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**NOTICE OF APPEAL.**

Filed December 20, 1929.

**In Chancery of New Jersey**

58-434

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In the Matter of the application of ADDIE TAYLOR GERMAN, a married woman, to convey her property without concurrence of her husband.

*On Petition  
of J. Albert  
Homan,  
Auditor in  
Attachment,  
for an Order  
to Pay to  
Petitioner  
Certain  
Monies on  
Deposit with  
the Clerk.*

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*Notice  
of Appeal.*

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Addie Taylor German, the respondent to the petition filed by J. Albert Homan, petitioner in the above-entitled cause, hereby appeals from the final order directing certain monies, heretofore deposited with the Clerk of this Court under the provisions of the final decree made and entered in the above-entitled cause on the 7th day of August, 1925, and to be held by the said Clerk until the further order of this Court, to be paid over to said petitioner, which order was made on the 13th day of December, 1929, and from the whole and every part thereof, to the Court of

30

40

*Notice of Appeal.*

Errors and Appeals in the last resort in all causes.

Dated December 16, 1929.

CHILD & SHIPMAN,  
Solicitors for and of Counsel with Addie  
10 Taylor German, Respondent to Petition.

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

JEHIEL G. SHIPMAN,  
Of Counsel with Addie Taylor German.

Service acknowledged December 18, 1929, by  
20 McDermott, Enright & Carpenter, solicitors for auditor-petitioner.

Filed December 20, 1929.

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**PETITION OF APPEAL.**

Filed December 24, 1929.

**NEW JERSEY COURT OF ERRORS AND  
APPEALS.**

<p>In the Matter of the application of ADDIE TAYLOR GERMAN, a married woman, to convey her property without concurrence of her husband.</p>	<p><i>On Petition of J. Albert Homan, Auditor in Attachment, for an Order to Pay to said Auditor Certain Monies on Deposit with the Clerk.</i></p>	<p>10</p> <p>20</p>
<p>ADDIE TAYLOR GERMAN, <i>Appellant,</i></p> <p style="text-align: center;"><i>vs.</i></p> <p>J. ALBERT HOMAN, Auditor, <i>Respondent.</i></p>	<p><i>On Appeal from Court of Chancery.</i></p> <p><i>Petition of Appeal.</i></p>	<p>30</p>

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

The petition of Addie Taylor German, the appellant in the above-entitled cause, respectfully shows:

1. Petitioner finds herself aggrieved by a final order made in the Court of Chancery by His Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, bearing date December 13,

*Petition of Appeal.*

1929, in a certain cause in the said Court of Chancery wherein your petitioner did apply as a married woman to convey her property without the concurrence of her husband, an incompetent. A final decree was made in said cause on August 7, 1925, granting leave to your petitioner to make sale of her lands without the concurrence of her husband, who was incompetent, and a sale and conveyance of said lands was subsequently made; the said final decree directed that a certain sum of money, to wit: the sum of \$1,917.52, out of the proceeds of the sale of the said property, should be held by the Clerk of the Court of Chancery, which sum represented the value of the estate or interest of the petitioner's husband in the said lands, all in accordance with the statute in such case made and provided.

20 Subsequently, the American Exchange-Pacific National Bank, a corporation doing business in the State of New York, did bring suit against your petitioner's husband, Lewis German, for monies alleged to be due and owing to said bank, in the New Jersey Supreme Court by attachment against the said sum of \$1,917.52, on deposit with the Clerk, claiming that the said sum of money was the property of the petitioner's husband.

30 The respondent herein, J. Albert Homan, was duly appointed Auditor in said attachment and a judgment for the plaintiff was duly entered by default in the New Jersey Supreme Court in said suit; thereupon respondent did file his petition in the Court of Chancery of New Jersey, praying for an order that the said monies be paid over to him as auditor in attachment, to be applied in part satisfaction of said judgment. Appellant answered and opposed said petition claiming that said monies were not the property of said Lewis

40 German and not subject to attachment by said

*Petition of Appeal.*

bank, but said monies were the property of appellant.

2. Petitioner alleges that she is aggrieved by the final order made on December 13, 1929, in this cause, because said order does order and decree that the said sum of \$1,917.52, held by the Clerk as herein set forth, shall be paid to the respondent, J. Albert Homan, Auditor, whereas the said order should decree and adjudge that the said sum of money should be paid to your petitioner. 10

3. Petitioner appeals from the said order of the Chancellor of December 13, 1929, and from every part thereof, upon the ground that the same is erroneous in that the said order should decree and adjudge that the said sum should be paid to your petitioner, appellant herein. 20

Petitioner therefore prays that the said order of the Chancellor may be wholly reversed, set aside, and for nothing holden, and that the petitioner may have such other relief in the premises as to this Court may seem proper.

CHILD & SHIPMAN,  
Solicitors for and of Counsel with Appellant.

Filed December 24, 1929. 30

Service of a copy of the within notice of appeal is hereby acknowledged this 24th day of December, 1929.

McDERMOTT, ENRIGHT & CARPENTER,  
Attorneys of Respondent.

## ANSWER TO PETITION OF APPEAL.

Filed January 8, 1930.

NEW JERSEY COURT OF ERRORS  
AND APPEALS.

10

In the matter of the application  
of ADDIE TAYLOR GERMAN, a  
married woman, to convey  
her property without concu-  
rence of her husband.

*On Petition  
of J. Albert  
Homan,  
Auditor in  
Attachment,  
&c.*

20

ADDIE TAYLOR GERMAN,  
*Appellant,*

*vs.*

J. ALBERT HOMAN, Auditor,  
*Respondent.*

*On Appeal  
from Court  
of Chancery.*

*Answer to  
Petition of  
Appeal.*

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

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This respondent, not acknowledging all or any of the matters which in the said petition of appeal are contained to be true, for answer thereto, nevertheless, says and admits that an order was on the 13th day of December, 1929, made and entered in the Court of Chancery, in the cause for that purpose mentioned in the said petition, as is therein stated; but as to the substance and form thereof, this respondent prays to refer thereto when the same shall be produced. And this respondent is advised and believes that the said order is agreeable to equity, and he

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*Answer to Petition of Appeal.*

prays that the same may be affirmed, with costs  
to be adjudged to this respondent.

McDERMOTT, ENRIGHT & CARPENTER,  
Solicitors for Respondent.

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**PETITION.**

Filed June 25, 1926.

IN CHANCERY OF NEW JERSEY.

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In the Matter of the applica-  
tion of ADDIE TAYLOR GERMAN,  
a married woman, to convey  
her property without concu-  
rence of her husband.

58/434

Petition.

*To the Hon. Edwin Robert Walker, Chancellor of  
the State of New Jersey:*

20 The petition of J. Albert Homan of the City  
of Trenton, respectfully shows and charges, as  
follows:

(1) That on the 17th day of December, 1925,  
a writ of attachment was issued out of the New  
Jersey Supreme Court in a suit wherein Ameri-  
can Exchange-Pacific National Bank was plain-  
tiff, and Lewis German was defendant; that the  
said writ issue after the filing of an affidavit  
stating that the said Lewis German was a non-  
resident and owed to the American Exchange-  
Pacific National Bank a debt in the sum of  
30 \$7,614.62, pursuant to the Attachment Act of this  
State.

(2) That on December 31, 1925, Charles H.  
Reichert, Sheriff of the County of Mercer, pur-  
suant to the command of said writ of attach-  
ment, did attach in the hands of the Clerk of  
this Court the sum of \$1,913.62, the net amount  
paid into the hands of the Clerk of this Court  
40

*Petition of J. Albert Homan.*

September 16, 1925, representing the money value of the interest of said Lewis German in the lands and premises mentioned in the petition and final decree in this cause.

(3) Petitioner further shows that on January 21, 1926, the Hon. Thomas W. Trenchard, one of the Justices of the New Jersey Supreme Court, made an order directing advertisement of the notice of the issuance of the said writ of attachment, and appointed Jessie C. Buchanan as Auditor, pursuant to the provisions of the Attachment Act of the State of New Jersey, which order required said Jessie C. Buchanan to adjust and ascertain the amount due the plaintiff and each of the applying creditors, a certified copy of which order is hereto attached and marked Exhibit "A," and referred to for certainty. 10 20

(4) Petitioner further shows that on or about the 25th day of February, 1926. The Hon. Thomas W. Trenchard made an order appointing your petitioner, J. Albert Homan, as Auditor in the above-entitled cause in the place and stead of Jessie C. Buchanan, who died on February 18, 1926, copy of which order is hereto attached and marked Exhibit "B" and referred to for certainty. 30

(5) That on May 15, 1926, judgment final was entered in said action in the New Jersey Supreme Court wherein American Exchange-Pacific National Bank is plaintiff and Lewis German is defendant for \$7,777.04 damages as of April 29, 1926, as by reference to a certified copy of the rule for judgment attached hereto will more fully and at large appear; that upon the entry of said judgment costs in favor of the plaintiff and against the defendant were taxed in the sum of 40

*Petition of J. Albert Homan.*

\$40.12, as by reference to the said original judgment on the files of the Clerk of the Supreme Court will more fully and at large appear.

10 (6) That petitioner pursuant to the provisions of the Attachment Act is charged with the duty of taking into his possession as Auditor such of the property of the defendant as may be in the State of New Jersey to satisfy the claim of the plaintiff, with interest and costs (there being no applying creditors).

20 (7) Your petitioner further shows and charges that the said Addie Taylor German claims to have some interest in the said money in the hands of the Clerk of the Supreme Court, and that she is represented by Messrs. Child & Shipman as her solicitors.

Your petitioner prays that an order may be made directing the Clerk of this Court to pay to your petitioner, as Auditor in the said attachment suit, the said sum of \$1,913.62, with any accumulations of interest on the same, and for such other and further relief in the premises as may be equitable and just.

J. ALBERT HOMAN,  
Petitioner and Auditor under the Statute.

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*Petition of J. Albert Homan.*

STATE OF NEW JERSEY, }  
 COUNTY OF MERCER. } ss.:

J. ALBERT HOMAN, of full age, being duly sworn according to law, upon his oath deposes and says, that he is the petitioner named in the foregoing petition; that he has read the same, knows the contents thereof, and that the matters and things therein contained are true to the best of his knowledge, information and belief. 10

J. ALBERT HOMAN.

Subscribed and sworn to before  
 me this third day of June,  
 1926.

AGNES E. SERRIDGE,  
 (SEAL) Notary Public of New Jersey. 20

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*Exhibit "B."*

**Exhibit "B"**

Copy attached to Petition.

Filed February 25, 1926.

NEW JERSEY SUPREME COURT.

10

MERCER COUNTY.

AMERICAN EXCHANGE - PACIFIC  
NATIONAL BANK, a corpora-  
tion,

*Plaintiff,*

*vs.*

LEWIS GERMAN,

*Defendant.*

*In  
Attachment.*

*Action  
at Law.*

*Order.*

20

Jessie C. Buchanan, the Auditor appointed in the above-entitled cause by order of this Court made January 21, 1926, having died on February 18, 1926:

IT IS ORDERED that J. Albert Homan of the City of Trenton, be and he hereby is appointed Auditor in the above-entitled cause, pursuant to the statute in such case made and provided, in  
30 the place and stead of Jessie C. Buchanan, who was heretofore appointed Auditor in this cause, and who died February 18, 1926.

Let this rule be entered in the minutes.

THOMAS W. TRENCHARD,  
*J. S. C.*

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*Rule for Final Judgment.***Rule for Final Judgment.**

Copy attached to Petition.

## NEW JERSEY SUPREME COURT.

## MERCER COUNTY.

AMERICAN EXCHANGE-PACIFIC NATIONAL BANK, a corpora- tion,  <div style="text-align: center;"><i>Plaintiff,</i></div>	}	<i>In Attachment.  Action at Law.  Rule for Final Judgment.</i>
<i>vs.</i>		
LEWIS GERMAN,  <div style="text-align: center;"><i>Defendant.</i></div>		

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The report of the Auditor duly appointed in the above-entitled cause having been on file for ten days, and no appearance having been made on behalf of the defendant, and no objections to the said Auditor's Report having been made, and no other creditors having intervened in the above-entitled cause, and the Auditor reporting that there is due and owing the plaintiff, including interest to April 29, 1926, the sum of \$7,777.04, and good cause appearing:

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IT IS on this fourteenth day of May, 1926,

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ORDERED that judgment final be entered in favor of the plaintiff and against the defendant for \$7,777.04 as of April 29, 1926, with plaintiff's costs of suit to be taxed.

THOMAS W. TRENCHARD,

*J. S. C.*

Entered May 15, 1926, on motion of  
 McDERMOTT, ENRIGHT &  
 CARPENTER,  
 Attorneys.

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*Order to Show Cause.*

**Order to Show Cause.**

Filed June 25, 1926.

IN CHANCERY OF NEW JERSEY.

10	In the Matter of the applica- tion of ADDIE TAYLOR GERMAN, a married woman, to convey her property without concu- rence of her husband.	}	58/434 <i>On Petition,          &amp;c.          Order to          Show Cause.</i>
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20 Upon reading and filing the verified petition of J. Albert Homan, Auditor appointed by the Hon. Thomas W. Trenchard, Justice of the New Jersey Supreme Court, wherein it appears that there is on deposit in the hands of the Clerk of this Court in the above-entitled cause the sum of \$1,913.62, and wherein it appears that Addie Taylor German claims some interest in the said fund, and good cause appearing:

IT IS on this 25th day of June, 1926,

30 ORDERED that Addie Taylor German do show cause before the Chancellor at the Chancery Chambers, in the City of Jersey City, on the twelfth day of July, 1926, at ten o'clock in the forenoon, why the prayer of the said petition should not be granted, and why the Clerk should not be ordered to pay over to the said Auditor in said attachment suit the sum of \$1,913.62 in the Clerk's hands in the above-entitled cause.

E. R. WALKER,

C.

Respectfully advised,  
 BAYARD STOCKTON,  
 A. M.

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**ANSWER TO PETITION.**

Filed October 8, 1928.

IN CHANCERY OF NEW JERSEY.

58-434

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<p>In the Matter of the application of ADDIE TAYLOR GERMAN, a married woman, to convey her property without concurrence of her husband.</p>	}	<p><i>Answer to Petition.</i></p>
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The answer of Addie Taylor German to the petition of J. Albert Homan, filed in the above proceedings, charges as follows: 20

1. She admits the facts stated in paragraphs one, two, three, four, five and six of the petition.

2. Answering paragraph seven, she says that she is entitled to receive the moneys attached, as stated in the petition, to wit: the sum of \$1,917.52, with interest, and that the petitioner has no interest or right thereto. That she is the widow of Lewis German, who was the defendant and judgment debtor in the action in the New Jersey Supreme Court in which the American Exchange-Pacific National Bank, was plaintiff, as set forth in paragraph five of the petition. That the said Lewis German died on the 4th of May, 1928, at the New York State Hospital, Kings Park, Long Island, and that for a number of years prior to his death he had been confined at the Long Island Home, Amityville, Long Island, New York, an institution for the custody 30  
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*Answer to Petition.*

and treatment of the insane. She further states that she obtained a final decree in the proceedings in which this petition has been filed by J. Albert Homan, to wit: in the proceedings entitled, "In the matter of the application of Addie Taylor German, a married woman, to  
10 convey her property without concurrence of her husband, Docket 58-434," on the 7th day of August, 1925, a copy of which decree is attached to and made a part of this answer. She further states the Auditor, the petitioner herein, was never entitled to the moneys deposited with the Clerk of this Court for the reason that these moneys represented the money value of the inchoate right of curtesy of her late husband; that  
20 said inchoate right of curtesy never became consummate, and that, therefore, she is entitled to be paid the moneys on deposit and prays that an order be made directing the Clerk of this Court to pay to her, the said Addie Taylor German, the said moneys on deposit, \$1,917.52, which have been attached, and that the petition of the Auditor, J. Albert Homan, be dismissed.

CHILD, SHIPMAN & PLUMER,  
Solicitors and Counsel for  
Addie Taylor German.

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*Exhibit "A."***Exhibit "A"**

Filed August 11, 1925.

## IN CHANCERY OF NEW JERSEY.

In the Matter of the application of ADDIE TAYLOR GERMAN, a married woman, to convey her property without concurrence of her husband.	}	<i>On Petition, etc.  Final Decree.</i>	10
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A petition having been filed in the above entitled matter by Addie Taylor German praying that an order be made by this court directing and authorizing her to convey her interest in the lands described in the petition by a deed or deeds executed by herself without the concurrence of her husband, and an order to show cause having been made returnable July 7th, 1925, requiring the petitioner's husband, Lewis German, to show cause before this Honorable Court why the prayer of the petition should not be granted; and due and legal service of a certified copy of the petition and affidavits attached thereto and the order to show cause having been made upon the said Lewis German, and on the return day of the said order to show cause an order having been made appointing Thomas Barber, Clerk in Chancery, Guardian Ad Litem of the said Lewis German; and it further appearing that an order of reference was made referring the matter to Richard Stockton, one of the Special Masters of this court, to inquire into the merits of the application in a summary manner, and to hear the same

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*Exhibit "A."*

for the Chancellor and to report thereon and to advise what order or decree should be made therein; and further requiring that the said Special Master should ascertain the actual money value of the estate and interest of the said Lewis German, petitioner's husband, in the lands described in the petition filed herein; and the said Special Master having filed his report recommending that an order be made permitting the petitioner to convey her interest in the premises by deed or deeds executed by herself without the concurrence of her husband and fixing the gross value of the inchoate right of curtesy of petitioner's husband in the said premises and an order having been made confirming said report,

It is on this Seventh day of August, 1925, on motion of J. G. Shipman, Solicitor for the Petitioner, by his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, ORDERED, ADJUDGED and DECREED, and the said Chancellor does by virtue of the power and authority of this court hereby Order, Adjudge and Decree that Addie Taylor German, the Petitioner herein, convey her undivided one-half interest in the following tracts or parcels of land and premises, situate, lying and being in the Township of Cranford, County of Union and State of New Jersey, described as follows:

"Which are more particularly laid down, designated and distinguished on a certain map entitled 'Map of Fairview Manor' now on file in the office of the Register of Union County as lots Nos. Five (5), Six (6), Seven (7), Eight (8), Nineteen (19), Twenty (20), Twenty-one (21), Twenty-two (22), Twenty-three (23), Twenty-four (24), Twenty-five (25), Twenty-six (26), Twenty-seven (27), Twenty-eight (28), Twenty-nine

*Exhibit "A."*

(29), Thirty (30), Thirty-one (31), Thirty-three (33), Thirty-four (34), Thirty-five (35), Thirty-eight (38), Thirty-nine (39), Forty-two (42), Forty-three (43), Forty-eight (48), Forty-nine (49), Fifty-one (51), Seventy-four (74), Seventy-five (75), Seventy-eight (78), Seventy-nine (79), Eighty (80), Eighty-one (81), and Eighty-seven (87), as laid down on said map." 10

by deed or deeds executed by herself without the concurrence of her husband; and that the said Addie Taylor German shall make the said conveyance of her undivided one-half interest in said lands to Jacob Suleder upon payment by him of the sum of Ten Thousand (\$10,000.00) Dollars in accordance with the terms of the agreement of sale made between the said Addie Taylor German and the said Jacob Suleder dated June 9th, 1925, and also in accordance with the provisions of this decree; 20

It is further ORDERED, ADJUDGED and DECREED, that the said Jacob Suleder shall pay to the Clerk of the Court of Chancery out of the purchase money for the undivided one-half interest in said lands the sum of One Thousand, Nine Hundred and Seventeen Dollars and Fifty-two Cents (\$1,917.52) which is the actual money value of the estate or interest of the said Lewis German, petitioner's husband, in the said lands which sum shall be held by the Clerk of this Court as a part of the estate and for the benefit of the said Lewis German, to abide the further order of this court; 30

And it is further ORDERED, ADJUDGED and DECREED, that upon the conveyance by the said Addie Taylor German of her undivided one-half interest in said lands as hereinbefore decreed and upon the payment to the Clerk of this 40

*Exhibit "A."*

10 Court of the said sum of One Thousand Nine Hundred and Seventeen Dollars and Fifty-two cents (\$1,917.52) as herein set forth, said lands shall be free from any claim, estate or right of the said Lewis German, and the said conveyance shall be an absolute bar to any right of cour-  
 tesy which the said Lewis German has therein in case he shall survive the said Addie Taylor German;

It is further ORDERED, ADJUDGED and DECREED that a certified copy of this decree may be recorded in the office of the Register of the county in which the lands are located;

20 And it is further ORDERED, ADJUDGED and DECREED that a counsel fee of \$200.00 be paid to J. G. Shipman, Solicitor for the petitioner, together with the costs to be taxed, such payment to be made by the said Jacob Suleder out of the purchase money for said lands.

E. R. Walker,  
 C.

Respectfully advised,

Bayard Stockton, A. M.

"A true copy

30 Thomas Barber,  
 Clerk."

**STIPULATION.**

Filed October 8, 1928.

IN CHANCERY OF NEW JERSEY.

58-434

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In the Matter of the applica-  
tion of ADDIE TAYLOR GERMAN,  
a married woman, to convey  
her property without concur-  
rence of her husband.

*On Petition,  
by J. Albert  
Homan, and  
by Addie  
Taylor  
German.*

*Stipulation.*

It is hereby stipulated and agreed by J. Albert Homan and Addie Taylor German, by their respective attorneys, as follows: 20

All of the facts stated in paragraphs one, two, three, four, five and six, respecting the attachment proceedings taken by the American-Exchange Pacific National Bank, against the deposit of \$1,917.52, deposited with the Clerk in Chancery in the above-entitled matter, are admitted.

It is further stipulated that Lewis German was the judgment debtor and defendant in the suit in which judgment was entered by the American-Exchange Pacific National Bank, on May 15, 1926, by the New Jersey Supreme Court, for \$7,777.04; that the said Lewis German died on the 4th of May, 1928, at the New York State Hospital, Kings Park, Long Island, New York, and that Addie Taylor German is his widow. A copy of the final decree entered in the above-entitled suit, 30

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*Stipulation.*

on the 7th day of August, 1925, be admitted as evidence in this proceeding.

McDERMOTT, ENRIGHT & CARPENTER,  
Solicitors of Petitioner, J. Albert Homan,  
Auditor.

10 CHILD, SHIPMAN & PLUMER,  
Solicitors of Petitioner, Addie Taylor German.

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**PETITION, ORDER OF REFERENCE AND  
COPY OF SPECIAL MASTER'S REPORT  
IN CHANCERY.**

**Petition.**

Filed June 24, 1925.

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IN CHANCERY OF NEW JERSEY.

<p>In the matter of the application of ADDIE TAYLOR GERMAN, a married woman, to convey her property without concur- rence of her husband.</p>	}	<i>Petition.</i>
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The petition of Addie Taylor German of the Borough of Brooklyn, County of Kings and State of New York, respectfully shows:

1. Petitioner is a married woman and her husband's name is Lewis German, who is 75 years of age. A child was born of the marriage and is now alive.

2. Petitioner shows that her husband, Lewis German, up until the month of May, 1924, was competent, but that during that month his mind began to fail and that he then became mentally incapacitated and insane; that on May 25, 1924 an application was made to the County Judge of the County of Kings, State of New York, for the commitment of the petitioner's husband to an institution for the insane for custody and treatment; and that on May 26, 1924 an order was made by the County Judge of Kings County,

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*Petition of Addie Taylor German.*

New York, committing the said Lewis German, the petitioner's husband, to the Long Island Home, Town of Amityville, Long Island, State of New York, an institution for the custody and treatment of the insane; and that the said Lewis German is still confined at the said institution and is still insane. A copy of said order of commitment is hereto annexed and marked Exhibit A and made a part of this petition.

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3. Petitioner further shows that she is the owner in fee simple of an undivided one-half interest in the following tracts or parcels of land and premises situate, lying and being in the Township of Cranford, County of Union and State of New Jersey, which are described as follows:

20

"Which are more particularly laid down, designated and distinguished on a certain map entitled 'Map of Fairview Manor' now on file in the office of the Register of Union County as lots Nos. Five (5), Six (6), Seven (7), Eight (8), Nineteen (19), Twenty (20), Twenty-one (21), Twenty-two (22), Twenty-three (23), Twenty-four (24), Twenty-five (25), Twenty-six (26), Twenty-seven (27), Twenty-eight (28), Twenty-nine (29), Thirty (30), Thirty-one (31), Thirty-three (33), Thirty-four (34), Thirty-five (35), Thirty-eight (38), Thirty-nine (39), Forty-two (42), Forty-three (43), Forty-eight (48), Forty-nine (49), Fifty-one (51), Seventy-four (74), Seventy-five (75), Seventy-eight (78), Seventy-nine (79), Eighty (80), Eighty-one (81), and Eighty-seven (87), as laid down on said map."

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*Petition of Addie Taylor German.*

That the undivided one-half interest in the said premises were conveyed to petitioner on the 14th of October, 1920 by her husband, the said Lewis German, by deed of warranty which was recorded in the Register's Office of the County of Union on October 18, 1920 in Book 809 of Deeds, page 588, etc.; that the conveyance was made to petitioner by her husband in consideration of and to repay petitioner large sums of money which petitioner had loaned her husband for use in his business. 10

Your petitioner shows that she has had an offer for her interest in the said land, from a prospective purchaser of said property, and desires to convey the same, but is unable to do so by reason of the mental incapacity of her husband to join with her in the execution of deeds of conveyance therefor. 20

Your petitioner therefore prays that this Honorable Court will inquire into the merits of her application in a summary manner; and that an order be made directing and authorizing petitioner to convey her said land by deed or deeds executed by herself, without the concurrence of her husband; and further prays that an order be made directed to the said Lewis German, petitioner's husband, directing him to show cause at a time and place certain why the foregoing prayer of the petitioner should not be granted. 30

ADDIE TAYLOR GERMAN,  
Petitioner.

*Petition of Addie Taylor German.*

STATE OF NEW YORK, }  
 COUNTY OF NEW YORK. } ss.

ADDIE TAYLOR GERMAN, being duly sworn on her oath according to law, deposes and says that she is the petitioner in the foregoing petition named; that she is a married woman; that her  
 10 husband's name is Lewis German; that the age of her husband is 75 years; that he was competent and sane up until the month of May, 1924, during which time he became insane and incompetent and upon application to the County Judge of Kings County, State of New York, an order was made on May 26, 1924, committing the said Lewis German to the Long Island Home at Amityville, Long Island, New York, an institution for the custody and treatment of the insane,  
 20 and adjudging him to be insane and a proper subject for commitment to such institution. Deponent's husband is still confined at said institution. Copy of said order is hereto annexed. That deponent is the owner of an undivided one-half interest in the lands and premises described in the petition, having acquired the same by deed from her husband dated October 14, 1920; that deponent had loaned sums of money to her husband from time to time for a number of years  
 30 previous to the date of said conveyance, which money was used by the petitioner's husband in his business and had never been repaid to the petitioner, and, consequently, petitioner's husband desired to convey and did convey the said one-half interest in the land and premises to her; that she has had an offer from a prospective purchaser to buy her said half interest in said premises; and that she is unable to do so because  
 40 her husband to join in the execution of deeds of

*Petition of Addie Taylor German.*

conveyance and desires that an order may be made permitting her to convey the said land by deed to be executed by herself without the concurrence of her husband.

ADDIE TAYLOR GERMAN.

Subscribed and sworn to before me  
this 9th day of June, 1925.

W. IRVING TAYLOR.

W. IRVING TAYLOR,

(L. s.) Notary Public, New York County.

Clerk's No. 33, Register's No. 7002.

Certificate filed in Kings Co., Clerk's No. 3,  
Reg. No. 7002; Queens Co., Clerk's No. 1125.

Commission expires March 30, 1927.

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Certificate of Clerk of New York County at-  
tached.

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STATE OF NEW YORK, }  
COUNTY OF SUFFOLK. } ss.

O. J. WILSEY, being duly sworn on his oath according to law, deposes and says that he is the superintendent or physician in charge of the Long Island Home, situated in Amityville, Long Island, New York; that the said Home is an institution for the custody and treatment of the insane; that he has been superintendent there for 33 years; that he personally knows Lewis German, who was committed to the said home by order of the County Judge of the County of Kings on May 26, 1924; that the said Lewis German is still confined at the said Home.

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Deponent further says that he is a physician and has had 43 years of experience in the treatment and care of various kinds of insane and mentally incapacitated persons; that the said

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*Petition of Addie Taylor German.*

Lewis German is now suffering from a form of insanity called senile dementia, paranoid state, and was suffering from same disease when he entered the institution, and in the opinion of the deponent, based on his experience, said Lewis German is insane at the present time and is incapable of carrying on any business affairs.

O. J. WILSEY.

Sworn to before me this  
17th day of June, 1925.

NELLIE M. FORAN,  
(L. S.) Notary Public, Suffolk Co., N. Y.

Certificate of Clerk of New York County attached.

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## ORDER OF COMMITMENT.

Before the Hon. Alonzo G. McLaughlin, County Judge of Kings Co., on the 26th day of May, 1924.

In the Matter of an Application for the Commitment of Lewis German, an alleged insane person.

30 Upon the petition of Gale German dated May 25, 1924 and a certificate made by two duly qualified medical examiners in lunacy, which certificate is dated on the 25th day of May, 1924, and which is annexed hereto, and upon such other facts and information as were produced before me, and being satisfied that the above alleged insane person is insane and a proper subject for custody and treatment in an institution for the insane, within the meaning of the statute and that he is not in confinement under a criminal charge, it is therefore hereby

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*Petition of Addie Taylor German.*

ORDERED, That the said Lewis German be and hereby is adjudged insane and that he be committed to (insert, correctly official title of institution) Long Island Home, Amityville, L. I., an institution for the custody and treatment of the insane.

ORDERED, That the Superintendent of the Long Island Home forthwith at the time of the commitment of Lewis German to said hospital, forward a verbatim copy of the entire proceeding herein to the office of the Clerk of Kings County. 10

ORDERED, That the said papers so sent shall be sealed in the office of the County Clerk of Kings County, and be exhibited only to the parties to the proceedings, or someone properly interested, upon the order of the Court.

ALONZO G. McLAUGHLIN, 20  
County Judge of Kings Co.

STATEMENT OF FINANCIAL CONDITION  
OF INSANE PERSON.

(If the order of commitment be directed to a State Hospital, the statute requires that the justice or judge shall append a statement as far as can be ascertained of the financial condition of the insane person and of the persons legally liable for his maintenance. (See Section 82 of Insanity Law.) 30

Real estate, location and estimated value—  
No information.

Personal property and income of insane person herein and of his legally liable relatives—No information.

ALONZO G. McLAUGHLIN, 40  
County Judge of Kings Co.

*Petition of Addie Taylor German.*

STATE OF NEW YORK, }  
COUNTY OF KINGS. } ss.

10 I, WILLIAM E. KELLY, Clerk of the County of Kings and Clerk of the Supreme Court of the State of New York in and for said County (said Court being a Court of Record), Do HEREBY CERTIFY that I have compared the annexed with the original order and statement filed in my office May 29, 1924 and that the same is a true transcript thereof and of the whole of such original.

IN TESTIMONY WHEREOF, I have hereunder set my hand and affixed the seal of said County and Court this 7th day of May, 1925.

WILLIAM E. KELLY,  
Clerk.

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*Order of Reference.***Order of Reference.**

Filed July 9, 1925.

## IN CHANCERY OF NEW JERSEY.

In the matter of the application  
of ADDIE TAYLOR GERMAN, a  
married woman, to convey  
her property without concur-  
rence of her husband.

*On Petition,  
etc.**Order of  
Reference.*

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A petition having been filed and an order to  
show cause having been made by the above-en-  
titled Court on June 24, 1925, returnable at the  
Chancery Chambers, Newark, N. J., on July 7,  
1925, requiring Lewis German, the petitioner's  
husband, an insane person to show cause why  
an order should not be made authorizing peti-  
tioner to convey her lands and real estate by  
deed executed by herself without concurrence of  
her husband; and there being no appearance on  
behalf of the said insane person on the return  
day of said order; and an order having been  
made upon the said return day appointing  
Thomas Barber, Clerk of the above-entitled  
court, guardian *ad litem* of the said Lewis Ger-  
man; and the said guardian *ad litem* having ap-  
peared and entered his appearance and filed an  
answer on behalf of the said Lewis German; it  
is thereupon on this 8th day of July, 1925, on  
motion of J. G. Shipman, solicitor and counsel  
with petitioner,

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ORDERED that this matter be referred to Rich-  
ard Stockton, one of the special masters of this

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*Order of Reference.*

court, to inquire into the merits of the applica-  
 tion in a summary manner and to hear the same  
 for the Chancellor and to report thereon to him  
 and to advise what order or decree should be  
 made therein; and that in case the said special  
 master shall report that a decree should be made  
 10 ordering the said petitioner to convey her lands  
 without the concurrence of her husband accord-  
 ing to the prayer of the petition, that the special  
 master shall then ascertain the actual money  
 value of the estate or interest of her husband in  
 such lands, if any, by calculation based upon the  
 actual cash value of said lands and upon the ex-  
 pectancy and life of said husband and wife, in  
 the manner and according to the rules now or  
 hereafter in use in the above-entitled court.

20 E. R. WALKER,  
C.

Respectfully advised,

BAYARD STOCKTON,  
 A. M.

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*Report of Special Master.*

**Report of Special Master.**

IN CHANCERY OF NEW JERSEY.

In the Matter of the applica- tion of ADDIE TAYLOR GERMAN, a married woman, to convey her property without concur- rence of her husband.	}	<i>On Petition.</i> <i>Report of</i> <i>Special</i> <i>Master.</i>	10
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In pursuance of an order of reference made in this cause on July 8, 1925, wherein it was referred to the subscriber, one of the Special Masters of this Court to inquire into the merits of the application made herein by said Addie Taylor German and to report thereon and to advise what order or decree should be made therein; and that in case the said special master shall report that a decree should be made ordering the said petitioner to convey her lands without the concurrence of her husband according to the prayer of the petition, that the special master shall then ascertain the actual money value of the estate or interest of her husband in such lands, if any, by calculation based upon the actual cash value of said lands and upon the expectancy and life of said husband and wife, in the manner and according to the rules now or hereafter in use in the above-entitled court.

I, Richard Stockton, as such Special Master, do hereby respectfully report to his Honor, the Chancellor, that I issued a summons to Thomas Barber, Clerk in Chancery, guardian *ad litem* of Lewis German, a lunatic, husband of the said petitioner, Addie Taylor German, and that due

*Report of Special Master.*

and legal service of said summons was acknowledged by the said guardian as appears by the endorsements on said summons which is hereto annexed; and that I have been attended by J. G. Shipman, solicitor of said petitioner, and have considered the matters referred to me by said order.

10 And I find and report that the said petitioner is a married woman and that the name of her husband is Lewis German and that he is seventy-four years of age, and that two children were born of the marriage of the said petitioner with said Lewis German and that both of said children are now living.

20 And I further find and report that the said Lewis German was competent and of sound mind until the month of May, 1924, when he became mentally incapacitated and insane and by an order made on May 26, 1924, by the County Judge of Kings County, New York, the said Lewis German was adjudged insane and was thereby committed to Long Island Home, Amityville, Long Island, New York, an institution for the custody and treatment of the insane, and that the said Lewis German is still confined at the said institution and is still insane.

30 And I further find and report that the said petitioner, Addie Taylor German, is the owner in fee simple of an undivided one-half interest in thirty-four lots in the Township of Cranford, Union County, New Jersey, all of which lots are vacant and unimproved, which premises were conveyed to her by her husband in October, 1920, in consideration of and to repay her certain monies she had loaned him for use in his business.

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*Report of Special Master.*

And I further find and report that the premises bring in no income to petitioner and it is doubtful if the said premises will increase in value to an extent to justify the petitioner retaining same, and that an offer has been made by Jacob Suleder to purchase the said undivided one-half interest of petitioner in said premises for \$10,000, which sum I find to be a reasonable and fair price and the cash value thereof, and that petitioner has accepted the said offer and desires to convey the said premises but is unable to do so by reason of the mental incapacity of her husband to join with her in the execution of the deed therefor. 10

And I further find and report that the said Lewis German, as the husband of said Addie Taylor German, has an inchoate right of curtesy in the said premises and that the gross value of such right, on the principal of life annuities, calculated on the bases of the table annexed to the rules of this Court is one thousand and nine hundred and seventeen dollars and fifty-two cents, and that such sum is reasonable satisfaction for said inchoate right of curtesy of said Lewis German in said premises. 20

And I therefore recommend that an order be made by this Court permitting the petitioner, Addie Taylor German, to convey said premises by a deed or deeds executed by herself without the concurrence of her said husband and also directing the said petitioner to pay to the Clerk of this Court from the proceeds of sale of said premises the sum of one thousand and nine hundred and seventeen dollars and fifty-two cents, to be held by him for the benefit of the said Lewis German and to abide the further order of this Court. 30 40

*Report of Special Master.*

All of which is respectfully submitted this  
24th day of July, 1925.

RICHARD STOCKTON,  
Special Master in Chancery.

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**OPINION OF VICE-CHANCELLOR.**

Filed December 3, 1929.

**IN CHANCERY OF NEW JERSEY.**

In the Matter of the application of ADDIE TAYLOR GERMAN, a married woman, to convey her property without concurrence of her husband.

58-434.

*On Petition.*  
*&c.*

*Opinion.*

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November 29, 1929.

Jehiel G. Shipman, Esq., for the petitioner.

McDermott, Enright & Carpenter, Esq's, for the respondent.

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**OPINION.**

BENTLEY, V.-C.:

On petition for an order directing the Clerk to pay out moneys deposited with him.

A married woman filed a petition under the authority of the Married Women's Act (3 C. S., 3233, secs. 8q and 8r). Such proceedings were had thereon that on the 7th day of August, 1925, a decree was made in accordance with the prayer of the petition and it was therein provided that out of the purchase money to be paid for the lands of the married woman the sum of \$1,917.52, being the value of her husband's estate or interest therein, should be held by the Clerk of this Court until the Court's further order.

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The woman's husband died on the 4th day of May, 1928. Before the death of the husband

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*Opinion of Vice-Chancellor.*

the Sheriff of Mercer County attached in the hands of the Clerk the said sum of money so held by him, pursuant to the direction of a writ of attachment which had then issued against the moneys and effects of the said husband. Judgment was thereafter rendered in favor of the attaching creditor for \$7,777.04. Thereafter, the auditor in attachment filed the present petition on or about the 3rd day of June, 1926, praying an order directing the payment to him of the said sum in the hands of the Clerk. This application is resisted by Mrs. German upon the ground that the death of her husband cut off all the rights of him, his heirs, executors, administrators and assigns and, consequently, of his creditors.

20 It would be a waste of time to enter into any discussion as to the rights of husbands in lands held in fee simple by their respective wives, either under the common law of England or the changes that have been made by statute. The act under which the decree herein was made provides that in case of mental incapacity of her husband, any woman owning lands within this state, desiring to convey the same, may do so without the concurrence of her husband upon the decree of the Chancellor free from any right of curtesy. It is further provided that upon any such application the Court shall ascertain the value of the husband's interest in such lands in money, and that out of the purchase price to be paid for her land, the purchaser shall pay to the committee or guardian of such husband, an amount equal to such value, or if there be no such committee or guardian, then to the Clerk of this Court. The effect of this statute, as I see it, is to destroy entirely any estates or interests

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*Opinion of Vice-Chancellor.*

by such a husband, and to substitute for that estate or interest a sum of money that shall clearly represent the value thereof. And the further effect is produced, that while the wife is not compelled by the legislation to part with her lands, she is obliged, if she takes advantage thereof, to pay for the privilege which she otherwise would not have, by surrendering a portion of the purchase price received, for the benefit of the estate of her unfortunate spouse. Therefore, it seems to me that there is brought into existence a fund that is personal property for the exclusive benefit of the husband's estate. Such fund has none of the attributes of real estate. The statute does not prescribe any limitation upon the character or use of this money after it is paid by the purchaser of the woman's land, not to her but to her husband's personal representative. The guardian is not restrained in his application of it for the benefit of his ward as he may apply other money coming into his hands. There is no provision whereby she retains or secures any other or further right in such money than the law gives her over any of the other personal property in her husband's estate. Consequently, it appears unescapable that a fund thus acquired by a husband's estate is subject to the demands of his creditors under the same rules that obtain as to any other chattels.

It will readily be seen that the views herein expressed make it impossible for me to agree with the arguments advanced by counsel for Mrs. German which are based on the decision in *Bucci v. Popovich*, 93 N. J. Eq. 121. In that case Vice-Chancellor Fielder was dealing with a matter of title, and he held that our Married Women's Act, sect. 2, 3 C. S., 3225, destroyed the estate of

*Opinion of Vice-Chancellor.*

tenancy by the curtesy initiate, whereas I am confronted by an entirely different part of the statute which permits the conversion of real property into personal property.

10 It is further argued on behalf of the widow that even if such an attachment would lie at the time it was made, the death of the husband would terminate any estate by the curtesy, even consummate, which is the highest tenure to which it could ever rise. The reason I cannot arrive at any decision by analogy to this division of the common law has already been made to appear.

I will advise an order in conformity with the prayer of the auditor's petition.

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**ORDER DIRECTING SURPLUS MONEYS TO  
BE PAID OVER.**

Filed December 13, 1929.

IN CHANCERY OF NEW JERSEY.

In the Matter of the applica-  
tion of ADDIE TAYLOR GERMAN,  
a married woman, to convey  
her property without concu-  
rence of her husband.

58-434

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*On Petition.*

*Order Direct-  
ing Surplus  
Moneys To  
Be Paid  
Over.*

This matter coming on to be heard on petition  
of J. Albert Homan of the City of Trenton,  
auditor appointed February 25, 1926, by the  
New Jersey Supreme Court, pursuant to the at-  
tachment act of the State of New Jersey, in a  
cause pending in the Supreme Court wherein  
American Exchange-Pacific National Bank was  
plaintiff and Lewis German was defendant, and  
it appearing from the said petition that judg-  
ment was entered in the said attachment action in  
favor of the American Exchange-Pacific National  
Bank, plaintiff, against Lewis German, defendant,  
for \$7,777.04 damages, as of April 29, 1926, and  
costs of \$40.12, and it further appearing that on  
December 31, 1925, Charles H. Reichert, Sheriff  
of the County of Mercer, pursuant to the com-  
mand of said writ of attachment, did attach in the  
hands of the Clerk of this Court the sum of \$1,-  
913.62, the net amount paid into the hands of the  
Clerk of this Court September 16, 1925, represent-  
ing the money value of the interest of Lewis Ger-  
man in the lands and premises mentioned in the

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*Order Directing Surplus Moneys to be Paid Over.*

petition and final decree in this cause, and Addie Taylor German having filed an answer to the petition of the said auditor, and the matter regularly coming on for hearing on the said petition and answer thereto, and the matter being argued by J. G. Shipman, solicitor for Addie Taylor German, and McDermott, Enright & Carpenter, solicitors for the auditor-petitioner, and the Court being of opinion that the proceeds of sale at the time of the levy of said attachment was the property of the said Lewis German and subject to said writ of attachment, and good cause appearing:

IT IS on this 13th day of December, 1929, on motion of McDermott, Enright & Carpenter, solicitors for said auditor,

ORDERED that the Clerk of this Court do pay to J. Albert Homan, auditor appointed in the cause pending in the New Jersey Supreme Court, wherein American Exchange-Pacific National Bank was plaintiff and Lewis German was defendant, the sum of \$1,917.52, and all accumulations of interest thereon, being the value of the estate or interest of Lewis German in the lands and premises ordered and decreed to be sold in the above-entitled cause, to apply on account of the judgment entered in the said cause pending in the New Jersey Supreme Court, upon which the Sheriff of the County of Mercer levied a writ of attachment in said cause on the 31st day of December, 1925.

E. R. WALKER,  
C.

Respectfully advised,

JOHN BENTLEY,  
V.-C.

*Order Directing Surplus Moneys to be Paid Over.*

I approve the above order as to form.

CHILD & SHIPMAN,  
Solicitors for Addie Taylor German.

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Arthur W. Cross, Law Printer, 55-57 Lafayette Street, Newark, N. J.

## New Jersey Court of Errors and Appeals

On Petition of J. Albert Homan, Auditor in Attachment, for an order to pay to said Auditor certain moneys on deposit with the Clerk.

In the Matter of the Application of ADDIE TAYLOR GERMAN, a married woman, to convey her property without concurrence of her husband.

ADDIE TAYLOR GERMAN,  
*Appellant,*

*vs.*

J. ALBERT HOMAN, Auditor,  
*Respondent.*

*On Appeal  
from Court  
of Chancery.*

### BRIEF FOR THE APPELLANT, ADDIE TAYLOR GERMAN.

#### Facts.

This is an appeal from an order made in the above matter by the Court of Chancery, on December 13th, 1929, by which order a certain sum of money, to wit: \$1,917.62, which is on deposit with the Clerk of the Court, was ordered paid to J. Albert Homan, auditor appointed in attachment proceedings which had been brought by the American Exchange-Pacific National Bank of New York, a corporation of New York, against Lewis German, appellant's husband, now deceased.

The facts which brought about this suit are as follows:

Addie Taylor German was the owner of a one-half interest in a tract of land in the Town-

ship of Cranford, Union County, New Jersey. She acquired this property on October 14, 1920, by deed from her husband, Lewis German, in consideration of monies loaned and used in her husband's business. At this time Mr. German was fully competent but later, in the month of May, 1924, he became mentally incapacitated and by an order made on May 26, 1924, by the County Judge of Kings County, New York, Lewis German was adjudged insane and committed to the Long Island Home, Amityville, L. I., an institution for the custody and treatment of the insane, and he was confined there and remained there until his death, which occurred on May 4, 1928.

In the meantime Mrs. German having received an offer for the sale of her one-half interest in her property, was desirous of selling the same and accordingly, on the 24th day of June, 1925, she filed her duly verified petition (Case, p. 23) in the Court of Chancery setting out the facts which have just been stated and praying that an order be made directing and authorizing her to convey her land by deed or deeds executed by herself, without the concurrence of her husband. The Clerk of the Court of Chancery was appointed *guardian ad litem* of Lewis German, lunatic, and an order of reference was duly made (Case, p. 31) to a Special Master who heard the evidence to support the petition and filed a report, a copy of which was printed for the record (p. 33). The report was subsequently confirmed and a final decree was made ordering Addie Taylor German to convey her one-half interest in the property to the prospective purchaser upon payment of the proper consideration, and the decree further provided as follows:

“It is further ORDERED, ADJUDGED and DECREED, that the said Jacob Suleder shall

pay to the Clerk of the Court of Chancery out of the purchase money for the undivided one-half interest in said lands the sum of one thousand, nine hundred and seventeen dollars and fifty-two cents (\$1,917.52) which is the actual money value of the estate or interest of the said Lewis German, petitioner's husband, in the said lands which sum shall be held by the Clerk of this Court as a part of the estate and for the benefit of the said Lewis German, to abide the further order of this court;

And it is further ORDERED, ADJUDGED and DECREED, that upon the conveyance by the said Addie Taylor German of her undivided one-half interest in said lands as hereinbefore decreed and upon the payment to the Clerk of this Court of the said sum of one thousand nine hundred and seventeen dollars and fifty-two cents (\$1,917.52) as herein set forth, said lands shall be free from any claim, estate or right of the said Lewis German, and the said conveyance shall be an absolute bar to any right of curtesy which the said Lewis German has therein in case he shall survive the said Addie Taylor German."

Subsequently, the deed was delivered by Mrs. German to the purchaser and all of the consideration was paid to her in cash, with the exception of \$1,917.52, which was paid to the Clerk of the Court of Chancery in accordance with the decree, and it is with respect to the present ownership of this deposit that the present controversy has arisen.

The proceedings were instituted by Mrs. German under Section 8Q and R, of the Married Women's Act, C. S. of N. J., pages 3233, 3234.

Section 8Q provides that a married woman may convey her real property without the concurrence of her husband by an order of the

Court of Chancery, where the husband is incompetent, and says:

“Which deed or deeds of conveyance shall convey the said lands free from any claim, estate or right of the husband of such married woman, and shall be an absolute bar to any right of curtesy therein *in case he shall survive her.*” (Italics ours.)

Section 8R provides for the procedure and we quote this in full:

“8r. MARRIED WOMAN MAY CONVEY REAL PROPERTY WITHOUT CONCURRENCE OF HUSBAND UNDER ORDER OF COURT OF CHANCERY WHERE HUSBAND IS INCOMPETENT; procedure.

Sec. 2. That upon a petition filed for the purpose aforesaid, the Court of Chancery may, in a summary manner, inquire into the merits of the application, by reference to a master or otherwise, and in case the said court shall order that such married woman may convey her lands, as aforesaid, said court shall ascertain the actual money value of the estate or interest of the husband in such lands, *if any*, by a calculation based upon the actual cash value of said lands, and upon the expectancy of life of the said husband and wife in the manner and according to the rules now or hereafter in use in said court, and that the value thereof shall be paid out of the purchase money of the said lands by the purchaser to the committee or guardian of said lunatic or incapacitated husband, duly appointed by any competent court of this state or elsewhere, *to be held by him as part of the estate of such husband*, or if there be no such guardian or committee, then such payment shall be made to the clerk of the court, and that the order of the court shall specifically direct how much money shall be so paid and to whom such payment shall be made by said purchaser. (Italics ours.)

These two sections were passed in P. L. 1890, page 41.

The money was paid to the Clerk as directed by the statute, because there was no guardian or committee to receive it. Mr. German never received the benefit of any of the income for his support; Mrs. German having supported him during the entire time he was in the institution, and the interest on the fund has accumulated.

On the 5th day of June, 1926, a petition was filed in the Court of Chancery by J. Albert Homan (Case, p. 8) setting forth that on December 17, 1925, a writ of attachment had been issued out of the New Jersey Supreme Court in a suit in which the American Exchange-Pacific National Bank was plaintiff, and Lewis German, the husband of Addie Taylor German, was the defendant, and that the Sheriff of Mercer County, in pursuance of the commands in the writ of attachment, attached the sum of money, \$1,917.53, on deposit in the hands of the Clerk, as money belonging to Lewis German, in order to satisfy the bank debt. Subsequently, the petitioner, J. Albert Homan, was appointed auditor and he caused the final judgment to be entered in the New Jersey Supreme Court in favor of the American Exchange-Pacific National Bank, as plaintiff, and against Lewis German, as defendant, in the sum of \$7,777.04, which judgment was entered May 15, 1926. Thereupon, the said auditor, J. Albert Homan, in pursuance of the provisions of the attachment act filed his petition in the Court of Chancery, praying for an order directing the Clerk to pay to the petitioner, as auditor in the attachment suit, the said sum of \$1,917.52.

Upon the filing of this petition Mrs. German, the appellant here, filed an affidavit, and, subsequently, an answer (Case, p. 15) in which she admitted the attachment proceedings and denied

that the auditor was entitled to the money on deposit with the Clerk and claimed that she was entitled to receive the full amount of money with interest. The petition of J. Albert Homan was filed prior to the death of the appellant's husband, but before the matter came up for argument Mr. German had died, and the answer to the petition sets out this fact. She says that the money on deposit represents the actual money value of the estate or interest of her husband in the land that she sold in accordance with the terms of the statute; that such interest of her husband in the land was that of an inchoate right of curtesy; that he has died before her and that his inchoate right of curtesy never became consummate; that, consequently, the sum of money on deposit, representing only the present value of an inchoate right of curtesy, never belonged to her husband and was, therefore, not subject to attachment for his debts, and should be paid to her.

A stipulation was also filed and the matter was argued before the Vice-Chancellor who filed his opinion construing the statute under which Mrs. German brought her original proceedings in the Court of Chancery, and holding that the effect of the statute was to require the married woman who took advantage of this act to set aside and pay her husband a lump sum of money as a penalty for the privilege of selling without his concurrence; that this money, although representing the interest of the husband in the land, was converted from real estate into personalty and became a part of the husband's property and estate and was subject to his debts, and, consequently, subject to attachment, and made an order directing the Clerk to pay the money to the auditor.

So far as known, the precise questions involved have never been passed upon by an Appellate Court of this State. As the Vice-Chancellor's decision may affect numerous other parcels of real estate, the importance of this application becomes apparent.

#### Reasons for Reversal of Decree.

It is submitted the decree should be reversed for the following reasons:

*First:* The fund represents the money value of an interest in real property sold pursuant to operation of law, without the consent of the owner thereof, and therefore, in the absence of a statute to the contrary, the fund retains its character as realty, of the same nature and extent as the interest in the land before the sale, until it comes into possession of a person, *sui juris*, who elects to convert it into personalty. In the instant case, the nature and extent of the husband's interest in the land was a mere inchoate right, at some later date, *to have an estate for his own life, upon the contingency that he survive his wife.*

Although equity will not permit a wife to destroy this inchoate right by any act of hers, yet until it ripens into curtesy consummate, by the prior death of the wife, it is so contingent, and intangible as to be not property subject to attachment or execution.

But even if this were not so, the fund would still remain real estate, because the husband was a lunatic and could not convert it into personalty.

If the attachment and judgment were valid, they could only affect whatever interest the

husband had, and all his interest was extinguished by his death in his wife's lifetime, unless the Vice-Chancellor is correct in his view that Sections 8Q and R gives a husband greater rights in his wife's lands than he had even at common law.

*Second:* The proceedings under Sections 8Q and R amounted in law and fact to the sale of an interest of a lunatic in real estate; consequently, the provisions of Compiled Statutes, Vol. 2, page 2788 must be read in connection with Sections 8Q and R of the Married Women's Act. These provisions (Article 9) are:

*"That no sale of any real estate, made pursuant to or by virtue of the provisions of this act, shall give to any person any other or greater interest in the proceeds of such sale than he or she had or would have had, in the lands, provided the same had not been sold, but the said proceeds shall be considered, relative to the statutes of descent and distribution and for every other purpose, as real estate of the same nature as the property sold."* (Italics ours.)

The Vice-Chancellor's decision that the husband's estate became the absolute owner of the proceeds of sale of an inchoate interest, which even if it had become consummate could never have been more than an estate for his life, violates said statute, and is contrary to the legislative policy with respect to the property interests of incompetents.

*Third:* The Vice-Chancellor construes the Married Women's Act as imposing penalties upon a wife for the husband's benefit, in case she avails herself of its provisions, rather than as a remedial statute to relieve her from the hardships of the Common Law.

The consequent of this view is to subject a wife's land to her husband's debts, although this act provides she holds her lands as if a *feme sole*, such a consequence is contrary to the legislative policy of this State.

The Courts of this State, although conserving the husband's inchoate curtesy rights, have never concurred in such an interpretation of the Married Women's Act.

*Fourth:* The decree herein deprives appellant of a part of her property, contrary to law and without due process of law, contrary to the Constitutions of the United States and of the State of New Jersey.

#### Argument of First Reason for Reversal.

This is an ancient doctrine in equity recognized in England, in this State and many others.

In *Wetherill v. Hough*, 52 N. J. Equity, page 683, it was said:

“The cases show that where the conversion is compulsory, *i. e.*, against the will or without the consent of the owner, the fund will be treated as real estate, *until the owner, being sui juris or of disposable capacity, manifests a willingness to accept it as personal.*” (Italics ours.)

In *Lerch v. Oberly*, 18 N. J. Equity, page 575, it was held that

“The surplus of the proceeds of lands of a decedent, sold by order of the Orphans' Court, for the payment of his debts, above the amount needed for the payment of debts, retains the character of real estate, so will the proceeds of lands sold by order of the Court in proceedings for partition, because incapable of partition. Such proceeds retain the character of real estate for the purpose

of succession, until they vest in some person, *who is not an infant or lunatic and who, having capacity to change the nature of the estate, gives it the character of personality.*" (Italics ours.)

This decision follows *Snowhill v. Snowhill*, 3 N. J. Equity, page 20, which was a sale of an infant's lands by virtue of a special act which authorized a sale and directed the proceeds to be invested; one-third for the interest of the mother, and two-thirds for the infant, and gives no directions as to the principal. When the infant died its heirs-at-law claimed that the proceeds of the sale retained the character of real estate and descended to them. The Chancellor held otherwise, but this was reversed on appeal. This decision of the Court of Errors was followed in the *Oberly* case.

See also, *Lerch v. Oberly*, 18 N. J. Equity, 575; where the Court of Errors affirmed the Court of Chancery.

In the matter of *Wharton*, 5 De. G., M. & G. 33, the real estate of a lunatic had been sold under a statute similar to our statute which covers the sale of lands of idiots and lunatics, and which contained a provision similar to our statute; to wit:

"The proceeds of the estate sold shall be of the same nature and character as the estate sold."

Upon the death of the lunatic it was held by the English Courts that the money which represented the proceeds of the sale of the property descended to the heirs-at-law;

"It passed as real estate to his heirs-at-law, and not to his next of kin."

This decision was based upon the principle that "money impressed with the character of

land remains such until it is accepted as money by its absolute owner, of sufficient capacity to make such election." (Quoted from *Oberly v. Lerch*, 18 N. J. Equity, 354.)

It was said in *Ross v. Adams*, 28 N. J. Law, page 160:

"This money represents the land and it is manifest that we should dispose of it as nearly as possible as if it were the land itself."

In the leading case of *Hackensack Trust Company v. Tracy*, 86 N. J. Equity, page 301, the court said:

"\* \* \* The proceeds of the sale of lands retain the character of real estate, for the purposes of succession and distribution, for the compensation of the parties is made by way of distribution to those who had estates and rights in the land, and in proportion to their *respective rights and interests*."

In *Mullen v. Mullen*, 98 N. J. Equity, page 90, the court said:

"Had title to the lands here in question remained in the wife, or had she sold and conveyed her interest or estate under the Act of 1880, the lien (if I may so call it) of her husband in his curtesy would have remained on the lands, and in case he survived his wife, he would be entitled to receive all the net rents and profits of the lands for his life."

The same rule is stated in the New York case of *Master v. McMillan*, 126 Appellate Division at page 158:

"Where land has been taken not by voluntary negotiation, but by the compulsory proceedings authorized by statute and the money is paid into court, it continues to be real estate until it is taken out by some per-

son having a right to elect to treat it as money, that is, by some person *sui juris*, who is an unfettered owner. If the owner is an infant or a lunatic or if the land is subject to a settlement, the money necessarily retains its character as real estate." (Italics ours.)

In the English Case of *In re Barker*, 50 Law Journal (Equity) page 334, the proceeds of sale of a lunatic's lands were paid into court, invested in consuls and carried on the court records as personalty. Upon his death the fund was claimed both by the heirs-at-law and the administrator. The Court of Appeals held the fund was real estate going to the heirs-at-law, the law being undoubtedly as above stated. The lunatic, of course, could not convert the fund into personalty.

It is thus necessary to examine the Vice-Chancellor's views that the conversion was effected by the language of Section 8R of the Married Women's Act.

That this was the Vice-Chancellor's view appears from his statement that it would be a waste of time to enquire into a husband's rights in his wife's realty.

He says further (Case, pp. 39-40):

"The effect of this statute as I see it is to destroy entirely any estate or interest by such a husband, and to substitute for that estate or interest the sum of money that shall clearly represent the value thereof.  
\* \* \* Therefore, it seems to me that there is brought into existence a fund that is personal property for the exclusive benefit of the husband's estate."

This not only ignores the above decisions, but appears to be based solely in the fact that Section 8R of the statute provides that out of the

purchase money, the value of the husband's interest must be paid to the committee or guardian "*To be held by him as part of the estate of such husband*"; which the Vice-Chancellor infers is equivalent to saying that it becomes the husband's exclusive property as personalty. Of course, a person's estate, whether real or personal, may comprise many valuable rights and interests less than absolute and unqualified ownership of things, sometimes the most valuable are intangible. The words above quoted in no wise prevent the fund remaining real estate of the same character as the estate "destroyed" nor do they of necessity effect a conversion into personalty.

It is held in this state that since the passage of the Married Women's Act in 1852, there exists no such thing as an "estate or interest" of curtesy initiate which could be "destroyed" or for which a sum of money could be "substituted";

*Hackensack Trust Company v. Tracy*, 86 N. J. Equity 301.

*Porch v. Fries*, 18 N. J. Equity 204.

*Bucci v. Popovitch*, 93 N. J. Equity 121 (affirmed 93 N. J. Equity 511).

There is, however, an *inchoate right*, or equity to a future life estate upon the contingency of surviving the wife, which the said statute prevents being "destroyed" by the procedure set forth in Section 8R. The method of computing the "money value" of this right from the elements of the consideration paid for the land and the ratio of life expectancies of husband and wife according to the rules of court, is analogous to the computation of dower or other life estates and indicates a legislative interest to conserve a *future life estate*, rather than to provide a present lump sum payment.

The legislature did not intend to enlarge a husband's rights in his wife's land by the passage of the Married Women's Act. The contrary was the case. Nor did it intend to penalize a wife. Its sole purpose was to provide a means by which real estate might be conveyed where the husband was incompetent to join in the deed. It contemplated no conversion of the property rights of the parties from realty into personalty.

In the *Barker Case*, above referred to, the court said:

“There is, it seems to me, a broad general principle underlying all these questions, which is this, that where property is taken compulsory from any person who is not *sui juris* and who is not competent to make the subsequent alteration in the disposition or the devolutions of that property which would naturally follow such a change, the presumption is that the legislature intended, if the words of the Act of Parliament really admit of that interpretation, *not to interfere with any legal right or any legitimate expectation of any person whatever. The sole object of the change was for the purpose of that particular change, that is, in this case, it was to enable the property to be disposed of advantageously*, and we can conceive a great number of very unjust consequences that would follow if any other rule were to be adopted.” (Italics ours.)

In construing the Partition Act, the court said in *Osborne v. Edwards*, 11 N. J. Equity, page 73:

“The act for the partition of land was not intended by the legislature as a mode by which the real estate of the wife, without her consent, could be converted into personalty and placed at the disposal of her husband. *The sole object of the act is to provide a mode for the more easy partition of lands held by coparceners, jurit tenants*

*and tenants in common and not to prejudice or destroy, by its operation, the legal or equitable rights of the parties interested in the land."* (Italics ours.)

The sections of the statute in question, by their language, are not contrary to the equitable doctrine to which we have referred or to the decisions cited.

In the first place, the statute says that the money value of the interest of the husband shall be ascertained, *if any*; and then it says that the money is to be *held* by the guardian, not to be used; and in the first paragraph, 8q, it provides that the deed shall convey the land "free from any claim, estate or right of the husband of such married woman, and shall be an absolute bar to any right of curtesy therein *in case he shall survive her.*" This language all points to an intention on the part of the legislature that the sum representing the curtesy right should be held by the court until it should become consummate and not converted into personalty.

In *Mullen v. Mullen*, 98 N. J. Equity, page 90, affirmed page 727:

A petition was filed by a wife for an order to direct the payment to her of her share of the proceeds of the sale of lands which had been made in a partition suit. The husband appeared and opposed the application contending that his curtesy right attached to the proceeds of the sale. It was so held by the court. The wife claimed that she was entitled to have the money paid to her in full; or that the money should be paid to her less such sum as would represent the gross value of his curtesy right, if she were now deceased, and he were entitled to his curtesy at once *such sum to remain in court until the death of one of them.* In the meantime, she

to receive the income. If she survived him, the principal to be paid to her, but if he survived her he was to receive the gross value of his curtesy, or the income for life on the sum in court, and upon his acceptance of a sum in gross, or upon his death the balance to be paid to her heirs. It was held that:

“The proceeds of the sale retain the character of real estate for the purpose of distribution.”

The court went on to say that there was *no statute*, which under the circumstances there present *authorized* the court to order the payment to the wife in the manner in which she desired. Section 52 of the Partition Act, C. S. 3912, was held to apply only to cases where curtesy had become consummate. Section 60 of the Chancery Act, C. S. 433 (which provided that when money is paid into court in foreclosure proceedings, the owner of the estate for life may have payment of the gross sum in lieu thereof), was held to apply to foreclosure cases only.

The court refused to make the payment to the wife as she desired and went on to say; following the decisions cited:

“The lands having been sold under judicial proceedings, his lien follows and attaches to the proceeds of sale, and he will be entitled to the same interest in the proceeds as he had in the lands, and that interest, in case he survives his wife, is the net income of the whole fund.”

The Vice-Chancellor would not order the full amount paid to the wife because it might defeat his curtesy right and finally it was ordered that the entire proceeds should be invested and the income arising therefrom paid to the wife during the joint lives of the husband and wife,

and to the husband during his life, if he survive her. After his death, the principal to be paid to the wife's heirs; or upon the death of the husband during the wife's life, she would be entitled to have the principal paid to her.

It will, no doubt, be argued that the statute here in question authorizes the court to fix a gross sum to represent the present value of the curtesy right and pay it to the incompetent husband's estate. On the contrary, we contend that this statute is authority for the court to make an order in accordance with the claim of the wife in the Mullen case, which is (p. 94):

"That the money be paid to her, less such sum as will represent the gross value of his curtesy if she were now deceased and he were entitled to his curtesy at once, *such sum to remain in court until the death of one of them*, in the meantime she is to receive the income therefrom; if she survives him, the principal to be paid to her, but if he survives her, he to receive the then gross value of his curtesy, or the income for life on the sum in court." (Italics ours.)

#### Argument of Second Reason for Reversal.

It is axiomatic that the procedure laid down in Section 8r was a method produced to free the wife's land of a real property right of the husband in her land so as to convey good title. The above section requires the fund to be held, *i. e.* administered, as part of the estate of the lunatic husband.

It follows that the sale of the husband's interest as well as the fund realized are governed by the General Statute regarding the property and estates of idiots, lunatics, drunkards (Compiled Statutes of New Jersey, Vol. 2, p. 2788).

It was shown above that Article 9 of this Statute not only prevents a conversion of a real property interest into personalty, but it also prevents any person acquiring greater rights in the proceeds of sale than existed in respect to the thing sold.

That this is a uniform legislative policy in respect to property rights of incompetents generally is shown by the fact that the provisions of Article 9 of the Statute in respect to idiots, lunatics and drunkards is re-enacted verbatim in respect to infants' lands (see Compiled Statutes, Vol. 2, Sec. 5, p. 2805).

As these statutes are merely declaratory of long existing common law principles, it cannot be said that the legislature intended to make an exception in the sole instance contemplated in Sections 8Q and R of the Married Women's Act. Article 1 of the statute relating to idiots, lunatics and drunkards provides for the appointment by the Orphans' Court of a *guardian*:

“Who shall have the care and safekeeping of the said idiot or lunatic, in his or her lands, tenements, goods and chattels, *that the said idiot or lunatic may live and be competently supported and maintained by and, out of his or her goods, chattels and profits of his or her lands or tenements and that no waste or destruction of his or her lands or tenements be done or permitted and such lands shall in no wise be aliened, save that the same be done by authority of this or some other statute of this state, but shall upon the death of any such idiot, descend and go to his or her heirs and the residue of the goods, chattels and profits of the said idiot, after payment of his or her debts, shall go to and be distributed, according to law, among his or her next of kin.*”  
\* \* \* (Italics ours.)

It cannot be questioned that the purpose of this statute was remedial and for the conservation of every property right and interest of persons *non compos mentis*, whether real or personal and for the application of the income to the competent support and maintenance of a lunatic. Nor can it be questioned that the words "real estate" used in Article 9 referred not only to "lands and tenements" mentioned in Article 1, in their strict legal definition, *but also include all rights or interests*, legal or equitable, of a lunatic in any real property whatsoever. A liberal interpretation of such a statute is necessary for the accomplishment of the beneficial purpose intended (*Bucci v. Popovitch*, 93 N. J. Equity, p. 121).

The above being the only general statute regulating the administration of estates of lunatics, it follows as a necessary consequence that the provision in Comp. Stat. p. 3233, 8R, for the payment of the ascertained value of the incompetent's curtesy interest "*to the committee or guardian of said lunatic or incompetent husband, duly appointed by any competent court of this state or elsewhere, to be held by him as part of the estate of such husband,*" refer by necessary implication to the above-quoted articles of Comp. Stat. Vol. 2, page 2788 regulating the estates of persons *non compos mentis*. These two statutes must be read together.

This being the case, the provisions of Article 9 above quoted, require that the fund in dispute be considered as real estate "*for every purpose,*" of the same nature as the property sold (*i. e., the curtesy interest*) and prohibits the giving to any person of "any other or greater interest in the proceeds of such sale than he or she had or would have had in the lands, provided the same had not been sold."

The Vice-Chancellor says (Case, p. 39):

“The guardian is not restrained in his application of it” (*i. e.*, the fund in court)  
 “for the benefit of his ward as he may apply other money coming into his hand.”

He, of course, means that Section 8R does not so specifically provide. But this section does provide that the guardian is to hold the fund as part of the estate of the lunatic husband, which of course means that it is to be administered in the manner prescribed by law for such estates. These provisions are found in the above-quoted sections of the statute in respect to idiots, lunatics and drunkards which provide for the competent maintenance of the ward, the prevention of waste and the disposition of the corpus at the death of the ward. As there is a general statute regulating the subject, it would have been superfluous for Section 8R to repeat these provisions. The above statement that the guardian is not restrained in the application of the fund for the ward's benefit is not only remarkable in view of the condition of fides existing between guardian and ward, but it is directly in conflict with the language of the decree (Case, p. 17) which directs the funds to be paid to the Clerk to be held as part of the estate “*and for the benefit of the said Lewis German.*”

While it is true that we are here construing a particular section of the Married Women's Act, Section 8Q and R, the policy of the legislature as shown in other statutes relating to the judicial sale of the lands of infants and incompetents is important in determining the legislative intent in respect to the particular sections here in question. It naturally follows that if the legislature has adopted a policy in the statutes referred to, relating to the judicial sale of lands of incompetents and infants, to wit: that their interest in

the proceeds retains its character of real estate, that it would naturally adopt the same policy in passing these sections of the Married Women's Act.

A further indication of the legislative intent regarding this section of the statute is found in an act relative to inchoate dower, Compiled Statutes 2051. This act was passed by the Laws of 1878, page 193, and was subsequently repealed and a new act passed; Laws of 1912, Chap. 302, C. S. Supplement 999. The legislature in the act of 1878 deals with a situation where the wife is incompetent and is incapable of executing a valid release of her inchoate right of dower. It provides that the Chancellor may direct such release to be made by a Master in Chancery, where it appears that the interest of the owner of the lands require them to be promoted by a sale.

The second section provides for the procedure by filing a petition and says:

"And in case a release is ordered by him in conformity with the prayer of said petition, a bond shall be given to the Chancellor in such penalty and with such surety as he may direct, to secure such person so entitled to such inchoate right of dower *in case she survives her husband*, the enjoyment after his decease and during her life of the fund equal to one-third of the proceeds of said lands or premises, \* \* \* or in lieu of said bond if it shall appear satisfactory to the Chancellor the said sum of one-third of the whole proceeds of the sale shall be invested under the direction of the Chancellor and the interest thereon during the joint lives of the husband and wife, shall go to such husband and if the husband dies first, then to widow during her life." (Italics ours.)

This statute was passed in 1878 before the statute here under construction. The provision for the securing of the inchoate dower is directly by bond. The alternative is by the investment of a third of the proceeds of sale. Even if the latter method of investing a third of the proceeds is adopted, the wife does not receive the interest upon this fund unless she survives her husband, nor does she obtain the benefits from the bond unless and until she survives her husband.

It can be argued that the legislature did not intend in the statutes here in question passed in 1890, to give the husband immediately a curtesy right in the form of a gross sum before it has become consummate, when they have passed a statute by which the wife, under similar circumstances, could not secure the money which represented her inchoate right of dower, until such right had become consummate by her surviving her husband. The legislature would not give to an incompetent husband a sum of money for a curtesy right before it had accrued, and deny such sum of money to an incompetent wife. Such a purpose on the part of the legislature to favor the incompetent husband's interest in his wife's estate over the incompetent wife, is not consistent with the theory or policy of the legislature in passing the Married Women's Act.

This statute was subsequently repealed and a new act passed in 1912, which places jurisdiction in the Prerogative Court instead of the Chancellor. The second section provides for the procedure and says:

“In case a conveyance of mortgage is allowed it shall require a bond to be given by the owner of such lands, tenements and hereditaments to the Ordinary of the Prerogative Court or to the guardian of such person in such penalty and with such surety

as he may direct, to secure to the guardian of such person so entitled to such inchoate right of dower, the enjoyment during her life, *after such dower has become fixed and assigned*, a fund equal to one-third of the value of such lands, etc. \* \* \* or in lieu of said bond, if the petition so request, the Ordinary of the Prerogative Court shall cause an appraisement of said land and premises to be made, and a gross sum paid or secured to the guardian of such incompetent in consideration of the release and relinquishment of her inchoate right of dower in the said lands, etc.”

This statute is similar to the old one in respect to the method of securing the dower by giving a bond; and it is noticeable that the other method, that of fixing the gross sum to be paid to the guardian of the incompetent, can only be done by the special request of the petitioners. It is apparent the legislature were of the opinion that a gross sum could only be paid to the wife's guardian for an inchoate dower right upon special request of the husband; therefore, under the sections, 8Q and R, it follows that it was intended that the money value of the inchoate right of curtesy of the husband could only be paid absolutely in a gross sum to his guardian upon special request of the *wife*.

#### Argument of Third Reason for Reversal.

In construing the Married Women's Act the Vice-Chancellor says in his opinion (Case, p. 39):

“And the further effect is produced, that while the wife is not compelled by the legislation to part with her lands, *she is obliged, if she takes advantage thereof, to pay for the privilege*, which she otherwise would not have, *by surrendering a portion of the purchase price received for the benefit of the*

*estate of her unfortunate spouse.*" (Italics ours.)

This view in effect either imposes a penalty for exercising rights granted by a statute, which is obnoxious to the general policy of the law, or else compels a wife to *purchase* them from her husband.

The courts of this state have repeatedly held that the Married Women's Acts were *remedial* statutes for the wife's benefit alone; they neither *penalize* her nor compel her to *purchase* the rights granted to her by law. The act itself permits her, during coverture, to own real property as if a *feme sole*. In *Bucci v. Popovitch*, 93 N. J. Equity, at page 124, the court said:

"The intention of this legislation was to free the married woman from the hardships under the common law, which subjected her real estate so largely to her husband's control and to give her the sole use and enjoyment of her separate estate. It should be liberally construed in her favor so that the benefits intended thereby shall inure to her."

The same was held in *Compton v. Pierson*, 28 N. J. Equity on page 231, and in *Johnson v. Cummings*, 16 N. J. Equity, page 97. How is a married woman freed from the hardship of her husband's control of her land, if she has to pay him for the privilege of enjoying and disposing of it? Such is certainly not a liberal construction of the statute nor one in harmony with authoritative decisions of this state.

Beginning with 1847 every State in the Union has passed Married Women's Acts and the courts have uniformly construed them liberally as remedial statutes for the accomplishment of the purposes announced in *Bucci v. Popovitch* above quoted. As shown above, the purpose of Section

8R of the statute was not to compel a wife to pay for a privilege, but was merely to safeguard from extinguishment an inchoate right of the husband which might later grow into a life estate, and at the same time allow her to dispose of her lands. The Vice-Chancellor's decision, in effect, makes the wife's property liable for her husband's debts contrary to the intent of the Married Women's Act.

He says (Case, p. 39): "Consequently it appears inescapable that a fund thus acquired by a husband's estate is subject to the demands of his creditors *under the same rules that obtain to any other chattels.*" (Italics ours.)

In the above case of *Bucci v. Popovitch*, 93 N. J. Equity, page 121, which was affirmed on appeal in 93 N. J. Equity, page 511, it is said at page 124:

\* \* \* "I regard his inchoate right of curtesy as a right created by law or growing out of the married state, *personal to him and not subject to the claims of his creditors.* He may at any time during coverture assent to a sale by his wife of her lands, and if he signifies such assent by joining in a deed with her, it is my opinion that she conveys as a feme sole would, free from any interest or estate of her husband *and free from any claim of her husband's creditors.*" (Italics ours.)

This decision was brought to the Vice-Chancellor's attention, but he refused to consider it because he said it referred to an estate or interest in land (Case, p. 40).

\* \* \* "Whereas I am confronted by an entirely different part of the statute, which permits *the conversion of real property into personal property.*" (Italics ours.)

The statute he referred to was the same statute referred to in the *Bucci-Popovitch* case. In

basing the conclusion he arrived at, exclusively upon the words of Section 8R "*to be held by him as part of the estate of such husband,*" and in considering these words out of their context and standing alone, the Vice-Chancellor gave no consideration to any other provision of the same sections of the act, and entirely ignored the purport and intention of this legislation, as expressed in other sections of the Married Women's Act.

His decision, therefore, is not a construction of Sections 8Q and R, nor of the Married Women's Act as a whole, but only of the words of Section 8R above quoted.

It has been shown above that the conclusion that these words effected a conversion into personalty is erroneous.

In *Mullen v. Mullen, supra*, after stating as heretofore quoted, that the "lien" of the husband's inchoate curtesy followed and attached to the proceeds of sale, the court then said:

"But the Married Women's Act should not be so liberally construed *as to give her her husband's estate as well as her own.* To put her in possession of the fund might defeat the husband's curtesy, because she may dissipate it. In fact, she claims the right to dispose of it after it comes into her possession and that if she does, her husband's interest is gone. To direct payment of a gross sum to her would deplete the fund by taking a large part of the principal on which he will be entitled to income, in the event that he shall live to receive it." (Italics ours.)

Conversely it may be said with greater force, in view of the beneficial purpose of this act, that it should not be construed so narrowly and strictly as to give any part of the wife's property to the husband, absolutely, nor so as to subject the

wife's property to the demands of the husband's creditors contrary to the purpose and intention of this remedial statute.

#### Argument of Fourth Reason for Reversal.

If, as shown above, this fund retains its character as real estate of the same quality and extent as the interest sold, then the greatest possible interest the husband could ever have obtained, had he survived his wife, would have been the right to receive the income of the fund during his natural life, and the greatest right of the creditors of the husband would be to have the income applied in liquidation of the debt. Neither husband nor creditor would have any claim upon the corpus of the fund, they both being interested only in the income. The corpus of the fund would at all times remain the property of the wife, subject only to the husband's right to receive the income produced therefrom for his life. The rights of both husband and creditor would cease upon the extinguishment of the life estate by reason of the husband's death.

Thus the wife would not be deprived of her property, but only of the income derived therefrom.

Before the sale of the real estate, the wife was seized of the entire fee as if a *feme sole*, there being no *estate* by the curtesy initiate in the husband, but merely an equitable inchoate right which does not attain to that dignity. To hold, as the Vice-Chancellor does, that in case of a sale of a wife's lands, where the husband is a lunatic, the statute takes away from the wife a part of the purchase price and gives it absolutely to the husband as his unqualified property, is tantamount to saying that the statute takes personal

property from one individual and gives it to another individual, for the personal benefit of the donee and not for a public use, and without compensation. This clearly violates the Constitutions both of the United States and of the State of New Jersey.

### **ANSWERING RESPONDENT'S ARGUMENT BELOW.**

Counsel for respondent argued in the court below, and will no doubt argue here, that the inchoate right of curtesy does not give the husband a right to the fund but it is solely by virtue of the statute. This argument is absolutely falacious. The legislature cannot compel even a sane person to accept a gross sum in lieu of a dower interest or curtesy right, or life estate, or for years. Such gross sum can only be paid upon the consent of the person having such an interest. This is manifest from Section 60 of the Chancery Act, Com. Statutes, page 433, which refers to foreclosure sales, and Section 52 of the Partition Act.

Certainly, if a competent person can only be required to accept a gross sum in lieu of a dower interest or curtesy right by consent, then the legislature cannot compel an insane person who is unable to consent to accept a gross sum in lieu of a curtesy right. Therefore, it must be that the fund must be held by the court until such time as the incompetent can either elect to accept it or until his interest has become vested.

Furthermore, the incompetent husband can only have a sum of money fixed for an interest which he has in the property; if he has no interest in the property he is not entitled to any money. Therefore, the fund is entirely dependent upon the husband's having a curtesy right and

comes to him solely because of his having such curtesy right and not by virtue of the statute.

It may be likewise urged that if the legislature had intended that this sum of money representing the interest of the husband under the act here in question should be held by the court, the language of the act would have specifically provided for this, as it did in the Dower Act of 1878. In answer to this argument, we contend that the legislature would have specifically directed a gross sum to be paid outright and absolutely to the guardian of the husband upon the request of the wife, if such had been its intention in passing the statutes, as was done by the Act of 1912; and would not have used the words "to be held for the husband's estate;" and that in the absence of such specific language, it must be presumed that it was the intention of the legislature that the money should be held by the court to become the property of the incompetent husband and for his absolute use only "in case he survives her." As was said in the case of *In Re Barker, supra*:

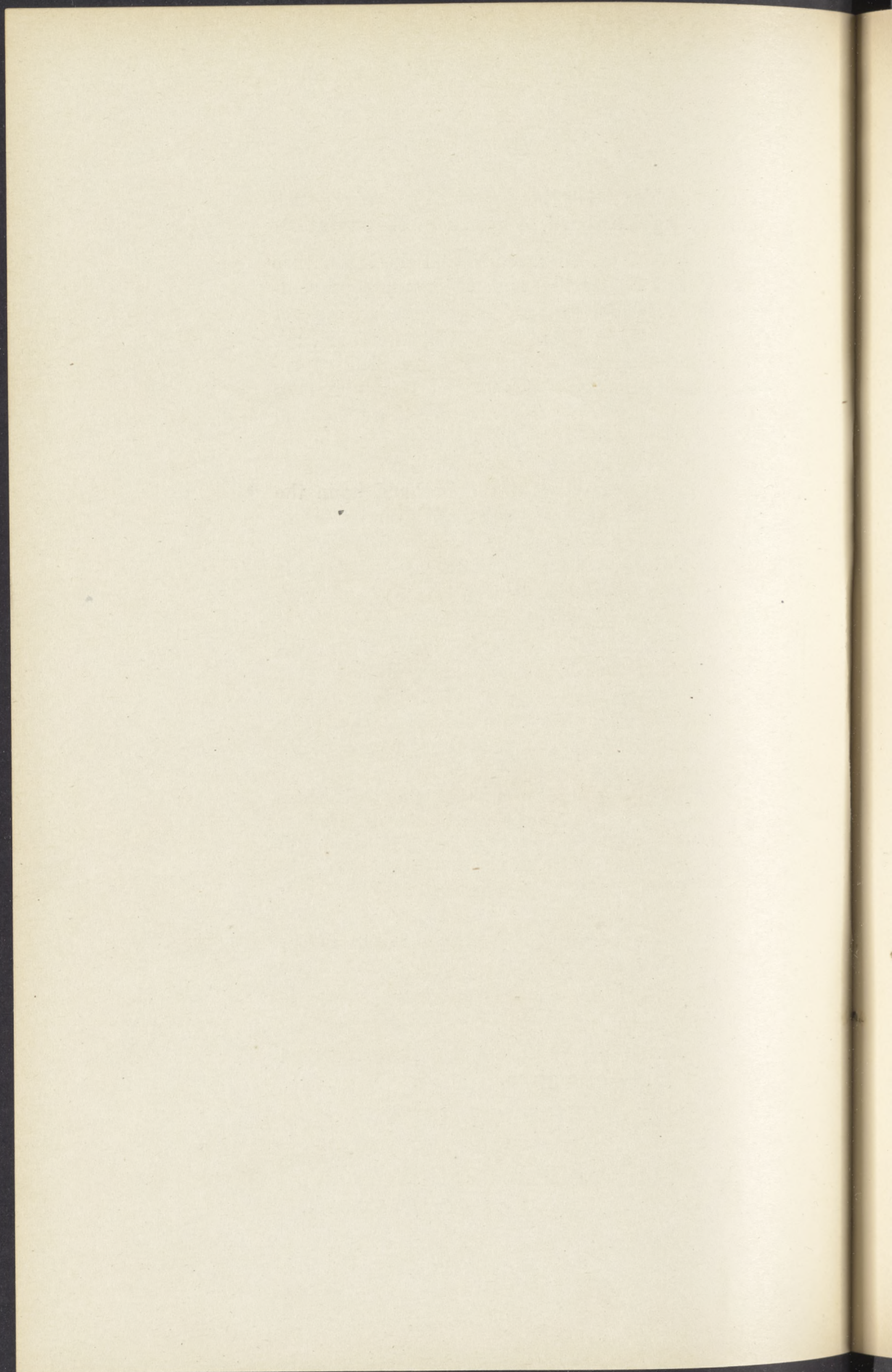
"The presumption is that the legislature intended, if the words of the Act of Parliament really admit of that interpretation, not to interfere with any legal right or any legitimate expectation of any person whatsoever."

The statute here in question will admit of the interpretation for which we contend, and the same presumption should follow as was mentioned in the Barker case.

We submit that the decree should be reversed for the reasons here given.

CHILD & SHIPMAN,  
Attorneys for the Appellant.

JEHIEL G. SHIPMAN,  
Of Counsel.



**New Jersey Court of Errors and Appeals**

IN THE MATTER  
*of*  
 The Application of ADDIE TAYLOR  
 GERMAN, a married woman, to  
 convey her property without  
 concurrence of her husband.

ADDIE TAYLOR GERMAN,  
 Appellant,  
*vs.*

J. ALBERT HOMAN, Auditor,  
 Respondent.

On Petition of J. Albert  
 Homan, Auditor in Attach-  
 ment, for an Order to pay to  
 said Auditor certain moneys  
 on deposit with the Clerk.

On Appeal from Court of  
 Chancery.

**BRIEF OF McDERMOTT, ENRIGHT & CAR-  
 PENTER, FOR J. ALBERT HOMAN,  
 AUDITOR, RESPONDENT.**

Lewis German, while competent, became in-  
 debted to the American Exchange-Pacific Na-  
 tional Bank.

On December 17, 1925, the Bank issued an at-  
 tachment out of the Supreme Court against Lewis  
 German, and on December 31, 1925, the Sheriff  
 of Mercer County levied said attachment on the  
 Clerk of the Court of Chancery, attaching  
 \$1,913.62, the net amount in his hands, represent-  
 ing the money value of the interest of Lewis  
 German in the lands and premises mentioned in  
 the petition and final decree "In the Matter of  
 the Application of Addie Taylor German, a mar-

ried woman, to convey her property without concurrence of her husband" (Docket in said cause being No. 58-434, Record, pp. 8-9). Thereafter judgment was entered in the said attachment proceedings, and the auditor in said cause petitioned the Chancellor to turn said money over to the auditor.

Mr. German died May 4, 1928 (Record, p. 15).

Vice Chancellor Bentley held that the creditor had the right to attach defendant's moneys which were in the hands of the Clerk. Vice Chancellor Bentley's opinion is so clear and convincing that counsel can do no better than to refer the Court to his opinion.

A married woman does not have to sell her property. If she wishes she may hold it until the death of her husband, when, of course, whatever right he has in it ceases. If she elects, however, to take advantage of the provisions of the statute (3 Comp. Stat., p. 3233, Sections 8Q and 8R) and make sale before her husband dies, the statute provides that she has to pay for this privilege of selling without his signature. The statute provides that there must be set apart the actual value of the estate or interest of the husband and that the value thereof shall be paid out of the purchase money of said lands "by the purchaser to the committee or guardian of said lunatic or incapacitated husband", or if there be no such guardian or committee "then such payment shall be made to the Clerk of the Court, and that the order of the Court shall specifically direct how much money shall be so paid out and to whom such payments shall be made by such purchaser".

The Court in the proceedings on the wife's application having determined that Lewis German did have an interest in his wife's property, valued at \$1,913.62, and having directed that the purchaser of the lands pay that amount into the

hands of the Clerk, we submit that that money was properly attached.

Since the statute provides that the money can be ordered paid over to the committee or guardian of the husband, if there were any, it seems that the Legislature intended that the money should go for the husband's sole and exclusive benefit.

The guardian or committee certainly could spend the money to pay the husband's debts or to maintain him. If this assumption is correct, then it must necessarily follow that in cases where the money is not paid to a Committee or Guardian but is deposited in Court, the husband on his petition can have the money paid to himself.

For the same reason the husband's interest in the money can be attached.

We submit that the wife had no right to contest this application. She had no interest in the money in the hands of the Clerk. All of her interest in the property was sold and she received cash therefor.

**Respectfully submitted that the order of the Vice Chancellor should be affirmed.**

McDERMOTT, ENRIGHT & CARPENTER,  
Solicitors for J. Albert Homan, Auditor  
in Attachment.

JAMES D. CARPENTER, JR.,  
Of Counsel.

