE SHEBLE ROGERS AND HAROLD W. SHEBLE.

(Filed February 28, 1944.)

IN CHANCERY OF NEW JERSEY.
149/696.

Between
GRACE MCNEAL BROWN,
Complainant,
and
CORN EXCHANGE NATIONAL BANK AND TRUST COMPANY, PHILADELPHIA, a Corporation of the State of Pennsylvania, Trustee under the Will of Frederick G. Brown, et al.,
Defendants.

On Bill, &c.
Answer of the Defendants, Marie Brown Sheble (Individually), Elaine Sheble Rogers and Harold W. Sheble.

The answer of the defendants, Marie Brown Sheble (individually), Elaine Sheble Rogers and Harold W. Sheble.

These defendants, Marie Brown Sheble (Individually), Elaine Sheble Rogers and Harold W. Sheble, answering the amended Bill of Complaint, say that:

1. Paragraph 1 is admitted.

2. Paragraph 2 is admitted.

3. Paragraph 3 is denied. The active management of the trust estate and the responsibility therefor, has always been and is now in the hands of the three trustees jointly.

4. Paragraph 4 is admitted.

5. Paragraph 5 is denied except that these defendants state that complainant is indebted to said trust estate upon her two certain notes dated August 9, 1932, in the amount of $14,000.00, principal on one note and the amount of $29,667.44, principal on the other note.

6. Paragraph 6 is denied, except that these defendants admit that the trustees hold certain collateral of complainant as security for the repayment of her said notes with interest.

7. Paragraph 7 is admitted.

8. Paragraph 8 is admitted.

9. Paragraph 9 is admitted except that a copy of the opinion, not the order, of the Burlington County Orphans' Court is attached to the bill of complaint. These answering defendants further show that the said order of the Burlington County Orphans' Court is in all ways correct and according to law.

10. Paragraph 10 is admitted.

11. Paragraph 11 is denied.

12. Paragraph 12 is denied.

13. Paragraph 13 is denied.

14. Paragraph 14 is admitted.

15. Paragraph 15 is denied except it is admitted that such securities are pledged for such notes.

16. Paragraph 16 is admitted.

17. Paragraph 17 is denied.

18. Paragraph 18 is admitted except that said Marie Brown Sheble, one of these defendants, is not a complainant as a trustee in this matter and the said defendant, Elaine Sheble is now Elaine Sheble Rogers, and the said defendant, Harold W. Sheble, is not a minor.

19. Complainant has heretofore, as an executor under the last will of Frederick G. Brown, deceased, and also as a trustee thereof, executed and filed numerous documents, tax returns, and papers wherein she has recognized her obligation to pay the principal and interest due under the two said notes, copies of which are attached hereto and made part hereof and marked Exhibits A and B respectively. In reliance upon the tax returns duly signed and sworn to by complainant, wherein her said notes were valued at the market value of the collateral pledged by her for such notes, the estate has paid taxes to both the United States government and the State of New Jersey, substantially higher than would have been the case had such notes not been recognized as assets of the estate. Furthermore, at the allowance of the account of the executors by the

Orphans' Court of Burlington County, commissions and other charges were duly allowed by the Court based on the valuation of the estate, including said notes as assets valued at the value of the collateral pledged therefor, the account of said executors having been duly signed and sworn to by complainant and presented for allowance to the said Burlington County Orphans' Court by the three executors, including complainant. By reason of the aforesaid actions of complainant, complainant is now estopped from denying her legal obligation to pay to the estate the principal and interest due under the terms of said notes. Complainant is further estopped from denying her obligations hereunder by reason of the fact that she has heretofore recognized said obligations and has voluntarily made payments on account of the principal thereof, thereby procuring the release of certain of the securities originally pledged by her as collateral therefor.

20. Over a period of many years, complainant has recognized her obligation on the notes aforesaid, and has consented to the trustees, of which she was one, deducting from her share of the income from the trust estate, the interest owed by her on said notes, and acting in reliance on complainant's said approval and acquiescence, the said trustees, of which the complainant is and was one, have not heretofore taken legal action to compel the sale of the collateral held for said notes, have not sought to deprive complainant of the income and dividends received by her from said collateral securities registered in her individual name, and have distributed income to the beneficiaries of said trust and have included in such income so distributed, the interest so paid by complainant, whereby complainant is

estopped now from denying her obligation to pay the principal and income due on the aforesaid notes.

21. Complainant from 1932 until 1941, recognized her obligation to pay the principal and interest due on the aforesaid notes and by reason thereof, and by reason of her acquiescence in various activities of the trustees recognizing the validity of said notes, the complainant is in laches and cannot now deny her obligation in this Court to pay the principal and interest on said notes.

22. Complainant is one of the three trustees under the last will and testament of Frederick G. Brown, deceased, and as such, is charged with the sacred duty and obligation to protect the principal and income of said trust estate, a part of which principal or corpus of such trust estate is represented by her promissory notes, copies of which are attached hereto as Exhibits A and B. After recognizing for many years that said notes constituted a part of the corpus of the trust estate, and were valid obligations of hers, complainant now, contrary to her duty as a trustee under said will, alleges in her own individual interest that said notes are not valid obligations of hers and that interest has been improperly paid thereon by her. In making such allegations, complainant fails to recognize and flatly disregards her duty as one of the trustees of said trust estate and does not come into this Court with clean hands. So long as complainant is one of the trustees of this estate, she cannot properly ask the assistance of this Court to relieve her of her individual obligations to the very great detriment and loss of said trust estate. In so asking, complainant is requesting this Court to ratify and approve self dealing on her part as a trustee with herself in her individual

capacity. Complainant does not come into Court with clean hands and is therefore, not entitled to the assistance of this Court.

BOYLE and ARCHER,
Solicitors and of Counsel with
Defendants, Marie Brown
Sheble (Individually),
Elaine Sheble Rogers and
Harold W. Sheble.

REPLICATION TO ANSWER OF DEFENDANTS CORN EXCHANGE NATIONAL BANK AND TRUST COMPANY, PHILADELPHIA, AND MARIE BROWN SHEBLE, TRUSTEES UNDER THE WILL OF FREDERICK G. BROWN, DECEASED, AND ANSWER TO COUNTERCLAIM.

(Filed March 30, 1944.)

IN CHANCERY OF NEW JERSEY.
149/696.

Between GRACE MCNEAL BROWN, Complainant, and CORN EXCHANGE NATIONAL BANK AND TRUST COMPANY, PHILADELPHIA, a Corporation of the State of Pennsylvania, Trustee under the Will of Frederick G. Brown, et al., Defendants.	Replication to Answer of Defendants Corn Exchange National Bank and Trust Company, Philadelphia, and Marie Brown Sheble, Trustees under the Will of Frederick G. Brown, Deceased, and Answer to Counterclaim.

The complainant joins issue on the answer of the above named defendants.

As to the counterclaim contained in said answer complainant says:

1. Paragraph 1 is admitted.

2. Paragraph 2 is admitted.

3. Paragraph 3 is admitted.

4. Paragraph 4 is admitted.

5. Paragraph 5 is admitted.

6. Paragraph 6 is denied except that complainant admits no part of the principal of the note of $27,669.44 has been paid by complainant.

7. Paragraph 7 is denied except that complainant admits that she has been credited with the payments therein mentioned and that the alleged collateral therein mentioned was delivered to her.

8. Paragraph 8 is denied.

9. Paragraph 9 is admitted except to the extent that complainant denies any right upon the part of said trustees to hold said collateral.

10. Paragraph 10 is admitted.

11. Paragraph 11 is admitted except that complainant denies the right of said trustees to hold the collateral therein mentioned.

12. Paragraph 12 is denied except that complainant admits that the defendant trustees have attempted to procure the return of the said shares of

The Philadelphia Electric Company common stock and the Public Service Corporation of New Jersey common stock from complainant through requests and demands made for such return to her directly and to her said attorneys and that complainant has not returned said stock and has not caused them to be registered in the name of the trustees.

13. Paragraph 13 is denied.

14. Complainant says that she has no knowledge as to any feelings of defendant trustees and denies that said defendant trustees have any right to liquidate said collateral and denies that she has violated her duties as a trustee.

15. Defendant trustees have an adequate remedy in the courts of law.

16. Any obligation to repay notes mentioned and described in said counterclaim has been terminated by the running of the statute of limitations.

17. Any obligation to repay said notes was forgiven by the said Frederick G. Brown during his lifetime.

18. Any obligation to repay the said notes was duly forgiven by the last will and testament of the said Frederick G. Brown.

19. Said defendant trustees have no right to recover any money that may be found to be due on said notes.

20. Said alleged collateral is in fact the property

of complainant and said defendant trustees have no right or title therein.

ARTHUR W. LEWIS,
Solicitor of Complainant.
DONALD R. TAGGART,
Of Counsel with Complainant.

State of New Jersey }
County of Atlantic } ss.

GRACE McNEAL BROWN, of full age, being duly sworn acording to law, upon her oath deposes and says:

1. I am the complainant in the above entitled cause and am the defendant to the counterclaim filed therein and named in the foregoing answer to said counterclaim; the matters and things contained in said answer to said counterclaim, so far as they relate to my own acts, are true, and so far as they relate to acts of others, I believe them to be true.

GRACE McNEAL BROWN.

Sworn and subscribed before me this 23rd day of March, 1944.

HARRIET L. LEAVENWORTH,
(Seal) Notary Public of New Jersey.
My Com. exp. 8/25/46.

REPLICATION TO ANSWER OF THE DEFENDANTS, MARIE BROWN SHEBLE (INDIVIDUALLY), ELAINE SHEBLE ROGERS AND HAROLD W. SHEBLE.

(Filed March 30, 1944.)

IN CHANCERY OF NEW JERSEY.
149/696.

Between
GRACE MCNEAL BROWN,
Complainant,
and
CORN EXCHANGE NATIONAL BANK AND TRUST COMPANY, PHILADELPHIA, a Corporation of the State of Pennsylvania, Trustee under the Will of Frederick G. Brown, et al.,
Defendants.

Replication to Answer of the Defendants, Marie Brown Sheble (individually), Elaine Sheble Rogers and Harold W. Sheble.

The complainant joins issue on the answer of the above mentioned defendants.

ARTHUR W. LEWIS,
Solicitor of Complainant.
DONALD R. TAGGART,
Of Counsel with Complainant.

REPLICATION TO ANSWER OF THE COMPLAINANT, GRACE McNEAL BROWN, TO COUNTER-CLAIM OF DEFENDANTS, CORN EXCHANGE NATIONAL BANK AND TRUST COMPANY, PHILADELPHIA AND MARIE BROWN SHEBLE, TRUSTEES.

(Filed April 3, 1944.)

IN CHANCERY OF NEW JERSEY.

149/696.

Between GRACE MCNEAL BROWN, Complainant, and CORN EXCHANGE NATIONAL BANK AND TRUST COMPANY, PHILADELPHIA, a Corporation of the State of Pennsylvania, Trustee under the Will of Frederick G. Brown, et al., Defendants.	Replication to Answer of the Complainant, Grace McNeal Brown, to Counter-Claim of Defendants, Corn Exchange National Bank and Trust Company, Philadelphia and Marie Brown Sheble, Trustees.

These defendants join issue on the answer of the complainant to their counter-claim.

BOYLE and ARCHER,

Solicitors and of Counsel with Defendants, Marie Brown Sheble, and Corn Exchange National Bank and Trust Company, Philadelphia, Trustees under the Will of Frederick G. Brown, Deceased.

ORDER OF REFERENCE.

(Filed April 17, 1944.)

IN CHANCERY OF NEW JERSEY.
149/696.

Between
GRACE MCNEAL BROWN,
Complainant,
and
CORN EXCHANGE NATIONAL BANK AND TRUST COMPANY, PHILADELPHIA, a Corporation of the State of Pennsylvania, Trustee under the Will of Frederick G. Brown, et al.,
Defendants.

Order of Reference.

This matter being opened to the Court by Boyle and Archer, solicitors of the defendants, and it appearing that Arthur W. Lewis, solicitor for the complainant, has consented hereto:

IT IS, on this 17th day of April, nineteen hundred and forty-four, on motion of Boyle and Archer, solicitors of the defendants, ORDERED that the above entitled cause be referred to Hon. Albert S. Woodruff, one of the Vice Chancellors of this Court, to hear the same for the Chancellor, and to report

thereon to him and to advise what order or decree should be made therein.

LUTHER A. CAMPBELL,
C.

I hereby consent to the entry of the foregoing order:

ARTHUR W. LEWIS,
Solicitor of Complainant.

BOYLE and ARCHER,
Solicitors of the Defendants.

A true copy.

EDW. L. WHELAN,
Clerk.

DESIGNATION.

(Filed April 29, 1944.)

IN CHANCERY OF NEW JERSEY.
149/696.

Between
GRACE MCNEAL BROWN,
Complainant,
and
CORN EXCHANGE NATIONAL BANK AND TRUST COMPANY, PHILADELPHIA, a Corporation of the State of Pennsylvania, Trustee under the Will of Frederick G. Brown, et al.,
Defendants.

On Bill, etc.
Designation.

This matter being opened to the Court by Boyle and Archer, solicitors of the defendants, and having been consented to by Arthur W. Lewis, Esquire, solicitor for the complainant;

It is, on this 29th day of April, 1944, ORDERED that Thursday the first day of June, 1944, at the hour of 10 o'clock in the forenoon, at the Chancery Chambers, in the new Court House in the City of Camden, New Jersey, be designated as the time and place for the hearing of the above entitled cause.

ALBERT S. WOODRUFF,
V. C.

Consented to by:
ARTHUR W. LEWIS,
Solicitor for the Complainant,
Grace McNeal Brown.

TESTIMONY.

IN CHANCERY OF NEW JERSEY.
149/696.

Between
GRACE MCNEAL BROWN,
Complainant,
and
CORN EXCHANGE NATIONAL BANK AND TRUST COMPANY, PHILADELPHIA, a Corporation of the State of Pennsylvania, Trustee under the Will of Frederick G. Brown, et al.,
Defendants.

On Bill, etc.
Final Hearing.

WOODRUFF, V. C.

June 1, 1944.

ARTHUR W. LEWIS, Esq., HENRY S. ROSS, Esq., for Complainant.

BOYLE & ARCHER, Esqs., by F. MORSE ARCHER, JR., Esq., with whom appeared FREDERICK C. NEWBOURG, JR., of the Philadelphia Bar, for Defendants.

MR. ROSS: I don't presume there is any particular necessity for outlining this matter prior to taking the testimony?

THE COURT: No, unless there is something new that has occurred to counsel. I have read the pleadings.

MR. ARCHER: Nothing new, only when the proper time comes Mr. Ross has agreed to stipulate certain facts of record.

THE CASE FOR THE COMPLAINANT.

GRACE McNEAL BROWN, sworn.

BY MR. ROSS:

Q. Mrs. Brown, you are the widow of Frederick G. Brown?

A. Yes.

Q. At the time of your husband's death did you have any assets other than the stocks that were placed in the safe deposit box of your husband and some few worthless shares of stock? Did you hear me?

A. I don't quite understand.

Q. I will repeat it. If your Honor will permit me to leave the table I think I can do it better. When your husband died did you have any property of any kind except the stock that was in your husband's safe deposit box and some few worthless shares of stock, is that correct?

A. I had mine in the Cinnaminson Bank, my own personal belongings from my own family.

THE COURT: Listen carefully and if you don't understand what counsel says to you say so and ask him to repeat it, and in answering trying to answer loud enough for us all to hear. Take your time and we will do the best we can.

Q. What I am trying to have you testify to, Mrs. Brown ——

THE COURT: Ask her what she had.

MR. ROSS: That is next to impossible. I am, unfortunately, going to be placed in the position of having to lead the witness some.

THE COURT: Let us see. Can you tell us what you did have at the time of your husband's death?

THE WITNESS: 12 years ago?

THE COURT: You had some stock which was in his deposit box?

THE WITNESS: No, I had no stocks of his in my deposit box, what I had I inherited from my father and mother and uncle and money I had invested, losing a good deal and replacing it, but they were my own personal stocks.

Q. Mrs. Brown, at the time your husband died you had practically nothing, isn't that correct?

MR. ARCHER: I object.

THE COURT: Mr. Ross, that isn't the way the evidence should be elicited.

MR. ROSS: I understand that. They are leading, and I probably will have a great deal of trouble. I wil do it another way.

THE COURT: And in the accepted way, if you will.

MR. ROSS: Suppose I take up something else.

THE COURT: This stock you asked about in her husband's box, speak of it by name.

THE WITNESS: My own stock was in his box.

THE COURT: Let us see if we can find out what you know about it. How old are you?

THE WITNESS: 77.

Q. Mrs. Brown, when your husband died did you own some Advance-Rumely Corporation stock?
A. Yes.
Q. Consolidated Gas Utilities "A"?
A. I don't remember that at all.
Q. Electric & Musical Industries?
A. Yes.
Q. And some General Motors Corporation?
A. Yes.
Q. Kennecott Copper Corporation?
A. Yes, sir.
Q. Any Mother Lode Coalition Mines?
A. Yes.
Q. Montgomery-Ward Company stock?
A. Yes.
Q. Niagara Hudson stock?
A. Yes.
Q. Pennroad Corporation?

A. Yes, sir.

Q. United Corporation common?

A. Yes, sir.

Q. Did you own any United Gas Improvement?

A. Yes.

Q. Tell me, Mrs. Brown, did you own any other stock?

A. The stock I owned and had in that box a man named Edgar Freeman, Treasurer and Secretary of the Corn Exchange Bank, he had brought a man with him, and Mrs. Sheble had her husband with her ——

Q. You are going far afield. What I asked you was, do you remember the list of stocks I read you?

A. Yes.

Q. Did you own any other stock at that time that you know of?

A. If I did it was practically worthless.

Q. What happened to the shares of stock you owned?

A. The shares of stock I owned were in my box. My husband had loaned me ——

Q. Tell me what happened to the shares of stock?

A. The man who was secretary, trustee and officer of the estate took a lawyer in with him and opened the box, and at my request my husband and I signed blank powers of attorney and I told him ——

Q. Did Mr. Freeman take the stock?

A. Mr. Freeman looked over the stock and Mr. Freeman took the stock and that is what I am fighting for.

Q. Did you own any other property at the time, real estate, or money, or bonds, or anything?

A. No.

Q. Just before your husband's death, before he got sick, did he know what your financial condition was?

A. Yes.

Q. Don't answer it.

MR. ARCHER: I object. I think that is a pure conclusion, what the decedent knew.

THE COURT: That would be a conclusion. It would have to be followed up by her testimony as to how he knew.

MR. ARCHER: And I object to any testimony as to transactions with the decedent during his lifetime.

MR. ROSS: I have anticipated that objection, if the Court please, and concededly there are many questions I cannot ask this witness because she is a party in interest, but so far as it relates to the construction of the document she is now merely testifying to the surrounding circumstances. I call your Honor's attention to the case of Snyder v. Warbasse, 11 N. J. Equity, which was a will construction case, Page 463 at Page 467, the Court said this: "In searching for the intention of the testator, we are not confined to the will itself, but may look at the situation of the property disposed of, and the persons taking it." The situation of the person taking it is exactly the point of this question and knowledge upon the part of the testator must be considered very relevant in considering what his intentions were.

THE COURT: Your question isn't directed, Mr. Ross, to the date, or approximate date of the execution of the will.

MR. ROSS: The will, if the Court please, speaks as of the time of the testator's death, and it is that

date on which the construction is based, if the Court please.

THE COURT: Mr. Ross, I think you are in error there. The man's words are chosen by him at the time of his making his will and executing it, and his intent must be ascertained as of that time. It is true the will comes into effect as of his death but we must look to the circumstances which surrounded him as of the time he was preparing and executing the will to ascertain what he meant by what he wrote.

MR. ROSS: May I differ with your Honor to this extent ——

THE COURT: That is always counsel's privilege.

MR. ROSS: Thank you, Sir. If you will recall, and you probably won't because it has probably been some time since you read it, one of the cases which I cited on the original argument, in which the court suggested that the failure of the testator to make a change in view of changed circumstances reestablished to a degree his thought of the will as of the time of the changed circumstances.

THE COURT: That is a little different situation.

MR. ROSS: In other words, I am trying to establish before your Honor the situation as of or just before the time of the testator's death when he could have changed his will in view of the changed circumstances but failing then to change his will he is presumed, I say, to have reconsidered the thing in the

light of the then happenings. I feel that is a correct exposition of the law.

THE COURT: I will hear you.

MR. ARCHER: If the Court please, that exact argument was made and overruled in Dulfon v. Keasby, a case which I cite in my memorandum and in a decision your Honor handed down in the Fisler case, and the Pennsylvania Company case where the advice of counsel given after execution of the will was not admissible.

THE COURT: I recollect that.

MR. ARCHER: That was a definite change of circumstance, and in citing the Pennsylvania case the Dulfon v. Keasbey case meets Mr. Ross' argument. I didn't bring that case with me but I can get it.

THE COURT: The question, Mr. Ross, in its present form, is not proper. Reframe the question.

MR. ROSS: Perhaps I can approach it differently.

Q. Mrs. Brown, during your lifetime did your husband interest himself in your financial affairs?

MR. ARCHER: I object. I think this line of testimony is completely inadmissible under the statute, transactions with the decedent. Particularly is that true since the witness is one of the three trustees.

THE COURT: Mr. Archer, I must, if I am to

construe the will, have whatever is possible of the surrounding circumstances.

MR. ARCHER: If the Court please, if questions were directed as to facts which existed in 1925, I think it was this will was drawn, that would be a more limited question than presently asked.

THE COURT: I will permit the question.

MR. ARCHER: My objection is noted?

THE COURT: Yes.

(Question repeated.)

THE WITNESS: Just like a husband and wife who loved each other they would be interested in everything each did.

Q. Did he know of your financial transactions?
A. Yes, we were very confidential with each other.
Q. After your husband's death did you ever make any complaint to Mr. Freeman as to the amount of income you were receiving?
A. I have made many.

THE COURT: Many what to Mr. Freeman?

THE WITNESS: Made many objections to the way he was conducting the case.

THE COURT: You are asked more particularly about the amount of income to you. Did you question that with Mr. Freeman?

THE WITNESS: Always they were taking—am I allowed to speak—they were taking over $2,000

from my income and they have done so for 12 years and I have objected constantly and I was ignored, and I also sent a withdrawal of the blank powers of attorney and that was ignored, never noticed in any way, and I was told ——

THE COURT: There was a power of attorney ——

THE WITNESS: Let me rest a minute.

MR. ROSS: Maybe I can help out. There were powers of attorney annexed to certain stock.

Q. Mrs. Brown, did you object to Mr. Freeman about being charged for principal or interest on these notes?

MR. ARCHER: I object. The question is leading.

MR. ROSS: It calls for a yes or no answer.

THE WITNESS: Repeat it, please.

MR. ROSS: I agree it is somewhat leading.

(Question repeated.)

THE WITNESS: Yes.

THE COURT: Which?

THE WITNESS: The notes he took out of my husband's and my joint box and which weren't made out correctly, they weren't made out correctly, and they were mine, and I always had an interest with

the company in my name and in spite of that they had taken over $2,000 or over from my income.

Q. Mrs. Brown, since your husband died have you accumulated any property except that which you have received as income from the estate?

A. Nothing except my own personally.

Q. When you say "your own personally" you mean the list of stocks ——

A. That Mr. Freeman took from me.

Q. What you have now is that accumulation and that only, is that correct?

A. And things I have invested; I changed my investments.

Q. But all of it has come from your husband's estate?

A. No it hasn't.

MR. ARCHER: I object to this as leading.

Q. Where did the rest come from?

A. What I had in bank and what Mr. Freeman took from me and put it in the estate they sent me the dividends, just my own certificates. He took them from me but I always received interest on those because they are mine.

Q. When you say other income that is what you refer to?

A. I don't know what you mean. All my other income has come from the little things I took care of myself, inherited from my family.

Q. Do you have any of the property you inherited from your family now or was that gone before your husband died?

A. I have it, it came to me by selling our home—we had houses, and four of us, and it was divided

between us and we each had our own, and that is what I have used to buy these shares with.

Q. All that happened before your husband died?

A. Yes, sir.

Q. And whatever you had is what you have testified to?

A. Yes.

CROSS-EXAMINATION.

BY MR. ARCHER:

Q. At the time of Mr. Brown's death you had a bank account in the Riverton Bank?

A. Yes, that is what I have been telling you about, that is what Mr. Freeman broke open himself, he opened that box.

Q. I was asking about a bank account in the Cinnaminson Bank, you had a bank account?

A. Maybe a few dollars.

Q. Wasn't it several thousand dollars?

A. No. I always had a bank account but I don't remember ever having several thousand dollars there unless it was an exchange of something. I have no recollection of $7,000.

Q. I said several?

A. That is where I put my income from the Corn Exchange Bank always since I received it; that is the only way I have of drawing anything to live on.

Q. I was referring to the time of Mr. Brown's death.

A. It would be what I had. He was ill for six weeks and night and day I was thinking only of him.

Q. You don't remember whether you had several thousand dollars there or not?

A. I don't ever remember having that much. I may have had but I have no recollection of it.

Q. Mrs. Brown, are these the notes of yours that were in Mr. Brown's box at the time of his death?

MR. ROSS: I will agree they were and her signature and in her husband's handwriting other than the signature.

THE WITNESS: Nothing was in Mr. Brown's box of mine at the time. I will look at them and see. Twelve years is a long time to remember. I never had that amount of money in cash.

MR. ROSS: You are not asked that.

Q. Is that your signature?
A. That is my signature.
Q. Is this your signature?
A. Yes.

MR. ARCHER: May I ask these be marked for Identification?

(Papers marked Exhibits D-1 & D-2 for Identification.)

MR. ARCHER: Nothing further, Sir.

MR. ROSS: You are finished for now.

MR. ROSS: I don't intend to offer any additional proof at this time.

MR. ARCHER: Does that mean you are closing?

MR. ROSS: As far as testimony is concerned on the main case.

COMPLAINANT RESTS.

THE CASE FOR THE DEFENDANTS.

EDGAR W. FREEMAN, sworn.

BY MR. ARCHER:

Q. Mr. Freeman, where do you live?
A. Merion, Pennsylvania.
Q. Are you a member of the bar?
A. Yes, sir.
Q. What state, Sir?
A. Pennsylvania and New York.
Q. How long have you been a member of the bar of Pennsylvania?
A. Since 1926.
Q. What is your present position?
A. Associated with Air Reduction Company in New York.
Q. Have you any connection at all at the present time with the Corn Exchange Bank in Philadelphia?
A. No, sir.
Q. At any time did you have any connection at that bank?
A. I was with the Corn Exchange as Trust Officer and then Vice President and Trust Officer from 1926 until 1942.
Q. That connection is now completely terminated?
A. Yes, sir.
Q. Could you hear Mrs. Brown's testimony as to what happened when the box was opened?
A. Not very clearly, no, sir.
Q. You are the Mr. Freeman who was present at that time and to whom she referred in her testimony?
A. Yes, sir.

Q. Tell us in whose name that box was registered, what the contents of it were, what you observed when it was opened and who was there.

A. The box was registered in the name of the testator, Frederick G. Brown and as I recall it Mrs. Brown had access to the box during his lifetime. After Mr. Brown's death Mrs. Brown, Mrs. Sheble, Mr. Newbourg and I, representing the Corn Exchange Bank, went to Riverton and in the presence of the Inheritance Tax Appraiser opened the box and found there a number of securities belonging to the decedent and also two notes of Mrs. Brown's payable to Mr. Brown together with certain collateral to those notes. As I recall, the notes and collateral were either in a separate envelope or clipped together in some way to indicate they belonged together.

Q. Mr. Freeman, I show you a note dated August 9, 1932, in the sum of $19,000, payable to F. G. Brown and signed Grace McNeal Brown, and ask you if that is one of the two notes you found in the box at the Cinnaminson Bank?

A. Yes, sir.

MR. ARCHER: I offer it in evidence.

(Paper heretofore marked Exhibit D-1 for Identification now marked Exhibit D-1.)

Q. I show you another note in the sum of $27,669.44, dated August 9, 1932, payable to the order of F. G. Brown, signed Grace McNeal Brown, payable at the Cinnaminson Bank, Riverton, New Jersey, and ask you where you first saw that paper?

A. That was the other note found in Mr. Brown's safe deposit box.

MR. ARCHER: I offer it in evidence.

(Paper heretofore marked Exhibit D-2 for Identification now marked Exhibit D-2.)

Q. You referred to certain collateral being with these two notes, attached to them. Tell us what the collateral was to which you referred.

A. I don't recall the exact securities at this time, Mr. Archer.

Q. Could you by referring to your records?

A. I recall a list was made up at the time.

MR. ARCHER: Unless your Honor has some objection I will ask the witness to refresh his memory from this list.

Q. When was that list made? Can you identify that list?

A. To the best of my recollection this was made up immediately after the box was opened and the contents listed. The collateral included 100 shares Montgomery Ward common, 300 shares Pennroad Corporation, 40 shares Advance-Rumely Corporation, 150 shares Mother Lode Coalition Mine, capital stock, 100 shares United Corporation common, 100 shares Consolidated Gas Utilities Class "A", 100 shares General Motors common, 930 shares United Gas Improvement common, 250 shares Kennecott Copper capital stock, 33 shares Niagara Hudson Power common, 200 shares Electric & Musical Industries Limited, American shares. All those stocks were registered in Mrs. Brown's name and transfer powers signed by Mrs. Brown were attached.

Q. I show you a memorandum headed "Wurts, Dulles & Co."—I understand counsel is willing to

stipulate these words, "F. G. Brown loaned this to" are in the handwriting of decedent.

MR. ROSS: Yes, sir.

Q. I show you this memorandum and ask you where you first saw that paper, Mr. Freeman?

A. This is a receipt signed by Wurts, Dulles & Co. to Grace McNeal Brown for $18,000, dated December 16, 1931, with a notation, "F. G. Brown loaned this to" and a line pointing to Grace McNeal Brown. That was found in decedent's safe deposit box.

MR. ARCHER: If the Court please, I offer this in evidence.

(Paper marked Exhibit D-3.)

THE COURT: Which part of this paper was it you agreed to?

MR. ARCHER: If the Court please, these words up here. (Indicating.) "F. G. Brown loaned this to" with the line that goes down to Grace McNeal Brown.

THE COURT: That is stipulated to be in the handwriting of the decedent, F. G. Brown.

Q. Mr. Freeman, I show you receipt dated October 5, 1931, signed by Grace NcNeal Brown—and I understand counsel stipulates that is Mrs. Brown's signature?

MR. ROSS: I do.

Q. And I ask you if that was in the decedent's box when you opened it right after his death?

A. Yes, sir, that was in the box.

MR. ARCHER: I offer it in evidence.

(Paper marked Exhibit D-4.)

Q. Mr. Freeman, did you have any conversation with Mrs. Brown regarding these notes at the time the box was opened?

A. As I recall, Mrs. Brown told us something of the circumstances under which the notes and the collateral were there and I think she informed both Mr. Newbourg and me it was her understanding Mr. Brown had intended to cancel the notes and she expressed regret over the fact he had not done so and both Mr. Newbourg and I explained to her because Mr. Brown had not canceled the notes they still represented valid obligations of hers and also assets of the estate.

Q. Did you make any further arrangements at that time concerning the handling of the notes and the obligation they represented?

A. At that time I don't think we made any definite arrangement as to their payment but it was explained to Mrs. Brown they would have to be considered as assets of the estate and she would have to arrange somehow to continue to pay the interest and, if possible, the principal on the notes.

Q. Subsequent to the time when the box was opened did you have any further conferences with Mrs. Brown concerning payment of interest and principal on these notes?

A. A month or so later when all the details of the estate had been assembled I wrote Mrs. Brown giving her the approximate value of the estate, the ap-

proximate income, about how much she might expect to receive as her share of the income and also arranged with her at that time to have interest on her notes paid out of her share of the income and she agreed that was a satisfactory arrangement. At that time I also advised her that some arrangement should be made later on to liquidate the principal of her two notes and, as I recall, I made several suggestions as to how she might do it. One was to authorize Mrs. Sheble and the bank, as the other executors, to sell the collateral. That wasn't agreeable to her because the collateral was less in value than the amount of the notes, and after some discussion it was agreed we would retain the collateral for the time being in the hope it would appreciate in market value so the notes could be paid off. Another suggestion I made at that time was that Mrs. Brown might pay into the estate, in addition to the interest on the notes, a portion of the income to which she was entitled in order to make a gradual liquidation of the principal of the notes. I think I also suggested the possibility Mrs. Brown might take out life insurance upon her own life, the premiums of which would be paid out of the income to which she was entitled and thereby secure payment of the notes because Mrs. Brown had told us she had no outside means with which to liquidate the notes.

Q. Did you get any letters from Mrs. Brown about the payment of this interest during this period of time?

A. Yes, Mrs. Brown wrote several letters.

Q. Can you produce those letters?

A. I don't have them with me. I remember one letter in which she expressed a feeling of satisfaction that her interest on the notes would be taken care of out of the income from the estate.

Q. Mr. Freeman, I show a letter dated February

5, 1933, addressed to you and signed "Grace McNeal Brown"—counsel stipulates the signature on this letter is the signature of Grace McNeal Brown—and I ask you if you received that from Mrs. Brown?

A. Yes, sir, this is one of the letters I recall in which Mrs. Brown says ——

MR. ROSS: I object.

THE COURT: The letter now speaks for itself.

MR. ROSS: I would like to read it before it is offered in evidence. It may not be evidential.

MR. ARCHER: It is very short.

MR. ROSS: I would like the opportunity of reading it before counsel offers it.

(Mr. Archer hands letter to Mr. Ross.)

MR. ROSS: I have no objection.

THE COURT: It may be marked in evidence.

(Paper marked Exhibit D-5.)

Q. Read that letter.

A. "Feb. 5, 1933. Dear Mr. Freeman—The request to the Executors for a further payment out of the principal—also the paper in regards—the settlement of the furniture were returned to you a few days ago—all signed—I am happy to say—It is comforting to me to know that the interest I now owe to the Estate will all be paid"—and the balance merely giving her forwarding address at that time, and signed, "Grace McNeal Brown."

Q. Mr. Freeman, I show you a letter dated February 9, 1933, purporting to be signed by Grace McNeal Brown—I show it to counsel and ask him if that is Mrs. Brown's signature? Counsel agrees it is her signature. I ask you if that is a letter you received from Mrs. Brown?

A. Yes, sir.

Q. And the date of the letter?

A. February 9, 1933. This one is addressed to Corn Exchange National Bank, "Dear Sirs: Enclosed please find my check for $427.59 for the balance of the interest I owe the estate." Signed, "Grace McNeal Brown."

(Paper marked Exhibit D-6.)

Q. Mr. Freeman, I show you a letter dated April 17, 1934, addressed to you, purporting to be signed by Grace McNeal Brown—I ask counsel if that is Mrs. Brown's signature?

MR. ROSS: Yes.

Q. I ask you if that is a letter you received from Mrs. Brown?

A. Yes, sir. Shall I read this?

MR. ARCHER: I don't know that the whole letter need be read in.

MR. ROSS: May I see it before it is offered so I may have an opportunity to object? I have no objection.

(Paper marked Exhibit D-7.)

Q. Mr. Freeman, I show you a letter dated Janu-

ary 21, 1935, purporting to be signed by Mrs. Brown —I will show this to counsel and ask counsel whether that is Mrs. Brown's signature?

MR. ROSS: It is Mrs. Brown's signature and I have no objection to it.

Q. I ask you if that is a letter you received from Mrs. Brown?

A. Yes, sir.

MR. ARCHER: I offer it in evidence.

(Paper marked Exhibit D-8.)

MR. ARCHER: If the Court please, as I understand it counsel is willing to stipulate Mrs. Brown signed the Federal Estate Tax Return, the New Jersey Transfer Inheritance Tax Return and the Executors' Account. That in the Federal Estate Tax Return these notes appeared as assets of the estate according to the market value of the collateral as of the date of death, and the same was true in the State Tax Return, the notes of Mrs. Brown's to the decedent were valued at the value of the collateral at the date of decedent's death. That in the Executors' Account, and also in the original inventory filed in the office of the Surrogate of Mt. Holly the notes were put in at their face value.

MR. ROSS: That is correct, sir.

MR. ARCHER: I offer in evidence the Federal Estate Tax Return, a true copy.

THE COURT: Has your opponent seen that?

MR. ARCHER: The original was signed by Mrs. Brown. For your Honor's information this informa-

tion concerning these notes appears on Schedule C of the Federal Estate Tax Return.

(Paper marked Exhibit D-9.)

MR. ARCHER: I offer in evidence original certified copy of the Executors' Account in which these notes appear as a part of the assets of the Estate.

(Paper marked Exhibit D-10.)

MR. ARCHER: I offer in evidence a copy of the New Jersey Transfer Inheritance Tax Return which it is stipulated Mrs. Brown and the other two Executors signed.

(Paper marked Exhibit D-11.)

Q. Mr. Freeman, I show you statements of investments in this trust, Corn Exchange National Bank & Trust Company, dated November 23, 1934, May 20, 1935, November 30, 1935, May 18, 1936 one apparently dated March 1, 1937, another one dated May 11, 1937, November 9, 1937, June 9, 1938, November 19 1938, May 12, 1939, and I ask you to examine those and advise me whether Mrs. Brown's signature appears on each one of those and if so, under what statement?

A. These were all statements prepared by the Corn Exchange National Bank & Trust Company and sent out to Mrs. Brown and Mrs. Sheble as co-trustees. They list all the assets in the estate at that time, with various details concerning interest rates, due dates, dividends, interest, and so on, and on each statement is the printed phrase, "I have examined this statement, find it satisfactory, and ap-

prove your management of the fund up to date.'' All of these were signed by Grace McNeal Brown.

Q. Do the notes to which we have been referring appear as assets of the estate in each one of those?

A. Yes, sir, they do.

MR. ARCHER: I offer these in evidence.

MR. ROSS: No objection.

(Papers marked Exhibit D-12.)

Q. Mr. Freeman, subsequent to the time when the Executors first started to administer this estate were there any payments made by Mrs. Brown on account of the principal of either of these two notes?

A. Yes, sir. I don't recall the exact years. There were two payments.

Q. Can you, through the assistance of memoranda and records you made at the time, give us the exact details of those two payments?

A. Yes, sir.

Q. Will you do so, please?

THE COURT: What is the approximate value of the Estate?

THE WITNESS: To the best of my recollection, Sir, it is around $300,000. I don't know the present figures.

Q. I show you a memorandum dated July 11, 1934, purporting to be signed by Mrs. Brown, and ask you if that gives you the details as to the first payment?

A. This is a receipt by Mrs. Brown for 100 shares Electric-Musical Industries—rather, 200 shares Electric Musical Industries, 300 shares Pennroad

Corporation, which were part of her collateral and given to Mrs. Brown in consideration of her payment to the estate of $2230.00 in reduction of the $19,000 note.

Q. That was a principal reduction?

A. Yes, sir.

MR. ARCHER: I offer this in evidence.

(Paper marked Exhibit D-13.)

Q. Does that receipt correctly reflect the transaction?

A. Yes, sir.

Q. Was any other similar transaction entered into at a later date?

A. Yes, another payment made by Mrs. Brown bringing the total reduction of principal up to $5,000, at which time she received back some of her collateral.

Q. I show you a receipt which counsel has stipulated is signed by Mrs. Brown, April 30, 1935, and ask you to please tell the Court what the transaction referred to, what happened?

A. This is a receipt by Mrs. Brown of 40 shares Advance Rumely Corporation, 100 shares Consolidated Gas Utilities "A", 150 shares Mother Lode Coalition Mines, 33 shares Niagara Hudson Power, 100 shares of United Corporation and 45 shares United Gas Improvement. At this time Mrs. Brown paid in $2770.00 to the Estate in reduction of the 6% note and brought the principal of that note down to $14,000.

MR. ARCHER: I offer this in evidence.

(Paper marked Exhibit D-14.)

Q. Mr. Freeman, during the period you were with the Corn Exchange National Bank were there any other payments made by Mrs. Brown on account of the principal of these notes?

A. I think not, Sir.

Q. Were interest payments made by her regularly to keep the interest current?

A. Yes, sir.

Q. Will you tell us how that was handled, how the interest payments were handled?

A. The general procedure was to send Mrs. Brown a statement showing the amount of income payable to her from the estate, which included her interest on the notes, and then Mrs. Brown signed a receipt for her share of the income and actually received a check for the full amount of her share less the interest payable by her and the bank, in turn, would give her a receipt for the interest which she paid on the notes.

THE COURT: How often did those transactions occur?

THE WITNESS: I don't recall. I think quarterly; possibly monthly.

THE COURT: I see Mr. Archer has a handful of them.

MR. ARCHER: I think these probably ought to be in evidence. They show exactly what Mr. Freeman just said and they carry it down to some time in 1941.

THE COURT: Show them to Mr. Ross.

MR. ROSS: I have no objection to their being offered in evidence.

THE COURT: They may be marked.

MR. ARCHER: I will offer them in evidence.

(Papers marked Exhibit D-15.)

THE COURT: How many of them?

MR. ARCHER: Accompanying each receipt is a check showing the amount she received which was always the amount less the interest.

THE COURT: Being in number?

MR. ARCHER: 87 white receipts and 105 checks.

THE COURT: They cover what period of time?

MR. ARCHER: They cover, Sir, the first one happens to be dated December 9, 1933.

THE COURT: And the last one?

MR. ARCHER: The last check is February 9, 1943, the last one we have here. I think that was just before the Trustees' Account was filed. The receipts run down to about 1941 and then they stop and then just the checks.

Q. Mr. Freeman, during this period of time when the interest was being maintained on these notes, and except for these two transactions which you have referred to there were no reductions of principal, did you ever make any efforts to persuade Mrs. Brown to consent to the liquidation of the collateral?

A. Yes, there were repeated efforts to persuade Mrs. Brown to make further payments on account

of principal, or to liquidate the entire obligation, but they were not successful.

Q. During this whole period of time was Mrs. Brown one of the co-trustees as well as a 2/5 beneficiary?

A. Yes, sir.

Q. Did she, or did she not, consent to any liquidation of collateral other than the two transactions you mentioned? I will withdraw that. Did she consent to the liquidation of any collateral held by the Estate for these notes?

A. No, sir.

Q. Did she refuse at various times to consent to the sale of that collateral?

A. I believe she did. I think we suggested several times the sale of part of her collateral as being a wise investment procedure at that time and she wouldn't consent.

Q. During that period of time who received the dividends and income from this collateral?

A. Mrs. Brown.

Q. The Estate never received that?

A. No, sir.

Q. Do you know the approximate amount of annual income she received as compared with the amount of interest she paid on the notes? I am now referring to the income from the collateral.

A. It was somewhat more than the amount of her interest; at least it was several years ago, I don't know how it is today.

CROSS-EXAMINATION.

BY MR. ROSS:

Q. Mr. Freeman, wasn't the income from the investments approximately $1275.00 a year?

A. I don't recall the exact figures.

THE COURT: That was the income from the Estate?

MR. ROSS: Just the collateral apparently pledged.

Q. Wasn't the interest charged, as a matter of fact, approximately $2,000 a year?

A. You have some figures here.

Q. I will be glad to have them read.

A. 1936 the income from the collateral was $1800; 1937, $2600; 1938, $1600; 1939, $1860; 1940, $2200; 1941, $2,000. Those are approximate figures.

Q. You don't have the income figures for the earlier years?

A. I don't have those here.

Q. From your knowledge of the stock market ——

A. Slightly less.

Q. When it started the income from the collateral was by no means equal to the interest charged on the notes?

A. The note interest?

Q. On the original obligation?

A. On the original obligation it would have been something over $2,000.

Q. Mr. Freeman, when you took the notes out of the box the only indication that that collateral was pledged for those notes was they were in the same envelope or they were clipped together?

A. Yes, sir.

Q. Did Mrs. Brown ever tell you that was collateral for these notes?

A. I think she did, yes, sir. I think there were also receipts, or other papers, in the box indicating that Mrs. Brown had given those securities to Mr. Brown as collateral.

Q. Did Mrs. Brown not tell you at that time that her husband had forgiven, using words to that effect, forgiven her any amount due on the notes?

A. As I recall, what Mrs. Brown told us at that time was her husband intended to cancel the obligation.

Q. Do you recall there was some other transaction in which you made inquiry concerning an advance of $550.00 made by Mr. Brown to Mrs. Brown, or to her loan account with Wurts, Dulles & Co. in which she told you then Mr. Brown had forgiven that particular obligation?

A. I don't recall that, Sir.

Q. I show you what purports to be a copy of an affidavit made by you and ask you if that is a true copy of an affidavit made by you?

A. I think it is, Sir, yes, sir.

Q. Does that refresh your mind as to that transaction I just spoke about?

A. I recall now Mr. Brown had loaned Mrs. Brown an additional $550.00 and taken as collateral some securities belonging to Mrs. Brown and also some others belonging to her brother and that Mr. Brown returned to her the securities belonging to her brother but retained those which Mrs. Brown owned.

Q. But the reason you did not include that debt as part of the assets of the Estate was because you had been informed and believed the debt had been forgiven, isn't that true?

A. I think that is true, yes, sir, although Mr.

Brown, as I recall, retained Mrs. Brown's collateral, or some of it.

Q. Did Mrs. Brown ever suggest to you that she should not be charged interest and principal on these notes?

A. She was always unhappy about the situation.

Q. And that unhappiness was expressed by her saying she shouldn't have to pay it?

A. I don't think she put it in those words.

Q. How did she put it?

A. She regretted the fact she was required to pay interest but she continually admitted it was her obligation.

Q. She refused to pay the principal?

A. No, she did not.

Q. Other than two payments totaling $5,000?

A. She refused to sell her own collateral to do it.

Q. And she refused to amortize it out of income?

A. Yes, on the ground she did not have enough income to live on comfortably.

THE COURT: Do you remember, approximately, what the income was she received?

THE WITNESS: From the Estate, Sir?

THE COURT: Yes.

THE WITNESS: I think a net amount of $6500.00.

THE COURT: A year?

THE WITNESS: Yes, sir.

THE COURT: Less, of course, the difference between the income and ——

THE WITNESS: As I recall, that was the net amount she received but my recollection is not very clear.

THE COURT: Only for my own information so I can get a rough idea of it.

Q. Each of these statements that has been introduced into evidence which bears Mrs. Brown's signature approves the management of the Corn Exchange Bank in the handling of the funds?

A. Yes, sir.

Q. And the mechanical details of the fund, of course, were handled by the Corn Exchange?

A. Yes, sir.

Q. And the matters which involved the exercise of discretion were decided by the three trustees?

A. Yes, sir.

Q. But mostly upon suggestion of the Corn Exchange?

A. The bank generally took the initiative in making suggestions, yes, sir.

Q. At the time, Mr. Freeman, when you first read the will and codicil of Mr. Brown did you form any opinion as a Trustee, or representative of the Trustee, as to the possibility that the income to Mrs. Brown might or might not be free of any obligation to her husband's estate?

THE COURT: Does that make any difference, Mr. Ross?

MR. ROSS: I think so, Sir. The purpose of the question is to establish, if the answer indicates such, that the Trustees made a joint error, and a mistake of law, or mistake of fact, has quite something to

do with the questions of estoppel which my colleague is going to raise on argument.

THE COURT: Answer the question.

THE WITNESS: I recall the spendthrift clause of the will was considered very carefully and it was realized Mrs. Brown's income was free from all outside creditors' claims and the payment of her interest was more or less voluntary with her. That was why we always obtained her approval to the payment of interest by her.

Q. Did you inform Mrs. Brown it was a matter of voluntary payment with her or not?

A. I don't recall that, Sir.

Q. You would probably say you did not?

MR. ARCHER: I object to that.

MR. ROSS: This is cross-examination, if the Court please.

MR. ARCHER: I don't think it is relevant.

THE WITNESS: If I may make a statement. I don't think the question arose because Mrs. Brown always paid the interest.

Q. The first payment of interest wasn't for some considerable time after her husband's death, isn't that so?

A. That is generally true in the settlement of all estates. A period of several months is required to make the estate set-up, to find out what the assets and obligations are.

Q. Have you available at this time a statement

which would show the first payment of interest charged to Mrs. Brown and credited on these notes?

THE COURT: While you are looking for that suppose we take our usual five minute recess.

(After recess.)

THE WITNESS: Statement dated February 7, 1932, showing the amount of interest due by Mrs. Brown to the Estate for the six months from August 9th, the date of the note, to February 7th, and that was apportioned, so far as the Estate was concerned, between the principal account, representing interest due up to the date of Mr. Brown's death, and the income the amount of interest due since his death.

MR. ROSS: May I ask that be marked for identification?

THE COURT: It may be marked.

(Paper marked Exhibit C-1 for Identification.)

Q. I want to go back again, Mr. Freeman, to the question I asked you originally. I don't think you quite answered it, at least, to my satisfaction. Did you, after the examination of the will and codicil, and with or without consultation with the Estate's counsel, and the bank's counsel, form an opinion as to whether or not the income from the estate that was payable to Mrs. Brown could be charged with interest or could be declared to be free from such charge?

MR. ARCHER: If the Court please, I object to that question. I think it is irrelevant and immaterial.

THE COURT: I think it is, Mr. Ross. What opinion Mr. Freeman arrived at I think is immaterial. It is a question of the facts and the law applicable to the facts.

MR. ROSS: Will your Honor hear me?

THE COURT: Yes.

MR. ROSS: I believe that is true, but how can we arrive at the facts unless the Trustee tells me what he determined. In other words, there is a factual question as to whether or not there was a determination because if it was determined she was compellable to pay the interest on the notes, or the principal, or both, out of the estate, that becomes very relevant with relation to the question of estoppel.

THE COURT: That is different. You are asking Mr. Freeman whether he arrived at a conclusion.

MR. ROSS: That calls for a yes or no answer.

THE COURT: Answer yes or no.

THE WITNESS: That is rather difficult, your Honor.

THE COURT: Yes and no?

THE WITNESS: I think whatever my opinion may have been the fact remains Mrs. Brown paid interest. If she hadn't done so then the Trustees would have had to liquidate her collateral, or get the income from her collateral.

MR. ROSS: If the Court please, I don't want to seem captious, or argue with this witness, who is doing the best he can, but I don't think that is a responsive answer.

THE COURT: I don't think it is material, Mr. Ross.

Q. Did you, as a representative of one of the Trustees, inform Mrs. Brown that she would have to pay the interest and principal?

MR. ARCHER: I object, if the Court please. I think that is irrelevant and immaterial. The fact is the obligation was recognized and the interest was paid.

THE COURT: The obligation, according to Mr. Ross' theory, wasn't recognized, there was a mistake, or something about it. I will let him answer that.

THE WITNESS: As I recall, we did inform Mrs. Brown she would be required to pay interest on her obligations because they were assets of the estate.

Q. And your first declaration to her of that fact was right at the opening of the box, as I understand it?

A. I don't recall that, Sir.

Q. There was some conversation at the time of opening the box in which she raised the question, as you say, her husband intended to cancel the notes and you told her they would be assets of the Estate?

A. Yes, sir.

Q. Did the trustees collectively, and within your knowledge, of course, ever make any attempt to de-

termine whether the alleged amount due was fairly due from Mrs. Brown?

MR. ARCHER: I object, if the Court please. Not the slightest evidence in the case that anything about this transaction was unfair.

MR. ROSS: A note from wife to husband is void at law, as your Honor well knows and any obligation from wife to husband in equity may be enforced to the extent that such obligation is fair.

THE COURT: Yes, but the Court must decide that.

MR. ROSS: That is true, but all I asked this witness was whether any inquiry was made by the Trustees as to the fairness. That would be one of the things to determine whether it was fair.

THE COURT: I don't think that would be one of the factors on which I could base a determination whether it was fair or not.

Q. To your knowledge did Mrs. Brown ever attempt to exert any dominion as owner over the collateral—I am naming it that because you named it so—pledged for these loans?

A. I don't recall any, Sir.

Q. Did Mrs. Brown not attempt to cancel any blank stock powers of attorney you might have had to those shares of stock?

A. I recall Mrs. Brown either wrote or came in to see me to register some objection to certain papers which she had signed and I was never able to determine just what she was referring to.

Q. Can you with any degree of reasonableness fix the time of that conversation or letter?

A. I would say possibly a year or two years before I left the bank, which would make it 1940 or 1941.

Q. Did you make an investigation into the financial condition of Mrs. Brown as of the time of her husband's death?

MR. ARCHER: I object, if the Court please, irrelevant and immaterial.

THE COURT: I will hear you, Mr. Ross.

MR. ROSS: This case, as far as I am concerned, is being tried partially on the theory that if there is an obligation from Mrs. Brown to the Estate that it is limited to the assets she has other than that which she has received as beneficiary of the Estate. Now, if it be disclosed that she had no assets, or very little assets, at the time of the death of her husband, that she has acquired nothing since the time of the death of her husband other than what she has received as income from the estate, it might well persuade your Honor, in the event you found in behalf of the counter-claimants, to limit the decree of the Court to what we might call her independent estate at that time. The purpose of this question has something substantially to do with that.

THE COURT: You are asking his opinion as to whether he made inquiry as to what she had?

MR. ROSS: Yes.

THE COURT: Suppose he says "Yes" then you will say, "What did she have?" If he knows he can tell.

THE WITNESS: We inquired only of Mrs. Brown.

Q. From your inquiry of Mrs. Brown what did you find she had?

A. Mrs. Brown advised us she had practically nothing of any value outside of the collateral.

Q. My recollection, Mr. Freeman, is that when the first payment on account of principal was made that the bank released collateral in approximately the amount of the value of the payment?

A. Yes, sir.

Q. And at the time the second payment was made the bank and Mrs. Sheble, or the Trustees, released collateral of approximately 50% of the amount of the payment, is that correct?

A. Yes, sir.

MR. ARCHER: If the Court please, those figures speak for themselves. It is already in evidence.

THE COURT: That is true.

Q. Now we can ask the question. Why was there a difference made in the amount of collateral released on each payment?

A. Because at that time the value of the collateral was about 50% of the whole obligation.

THE COURT: At the time of the second payment?

THE WITNESS: Yes, sir, and it wasn't felt fair to the Estate to release $2500.00 worth of collateral upon a $2500.00 payment in liquidation. Presumably that should have been done at the first payment but we didn't insist at that time.

MR. ROSS: I have no further questions.

THE COURT: Anything further?

BY MR. ARCHER:

Q. Mr. Freeman, in connection with the income that Mrs. Brown received all through these years concerning which you have been testifying, in figuring her 2/5 of the income was the interest she paid on these obligations included? In other words, was the interest she paid into the estate included in the estate from which she got 2/5's?

A. Yes, that was part of the gross income of the estate.

Q. Did she get commissions as Trustee on the income distributed in the Estate?

A. As I recall she got a share of the commissions on the gross income.

THE COURT: Including her own interest paid on those notes?

THE WITNESS: Yes.

Q. At the time of the allowance of the Executors' account was she also an Executor?

A. Yes, sir.

Q. Did she get any commissions on corpus at that time?

A. I believe she did, yes, sir.

Q. Were those notes included in the corpus on which she was allowed commissions?

A. Yes, sir.

Q. In connection with the Estate Tax Return and New Jersey Inheritance Tax Return were taxes paid

by the three Executors on the value of the estate including those notes at the value of the collateral?

A. Yes, sir.

MR. ARCHER: That is all.

MR. ROSS: No further questions.

WILLIAM J. RAMAGE, sworn.

BY MR. ARCHER:

Q. Mr. Ramage, where do you live, please?

A. I live in Philadelphia, 428 Slocum Street.

Q. What is your position?

A. Assistant Trust Officer at the Corn Exchange National Bank & Trust Company.

Q. Have you been in charge recently of the Estate of Frederick G. Brown?

A. Yes, I have.

Q. For how long, Mr. Ramage?

A. I would say since about last December.

Q. Have you gone over the records of that estate with some degree of detail?

A. Yes, I have.

Q. Can you tell the Court, please, as to what commission on corpus Mrs. Brown received as Executor of the estate at the time of the allowance of the Executor's account, the rate and amount thereof?

A. On corpus on the Executors' account she received 1 per cent. on principal, $3,324.45, and received commissions on income in the Executors' account at 1¾ per cent. She received $301.42 on February 19, 1934 and another payment of $138.98 on April 18, 1934.

Q. While Mrs. Brown has been serving as Trustee has she been receiving commissions as Trustee on income?

A. Yes.

Q. Can you tell us at what rate she has been receiving those commissions during the period of the Trusteeship?

A. Until December 9, 1939, she received 1¾ per cent. of the commissions.

Q. 1¾% of the income?

A. 1¾ per cent. based on the gross income, and since that date she has received 1¼ per cent. as commission on the gross income. Up until February 9th of this year she received—up to May 9, 1944, she received a total of $3010.10 as commissions on income from the Trustees' account.

Q. Were those commissions figured on income which included as part thereof the interest on these notes Mrs. Brown had been paying?

A. Up to February 9th of this year the commissions were figured on income which included the interest on the notes.

Q. Mr. Ramage, you are familiar with these securities we referred to as the collateral, are you not?

A. Yes, I am.

Q. Were there some shares of common stock of the U. G. I. included in that collateral?

A. Yes, we have 885 shares of the U. G. I. stock.

Q. Will you tell the Court, please, whether that stock was recently exchanged for other stock as part of the proceedings of the dissolution of the U. G. I.?

A. There was no exchange, it was a distribution of Philadelphia Electric common stock and Public Service of New Jersey stock, and more recently Delaware Power & Light Corporation stock.

MR. ROSS: If the Court please, I assume Mr. Archer is proving that portion of his counterclaim

which has already been decided by the Orphans' Court.

MR. ARCHER: That is exactly the point. The Orphans' Court said we should hold this stock in escrow pending the outcome of this litigation.

MR. ROSS: We have no quarrel with that situation. We are bound by the opinion of the Orphans' Court unless your Honor decides this stock is the individual property of Mrs. Brown. I have no objection. I thought we would save time but, as usual, it takes more.

MR. ARCHER: If you are willing to stipulate this stock to be valid collateral and his client will sign powers of attorney and consent to liquidation of the collateral ——

MR. ROSS: I give no such consent. I can't give any such consent.

MR. ARCHER: I would much prefer to proceed.

Q. Mr. Ramage, will you tell us exactly what happened in connection with this distribution of New Jersey Public Service stock and Philadelphia Electric Company stock? Give us the exact figures, what was distributed, and to whom it went, and when?

THE COURT: Do you want some more papers?

THE WITNESS: Yes.

THE COURT: The witness wishes some more records, or something.

(Counsel hands paper to witness.)

A. The first distribution of stock that was made, for each share of U. G. I. common stock there was issued to the shareholder of record 1/3 share of the Philadelphia Electric common stock and 1/12 share of the Public Service of New Jersey common stock. That distribution was made, I believe, around the early part of this year.

Q. In connection with the distribution made of the stock, the U. G. I. stock included in this collateral, to whom were the certificates for the Philadelphia Electric stock and the New Jersey Public Service stock sent by U. G. I.?

A. They were sent direct to Mrs. Brown.

Q. Was that because the collateral was registered solely in her name?

A. Yes, it was.

Q. Were you able, as Trustees, to get that Public Service stock and the Philadelphia Electric stock sent to Mrs. Brown from Mrs. Brown, have you ever been able to get it back in your hands as Trustee?

A. Only after instituting proceedings in the Orphans' Court of Burlington County.

Q. Mr. Ramage, as a result of the proceedings taken in the Orphans' Court of Burlington County were the certificates for those shares of Public Service of New Jersey and Philadelphia Electric delivered to your bank as Trustee?

A. Yes, they were.

Q. I show you a copy of an order of the Burlington County Orphans' Court dated March 21, 1944, and ask you if that is the order upon which you are presently holding those certificates of stock for the New Jersey Public Service and the Philadelphia Electric Company?

A. Yes, it is.

MR. ARCHER: Do you want this in evidence?

MR. ROSS: I have no objection.

MR. ARCHER: I offer a copy of the order.

THE COURT: And your opponent has no objection.

(Paper marked Exhibit D-16.)

Q. Have you any powers of attorney as Trustee in your possession, signed by Mrs. Brown, covering the transfer of this stock which has been substituted for the U. G. I. stock, the Philadelphia Electric stock and New Jersey Public Service?

A. We didn't receive any such stock powers.

Q. As Trustees could you and Mrs. Brown and Mrs. Sheble liquidate that collateral without getting further powers of attorney signed by Mrs. Brown?

A. We couldn't liquidate that security without a stock power from Mrs. Brown.

Q. Are the stock powers which accompanied the other collateral, the original stock powers, are they adequate for the Trustees to liquidate that collateral?

A. I believe the transfer agents probably would question the age of those stock powers if we attempted to sell the securities at this time.

Q. In the prudent management of this estate being conducted by the three trustees is it or is it not your judgment this collateral should be liquidated now?

MR. ROSS: I object to that question unless this man be qualified as an expert on future of the markets.

THE COURT: He is the Assistant Trust Officer.

MR. ARCHER: I am asking him as the Assistant Trust Officer whether, in the prudent management of the estate, in his judgment this collateral should be liquidated.

MR. ROSS: I don't think that is a general qualification.

THE COURT: Mr. Archer is now asking him his opinion. It may be worth something, or it may not. Have you an opinion in the matter?

THE WITNESS: I have charge of the administration of the accounts, and the matter of holding the investments of the account is left to other officers of the company, but if my opinion is worth anything I would say the collateral ought to be sold at this particular time.

Q. For what reason do you feel the collateral should now be liquidated, Mr. Ramage?

A. The general market conditions.

Q. Do you have any stock in addition to the Public Service of New Jersey and Philadelphia Electric Stock distributed in the breakup of U. G. I.?

A. We recently received a certificate for 69 shares of the Delaware Power and Light common stock and a check to the order of Mrs. Brown in the amount of $3.60 representing a fractional 5/20 of a share of the Delaware Power & Light stock. On the basis of the collateral which we have, 885 shares of U. G. I. stock we are only entitled to hold and to have 44 shares of Delaware Power & Light stock and the cash representing the fractional share represented by 5/20 of a share. Mrs. Brown must have held 500

extra shares of U. G. I. stock outside of the collateral which she had with us.

Q. Do you have any power of attorney covering this Delaware Power & Light Company stock?

A. No, we do not.

Q. And the certificate which you hold is registered in the name of Mrs. Brown?

A. Yes.

Q. And sent to you directly by U. G. I.?

A. Yes, sent direct by U. G. I.

CROSS-EXAMINATION.

BY MR. ROSS:

Q. These stock powers you do have are in blank, have never been filled in as to the name of the persons authorized to make the transfer, is that right?

A. That is correct.

Q. Are the powers dated?

A. That I can't answer offhand.

MR. ROSS: No further questions.

MR. ARCHER: That is all, Mr. Ramage.

VINCENT E. FUREY, sworn.

BY MR. ARCHER:

Q. Mr. Furey, where do you live, Sir?

A. In Stratford, Pennsylvania.

Q. What is your present position?

A. Assistant Vice President of Corn Exchange National Bank & Trust Company.

Q. How long have you held that position?

A. Since only about two months, Sir.

Q. Before that what position did you hold?

A. Before that I had been Assistant Cashier of the bank for approximately eight months, and prior to that had been a Trust Officer for a period of several years.

Q. Trust Officer of the bank?

A. Yes, sir.

Q. As Trust Officer were you familiar with the Estate of Frederick G. Brown?

A. Yes, sir.

Q. Are you familiar with the collateral which the Trustees of that Estate hold for the obligation of Mrs. Brown?

A. Yes.

Q. In your judgment should that collateral be presently liquidated or held?

A. I think that could be argued, but my own inclination would be to sell it, for two reasons particularly. In the first place, the market for the collateral generally is higher now than it has been for quite some time; it is considerably higher proportionately than the market was at the time of Mr. Brown's death and if the notes are an asset of the estate and you have to realize it out of the collateral now, I think, is the proper time to do it. Besides that reason we also have securities of the same companies in the estate itself. I think the estate is well represented in those particular investments.

THE COURT: Sufficiently represented?

THE WITNESS: Yes.

Q. Are you familiar with the efforts made to procure from Mrs. Brown the Public Service stock and the Philadelphia Electric Company stock which Mr. Ramage testified to?

A. Yes, sir.

Q. Tell us what effort was made to secure the return of those certificates from her?

A. Well, we had made contact with Mrs. Brown's counsel, and demand was made on Mrs. Brown personally by the Trustees to turn over those stocks to the estate to be held with the other collateral on the obligations, but as I understand neither Mrs. Brown's counsel nor Mrs. Brown herself would deliver the securities.

Q. They were finally delivered under an order of the Orphans' Court?

A. Delivered to the bank as Trustee in escrow until the determination of this proceeding.

Q. Under an order of the Burlington County Orphans' Court?

A. Yes.

THE COURT: Do you think it would be advantageous to sell those securities now just received in exchange for the U.G.I.?

THE WITNESS: I don't think it is as pressing to sell some of those as the others. In other words, I don't think you can give a carte blanche answer to all of them because the circumstances are different.

THE COURT: The new arrangement is probably too new?

THE WITNESS: If they weren't held as collateral I think the situation might be different. If

it is determined they are not collateral I think the situation would be different.

Q. The situation would be different if not held as collateral?

A. Yes, I think so. Just to pick out one in particular, Philadelphia Electric Company, I don't know that I would be so inclined to sell Philadelphia Electric common stock which was owned, actually owned, outright, but if you have it merely as collateral I think you have a different set of circumstances to consider.

Q. Is Mrs. Brown still getting the income from the securities as dividends on the stock?

A. As far as we know there have never been any definite orders left with the respective companies to pay the dividends to the estate.

Q. Should Mrs. Brown cease to pay the interest on this obligation what action would you feel the trustees would be compelled to take to protect the estate?

MR. ROSS: I object, entirely irrelevant and incompetent.

THE COURT: I think that is true.

MR. ARCHER: The point I wanted to bring out on the record was this, as long as the interest is paid on these notes the trustees have felt it a proper administration of the trust estate.

THE COURT: I think that is a matter of argument to the Court rather than competent testimony from this witness.

MR. ARCHER: That is all.

CROSS-EXAMINATION.

BY MR. ROSS:

Q. Mr. Furey, with relation to the stocks presently held as collateral other than the substitution for U.G.I. are you familiar with the other stocks, which ones they are?

A. That are collateral?

Q. Yes.

A. Yes.

Q. What stocks are held?

A. Montgomery Ward, Kennecott Copper ——

Q. With relation to Montgomery Ward, at the present time isn't that stock suffering from a slight recession because of the unfavorable publicity on the activities of Mr. Avery?

THE COURT: And the Government?

Q. And the Government?

A. You may possibly assume that, but if you observe what happened to the stock pricewise over the last few years I don't think that argument would hold.

Q. Do you know whether the earnings and gross business of Montgomery Ward, during this period of time I mentioned, have diminished?

A. I wouldn't at all argue that but I think the Secretary of the Treasurer will be the one who will suffer the most by reason of the decline in business. Montgomery Ward is in the high excess brackets and a decline in earnings wouldn't have any unusual effect.

Q. All these stocks have prior securities to be paid off before the common stock?

A. No, that is not true.

Q. Which ones do and which do not?

A. General Motors has an issue of preferred stock. United Gas Improvement is just the common stock of the Utility Holding Company and if you want to carry the senior position there you have to take the bonds and preferred stock.

Q. A huge amount there?

A. Yes, a huge amount. Kennecott Copper has no senior capitalization, nor has Montgomery Ward.

Q. How would those particular stocks react to a change of administration, in your opinion?

A. I can't answer that.

Q. What is your personal opinion as to the effect of a Republican administration, let us say, on U.G.I.?

A. I don't think—this is strictly a personal opinion—I think ——

THE COURT: You are not running for public office? Your answer won't hurt you politically?

THE WITNESS: No.

THE COURT: You may answer.

THE WITNESS: I think the whole question will revolve on what will happen to taxes.

Q. What effect do you feel inflation would have on the market price of these stocks?

A. I cannot answer.

Q. Do you anticipate there will be some inflation?

A. There has been.

Q. Do you anticipate it will continue?

A. For the duration of the war the currency inflation will continue.

Q. Doesn't that have an effect on the market price of stock?

A. It could.

Q. As a matter of fact, doesn't it always, Mr. Furey?

A. I don't know.

MR. ROSS: No further questions.

THE COURT: Apparently the young man has only lived through one depression.

BY MR. ARCHER:

Q. Regardless of whether this stock constituting the collateral should or should not be sold now are the three trustees, as such, in a position to liquidate the collateral without the consent, or without the signing of additional powers by Mrs. Brown in her individual capacity?

A. No, the securities couldn't be sold in their present form for two reasons. In the first place, some of the powers attached to the securities are dated—some are not, and some are—those dated are dated back in 1930 and 1931 and I am doubtful whether a transfer officer would consent to the use of those powers for sale at this time. In the second place, we have to get the general approval of the trustees for the sale and we have no such approval.

Q. Have you gotten the approval of Mrs. Sheble, the other trustee?

A. Not in writing. We have discussed it and Mrs. Sheble has indicated she would approve.

Q. You have no powers covering these stocks distributed by the U.G.I.?

A. The more recent ones we have no powers whatsoever.

MR. ARCHER: That is all.

THE COURT: It is just about lunch time.

MR. ARCHER: I think we have finished.

MR. ROSS: I think we can complete the testimony before lunch.

THE COURT: If it only takes, perhaps, 10 minutes we will finish taking the testimony, but one day this week I made that same suggestion and at 1:30 we adjourned for an hour and came back until after four.

DEFENDANTS REST.

COMPLAINANT'S REBUTTAL.

GRACE McNEAL BROWN, recalled.

BY MR. ROSS:

Q. Don't answer this question. I will ask it but don't answer it, please. Before your husband died did he make any statement to you with respect to forgiving you the obligation on those notes?

MR. ARCHER: I object.

THE COURT: I will now hear you.

MR. ROSS: If the Court please, the rule is that the party in interest cannot testify as to any transactions with the deceased until or unless a representative of the deceased first testifies as to transactions had with the deceased. I will ask your Honor to

recall Mr. Freeman's testimony in which he said Mrs. Brown told me that her husband had intended to cancel the notes. Now, I think that opens the door.

THE COURT: Mr. Freeman is not the Executor.

MR. ROSS: He is the Trust Officer of the Executor, or was the Trust Officer, and the conversation was held at the time he was active as Trust Officer, and his mere separation at this stage shouldn't bar us. He was permitted to so testify.

THE COURT: I don't think that opens the door to inquire here as to transactions between her and her now deceased husband.

MR. ROSS: I object to your Honor's ruling.

THE COURT: You don't need an objection.

MR. ROSS: Yes, I know, but I didn't want to take the chance.

Q. Mrs. Brown, did you tell Mr. Freeman that your husband had forgiven you any amount due on the notes?

MR. ARCHER: May I enter an objection to this whole line of questioning? The questions I asked Mr. Freeman on direct examination concerned testimony Mrs. Brown had given on her direct examination.

THE COURT: Mr. Freeman did say, as I recollect it, that Mrs. Brown did say something to the

effect her husband had intended to cancel, or destroy or annul these note obligations.

MR. ARCHER: Yes, he did so testify.

THE COURT: This question is whether or not she did say that to Mr. Freeman.

MR. ARCHER: My objection is, if the Court please, she has already, in her direct examination, testified as to this conversation she had with Mr. Freeman and what Mr. Freeman said and all Mr. Freeman did was to give his version of it.

THE COURT: (To the stenographer.) Read the question so I may be certain of the phraseology.

(Question repeated.)

THE COURT: That, Mr. Ross, I think is improper. It is not using the words of Mr. Freeman.

MR. ROSS: I agree. Suppose we postpone this until after lunch. I may think of a few arguments during lunch time.

MR. ARCHER: May I ask this, rather seriously, if we couldn't finish the matter so as not to bring Mr. Freeman back.

THE COURT: We will go on for another 10 minutes.

Q. Mrs. Brown, did you say to Mr. Freeman that your husband had intended to cancel the notes?
A. My husband canceled them twice.
Q. That isn't an answer.

THE COURT: That may be stricken. Listen while the question is read to you. It really calls for an answer yes or no.

(Question repeated.)

THE WITNESS: Yes. I don't remember whether I did but I would have said it because that was the truth.

MR. ROSS: I guess that answers it. That is the best I can do. We rest.

MR. ARCHER: We are through.

THE COURT: The case is concluded as far as testimony is concerned?

MR. ARCHER: Yes.

THE COURT: Return at 25 minutes of 2. In other words, we will recess for one hour and then I will hear your arguments.

(At this point a recess was taken until 1:35 o'clock P. M.)

(Trial of the cause resumed at 1:35 P. M., pursuant to adjournment, in the presence of the Court and counsel for the respective parties.)

MR. ROSS: The exhibit I had marked for identification I would like now to have marked in evidence.

MR. ARCHER: I have no objection.

THE COURT: It may be marked in evidence.

(Paper heretofore marked Exhibit C-1 for Identification now marked Exhibit C-1.)

MR. ROSS: If the Court please, I haven't produced a copy of the will or codicil, I have assumed your Honor will accept the copies annexed to the bill as true copies. They are true copies.

MR. ARCHER: I have no objection to that.

(Argument.)

THE COURT: Gentlemen, you may or may not know the situation, but because I was away three weeks in Toms River, and must give them another week here, it has caused a disruption of my own work, and I have final hearings right up until the 1st of July, and I may not be able to consider this matter until July. Therefore I want a transcript of what took place today, counsel will exchange briefs, and I will welcome help from both of you on the points raised.

MR. ROSS: I should like to have 10 days.

THE COURT: It is unfortunate but I don't think I will be able to consider this matter before the first of July.

MR. ROSS: After 11 years a few more days won't matter.

THE COURT: It sounds like a troublesome matter to take up in the hot weather of July but

that is what I will have to do. Court stands adjourned.

EXHIBIT D-1.

$19000 00/100 Riverton, N. J., August 9th 1932
On demand after date I promise to pay To the order of F. G. Brown Nineteen Thousand and no/100 DOL-
100
LARS at the CINNAMINSON BANK AND TRUST COMPANY, RIVERTON, N. J.
Interest @ 6%

No. .....
Due .....

Without defalcation or discount. Value received.
Credit the Drawer.

..... Grace McNeal Brown

(In margin:)
DISCOUNT DAYS
TUESDAYS AND FRIDAYS
3-31-10M

(On back:)

	19,000.00
7/11/34 paid	2 230.00
Bal	16,770.00
4/30/35 paid	2 770.00
	14 000 00

Exhibit D-2, Note
Exhibit D-3, Receipt

EXHIBIT D-2.

$27669 44/100 Riverton, N. J., August 9th 1932
On demand after date I promise to pay To the order of F. G. Brown Twenty Seven Thousand, six hundred sixty nine and 44/100 DOLLARS at the CIN-
100
NAMINSON BANK AND TRUST COMPANY, RIVERTON, N. J.
Interest rate 4%

No. .....
Due .....

Without defalcation or discount. Value received.
Credit the Drawer.
..... Grace McNeal Brown

(In margin:)
DISCOUNT DAYS
TUESDAYS AND FRIDAYS
3-31-10M

EXHIBIT D-3.

WURTS, DULLES & CO.
1416 Chestnut Street
Philadelphia, 12/16/1931

F. G. Brown
Loaned this to
|
Received from Grace McNeal Brown Eighteen thousand dollars (currency) Cash on a/c
Wurts Dulles & Co.
Nemer

EXHIBIT D-4.

F. G. BROWN
802 Main Street
Riverton, N. J.

October 5th 1931

Received, to date, from F. G. Brown
Bonds as follows:—viz

$9 000	U. S. Liberty 4¼s
5 000	" Treasury 4¼s
5 000	Lehigh Valley R. R. 5s—2003
10 000	Pennsylvania Power & Light 4½s

$29 000 00 Face Value as loans to be used to protect my accounts with Wurts, Dulles & Co. Philadelphia.

Cinnaminson National Bk. Riverton
Grace McNeal Brown

EXHIBIT D-5.

1399

Feb. 5—'33—

Dear Mr. Freeman—

The request to the Executors for a further payment out of the principal—Also the paper in regards—the settlement of the furniture were returned to you a few days ago—all signed—I am happy to say—It is comforting to me to know that the interest I now owe to the Estate will all be paid—I closed my home in Riverton yesterday and for a short time my address will be 111 Peyton Avenue—

Haddonfield New Jersey—My telephone number Haddonfield—209-J—
Thanking you for again helping me—
I am—

Very sincerely—
Grace McNeal Brown.

EXHIBIT D-6.

1399
Feb—9—'33—

Corn Exchange National Bank

Dear Sirs—

Enclosed please find my check for $427 59/100 for the balance of the interest I owe the Estate—

Very truly—
Grace McNeal Brown.

EXHIBIT D-7.

Mrs. F. G. Brown

1399

Marlborough-Blenheim
Atlantic City, N. J.

April 17—'34—

Dear Mr. Freeman—

I am inclosing the dividend for our estate—from the American Telephone and Telegraph Company—May I please have an itemized account of our income for February—March and April—As I have not had any statement of our income since November 20th—it is impossible for me to know accurately what to

expect each month—I am hoping to pay something on my debt before very long.

Very truly—

Grace McNeal Brown.

EXHIBIT D-8.

Mrs. F. G. Brown—

1399

HOTEL CRILLON
Milton B. Kille, Lessee
Indiana Avenue—City Park and the Beach
Atlantic City, N. J.

January 21 '35—

Dear Mr. Rowland—

If it is necessary for you to make a report of my income for the year will you please send me a copy of it as soon as you can—and also include the amount of interest I have paid to the estate this year as that is quite important to me—I am anxious to have my income tax settled as soon as possible—

Very truly

Grace McNeal Brown.

EXHIBIT D-13.

July 11, 1934

RECEIVED, PHILADELPHIA, from CORN EXCHANGE NATIONAL BANK AND TRUST COMPANY, PHILADELPHIA, Co-Executor, Estate of FREDERICK G. BROWN, DECEASED, the following securities:

100 shares—Electric & Musical Industries Ltd. Certificate No. T-17483
100 shares—Electric & Musical Industries Ltd. Certificate No. T-17482
300 shares—Pennroad Corporation, Ctfs. Nos. N274562/N274561/N274560 for 100 shares each.

The above securities were held as part collateral to $19,000 Demand Note dated 8/9/32 and released on account of payment of $2230.00 in reduction.

Grace McNeal Brown
Grace McNeal Brown

EXHIBIT D-14.

1399

COPY

CORN EXCHANGE NATIONAL BANK
AND TRUST COMPANY
PHILADELPHIA

April 30, 1935

FREDERICK. G. BROWN, DECEASED
Mrs. Grace McNeal Brown
Marlborough Blenheim
Atlantic City, N. J.

Dear Mrs. Brown:

This will acknowledge your letter of April 29 enclosing your check to the order of the Estate for $2770 in reduction of your outstanding 6% note. This payment will reduce the 6% note to the amount of $14,000.

As previously arranged, we are enclosing by regis-

tered mail the following stocks held as collateral on your loan:

40	shrs.	Advance Rumely	@ 6½	$260.00
100	"	Consolidated Gas Utilities "A"	@ ⅛	12.50
150	"	Mother Lode Coalition Mines	@ ⅜	56.25
33	"	Niagara Hudson	@ 4⅜	144.38
100	"	United Corporation	@ 3⅛	312.50
45	"	United Gas Improvement	@ 13⅝	613.13
				$1398.76

Kindly sign and return the enclosed carbon copy of this letter for our receipt.

I will communicate with you and Mrs. Sheble in a few days with reference to the reinvestment of the approximately $3000 which we now have available.

EDGAR W. FREEMAN
Vice President and Trust Officer

EWF/W
CC—Mrs. Marie Brown Sheble
encs.

Received above Grace McNeal Brown—

CONCLUSIONS.

(Filed May 11, 1945.)

IN CHANCERY OF NEW JERSEY.
149-696

Between
GRACE MCNEAL BROWN,
Complainant,
and
CORN EXCHANGE NATIONAL BANK AND TRUST COMPANY, etc., et al.,
Defendants.

On Bill, &c.
Conclusions.

Mr. Arthur W. Lewis, for whom appeared Mr. Henry S. Ross, For the Complainant.
Messrs. Boyle & Archer, for whom appeared Mr. F. Morse Archer, Jr., For the Defendants.

WOODRUFF, V. C.

The amended bill of complaint prays a construction of the last will and testament of Frederick G. Brown, deceased, and a declaration of complainant's rights thereunder. Complainant is the widow of the testator, a primary beneficiary under his will, and one of the three trustees appointed therein to administer a trust of decedent's residuary estate.

Complainant calls attention to the fact that a spendthrift clause was included in the will, and that the testator specifically provided by a codicil for the payment to his beneficiaries of principal, in addition to income, if necessary to provide for their support, comfort and maintenance or to meet any emergency. Complainant argues that decedent's dominant testamentary purpose was to insure to her and to his daughter, Marie Brown Sheble, expense-free homes and a substantial income for life, and contends for a construction of the will and codicil which would absolve her from payment of two demand promissory notes, aggregating $46,669.44, which she gave to her husband for moneys paid by him to her stockbroker to prevent sale of pledged securities. Her co-trustees maintain that no substantial question of construction has been projected by the complainant; that the single question she agitates was correctly resolved by the parties themselves immediately following their qualification as executors; and, that complainant, by her conduct over the eleven years that have since passed, has estopped herself from being granted any relief under her bill.

The right of a testator, under certain circumstances, to prohibit the taking or alienation of a testamentary gift by any person other than the beneficiary was recognized in New Jersey as early as 1852. Arnwine vs. Carroll, 8 N. J. Eq. 620, 625, affirmed 8 N. J. Eq. 886. However, there seems to have been no judicial consideration of the particular legal question involved in the present case reported until 1941. In the case of In re, McGregor, an opinion of Vice Ordinary Fielder was adopted by the Court of Errors and Appeals, 130 N. J. Eq. 5, 19 Atl. Rep. 2d, 865, 145 A. R. (2) 1320n. The Vice Ordinary, after discussing the facts proven, said: "The trust was created as a spendthrift trust with

the definite intention that no part of it should be made available for the benefit of Donald's creditors, *of whom the estate is one,* and the trustee was given specific instructions as well as discretion by the codicil which created it, as to the use of trust income. * * * If he [the trustee] were to pay the whole or any part of the income to the executors in reduction of Donald's debt, he would defeat the decedent's expressed intention which was that no part of income of the trust should be devoted to any purpose other than the support of Donald, or his wife and children." (Italics mine.) A quite recent decision of our Court of Errors and Appeals further established the principles applicable to a case such as the present. In Chelsea-Wheeler Coal Co. vs. Marvin, 134 N. J. Eq. 432, 35 Atl. Rep. 2d, 874, Justice Colie said: "We are faced with what may be termed conflicting phases of public policy; on the one hand the right of creditors to satisfaction of the just debts owing to them and on the other hand the equally well-recognized right of the head of a family to provide for his dependents after his death. * * * While the statute [R. S. 2:26-182, dealing with the right of a judgment creditor to reach debts and income from trust funds owing to the judgment debtor] referred to above is not involved in the present situation and moreover is applicable only to involuntary alienation, nevertheless it is declarative of a public policy to safeguard a reasonable sum for sustenance from the hands of creditors."

The spendthrift clause in the will now before the court reads:

> "SIXTH: Any payment or payments of either income or principal from my residuary estate hereinbefore directed to be made to any one or all of the beneficiaries hereinbefore named, shall not be subject to the debts, engage-

ments, anticipation or alienation of any beneficiary or beneficiaries, nor shall the same be subject to judgment, attachment or other process of law at the hands *of anyone whomsoever.*" (Italics mine.)

The paragraph of the codicil to which complainant calls particular attention reads:

"I further give my Executors and Trustees full power and authority to pay over and deliver from time to time to the person or persons who may at the time be the beneficiary of all or any part of my estate, any or all of the principal (in addition to the income) of that part of my estate in which the particular person or persons may be interested. My idea in making this provision is to enable members of my family or other beneficiary to provide for their suitable support, comfort and maintenance or for the education of any dependent beneficiary, or to meet any emergency such as illness, loss or misfortune that may befall them or any of them. The payment of the principal is to rest solely within the discretion of my Trustees and cannot be enforced by any person or persons whomsoever."

The primary beneficiaries under the testator's will are his widow and daughter. By paragraph 2 the testator bequeathed to his wife and to his daughter all of his personal, intimate effects, "* * * to be divided between them in such manner as they may agree * * *". By the third paragraph he gave and devised a dwelling known as 414 Lippincott Avenue, in the Borough of Riverton, to his daughter, "* * * for and during the term of her natural life, without the payment of any rent therefor, * * *." He then

directed that all expenses for the maintenance of this dwelling "* * * be charged to and paid from the income from my residuary estate." By the fourth paragraph the testator made similar provision for his wife, giving her, for life, the dwelling 802 Main Street, Riverton, with all maintenance charges to be paid out of the income from his residuary estate. That estate he devised and bequeathed to his three trustees, the net income to be paid, two-fifths to his wife the complainant for life, and three-fifths to his daughter Marie Brown Sheble for life. Upon the death of these beneficiaries, he directed that the balance of the trust *res,* including the two dwellings, be distributed among his grandchildren, the children of his daughter Marie Brown Sheble.

The dominant purpose of the testator, when he formulated and executed his will and the codicil is clearly expressed in those instruments. While, in this instance, the testator did not specifically provide that income from the trust be paid out only to a beneficiary upon his personal receipt, or give to his trustees absolute discretion as to payment or abstinence from payment to beneficiaries of trust income, he did unequivocally declare that payments of income or principal from his residuary estate, directed to be made to any beneficiary, should not be subject to the debts of such beneficiary or "judgment, attachment or other process of law at the hands of anyone whomsoever." The significance of testator's words, "at the hands of anyone whomsoever" cannot be doubted or misunderstood. Testator did not exclude his executors as possible creditors; his words were all inclusive. Furthermore, his intent to insure "suitable support, comfort and maintenance" for his wife and to care for her in any emergency that might come upon her was emphasized in his codicil. His executors and trustees

are specifically authorized to use up to two-fifths of the principal of the residuary estate in addition to income to effectuate testator's purpose.

Testator's will was executed August 5, 1925; the codicil, August 29, 1925. The intent of a testator is to be ascertained as of the time of the execution of his testamentary instruments; the instruments become effective at his death. And, it has been held that, where a substantial period elapses between the execution of the will and the death of the testator, during which time material changes occur respecting the testator's estate or his beneficiaries, and no change is made by the testator in his will, it may be presumed that he was content to have his will, as executed, become fully effective at his death. Vrooman vs. Virgil (Chancery), 81 N. J. Eq. 301, 310, 88 Atl. Rep. 372.

It was the testimony of the complainant that she came to possess some property by inheritance. Apparently she managed this separate estate herself. In August, 1932, she was in danger of losing securities valued at $29,669.44 which she had hypothecated with a stockbroker. Her husband came to her rescue; he gave to her or paid over to her stockbroker $46,669.44 to close out the account. Upon release of her pledged securities they were assigned by her in blank and given to her husband to hold as collateral to the two promissory notes here in question. One note was approximately secured by the collateral. On that note Mr. Brown asked for only 4% interest; on the unsecured note, the interest fixed was 6%. The collateral, the notes and a receipt of the stockbroker for money paid, were found together in the safe deposit box of the testator following his death. The notes had not been cancelled.

Complainant asserted in her amended bill that the testator, during his lifetime, released her from her

obligation to pay the notes. To support this allegation we have only her testimony, and that was limited to a statement that her husband intended to cancel the obligations. If the intention of the testator to forgive the debt had not been made clear in his will, a presumption would have been indulged by this court that the notes were valid obligations of the complainant. Even a gift of a legacy by a creditor to his debtor does not operate as a release or extinguishment of a debt due from the legatee, when securities held for payment of the debt remain uncancelled and the intention of the testator to annul the debt is not clear. Snyder vs. Warbasse (Chancery), 11 N. J. Eq. 463, 473. However, as I have already held, the intention of the testator to forgive his wife the debts represented by her two notes is clearly expressed in his will and codicil. Thus, we come to a discussion of the defense of estoppel.

The position which the complainant now assumes is inconsistent with her conduct over the past eleven years. That conduct naturally and directly caused her co-executors and trustees to adopt and follow a course of action which has materially affected their responsibility to their cestuis que trustent, altered the status of the trust itself, and affected the interests of future beneficiaries. Complainant was nominated by her husband to be an executrix and a trustee of his will; she was also a beneficiary thereunder. Her moment for decision came when, in her presence, her husband's safe deposit box was opened and her notes were found attached to the securities which she had given to him, and uncancelled. She did not then declare that her husband had annulled her debt; what she did say was that her husband had intended so to do. She did not, before qualifying, seek a construction of the will or a determination as to her liability on the notes, yet she knew, or should have

known, that if she qualified as an executrix and trustee she would owe one hundred per cent loyalty to the trust she assumed. Camden Trust Co. vs. Cramer (Errors and Appeals), 136 N. J. Eq. 261, 40 Atl. Rep. 2d, 601. She chose to qualify.

Upon the qualification of the executors it became necessary that they file federal and state tax returns. Complainant signed the necessary forms; in them her notes were listed as assets of the estate and for their face value; upon them substantial tax payments were made from the estate by the executors. Complainant then joined with her co-executors to seek the approval of the Burlington County Orphans' Court of an executors account. Therein her notes were again listed as assets of the estate at their face value. Complainant, on the accounting, sought and was allowed the commissions of an executrix—commissions based upon figures which included the principal amount of her notes and the interest paid by her. Following court approval of the account, she joined with her co-executors in transferring the assets of the estate, including her two notes and the possession of her collateral, to the trustees. As a trustee, she accepted the notes at face value. The moneys expended by the executors for state and federal taxes and the commissions paid to complainant and to the two defendants as executors and trustees were taken from the residuary estate which the trustees were directed to ultimately distribute among the testator's grandchildren.

When the executors received complainant's notes and her collateral, it became necessary for them to put some construction upon the will and codicil and to determine upon a course of action. Complainant did not then suggest that, by the terms of his will, her husband had released her from payment of her notes; what she did was to agree to a deduction of

interest on the notes from income payable to her under the will. The procedure adopted was this: A statement was forwarded to Mrs. Brown by her co-fiduciary, Corn Exchange National Bank & Trust Company, showing the amount of income payable to her from the estate (derived, in part, from interest on her two notes); Mrs. Brown signed a receipt for her share of the income and received a check for the amount due her, less the interest called for on her notes; the bank gave a receipt to Mrs. Brown for interest paid. One hundred five such checks and eighty-seven such receipts were put in evidence. The checks cover the period from December 9, 1933 to February 9, 1943; receipts were not taken after the year 1941. Complainant's consent to the deduction of interest from income was never effectively withdrawn until she filed her bill in this cause.

The testator died November 3, 1932; his will was probated November 18, 1932; the account of the executors was presented and approved February 15, 1934. February 5, 1933 complainant wrote a letter to the trust officer of her co-trustee, Corn Exchange National Bank and Trust Company. In it she said: "It is comforting to me to know that the interest I now owe to the Estate will all be paid—and the balance." On February 9, 1933 she gave her personal check to the executors for $427.59 in payment of interest on her notes. July 11, 1934 she made a direct payment of $2230. to the trustees in reduction of her $19,000 note. In consideration of the latter payment the trustees returned to her some of the securities held by them as collateral. April 30, 1934 complainant made another payment of $2770. on the principal of said note and at her request the trustees delivered to her additional securities.

Complainant's reduction of the principal of the notes was made voluntarily and from out her own

funds; her payments of interest were also voluntarily made. The prohibition of the testator against alienation of income payments by a beneficiary only applied to income which had not accrued. When deductions for interest were made from income payable to complainant, the income had accrued and was actually due. Income such as this, when it accrues, becomes vested in the *cestui que trust* and subject to his disposition and control. The Trust Co. of New Jersey vs. Gardner (Chancery), 133 N. J. Eq. 436, 439, 32 Atl. Rep. 2d 572.

The detail work of the executors and trustees has always been taken care of by Corn Exchange National Bank and Trust Company. Regularly, over the years, it submitted statements of trust investments to complainant and to Mrs. Sheble. Ten such statements were received in evidence; each bore upon it these words: "I have examined this statement, find it satisfactory, and approve your management of the fund up to date." All of these statements were signed by the complainant, and complainant's notes are listed in each of these statements as assets of the estate.

The parties did, as defendants suggest, place a construction upon the will and in particular upon those portions wherein complainant now asserts there is ambiguity. Complainant was adversely affected by that construction, which fact is important in considering her conduct and determining the applicability of the doctrine of equitable estoppel. Our Court of Errors and Appeals, in Fink vs. Harder, 111 N. J. Eq. 439, 440, 162 Atl. Rep. 614, affirmed this court on an opinion of Vice Chancellor Fallen which contained the following statement: "Where, as in the case *sub judice*, parties in interest have practically construed a will, and allowed a beneficiary named therein to possess and enjoy a devise,

relying upon the devisee's assumed right thereto, the parties to such practical construction may be regarded as being estopped from asserting the contrary. In re, Marx, 103 N. Y. Supp. 446." See also, 69 C. J., Wills, par. 1167; Paige on Wills, Sec. 1614.

"In modern usage, equitable estoppel and estoppel *in pais* are convertible terms, embracing also *quasi*-estoppel. They embody the doctrine, grounded in equity and justice, that one shall not be permitted to repudiate an act done or position assumed where that course would work injustice to another who, having the right to do so, has relied thereon. * * * It is of the essence of equitable estoppel that one is precluded from taking a position inconsistent with that previously assumed and intended to influence the conduct of another, if such repudiation 'would not be responsive to the demands of justice and good conscience,' in that it would effect an unjust result as regards the latter." New Jersey Suburban Water Co. vs. Harrison (Errors and Appeals), 122 N. J. Law 189, 194, 3 Atl. Rep. 2d, 623.

Complainant's co-trustees, Corn Exchange National Bank and Trust Company and Mrs. Sheble, have consistently acted in accordance with the understanding had with complainant that she would pay interest on her notes out of the income paid her from the trust and that she would pay the principal in installments or upon sale of her securities. They charged themselves with receipt of her notes at face value; they reported to the state and to the federal governments that they held her notes at face value and, on these reports, paid out moneys of the estate in taxes; they credited complainant with payments of interest on her obligations and paid her income as upon receipt had of those moneys; they sought and accepted commissions on the basis of complainant's agreement. It is equitable and just that com-

plainant should be, and she is, concluded and forbidden by law to now repudiate her agreement and her past conduct so far as it affects the administration of the estate up to the time this suit was instituted.

Among the securities of complainant found in the testator's safe deposit box were 885 shares of common stock of United Gas Improvement Company. In 1943 proceedings were taken to dissolve that company and, subsequently, distribution was made to its stockholders of common stock of Philadelphia Electric Company and Public Service Corporation of New Jersey. Two hundred ninety-five shares and seventy-three and nine-twelfths shares, respectively, were issued in exchange for the 885 shares. By reason of the fact that the old shares were registered in the name of complainant, the new stock, when issued, was mailed to her. Defendants then requested complainant to deposit these certificates with other securities held by the trustees as collateral to her two notes. She refused. Defendants petitioned the Burlington County Orphans' Court for an accounting from the complainant and for an order directing her to deliver the certificates, duly endorsed, to the trustees. Complainant defended but was ordered by the court to turn over the stock to the defendants to be held by them in escrow pending determination, by this or another court, of the question of ownership and right of possession. This cause was then instituted.

When the complainant filed her bill herein she gave definite notice to her co-trustees that she would no longer permit interest on her notes to be deducted from income payable to her from the trust, that she considered her debt to her husband to have been forgiven by the terms of his will, that she would insist on the return to her of her securities, and that, in

the future, she would insist upon receipt of a full two-fifths share of the net income from the trust. I have disposed of her claims with respect to past payments of interest on the notes and payments made on account of principal. I shall now pass upon her rights from and after the filing of her bill. Those rights must be declared as they exist in law and must be grounded upon the court's determination as to the intention of the testator when he was disposing of his estate. Morrison vs. Dawson (Chancery), 115 N. J. Eq. 45, 48, 169 Atl. Rep. 694. As was said by our Court of Errors and Appeals in New Jersey Suburban Water Co. vs. Harrison, supra, the doctrine of estoppel is applicable only when conduct was designed to influence a person and did operate to produce an unjust or inequitable result to him. A quotation particularly apt to the present case will be found at page 619 of the opinion filed in Demarest vs. Hopper (Errors and Appeals), 22 N. J. Law 599: " 'An estoppel is where a man is concluded and forbidden by law to speak against his own act ordered; yea, even tho it is to say the truth.' " Termes de la Ley, tit. Estoppel; 1 Lit. Pr. Reg. cited in Best on Evidence, Sec. 362, page 403.

In my view, complainant's position was radically changed when she filed her bill of complaint. She renounced her agreement recognizing her notes as liabilities and authorizing payment of interest out of income, prayed a construction of the will and codicil by this court, and asked for a declaration of her rights thereunder. The testamentary instruments have now been construed and I have found that by the terms thereof decedent forgave the debt of his wife. While complainant's failure to obtain a construction of the will before agreeing to pay interest on her notes out of income, and before making the two payments on account of principal, has af-

fected the trust, its administration and the interests of present and future beneficiaries, it has operated generally to the disadvantage of the complainant; resulting payments into the trust have exceeded resulting expenditures from the trust or reductions in value of the trust *res*. No injustice will be visited upon Mrs. Sheble as a beneficiary or upon her children as future beneficiaries if the trustees now administer the trust in accordance with the court's construction of the will and codicil. Complainant is entitled to receive her notes and her securities, and from and after January 20, 1944, when her bill of complaint was filed, to be paid a two-fifths part of the net income of decedent's residuary estate as directed in the fifth paragraph of the will.

SUBMITTED, August 3, 1944.

DETERMINED, May 5, 1945.

FINAL DECREE.

(Filed June 9, 1945.)

IN CHANCERY OF NEW JERSEY.
149-696

Between
GRACE MCNEAL BROWN,
Complainant,
and
CORN EXCHANGE NATIONAL BANK AND TRUST COMPANY, PHILADELPHIA, a Corporation of the State of Pennsylvania, Trustee under the Will of Frederick G. Brown, et al.,
Defendants.

On Bill, &c.
Final Decree.

This cause coming on to be heard in the presence of Henry S. Ross, a solicitor of this Court, appearing on behalf of Arthur W. Lewis, Solicitor of the complainant, Grace McNeal Brown, and F. Morse Archer, Jr., of the firm of Boyle & Archer, solicitors of the defendants, and the Court having examined the pleadings and having taken proofs orally in open court and heard and considered the arguments of counsel thereon; and it appearing to the satisfaction of the Court that, by the true construction and mean-

ing of the sixth paragraph of and the codicil to the last will and testament of Frederick G. Brown, Deceased, the complainant is entitled to have delivered to her the two certain promissory notes mentioned and described in the bill of complaints herein, executed by her and delivered to the said Frederick G. Brown during his lifetime together with the collateral accompanying said notes and in addition thereto the said complainant is entitled to be paid a two-fifths part of the net income of the residuary estate of the said Frederick G. Brown, Deceased, from and after January 20, 1944, in accordance with the terms of Paragraph FIFTH of said Will; and that therefore the counter-claim filed herein by Marie Brown Sheble and Corn Exchange National Bank and Trust Company, Philadelphia, Trustees under the will of Frederick G. Brown, Deceased, should be dismissed;

It is, on this 19th day of June, 1945, ORDERED, ADJUDGED and DECREED that under the provisions of the SIXTH Paragraph of and the codicil to the will of said Frederick G. Brown, Deceased, the said complainant is entitled to have delivered to her the two certain promissory notes mentioned and described in the bill of complaint filed herein and executed by her and delivered to her by the said Frederick G. Brown during his lifetime, together with the collateral accompanying said notes and in addition thereto the said complainant is entitled to be paid a two-fifths part of the net income of the residuary estate of the said Frederick G. Brown, Deceased, from and after January 20, 1944 as directed by the FIFTH Paragraph of said will;

It is further Ordered, Adjudged and Decreed that the counterclaim filed herein by the said Marie Brown Sheble and Corn Exchange National Bank and Trust Company, Philadelphia, Trustees under

the will of Frederick G. Brown, Deceased, be and the same is hereby dismissed.

It is further Ordered that no counsel fees be allowed to the solicitors for any of the parties hereto and that the complainant be allowed her taxed costs of this suit to be paid by Grace McNeal Brown, Marie Brown Sheble and Corn Exchange National Bank and Trust Company, Philadelphia, Trustees under the will of Frederick G. Brown, Deceased, out of the estate in their hands.

LUTHER A. CAMPBELL,
C.

Respectfully advised,
ALBERT S. WOODRUFF,
V. C.

NOTICE OF APPEAL.

(Filed July 19, 1945.)

IN CHANCERY OF NEW JERSEY.
149-696

GRACE MCNEAL BROWN,
Complainant,
vs.
CORN EXCHANGE NATIONAL BANK AND TRUST COMPANY OF PHILADELPHIA, and MARIE BROWN SHEBLE, Trustees under the will of Frederick G. Brown, deceased, et als.,
Defendants.

On Bill, &c.
Notice of Appeal.

The Defendants, Corn Exchange National Bank and Trust Company of Philadelphia and Marie Brown Sheble, Trustees under the will of Frederick G. Brown, deceased, and Marie Brown Sheble, individually, and Elaine Sheble Rogers and Harold W. Sheble, hereby appeal to the Court of Errors and Appeals in the Last Resort in all Causes, from so much of the Final Decree made in the above entitled cause on June 19, 1945, as directs:

1. That the said Complainant is entitled under the provisions of the Sixth Paragraph of and the

codicil to the last will of said Frederick G. Brown, deceased, to have delivered to her the two certain promissory notes mentioned and described in the Bill of Complaint filed herein and executed by her and delivered by her to the said Frederick G. Brown during his lifetime, together with the collateral accompanying said notes;

2. That the Counterclaim filed herein by the Trustees under the will of Frederick G. Brown, deceased, be dismissed;

3. That the Complainant be allowed her taxed costs in this suit to be paid by the said Trustees under the will of Frederick G. Brown, deceased, out of the estate in their hands;

The Decree of the Court of Chancery, parts of which are herein appealed from was made by the Chancellor on the advice of the Honorable Albert S. Woodruff, Vice Chancellor.

Dated: July 13, 1945.

BOYLE, ARCHER & GREINER,
Solicitors for and of Counsel with the Defendants, Corn Exchange National Bank & Trust Company of Philadelphia and Marie Brown Sheble, Trustees, and Marie Brown Sheble, individually, Elaine Sheble Rogers and Harold W. Sheble.

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

F. MORSE ARCHER, JR.,
Of Counsel with the Defendants, Corn Exchange National Bank and Trust Company of Philadelphia

and Marie Brown Sheble, Trustees under the will of Frederick G. Brown, dec'd., and Marie Brown Sheble, individually, Elaine Sheble Rogers and Harold W. Sheble.

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Due and legal service of copy of the foregoing Notice of Appeal is hereby acknowledged this 19th day of July, 1945.

ARRTHUR LEWIS,
Solicitor of the Complainant,
Grace McNeal Brown.

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PETITION OF APPEAL.

(Filed August 3, 1945.)

NEW JERSEY COURT OF ERRORS AND APPEALS.

GRACE MCNEAL BROWN,
Complainant-Appellee,
vs.
CORN EXCHANGE NATIONAL BANK AND TRUST COMPANY OF PHILADELPHIA, and MARIE BROWN SHEBLE, Trustees under the will of Frederick G. Brown, MARIE BROWN SHEBLE, Individually, ELAINE SHEBLE ROGERS and HAROLD W. SHEBLE,
Defendant-Appellants.

On Appeal from Court of Chancery.
Petition of Appeal.

TO THE HONORABLE THE COURT OF ERRORS AND APPEALS IN THE LAST RESORT IN ALL CAUSES:

The Petition of Corn Exchange National Bank and Trust Company of Philadelphia, and Marie Brown Sheble, Trustees under the will of Frederick G. Brown, deceased, Marie Brown Sheble, individually, and Elaine Sheble Rogers and Harold W.

Sheble, the Appellants in the above entitled cause, respectfully shows that:

1. Petitioners find themselves aggrieved by a final decree made in the Court of Chancery by his Honor Luther A. Campbell, Chancellor of the State of New Jersey, on the advice of Albert S. Woodruff, Vice Chancellor, bearing date June 19, 1945, in a certain cause in said Court of Chancery wherein the said Grace McNeal Brown was Complainant and the said Corn Exchange National Bank and Trust Company of Philadelphia, and Marie Brown Sheble, Trustees under the will of Frederick G. Brown, deceased, Marie Brown Sheble, individually, Elaine Sheble Rogers and Harold W. Sheble were Defendants, in this respect, to wit, that the said Decree adjudges the following:

A. That the said Complainant is entitled under the provisions of the Sixth Paragraph of and the codicil to the will of said Frederick G. Brown, deceased, to have delivered to her the two certain promissory notes mentioned and described in the Bill of Complaint filed in said cause, and executed by her and delivered by her to said Frederick G. Brown during his lifetime, together with the collateral accompanying said notes.

B. That the Counterclaim filed in said cause by the said Marie Brown Sheble and Corn Exchange National Bank and Trust Company of Philadelphia, Trustees under the will of Frederick G. Brown, deceased, be dismissed.

C. That the Complainant be allowed her taxed costs in said cause to be paid by the Trustees under

the will of Frederick G. Brown, deceased, out of the estate in their hands.

And Petitioners appeal from that part of the Decree of the Chancellor, which decrees as aforesaid upon the ground that the same is erroneous in that the Sixth Section of the Decedent's will and the codicil to Decedent's will do not provide that the aforesaid notes be forgiven and returned along with the aforesaid collateral to the Complainant, and in that the Complainant is now estopped by reason of her conduct and laches since the decedent's death, individually and as a Co-Trustee of said estate, from now claiming that said notes and the collateral therefor, should be returned to her and in that said Complainant, has violated her duty as Trustee of this estate in failing to surrender to said Trustees the said collateral securing said notes as sought by two of the Trustees in their Counterclaim filed in said cause, and in that Complainant is not entitled to the relief granted her since she did not come into said Court with clean hands.

Petitioners therefore, pray that the said Decree of the said Chancellor may be, in the particulars aforesaid, reversed, set aside and for nothing holden, and that Petitioners may have such other relief in the premises as to this Court shall seem proper.

BOYLE, ARCHER & GREINER,
Solicitors for and of Counsel
with Appellants.

Service of copy of this within Petition of Appeal is hereby acknowledged this 3rd day of August, 1945.

ARTHUR W. LEWIS,
Solicitor for Complainant-
Appellee.

STIPULATION RESPECTING THE STATE OF THE CASE.

NEW JERSEY COURT OF ERRORS AND APPEALS.

GRACE MCNEAL BROWN,
Complainant-Appellee,
vs.
CORN EXCHANGE NATIONAL BANK AND TRUST COMPANY OF PHILADELPHIA, and MARIE BROWN SHEBLE, Trustees under the will of Frederick G. Brown, MARIE BROWN SHEBLE, Individually, ELAINE SHEBLE ROGERS and HAROLD W. SHEBLE,
Defendant-Appellants.

On Appeal from Court of Chancery. Stipulation Respecting the State of the Case.

In order that the questions involved in this appeal may be concisely and clearly presented to the Court, and in order to avoid needless printing, it is hereby stipulated by and between the parties hereto that the state of the case shall be abridged as follows:

1. The original Bill of Complaint shall be omitted as it was replaced entirely by the amended Bill of Complaint. The copy of a certain Petition for Discovery heretofore filed in the Burlington County Or-

phans' Court, the copy of a certain Order To Show Cause of the Burlington County Orphans' Court, and a certain Affidavit of Grace McNeal Brown, all of which are attached to the Amended Bill of Complaint are omitted since they have no bearing on the questions involved in this appeal.

2. Certain Orders of the Court of Chancery continuing hearings and certain Orders respecting temporary restraint and Affidavits filed in connection therewith not being material to this appeal are omitted as is the Notice of Hearing.

3. Exhibits A and B attached to the Defendant-Appellants' Counterclaim are omitted as they are the same as Exhibits D-1 and D-2 introduced into evidence by the Defendant-Appellants.

4. Exhibit D-9 was a true copy of the estate tax return executed on November 3, 1932, by the Complainant-Appellee, Grace McNeal Brown, the Defendant-Appellant, Marie Brown Sheble, and the Defendant-Appellant, Corn Exchange National Bank and Trust Company of Philadelphia, as Executors of the estate of Frederick G. Brown, deceased, which said return was in due course filed by said Executors. For brevity, said Exhibit D-9 is omitted, but it is agreed that in Schedule C of said return, Exhibits D-1 and D-2 were reported as assets of the estate and valued at the then market value of the securities of the Complainant-Appellee then pledged as collateral for said notes. The principal of said notes thus included for tax purposes was $22,788.25, plus interest accrued on said notes to the date of death of $504.37. Subsequently the federal estate tax, paid by the Executors, on the said estate, was based upon the inclusion of said sums as part of the assets of

the estate so that the tax was substantially larger than it would have been had said notes not been included as assets of the decedent.

5. Exhibit D-10 consists of a certified copy of the account of Grace McNeal Brown, Marie Brown Sheble and Corn Exchange National Bank and Trust Company of Philadelphia, as Executors of the Estate of Frederick G. Brown, deceased, which said account was duly sworn to by the said Grace McNeal Brown, Marie Brown Sheble and Corn Exchange National Bank and Trust Company of Philadelphia on December 26, 1933. For brevity, said account is not reprinted in full, but it is agreed that among the assets included as part of the corpus of said account, were Exhibits D-1 and D-2, which said notes, for accounting purposes in the Burlington County Orphans' Court, were valued at par. Said Exhibit D-1 being valued at $19,000.00, and Exhibit D-2 valued at $27,669.44. Commissions of 3½% on corpus were allowed to the aforesaid three Executors by the Burlington County Orphans' Court, including as a part of such corpus, said notes Exhibit D-1 and D-2 at par.

6. Exhibit D-11 consisted of a true copy of the New Jersey Transfer Inheritance Tax return, sworn to and filed by Grace McNeal Brown, the Complainant-Appellee, and the Defendant-Appellants, Corn Exchange National Bank and Trust Company of Philadelphia and Marie Brown Sheble, as Executors of the estate of Frederick G. Brown, deceased, which said return for sake of brevity is omitted. It is stipulated that Exhibits D-1 and D-2 are included in Schedule B at the value of the collateral belonging to Grace McNeal Brown, pledged for the payment thereof at the date of the decedent's death, the prin-

cipal value thereof being reported to be $22,788.25 to which was added the interest on said Exhibits accrued to the date of the decedent's death of $504.37. Subsequently, the New Jersey Transfer Inheritance taxes on the estate were paid on the basis of including said notes Exhibits D-1 and D-2 as assets of the estate at the aforesaid valuations whereby the New Jersey Transfer Inheritance tax paid by the said Executors was substantially larger than it would have been had said notes not been considered assets belonging to the decedent at the time of his death.

7. Exhibit D-12 for sake of brevity is not printed in full, but it is stipulated that said Exhibit consisted of statements of investments issued by the Corn Exchange National Bank and Trust Company of Philadelphia in the account of Frederick G. Brown, deceased. These statements bear the following dates —November 23, 1934, May 20, 1935, November 30, 1935, May 18, 1935, March 1, 1937, May 11, 1937, November 9, 1937, June 9, 1938, November 19, 1938, and May 12, 1939. Each of these statements contains a certification reading as follows:

"I have examined this statement, find it satisfactory, and approve your management of the fund up to date."

This certification on each of these statements is personally signed by the Complainant-Appellee, Grace McNeal Brown. The aforesaid notes, Exhibits D-1 and D-2, are listed at their current par values on each of said statements of investments.

8. Exhibit D-15 consists of 87 white receipts, duly signed by Complainant-Appellee, Grace McNeal Brown, and 105 checks, duly endorsed for deposit by her. Said white receipts bear dates from De-

cember 9, 1933 to February 9, 1943, inclusive. An example of said white receipts and of said checks, both dated December 9, 1933, follow:

White:

"K-6-B

Grace McNeal Brown PHILADELPHIA 12-9-33

Received of

CORN EXCHANGE NATIONAL BANK
AND TRUST COMPANY
(FREDERICK G. BROWN, DEC'D)

Check for $300. representing my 2/5ths share of a distribution of income of $750.

$300.00 GRACE McNEAL BROWN"

Green:

CORN EXCHANGE NATIONAL BANK
and TRUST COMPANY

(3-18)

Philadelphia, Pa. December 9, 1933 No. 35771

Pay to the
Order of GRACE MC NEAL BROWN $115.42
CORN EX. NAT
BK. & TR. CO. $115 and 42 CTS
To the
PENNSYLVANIA COMPANY
for insurances on Lives and Granting Annuities
PHILADELPHIA, PA. 3-2

C. P. Rowland
Asst. Trust Officer
B. Lillian Rose
Asst. Trust Officer"

Endorsement:

"For deposit only in the Cinnaminson Bank and Trust Company—

Grace McNeal Brown"

For sake of brevity, the balance of the said checks and white receipts are not printed in full, but it is

stipulated that all of them are essentially in the same form although three of said white receipts dated March 10, 1941, April 9, 1941 and May 9, 1941, contain ink corrections of the figures appearing thereon, which said ink corrections were apparently made by said Grace McNeal Brown.

9. Exhibit D-16 is omitted for the reason that it has no bearing on this appeal and concerns only the holding of certain securities in escrow pending the decision of this Court.

10. Exhibit C-1 is not printed as the text of the testimony shows its purport.

BOYLE, ARCHER & GREINER,
Solicitors for Defendant-Appellants.
ARTHUR W. LEWIS,
Solicitor for Complainant-Appellee.

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NEW JERSEY COURT OF ERRORS AND APPEALS.

GRACE MCNEAL BROWN,
Complainant-Appellee,

VS.

CORN EXCHANGE NATIONAL BANK AND TRUST COMPANY OF PHILADELPHIA, and MARIE BROWN SHEBLE, Trustees under the will of Frederick G. Brown, MARIE BROWN SHEBLE, Individually, ELAINE SHEBLE ROGERS and HAROLD W. SHEBLE,
Defendants-Appellants.

ON APPEAL FROM THE COURT OF CHANCERY.

BRIEF FOR DEFENDANTS-APPELLANTS.

THE PARTIES AND THE NATURE OF THE SUIT.

This is an appeal from a Decree of the Chancellor dated June 19, 1945, on the advice of the Honorable Albert S. Woodruff, Vice Chancellor, in so far as such Decree determines that the Complainant, Grace McNeal Brown, is entitled to have surrendered to her, two certain promissory notes which she had executed and delivered to the decedent, Frederick G. Brown, during his lifetime, together with certain

collateral of the Complainant securing and accompanying such notes, and in so far as such Decree dismisses the Counterclaim of the Defendants, Marie Brown Sheble and Corn Exchange National Bank and Trust Company of Philadelphia, Trustees under the will of Frederick G. Brown, deceased. No appeal is taken from the Decree of the Court below in so far as it determines that the Complainant is entitled to be paid a two-fifths share of the net income of the residuary estate of said Frederick G. Brown, deceased, from and after January 20, 1944, nor in so far as it denies the allowance of counsel fees, but appeal is taken further from that part of the Decree of the Court below, which allows the Complainant her taxed costs to be paid out of the estate of the decedent aforesaid.

The Complainant, Grace McNeal Brown, and the Defendants, Marie Brown Sheble and Corn Exchange National Bank and Trust Company of Philadelphia, are the Executors and Trustees under the will of Frederick G. Brown, deceased, who died November 3, 1932, a resident of Burlington County, New Jersey. All these parties have duly qualified as such Executors and Trustees, and are presently actively serving in such capacities. The other Defendants, Elaine Sheble Rogers and Harold W. Sheble, are remaindermen having an interest under the will of the decedent, but are not fiduciaries of the estate.

The Complainant, Grace McNeal Brown, although still qualified and serving as Executrix and Trustee of the Estate, on January 20, 1944, filed a Bill of Complaint in the Court of Chancery against the Defendants in which she sought to compel the other Trustees to surrender to her, individually, two notes supported by collateral consisting of securities which she owned individually, on the theory that

these notes and collateral which she had executed and delivered to the decedent during his lifetime for money borrowed by her, were not assets of the estate. The other two Trustees denied that the Complainant was entitled to a surrender and extinguishment of her notes, and the collateral supporting the same, but on the contrary, maintained that such notes and collateral were properly assets of the estate, and that the Complainant was violating her duty as a Trustee of the estate in seeking to have the notes and collateral turned over to her as her individual property. In view of the Complainant's denial at that time of liability on the notes, the other two Defendant Trustees filed with their Answer, a Counterclaim seeking judgment against the Complainant on the notes.

The Complainant, Grace McNeal Brown, is the widow of the decedent, Frederick G. Brown, and was his wife at the time she borrowed the money from him and delivered her notes to him with her collateral.

THE FACTS.

The decedent, Frederick G. Brown, died as above stated, November 3, 1932, a resident of Riverton, Burlington County, New Jersey, leaving a last will and codicil (Exhibits A & B attached to Amended Bill of Complaint, S. C. p. 12, etc.) under which he made certain specific bequests and devises to his daughter, Marie Brown Sheble, one of the Defendants, and to his wife, Grace McNeal Brown, the Complainant. All the residue of his estate he devised to his Trustees, the Complainant, Grace McNeal Brown, and the Defendants, Marie Brown

Sheble and Corn Exchange National Bank and Trust Company of Philadelphia, to pay the income from the estate as follows: two-fifths thereof to the Complainant for life, and three-fifths thereof to the Defendant, Marie Brown Sheble for life, with the whole of the income to Marie Brown Sheble for life after the death of the Complainant. The principal and income of the estate, after the death of the survivor of said widow and daughter, is devised and bequeathed to the issue of the daughter, Marie Brown Sheble, upon the terms and conditions more particularly set forth in the Fifth Section of the decedent's will.

The will of the decedent was executed August 5, 1925, and the codicil thereto was executed August 29, 1925. In due course, in 1932, after the decedent's death, the will and codicil were probated and the three fiduciaries duly qualified as Executors and Trustees in the Surrogate's Court of Burlington County.

The Sixth Section of the decedent's will consists of a spendthrift trust clause in the usual form reading as follows:

> "SIXTH: Any payment or payments of either income or principal from my residuary estate hereinbefore directed to be made to any one or all of the beneficiaries hereinbefore named, shall not be subject to the debts, engagements, anticipation or alienation of any beneficiary or beneficiaries, nor shall the same be subject to judgment, attachment or other process of law at the hands of anyone whomsoever."

The codicil of August 29, 1925, makes a change in the Corporate Executor and Trustee, and contains the following section:

> "I further give my Executors and Trustees full power and authority to pay over and deliver from time to time to the person or persons who may at the time be the beneficiary of all or any part of my estate, any or all of the principal (in addition to the income) of that part of my estate in which the particular person or persons may be interested. My idea in making this provision is to enable members of my family or other beneficiary to provide for their suitable support, comfort and maintenance or for the education of any dependent beneficiary, or to meet any emergency such as illness, loss or misfortune that may befall them or any of them. The payment of the principal is to rest solely within the discretion of my Trustees and cannot be enforced by any person or persons whomsoever."

Immediately after the decedent's death, when his safe deposit box was opened, there were found in the box the two negotiable notes of the Complainant to the decedent, both dated August 9, 1932, marked respectively Exhibits D-1 (S. C. p. 100) and D-2 (S. C. p. 101), along with the collateral consisting of the securities of the individual estate of the Complainant in part securing the payment of the said notes. These were thus dated approximately three months before decedent's death and seven years after his will and codicil.

From the testimony, particularly the testimony of the Complainant herself (S. C. pp. 46, l. 24; 57 & 59—Exs. 33 & D-4) and the Exhibits, it is apparent that both notes represented actual cash and marketable securities (later liquidated) loaned by the decedent to his wife to pay off her indebtedness on certain brokerage accounts in which she had been unsuccess-

fully speculating with her own individual securities. One of the notes which was at least partially secured, carried interest at the rate of four per cent (4%), while the other note which the collateral was totally inadequate to cover, carried interest at six per cent (6%).

Upon the qualification of the three Executors, Mrs. Brown agreed voluntarily to pay interest on her notes to the estate out of her share of income from the estate (S. C. p. 60, Exs. D-5, D-6, D-7 and D-8, S. C. pp. 102-104). Under the arrangements agreed upon, and carried out over a period of years from 1933 to 1943 inclusive, the current interest on the notes, or the balance thereof, was deducted from Mrs. Brown's share of the income from the residuary estate with her consent, and added to the gross income of the estate in the same manner as interest received from any other securities. During this period, or at least until 1941, Mrs. Brown signed receipts for her full share of two-fifth of the net income from the residuary trust, although as stated, she only received the amount to which she was entitled after deducting the interest on her notes. (S. C. pp. 67, 68 and 133, Paragraph 8 of Stipulation, Exhibit D-15.)

Furthermore, during the period from 1934 to 1939, inclusive, Mrs. Brown received and personally approved regular statements of investments of the estate, which statements of investments listed as sundry assets, her notes to the decedent at their face value. (S. C. pp. 64, 65 and 133, Exhibit D-12 and Paragraph 7 of Stipulation.)

As one of the Executors of the estate, the Complainant duly executed, under oath, a transfer inheritance tax return to the State of New Jersey, Schedule B of which return contained her two notes to the decedent valued at the market value of the

collateral supporting the same at the date of the decedent's death, and subsequently as one of the Executors of the estate, she paid the New Jersey transfer inheritance taxes based on the inclusion of such notes as an asset of the decedent at the time of his death. (S. C. pp. 63, 64 and 132, Exhibit D-11, Paragraph 6 of Stipulation.)

Likewise as an Executor of the estate, the Complainant executed under oath, the Federal estate tax return, Schedule C of which return included her notes to the decedent valued at the value of the collateral as of the date of the decedent's death. The Federal estate tax paid by the Complainant and the other Executors was based upon this return valuing the notes as assets of the estate (S. C. pp. 63, 64 and 131; Exhibit D-9 and Paragraph 4 of Stipulation).

At the termination of the administration of the estate by the Executors, Mrs. Brown and the other two Executors, duly filed their final account in the Orphans' Court of Burlington County. Both the Petition and the Account itself were duly verified under oath by Mrs. Brown. In the statement of assets appearing in said Account, for which the Executors charged themselves, the two notes of Mrs. Brown to the decedent are included at their par value, or face value and on February 15, 1934, commissions of 3½% on corpus, including the par value of said notes, were allowed to the Complainant and the other Executors by the Orphans' Court of Burlington County at the audit of the Account.

Twice during the period of the Trusteeship, Mrs. Brown made payments on account of the principal of the notes and in connection with such payments, certain of her collateral was released. (S. C. pp. 65 and 66.) The amount of the second such payments exceeded the value of the collateral then re-

leased. (S. C. p. 80.) It is thus apparent that Mrs. Brown, in filing her Bill of Complaint in this case in 1944, in which she attempts to deny liability on her notes, is taking a position utterly inconsistent with the position previously taken by her over a period of years as an Executrix and Trustee of the estate. Moreover, the Complainant in her testimony (S. C. p. 98, l. 10), even now does not claim that the decedent forgave this indebtedness during his lifetime, but only says that he had intended to cancel the notes. It is uncontroverted of course, that the notes were never canceled. (S. C. pp. 56 and 59.)

On the strength of the arrangements agreed to by Mrs. Brown for the payment of interest on her obligations and with the prospect of future liquidation of the principal from the collateral or otherwise, the securities constituting the collateral were allowed to remain registered in her name so that she received the dividends thereon. As a result, a difficulty has arisen concerning the disposition of securities issued in connection with the dismemberment of the United Gas Improvement Company. Some of the stock of this Company was held as part of the collateral for Mrs. Brown's notes. Upon the breaking up of the United Gas Improvement Company into its component parts, certain stocks of the operating companies were issued to the United Gas Improvement Company stock holders. By reason of the fact that the United Gas Improvement stock was registered in the name of Mrs. Brown, these valuable securities were sent by the Company to her, registered in her own name, representing a substantial portion of the value of the original United Gas Improvement stock pledged as part of the collateral. In spite of being a Trustee of the Estate, Mrs. Brown individually claimed these securities sent to her and refused to deliver them to the Trustees until ordered to do so

by the Orphans' Court of Burlington County, which Court ordered the securities to be held pending the final outcome in the Chancery case presently before the Court of Errors and Appeals on this appeal. (S. C. pp. 85, 86 and 135; Exhibit D-16; Stip. par. 9.) As the powers of attorney signed by Mrs. Brown attached to the collateral securing her notes are now very old and are obsolete in respect to the securities issued in the dismemberment of the United Gas Improvement Company, one of the prayers in the Defendants' Counterclaim is to order Mrs. Brown not only to deliver to the Trustees the securities rightfully belonging to them as part of the collateral, but also to execute proper powers of attorney so that the Trustees will be able to sell the securities or register them in the name of the Trustees. (S. C. p. 94.)

QUESTIONS INVOLVED.

The Bill of Complaint of the Complainant and the Counterclaim of the Defendants both involve the following two basic questions:

1—Did the decedent, Frederick G. Brown, by the terms of his will and codicil forgive the indebtedness of his wife, the Complainant, to him represented by her two negotiable notes taken by decedent approximately seven years after the date of his will and codicil?

2—Has the Complainant by her conduct over a period of more than ten years barred herself from now denying the validity of her promissory notes, either by estoppel, laches or because she does not come into Court with clean hands?

Several other subsidiary points which these Defendants believe are not involved in this appeal will be covered briefly in connection with the argument concerning the two basic questions listed above.

ARGUMENT.

Since exactly the same matters of law control the correct disposition of both the Bill of Complaint and the Counterclaim, the arguments herein advanced on behalf of the Defendants are applicable to both the dismissal of the Bill of Complaint, and the granting of the relief prayed for in the Counterclaim of the Defendants.

Point I.

Construction of the Will and Codicil of Frederick G. Brown, Deceased.

The will and codicil of this decedent say nothing about the forgiveness of any indebtedness owed to the decedent by his wife or any other beneficiary of the estate, nor is there any language in either the will or the codicil which can be construed to show any intention on the part of the decedent to forgive any indebtedness owed to him. The Complainant has taken the position that the Sixth Section of the will and the paragraph in the codicil hereinbefore quoted in full constitute a cancellation by the decedent of the obligation of his wife to him, represented by her negotiable promissory notes.

Complainant in her own testimony refutes her argument in this respect where she said that the de-

cedent had intended to cancel the notes although the proof is clear that he had not done so (S. C. p. 59). Obviously if the decedent, by the provisions of his will, had canceled these notes or forgiven the indebtedness, that would have settled the matter in his mind and he would not have had any intention to do anything further.

In the second place, the language of the decedent's will and codicil gives no indication whatsoever of any intention on his part to cancel any of this indebtedness. The Sixth Section of his will is a simple spendthrift trust clause in the usual form except that it does not go so far as some clauses of this type in that it does not contain any requirement that the income be paid only on the individual receipt of the beneficiary. To say that by this language in a spendthrift trust clause the decedent intended to release from his estate a substantial portion thereof represented by the promissory notes of the Complainant and her collateral, is to completely distort the language of the clause. All the decedent said was that he wanted the Complainant and other beneficiaries to get the income from his estate free of the claims of their creditors. This is obviously quite a different thing from saying that all obligations of the beneficiaries should be forgiven. Certain it is that had the decedent intended to go further and relieve his beneficiaries of any obligations to pay back just debts out of their own resources, he would have certainly evidenced such intention by appropriate language broad enough to cover the situation.

The same basic comments apply to the language in the codicil to the decedent's will hereinbefore quoted in full wherein the decedent provided that the Trustees, in their sole discretion, should pay out principal for the benefit of his beneficiaries should such principal be needed for their suitable support,

comfort and maintenance, or to meet emergencies. Here again there is no reference in the language whatsoever to the forgiveness of any indebtedness.

The Defendants have recognized all along that the Trustees, of which the Complainant is one, could not without her consent and full approval, apply a portion of her income to the payment of interest on her obligations. Had she not paid such interest, however, in the proper performance of their fiduciary obligations, they would have been compelled to proceed against her own (S. C. pp. 52, l. 18; 87, l. 40, and 88, l. 1) individual estate for the purpose of collecting therefrom the principal and interest due on her obligations. Only by doing this could they fulfill their full duty to the other present and future beneficiaries of the trust. Furthermore, the Trustees have always recognized that they have a fiduciary duty in their discretion to use principal for the benefit of the Complainant, or any other beneficiary, should the need therefor arise within the terms and conditions set forth in the codicil. There has not, however, been presented to the Trustees, any facts which would indicate to the slightest extent that the Complainant is in need of any principal or is entitled to any principal within the terms and conditions of the codicil. On the contrary, the testimony (S. C. pp. 59, 60 and 65, l. 31), shows clearly that Mrs. Brown has always had ample means for her suitable comfort and maintenance. In this litigation, the Trustees recognize fully their obligation to see that Mrs. Brown is suitably provided for, but this does not mean that her separate individual property should be freed from her just obligations. The use of Mrs. Brown's individual separate estate and property for the purpose of meeting her just obligations, has no bearing on her being suitably cared for. On the other hand, Mrs. Brown is taking the position

that because the Trustees are obligated to see that she is maintained suitably, she should be released of her debts and should be free to speculate with, give away, or otherwise dispose of her individual assets not required for her maintenance. The mere statement of her position is sufficient to show that it has no support in the language of the decedent's will and codicil.

Finally, it is clear that since the will and codicil were both executed in August 1925, and the notes in 1932, the decedent could not possibly have intended that the spendthrift trust clause and the general provisions for the use of principal should constitute a forgiveness of future obligations. The will and codicil speak in respect to the testator's intention as of the date of their execution, which was August 1925. *Dulfon v. Keasby,* 111 N. J. Eq. 223 at 229; and *In re Fisler's Estate,* 131 N. J. Eq., 310 at 317, affirmed 133 N. J. Eq. 421.

Clearly in taking the complainants' promissory notes a few months before his death, the testator intended to preserve the testamentary plan of his will insofar as the division of his estate between his wife and his daughter was involved. The gift, of such a substantial sum as was represented by the promissory notes, to his wife would have reduced materially the value of his estate, and would have reduced correspondingly that proportion of the income which he had given to his daughter, and would have conferred benefits on his wife over and above the share of income he had designated for her in his will.

The Courts of New Jersey, while they have recognized in part the validity of spendthrift trust clauses, have always recognized that their effect is frequently to enable a debtor to avoid payment of his just debts contrary to public policy, and conse-

quently have limited rather than extended the protection given by such clauses. For example, reference is made to the case of *Trust Company of New Jersey v. Gardner,* 133 N. J. Eq. 436, holding that when income falls due and is payable to a life tenant under the terms of a spendthrift trust, such income becomes vested in the life tenant and may be assigned by her notwithstanding the restrictive provisions of the trust. See also *Wright v. Leupp,* 70 N. J. Eq. 130, and *Keeler's Estate,* 334, Pa. 225, and the *Restatement of the Law of Trusts by the American Law Institute,* Sections 152, etc.

The case of *In re McGregor,* 130 N. J. Eq. 5, cited in the opinion in the Court of Chancery, is not in point, and is in every way consistent with the position herein taken by the Trustees. In that case, in substance the Court merely decided that the indebtedness of one beneficiary to the decedent should not be assigned exclusively to the share of the trust held for such beneficiary and his children since to do so would charge the beneficiary's children with their father's debt, thereby defeating the intention of the decedent that such children should ultimately receive one-fourth of the residuary estate, the beneficiary being insolvent. Moreover, the language used by the decedent in the McGregor case did not give the insolvent beneficiary a life interest in the net income from a portion of the estate, but provided that the Trustees in their discretion, should use the net income for the benefit of the insolvent beneficiary's wife and children.

In the case at bar, the Trustees are not seeking to have Mrs. Brown's income from the trust applied to pay her indebtedness to the estate.

Likewise, the case of *Chelsea Wheeler Coal Company vs. Marvin,* 134 N. J. Eq. 432, cited in the opinion of the Court of Chancery, is not in point in that

it involves only the validity of an assignment and power of attorney covering future payments to be received under the terms of an insurance policy. The case in no way involved a release of a beneficiary from his legal obligations.

Point II.

Estoppel, Laches and Clean Hands.

The Complainant, having accepted as valid her obligations to the estate of her husband since his death on November 18, 1932, is now barred by laches from reversing her position in the present litigation before this Court.

The two basic elements required to constitute laches are:

A. Lack of diligence on part of the Complainant,

and

B. Injury to the other party due to the Complainant's inaction.

Both of these elements are overwhelmingly present in the case at bar. From 1932, for a period of ten years, the Complainant, who was both an Executrix and a Trustee of the estate, acquiesced to her liability on the notes in question to the estate. Reference is made to her consent regarding the payment of interest hereinbefore mentioned, and to numerous other actions taken by the Complainant consistent therewith. Complainant, as an Executrix, executed the Federal estate tax return and the New Jersey transfer inheritance tax return, in both of which, her notes to the estate were valued at the

market value of her collateral pledged therewith (S. C. pp. 63 and 64). Thus the estate by her action as one of the Executors, paid to both the New Jersey and United States of America, a tax substantially larger because her notes to the estate were included as valuable assets thereof. Furthermore, the Complainant duly executed, under oath, the Executors' Account, in which the notes appear, not at the value of the collateral, but at their face value (S. C. p. 63). As one of the Executors and Trustees, the Complainant received commissions on corpus and income from the estate and included in the amount of such corpus were said notes and included in the amount of such income, were her payments of interest on said notes. (S. C. pp. 82 and 83.)

Furthermore, Complainant actually recognized her obligations, not only to pay interest, but also principal, in that twice she made substantial payments on account of her obligation, at one time getting released collateral having a value of approximately the payment, and another time, getting released collateral having a value of approximately 50% of the payment (S. C. p. 80).

Such conduct clearly constitutes laches within the doctrine as established by numerous cases in this State. *Chetwood v. Berrian,* 39 N. J. Eq. 203; at 210; *The Norfolk and New Brunswick Hosiery Company v. Arnold,* 49 N. J. Eq. 390.

See also *Swinley v. Force,* 78 N. J. Eq. 52, holding that the efficacy of the defense based on laches does not depend upon proof that the lapse of time has resulted in the actual loss of testimony through death or otherwise, but that it is generally sufficient that the Court cannot feel confident of its ability to ascertain the truth now as well as it could when the subject for investigation was recent. Obviously, of course, the decedent's records, check books and the

records of the Complainant's brokerage accounts, as well as the memories of possible witnesses, including the memory of the Complainant herself, have been lost, destroyed or weakened by the lapse of eleven or more years. To this same effect is *Reeves v. Weber,* 111 N. J. Eq. 454.

Moreover, the Complainant is bound by her laches, not only by what she actually knew, but also by what she should reasonably have known respecting her liability on the notes. *Cameron v. Penn Mutual Life Insurance Company,* 116 N. J. Eq. 311.

For other recent cases upholding this same established principle of laches see *Phair v. Melosh,* 125 N. J. Eq. 497, affirmed per curiam on the opinion of the Chancery Court, 127 N. J. Eq. 15; *Dunham v. Adams,* 82 N. J. Eq. 265; and *Wendt v. Bergen Savings Bank,* 131 N. J. Eq. 380, affirmed 133 N. J. Eq. 34, citing several other cases.

Complainant is not entitled to be relieved of her obligations by this Court of Equity for the further reason that she does not come into Court with clean hands and has not herself done equity.

Although she is a Trustee of the estate and as such owes to the estate her absolute and undivided loyalty (see *Scott on Trusts,* Volume II, Sections 170, 170.25 and 177, and *Meinhard v. Salmon,* 249 N. Y. 458; 164 N. E. 545; 62 ALR I), she is now after eleven years when the estate has obviously been badly handicapped through the destruction of the decedent's personal records and other loss of evidence, seeking to take advantage of the situation and deny her obligation to the estate which she has heretofore recognized. There is, thus, presented to the Court a clear case of self-dealing on the part of the Complainant under circumstances putting the estate at a very great disadvantage. Furthermore, the Complainant has not done equity in this matter

in that in spite of repeated demands, she did not return the stocks distributed by the United Gas Improvement Company until forced to do so by the order of the Orphans' Court of Burlington County, although it was clearly her duty as a Trustee to return such stocks to be held by the Trustees on the same basis as the Trustees had held the United Gas Improvement Company stock until such time as this Court should determine the status of these collateral securities. (S. C. p. 85, l. 26.)

Nor can the Complainant justify her divided loyalty and self-dealing on the theory that the decedent put her in this position. She could readily have had the question, if any, as to her liability on these obligations determined before the Trusteeship was set up, in which case, she would then have been in a position to serve as Trustee in a proper manner without divided loyalty. This course might have necessitated the Complainant not qualifying immediately as an Executrix, but she could have easily thereby kept out of a position of self-dealing.

"That he who seeks equity must do equity" is a principle established over and over again by this Court and the principle is not limited to any particular case or class of cases, but applies whenever necessary to promote justice. Nor can Complainant escape its effect by resorting to any technical positions or legal niceties. For a very clear cut statement of this principle see *Patsourakos v. Koliouotos,* 132 N. J. Eq. 87, affirmed 133 N. J. Eq. 37.

Complainant having accepted as valid her obligations to the estate of her husband since his death on November 18, 1932, is now estopped and barred from taking the position that the obligations are not valid. Reference is again made to the Complainant's conduct hereinabove recited with respect to the tax returns, the Executors' Account, the payments made

on account of principal and the arrangements made whereby the collateral securities have remained registered in Complainant's name.

The doctrine of estoppel is grounded in equity and justice and holds that a person shall not be permitted to repudiate a position taken where such repudiation would work an injustice to another, who, having the right to do so, has relied on the position taken. See *McSweeney v. Equitable Trust Company,* 127 N. J. Law 299.

It is submitted that in the case at bar, the Complainant has for eleven years taken a position admitting her obligation on the notes and that she cannot now be allowed by this Court to repudiate such obligation. Certainly the Executors and Trustees were entitled to rely upon the Complainant's admission of liability, particularly, since she was also an Executrix and Trustee, and under the strongest obligation to deal fairly with the estate. To allow the Complainant now to repudiate her obligation eleven or twelve years later after records have been destroyed and other evidence lost, would certainly work a great injustice to the estate.

For another recent case of the Court of Errors upholding this same principle, reference is made to *New Jersey Suburban Water Company v. Town of Harrison,* 122 N. J. Law 189.

In principle, the case at bar is controlled by the case of *Cleaves v. Broderson,* 123 N. J. Eq. 234, where a defendant's failure to assert a claim to certain stock when auditors were examining the books of the corporation of which the Plaintiffs were about to acquire a controlling interest, estopped the defendant from thereafter asserting a claim to the stock. In the case at bar, the Complainant failed to assert her denial of liability when the Executors were paying taxes and commissions, and she is,

therefore, now estopped from asserting her denial of liability.

In passing, it should be noted that the execution and delivery of both of the notes of the Complainant are admitted and both the notes being negotiable instruments, carry the presumption (which is undisputed in this case) that they were given for a valid consideration. Furthermore, it is admitted that the securities listed in the Counterclaim were pledged by the Complainant with the decedent during his lifetime as collateral for the notes and were with the notes in his safe deposit box at his death. (S. C. pp. 56 and 57.) Likewise, it is admitted that the Complainant, as one of the Trustees, at the completion of the administration by the Executors, joined with the Executors in transferring these notes and their collateral as part of the residuary estate, to herself and others as Trustees. From the testimony it appears that these notes represented loans of cash and bonds (which were later liquidated) by the decedent to the Complainant for the purpose of bolstering up the brokerage account operated by the Complainant in connection with her own personal estate and affairs. Reference is made to the receipt dated October 5, 1931 (S. C. pp. 58 and 59; Exhibit D-4, p. 102), listing such bonds having a value of $29,000.00, signed by Mrs. Brown and admitted into evidence referring to the Wurts, Dulles & Company account and to the receipt signed December 16, 1931 (S. C. p. 58; Exhibit D-3, p. 101), from Wurts, Dulles & Company bearing on it in the decedent's own handwriting, the reference to the loan made by him to her in the amount of $18,000.00.

The jurisdiction of this Court to enter judgment on these notes in favor of the estate is clear. See *Ward v. McLellan,* 117 N. J. Eq. 475; *Freitag v. Bersano,* 123 N. J. Eq. 515.

For a statement of the general law regarding the obligations of the wife for any money loaned to her, even under the old stricter rules, see *Healey v. Healey,* 48 N. J. Eq. 239.

CONCLUSION.

It is, therefore, respectfully submitted that the Decree of the Chancellor in this matter, be reversed in so far as it adjudges that the Complainant is entitled to have delivered to her her two said promissory notes, together with the collateral accompanying them, and it is also respectfully submitted that the said Decree of the Chancellor in this case, be reversed in so far as it dismissed the Counterclaim of Marie Brown Sheble and Corn Exchange National Bank and Trust Company of Philadelphia, as Trustees under the will of Frederick G. Brown, deceased.

It is further respectfully submitted that the Complainant be decreed to pay said notes in accordance with the second prayer of the Counterclaim, and that she be ordered to deliver to the Trustees of the estate, the securities in accordance with the third prayer of the counterclaim, with transfer powers duly executed by her so that said securities may be held properly as collateral for her notes. (S. C. p. 90.) It is further respectfully submitted that the fourth prayer of the Counterclaim be granted and that the Complainant be ordered and decreed to sign proper powers of transfer for all the securities held by the Trustees as collateral for the Complainant's obligations since only with such powers duly signed, can the Trustees properly administer their trust and control the liquidation of the collateral in accordance with the rights possessed by the Trustees as pledgees.

It is further respectfully submitted that the Complainant, by reason of her personal interest in holding the collateral, should no longer retain her right as a Trustee to block the sale thereof. In view of the difference of opinion between the Complainant (S. C. pp. 88 and 94) on one hand, and the other two Trustees, on the other hand, it is respectfully submitted that the Chancellor be directed either to authorize the other two Trustees to act on behalf of the estate, or to himself, assume the responsibility of determining the proper disposition of the collateral.

Finally it is respectfully submitted that the taxed costs in this matter should not be taxed against the Defendants, nor the estate of Frederick G. Brown, deceased.

Respectfully submitted,
BOYLE, ARCHER & GREINER,
Solicitors for the Defendants-Appellants
F. MORSE ARCHER, JR.,
Of Counsel.

The oral argument in this case will be presented by F. Morse Archer, Jr., Esquire.

NEW JERSEY COURT OF ERRORS AND APPEALS.

GRACE MCNEAL BROWN,
Complainant-Appellee,

VS.

CORN EXCHANGE NATIONAL BANK AND TRUST COMPANY OF PHILADELPHIA, and MARIE BROWN SHEBLE, Trustees under the will of Frederick G. Brown, MARIE BROWN SHEBLE, Individually, ELAINE SHEBLE ROGERS and HAROLD W. SHEBLE,
Defendants-Appellants.

ON APPEAL FROM THE COURT OF CHANCERY.

BRIEF FOR COMPLAINANT-APPELLEE.

THE FACTS.

Frederick G. Brown died November 3, 1932, resident in this State, testate, and by virtue of his last will and testament and the codicil thereto (Exhibits A and B attached to the amended bill of complaint, S. C. p. 12 et seq.) among other things, did devise the residue of his estate to three trustees, viz., Grace McNeal Brown, the complainant herein, and Marie

Brown Sheble and Corn Exchange National Bank and Trust Company, two of the defendants herein, in trust, to pay the income from the Estate as follows: two-fifths thereof to the Complainant for life, and three-fifths thereof to the Defendant, Marie Brown Sheble for life, with the whole of the income to Marie Brown Sheble for life after the death of the Complainant. The principal and income of the estate, after the death of the survivor of said widow and daughter, is devised and bequeathed to the issue of the daughter, Marie Brown Sheble, upon the terms and conditions more particularly set forth in the Fifth Section of the decedent's will.

The will of the decedent was executed August 5, 1925, and the codicil thereto was executed August 29, 1925. In due course, in 1932, after the decedent's death, the will and codicil were probated and the three fiduciaries duly qualified as Executors and Trustees in the Surrogate's Court of Burlington County.

The Sixth Section of the decedent's will consists of a spendthrift trust clause reading as follows:

> "SIXTH: Any payment or payments of either income or principal from my residuary estate hereinbefore directed to be made to any one or all of the beneficiaries hereinbefore named, shall not be subject to the debts, engagements, anticipation or alienation of any beneficiary or beneficiaries, nor shall the same be subject to judgment, attachment or other process of law at the hands of anyone whomsoever."

The codicil of August 29, 1925, makes a change in the Corporate Executor and Trustee, and contains the following section:

"I further give my Executors and Trustees full power and authority to pay over and deliver from time to time to the person or persons who may at the time be the beneficiary of all or any part of my estate, any of all of the principal (in addition to the income) of that part of my estate in which the particular person or persons may be interested. My idea in making this provision is to enable members of my family or other beneficiary to provide for their suitable support, comfort and maintenance or for the education of any dependent beneficiary, or to meet any emergency such as illness, loss or misfortune that may befall them or any of them. The payment of the principal is to rest solely within the discretion of my Trustees and cannot be enforced by any person or persons whomsoever."

Complainant during the lifetime of the said Frederick G. Brown, executed to him two notes D-1 and D-2, and from 1933 to 1943 inclusive permitted the deduction from the income payable to her of interest, and made on two occasions, payments on account of principal. (S. C. pp. 65 and 66.)

On January 20, 1944, complainant filed a bill for construction of the will and codicil in question, and praying, among other things, that the Court of Chancery should, by its decree, determine that the obligation of the notes, if any, should be decreed to have been forgiven by virtue of the terms thereof, and that, in any event, that the income of which she is the beneficiary during her lifetime, should not be charged with interest and principal on the said notes.

Such was the decree of the Court of Chancery. (S. C. p. 124 et seq.) Said decree, by its terms, dismissed the counterclaim of the defendants as a result of the construction placed on said will and codicil.

ARGUMENT.

In *Chelsea-Wheeler Coal Co. vs. Marvin,* 134 N. J. Eq. 432, Justice Colie refers to the fact that the Courts of this State recognize the right of the head of a family to provide for his dependents after his death. In the will of the decedent in this matter, such attempt was made and in addition decedent directed that such provision should be free of the claim of any creditor. In fact this freedom is emphasized by the use of the words *"of anyone whomsoever"*.

Decedent further states in his codicil that all of the principal of the trust could be used for the support, etc., of any beneficiary (including Complainant). These two portions of the will manifest the desire of the decedent in an unmistakable manner. It is inconceivable that the testator, having knowledge of the serious financial condition of his wife during the period prior to his death (S. C. pp. 49, 50, 52 and 53) could have, in light of paragraph "SIXTH" of his will, and the pertinent portion of the codicil above referred to, the intention that his executors should collect from his widow the staggering sum of the face of the notes, *and thus leave her penniless* with the exception of the income under the will and the doubtful ability to secure advancements of principal from the trust estate from the other trustees.

Testator died with full knowledge of his widow's financial condition and will be presumed to have been content to have his will, as executed, fully effective at his death. *Vrooman vs. Virgil,* 81 N. J. Eq. 301, 310. To make his will fully effective, precludes the adoption of the theories of the defendants. *In re Munson, et al,* 56 N.Y.S. 151, 25 Misc. Rep. 586. The fact that complainant has been adequately provided for during her widowhood is not controlling, but the situation must be viewed as it appeared at the time of testator's death.

Defendants argue that the taking by testator of the complainant's promissory notes a few months before his death is an indication of his intention to preserve the income status of his estate. To successfully sustain such a construction the defendants should have shown that at the time the notes were given, viz., three months before the death of the testator, he then was possessed of the knowledge that he would die at the expiration of three months. The test to be applied resolves itself into the determination that at the date of testator's death, he was content to have his will probated in the same condition as existed at the time of its preparation.

Defendants argue that they are not seeking to have the income from the trust estate applied to the alleged indebtedness, and deny that the case of *In re McGregor,* 130 N. J. Eq. 5, cited in the conclusions of Vice-Chancellor Woodruff, is in point. Presently, such position is correct so far as it refers to the application of income. However, in the trial of the cause and by the answers of the defendants (S. C. p. 14 et seq. and p. 27 et seq.) such issue was raised, disputed and determined.

Defendants raise the question of estoppel, laches

and clean hands as defenses to the decree of the Court of Chancery. The testator by his action placed complainant in a position of dual capacity. She is a trustee and bound to exercise all of the good faith required by that position. She is also an individual beneficiary and entitled to the aid of the Court of Chancery in determining her individual rights.

With relation to the question of estoppel, the questions posed in the instant case were raised in similar manner and with similar objections in the case of *Morrison, et al. vs. Dawson,* 115 N. J. Eq. 45, and the rights of the widow in that case were determined as they existed in law and were grounded on the *determination of the Court as to the intention of the testator when he was disposing of his estate,* in spite of the fact that she had treated her fee simple estate as a life estate, so filed her return with the State Tax Department and had made repeated statements to the effect that she was only entitled to the income of the estate. Further, the doctrine of estoppel is only applicable when conduct was designed to influence a person and did operate to produce an unjust or inequitable result to him. *New Jersey Suburban Water Co. vs. Harrison,* 122 N. J. Law 189, 194.

The Court of Chancery has determined as a fact that any laches on the part of the complainant has operated generally to her disadvantage and therefore any such laches in securing a determination of her rights under the will should not now bar her from the benefit of the favorable construction thereof.

With relation to the attack upon the conduct of complainant with relation to holding shares of the pledged stock and thus alleging that she is not in

Court with clean hands, notice should be taken that in her capacity as trustee she is equally entitled to possession of any trust assets of the trust, and that even if she was guilty of wrong doing, such action has nothing to do with the construction of the will.

With relation to the counterclaim filed by two of the defendants, as trustees, the propriety of such action is presently open to question. *Voorhees vs. Voorhees, Executor,* 18 N. J. Eq. 223.

Bearing in mind that the obligations which are the subject of the counterclaim are those of a wife to a husband, defendant trustees were under the burden to prove the amount due and to convince the Court that the obligation created by the notes shall fairly be charged against complainant, as any contract between a husband and wife being void at law and being in equity only a contract sub-moto, no inference or presumption arises, due to the possession of the notes by the defendant trustees, that there is due from the complainant to the trust estate the amounts alleged to be due but not so proven in the counterclaim. *Demarest vs. Terhune,* 62 N. J. Eq. 663.

It must be remembered that the size of decedent's estate was approximately $300,000.00 when he died and it is presumably much larger now; that complainant was a widow, who is now approximately 77 and was 66 when testator died and destitute of all means but those given her by the provisions of testator's will; that the widow complained that her husband intended to forgive her the debts in question (S. C. p. 77, bottom); that this estate was really settled by the defendant corporate executor and that all the widow was asked to do was to sign papers of approval; that the corporate executor (S. C. p. 73,

testimony of Edgar W. Freeman); that this aged lady was dealing with an experienced corporate fiduciary that knew that there was a question under the spendthrift provisions as to the enforceability of the obligations involved and knowing this, failed to advise this widow that she might have rights and in a very cute manner actually confessed to this failure of duty to the complainant. This testimony comes from the lips of Edgar W. Freeman, the only witness produced who was familiar with what occurred at the death of the testator and thereafter until the 1940's. Mr. Freeman said, S. C. p. 74, line 9:

> "I recall the spendthrift clause of the will was considered very carefully and it was realized Mrs. Brown's income was free from all outside creditors' claims and the payment of her interest was more or less voluntary with her. *That was why we always obtained her approval to the payment of interest by her.*" (Italics ours.)

The witness admitted that the payments of interest made the complainant unhappy and cramped her income (S. C. p. 72) and by making her unhappy unquestionably deprived her of one of the main objects of the will, namely, her comfortable support. And yet, knowing that this legal question existed, in fact not appealing from a determination of the lower court, that the payments of interest from now on should not be enforced and thus confessing its prior misconduct, the officials of this corporate fiduciary, by the artifice of exonerating papers obtained by trained men from this old lady, extracted over the years approximately $24,000.00, of which she is now the loser of three-fifths net by virtue of the decision

of the lower court holding her estopped from recovering the payments thus admittedly improperly obtained from her.

It would be a novel application of the doctrines of clean hands, laches and estoppel to deprive complainant of what remains to her at this date if such doctrines were applied to a widow who has suffered so much.

Defendants also appeal from the allowance of taxed costs to complainant. Costs are discretionary, and in this case, the action of the complainant has resulted in the entry of a decree that she be paid her entire share of the life income without deduction, from which no appeal is pending, so that irrespective of the opinion of this Court with relation to the matters being appealed, she will have been a successful litigant.

It is, therefore, respectfully submitted that the appeal should be dismissed.

ARTHUR W. LEWIS,
Solicitor of Complainant-Appellee.
WILLIAM C. GOTSHALK,
Of Counsel.

The oral argument in this case will be presented by William C. Gotshalk, Esq.

NEW JERSEY COURT OF ERRORS AND APPEALS.

GRACE MCNEAL BROWN,
Complainant-Appellee,

VS.

CORN EXCHANGE NATIONAL BANK AND TRUST COMPANY OF PHILADELPHIA, and MARIE BROWN SHEBLE, Trustees under the Will of Frederick G. Brown, MARIE BROWN SHEBLE, Individually, ELAINE SHEBLE ROGERS and HAROLD W. SHEBLE,
Defendants-Appellants.

ON BILL, &C.

ON APPEAL FROM COURT OF CHANCERY.

REPLY BRIEF FOR DEFENDANTS-APPELLANTS.

The Defendants-Appellants respectfully request the Court to accept this reply brief in order that said issues before the Court may be more clearly drawn.

I.

In her brief, the Complainant-Appellee, seems to assume that the position of the Defendants-Appellants (hereinafter referred to as Trustees), is inconsistent with the holding of the case of *Vrooman v. Virgil,* 81 N. J. Eq. 301 at 310. This is not correct.

The position of the Trustees is that the testator's intention must be determined as of the date his will and codicil were drawn, namely August, 1925. Reference is made to the cases cited on page 13 of the brief of the Trustees.

The obligations of the Complainant-Appellee to the testator were not in existence and not contemplated by or referred to in the language of the decedent's will and codicil. The testator evidenced merely his desire that his wife should have two-fifths of the income of his whole estate, and that his Trustee should go into principal, if necessary, to see that she was adequately provided for. The holding of *Vrooman v. Virgil,* supra, would support the proposition that this intention on the part of the testator is presumed to continue to the date of his death. The Trustees do not dispute this position, and in fact, have recognized, and do recognize that these provisions of the will should be carried out fully. This is not to say, however, that the testator, by the language he used in 1925, intended to forgive debts coming into being in 1932. On the contrary, the decedent's action in taking notes three months before his death, for the money which he loaned to his wife, is clear evidence of an intention on his part for her to repay the money which she had borrowed, thereby preserving intact the respective interests in his es-

tate of the various beneficiaries designated in his will.

It is the duty of the Trustees, including the Complainant-Appellee, to see that these obligations to the estate are repaid. The duty of the Trustees to provide for the suitable support, comfort and maintenance of Mrs. Brown does not relieve her from her obligation to pay the notes. Particularly, it should be noted that any payments out of principal, which the Trustees may be called upon to make to Mrs. Brown, under the terms of the codicil to the decedent's will, are to be made, not out of the corpus of the estate as a whole, but out of that portion of the corpus from which Mrs. Brown is receiving income.

The liquidation of the collateral supporting the Complainant-Appellee's notes will not deprive her of her support, comfort and maintenance, nor have the payments by her in the past, of a portion of her income, deprived her of such privileges, nor would payments in the future by her from her own resources, or from income in excess of that reasonably required for her needs, deprive her of such rights and privileges.

The construction which the Complainant-Appellee seeks to put on the will, illustrates clearly the danger of allowing a Trustee to deal with herself.

II.

The Complainant-Appellee, in her brief inter alia, makes the following statement seeking to show that she is in Court with clean hands:

> "... notice should be taken that in her capacity as Trustee, she is equally entitled to possession of any trust assets of the trust. ..."

This statement is apparently designed to lead this Court to believe that the Complainant-Appellee is seeking possession of the collateral securities to hold them in her representative capacity as Trustee for the benefit of the estate. Such has not been her position. Reference is made to paragraph 15 of the Amended Bill of Complaint (S. C. p. 5, line 11) reading as follows:

> "Such alleged assets consist only of certain securities owned by Complainant which are alleged by complainant's co-trustees to be collateral security for the payment of the notes aforesaid."

See also the testimony of Mr. Ramage (S. C. pp. 85 and 86) wherein it appears that it took an order of the Orphans' Court to compel the Complainant-Appellee to allow the estate to hold the securities, even pending the outcome of this litigation.

III.

Respecting laches and estoppel, the brief of the Complainant-Appellee states that the position heretofore taken by the Complainant-Appellee in admitting her obligation on the notes, has operated generally to her disadvantage. This is only part of the truth. If the Complainant-Appellee is now successful in changing her position, and avoiding her obligation on the notes, her prior conduct and position will operate very greatly to the disadvantage of the remaindermen who eventually get the corpus of the trust, and from this time on, will operate to the dis-

advantage of the other life tenant whose income will be reduced.

Very substantial sums, as appears from the State of the Case, have been paid out of the principal of the estate, for inheritance taxes, estate taxes, and commissions on corpus to Complainant-Appellee and the other Trustees, which sums would not have been paid out if the obligations of the Complainant-Appellee had not been included as assets of the estate. The net effect, therefore, of allowing the Complainant-Appellee now to change her position would be to damage seriously the interests of the other beneficiaries under the will, particularly the remaindermen.

The essence of estoppel in equity is that a party shall not be allowed to reverse a position previously taken where such reversal unjustly causes substantial injury to another person.

Here the Complainant-Appellee's conduct lead the other Trustees, representing all the beneficiaries, to make the payments indicated above, and to withhold bringing suit to establish liability on the notes. Now, more than ten years later, after many of the decedent's records and papers have been destroyed, and after the principal of the estate has suffered the charges mentioned, it is submitted that it would be grossly inequitable to allow the Complainant-Appellee to withdraw from the estate, the portion of the corpus represented by her notes.

That the doctrine of estoppel is applicable even in connection with the construction of a will, was thoroughly established by this Court in affirming the decree of the Chancellor in the case of *Fink v. Harder*, 111 N. J. Eq. 439; wherein this Court determined that the parties by their conduct over a period of

years, had construed the will of the testatrix as entitling a certain party to a life estate and were thereby estopped from asserting the contrary. This case has been cited with approval recently in the Court of Chancery in *Daly v. Rogers,* 132 N. J. Eq. 200, at 204.

Not in point, is the case cited in the brief of the Complainant-Appellee, *Morrison vs. Dawson,* 115 N. J. Eq. 45. In this case none of the elements of estoppel were present, and the Court of Chancery specifically in its opinion at page 48, draws attention to this fact, stating that in the case no one changed his position by reason of the misconception of the beneficiary concerning her rights.

IV.

The evidence is clear and uncontroverted that the Complainant-Appellee borrowed the money in good faith from the decedent, which fact is implicit in the Complainant-Appellee's own testimony wherein she refers to the alleged intention of the decedent to forgive the obligations, so that this point will not again be discussed here.

V.

Finally, the brief of the Complainant-Appellee implies that the corporate fiduciary failed to advise Mrs. Brown properly concerning her rights after the death of the decedent. The duty of the corporate fiduciary as such was not to advise Mrs. Brown but to protect the estate and to see that its assets were not dissipated.

Whether the corporate fiduciary did or did not advise Mrs. Brown, is not an issue before this Court. However, there is not the slightest scintilla of testimony indicating that at the date of the decedent's death, anybody thought the decedent's will could possibly have constituted a forgiveness of this indebtedness, and in fact, no such idea had occurred to any of the persons involved.

Of course, the effect of the spendthrift trust clause on the collection of the interest and principal of the notes, was necessarily carefully considered. As appears from the testimony and from the letters which Mrs. Brown wrote to the corporate fiduciary, Mrs. Brown agreed to pay the interest on her notes and the other Trustees complied with her wishes and withheld selling her collateral. It is obvious from the testimony that the corporate executor and the other individual executor were only performing their duty as fiduciaries in seeking to make arrangements for the payment by Mrs. Brown of her obligations on a basis that was compatible with her proper comfort, maintenance and support.

Reference is made particularly to Exhibit D-5 (S. C. p. 102), and the testimony of Mr. Freeman (S. C. pp. 72 and 73) wherein it appears that the net income from the estate received by Mrs. Brown, after the payment of her interest, was approximately $6,500.00 per year, and in addition, she received the income from her collateral (S. C. p. 70). The statement contained in the Complainant-Appellee's brief that $24,000.00, was admittedly improperly obtained from Mrs. Brown, is not based upon any testimony appearing in the case, and is absolutely denied. In any event, it is not perceived that the unsupported allegation made in the Complainant-Appellee's brief

respecting the corporate fiduciary, to the slightest extent, relieves the Complainant-Appellee of the effect of her conduct in respect to estoppel, laches or clean hands.

It is, therefore, respectfully submitted that the portions of the decree of the Chancellor, appealed to this Court, be reversed.

Boyle, Archer & Greiner,

BOYLE, ARCHER & GREINER,
Solicitors and of Counsel of Defendants-Appellants.