NEW JERSEY COURT OF ERRORS AND APPEALS.

In the Matter of the Estate of

SIMON ROTHSCHILD,

Deceased.

BRIEF OF McDERMOTT & ENRIGHT FOR APPELLANT.

This appeal brings up a decree of the Prerogative Court affirming an order of the Monmouth County Orphans' Court sustaining certain collateral inheritance taxes assessed by the Monmouth County Surrogate against alleged bequests under the last Will and Testament of Simon Rothschild. The taxes appealed from may be considered in three groups:

FIRST: Mount Sinai Hospital, Home for Aged and Infirm Hebrews, Montifiori Home for Chronic Invalids, Hebrew Benevolent & Orphan Ayslum, United Hebrew Charities, which may be classified either as hospitals, orphan asylums or charitable or benevolent institutions.

SECOND: The Educational Alliance, which, while undoubtedly a charitable institution, is also within the classification of Chapter 62 of the Laws of 1898.

THIRD: A certain benefit enjoyed by a niece, Cora Lindauer, which has been assessed as an annuity created by the will.

All of these institutions are incorporated under the laws of the State of New York, but their benevolences are not necessarily restricted to the State of New York (p. 5-7.)

The first group would be clearly within the exemption of Chap. CCX., par. 1, Laws of 1894, if incorporated under the laws of New Jersey. This section, which is the original sanction for the tax, continues, "excepting churches, hospitals and orphan asylums, public libraries, Bible and tract societies, and all religious, benevolent and charitable institutions and organizations."

The Prerogative Court, however, in Alfred University vs. Hancock, 46 Atl. 178, decided that by implication the exemption is to be construed as limited to domestic corporations, and in the present case naturally followed its earlier precedent the ordinary observing "If erroneous it must be so pronounced in a reviewing Court." pg. 27, l. 20.

The Alfred University case was decided expressly on the authority of decisions of courts of other States. The pertinent part of the opinion of Vice Ordinary Reed is as follows: "Conceding the charitable character of the institution does the exemption apply to institutions located without the limits of the State of New Jersey? The overwhelming weight of authority is that where the Legislature grants exemption from such a tax to corporations or organizations it includes in the exemption only domestic corporations or organizations. (Then follows a discussion of foreign decisions.)

On the strength of these authorities I shall hold that the exception in the Act of 1894 does not cover the present bequest to Alfred University, a corporation and institution situated in the State of New York. "

We submit that a careful consideration of these foreign decisions, with reference to the general tax laws and public policy of the States where made, should lead this court to disregard them as not applicable to this State, having regard to its laws respecting general taxation and its declared public policy and established rules of statutory construction.

The New York Collateral Inheritance Tax Act, Chap. 713, Laws 1887, taxes property passing to bodies politic or corporate other than to the societies, corporations and institutions now exempt by law from taxation.

By reference to other statutes of New York it was determined that, if there were property belonging to Trinity College, a Connecticut corporation, situate in New York, it would not be exempt; and although the legacy would be exempt under the laws of Connecticut, that exemption would not be recognized in New York.

Catlin v. Trinity College, 113 N. Y. 133.

This decision concludes: "There is no comity which requires that colleges existing under the laws of other States should be placed in a more favorable situation under the act of 1887 than colleges organized under the laws of this State."

A subsequent statute of New York is discussed, in re Prime, 136 N. Y. 347. The conclusion is, in part: "We are of opinion that the statute of a State granting powers and privileges to corporations, must, in the absence of plain indications to the contrary, be held to apply only to corporations created by the State and over which it has power of visitation and control. * * * * * It is the policy of society to encourage benevolence and charity, but it is not the proper function of a State to go outside of its

own limits and devote its resources to support the calls of religion, education or missions for the benefit of mankind at large."

Another decision cited by Vice Ordinary Reed is Minot v. Winthrop, 162 Mass. 113.

The collateral inheritance tax statute of Massachusetts exempts from its provision educational or religious societies or institutions, the property of which is exempt from taxation. Held that this did not exempt a foreign corporation.

The Illinois statute construed in People v. Western Seaman's Friend Society, 87 Ill. 246, exempted from taxation all property of institutions purely public and charitable, when actually and exclusively used for such charitable purposes.

Taxes were assessed on Chicago real estate owned by a foreign corporation, otherwise coming within the description of the exempt class. Held that the statute must be understood to have exclusive reference to institutions created by the laws of Illinois and not to foreign corporations.

All of these decisions are based directly or indirectly upon the local law regulating the general taxation of property located within the jurisdiction belonging to a foreign corporation.

It may be that the public policy or the proper construction of the particular statutes of these foreign States with respect to the general taxation of local property thus owned is correctly expressed in these opinions, it would then follow that the collateral inheritance tax statutes of such States, referring as they do expressly to the exemptions provided by the general tax act or impliedly referring to the policy

of the State as declared by the construction put by the courts upon the general tax acts, should be limited to local charitable institutions as exempt.

"In re Prime" discusses this supposed consideration of public policy. In New Jersey, however, a different policy has been adopted in dealing with the property of charitable institutions and a different rule of statutory construction has been pronounced. It has been expressly held by the Supreme Court that local property owned by foreign corporations and devoted to charitable or religious uses is exempt under the general tax act.

Our Legislature and our courts in enacting and construing the general tax act have refused to limit to local corporations an exemption declared in general terms.

Litz vs. Johnson, 65 N. J. L. 169.
St. Vincent de Paul vs. Breakley, 67 N. J. L. 176-177.

Furthermore our Court of Errors in Stewart v. Lehigh Valley Railroad Company, 9 Vroom 505-513, has laid down a law of statutory construction at variance with the rule adopted by the cases relied on as authority for the decision in the Alfred University case.

The statute there interpreted conferred power upon a corporation to lease "to any person or persons or corporations," and it was contended that this should be limited to domestic corporations.

Justice Dixon says: "It does not seem to me consistent with the natural import of this expression to hold that it includes only corporations created by the laws of this State. Corporations formed under laws passed beyond the limits of our own commonwealth are too frequent as suitors in our courts, and

as subjects of our legislation; they have too well organized and substantial an existence in the social system of all the States of our Union for us to say that when the Legislature speaks of any corporation it means no other than those of its own creation."

See also Warren v Penn 66 N.J.L. 641

This is in direct conflict with the reasoning of Justice Andrews through which he reaches his conclusion In re Prime as follows:

"We are of opinion that the statute of a State granting powers and privileges to corporations must in the absence of plain indications to the contrary be held to apply only to corporations created by the State, and over which it has the power of visitation and control."

We therefore submit that the Alfred University case resting as it does upon the decisions of other States whose public policy and statute law respecting the general taxation of religious and charitable institutions and so far as they construe statutes applying rules of construction at variance with those adopted in this State, should be disregarded in determining the appeal now before the court.

Passing to the other question involved by this appeal.

The Educational Alliance is not only a charitable and benevolent institution within the section above cited, but it is specifically exempt. P. L. 1898, pg. 106, exempts legacies to any Bible or tract society or religious institution, boards of the church or organizations there[illegible] not confined in their operations and benefactions [illegible]ocal or State purposes, but for the general good of the people interested therein of the United States or of foreign lands, as the board of home and foreign missions of various church denominations, whether organized under the laws of this or any other State.

The Alliance is incorporated under a statute expressly entitled for the creation of missionary societies. Its Act of Consolidation defines the purpose among others: " of promoting education, religious and civic training, moral and physical culture, and maintaining and conducting for that purpose synagogues, etc." It is for the benefit "especially of those professing the Jewish religion" * * * * and shall be conducted under Jewish auspices."

In that it maintains and conducts synagogues for those professing the Jewish religion and is conducted under Jewish auspices, for the purpose of promoting religious training, it must be regarded as a religious institution and also as a board of the Church, or an organization of the Church. Its scope thus defined taken in connection with its enabling act, which expressly mentions missionary societies, shows the purpose to create a corporation for carrying on home missionary work in conjunction with its other beneficient activities.

Nor is this activity confined to "local or state purposes" within the meaning of the act. This coupling of the words local and state has a significance as when we speak of local and State government or local and state affairs. The locality is a sub-division of the State and if this organization is not necessarily confined in its operation to the State of New York or to any particular locality within that state, it is within the exception.

The Act of Consolidation, May 1, 1899, is the one which gives the corporation its religious character. It is given power to pursue its purpose for the advancement " of the residents of New York and its vicinity." This may well mean the State of New York and its vicinity, which would include the surrounding states. If it be limited to the City of New York, then vicinity undoubtedly includes the cities of

Jersey City, Hoboken, Union Hill, Bayonne, West Hoboken, all of which are in a very real sense the vicinity of the metropolis. If the purpose is broader than the limits of a single state, the exemption must apply.

Furthermore, it is for the general good of all the people. Its opportunities are free to all who come, from whatever locality.

HEBREW BENEVOLENT AND ORPHAN ASYLUM

This alleged bequest consists of four bonds of the Society. The original valuation was reduced by the Orphans Court, but we contend they are not subject to tax at all.

In addition to the objections common to the first class it is now insisted that no property has passed by the will, hence there can be no tax. The will in effect directs the executor to turn over certain evidences of debt held by the testator against the asylum. These debenture bonds are not secured by any lien or interest in any specific property or fund. They are simply evidences of indebtedness not distinguishable fom a promissory note, except that they are under seal. Testator was an original subscriber. He loaned his money to the Asylum and took an acknowledgment of the debt. He by his will forgives the debt and directs the Executor to surrender the evidence thereof. If the institution wishes to again use the bonds it in effect reissues them and the transaction is a new negotiation, notwithstanding the old instrument is used.

Oliphant v. Vannest, 29 Vr. 162.

The tax is only imposed when property passes.

Gen. Stat. pg. 3339, Sec. 1. This does not cover the cancellation of a debt.

The Cora Lindauer assessment is resisted on several grounds:

FIRST: No property has passed to her under the will.

The codicil of January 5, 1905, provides:

"I hereby direct my brother William, or if he should predecease me, then I direct his two children to pay to Cora Lindauer the sum of $1,000 in each and every year during her life, and to evidence the assumption of this obligation on the part of my brother or of his children I direct him or them to execute and deliver to said Cora Lindauer a written agreement to the foregoing effect."

On February 21, 1905, the brother William entered into such an agreement, and Miss Lindauer is now receiving the sum of $1,000 annually at the time and in the manner prescribed by this agreement.

It is quite evident that testator did not intend that his niece should have any direct interest in his estate; he does not direct the executor to make the payments or indicate that the payments are to come out of the estate, but disposes of the estate absolutely and finally. He directs his brother to assume a personal obligation, but he does not make the enjoyment of the brother's bequest conditional upon his assuming the obligation. The brother need not enter into the contract except for his sentimental regard for the wishes of the dead, and having made it, it may be doubted whether the contract is legally enforceable for lack of consideration. But adopting the view most favorable to the niece, her right first comes into being when the brother executes the agreement mentioned in the will. If he does not accept his legacy it could not be contended that he would be under a legal obligation to pay the annuity

and there is no provisions which would permit the niece to charge the payments on the estate. If the brother does accept the residue then the most that can be argued is that the niece could compel him in equity to enter into the contract, on the theory that the execution of the contract is a condition made for her benefit upon which he was given the residue. We deny that she would even have that right, but conceding it for argument it only serves to show that her annuity comes from the brother personally and not from the estate.

The brother takes the estate absolutely and merges it with his own. He may hazard it in business and become insolvent, so that the niece would receive nothing, yet she would have no legal complaint. The property she gets comes to her from the surviving brother, not as executor, nor as trustees, nor as residuary legatee, but through private contract with her. The statute taxes the passing of property by succession or will from a deceased person to the collateral relative, but no such case is here made.

SECOND: In any event the tax can only be laid on the property actually passing, viz.: $1,000 per year, and the tax laid by computing the present value of an annuity for the estimated expectancy of life is unlawful.

There is no warrant in the statute for such computation. The tax is to be laid on the property actually passing, under the will, in this case $1,000 per year during life. If the legatee dies to-morrow then the tax should have been on $1,000, notwithstanding which the State claims the right to exact a tax of $513.45 on a valuation of $10,269. The right which passed under the will (if any) was to receive $1,000 per year during actual life. The thing assessed is the right to receive such sum during the estimated

life of an average person. Miss Landauer may or may not be an average person, and she may or may not realize the expectancy.

The use of expectancy tables is convenient, but even in the case of surplus moneys or proceeds of lands sold free of dower or other instances of money in court subject to a life interest the life tenant is not compelled to abide the tables, but they are applied only with his consent.

JOHN M. ENRIGHT,
Of Counsel with Appellant.

MacCrellish & Quigley, Printers, Trenton, N. J.

NEW JERSEY

Court of Errors and Appeals

In the Matter of the Estate of Simon Rothschild, Deceased. Collateral Inheritance Tax Appeal.

On Appeal from the Prerogative Court.

Brief for the State.

Simon Rothschild died, leaving a last will and testament, which was duly probated before the Surrogate of the county of Monmouth, this State, in which he made certain specific bequests, upon which the Surrogate of said county proceeded to levy a succession tax, pursuant to the provisions of our inheritance tax law (*P. L. 1894, p. 318*). The taxes so imposed have been paid upon all of the taxable bequests contained in said will, except the first, second, third, fourth, fifth and sixth items, and the second item of the second codicil to said will. An appeal from the assessments on these bequests was taken to the Monmouth Orphans' Court, resulting in their affirmance, except as to the assessment on the bonds given to the Hebrew Benevolent and Orphan Asylum, which was reduced from $4,000 to $2,600, by agreement, the latter being considered the fair market value of such bonds. A further appeal was prosecuted to the Pre-

rogative Court, and a decree there entered affirming the decree of the Orphans' Court. The present appeal is from the decree of the Prerogative Court. For easy reference the items in question are here set out in full, and are as follows:

"First. I give and bequeath to the Mt. Sinai Hospital, of the city of New York, the sum of fifty thousand dollars on the express condition, however, that the said institution shall designate and perpetuate a ward in the said hospital consisting of not less than ten beds, to be maintained and known during the existence of the said institution as the 'Simon Rothschild Ward.'

"Second. I give and bequeath to the Home for Aged and Infirm Hebrews of the City of New York, the sum of five thousand dollars.

"Third. I give and bequeath to the Montefiore Home for Chronic Invalids of the City of New York, the sum of twenty-five hundred dollars, to be appropriated by said institution to the dedication in perpetuity of a bed in my memory.

"Fourth. I give and bequeath to the Hebrew Benevolent and Orphan Asylum of the City of New York, the sum of four thousand dollars in its own bonds in that amount now in my possession.

"Fifth. I give and bequeath to the United Hebrew Charities of the City of New York, the sum of two thousand dollars.

"Sixth. I give and bequeath to the Educational Alliance of the City of New York, the sum of two thousand dollars."

Codicil. "I hereby direct by brother, William, or if he should predecease me, then I direct his two children to pay to Cora Lindauer, one of the daughters of the aforesaid Myer Lindauer, the sum of one thousand dollars in each and every year during her life, and to evidence the assumption of this obligation on the part of my brother or of his children, I direct him or them, as the case may be,

to execute and deliver to the said Cora a written agreement to the foregoing effect, the execution and delivery of said agreement and the performance thereof to be a sufficient satisfaction of the direction herein contained."

Under our inheritance tax law, all property which passes by will or by the intestate laws of this State is liable to the payment of a tax of five dollars on every hundred dollars of the clear market value of such property, excepting, however, property passing to "churches, hospitals and orphan asylums, public libraries, Bible and tract societies, *and all religious, benevolent and charitable institutions and organizations,* in trust or otherwise." (*P. L. 1884, p. 318.*)

The main point for consideration in this cause is whether the exemption accorded by our collateral inheritance tax law (*P. L. 1894, p. 318*) to "religious, benevolent and charitable institutions and organizations, in trust or otherwise," applies to institutions and organizations organized or existing under the laws of foreign states or countries, for, by the stipulation in this cause (*Case, pp. 4, et seq.*), it appears that all the foregoing named institutions are organized and existing under the laws of the State of New York.

The precise question as to whether charitable institutions of other States are exempt from taxation under our act was presented to the Prerogative Court of this State in the case of *Alfred University* vs. *Hancock, 46 Atl. 178,* and answered in the negative. The principle there laid down is the same as that followed in numerous cases in other States.

In the matter of the *Estate of Prime, 136 N. Y. 347, 360,* the Court of Appeals of the State of New York held:

"A statute of a State granting powers and privileges to corporations must, in the absence of plain indications to the contrary, be held to apply only

> to corporations created by the State, and over which it has the power of visitation and control. Such is the natural interpretation of such legislation in the absence of a contrary intention appearing on the face of the act. The Legislature in such case is dealing with its own creations, whose rights and obligations it may limit, define and control."

In the case of *United States* vs. *Perkins, 163 U. S. 625, 630,* the Supreme Court, in an opinion delivered by Mr. Justice Brown, after quoting the above excerpt from the opinion in the case of Prime, *supra,* held:

> "If the ruling of the Court of Appeals of New York in this particular case be not absolutely binding upon us, we think that, having regard to the purpose of the law to impose a tax generally upon inheritances, the Legislature intended to allow an exemption only in favor of such corporations as it had itself created, and which might reasonably be supposed to be the special objects of its solicitude and bounty."

In the case of *Minot* v. *Winthrop, 162 Mass. 113, 126,* which was a collateral inheritance case, the testatrix made specific bequests to two religious societies in the State of New York, and it was insisted at the argument that these societies were exempt, but the Attorney-General, on behalf of the State, contended that the exemption to "charitable, educational or religious societies or institutions, the property of which is exempt by law from taxation, found in the collateral inheritance law of Massachusetts, was confined to societies, the property of which was exempt from taxation by the laws of Massachusetts. The Court held that the latter was the true construction of the law, and cited the Prime case, supra.; *Catlin* v. *Trustees of Trinity College, 113 N. Y. 133; Healy* v. *Reed, 153 Mass. 197.*

In the matter of *Ballies, 144 N. Y. 132, 133,* the testator devised his residuary estate among certain religious corporations organized and existing under the laws of other States, and it was claimed that the provisions

of the then collateral inheritance tax law of New York, which exempted "any property heretofore or hereafter devised or bequeathed to any person who is a bishop, or to any religious corporation, shall be exempt from and not subject to the provisions of this act," applied to the religious corporations in question. The Court said:

> "Whether this act applies to religious corporations created by the laws of our State was the subject of our consideration in the case of The Estate of Prime (136 N. Y. 350), and we held that its application could only be to corporations created by the laws of this State. The authority in that case is indisputable, and Chief Justice Andrews, who delivered the opinion of the court, discussed the question with such attention as to render it unnecessary to resume the discussion upon the present appeal."

See also *In Re Merriam, 73 N. Y. 587; In Re James' Estate, 27 N. Y. 258; In Re Taylor, 80 Hun. 589; People* v. *Western Seamen's Friend's Society, 87 Ill. 246.*

That the exemption granted by our act to religious and charitable institutions was intended to include only such religious and charitable institutions as were organized under the laws of this State is evidenced by a supplement to the collateral inheritance tax law (*P. L. 1898, p. 106*), where exemption is accorded on gifts, grants and the like made by citizens of this State to any Bible or tract society or religious institutions, boards of the church, or organization thereof, in trust or otherwise, not confined in their operations and benefactions to local or State purposes, but for the general good of the people interested therein, of the United States or foreign lands, as the Board of Home and Foreign Missions of various church denominations. It must be conceded that a gift to religion is a gift to charity, and if religious institutions of other States were exempt from tax on property passing by our laws there would have been no necessity for this supplement of 1898. This

latter act clearly demonstrates that it never was the legislative intention to exempt from taxation foreign charitable institutions.

"Statutes conferring particular exemptions from general burthens, however meritorious the cause may be for such exemption, are strictly construed." *State* vs. *Mills, 5 Vr. 177, 181; State* vs. *Newark, 2 Dutch. 519, 521.* The principle was thus stated in *Yazoo R. R.* vs. *Thomas, 132 U. S. 174.*

> "Exemption from taxation, being in derogation of sovereign authority and common right, are not to be extended beyond the express requisites of the language used when most strictly construed."

Exemption from taxation should never be assumed, unless the language used is too clear to admit of doubt. If a doubt arise as to the intent of the Legislature that doubt must be resolved in favor of the State. *Vicksburg, &c., R. R.* vs. *Dennis, 116 U. S. 665, 668; Bailey* vs. *Maguire, 22 Wall. 215, 226; Sedgwick on Stat. Con., p. 296; Sutherland on Stat. Con., sec. 364.*

II.

But it is insisted that if the various charitable institutions hereinbefore named be not entitled to exemption under the Act of 1894, still the bequest to the Educational Alliance of the City of New York is exempt from taxation by reason of the provisions of Chapter 62 of the laws of 1898 (*P. L. 1898, p. 106*). This act reads as follows:

> "All gifts * * * by residents or citizens of this State to any Bible or tract society, or religious institution, boards of the church or organizations thereof, in trust or otherwise, not confined in their operations and benefactions to local or State purposes, but for the general good of the people in-

terested therein, of the United States, or of foreign lands, as the Board of Home and Foreign Missions of various church denominations, shall not be taxed under this act, whether said societies, religious institutions or boards aforesaid are organized under the laws of this State, or incorporated and organized under the laws of some other State."

The Educational Alliance was incorporated under the laws of the State of New York for the purpose of promoting free education by the erection and maintenance of buildings in the city of New York containing library, reading and class-rooms and lecture and music halls, and by the act consolidating the Alliance with the Hebrew Free School Association (*Case, p. 7*) its objects are further declared to be "for the purpose of promoting education, religious and civic training, moral and physical culture, the amelioration of the condition and social advancement of the residents of New York and its vicinity, and especially of those professing the Jewish religion, and maintaining and conducting for that purpose schools, synagogues, libraries, reading, class and club-rooms, gymnasiums, music and lecture halls, &c."

If, therefore, the Educational Alliance be within the exemption of the act of 1898, it must be because it is a religious institution, as that act is limited to that end, and does not exempt "charitable institutions" except such as shall be for "religious" purposes, and then only to those not confined in their operations and benefactions to local and State purposes. From the statement of the objects for which the association was formed, it can be readily seen that religious training is but one of its features, and that a gift to such an institution could not by any stretch of imagination be said to be a gift to religion, for while the association may promote religious training, it may also maintain club rooms, gymnasiums, music and lecture halls. Even if the Court should hold that this institution was of the character included in the words, "a religious institution," still it would not be ex-

empt by the provisions of the law of 1898, above referred to, for it is clear that its objects are limited to "the amelioration of the condition and social advancement of the residents of New York and its vicinity," and are, therefore, "confined in their operations and benefactions to local or State purposes," and are not "for the general good of the people interested therein, of the United States and of foreign lands." It is, therefore, clearly not exempt by this statute.

III.

It was insisted by the appellant, both before the Orphans' Court and the Prerogative Court, that the bequest to the Hebrew Benevolent and Orphan Asylum Society of the City of New York, of bonds of that institution, amounting to $4,000, is the forgiving of a debt. This contention has no force. The Orphan Asylum acquired these bonds by reason of a bequest in the will of Mr. Rothschild, and as the property passed solely by reason of that will, it is taxable. A case exactly in point is *Matter of Gould, 156 N. Y. 423.*

IV.

Another point raised by the appellant is whether the bequest to Cora Lindauer set forth in the second paragraph in the second codicil of the will is taxable, the claim being that no property passed to Cora Lindauer by virtue thereof, and for that reason no legacy to her can be taxed; that whatever she received she received by virtue of the agreement made by William Rothschild and others, and marked "Exhibit C," for the appellant (*Case, p. 18*). An examination of the agreement shows that the parties executing the same did not place the ingenious construction upon this clause of the will which has been done by their astute counsel. In the agreement they clearly recognize the force and effect of the clause

in the codicil giving this property to Cora Lindauer. The following recital would seem to be conclusive against the contention here made:

> "Whereas, the said parties of the second part are the beneficiaries under the said Deed of Trust, and in accepting the said residuary estate and the benefits thereof, they have agreed to take the same, subject to the burdens imposed by the said codicil to the last will and testament of Simon Rothschild, deceased, and have agreed to enter into this agreement."

An examination of the language of the codicil discloses clearly that the testator intended, as the beneficiaries understood that he intended, to make the bequest to Cora Lindauer a charge upon his residuary estate. His direction to his brother, William, to pay to Cora Lindauer the sum of one thousand dollars, might possibly be construed as a mere request for him so to do, and of no force and effect as against the estate; but when the testator provided that he should execute a written agreement to pay to her the aforesaid sum, and that "the execution and delivery of said agreement, and the performance thereof to be sufficient satisfaction of the direction herein contained," it surely cannot be contended that the express purpose of the testator was not to charge his estate with the payment of this bequest. The recital in the agreement that the parties taking the residuary estate have agreed to take the same "subject to the burdens imposed by the said codicil" would seem to give it a construction which these contestants cannot now dispute, namely, that the force and effect of the said codicil was to give an annuity to Cora Lindauer of one thousand dollars a year, and to make the same a charge upon the estate of Simon Rothschild. If this construction—which is seemingly the only reasonable one—be given to this codicil, then it is clear that Cora Lindauer did take property which passed pursuant to the terms of the will of Simon Rothschild, and that it is therefore properly taxable.

It is to be noted that William, the executor, is the sole residuary legatee, and the rule of law is well settled that where there is a specific legacy to one and the residue to another, the legacy becomes a charge upon the residuary estate without express words to that effect. See

Corwine vs. *Corwine, 8 C. E. Green 368.*

Corwine vs. *Corwine, 9 C. E. Green 579.*

Stevens vs. *Flower, 1 Dick. 340.*

First Baptist Church of Hoboken vs. *Syms, 6 Dick. 363.*

Carter vs. *Gray, 13 Dick. 411.*

It would seem that under the application of this rule there could be no doubt as to the character of the bequest to Miss Lindauer. The suggestion that she receives anything by the agreement is merely a confusion of terms, because she would never have received the agreement had it not been for the will; and the agreement to pay to her a specific sum of money is, so far as the purposes of this case go, equivalent to the payment itself. The mere fact that by the agreement the residuary estate is freed, does not change the character of the bequest therein. It surely cannot be contended that "Exhibit C" would ever have been executed to Cora Lindauer had the will of Simon Rothschild never been executed, and if that be so, then the property passing to Cora Lindauer under the will is taxable. If the agreement be a mere voluntary act, and is not based on the will, it is without consideration and unenforcable. It can scarcely be conceived that the contestants would seriously contend for this construction of that agreement, thereby nullifying the act of the parties and depriving Miss Lindauer of the benefit which she is entitled to receive under and by virtue of the will, and which are now only enforcable through the agreement.

V.

The only other question remaining is as to the proper method of computing the value of this one thousand dol-

lars. The stipulation entered into by the parties shows that the computation was made by taking the present value of an annuity of one thousand dollars a year for the estimated expectancy of life of Cora Lindauer, as determined by the Northampton tables. This method seems fair, and is the ordinary method used in this State in computing the value of annuities.

It is respectfully contended:

First. That the statute of 1894, exempting certain charitable institutions and organizations from taxation, applies only to such institutions and organizations as are organized under the laws of this State.

Second. That the Educational Alliance is not a religious institution within the meaning of the act of 1898.

Third. That the bequest to the Hebrew Benevolent and Orphan Asylum Society of the City of New York is not the forgiving of a debt, but that property does in fact pass to it which is taxable.

Fourth. That the bequest to Cora Lindauer of the sum of one thousand dollars in each and every year during the term of her natural life is a bequest of the moneys of Simon Rothschild, and therefore passes by his will, and does not pass by any agreement which Simon should require his brother, William, to execute to evidence his assumption to pay the said sum of one thousand dollars in each and every year during the lifetime of said Cora Lindauer, and is therefore taxable.

THEODORE BACKES,
EDWARD D. DUFFIELD,
Asst. Attorney-General.

MONMOUTH COUNTY ORPHANS' COURT.

In the Matter

of

Assessment of a Tax upon Legacies and Bequests under the will of Simon Rothschild, deceased.

INDEX.

(Petition of Appeal from Surrogate's Assessment.)

Monmouth County Orphans' Court.

In the Matter of Assessment of a Tax upon Legacies and Bequests under the will of Simon Rothschild, deceased.	Petition.

To the Honorable John E. Foster, Judge of the Orphans' Court in and for the County of Monmouth.

The petition of William Rothschild respectfully shows that he is the executor of the last will and testament of Simon Rothschild, deceased, late of the County of Monmouth; that the last will and testament of said Simon Rothschild, deceased, has been duly admitted to probate by the Surrogate of the County of Monmouth, and letters testamentary thereon issued to your petitioner; that said Surrogate, acting upon the report of an appraiser by him appointed, has assessed the value of certain bequests made in said will and has attempted to

assess and fix the tax to which the same are liable, as follows:

Legatee.	Appraised Value.	Amount of Tax.
Mount Sinai Hospital of the City of New York	$50,000	$2,500
Home for Aged and Infirm Hebrews of the City of New York	5,000	250
Montefiore Home for Chronic Invalids of the City of New York	2,500	125
Hebrew Benevolent and Orphan Asylum of the City of New York	4,000	200
United Hebrew Charities of New York	2,000	100
Educational Alliance of the City of New York	2,000	100

That said Surrogate has likewise attempted to assess and fix the value of a direction of the deceased to his brother to pay to a second cousin, Cora Lindauer, the sum of $1,000 per year during her life, the value of such direction being fixed by said Surrogate at the sum of $10,269, and a tax fixed and assessed thereon on $513.45.

That the right to fix and assess said tax is claimed under an act of the Legislature of the State of New Jersey, entitled "An Act to Tax Intestates' Estates, Gifts, Legacies, Devises and Collateral Inheritances in Certain Cases," approved May 15, 1894, and the several supplements thereto, and that said tax has been certified by said Surrogate to the Comptroller of this State and demand made upon your petitioner as executor for the payment thereof, and that your petitioner is aggrieved and dissatisfied with said appraisement and assessment and appeals therefrom because:

1. Said appraisement and assessment are contrary to law and void.

2. Because the legatees, Mount Sinai Hospital of the City of New York, Home for Aged and Infirm Hebrews of the City of New York, Montefiore Home for Chronic Invalids of the City of New York, Hebrew Benevolent and Orphan Asylum of the City of New York, United Hebrew Charities of New York, Educational Alliance of the City of New York, are within the description of churches, hospitals, orphan asylums, Bible and tract societies, religious, benevolent and charitable institutions and organizations, whose bequests are exempted from taxation by law.

3. Because no property has passed by virtue of said will from the said Simon Rothschild, nor any income therefrom transferred by inheritance, distribution, bequest, devise, deed, grant, sale or gift by him to said Cora Lindauer, and that no tax can lawfully be levied thereon.

4. Because the bequest to the Hebrew Benevolent and Orphan Asylum of the City of New York, of its own bonds to the amount of four thousand dollars, is not a passing of property by virtue of said will, within the meaning of the statute.

5. Because the taxes assessed against each of said legacies are excessive.

6. Because the tax assessed against the provision for Cora Lindauer is based upon an estimated present value of an annuity, without regard to the amount received by her.

And your petitioner therefore appeals from the assessment of said tax on the ground that the same is erroneous, and that the same may be set aside and for nothing holden and for such other relief in the premises as to the Court shall seem meet.

GREY, MCDERMOTT & ENRIGHT,
Proctors of Appellant.

(Endorsed)—Filed July 10, 1905.

MONMOUTH COUNTY ORPHANS' COURT.

IN THE MATTER OF The Estate of SIMON ROTHSCHILD, deceased.	STIPULATION.

FREEHOLD, N. J., October 5, 1905.

APPEARANCES:

McDERMOTT & ENRIGHT, on the part of William Rothschild, executor of said deceased.
EDWARD D. DUFFIELD and Mr. BACKES, on the part of the State of New Jersey.

IT IS STIPULATED AND AGREED between the counsel of the respective parties that the following facts be admitted as proved before the Court:

The deceased, Simon Rothschild, was a resident of the County of Monmouth in the State of New Jersey, and died January 9, 1905, leaving a last will and testament, the executor of which was William Rothschild, who duly qualified and took upon himself the burden of the administration of said estate. Said last will and testament was duly proved before the Surrogate of the County of Monmouth in the month of January, nineteen hundred and five. An appraisement of that part of the estate of said deceased claimed to be subject to the collateral inheritance tax was made under the direction of the Surrogate of the County of Monmouth, and a copy of same is offered and admitted in evidence and is marked Exhibit B, on the part of the appellant.

The last will and testament of Simon Rothschild, deceased, with the codicils thereto annexed and the

probate thereof and letters testamentary issued to William Rothschild, is also offered and admitted in evidence and marked Exhibit A, on the part of the appellant.

An agreement made February 21, 1905, by William Rothschild, of the first part, Mathilde Rothschild and Frederick W. Rothschild, Joseph A. Bloom and Flora R. Bloom, of the second part, and Cora Lindauer, of the third part, offered and admitted in evidence and marked Exhibit C, on the part of the appellant. Offered by the appellant and admitted by the Court.

It is admitted that part of the collateral inheritance tax amounting to $13,613.45 has been paid by William Rothschild, the executor. That the disputed items which remain unpaid are as follows:

Mount Sinai Hospital of the City of New York, legacy valued at $50,000, tax $2,500;

Home for Aged and Infirm Hebrews of the City of New York, valued at $5,000, tax $250;

Montefiore Home for Chronic Invalids of the City of New York, valued at $2,500, tax $125;

Hebrew Benevolent and Orphan Asylum of the City of New York, valued at $4,000, tax $200;

United Hebrew Charities of the City of New York, valued at $2,000, tax $100;

The Educational Alliance of the City of New York, valued at $2,000, tax $100;

Cora Lindauer, valued at $10,269, tax $513.45.

IT IS FURTHER STIPULATED as follows:

THE MOUNT SINAI HOSPITAL OF THE CITY OF NEW YORK was duly incorporated under a statute of the State of New York entitled "An Act for the incorporation of Benevolent, Charitable, Scientific and Missionary Societies," passed April 12, 1848. The original date of incorporation was January 5, 1852. The objects of the corporation were amended from

time to time, and are now declared by Chapter 365 of the Laws of 1904 of the State of New York, as follows: "The purposes and objects of the Mt. Sinai Hospital of the City of New York are hereby declared to be the support and maintenance of an institution to be known as the Mt. Sinai Hospital, for the purpose of affording dispensary service and medical and surgical aid, and nursing sick and disabled poor of the City of New York and others, of any creed or nationality."

THE HOME FOR AGED AND INFIRM HEBREWS was incorporated December 24, 1872, under the laws of the State of New York. Its objects and purposes are to maintain a home for aged and infirm persons of both sexes, of the Jewish faith, and also for the purpose of relieving all deserving Jewish applicants who may be considered by its officers worthy of the Society's bounty.

The institution is supported entirely by charitable bequests, membership fees and donations. No charge is made to inmates or patients.

HEBREW BENEVOLENT AND ORPHAN ASYLUM SOCIETY OF THE CITY OF NEW YORK was incorporated by an Act of the Legislature of the State of New York, passed February 2, 1832, and thereafter from time to time amended. It purposes are to maintain, provide for, educate and instruct during minority orphans, half-orphans and indigent children of an age not exceeding thirteen years. The Society is maintained through voluntary contributions and in part by an allowance made by the City of New York. No charge is made to inmates.

The bonds to the amount of $4,000, mentioned in testator's will, are debenture bonds unsecured by any lien. They bear interest at three per cent., but have no market. Decedent was one of the original subscribers for bonds.

EDUCATIONAL ALLIANCE was incorporated under an Act of the Legislature of the State of New York, entitled "An Act for the incorporation of Benevolent, Charitable, Scientific and Missionary Societies," passed April 12, 1848. The date of incorporation was December 16, 1889. The business and objects of the Society are the promotion of free education by the erection and maintenance of buildings in the City of New York containing library, reading and class rooms, and lecture and music halls, and by co-operation with other societies in said city. Its objects are further declared by the Act of Consolidation with the Hebrew Free School Association, May 1, 1899, as follows:

"For the purpose of promoting education, religious and civic training, moral and physical culture, the amelioration of the condition and social advancement of the residents of New York and its vicinity, and especially of those professing the Jewish religion, and maintaining and conducting for that purpose schools, synagogues, libraries, reading class and club rooms, gymnasiums, music and lecture halls and to acquire such lands and erect such buildings as may be requisite for the accomplishment of such object. Such corporation shall be conducted under Jewish auspices."

It is supported by dues from members and voluntary contributions. No charge is made to those enjoying the benefits of the institution.

THE MONTEFIORE HOME FOR CHRONIC INVALIDS OF THE CITY OF NEW YORK is a corporation organized under the laws of the State of New York, for the purpose of maintaining a home for chronic invalids in the City of New York. It is supported by charitable bequests.

THE UNITED HEBREW CHARITIES OF THE CITY OF NEW YORK is a corporation organized under the laws of the State of New York, organized for charitable works and purposes in the aid and assistance

of the deserving poor. It is maintained under Jewish auspices.

It is further stipulated that the affidavit of M. Beckhard, hereto attached, may be taken as evidence that the bonds of the Hebrew Benevolent and Orphan Asylum do not exceed, at a fair valuation, sixty-five per cent. of their par value, or $2,600 instead of $4,000 as it says; and that if called as a witness, the said M. Beckhard would so testify. The said affidavit shall have all the force and effect as though the said testimony had been given in open court in this matter.

IT IS FURTHER STIPULATED that the method adopted by the appraiser in appraising the value of the rights assessed to Cora Lindauer was by computing the present value of an annuity of $1,000 a year for the estimated expectancy of life of said Cora Lindauer, as determined by the Northampton Tables applied to the said Cora Lindauer then of the age of fifty years, and that the assessment of collateral inheritance tax was based upon an appraisal so made.

McDERMOTT & ENRIGHT,
Proctors for Appellant.
EDWARD D. DUFFIELD,
Assistant Atty.-General.

(Exhibit A, for Appellant. Last Will and Testament of Simon Rothschild, deceased.)

I, SIMON ROTHSCHILD, of West End, Monmouth County, New Jersey, do make, publish and declare this to be my last Will and Testament, hereby revoking, cancelling and annuling any and all Wills, Testaments and Codicils by me at any time made.

FIRST:—I give and bequeath to the Mt. Sinai Hospital of the City of New York, the sum of Fifty thousand dollars on the express condition, however, that the said institution shall designate and perpetuate a ward in the said Hospital consisting of not less than ten beds, to be maintained and known during the existence of the said Institution as the "Simon Rothschild Ward."

SECOND:—I give and bequeath to the Home for Aged & Infirm Hebrews of the City of New York, the sum of Five thousand dollars.

THIRD:—I give and bequeath to the Montefiore Home for Chronic Invalids of the City of New York, the sum of Twenty-five hundred dollars to be appropriated by said Institution to the dedication in perpetuity of a Bed in my memory.

FOURTH:—I give and bequeath to the Hebrew Benevolent and Orphan Asylum of the City of New York, the sum of Four thousand dollars in its own bonds in that amount now in my possession.

FIFTH:—I give and bequeath to the United Hebrew Charities of the City of New York the sum of Two thousand dollars.

SIXTH:—I give and bequeath to the Educational Alliance of the City of New York the sum of Two thousand dollars.

SEVENTH:—I give and bequeath to my beloved grandnephews Alexander Blum and William R. Blum, children of my niece Flora R. Blum, my watch and all my jewelry of which I may die possessed and I authorize my said niece Flora R. Blum to divide the same between her said children as she may deem equitable.

EIGHTH:—I give and bequeath the sum of Two thousand dollars unto Pauline Einstein (whose

mother was my first cousin) of Hechingen, Prussia; and I give and bequeath a like sum to my cousin Jacob Bernheimer of Geoppingen, Germany, whose mother was my aunt.

NINTH:—I give and bequeath to such of the daughters of my deceased cousin Myer Lindauer, of Chicago, Ill. as may be unmarried at the time of my death, the sum of Ten thousand dollars to be divided between them share and share alike.

TENTH:—I give and bequeath the sum of Fifty thousand dollars to my niece Carolina Carlebach, widow of Max Carlebach, of Frankfort, Germany; provided, however that if she should predecease me, then the said sum shall be paid to her issue her surviving in equal shares.

ELEVENTH:—I give and bequeath to Joseph Adler, of Munchen, Germany, or in the event of his death before me or his refusal or inability to act, then unto Otto Kauffman, of Stuttgart, Germany, the sum of Fifty thousand dollars, in trust nevertheless, to and for the following uses and purposes:—To invest and keep the said sum invested: to receive the income and interest thereof and to pay the net income and interest so received to my niece Caroline Ellinger, wife of Siegmund Ellinger, of Munchen, Germany, during her life, and on her death to divide the principal sum between her children her surviving, the issue of any deceased child to take the share which the parent would have taken if then living. Provided, however, that if at the time of the death of the said Caroline Ellinger there should not be living any child of her or issue of a deceased child, then the said principal sum so held in trust shall be paid to Rose Adler, wife of the said Joseph Adler, of Munchen, Germany, or if she should then be dead to her son, if then living and if not to his issue then surviving.

TWELFTH:—I give and bequeath the sum of Fifty thousand dollars to my niece Rose Adler, wife of Joseph Adler, of Munchen, Germany, or should she predecease me, to her son, if then living, and if not to his issue then surviving.

THIRTEENTH:—I give and bequeath the sum of Fifty thousand dollars to my niece Rosa Kauffman, wife of Otto Kauffman of Stuttgart in the Empire of Germany, or should she predecease me, to her children me surviving, the issue of any deceased child to take the share which the parent would have taken if then living.

FOURTEENTH:—I give and bequeath the sum of Fifty thousand dollars to my nephew Julius Rothschild, of Geoppingen, in the Empire of Germany, or should he predecease me, to his children me surviving, the issue of any deceased child to take the share which the parent would have taken if then living.

FIFTEENTH:—I give and bequeath to my grand-nephews Alexander Blum and William R. Blum the sum of Twenty-five thousand dollars, provided however that during the minority of each, his share of said fund shall be invested for his benefit by my niece Flora R. Blum and my nephew Joseph R. Blum (who are hereby appointed Trustees of the said funds for that purpose) and the interest thereof accumulated and as soon as each grand-nephew shall attain his majority, his share of the said fund together with all accumulations of interest and income thereon shall be paid over to him, but if either of my grand-nephews should die before attaining his majority, then his share together with the accumulated interest and income thereon shall go to his surviving brother.

SIXTEENTH:—I give and bequeath to my grand-nephew Wilfred Rothschild the sum of Twelve thousand five hundred dollars, provided, however,

that during his minority said sum shall be invested for his benefit, and the income thereof accumulated; and for the purpose of making such investment and of collecting the income thereof and of holding the said fund and the accumulated income until his arrival at his majority, I appoint my nephew Frederick W. Rothschild, and his wife Sarah as the Trustees of the said fund, and I direct them to pay over the amount of the said fund, together with all accumulated income thereon, to my said grand-nephew Wilfred on his arrival at the age of twenty-one.

SEVENTEENTH:—I direct that all the legacies and bequests hereinabove made shall be paid over to the respective legatees and beneficiaries free and discharged of any transfer of succession tax, and that the amount of such transfer or succession taxes shall be paid out of my residuary estate.

EIGHTEENTH:—I give, devise and bequeath all the rest, residue and remainder of my estate, both real and personal wheresoever and whatsoever the same may be, of which I may die seized or possessed unto my brother William Rothschild of West End, Long Branch, New Jersey, to have and to hold the same absolutely and forever; provided however that if he should predecease me, then I give, devise and bequeath my said residuary estate unto his children me surviving, the issue of such of them as may predecease me, to take the share which the parent would have taken if then living.

NINETEENTH. Should any legatee or beneficiary under this my last Will and Testament attack the validity of this my last Will for any reason, or upon any ground whatsoever then it is my purpose and desire and I hereby will and declare that any legacy herein contained for the benefit of the party or parties so attacking my said Will shall thereby be revoked and the said legacy shall in that event lapse and become void.

TWENTIETH:—I authorize and empower my Executor or executors hereinafter named, to sell the whole or any part of the real estate of which I may die seized, at such time or times, in such manner, upon such terms and at such prices as to him or them shall seem meet and proper.

I direct my executor or executors to pay all my bequests to Charitable Institutions within six months from the date of my death, and I also request my said executor or executors to cause to be erected over my grave a monument of the same character as is now placed over the grave of my deceased brother.

TWENTY-FIRST: I nominate, constitute and appoint my said brother William Rothschild Sole Executor of this my Last Will and Testament. In the event of his death, before me, I nominate, constitute and appoint my sister-in law Mathilda Rothschild, my nephew Frederick W. Rothschild, my niece Flora R. Blum and my nephew Joseph A. Blum, Executors of this my Last Will and Testament, and none of my executors or executrices shall be required to give or file any bond or security to qualify as such.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal, this Twenty-ninth day of January in the year one thousand nine hundred and three.

SIMON ROTHSCHILD [L. S.]

The foregoing instrument was at the date thereof, subscribed, sealed, published and declared by the above named Testator, Simon Rothschild as and for his last Will and Testament in the presence of us, who at his request, in his presence and in the presence of each other have at the same time subscribed our names as witnesses thereto.

The words on preceding page 'and none of my Executors or executrices shall be required to give or

file any bond or security to qualify as such " were interlined before execution of the Will by the testator.

GIBSON PUTSEL,
13 E. 57th St. New York City.
WM. R. ROSE,
307 W. 81st St. New York City.

I, SIMON ROTHSCHILD, of West End, Monmouth County, New Jersey, do make, publish and declare this to be a Codicil to my last Will and Testament, bearing date the Twenty ninth day of January, Nineteen hundred and three.

FIRST:—I do hereby revoke, cancel and annul the bequests made by me, in and by the Fifteenth Article of my last Will and Testament, to my grandnephews Alexander Blum and William R. Blum, and I do also hereby revoke, cancel and annul the bequests made by me in and by the Sixteenth Article of my Last Will and Testament, to my grandnephew Wilfred Rothschild.

SECOND:—Except as herein modified, I do hereby ratify and confirm my said last Will and Testament in each and every respect.

IN WITNESS WHEREOF, I have hereunto set my hand and seal, this Twenty-eighth day of June, Nineteen hundred and four.

SIMON ROTHSCHILD [L. S.]

The foregoing instrument was at the date thereof subscribed, sealed published and declared by the above-named testator, Simon Rothschild, as and for a codicil to his last Will and Testament, dated the 29th day of January, 1903, in the presence of us, who, at his request, in his presence, and in the presence of each other, have at the same time subscribed our names as witnesses thereto.

GIBSON PUTZEL, 13 E 57" St., N. Y. City.
BENJ. G. PASKUS, 22 East 89" St., N. Y. City.

I, SIMON ROTHSCHILD, of West End, Monmouth County, New Jersey, do make, publish and declare this to be a Second Codicil to my last Will and Testament, bearing date the Twenty-ninth day of January, Nineteen hundred and three.

FIRST:—I hereby modify and amend the Ninth Article of my Will so that the same shall read as follows:

I give and bequeath to the daughters of my deceased cousin Myer Lindauer of Chicago, Ill., as may be living at the time of my death, the sum of Ten thousand dollars to be divided between them share and share alike.

SECOND:—I hereby direct my brother William or if he should predecease me then I direct his two children to pay to Cora Lindauer, one of the daughters of the aforesaid Myer Lindauer, the sum of One thousand dollars in each and every year during her life, and to evidence the assumption of this obligation on the part of my brother or of his children I direct him or them as the case may be to execute and deliver to the said Cora a written agreement to the foregoing effect, the execution and delivery of said agreement and the performance thereof to be a sufficient satisfaction of the direction herein contained.

THIRD:—Except as herein modified I do hereby ratify and confirm my said last Will and Testament in each and every respect.

WITNESS my hand and seal this Fifth day of January, 1905.

SIMON ROTHSCHILD [L. S.]

The foregoing instrument was at the date thereof subscribed, sealed, published and declared by the above named testator, Simon Rothschild, as and for

a second codicil to his last Will and Testament, dated the 29th day of January, 1903, in the presence of us, who, at his request, in his presence and in the presence of each other, have at the same time subscribed our names as witnesses thereto.

The word "daughters" on the first page stricken out and the word "second" in the attestation clause interlined before execution.

LEVI BAMBERGER Hotel Netherland, New York City

GIBSON PUTZEL, 13 E 57" St., New York City.

(Exhibit "B," for Appellant, Surrogate's Assessment).

OFFICE OF THE

SURROGATE OF THE COUNTY OF MONMOUTH,

FREEHOLD, NEW JERSEY, May 18th, 1905.

To J. WILLARD MORGAN,
State Comptroller:

SIR—

In compliance with the Collateral Inheritance Tax Laws of the State, I herewith transmit my assessment and the tax thereon payable by the

Estate of Simon Rothschild,
Date of Death, January 9th, 1905.
Executor William Rothschild,
Administrator.....
P. O. Address—Send bill to Rose & Putzel, Attys., #128 Broadway, New York City.
Value of Realty.....$
Value of Personalty.....$327,500.00
Value of Annuity, Life Estate or term of years.....$10,269.00

Name of Legatee or Beneficiary.	Value.	Tax.
Mt. Sinai Hospital of the City of New York...	$50,000.00	$2,500.00
Home for Aged and Infirm Hebrews of the City of New York.....	5,000.00	250.00
Montefiore Home for Chronic Invalids of the City of New York.	2,500.00	125.00
Hebrew Benevolent & Orphan Asylum of the City of New York.	4,000.00	200.00
United Hebrew Charities of the City of New York.....	2,000.00	100.00
The Educational Alliance of the City of New York.....	2,000.00	100.00
Pauline Einstein	2,000.00	100.00
Daughters of Myer Lindauer	10,000.00	500.00
Caroline Carlebach.....	50,000.00	2,500.00
Jos. Adler (in Trust).....	50,000.00	2,500.00
Rosa Adler.....	50,000.00	2,500.00
Rosa Kaufman	50,000.00	2,500.00
Julius Rothschild.....	50,000.00	2,500.00
Cora Lindauer.....	10,269.00	513.45
	$337,769.00	$16,888.45

Total Assessment.....$337,769.00
Total Tax $16,888.45
Remarks.....

I do hereby certify that the foregoing statement is true and correct.

(Signed) David S. Crater,
Surrogate.

(Exhibit C for Appellant, Annuity Agreement.)

AGREEMENT, made and entered into, this twenty first day of February, in the year one thousand, nine hundred and five, by and between WILLIAM ROTHSCHILD, of West End, Monmouth County, State of New Jersey, party of the first part, MATHILDE ROTHSCHILD and FREDERICK W. ROTHSCHILD, of the same place, JOSEPH A. BLUM and FLORA A. BLUM, of the City of New York, individually and as Trustees under a certain Deed of Trust dated the 23d day of January, 1905, made and executed by William Rothschild to them, parties of the second part, and CORA LINDAUER, party of the third part.

WHEREAS in and by the Second Codicil, dated the fifth day of January, 1905, to the last Will and Testament of Simon Rothschild, deceased, which said Will and Codicil were duly admitted to probate by the Surrogate of Monmouth County, on the 13th day of January, 1905, there is the following provision:

> "SECOND:—I hereby direct my brother "William, or if he should predecease me, "then I direct his two children to pay to Cora "Lindauer, one of the daughters of the afore- "said Myer Lindauer, the sum of One thou- "sand dollars in each and every year during "her life, and to evidence the assumption of "this obligation on the part of my brother "or of his children, I direct him or them, as "the case may be, to execute and deliver to "the said Cora a written agreement to the "foregoing effect—the execution and deliv- "ery of said agreement and the performance "thereof to be a sufficient satisfaction of the "direction herein contained."

AND WHEREAS William Rothschild is the residuary legatee under the last Will and Testament of said Simon Rothschild, deceased, and has trans-

ferred the said residuary estate under a Deed of Trust made by him, dated January 23d, 1905, unto the parties of the second part for the uses and purposes in said Deed of Trust set forth, and

WHEREAS the said parties of the second part are the beneficiaries under the said Deed of Trust, and in accepting the said residuary estate and the benefits thereof, they have agreed to take the same subject to the burdens imposed by the said Codicil to the last Will and Testament of Simon Rothschild, deceased, and have agreed to enter into this agreement.

NOW THEREFORE, for and in consideration of the premises and the sum of One Dollar to the party of the first part and the parties of the second part hereto in hand paid by the party of the third part, the receipt whereof is hereby acknowledged, the parties of the first and second part hereby jointly and severally, for themselves and their respective executors, administrators and assigns, covenant and agree to and with the party of the third part that they, the parties of the first and second part will pay to Cora Lindauer annually during the term of her life the sum of one thousand dollars in quarterly instalments—the first payment having been made on the 18th day of February, 1905.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals, the day and year first above written.

WM. ROTHSCHILD [SEAL.]
MATHILDE ROTHSCHILD [SEAL.]
FREDERICK W. ROTHSCHILD [SEAL.]
JOSEPH A. BLUM [SEAL.]
FLORA R. BLUM [SEAL.]

In presence of
GIBSON PUTZEL.

MONMOUTH COUNTY ORPHANS' COURT.

In the Matter of The Estate of Simon Rothschild, deceased. Collateral Inheritance Tax Appeal.	Decree.

William Rothschild, as executor of the last will and testament of Simon Rothschild, deceased, having filed his appeal from the action of the Surrogate of the County of Monmouth assessing and fixing certain valuations for the estates and annuities passing under said will, and assessing certain taxes thereon as due to the State of New Jersey under an act to tax intestates' estates, gifts, legacies, &c., as follows:

Name of Legatee or Beneficiary.	Value.	Tax.
Mt. Sinai Hospital of the City of New York.....	$50,000 00	$2,500 00
Home for Aged and Infirm Hebrews of the City of New York.....	5,000 00	250 00
Montefiore Home for Chronic Invalids of the City of New York.....	2,500 00	125 00
Hebrew Benevolent & Orphan Asylum of the City of New York.....	4,000 00	200 00
United Hebrew Charities of the City of New York	2,000 00	100 00
The Educational Alliance of the City of New York	2,000 00	100 00
Cora Lindauer.....	10,269 00	513 45

And said appeal coming on to be heard in the presence of McDermott & Enright, of counsel with appellant, and Edward D. Duffield, Assistant Attorney-General for the State, and the arguments of counsel being heard and considered, and the Court being of the opinion that the valuation of the bequest to the Hebrew Benevolent and Orphan Asylum should be reduced from four thousand dollars to two thousand six hundred dollars, and that the tax assessed thereon should be reduced to one hundred and thirty dollars; and that said valuations and assessments should in other respects be confirmed; it is, on this nineteenth day of January, nineteen hundred and six, ordered, that the valuation assessed by the Surrogate of the County of Monmouth upon the legacy of the Hebrew Benevolent and Orphan Asylum aforesaid be reduced from four thousand dollars to two thousand six hundred dollars, and that the tax assessed thereon be reduced from two hundred dollars to one hundred and thirty dollars, and that said valuation and tax be and the same hereby are fixed at said amounts.

It is further ordered, adjudged and decreed that property of which the said Simon Rothschild died possessed while a resident of the State of New Jersey has passed by his last will and testament aforesaid to said

Mt. Sinai Hospital of the City of New York,
Home for Aged and Infirm Hebrews of the City of New York,
Montefiore Home for Chronic Invalids of the City of New York,
Hebrew Benevolent and Orphan Asylum of the City of New York,
United Hebrew Charities of the City of New York,
The Educational Alliance of the City of New York,
Cora Lindauer.

That the property so passed is of the fair cash value assessed and fixed by said Surrogate except as aforesaid reduced and that said property is liable to the tax fixed and assessed by said Surrogate except as above reduced; and that the action of the Surrogate in assessing and fixing said valuations and tax be and hereby is affirmed; and that said valuations and tax be and the same hereby are fixed at the respective amounts assessed and fixed by the Surrogate of the County of Monmouth aforesaid (except as above reduced), and that the appeal of the said William Rothschild, executor, &c. (except as to the tax assessed against the Hebrew Benevolent and Orphan Asylum), be dismissed but without costs.

JOHN E. FOSTER,
Judge.

MONMOUTH COUNTY ORPHANS' COURT.

IN THE MATTER
OF
The Estate of SIMON ROTHSCHILD, deceased.
Collateral Inheritance Tax Appeal.

William Rothschild, executor of the last will and testament of Simon Rothschild, deceased, hereby demands an appeal from a certain order and decree of the Monmouth County Orphans' Court made on the nineteenth day of January, nineteen hundred and six, fixing and affirming certain collateral inheritance taxes assessed upon alleged property passing to the following:

Mt. Sinai Hospital of the City of New York,
Home for Aged and Infirm Hebrews of the City of New York,

Montefiore Home for Chronic Invalids of the City of New York,
Hebrew Benevolent and Orphan Asylum of the City of New York,
United Hebrew Charities of the City of New York,
The Educational Alliance of the City of New York,
Cora Lindauer,

under the will of Simon Rothschild, deceased.

McDermott & Enright,
Proctors for Appellant.

PREROGATIVE COURT OF THE STATE OF NEW JERSEY.

To the Ordinary of the Prerogative Court of the State of New Jersey:

The petition of William Rothschild respectfully shows that he is the executor and sole residuary legatee under the last will and testament of Simon Rothschild, deceased; that by an order and decree of the Monmouth County Orphans' Court, heretofore made on the day of January, nineteen hundred and six, it was adjudged and decreed that certain property had passed under the last will and testament of Simon Rothschild, deceased, to certain individuals and corporations of the fair cash value and subject to payment of collateral inheritance tax to the State of New Jersey, all as follows:

	Value.	Tax.
Mt. Sinai Hospital of the City of New York.....	$50,000 00	$2,500 00
Home for Aged and Infirm Hebrews of the City of New York.....	5,000 00	250 00
Montefiore Home for Chronic Invalids of the City of New York.....	2,500 00	125 00

Hebrew Benevolent and Orphan Asylum of the City of New York.....	2,600 00	130 00
United Hebrew Charities of the City of New York.	2,000 00	100 00
The Educational Alliance of the City of New York.	2,000 00	100 00
Cora Lindauer.....	10,269 00	513 45

and affirming the action of the Surrogate of the County of Monmouth in assessing the valuations of said property and the tax assessed thereon as aforesaid, except in that the valuation and tax assessed against the Hebrew Benevolent and Orphan Asylum was ordered to $2,600.

Your petitioner further shows that he is aggrieved by the order and decree of said Orphans' Court in so far as the same affirms the action of the Surrogate aforesaid, and the tax by him assessed; and in that it is adjudged that property has passed under the will of said Simon Rothschild, deceased, to the persons above named; and in so far as said order and decree adjudges that property has passed under said will and subject to taxation of the values found and affirmed by said decree; and in so far as said order and decree adjudges that said estate is liable to taxation in the several amounts found and affirmed by said decree; and in so far as said decree dismisses the appeal of your petitioner from the action of the Surrogate of the County of Monmouth aforesaid.

Your petitioner appeals from the several parts of said order and decree aforesaid, upon the grounds, among others, that no property has passed by virtue of the will of said Simon Rothschild, deceased, to the said Cora Lindauer; that no property has passed under and by virtue of said will subject to taxation to said Hebrew Benevolent and Orphan Asylum, the testamentary provision for its benefit being only the forgiveness of a debt; and on the further ground that the Mt. Sinai Hospital of the City of New York, Home for Aged and Infirm Hebrews of the City of

New York, Montefiore Home for Chronic Invalids of the City of New York, Hebrew Benevolent and Orphan Asylum of the City of New York, United Hebrew Charities of the City of New York, the Educational Alliance of the City of New York, come within the description of churches, hospitals, orphan asylums, public libraries, bible and tract societies, religious, benevolent and charitable institutions and organizations, and as such are exempt from the taxes by said decree fixed and affirmed.

And on the further ground that the alleged bequest to Cora Lindauer was improperly and excessively appraised, among other things, in that said appraisal was based upon the appraiser's estimate of the probable duration of her life rather than upon the actual duration of life.

Your petitioner therefore prays that the order and decree of the Monmouth County Orphans' Court aforesaid be reversed and set aside, and that your petitioner may have such relief in the premises as to this Court may seem meet.

McDermott & Enright,
Sols. of Complainant for William Rothschild, Executor.

(Endorsed)—Filed Jany. 30, 1906.

PREROGATIVE COURT OF NEW JERSEY.

In the Matter of The Collateral Inheritance Tax on the Estate of Simon Rothschild, deceased.	Opinion.

Magie, *Ordinary*:

This is an appeal from an order of the Orphans' Court of Monmouth County, affirming the appraisal and assessment of the Surrogate of that county in respect to certain legacies given by the will of Simon Rothschild, deceased, as a resident of that county, under the provisions of the act entitled "An Act to tax intestates' estates, gifts, legacies, devises and collateral inheritances in certain cases"; approved May 16, 1894 (*Laws, 1894, p. 318*).

No objection has been opposed to the jurisdiction of this Court to review the order of the Orphans' Court, and such orders have been heretofore reviewed on appeal (*Alfred University* v. *Hancock, 46 Atl. Rep., 178; Hoyt* v. *Hancock, 20 Dick.* (*65 N. J. Eq.*), *688; In re Vineland Historical Society, 21 Dick.* (*66 N. J. Eq.*), *291*).

The assessments complained of relate to impositions of the tax in respect to various legacies given by said will, and appellant's counsel properly admits that the legatees affected thereby may be divided into three classes.

One class of such legatees consists of corporations to whom legacies of various amounts are bequeathed, and which, by the stipulation of counsel presented to the Orphans' Court, appear to be charitable institutions which would be the subject of the

exemptions specified in Section 1 of the Collateral Inheritance Tax Law, if they were corporations obtaining their corporate existence and functions under the laws of this State. But it is conceded that each one of them is a corporation of the State of New York, and not of this State. They, therefore, fall within the doctrine declared in this Court in *Alfred University* v. *Hancock, 46 Atl. R., 178*, which construed the exemption in question as applicable only to charitable institutions created by our laws. The argument of appellant's counsel is, in this respect, directed to questioning the propriety of that decision. Every court may, doubtless, review and overrule its decisions in previous cases. No decision should be overruled except upon the clearest establishment of error, and when the overruling may not do serious wrong. But the decision in the case referred to was made about ten years ago. Assessments have, doubtless, since been made upon its doctrine. It ought not to be now overruled except on the clearest grounds. The decision follows pertinent decisions in other States under similar laws, and I find no reason to question its entire accuracy. If erroneous, it must be so pronounced in a reviewing court.

One of this group, " The Hebrew Benevolent and Orphan Asylum," was the legatee, under testator's will, of four of its own debenture bonds, which had been subscribed for and which had been held by testator. Under the evidence before the Orphans' Court the valuation of these bonds was held to be excessive and was reduced to an amount found to be the market value thereof.

But it was contended in the Orphans' Court, and the contention is repeated here, that no assessment could be made upon this gift. It is insisted that such a gift only released to a debtor evidences of his debt held by his creditor.

What may be taxed under the Collateral Inheritance Tax Law is property which passes by will, if not within the exemptions therein specified. The debenture bonds in question were the property of tes-

tator. When he bequeathed them to the Asylum, the property passed from him to it. It might cancel the bonds, and so relieve itself of the obligation they evidence, or it might probably transfer them to any one who might be willing to pay their value. In my judgment, the tax upon their value was properly imposed.

One other of the legatees is claimed to be exempt because of the provisions contained in the supplement to the Collateral Inheritance Tax Act, approved May 15, 1898 (*Laws 1898, p. 106*). By this act, corporations organized for certain specified objects, whether organized under the laws of this or any other State, are accorded exemption from this tax.

The legatee in respect to which this exemption is claimed is shown to have acquired its corporate existence and powers under an act of the State of New York, the terms of which permitted incorporation for various objects. The acquisition of corporate powers for certain of the permitted objects would probably bring the corporation within the exemption of the supplement. The acquisition of corporate powers for other of the permitted objects would not bring the corporation within the exemption. But the obvious test of exemption is not incorporation under an act permitting incorporation for objects that would exempt, but incorporation for objects that entitle to exemption. An examination of the objects and purposes for which this corporation has acquired its powers does not disclose them to be such as exempt under this legislation.

The remaining question is whether any property passed to Cora Lindauer by said will which may be taxed under said act.

By the testator's will, all his residuary estate was left to his brother William, unless he predeceased testator, in which case it was left to the children of his brother who should survive testator. By the second codicil to his will testator directed his brother William (unless he should predecease him, or in that

event, his children) to pay to Cora Lindauer $1,000 a year during her life, and directed him or them to execute to her a written agreement to the foregoing effect.

In my judgment, the gift by this codicil was a charge upon the residuary estate given to his brother if he survived testator (as he did), and his provision for a recognition of the indebtedness was collateral to the charge and was therefore property which passed by his will to Cora Lindauer. The property thus passed was an annuity for life, and its value may properly be fixed by a determination of its worth at testator's decease, considered in the light of the legatee's probability of life.

All the objections having been found insufficient to produce a reversal, the order appealed from is affirmed.

Filed April 24, 1906.

NEW JERSEY PREROGATIVE COURT.

IN THE MATTER OF The Collateral Inheritance Tax assessed against the Estate of SIMON ROTHSCHILD, deceased.	On Appeal from the Monmouth County Orphans' Court. ORDER OF AFFIRMANCE.

This cause coming on to be heard in the presence of Messrs. McDermott and Enright, of counsel for the Estate of Simon Rothschild, deceased, and of Edward D. Duffield, Assistant Attorney-General of the State of New Jersey, for said State, and the Court having duly considered the matter and being of opinion that the order made by the Orphans' Court of Monmouth Couuty is, in all respects, correct and should be affirmed;

It is, on this first day of May, in the year of our Lord one thousand nine hundred and six, on motion of Edward D. Duffield, Assistant Attorney-General of the State of New Jersey, ordered, adjudged and decreed that the order of the Orphans' Court of the County of Monmouth, heretofore made in the above stated cause, be and the same hereby is in all things affirmed, with costs to be taxed.

W. J. MAGIE,
Ordinary.

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PREROGATIVE COURT OF THE STATE OF NEW JERSEY.

IN THE MATTER OF The Collateral Inheritance Tax on the Estate of SIMON ROTHSCHILD, deceased.	On Appeal from Monmouth County Orphans' Court. NOTICE OF APPEAL.

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William Rothschild hereby appeals from the final decree made in this Court in the above matter on the first day of May, nineteen hundred and six, and from every part thereof, to the Court of Errors and Appeals in the last resort in all causes.

Dated May 19, 1906.

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McDERMOTT & ENRIGHT,
Solicitors of William Rothschild, Appellant.

JOHN M. ENRIGHT,
Of Counsel.

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

JOHN M. ENRIGHT,
Of Counsel with Appellant.

40 (Endorsed)—Filed May 22, 1906.

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

Your petitioner, William Rothschild, the appellant herein, respectfully shows:

That your petitioner is aggrieved by a final decree made in the Prerogative Court by his Honor William J. Magie, Ordinary, bearing date the first day of May, nineteen hundred and six, in the matter of the collateral inheritance tax on the estate of Simon Rothschild, deceased, and wherein your petitioner was an interested party in this respect, to wit, in that said decree affirmed a certain order and decree of the Monmouth County Orphans' Court made on the nineteenth day of January, nineteen hundred and six, dismissing your petitioner's appeal from the action of the Surrogate of the County of Monmouth assessing and fixing certain valuations for estates and annuities alleged to have passed under the will of Simon Rothschild, deceased, of which your petitioner is executor; and said decree of the Monmouth County Orphans' Court further adjudging that property had passed under said will and was of the fair cash value assessed and fixed by said Surrogate (except as therein reduced), and that said property was liable to the tax fixed and assessed by said Surrogate of said county aforesaid.

Your petitioner humbly appeals from the decree of the Prerogative Court, upon the ground that the same is erroneous in affirming the decree of the Orphans' Court, and upon further grounds, among others, that no property has passed by virtue of the will of said Simon Rothschild, deceased, to the said Cora Lindauer; that no property has passed under and by virtue of said will, subject to taxation, to said Hebrew Benevolent and Orphan Asylum of the City of New York, the testamentary provision for its benefit being only the forgiveness of debt; that the Mount Sinai Hospital of the City of New York, The Home for

Aged and Infirm Hebrews of the City of New York, The Montefiore Home for Chronic Invalids of the City of New York, The Hebrew Benevolent and Orphan Asylum of the City of New York, The United Hebrew Charities of the City of New York, the Educational Alliance of the City of New York come within the description of churches, orphan asylums, public libraries, bible and tract societies, and benevolent institutions and organizations, and as such are exempt from the taxes by said decree fixed and affirmed; that the alleged bequest to Cora Lindauer was unlawfully and excessively appraised, among other things, in that said appraisal was based upon the appraiser's estimate of the probable duration of her life rather than upon the actual duration of life, all as adjudged, decreed and affirmed by the order and decree of the Orphans' Court affirmed by the decree of the Prerogative Court as aforesaid.

Your petitioner therefore prays that the decree of the Ordinary may be reversed, set aside and for nothing holden, and that your petitioner may have such relief in the premises as to this Honorable Court may seem meet.

McDermott & Enright,
Solicitors and of Counsel with
William Rothschild, Appellant.

(Endorsed)—Filed May 22, 1906.

(Formal Answer to Petition of Appeal.)