

# I N D E X

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FINAL DECREE.

(Filed May 15, 1923.)

IN CHANCERY OF NEW JERSEY.

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Between		10
EMILY ALLEN ELFRETH,	}	
Exec., etc.,		
Complainant,		
and		
CHARLES J. ALLEN, Exec.,	}	On Bill, &c.
etc., <i>et als.</i> ,		Final Decree.
Defendants.		

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This cause coming on to be heard in the presence of Messrs. McCarter & English, and Charles DeF. Besore, solicitors for and of counsel with the complainant, and Peter Backes, and William D. Lippincott, solicitors for and of counsel with the defendants, and it appearing that Samuel L. Allen, in his lifetime, and William H. Roberts, one of the defendants herein, were co-partners trading under the firm name of Samuel L. Allen & Co., in which partnership, Elizabeth H. Richie was a special partner to the extent of \$40,000, and to which partnership Samuel L. Allen contributed the sum of \$30,000 capital, and William H. Roberts contributed the sum of \$15,000, capital; and that during the continuance of the co-partnership the net profits were divided between the said partners Allen and Roberts, on the basis of two-thirds to the said

Samuel L. Allen, and one-third to the said William H. Roberts.

And it further appearing that the said co-partnership agreement provided for the formation of a corporation by the surviving partner and the legal representatives of the deceased partner, upon the death of either the said Samuel L. Allen, or the said William H. Roberts, and that they should take stock in the said corporation in proportion to  
10 their respective interests in the said business.

And it further appearing that the said Samuel L. Allen died on March 28, 1918, leaving a last will and testament, which has been duly probated, wherein, and whereby, he did appoint Emily Allen Elfreth, the complainant, Sarah H. Allen, Charles J. Allen, Elizabeth R. Allen and Susan J. Allen, all defendants herein, as the executors and trustees thereof.

And it further appearing that the said William  
20 H. Roberts, the surviving partner, did organize, under the laws of the Commonwealth of Pennsylvania, a corporation known as S. L. Allen & Co., Inc., with an authorized capital stock of \$1,500,000, divided into \$1,000,000 common stock having sole voting privileges (of which \$800,000 has been issued and is still outstanding), and \$500,000 preferred stock having no voting privileges (of which \$450,000 has been issued, and is still outstanding), and did, as such surviving partner, convey, assign, transfer,  
30 and set over to the said S. L. Allen & Co., Inc., certain of the property and assets of the said partnership.

And it further appearing that the said William H. Roberts, as surviving partner, in the settlement of the co-partnership accounts between himself and the legal representatives of the estate of the said Samuel L. Allen, did apportion the capital stock

of the said S. L. Allen & Co., Inc., upon his calculation, between himself, and the Allen Estate, as follows: to the Allen Estate, \$845,389, and to himself, the said William H. Roberts, \$482,254.98, but in such division of stock, did reserve out of the Allen Estate an apportionment of \$342,833.33, which he estimated was required to pay excess profits, inheritance, and personal estate taxes owed by the said Allen Estate, certain family expenses, and some of the legacies, so that, after making certain adjustments, there was allotted to the said Allen Estate \$514,800 in capital stock of the said S. L. Allen & Co., Inc., \$127,100 being preferred stock, and \$387,700 being common stock, and that the said William H. Roberts took of the said capital stock of the said corporation after adjustments, \$469,200, \$115,900, being preferred stock, and \$353,300 being common stock. 10

And it further appearing that the executors and trustees of the estate of the said Samuel L. Allen have applied a large portion of the preferred stock so allotted to them in payment, at par, of legacies given by the said decedent's last will, and that Charles J. Allen, the son of the decedent, and one of the executors and trustees of his estate, who is entitled under the said last will, to one-sixth of the residue of the estate, absolutely, has received as his share capital stock of the said S. L. Allen & Co., Inc., and now holds \$64,600 in common stock, and \$15,600 in preferred stock. 20

And it further appearing that in the apportionment of the said stock the said William H. Roberts divided the same in such a way as not to give a two-thirds interest in the stock having voting power to the legal representatives of the said Samuel L. Allen, and one-third of such stock to himself. 30

And it further appearing that common stock of

the par value of \$59,000 has been issued for cash at par to certain persons associated in the business of the said corporations, and that the shares of common stock held by the said William H. Roberts have now been reduced to shares of the par value of \$313,300 by a transfer of shares of the par value of \$40,000 to other persons associated with him in the business of the corporation, so that shares of common stock of the par value of \$99,000 are now held by  
10 persons associated with him in the conduct of the business of the said corporation.

And the Court being of opinion that in the method of apportioning the said stock, as adopted by the said William H. Roberts, he has fallen into error, and the distribution of the shares of common stock as made by him is not in accordance with the partnership agreement.

And it further appearing that Sarah H. Allen, Charles J. Allen, Elizabeth R. Allen, and Susan J.  
20 Allen, as executors and trustees, have, in pursuance of an order of this Court, made in this cause, filed in this Court their account as executors and trustees of the said Samuel L. Allen, deceased; and that the said account was duly examined and passed upon by Samuel Powis, a special master of this Court, who has filed his report and stated said account, and no exceptions have been filed to the said account.

And it further appearing that the executors and trustees of the said Samuel L. Allen, deceased, have  
30 asked to be relieved from their said duties, and discharged therefrom, and that a new trustee should be named and appointed in their place and stead.

And it further appearing that the best interests of the said estate require that the executors and trustees named under the last will and testament of the said Samuel L. Allen, deceased, should be re-

lieved and discharged from further administering said estate.

And it further appearing that the defendants, William H. Roberts, and the legal representatives of the estate of the said Samuel L. Allen, excepting the complainant, Emily Allen Elfreth, together with their associates, who are the holders of the capital stock of S. L. Allen & Co., Inc., did create a voting trust of their respective stockholdings in the said company, and did therein and thereby designate 10  
David Lippincott, William H. Roberts and Elizabeth R. Allen as the voting trustees of said stock.

And it further appearing that the said voting trust is void and of no effect, and should be surrendered, set aside, and for nothing holden.

It is, thereupon, on this 15th day of May, in the year of our Lord one thousand nine hundred and twenty-three (1923), by Edwin Robert Walker, Chancellor of the State of New Jersey, ordered, adjudged and decreed that at the time of the death of 20  
Samuel L. Allen, deceased, the capital of the said Samuel L. Allen invested in the partnership of S. L. Allen & Company was the sum of \$30,000; and the capital of the said William H. Roberts in the said partnership was the sum of \$15,000; and the capital of the said Elizabeth H. Richie was the sum of \$40,000, which said sum of \$40,000 the said Elizabeth H. Richie was entitled to have paid to her before any sums were paid to the said Samuel L. Allen and the said William H. Roberts, and upon which 30  
said sum of \$40,000 the said Elizabeth H. Richie was entitled to receive profits at the rate of 10% per annum, so long as said capital remained unpaid to her, and that after the firm creditors had been paid and satisfied and the said Elizabeth H. Richie had received her capital, together with all accumulated income thereon, the said Samuel L. Allen was en-

- titled to be repaid such sums as had been invested by him in the said firm from time to time from the profits payable to him, as shown by the partnership agreement and the books of the partnership; and the said William H. Roberts was entitled to be repaid such sums as had been invested by him in the said firm from time to time from the profits payable to him, as shown by the partnership agreement and the books of the partnership; and the said Samuel
- 10 L. Allen was then entitled to be repaid his capital of \$30,000, and the said William H. Roberts his capital of \$15,000, and if any accumulated surplus or undivided profits of the said partnership then remained, the said Samuel L. Allen was entitled to a two-thirds interest and the said William H. Roberts to a one-third interest therein, and to be paid the same accordingly, and that all of said sums were due and payable to the said partners on June 30, 1918, and that the interest of the said Samuel L.
- 20 Allen in the said firm was a two-thirds interest, and the interest of the said William H. Roberts in said firm was a one-third interest, and that in the corporation of S. L. Allen & Co., Inc., formed and organized by the defendant, William H. Roberts, for the purpose of taking over the assets and continuing the business of said co-partnership, the executors of the estate of Samuel L. Allen, deceased, were entitled to receive such issue of stock as would insure to them a two-thirds participation in the voting con-
- 30 trol of said corporation and in the surplus accumulated and to be accumulated by said corporation, not including, however, such profits as had been reinvested by the said Samuel L. Allen in the said partnership during his lifetime, and were entitled to receive, also, for such sums as should be reinvested by them in the said corporation from the profits left with the said partnership by the said Samuel L.

Allen, in his lifetime, such stock or securities at par as should equal the amount of such sums so left with the said partnership and of such character as to participate in dividends and assets upon dissolution equally, with the stocks and securities issued to the said William H. Roberts for and representing his investment of profits left by him with the said partnership.

It is further ordered, adjudged and decreed that in order to vest in the estate of the said Samuel L. 10  
Allen, deceased, its true and proper interest in the assets of the said S. L. Allen & Co., Inc., the said defendants, William H. Roberts, Sarah H. Allen, Charles J. Allen, Elizabeth R. Allen and Susan J. Allen, together with the said complainant, Emily Allen Elfreth, on or before the 30th day of June, 1923, do cause the said S. L. Allen & Co., Inc., to take such action as may be appropriate to reduce its present authorized capital stock to the sum of \$1,250,000, to be divided into \$450,000 par value of 20  
preferred stock, and \$800,000 par value of common stock, at the par value of \$100 per share, and to sub-divide the said common stock into two classes, to be known as "Class A" and "Class B," respectively, of which "Class A" common stock shall have the sole voting power and privileges, and to be the controlling stock of the said corporation, and to be entitled to such dividends as the directors may declare thereon from time to time, and "Class B" 30  
common stock shall have no voting power, and be entitled to no control or management of the affairs of the said corporation, but shall be entitled to the same dividends as the directors may declare upon "Class A" common stock from time to time, up to, but not exceeding, 7% in any one year, and to participate equally with "Class A" common stock in the distribution of the assets in liquidation, up to,

but not exceeding, \$100 per share, and shall participate no further in such distribution.

It is further ordered, adjudged and decreed that on or before the said 30th day of June, 1923, the said Sarah H. Allen, Charles J. Allen, Elizabeth R. Allen, Susan J. Allen, and the said complainant herein, Emily Allen Elfreth, as executors and trustees of the estate of Samuel L. Allen, deceased, and the said Charles J. Allen, individually, shall sur-  
10 render their common stock to the said S. L. Allen & Co., Inc., and that on or before the same date the said William H. Roberts shall surrender his common stock, and procure his assignees and associates in the said business to surrender their common stock to the said S. L. Allen & Co., Inc., all of which shall then be re-issued in the following manner:

To Sarah H. Allen, Charles J. Allen, Elizabeth R. Allen, Susan J. Allen, and Emily Allen Elfreth, as  
20 executors and trustees of the estate of the said Samuel L. Allen, deceased, or their successor or successors in the said trusts, 2500 shares of "Class A" common stock, and 731 shares of "Class B" common stock;

To Charles J. Allen, individually, 500 shares of "Class A" common stock, and 146 shares of "Class B" common stock;

To William H. Roberts, his associates and assignees, 1500 shares of "Class A" common stock, and 2623 shares of "Class B" common stock.

30 It is further ordered, adjudged and decreed that the said account, as stated by the said Samuel Powis, special master, as aforesaid, be re-referred to him to be re-stated and supplemented, so as to conform to this decree, without re-vouching the account as heretofore vouched.

It is further ordered, adjudged and decreed

that the voting trust agreement heretofore made and entered into between the said William H. Roberts and his associates, and the said Sarah H. Allen, Charles J. Allen, Elizabeth R. Allen, and Susan J. Allen, be and the same is hereby declared null and void and for nothing holden, and the said trustee therein named, to wit, David Lippincott, William H. Roberts, and Elizabeth R. Allen, be and they hereby are discharged and relieved from exercising any and all duties under said voting trust agreement. 10

It is further ordered, adjudged and decreed that the Trenton Trust Company of Trenton, N. J., a corporation of this State, duly authorized to administer trusts, be and it hereby is appointed trustee in the place and stead of Emily Allen Elfreth, Sarah H. Allen, Charles J. Allen, Elizabeth R. Allen, and Susan J. Allen, to execute and complete the trusts created and declared in the last will and testament of the said Samuel L. Allen, deceased, and that said trustee, before entering upon its duties as such trustee, shall enter into a bond to the Ordinary of the State of New Jersey, in the sum of \$200,000, with sufficient sureties to be approved by this Court, conditioned for the faithful performance of its duties as such trustee. 20

It is further ordered, adjudged and decreed that the said complainant and defendants shall be at liberty to apply to this Court for such other directions and relief as they may be advised.

It is further ordered, adjudged and decreed that the said defendants, William H. Roberts, Sarah H. Allen, Charles J. Allen, Elizabeth R. Allen and Susan J. Allen, individually, do pay to the said complainant, or her solicitors, the costs of this suit to be taxed, in which shall be included a counsel fee of \$8,000, and that the said complainant do have execu- 30

tion therefor according to the rules and practices  
of this Court.

E. R. WALKER,  
C.

Respectfully advised,  
JOHN H. BACKES,  
V. C.

10

We consent to the entry of the foregoing decree  
as to form and, in substance, as carrying out the  
opinion of the Court.

PETER BACKES,  
*Solicitor of Defendants.*  
McCARTER & ENGLISH,  
*Solicitors of Complainant.*

A true copy.  
20 THOMAS BARBER,  
*Clerk.*

30

FIRST ACCOUNT OF SUBSTITUTED  
TRUSTEE.

(Filed June 26, 1924.)

IN CHANCERY OF NEW JERSEY.

10

Between

EMILY ALLEN ELFRETH,  
Exr., etc.,

*Complainant,*

and

CHARLES J. ALLEN, Exr.,  
etc.,

*Defendant.*

} First Account of  
Substituted  
Trustee.

20

The first account of the Trenton Trust Company, substituted trustee, under the will of Samuel L. Allen, deceased.

FIRST: As to corpus.

This accountant chargeth itself with the following securities and cash required from the executors:

By balance on hand, consisting of the following securities and cash which have been assigned and paid to the Trenton Trust Co., substituted trustees: 30

1095 shs. preferred stock

S. L. Allen & Co. \$109,500.00

2500 shs. Class A common  
stock do; 731 shs. Class

B common stock do 323,100.00

12 *First Account of Substituted Trustee*

Interest in David Roberts notes, of doubtful value	10,000.00	
One share of American Golfer, of doubtful value	25.00	
One share of American Golfer, preferred, of doubtful value	50.00	
Note of J. M. Green, of doubtful value	239.08	
10 Cash	6,293.47	\$449,207.55

SECOND: As to Income—Dr.

	To amount received from ex- ecutors of estate	\$27,605.51
1923		
20 Aug. 25,	Dividend—S. L. Allen & Co., for 9 mos., or $5\frac{1}{4}\%$ , on 965 shs. pref. stock held by trus- tees (being on acct. of 18 mos.' div. omitted from Jan. 1, 1921, to June 30, 1922, at 7%)	5,066.25
	Dividend—S. L. Allen & Co. for 9 mos. or $5\frac{1}{4}\%$ on 330 shs. pref. stock held by ex- ecutors (being on acct. of 18 mos.' dividends omitted from Jan. 1, 1921, to June 30, 1922, at 7%)	1,732.50
30 Sept. 7,	Cash—S. L. Allen & Co., in- terest on money loaned them by estate to date	465.29
	Cash—S. L. Allen & Co., in- terest on money loaned them by estate to date	68.93
Oct. 1,	Dividend—S. L. Allen & Co. regular $1\frac{3}{4}\%$ dividend and	

	one back dividend on 965 shs. stock	3,377.50	
	Dividend—S. L. Allen & Co., regular 1 $\frac{3}{4}$ % dividend and one back div. on 900 shs. stock	3,150.00	
2,	Cash—Interest to date on acct. in Camden Safe Dep. & Trust Co.	77.62	
6,	Cash—Interest to date on acct. in Burlington Co. Trust Co.	13.19	10
26,	Dividend—S. L. Allen & Co., on 965 shs.	1,688.75	
26,	Dividend—S. L. Allen & Co., on 330 shs.	577.50	
Nov. 21,	Dividend—S. L. Allen & Co., on 330 shs.	577.50	
	Dividend—S. L. Allen & Co., on 965 shs.	1,688.75	20
1924			
Jan. 2,	Interest on deposits	63.90	
	Dividend—S. L. Allen & Co., on 965 shs.	1,688.75	
	Dividend—S. L. Allen & Co., on 330 shs.	577.50	
11,	Cash—S. L. Allen & Co., in- terest on Roberts notes	2,038.81	
	Cash—S. L. Allen & Co., 2/3 of accrued int. on contin- gent tax reserve of partner- ship	3,677.12	30
Mar. 12,	Dividend—S. L. Allen & Co., 3% on common stock	9,693.00	
13,	Dividend—S. L. Allen & Co., on 70 shs. received for pay-		

14 *First Account of Substituted Trustee*

	ment of Jane A. Boyer legacy	122.50
Apr. 1,	Dividend—S. L. Allen & Co., on 965 shs. pref.	1,688.75
	Dividend—S. L. Allen & Co., on 130 shs. pref.	227.50
	Total Receipts	<u>\$65,867.12</u>

10 Income—Cr.  
1923

Aug. 28,	By cash Sarah H. Allen	\$2,026.50
	“ Elizabeth R. Allen	1,013.25
	“ Susan J. Allen	1,013.25
	“ Emily Allen Elfreth	1,013.25
Oct. 1,	“ Elizabeth L. Roberts	700.00
	“ Rebecca A. Mohn	525.00
	“ Jane A. Boyer	245.00
	“ Louisa A. Snook	175.00
20	“ Benj. S. DeCou	175.00
	“ Wm. A. Snook	35.00
	“ Margaret A. Snook	35.00
	“ Grace A. Snook	35.00
	“ C. Nathan Snook	35.00
	“ Samuel A. Snook	35.00
	2, “ Sarah H. Allen	4,914.61
	“ Eliz. R. Allen	2,457.31
	“ Susan J. Allen	2,457.31
	“ Emily Allen Elfreth	2,457.31
30	15, “ N. L. Petty, expense to Phila.	1.77
	18, “ Emily Allen Elfreth	2,470.18
	26, “ Sarah H. Allen	675.50
	“ Eliz. R. Allen	377.75
	“ Susan J. Allen	377.75
	“ Emily Allen Elfreth	377.75

*First Account of Substituted Trustee* 15

Nov. 15,	“	N. L. Petty, expense trips to Phila.	5.50	
21,	“	Sarah H. Allen	675.50	
	“	Eliz. R. Allen	297.75	
	“	Susan J. Allen	297.75	
	“	Emily Allen Elfreth	297.75	
Dec. 10,	“	Chas J. Allen, Gdn., 4½ years' dividend on \$20,000	6,300.00	
22,	“	Banj. S. DeCou, 3 mos.' div. on 50 shs. of stock, from Mar. 28, 1919, to June 28, 1919	87.50	10
1924				
Jan. 4,	“	Sarah H. Allen	675.50	
	“	Eliz. R. Allen	337.75	
	“	Susan J. Allen	337.75	
	“	Emily Allen Elfreth	337.75	
	“	Chas J. Allen, Gdn.	350.00	20
10,	“	N. L. Petty, expense of trip to Phila.	2.75	
11,	“	Sarah H. Allen	4,940.36	
	“	Eliz. R. Allen	2,470.18	
	“	Susan J. Allen	2,470.18	
	“	Chas. J. Allen	2,409.50	
	“	Eliz. L. Roberts, 3 mos.' div. from Mar. 28, 1919, to June 28, 1919	350.00	30
	“	Rebecca A. Mohn, do	262.50	
	“	Louisa A. Snook, do	87.50	
	“	Wm. A. Snook, do	17.50	
	“	Margaret A. Snook, do	17.50	
	“	Grace H. Snook, do	17.50	
	“	C. Nathan Snook, do	17.50	
	“	Samuel A. Snook, do	17.50	

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Feb. 4,	“	Samuel F. Rudolpy, care of 2 lots in Cardington Cemetery for 1923	7.50
Mar. 2,	“	Sarah H. Allen	3,877.20
	“	Eliz. R. Allen	1,938.60
	“	Susan J. Allen	1,938.60
Apr. 1,	“	Sarah H. Allen	675.50
	“	Eliz. R. Allen	337.75
10	“	Susan J. Allen	337.75
		Fwd.,	\$55,822.36
1924			
Mar. 15,	“	Sarah H. Allen, Elizabeth R. Allen, Susan J. Allen, Charles J. Allen, interest on money loaned estate	158.92
20	“	Held, subject to Court for Emily Allen Elfreth and being payment due her as follows:	
		Mar. 12, \$1,938.60	
		Apr. 1, 337.75	2,276.35
June 12,	“	Charles J. Allen	60.68
		Balance of income on hand	7,548.81
30			<u>\$65,867.12</u>

The balance on hand of \$7,548.81, after payment of commissions, is payable to the beneficiaries in the amounts stated below, which is based upon the following calculation:

965 shs. pfd. and 3231 shs. of common stock of S. L. Allen & Co. were set aside for Sarah

H. Allen, Elizabeth R. Allen, Susan J. Allen and Emily Allen Elfreth, the dividends from these stocks having been received and all paid them as shown by above and former accounts.

Income from other sources was received and included in the accounts, and out of which the life tenants have been paid as follows:

1923		
Oct. 18, Emily Allen Elfreth	\$2,470.18	
1924		10
Jan. 11, Sarah H. Allen	4,940.36	
“ “ Elizabeth R. Allen	2,470.18	
“ “ Susan J. Allen	2,470.18	
“ “ Charles J. Allen	2,409.50	
June 12, Charles J. Allen	60.68	\$14,821.08
	<hr/>	
Balance of income on hand		7,548.81
		<hr/>
Net income from other sources		\$22,369.89 20
		<hr/>
Charles J. Allen is entitled to one-sixth	\$3,728.31	
He has received	2,470.18	
		<hr/>
Balance due him	\$1,258.13	
Less commissions of 5%		62.40
		<hr/>
Balance due him		\$1,195.73
		<hr/>
Deducting \$1258.13 from above balance		30
on hand of \$7,548.81 leaves \$6,290.68,		
which, after deducting estimated com-		
missions of \$1,850.63, calculated as fol-		
lows:		
5% on receipts of \$38,260.61	\$1,913.03	

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Less commissions charged against Charles J. Allen	62.40
	<hr/>
	\$1,850.63
Gives an amount to be paid Sarah H. Al- len, Elizabeth R. Allen, Susan J. Allen and Emily Allen Elfreth	\$4,440.05
	<hr/>
Sarah H. Allen is entitled to 2/5, or	\$1,776.02
10 Elizabeth R. Allen is entitled to 1/5, or	888.01
Susan J. Allen is entitled to 1/5, or	888.01
Emily Allen Elfreth is entitled to 1/5, or	888.01
	<hr/>
	\$4,440.05
	<hr/>

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

H. ARTHUR SMITH, being duly sworn according to law, on his oath saith, that he is the president of the Trenton Trust Company, the substituted trustee in the foregoing account named, and that the said account is in all things just and true, both as to the charges and discharges thereof, according to the best of his knowledge and belief.

H. ARTHUR SMITH.

30 Subscribed and sworn to before me this 13th day of June, A. D. 1924.

WM. H. BLOOR,  
*Notary Public of N. J.*

A true copy.

THOMAS BARBER,  
*Clerk.*

MASTER'S REPORT.

(Filed Aug. 20, 1925.)

IN CHANCERY OF NEW JERSEY.

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Between EMILY ALLEN ELFRETH, Executrix, &c., <i>Complainant,</i> and CHARLES J. ALLEN, EX- ecutor, <i>et al.,</i> <i>Defendants.</i>	}	On Bill, &c. Master's Report.	10
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This matter having been referred to me by an order of the Chancellor, dated the twenty-sixth day of June, nineteen hundred and twenty-four, directing me as special master to state and settle the account of the Trenton Trust Company, substituted trustee under the last will and testament of Samuel L. Allen, deceased, and to file my findings and report in this cause, I do hereby respectfully certify and report that I have been attended by Nelson L. Petty, Esquire, solicitor for the said substituted trustee, Mrs. Emily Allen Elfreth, complainant, *pro se*, and Peter Backes, Esquire, solicitor for the defendants, and have taken the depositions of the witnesses and the evidence produced before me and have considered the matters referred to me. 30

And I do respectfully certify and report that I find from the said testimony and evidence produced

before me that the gross principal amount or corpus of the estate of the said decedent (including cash on hand), received by the said substituted trustee from the executors under the aforesaid last will and testament, is the sum of four hundred and forty-nine thousand two hundred and seven dollars and fifty-five cents (\$449,207.55), as by reference to Schedule I hereto annexed and made a part hereof will more fully appear.

- 10 And I do further certify and report that the income received by the said substituted trustee from such executors amounts to twenty-seven thousand six hundred and five dollars and fifty-one cents (\$27,605.51), and that additional income from other sources aggregates thirty-eight thousand two hundred and sixty-one dollars and sixty-one cents (\$38,261.61), making the total income received by the said substituted trustee the sum of sixty-five thousand eight hundred and sixty-seven dollars and  
20 twelve cents (\$65,867.12), as by reference to Schedule II hereto annexed will in more detail appear.

And I do further find and report that the disbursements properly made by the said substituted trustee amount to the sum of fifty-eight thousand three hundred and eighteen dollars and thirty-one cents (\$58,318.31), as by reference to Schedule III annexed hereto and made a part hereof will more fully appear.

- And I do therefore certify and report that the  
30 balance or cash on hand, still undistributed, with said substituted trustee, is the sum of seven thousand five hundred and forty-eight dollars and eighty-one cents (\$7,548.81). See Schedule III.

Respectfully submitted this                      day of July,  
A. D. nineteen hundred and twenty-five.

SAMUEL POWIS,  
*Master.*

## SCHEDULE I.

## PRINCIPAL OR CORPUS OF ESTATE RECEIVED BY SUBSTITUTED TRUSTEE FROM EXECUTORS.

Securities and cash assigned and paid to the Trenton Trust Company, substituted trustee:		10
1095 shares of preferred stock of S. L. Allen and Company	\$109,500.00	
2500 shares of Class A common stock and 731 shares of Class B common stock of S. L. Allen and Company	323,100.00	
Interest in David Roberts notes (said to be of doubtful value)	10,000.00	
One share of American Golfer (said to be of doubtful value)	25.00	20
One share of American Golfer preferred (said to be of doubtful value)	50.00	
Note of J. M. Green (said to be of doubtful value)	239.08	
Cash	6,293.47	
	<hr/>	
Principal on hand, as received from executors	\$449,207.55	
	<hr/>	30

## SCHEDULE II.

INCOME RECEIVED BY SUBSTITUTED  
TRUSTEE.

	Amount received from execu- tors (in addition to cash set out in Schedule I)	\$27,605.51
10	1923. Aug. 25, Dividend, S. L. Allen and Com- pany, for 9 months, or 5¼%, on 965 shares of preferred stock held by trustees (being on account of 18 months divi- dends omitted from January 1, 1921, to June 30, 1922, @ 7%)	5,066.25
20	Dividend, S. L. Allen and Com- pany, for 9 months, or 5¼%, on 330 shares of preferred stock held by executors (be- ing on account of 18 months dividends omitted from Jan- uary 1, 1921, to June 30, 1922, @ 7%)	1,732.50
	Sept. 7, Cash, S. L. Allen and Company, interest on money loaned it by estate, to date	465.29
30	Cash, S. L. Allen and Company, interest on money loaned it by estate, to date	68.93
	Oct. 1, Dividend, S. L. Allen and Company, regular 1¾% divi- dend and one back dividend on 965 shares of stock	3,377.50
	Dividend, S. L. Allen and Company, regular 1¾% div-	

	idend and one back dividend on 900 shares of stock	3,150.00	
Oct. 2,	Cash, interest to date on ac- count in Camden Safe De- posit and Trust Company	77.62	
	6, Cash, interest to date on ac- count in Burlington County Trust Company	13.19	
	26, Dividend, S. L. Allen and Com- pany, on 965 shares	1,688.75	10
	Dividend, S. L. Allen and Com- pany, on 330 shares	577.50	
Nov. 21,	Dividend, S. L. Allen and Com- pany, on 330 shares	577.50	
	Dividend, S. L. Allen and Com- pany, on 965 shares	1,688.75	
1924.			
Jan. 2,	Interest on deposits	63.90	
	Dividend, S. L. Allen and Com- pany, on 965 shares	1,688.75	20
	Dividend, S. L. Allen and Com- pany, on 330 shares	577.50	
	11, Cash, S. L. Allen and Company, interest on Roberts notes	2,038.81	
	Cash, S. L. Allen and Company, 2/3 of accrued interest on contingent tax reserve of partnership	3,677.12	
Mar. 12,	Dividend, S. L. Allen and Com- pany, 3% on common stock	9,693.00	30
	13, Dividend, S. L. Allen and Com- pany, on 70 shares, received for payment of Jane A. Boyer legacy	122.50	
Apr. 1,	Dividend, S. L. Allen and Com- pany, on 965 shares of pre- ferred stock	1,688.75	

Dividend, S. L. Allen and Company, on 130 shares of preferred stock	227.50
Total receipts	<u>\$65,867.12</u>

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## SCHEDULE III.

DISBURSEMENTS PROPERLY MADE BY  
SUBSTITUTED TRUSTEE.

	Amount forward (receipts)	\$65,867.12
1923.		
Aug. 28,	Paid to Sarah H. Allen, on account of income	\$2,026.50
20	Paid to Elizabeth R. Allen, on account of income	1,013.25
	Paid to Susan J. Allen, on account of income	1,013.25
	Paid to Emily Allen Elfreth, on account of income	1,013.25
Oct. 1,	Paid to Elizabeth R. Roberts, interest on legacy	700.00
30	Paid to Rebecca A. Mohn, interest on legacy	525.00
	Paid to Jane A. Boyer, interest on legacy	245.00

Paid to Louisa A. Snook, interest on legacy	175.00	
Paid to Benjamin S. DeCou, interest on legacy	175.00	
Paid to William A. Snook, interest on legacy	35.00	
Paid to Margaret A. Snook, interest on legacy	35.00	10
Paid to Grace H. Snook, interest on legacy	35.00	
Paid to C. Nathan Snook, interest on legacy	35.00	
Paid to Samuel A. Snook, interest on legacy	35.00	20
2, Paid to Sarah H. Allen, on account of income	4,914.61	
Paid to Elizabeth R. Allen, on account of income	2,457.31	
Paid to Susan J. Allen, on account of income	2,457.31	30
Paid to Emily Allen Elfreth, on account of income	2,457.31	
15, Paid to N. L. Petty, expense of trip to Philadelphia	1.77	
18, Paid to Emily Allen		

	Elfreth, on account of income	2,470.18
26,	Paid to Sarah H. Al- len, on account of in- come	675.50
	Paid to Elizabeth R. Al- len, on account of in- come	377.75
10	Paid to Susan J. Al- len, on account of in- come	377.75
	Paid to Emily Allen Elfreth, on account of income	377.75
Nov. 15,	Paid to N. L. Petty, ex- pense of trips to Philadelphia	5.50
21,	Paid to Sarah R. Al- len, on account of in- come	675.50
20	Paid to Elizabeth R. Allen, on account of income	297.75
	Paid to Susan J. Al- len, on account of in- come	297.75
	Paid to Emily Allen Elfreth, on account of income	297.75
30 Dec. 10,	Paid to Charles J. Al- len, guardian (divi- dend)	6,300.00
	22, Paid to Benjamin S. DeCou (dividend)	87.50
1924.		
Jan. 4,	Paid to Sarah H. Al-	

	len, on account of income	675.50	
	Paid to Elizabeth R. Allen, on account of income	337.75	
	Paid to Susan J. Allen, on account of income	337.75	
	Paid to Emily Allen Elfreth, on account of income	337.75	10
	Paid to Charles J. Allen, guardian, interest on legacy	350.00	
10,	Paid to N. L. Petty, expense of trip to Philadelphia	2.75	
Jan. 11,	Paid to Sarah H. Allen, on account of income	\$4,940.36	20
	Paid to Elizabeth R. Allen, on account of income	2,470.18	
	Paid to Susan J. Allen, on account of income	2,470.18	
	Paid to Charles J. Allen, on account of income	2,409.50	
	Paid to Elizabeth L. Roberts, dividends on legacy paid in stock, to June 28, 1919	350.00	30
	Paid to Rebecca A. Mohn, dividends on		

		legacy paid in stock, to June 28, 1919	262.50
		Paid to Louisa A. Snook, dividends on legacy paid in stock, to June 28, 1919	87.50
10		Paid to William A. Snook, dividends on legacy paid in stock, to June 28, 1919	17.50
		Paid to Margaret A. Snook, dividends on legacy paid in stock, to June 28, 1919	17.50
		Paid to Grace H. Snook, dividends on legacy paid in stock, to June 28, 1919	17.50
20		Paid to C. Nathan Snook, dividends on legacy paid in stock, to June 28, 1919	17.50
		Paid to Samuel A. Snook, dividends on legacy paid in stock, to June 28, 1919	17.50
	Feb. 4,	Paid to Samuel F. Ru- dolpy, for care of two lots in Carding- ton Cemetery for 1923	7.50
30			
	Mar. 2,	Paid to Sarah S. Al- len, on account of in- come	3,877.20
		Paid to Elizabeth R. Allen, on account of income	1,938.60

	Paid to Susan J. Allen, on account of income	1,938.60	
Apr. 1,	Paid to Sarah H. Allen, on account of income	675.50	
	Paid to Elizabeth R. Allen, on account of income	337.75	
	Paid to Susan J. Allen, on account of income	337.75	10
Mar. 15,	Paid to Sarah H. Allen, Elizabeth R. Allen, Charles J. Allen and Susan J. Allen, interest on money loaned estate	158.92	
	Held subject to order of Court, for Emily Allen Elfreth, being payments due her on April 1, 1924	2,276.35	20
June 12,	Paid to Charles J. Allen	60.68	
	Total disbursements	58,318.31	
	Amount forward, total receipts	\$65,867.12	
	Amount forward, total disbursements	58,318.31	30
	Undistributed balance of income on hand	\$7,548.81	

30    *Order Confirming Master's Report and  
Account of Substituted Trustee*

ORDER CONFIRMING MASTER'S REPORT  
AND ACCOUNT OF SUBSTITUTED  
TRUSTEE.

(Filed Sept. 15, 1925.)

10            IN CHANCERY OF NEW JERSEY.

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Between	}	On Bill, Etc. Order Confirming Master's Report and Account of Substituted Trustee.
EMILY ALLEN ELFRETH,		
Executrix, etc.,		
Complainant,		
and		
20    CHARLES J. ALLEN, EX-		
ecutor, <i>et als.</i> ,		
Defendants.		

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30            This matter being opened to the Court, and it appearing by an order of the Chancellor dated the twenty-sixth day of June, 1924, directed to Samuel Powis, Special Master, to state and settle the account of the Trenton Trust Company, substituted trustee under the last will and testament of Samuel L. Allen, deceased, and to file his findings and report in this cause; and it further appearing that said Master's report and account is now on file in this cause; and it further appearing that due notice of the filing of said Master's report and account has been given to all of said parties and no cause being

*Order Confirming Master's Report and* 31  
*Account of Substituted Trustee*

shown why the said Master's report and account should not be confirmed;

It is thereupon, on this 15 day of September, 1925, ordered, adjudged and decreed, that the said Master's account and report and the matters and things therein contained be and the same are hereby confirmed;

And it is further ordered, that the Trenton Trust Company, substituted trustee of the Estate of Samuel L. Allen, deceased, out of the funds belonging to said estate in its hands, be allowed the sum of \$1147.85 as and for its commissions; 10

And it is further ordered, that a fee of \$1000 be allowed to Peter Backes, the proctor of said substituted trustee;

And it is further ordered, that the said Trenton Trust Company, substituted trustee of the Estate of Samuel L. Allen, deceased, do pay to the said Samuel Powis, Special Master, who has re-stated 20 the three several accounts of the executors and of the substituted trustee, the sum of \$500 in addition to the fees allowed him as such Special Master.

E. R. WALKER,

C.

Respectfully advised,

JOHN H. BACKES,

V. C.

L

PETITION OF TRENTON TRUST COMPANY.

(Filed June 25, 1928.)

IN CHANCERY OF NEW JERSEY.

To His Honor, Edwin Robert Walker, Chancellor of  
10      *the State of New Jersey:*

The petition of the Trenton Trust Company respectfully shows:

1. That it is a corporation of the State of New Jersey and is authorized by the statutes of this State generally to act as trustee of every kind and description not inconsistent with the laws of this State or of the United States.
- 20      2. That by a decree dated on the 15th day of May, 1923, made in a cause in which Emily Allen Elfreth is complainant and Sarah H. Allen, *et als.*, are defendants, your petitioner was appointed trustee in the place and stead of Emily Allen Elfreth, Sarah H. Allen, Charles J. Allen, Elizabeth R. Allen and Susan J. Allen, to execute and complete the trust created and declared in the last will and testament of Samuel L. Allen.
- 30      3. That it qualified and is discharging its duty as trustee of said trust established under the will of the said Samuel L. Allen, deceased.
4. That Samuel L. Allen, in and by the 5th paragraph of his will dated the 13th day of December, 1917, provided as follows:

“Whereas the co-partnership agreement between William H. Roberts, Elizabeth H. Richie and myself in the formation of the firm of S. L. Allen and Company of Philadelphia, provides that in case of my death or the death of William H. Roberts, a stock company shall forthwith be formed for the conduct of said business, etc. Now if my executors and my partners in business deem it advisable and if such stock company shall not have been formed in my lifetime, I do hereby authorize, empower and direct my executors hereinafter named to carry into effect the provisions of said co-partnership agreement and to accept so much of the capital stock in the corporation so to be formed as aforesaid, as my estate shall be entitled to receive, in full payment, of my interest in said firm of S. L. Allen and Company, and I hereby exonerate and discharge my executors from any and all personal liability for their so doing. 10 20

And I direct that none of the shares of the capital stock so to be accepted and taken by, or which may come into the possession of my executors, shall be sold by them or by the trustees hereinafter named within a period of ten years from and after the date of my death, unless a majority of my family, which I mean, my wife and four children, or a majority of them, living at that time, shall approve in writing of the same being sold, in which case I hereby authorize and direct the sale thereof, and I advise my children to withhold the same for a like period, of any shares of said capital stock which may come into their absolute possession, under this my will.” 30

5. That by the 8th paragraph of said will, Samuel

L. Allen created the trust which your petitioner is now administering, and which is as follows:

10           “As to all the rest, residue and remainder of my estate, real, personal and mixed, of which I shall die seized and possessed, I give, devise and bequeath one-sixth part thereof to my son, CHARLES J. ALLEN absolutely and in fee simple, and I give, devise and bequeath the remaining five-sixths of my residuary estate, including therein the said shares of stock, so to be taken by said executors, or which I may own at the time of my decease, unto my wife, SARAH H. ALLEN, and my son, Charles J. Allen, and my three daughters, Elizabeth R. Allen, Susan J. Allen and Emily Allen Elfreth, and the survivor of them IN TRUST for the following uses and purposes, that is to say, IN TRUST to hold said shares of stock and to invest the residue in good first mortgages of real estate situate in the State of Pennsylvania or 20           New Jersey, in public loans of the United States, the State of Pennsylvania or the City of Philadelphia, or such other securities or investments as said trustee shall deem advisable without being restricted to such as are known as legal investments for trustees, with full power on the part of said trustee to change and convert such investments and to re-invest the same from time to time as to them may seem most advantageous for my estate and from the income arising therefrom I direct my said trustees to pay all taxes, water rents and other proper charges and all interest upon the mortgages (if any) upon any part of my estate, all 30           municipal charges, and expenses for keeping my real estate in good order and repair, and the net income arising from said five-sixths

part of my said residuary estate I give and bequeath as follows:

Two fifths thereof to my wife, SARAH H. ALLEN, for her own use absolutely for and during the full term of her natural life which with the hereinbefore mentioned specific devise to her shall be in lieu and satisfaction of her dower or thirds for life in my estate.

One fifth thereof, I give and bequeath to my daughter, ELIZABETH R. ALLEN, for her own use absolutely for and during the full term of her natural life. 10

One fifth thereof, I give and bequeath to my daughter SUSAN J. ALLEN, for her own use absolutely for and during the full term of her natural life.

And the remaining one-fifth thereof, I give and bequeath to my daughter EMILY ALLEN ELFRETH, for her own use absolutely for and during the full term of her natural life." 20

6. Said testator further provided in and by the eighth paragraph of his will as follows:

"I will and direct that my trustees shall take, accept, receive and hold as a part of the Trust which I have created by this my will for the use and benefit of my wife and daughters, such share or proportion of interest in my manufacturing business which may be properly allotted and set apart to said trust, or if my said business should have been converted into a corporation or limited liability company or joint stock company in my lifetime, then and in such case to accept, receive and hold such shares therein as may be so allotted and set apart without responsibility or liability on the 30

part of my said trustees in either event, for so doing."

And further by said paragraph:

10 "Upon the decease of my said wife, or either of my said daughters, I give, devise and bequeath freed and discharged from all trusts under this my will such proportionate part of the principal or corpus of my said estate as  
20 that upon which the one so dying shall be entitled immediately before and at the time of her death to receive the income unto such person or persons and for such estate or estates as she may by her last will and testament, or by writing in nature thereof, direct, limit and appoint, and in default of such appointment, then I give, devise and bequeath such proportionate part of said principal or corpus of my said residuary estate free from all trusts unto  
30 such person or persons as would be entitled thereto under the Intestate Laws of the State of New Jersey, had same been exclusively personal property and had the one so dying been possessed thereof in her own right at the time of her death."

7. That as trustee for said estate, your petitioner now holds 1043 shares of preferred capital stock of S. L. Allen & Co.; 2500 shares of Class A and 512  
30 shares of Class B capital stock.

8. That Sarah H. Allen, the widow and one of the beneficiaries entitled to receive two-fifths of the income under the will of the said Samuel L. Allen, deceased, died on the 17th day of March, 1928, leaving a last will and testament dated on the 9th day

of June, 1927, and a codicil thereto dated on the 21st day of June, 1927, which said will and codicil have been offered for probate in the Prerogative Court of the State of New Jersey, by Emily Allen Elfreth, the executrix named in said will.

9. That a caveat protesting against the probate of said will has been filed in said court by Charles J. Allen, one of the beneficiaries thereof, and that the hearing thereon is now pending and set for the 27th day of November, 1928, before Malcolm G. Buchanan, one of the Vice-Ordinaries of that court. 10

10. That Sarah H. Allen (the widow of Samuel L. Allen, deceased) in and by the 4th paragraph of her will disposed of her estate in manner following:

“All the rest, residue and remainder of my estate, real, personal and mixed, and, pursuant to the power of appointment vested in me by the last will and testament of my husband, Samuel L. Allen, deceased, bearing date the 13th day of December, 1917, all the rest, residue and remainder of his estate over which I have the power of appointment, I will and direct shall be delivered to my trustees hereinafter named in trust for the following uses and purposes, that is to say in trust to hold and to invest the said rest, residue and remainders in good first mortgages of real estate situate in the State of Pennsylvania or New Jersey, with full power on the part of the said trustees to change and convert such investments and to reinvest the same from time to time as to her may seem most advantageous for my estate and the net income arising from my said residuary estate I give and bequeath as follows: 20 30

One-fourth thereof I give and bequeath to my daughter Elizabeth R. Allen for her use absolutely for and during the full term of her natural life.

One-fourth thereof I give and bequeath to my daughter Susan J. Allen for her use absolutely for and during the full term of her natural life.

10 One-fourth thereof I give and bequeath to my son Charles J. Allen for his use absolutely for and during the full term of his natural life.

One-fourth thereof I give and bequeath to my daughter, Emily Allen Elfreth for her use absolutely for and during the full term of her natural life.

20 The amount herein given to and directed to be paid to each of my said children shall be paid into their own hands respectively upon their own receipts whether married or single, without any power on the part of any of them to sell, assign or transfer or in any way or manner anticipate the same and shall not be subject to nor liable for their debts, contracts or engagements or be divested by an judicial order, decree or sale whatsoever nor be subject for and during the full term of his natural life. to the interference or control, debts, contracts or engagements of any husband which any of my daughters may now have or may at any time hereafter have or take, nor be subject to the interference or control, debts, contracts or engagements of any wife which my son may now have or may at any time hereafter have or take.

30 Upon the death of either of my said children I give devise and bequeath the income to which the said child shall have been entitled immedi-

ately before and at the time of his or her death to such person or persons and for such estate or estates as he or she may by her last will and testament or by writing in nature thereof, or by deed delivered to my trustee direct, limit and appoint, and in default of such appointment then I give, devise and bequeath the said income to such person or persons as would be entitled thereto under the intestate laws of the State of Pennsylvania, had same been exclusively personal property and had the one so dying been possessed thereof in his or her own right at the time of his or her death.” 10

That by the first paragraph of her codicil to her said will, the said Sarah H. Allen provided as follows:

“It is my will that my executrix and trustee and her successors shall have full power to receive from the trustee of the estate of my husband, Samuel L. Allen, deceased, shares of stock of S. L. Allen & Co. Inc., and other securities in the possession of the trustee of the estate constituting the estate over which I have a power of appointment under the terms of the will of the said Samuel L. Allen, deceased, pursuant to which power I make this provision.” 20

11. That as trustee of the estate of Samuel L. Allen, deceased, your petitioner has received an offer from Edward W. Burt and Edward L. Richie, dated June 8, 1928, to purchase all of the stock of the S. L. Allen & Co., Inc., now held by it as said trustee, as will more fully appear by Exhibit A hereto annexed and made part hereof, and that the trustee has accepted said offer, subject to re- 30

porting the same to and receiving a confirmation of the same from the Court of Chancery of New Jersey.

10 12. Your petitioner further shows that the offer to purchase said stock of the S. L. Allen & Co., Inc., now held by it in trust, is a good and *bona fide* offer, and in the opinion of your petitioner is an advantageous one for said estate and should be accepted.

20 13. Your petitioner further shows that the following named persons; to wit, Emily Allen Elfreth, Elizabeth R. Allen, Susan J. Allen, Charles J. Allen and the executrix or other personal representative of the estate of Sarah H. Allen are each of them as beneficiaries of the estate of Samuel L. Allen and of the estate of Sarah H. Allen, or as next of kin of both Samuel L. Allen and Sarah H. Allen, interested in the sale of said stock herein prayed for.

14. That uncertainty has arisen as to your petitioner's right to make said sale because of the provisions contained in the will of Sarah H. Allen, deceased.

Your petitioner therefore prays,

30 For the advice and direction of this Court in the premises; that this Court will determine whether or not the offer made by Edward W. Burt and Edward L. Richie to purchase all of the said shares of stock in S. L. Allen & Co., held by it as trustee, should be accepted and confirmed in accordance with their offer, and that an order may be made authorizing and directing your petitioner to accept said offer and transfer and deliver the said stock to Messrs. Edward W. Burt and Edward

L. Richie upon the payment by them of the said purchase price as set forth in said offer; and further that if this Court will not authorize the acceptance of said offer, that then this Court shall instruct and direct your petitioner whether said stock shall be sold and if so, the method and manner of making the said sale, whether it should be sold in one parcel or in lots, and if so, at what price and whether at private or public sale, and for such other and further relief. 10

And your petitioner will ever pray.

TRENTON TRUST COMPANY,

By H. A. SMITH,

*Pres't.*

*Petitioner.*

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STATE OF NEW JERSEY, }  
COUNTY OF MERCER, } ss. 20

NELSON L. PETTY, being duly sworn according to law on his oath, deposes and says, I am the trust officer of the Trenton Trust Company, the petitioner in the foregoing petition; that as such trust officer I have the charge of and am intrusted with the duty of the management of the estate of Samuel L. Allen, deceased, now being administered by the Trenton Trust Company as trustee under a decree of the Court of Chancery of New Jersey, dated 30 on the 15th day of May, 1923, in a cause wherein Emily Allen Elfreth is complainant and Sarah H. Allen, et als., are defendants; that I have read the foregoing petition and the matters and things therein set forth are true.

That the capital stock of the S. L. Allen & Co.,

Inc., consists of 4500 shares of common Class A capital stock of the par value of \$100 each, which stock has the voting power and the balance is composed of 3500 shares of Class B common stock which carries a dividend of 7% non-cumulative per annum, of which capital stock issued and outstanding 1035 shares are in the treasury of the company, and 4500 shares of 7% preferred stock, of which 1050 shares are in the treasury of the company; that the total amount of capital stock outstanding of all classes is \$1,041,500.

That the said trustee is now the holder of 1043 shares of the preferred capital stock, 2500 shares of Class A common stock and 512 shares of Class B common stock; that said 2500 shares of Class A capital stock is the only stock which has the voting power and represents the majority control of the said S. L. Allen & Co., Inc.; that the other 2000 shares of Class A common stock are held by Charles J. Allen, a son of Samuel L. Allen, deceased, who has 500 shares and the balance of 1500 shares are held by William H. Roberts and his associates.

That this deponent as the trust officer of the trustee and H. Arthur Smith as president of the said trustee, were at the time of the appointment of said trustee elected to and are now members of the board of directors of the S. L. Allen & Co., Inc., and as such have had a general supervision over the affairs of the company, and your deponent as such officer has attended all of the meetings of the directors of said company and is familiar with its general management and affairs.

That since its appointment as trustee the S. L. Allen & Co., Inc., has annually earned and paid dividends upon their capital stock outstanding excepting in the year 1923; that the income so received from said dividends and other earnings of the resid-

uary estate of Samuel L. Allen, has been paid to the beneficiaries named in and as directed by the will of Samuel L. Allen, deceased, that Sarah H. Allen, the widow of the testator, Samuel L. Allen, and one of his beneficiaries was entitled to receive and did receive a two-fifths net income of said residuary estate during her lifetime and was also given a power of appointment over two-fifths share of the residuary estate from which she was receiving the income; that the said Sarah H. Allen died on the 17th day of March, 1928, leaving her surviving, four children, namely, Emily Allen Elfreth, Elizabeth R. Allen, Susan J. Allen and Charles J. Allen; that said Sarah H. Allen left a last will and testament dated on the 9th day of June, 1927, and a codicil thereto dated on the 21st day of June, 1927, which paper writings have been duly offered for probate in the Prerogative Court of the State of New Jersey by Emily Allen Elfreth, the executrix named therein; that a caveat of protest against the probate of said will has been filed by Charles J. Allen, a son of the decedent; that probate has been withheld and no letters of administration have been granted on said estate and a hearing is now pending and set for the 27th day of November, 1928, before the Honorable Malcolm G. Buchanan, one of the Vice-Ordinaries of this State.

That Sarah H. Allen, the widow of Samuel L. Allen, pursuant to the power of appointment given to her by the will of her husband, gave all the residue and remainder of her estate, including her interest in the estate of her late husband, Samuel L. Allen, to her trustee, Emily Allen Elfreth, and by the codicil of her said will, said that it was her will that her executrix and trustee shall have full power to receive from the trustee of her husband's estate, shares of stock of the S. L. Allen & Co., Inc., and

other securities in the possession of the trustee of the estate, constituting the estate over which she had power of appointment under the will of her husband.

That on the 8th day of June, 1928, the trustee received an offer from Edward W. Burt and Edward L. Richie on behalf of themselves and their associates to purchase all of the stock now held by it as trustee for the sum of \$100 per share for the preferred stock and Class B common stock, and the sum of \$210 per share for the Class A common stock, settlement to be made within 60 days from the date of confirmation of said offer; that said offer further provides that it shall remain open for a period of two weeks from the date thereof and if not accepted within that time, it shall be deemed to have been withdrawn; that as an earnest of their good faith they have deposited with the trustee their check in the sum of \$50,000; that this deponent as trust officer of the trustee by the direction of the trustee has accepted said offer subject to reporting the same to this Court and receiving a confirmation from this Court.

That said trustee has had an examination of the condition of said S. L. Allen & Co., Inc., made by a competent and experienced appraiser to ascertain the value of said holdings of said stock held by it as trustee, and also had the physical property appraised by competent real estate appraisers and had the accounts and affairs of said company properly audited by competent public accountants, and upon due consideration thereof and of all the surrounding circumstances and upon the personal examination made of the said plant and the business owned by the said corporation, and of its accounts and affairs made by a specially appointed committee of your trustee's directors, it is their best judgment

that the best interest for the said estate would be secured by a sale of the said stock, and the reason for their judgment is this, that the stock represents the interest in a manufacturing business which business while it has been profitable in the past, yet is at all times subject to the changes of a manufacturing business engaged in the manufacturing of agricultural implements and "Flexible Flyer" sleds; that in the opinion of the board of directors of the trustee, the offer made by Messrs. Edward W. Burt and Edward L. Richie, is an advantageous one for the estate and should be accepted inasmuch as the said stock represents an interest in a manufacturing company and in a business which is at all times liable to sudden changes and further because the said stock is not a legal investment for trust funds. 10

NELSON L. PETTY.

Sworn and subscribed to before me the 20th day 20  
of June, 1928.

MIRIAM F. WRIGHT,  
*Notary Public of N. J.*

My commission expires Mar. 31, 1929.

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EXHIBIT "A."

Philadelphia, Pa., June 8, 1928.

Trenton Trust Company, 30  
Trustee of the Estate of Samuel L. Allen deceased,  
Trenton, N. J.  
Gentlemen:

On behalf of ourselves and associates, we, the undersigned, do hereby offer to purchase from you as the Trustee of the Estate of Samuel L. Allen, deceased, all of the capital stock of the S. L. Allen &

Co. Inc., both Preferred and Common, Classes A and B, now held by you in said trust, or so much thereof as you may be in a position to sell (not less, however, than three fifths of each class of the total number of shares now held by you), consisting of 1043 shares Preferred Stock, 512 shares, Class B Common Stock and 2500 shares, Class A Common Stock, and we hereby agree to pay you for the Preferred Stock and Class B Common Stock, \$100 per share, and  
 10 for the Class A Common Stock, the sum of \$210 per share. Settlement to be made within 60 days from the date of confirmation of this offer.

As an earnest of our good faith in the matter, we hereby tender you Cashier's check of the National Bank of North Philadelphia in the sum of \$50,000, to be applied on account of the purchase price in the event of the acceptance of this offer by you; or to be returned to us in the event of its rejection. This sum to be forfeited to you in the  
 20 event of our failure to comply with the terms of this offer upon its acceptance.

This offer to remain open for a period of two weeks from the date hereof. If not accepted within that period, it shall be deemed to have been withdrawn and the check above mentioned shall be returned to us unless the time for acceptance is extended in writing by us.

Very truly yours,  
 (signed) Edward W. Burt,  
 Edward L. Richie.

30 The Trustee hereby accepts the above offer, subject to reporting the same to and receiving a confirmation of the same from the Court of Chancery of New Jersey.

(Signed) Trenton Trust Company,  
 Nelson L. Petty,  
 Trust Officer.

AFFIDAVIT.

(Filed Sept. 7, 1928.)

IN CHANCERY OF NEW JERSEY.

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Between EMILY ALLEN ELFRETH, <i>Complainant,</i> and CHARLES J. ALLEN, <i>et als.,</i> <i>Defendants.</i>	}	On Bill, &c. Affidavit.
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STATE OF NEW JERSEY, COUNTY OF MERCER,	}	ss.
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NELSON L. PETTY, being duly sworn according to law on his oath, deposes and says:

I am the trust officer of the Trenton Trust Company and as such I have represented the estate of Samuel L. Allen, deceased, in all matters relating to said trust and especially the sale of the stock of the S. L. Allen & Co., Inc., held in said trust.

That on June 25, 1926, Elizabeth R. Allen, Susan 30  
J. Allen and Emily Allen Elfreth, in writing, requested and directed the said trustee to sell the stock in the S. L. Allen & Co., Inc., held in said trust, the price, however, to be subject to their written approval.

On November 8, 1926, Elizabeth R. Allen, Emily

Allen Elfreth and Susan J. Allen, constituting a majority of the beneficiaries of said trust and also of the said family of the late Samuel L. Allen, again requested the trustee in writing to make sale of said stock, urging as a reason therefor, that all the property they possessed was represented by said stock and subject to the hazards and risks to which all manufacturing enterprises are liable; and further urged that for nearly two years they had received no income, and further urged that the death of any of them would deprive the trustee of a majority holding of the voting stock and reduce the trust estate to a minority holding which would be practically valueless in an attempted sale; and further urged that they felt that their property should be invested where the income is fixed and regular and where the risk was not that of a manufacturing business; and further that if the property representing the trust stock in question could be sold, the corpus of the estate, if an adequate price were to be received, would be increased and thus their income would be increased, and further that the gradual expiration of the patents destroyed the monopoly upon which the business was based and because of the encroachment of competition, the business was no longer the largest manufacturers of sleds, and in view of these facts the beneficiaries again reiterated their request and instructions to the trustee to sell the stock, provided a price could be obtained that met with their joint written approval.

It was due to these requests in writing and numerous personal requests made at the interviews had between the beneficiaries and myself, that the trustee undertook to obtain a purchaser for said stock.

That on November 29, 1926, Sarah H. Allen,

Elizabeth R. Allen and Susan J. Allen notified the trustee in writing that they had enclosed a copy of an agreement of sale of stock of S. L. Allen & Co., and further that as their rights in the matter of the sale of this stock was arbitrary and absolute, that they were under no obligation to state to the said trustee their reasons for exercising this right, and further they urged that it was to be clearly understood that they would not consider a sale of said stock to their brother, Charles J. Allen, and further that they would not consider a sale to William H. Roberts and his associates, and further that they would not consent to a sale of the stock to strangers for it would result in a number of relatives losing their present positions. No copy of an agreement of sale was enclosed in said letter nor was the same ever presented to the trustee although the trustee has been informed that such attempted sale had been made to one William Henry Elfreth. Several more interviews were had by me with the beneficiaries as well as with William Henry Elfreth. No conclusions were reached.

On December 6, 1926, William Henry Elfreth gave notice to the trustee in writing informing it that he had made an offer to the majority of the family of Samuel L. Allen, deceased; namely, Sarah H. Allen, the mother, Elizabeth R. Allen, Susan J. Allen and Emily Allen Elfreth, the daughters, for the purchase of all the stock of S. L. Allen & Co., Inc., now held in trust; that they had accepted his offer and had consented to the sale and had signed an order upon the trustee to consummate the sale by delivery of the stock to the purchaser; and further that he had requested the Allen family to refrain from giving to the trustee the specific terms of the offer, restricting themselves to giving the trustee simply notice that their written consent had

been given, and at the same time that he also wished to give notice that his offer had been accepted and that the authorization and request to make conveyance of the stock together with the written consent, would be delivered in due course. No such offer, order, acceptance or authorization referred to in said letter was ever delivered to the trustee nor did the trustee ever learn the contents of said documents.

- 10 Thereupon on December 22, 1926, I notified said parties that after many interviews with Mr. Elfreth in an endeavor to effect a sale, I had arrived at the following results: that Charles J. Allen would not become associated with Mr. Elfreth in the conduct of the business, that this was final; and further that I had suggested to Mr. Elfreth that the only way out of the difficulty was to sell to the present management, but he informed me that Mrs. Elfreth, his wife, would not consent to a sale to the present management and Mr. Allen would not consent to a sale to anyone else and that the consequence was the blocking and making of a sale.

20 That on January 27, 1927, Mr. Elfreth after a further conference with me intimated that his principals would consent to a sale of the stock for \$1,200,000. On this day, I notified Mr. Elfreth that after a personal talk with the management of the Allen Co. they advised me to tell him that they would not pay \$1,200,000 for the stock.

- 30 On February 3, 1927, the said William Henry Elfreth telegraphed me requesting to know if the Trust Co. would or would not offer to sell him the controlling stock interest for \$1,200,000 in cash. To this telegram I replied on February 3rd, "Will you pay \$1,200,00 for the Allen stock held in the estate? If so, make the offer in writing with a deposit of \$50,000."

On February 4, 1927, William Henry Elfreth telegraphed me as follows: "Having received no responsive reply to my telegram asking whether you would or would not offer to sell me the majority stock interest of S. L. Allen & Co., for \$1,200,000 I regard this as stated as a refusal. I am not now interested in buying at any figure and the incident is closed."

On or about May 20, 1927, I at the special request of William Henry Elfreth secured the services of Ballinger Engineering Appraisement Co. to make an appraisement of the value of the stock held in said trust. That said company made said appraisement and a copy thereof was furnished to William Henry Elfreth and the beneficiaries and their counsel. 10

That on May 23rd of the same year after a conference between this deponent, Mrs. Elfreth and Miss Elizabeth Allen and the said William Henry Allen, it was agreed that the three daughters would consent to sell the stock of the Allen Co. for \$1,200,000 and that the first chance to buy the stock at that price should be given to Mr. William H. Roberts and his associates. I submitted said offer to Mr. Roberts and received a reply to the same saying in effect, that he was not interested in the purchase of the stock at that figure and thereupon I offered the stock to the said William Henry Elfreth for the same price. 20

I received an acknowledgment of said offer from Mr. Elfreth and an acceptance thereof subject to a number of conditions among them being, that the sale should be made private and not reported to the Court, that the trustee give proper assurance that actual possession of the corporation would be given to him and that the transfer would be effected upon the books of the corporation and that he should 30

name and have at the time of settlement his own board of directors and officers. I replied to him on May 26th of that year in substance, that the trustee could not comply with the seven conditions stated by him, but that they would agree to deliver to him the certificates of stock properly endorsed for transfer and that the purchaser would be entitled to all the right title and interest which the stock certificates may give the holder thereof.

- 10 On June 3rd, the said William Henry Elfreth notified the trustee that the conditions placed upon the sale of stock were for the sole purpose of making sure that actual possession to the plant would follow the acquisition of the stock upon the payment of the consideration and that he wasn't interested in the purchase of the stock except as it carried with it the actual possession of the plant.

- 20 On June 8, 1927, the said William Henry Elfreth notified the trustee that he wished to repeat that he was not interested in the purchase of the equitable rights of this stock at any price, that he was only interested in the purchase of the legal title and upon the express condition that the actual possession of the plant shall pass to him upon the payment of the consideration.

- 30 Again on July 8, 1927, I notified the said William Henry Elfreth that confirming a conversation had between us over the telephone, that the trustee was willing to sell to him or his nominee the shares of stock of the S. L. Allen Co. for \$1,200,000, the shares to be transferred to him or to such person as he may name upon payment of the purchase price, and further that the trustee would not undertake to secure the resignation or discharge of any officer or director of the company and if that became necessary, the purchaser of the stock must exercise that right.

On October 4, 1927, I notified Mr. William H. Roberts informing him that the Allen beneficiaries had withdrawn their fixed price of \$1,200,00 for the stock held in trust and asked him if he had an offer to make for said stock, and further requested to ascertain from him if his stock was for sale, and if so, at what price, and to this letter, I received a reply from the said Mr. Roberts under date of October 8th, saying that while they were interested in the stock, they did not think it advisable under existing conditions to make a new offer at this time and that in regard to his own stock, the same was not for sale. 10

On October 14, 1927, Messrs. Scammell, Knight and Reese, attorneys for the beneficiaries and engaged to represent them and their interest, notified the trustee that they had a prospective purchaser for the stock in one, Ernest Rickett, of Chicago, Illinois, and requested certain information, which I furnished. I gave them all the information and data then available and I also had a conference with the said Mr. Rickett in company with Mr. Elfreth, all with a view in bringing about a sale of this stock; that after numerous conferences and after the furnishing of all the information in the possession of this trustee, and arranging for a personal inspection of the plant by the said Rickett, the said Rickett notified me under date of May 26, 1927, that he felt that the most difficulty in effecting any sale of the Allen estate, would be occasioned by the large decrease in the profits for the past year and after further correspondence, the said Rickett under date of December 8, 1927, advised me that he was inclined to believe that based upon the total of \$1,500,000 as the value of all the stock of the Allen Co., including the stock held by Roberts and his associates, that we may be able to get together, and 20 30

that on December 20, 1927, Mr. Elfreth wrote the trustee a letter in which he makes inquiry whether the trustee would sell the then present holdings to the said Rickett for the sum of \$611,275 and further stating that Mr. Rickett had asked him whether this consideration would be satisfactory and that before replying to this point, the beneficiaries wanted to know from the trustee whether it would deliver the title to the shares in question to Mr. Rickett and his associates upon the payment of the consideration, and further stated when the Trust Co. was in a position to state upon what terms they were willing to sell, the beneficiaries were prepared to give their decision in the matter, and further urged that as the business was in a state of depression at that time throughout the entire country with the exception of one or two places, and that there was no sign of improvement and grave possibilities of financial shrinkage in the near future, the beneficiaries would consider their trustee negligent unless it gave the matter immediate attention, as any delay at this time might make this or any other sale impossible at this or any other time in the near future and a delay might result in the trustee being compelled to carry the business through a non-dividend paying period, a condition which happened a few years ago under the present management, during which time of almost two years, the beneficiaries had no income whatsoever from this business.

After further communication with the said William Henry Elfreth and the said Ernest Rickett, it was agreed that the stock at the price named should first be offered to the present management, and on December 24th, the said William Henry Elfreth writing for the beneficiaries directed that an offer of the majority interests held in the said trust,

should be offered to the said Roberts and the other stockholders for the amount of their recent appraisal and requested that such offer should be made within a week's time.

On December 24, 1927, William Henry Elfreth, wrote to this trustee and requested to know whether the trustee would accept an offer of \$611,000 for the trust shares from Roberts and further stated that he was prepared to take up any definite proposition from the trustee with the two beneficiaries in Philadelphia, and again called the attention of the trustee to the business and the financial depression which existed throughout practically the entire country and urging that the trustee make an immediate sale. Negotiations were then undertaken by me for the trustee with the said William H. Roberts and his associates, which resulted in an offer being made to the trustee under date of February 15, 1928, by Edward W. Burt and Edward L. Richie to purchase all of the stock held by said trustee for the aggregate price of \$700,000 and deposited with the trustee as an earnest of good faith, a cashier's check on the National Bank of North Philadelphia in the sum of \$70,000. At this time the period of limitation for the consent of the beneficiaries had not expired and that every effort was made by this deponent to obtain said consent from the beneficiaries proved futile and as a consequence, I returned to the said Messrs. Burt and Richie, their said check.

Thereupon further negotiations were taken up between Mr. Elfreth and myself, and Mr. Elfreth, through his attorneys, Scammell, Knight and Reese, endeavored to obtain from this deponent, an acceptance of an offer to purchase at a like price, the said stock, but made no deposit nor gave any assurance that the sale would be consummated.

That pending these negotiations, Sarah H. Allen,

the widow of the said testator, died testate; that the probate of her will and codicile is now being contested.

That on April 4, 1928, Charles J. Allen, Edward W. Burt and Edward L. Richie and William H. Roberts, offered to purchase from the trustee, 1500 shares of Class A common stock and offered to pay therefor, the sum of \$210 per share which offer was refused on April 12, 1928, because of the uncertainty  
10 as to the number of shares of Class A stock which might remain in said trust fund, and, therefore, returned the said offer and the deposit of \$31,500.

That some time before June 8, 1928, S. L. Allen & Co., Inc., redeemed 219 shares of Class B common stock and paid the trustee therefor the sum of \$21,900 and thus reduced the number of shares of Class B common stock held by the trustee to 512 shares.

On June 8, 1928, the said Edward W. Burt and  
20 Edward L. Richie on behalf of themselves and their associates offered to purchase from the trustee, all of the capital stock of S. L. Allen & Co., Inc., both preferred and common, Classes A and B now held by the trustee or so much thereof as they may be in a position to sell, not less, however, than  $\frac{3}{5}$  of each class of total number of shares consisting of 1043 shares of preferred stock, 512 shares of Class B common stock and 2500 shares of Class A common stock, and agreed to pay for the preferred and the  
30 Class B stock, \$100 per share and for the Class A common stock, the sum of \$210 per share, or an aggregate of \$680,500, and as an earnest of good faith deposited with the said trustee, a cashier's check in the sum of \$50,000 to be applied on account of the purchase price.

The trustee accepted said offer subject to reporting the same to and receiving the confirmation of

the same from the Court of Chancery of New Jersey.

That in addition to the statements herein contained in this affidavit, as to the negotiations and endeavors made by me and by the trustee to secure a purchaser for said stock, I have made every endeavor and have held numerous conferences with the said William H. Elfreth claiming to represent the beneficiaries, excepting Charles J. Allen and with their counsel in an effort to bring about a satisfactory sale of the stock now held by the trustee, but all efforts made by me have proven of no avail excepting the present offer which is submitted to the Court of Chancery for its determination and instruction. 10

(Signed) NELSON L. PETTY.

Sworn and subscribed to before me this 30 day of August, 1928.

MARY M. WILSON, 20  
*Notary Public of New Jersey.*

AFFIDAVIT.

(Filed Sept. 7, 1928.)

IN CHANCERY OF NEW JERSEY.

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Between

EMILY ALLEN ELFRETH,  
*Complainant,*

and

SARAH H. ALLEN, *et als*  
*Defendants.*

On petition, &c.  
Affidavit.

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

BRUCE BEDFORD, HERBERT SINCLAIR AND CHARLES  
E. STOKES, being duly sworn on their respective  
oaths, do depose and say:

We are all engaged in the manufacturing business  
in the City of Trenton, N. J., and have been so en-  
gaged for a number of years last past. We are also  
30 members of the board of directors of the Trenton  
Trust Company of Trenton, N. J., and are members  
of the Finance Committee of said company, charged  
with the duty of investigating manufactories and  
other places of business of persons who may ask  
loans from said trust company. We have made  
a number of such examinations and appraisements

of property and are familiar with the method generally used by appraisers of that character of property.

At the request of the trust officer of the Trenton Trust Company and by direction of the board of directors of said company, we did in the spring of 1928, examine the manufacturing plant and business of the S. L. Allen Co., Inc., located at Fifth Street and Glenwood Avenue, in the City of Philadelphia, for the purpose of fixing a valuation on said business and said plant in order to estimate and fix a value on the stock of the S. L. Allen Co., both common and preferred, which the Trenton Trust Company then held and now holds as trustee of the estate of Samuel L. Allen, deceased. 10

We were furnished with the accountant's report of said business made by Haverley and Hay, and also by the appraisements of the real estate made by J. R. Massey & Son. We first considered the value of the land and the value of the buildings for this manufacturing purpose; namely, for the manufacturing of agricultural implements and sleds. Then we considered the proposition as a whole, as a manufacturing business. We went over their assets and liabilities and we examined carefully their sales and profits, etc., and taking into consideration the land, buildings and machinery as adapted for that purpose, we couldn't put the figure any higher than \$1,500,000 for the entire plant and that was our valuation and was the recommendation of our committee to the board of directors to the Trenton Trust Company. In reaching our conclusion we gave due consideration not only to the physical assets of the company but also to its earning power and its sales are the basis of its earning power. We found by the statements furnished us 20 30

that they showed a net earning of about an annual 6% on the capital stock of the company or 5% on the sale price of the plant, over a period of ten years under efficient management and years considered unusually prosperous in the manufacturing business. As a going plant with this earning power, it would not in my opinion be worth over \$1,500,000. the plant possesses value because it is a going concern and under efficient management and is of greater value than a closed one. If closed, it would possess no value except the value of the liquidated assets, the lands and buildings, and machinery at scrap value. The plant is not a modern one for the carrying on of that kind of business. It is five stories high and the same amount of business could be done in a plant that would cost less to construct today. After consideration and conferring with each other, we reached the conclusion that \$1,500,000 is a fair and adequate price for the entire capital stock of the company. It was on the recommendation of our committee which was presented to the board of directors of the trust company, that the board directed its trust officer to accept the bid made by Messrs. Burt and Richie subject to the confirmation of the Court.

BRUCE BEDFORD,  
HERBERT SINCLAIR,  
CHARLES E. STOKES.

30 Sworn and subscribed to before me the 9th day of August, 1928.

MARY M. WILSON,  
*Notary Public of New Jersey.*

ANSWER.

(Filed Aug. 24, 1928.)

IN CHANCERY OF NEW JERSEY.

Between

EMILY ALLEN ELFRETH,  
Executrix,

Complainant,

and

CHARLES J. ALLEN, and  
others,

Defendants.

On petition of Tren-  
ton Trust Company  
for leave to sell  
stock of S. L. Allen  
& Company, Inc.  
Answer.

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Elizabeth R. Allen, Susan J. Allen, Emily Allen  
Elfreth, individually and as executrices of the will  
of Samuel L. Allen, deceased, and Emily Allen  
Elfreth, administratrix *pendente lite* of Sarah H.  
Allen, deceased, for answer to the petition filed  
herein say:

1. They admit the matters set forth in paragraphs  
1-4-5-6-7-8-9 and 10 of the petition.

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2. For answer to paragraph 2 they respectfully  
refer to the opinion of the Vice-Chancellor rendered  
in said cause and the proceedings in connection with  
the appointment of said trustee in the place and  
stead of the trustees appointed by the will of said  
Samuel L. Allen, deceased.

3. For answer to paragraph 3 they admit that the trustee has qualified, but deny that it is fully discharging its duties as trustee of the trust established under the will of said Samuel L. Allen, deceased.

4. For answer to paragraph 11, the defendants hath no knowledge as to said offer but deny the trustee has power or authority to accept said offer  
10 or make a sale of the stock referred to in said offer.

5. For answer to paragraph 14 these defendants allege that by the provisions of the will of Samuel L. Allen, deceased, and the power of appointment given thereby, and under the provisions of the will of Sarah H. Allen, deceased, and its provisions as referred to in said petition, said trustees are required to make delivery of that portion of the shares held by it for the benefit of Sarah H. Allen  
20 to her executor and trustee appointed by her in her last will and testament.

6. For further answer to said petition these defendants set forth that the said Samuel L. Allen, deceased, by his last will and testament intended that the stock which his trustees should receive, should not be sold, and for a period of at least ten years after the date of his death unless a majority of his family should assent in writing it could not be sold;  
30 further, he also provided that any stock that should come into the absolute possession of his children he advised should not be sold for a like period of time; that the testator, Samuel L. Allen, deceased, understood the character of the business which he had founded and made successful and also knew the value of the stock, its earning power and the cer-

tainty of income his widow and children would have by the retention of this stock by his trustees in the corporation to be formed to take over his interest in the former partnership; that by paragraph 8 of his will be distinctly provided that the trustees should take and hold as a part of the trust which he had created for the use and benefit of his wife and daughters, the stock to be allotted and delivered to his executors and trustees in the corporation to be formed, and provided that the said trustees 10 should "receive and hold such shares therein as may be so allotted and set apart without respect of liability on the part of my said trustee, for so doing."

7. That among the shares delivered to said trustees are 2500 shares denominated as Class "A" stock, which stock is the only stock in said corporation having voting powers and the said stock held by said trustees is the majority in amount of said stock 20 issued and outstanding and constitutes the control in voting power of said corporation; that said trustee notwithstanding its power to change the management of said corporation, has, however, since its appointment continued the present management in control of said corporation's affairs; that if a proper examination is made of the books and accounts of said corporation and a true appraisal made of its assets, it will be shown that the stock held by said trustee in said corporation is 30 reasonably worth not less than \$1,300,000; that the company has had a long and successful career, that the products which it manufactures and sells have a long and well established reputation for quality and usefulness and are greatly desired by its customers each year and that the said company, if

properly managed, will continue on a profitable basis for a long period of time, all of which facts were well known to the said Samuel L. Allen, deceased, in his lifetime and were duly considered by him in directing that his trustees should hold this stock in the corporation to be formed under the directions of the terms of his will and relieving them of any liability by reason of their holding stock in a corporation of this character.

- 10 That so far as these answering defendants can ascertain there is no impelling reason for the sale of the stock held by said trustee and that to permit a sale of said stock for the reasons alleged in said petition, would be a gross violation of the terms of the said trust created by the will of said Samuel L. Allen, deceased.

- 20 That by the terms of the will of the said Sarah H. Allen, deceased, referred to in the said petition, it is provided that her executors and trustee shall have full power to receive from the trustee of the estate of her husband, the said Samuel L. Allen, deceased, the said shares of stock of the S. L. Allen & Company, Inc., over which she had the power of appointment under the terms of the will of said Samuel L. Allen, deceased; that to permit a sale of said stock would be a distinct violation of the terms of the trust of the said Samuel L. Allen, deceased, as well as the terms of the trust established by the said Sarah H. Allen, deceased, by her last will and testament.

- 30 Further answering, the defendants allege that the offer received by the said trustee is one made on behalf of the president, vice-president and treasurer, the officers in control of the S. L. Allen & Company, Inc., who have intimate inside information as to the great value of this stock; that the offer which they have made to the said trustee is

very inadequate and that to permit the acceptance of said offer for said stock would not only be a violation of the terms of the trust created by the will of the said Samuel L. Allen, deceased, and the trust created by the will of his widow, Sarah H. Allen, deceased, but would permit the stock to be sold at a grossly inadequate price. That in the petition filed herein, asking advice and direction as to the sale of said stock there are no facts set forth in sufficient detail from which the Court can determine that the offer made by the said management is one that should be accepted. 10

Defendants further answering, deny that the offer to purchase said stock as submitted by said trustee is an advantageous one for said estate and should be accepted, but on the contrary, respectfully pray that the application of said trustee to make sale of said stock be denied.

SCAMMELL, KNIGHT & REESE,  
*Solicitors of Elizabeth R. Allen, Susan* 20  
*J. Allen and Emily Allen Elfreth.*

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

ELIZABETH R. ALLEN, SUSAN J. ALLEN AND EMILY ALLEN ELFRETH, do hereby respectfully solemnly affirm that the facts and matters set forth in the above answer are true to the best of their knowledge, information and belief; that in July, 1927,  
 10 based on an appraisal recently made by Ballinger & Company of Philadelphia, of the fixed assets of S. L. Allen & Co., Inc., and a report of the current assets and liabilities of the company's accountants, it was shown that the value of the stocks held by the trust estate were of the value of \$1,331,237.47, and in this calculation the preferred and Class "B" common stock were only valued upon the basis of \$100.00 per share, which your deponents believe is far below the true market value of this stock. That  
 20 in the estimate of the value of the stock held by the trust estate no amount was added to represent the controlling interest in said corporation.

ELIZABETH R. ALLEN,  
 SUSAN J. ALLEN,  
 EMILY ALLEN ELFRETH.

Subscribed and affirmed before me this ninth day of August, A. D., 1928.

RUBY E. VANCE,  
*Notary Public of New Jersey.*

AFFIDAVIT.

(Filed Sept. 7, 1928.)

IN CHANCERY OF NEW JERSEY.

Between

EMILY ALLEN ELFRETH,  
Executrix, etc.,

*Complainant,*

and

CHARLES J. ALLEN, and  
others,

*Defendants.*

On Petition, etc.  
Affidavit.

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STATE OF PENNSYLVANIA, }  
COUNTY OF PHILADELPHIA, } ss.

WILLIAM HENRY ELFRETH, being duly sworn according to law on his oath deposes and says:

I am the husband of Emily Allen Elfreth, one of the daughters of Samuel L. Allen, deceased, and because of that relationship and also because I as an attorney at law I have been consulted by Sarah H. Allen, widow of Samuel L. Allen, now deceased, and also by Elizabeth R. Allen and Susan J. Allen, the other daughters of Samuel L. Allen, deceased, with respect to the affairs in connection with the estate of the late Samuel L. Allen, and in particular with respect to the stock of the S. L. Allen & Com-

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pany, Incorporated, which stock is held by the Trenton Trust Company as trustee under the will of the late Samuel L. Allen, deceased. The stock held by said Trenton Trust Company constitutes the voting control of said corporation.

I have read over the affidavit made by Nelson L. Petty in the petition filed for leave to make sale of this stock, and also his affidavit of August 30, 1928, served upon counsel representing my wife  
10 and the two above mentioned daughters of the said Samuel L. Allen, deceased, as well as said Emily Allen Elfreth as the administratrix, etc.

So that there may be no confusion in the answer to the respective paragraphs contained in said statement, I will endeavor to make clear the facts in connection with the application for the sale of said stock by said trustee.

On June 25, 1926, a letter, signed by Mrs. Sarah H. Allen, Elizabeth R. Allen, Susan J. Allen and  
20 Emily Allen Elfreth, was sent to the Trenton Trust Company as trustee, etc., a copy of the contents of that letter being attached hereto and marked Exhibit 1.

It is my information that the trustee tried and succeeded in obtaining an offer from Charles J. Allen for this stock. The amount of this offer was never disclosed to me or my wife, notwithstanding my request of Mr. Petty to know the amount of this offer. To the best of my knowledge after the  
30 receipt of this letter, Exhibit 1, the trust company was making some effort to make a sale of this stock to Charles J. Allen, and I believe Charles J. Allen was making an effort to finance the purchase of this stock. I do not know the price which Charles J. Allen offered for the stock and although I requested Mr. Petty to advise me the amount of said offer he refused to give me this information, although the

offer had in fact been received by him as trustee of this stock.

From time to time questions arose as to the value of the stock and it is my best recollection that I told Mr. Petty that that is something that they should ascertain in the best way they could. I told Mr. Petty that they could have appraisals made by people in whom they had confidence and that would assist them in reaching a conclusion as to what they thought the stock was worth. I, however, made it clear to him that their judgment might not coincide with the judgment of the beneficiaries as to what they thought the stock was worth, but that they could best determine that when they knew the best figure the trust company had decided upon as in their judgment was a fair value of this stock. 10

The negotiations, or an attempt on the part of the trust company to make a sale of this stock being delayed and the company as I recall, having made a sum in excess of \$250,000 at the close of their year in 1926, and being fearful that the trust company did not realize the advantage to be gained in a sale of the stock when the company was making such a large sum of money, the beneficiaries thereupon voiced their insistence upon immediate action by a letter dated November 8, 1926, a copy of which is attached hereto and marked Exhibit 2. 20

The beneficiaries received a reply to this letter from Mr. Petty dated November 18, 1926, a copy of which is attached hereto and marked Exhibit 3. 30

The information mentioned to be given to me in this letter was subsequently furnished me.

Mrs. Allen and her daughters were always desirous of her son Charles J. Allen purchasing this stock, provided he submit a fair offer for it, but they were unalterably opposed to William H.

Roberts purchasing this stock by reason of his action in appropriating to himself a majority of the stock and compelling them to resort to the Court of Chancery to comply with the agreement of his partnership. Charles J. Allen never told, so far as I can understand, his mother or his sisters the figure which he had submitted for the purchase of this stock up to November 29, 1926, and because of this they were fearful that in some way their brother Charles J. Allen and William H. Roberts and the other officers, etc., with him in the Allen Company, would succeed in getting this stock at a very low figure.

Thereafter, in order to be sure that such a thing could not occur, they entered into an agreement with me whereby I should purchase this stock at a price of \$666,666.00 and in due course, on November 29, 1926, notified the trust company of such a sale. A copy of the letter referring to this agreement of sale is attached hereto, dated November 29, 1926, and marked Exhibit 4. This letter notifying them of the same did not, however, enclose a copy of the agreement of sale.

In fixing upon the price to be paid for the stock, the beneficiaries and myself understood that this price was upon the basis of retaining substantially the old management and from past experience they realized as well as I did, that the earning power of the company was controlled in effect by this management and accordingly would have its effect upon the price to be paid for the stock. It was understood that I would retain considerable of the old management, but this did not include Mr. William H. Roberts for the reasons stated in the above letter, Exhibit 4. I might say in passing that I had also made it clear to Mrs. Allen and her daughters that I considered that the value of the

lands and buildings was very much in excess of the figures which were set up upon the books of the company.

In response to the letter of November 29th, we received a letter from Mr. Petty, dated December 22, 1926, a copy of which is attached hereto and marked Exhibit 5.

After the receipt of the letter from the trust company of December 22, 1926, I had certain conferences with Mr. Petty, the trust officer, and it is true that I intimated to him that I felt that the beneficiaries would consent to a sale of this stock for the sum of \$1,200,000. I think it is also true that it was suggested that he offer the stock to the present management at that price and later he advised me that the management would not pay \$1,200,000 for the stock. This advice I received in a letter dated January 27, 1927, a copy of which is attached hereto and marked Exhibit 6. 10

In response to this last letter I forwarded to the Trenton Trust Company a letter dated February 1, 1927, a copy of which is attached hereto and marked Exhibit 7. 20

As a result of this letter I tried to obtain from the trust company a statement that they would sell to me this stock for the sum of \$1,200,000. On February 3rd and 4th certain telegrams passed between us, which said telegrams are attached hereto and marked Exhibits 8, 9 and 10.

The reasons for my telegrams are set out in full in a letter addressed to the Trenton Trust Company, dated February 4, 1927, a copy of which is hereto annexed and marked Exhibit 11. 30

After this last letter and learning that Charles J. Allen was either in Florida, or proposed to be, I went to Florida and in consultation with Charles J. Allen, his mother and his sister, Susan J. Allen,

entered into an agreement with him which was signed by Susan J. Allen and Sarah H. Allen in Florida, and subsequently by Elizabeth R. Allen in Philadelphia. This agreement provided for a sale of the stock to these interests at a price which we all agreed was inadequate, but inasmuch as the stock was going to Charles J. Allen and his children and to Mrs. Elfreth's children, it meant the continuation of the Allen stock in the Allen family. Later  
10 when Mr. Charles J. Allen returned to Philadelphia he repudiated the agreement and that is the reason that Mrs. Elfreth did not sign the agreement, because before she had an opportunity to sign the agreement it had been repudiated by Charles J. Allen.

I advised the Trenton Trust Company of the agreement which Charles J. Allen had made consenting to the sale of the stock as above stated. By this time the Trenton Trust Company had resolved  
20 to make an appraisal of their own of the value of this stock. Accordingly on May 17, 1927, they sent to Mrs. Sarah H. Allen a letter setting forth their values as reported by their committees and advisors, a copy of which is hereby annexed and marked Exhibit 12.

Eventually, as a result of this letter, I made a request that an engineering company be obtained to appraise the buildings, machinery, dies, patterns and other equipment, and accordingly the trustee  
30 employed the Ballinger Engineering Appraising Company to do this work, and it is my recollection that Mr. Petty had the land also appraised by a real estate appraiser in Philadelphia recommended by Mr. Roberts.

After notifying the Trenton Trust Company that Charles J. Allen had made the agreement above mentioned, and subsequently repudiating it, a con-

ference was held by Miss Elizabeth R. Allen, Mrs. Elfreth and myself and Mr. Petty, on or about May 13th, and later, on May 20, 1927, Mr. Petty wrote me a letter, a copy of which is attached hereto and marked Exhibit 13, to which letter I replied under date of May 23, 1927, a copy of which letter is also attached hereto and marked Exhibit 14. Mr. Petty replied to this letter under date of May 26, 1927, and a copy of that letter is attached hereto and marked Exhibit 15. 10

I replied to that letter under date of June 3, 1927, a copy of which letter is attached hereto and marked Exhibit 16, to which letter Mr. Petty replied under date of June 7, 1927, a copy of which is attached hereto and marked Exhibit 17. I replied to this latter letter under date of June 8, 1927, a copy of which is attached hereto and marked Exhibit 18.

From time to time I wrote to the Trenton Trust Company and impressed them with the difficulties that the proposed purchaser would have in the transfer of this stock and how necessary it was to have the proper officers in control to complete a sale in event a sale was made to persons other than the present management. To some extent my thoughts upon this subject were expressed in a letter addressed to the Trenton Trust Company, dated July 11, 1927, a copy of which is attached hereto and marked Exhibit 19. 20

In the meantime, the appraisal of the Ballinger Company had been completed and I had before me a statement of the accounts of the company. Based upon these figures I made an estimate of the value of the estate's holdings, a copy of which statement was sent to the Trenton Trust Company and a copy of which is hereto attached and marked Exhibit 20. 30

Feeling that it was useless to keep the negotiations open because of the attitude of the trustee, I

sent a letter to the Trenton Trust Company terminating my offer. This letter is dated July 15, 1927, a copy of which is hereto attached and marked Exhibit 21.

10 It is my impression that at some time during these negotiations I suggested, based upon the valuation at \$1,200,000 of the estate's holdings, that I would be willing to recommend that \$400,000 in cash, \$400,000 in first mortgage bonds and \$400,000 preferred stock be accepted for the estate's interest, believing that this would provide a method of financing for those in the management without requiring them to put up a large amount of cash, and that it would avoid taking any capital out of the business.

On July 16, 1927, with this in mind, I wrote to the Trenton Trust Company suggesting a conference of practically all of the persons interested in the company. A copy of this letter is attached hereto and marked Exhibit 22.

20 I had no reply to this letter. It was suggested that I have a personal interview with Mr. Petty, which I did, and I was informed that the suggestion met with no response from the present management.

30 For some considerable time I had been in consultation with my cousin, Mr. Ernest Reckitt, of Chicago, a man of considerable financial standing and influence and interested in various banking and commercial enterprises and also the managing director of Francis Reckitt & Sons, Ltd., of London, England, who was fully equipped, with his associates and connections, to purchase the stock of the S. L. Allen & Company, Incorporated, held by the trustee. He, together with his brother, I am creditably informed, control assets of \$35,000,000. Mr. Reckitt's interest in the matter had reached such a state that he came east to see me and we arranged a conference

at the Bellevue-Stratford Hotel in Philadelphia, with Mr. Petty and a representative of the Chicago banking firm of Lane, Roloson & Company, at which conference it was made known to Mr. Petty that the beneficiaries, with Mr. Reckitt and his bankers, were now in the field to purchase this stock, and what they desired to know from the trust company was what price they would accept for this stock. Mr. Petty stated that not only would the beneficiaries be given the same consideration as any other purchaser, but in view of the fact that they were the real owners of the business they would be specially considered, and that the bankers could count upon that. Further, he stated that he was not prepared to state the price at which the Trenton Trust Company would be willing to sell, but that he would immediately take it up with his directors and get in touch with Mr. Reckitt in Chicago. That negotiation was satisfactory to all parties.

Mr. Reckitt and the representative of Lane, Roloson & Company returned to Chicago, and Mr. Petty to his Trenton Trust Company for further instructions. Subsequently, Mr. Petty wrote to Mr. Reckitt, stating that after conferring with his directors it was decided that the stock in question would be sold by the Trust Company for not less than approximately \$611,275.

In the meantime, Mr. Reckitt had been advised as to what they thought would be necessary to overcome any opposition to the proper transfer of the stock upon the acceptance of the offer suggested by the trust company, and there is considerable correspondence sent to the trust company stating what would be necessary to cover any possible chance of interference with the transfer of the stock by the present management. These requests on the part of the beneficiaries which had been suggested by Mr.

Reckitt and his bankers were finally refused by the trust company under date of September 21, 1927.

10 Notwithstanding this refusal on the part of the trust company, the beneficiaries and their bankers above mentioned continued to make an effort to purchase this stock from the Trenton Trust Company at a price approximating what they said they would be willing to accept for the stock. Just as soon as it was apparent to the trust company that the beneficiaries and their bankers were in a position to purchase this stock, thereupon the trust company immediately felt that it was their duty to first offer it to the management, and I refer particularly to their letter of December 22, 1927, a copy of which is hereto annexed and marked Exhibit 23. Mr. Petty gave Mr. Reckitt the same information.

On December 24th I wrote to Mr. Petty a letter, a copy of which is attached hereto and marked Exhibit 24.

20 Later I received a telephone message from Mr. Petty in which he advised me that he would not make an offer to Roberts and his associates unless the beneficiaries would first set a price at which they would consent to sell it, and accordingly I telegraphed to the board of directors of the Trenton Trust Company under date of December 30, 1927, requesting to know whether they approved such attitude. A copy of the telegram is hereto attached and marked Exhibit 25.

30 Notwithstanding the specific instructions by the beneficiaries, there was no offer of this stock to Mr. Roberts and no offer made by Mr. Roberts to the Trenton Trust Company for the purchase of this stock, of which we had any knowledge.

On or about January 27, 1928, a conference was held by Mr. Petty, Mr. Reckitt and Mr. Cassel, of

the banking firm in Chicago, and myself, at which time I suggested that the trust company fix a price at which the stock could be sold and first offer it to the beneficiaries, as I thought the beneficiaries had the first right to buy this stock. In response to this suggestion I received a reply refusing such suggestion under date of February 3, 1928, a copy of this letter is hereto attached and marked Exhibit 26.

Beginning with February 4, 1928, counsel of the beneficiaries, Messrs. Scammell, Knight & Reese, 10 began to negotiate directly with the trust company and endeavored to effect a sale of this stock to the beneficiaries and those acting for them. These negotiations will be detailed by Mr. Harvey Knight, of that firm. All that I know is that Mr. Knight was fully authorized by the beneficiaries to make the offer which he did for the stock and conduct the negotiations which he had with Mr. Petty.

On February 14, 1928, I telegraphed to the directors of the Trenton Trust Company on behalf of the beneficiaries and made an offer of \$695,000 for the stock held by the trustee. A copy of this telegram is attached hereto and marked Exhibit 27. 20

In response to this offer on the following day, February 15, 1928, the Trenton Trust Company telegraphed me that Edward W. Burt and Edward L. Ritchie, for themselves and their associates, had made an offer to purchase all of the S. L. Allen & Company, Incorporated, stock held in trust for \$700,000, and had deposited a cashier's check for \$70,000, and the telegram stated that this offer remained open until Friday, February 17, 1928, at six o'clock P. M. A copy of this telegram is attached hereto and marked Exhibit 28. 30

Upon receipt of the above telegram notifying me that the Trenton Trust Company had received an

offer of \$700,000 on behalf of the beneficiaries, and acting in accordance with their instructions, on the 16th day of February, 1928, I telegraphed the Trenton Trust Company that there was nothing in their telegram that called for consent or dissent by the beneficiaries, that the beneficiaries were entitled to the best advice of the trustee as to whether or not the sale was advantageous to the beneficiaries, and stating definitely that the beneficiaries resented the  
10 action of the trustee in permitting their offer of \$695,000 to be communicated to the Burt-Richie group. A copy of this telegram is attached hereto and marked Exhibit 29.

In response to the foregoing telegram the Trenton Trust Company, on the same day, February 16, 1928, telegraphed me again reiterating that they had an offer to \$700,000 and asking whether or not the beneficiaries would consent to this sale. A copy of  
20 this telegram is attached hereto and marked Exhibit 30.

On the following day, February 17, 1928, the Trenton Trust Company telegraphed me as follows:

“We believe the offer of Burt and Richie is an advantageous one for the estate and have informed them that it will be accepted, subject to the beneficiaries’ consent. We again ask for beneficiaries’ consent or dissent.”

A copy of this telegram is hereto attached and  
30 marked Exhibit 31.

On the same date, after receipt of this telegram by me, and acting at the request and on behalf of the beneficiaries, I telephoned the office of Scammell, Knight & Reese and talked with Mr. Harvey Knight, a member of that firm. I instructed him to say to the Trenton Trust Company, on behalf of the bene-

ficiaries, that they did not consent to the sale of the stock of S. L. Allen & Company, Incorporated, held in trust by the Trenton Trust Company, to Messrs. Richie, Roberts, *et al.*, for \$700,000, and to make an offer to the Trenton Trust Company, trustee, on behalf of Sarah H. Allen, Elizabeth R. Allen, Susan J. Allen and Emily Allen Elfreth of \$700,000 for the stock in question, without prejudice to any of their rights as beneficiaries under the Allen will.

I also asked him to request the Trenton Trust Company to offer the entire holdings of stock of the S. L. Allen & Company, Incorporated, held by it in trust, to the beneficiaries for the sum of \$700,000, subject to their consent, and further instructed him to notify the trustee that the beneficiaries would consent to the sale of the stock of S. L. Allen & Company, Incorporated, to themselves for the sum of \$700,000. I am informed and believe that on February 17, 1928, the Trenton Trust Company was notified by Scammell, Knight & Reese that the beneficiaries of the estate did not consent to the sale of the stock of S. L. Allen & Company, Incorporated, to Messrs. Roberts, Richie, *et al.*, for \$700,000, and that the Trenton Trust Company was asked to offer the stock to the beneficiaries for the same price that it had stated was advantageous when offered by Messrs. Burt, Richie, *et al.*, to wit: \$700,000, and that the Trenton Trust Company was at the same time advised that the beneficiaries would immediately consent to the sale of the said stock to themselves for the price of \$700,000. This refusal to consent, and request that the Trenton Trust Company make an offer to the beneficiaries to sell the trust stock to themselves at the same price that the Trenton Trust Company had said was advantageous when it sought to sell the same to Messrs. Roberts,

Richie, Burt, *et al.*, was made in writing by letter, a copy of which is attached hereto and marked Exhibit 32.

I am further informed and believe that after said letter was delivered to Mr. Petty, trust officer of the Trenton Trust Company, that the Trenton Trust Company refused to offer the entire holdings of stock of S. L. Allen & Company, Incorporated, held by it in trust, to Sarah H. Allen, Elizabeth R. Allen, 10 Susan J. Allen and Emily Allen Elfreth, for the sum of \$700,000, subject to the consent of the beneficiaries. That thereafter and on the same day, February 17, 1928, before the hour of six o'clock P. M., and while the offer of Burt, Richie, *et al.*, still remained open for acceptance, the beneficiaries made an offer to the Trenton Trust Company of \$700,000 for the stock in question, unlimited in time, and without prejudice to any of their rights as beneficiaries under the Samuel Allen will, and I am in- 20 formed that Mr. Petty, the trust officer of the Trenton Trust Company, and was again told by Mr. Knight that the beneficiaries would immediately consent to a sale to themselves of the trust stock of the S. L. Allen & Company, Incorporated, for \$700,000, but that the Trenton Trust Company refused to offer the entire holdings of the trust stock of the S. L. Allen & Company, Incorporated, to the beneficiaries for \$700,000. That the aforesaid offer was made in writing by letter dated February 17, 30 1928, and a copy of the letter is attached hereto and marked Exhibit 33.

I am further informed by Mr. Knight and believe that when the refusal to consent to the sale of the Allen Company stock to Messrs. Burt, Richie, *et al.*, was communicated to the trustee and the trustee refused to offer to sell the stock at the same price to

the beneficiaries, although it was informed that the consent of the beneficiaries would be immediately forthcoming, that Mr. Petty at that time stated that the Trenton Trust Company, trustee, now had two identical offers and that the trustee would not accept either offer, but would ask its counsel in this matter, Mr. Peter Backes, to secure for the trustee further directions from the Court of Chancery in the premises. This statement of Mr. Petty's also was communicated to Mr. Knight by a letter of 10 which I have seen the original, and a copy thereof is attached hereto and marked Exhibit 34.

On February 17, 1928, at six o'clock P. M., the said offer of \$700,000 made by Messrs. Burt, Richie, *et al.*, expired and the aforesaid offer of the beneficiaries of \$700,000 remained the only offer open for the acceptance of the trustee.

The trustee never accepted this offer of \$700,000 made by the beneficiaries.

The trustee did not seek the opinion and advice of 20 the Court of Chancery relative to the said offers for said stock, as it had indicated it would do.

At this time the beneficiaries had the control of the sale of said stock by virtue of the provision of Samuel L. Allen's will.

On March 12, 1928, Mrs. Sarah H. Allen died.

On March 18, 1928, the said ten-year period expired.

Thereafter in June, 1928, the beneficiaries re- 30 ceived formal notice that the trustee had accepted for said stock of S. L. Allen & Co., Inc., an offer of Messrs. Burt and Richie, amounting to \$680,500, subject to the confirmation of the Court of Chancery of New Jersey.

WILLIAM HENRY ELFRETH.



EXHIBIT NO. 2.

Moorestown, N. J.  
November 8, 1926

The Trenton Trust Company,  
State & Chancery Streets,  
Trenton, New Jersey.

Re: Estate of Samuel L. Allen, Deceased 10  
Attention: Mr. Nelson B. Petty

Dear Sirs:

For some time past we, the undersigned, who constitute the majority of the beneficiaries of the Trust Estate of Samuel L. Allen, deceased, and a majority of the testator's family, have been giving serious consideration to the question of the advisability of the sale of the stock of S. L. Allen & Co. Inc., now held in trust by your company under the terms of the will of Samuel L. Allen, deceased, the voting control of the company being vested in your company which holds in trust a majority of the voting stock. 20

We are of the opinion that this stock should be sold, and as expeditiously as possible, provided a price can be obtained for it which meets with our joint written approval, and we have so informed you and instructed you in writing some months since.

With this condition of price complied with, we are prepared to give our unanimous approval and consent to a sale. 30

You will recall that a sale can be consummated only with the consent and approval of the majority of the Allen family. We constitute the majority and are with our mother the sole living beneficiaries

of the trust, the other member of the Allen family, Charles J. Allen, having no interest in the trust estate, neither as trustee or beneficiary.

May we ask, therefore, that in giving consideration to the matter of the advisability of a sale, you consider only the interest of the trust estate and the interest of ourselves as beneficiaries.

10      It is our thought that any sale should be based only upon sound legal and business considerations.

It is perhaps proper that we should state some of our reasons for advocating a sale of the stock in question.

20      Practically all of the property that we possess either jointly or individually in our right or in trust is represented by stock holdings in S. L. Allen & Co. Inc., the interest in this company being practically the only property devised by our father, the testator, except his residence in Moorestown. It does not seem to be good business policy to have all our estate invested in an industrial enterprise subject to the hazards and risks to which all manufacturing enterprises are liable.

We have consulted our bankers in regard to this matter and they all agree with us that the risk is unusually great.

30      We are all women. We have had no experience in the manufacturing business, and do not and never did hold positions either as directors or officers of our company, the control being in those who hold only a minority interest, and who constitute a group of people who, upon the death of the testator, used every legal means in their power to divest us of our majority interest in the company, and who surrendered that interest only upon the decree of the Chancery Court of New Jersey.

For almost two years, under this management,

we had no income whatsoever, and such income as we have received during the other years of the management has not been sufficient to enable us to set up reserves to tide us over periods of financial depression during which the business in the past has yielded no income, and which in the future, under similar conditions, would probably yield no income. Nor has our rate of income increased in proportion to the rate of increase in the cost of living and in the cost of other commodities. Nor has it increased with the rate of increase in wages and salaries allowed our officers and workmen. 10

Such income as we received in dividends has been based upon valuations in some instances established over thirty or thirty-five years ago, no attempt until recently having been made to pay us an income in proportion to the actual value of our property, and no consideration given to the increase in values of our land and buildings despite the fact that there has been general enhancement of real estate values throughout the entire United States. 20

We are desirous of a quick sale for the reason that the death of any of us, under present conditions might deprive the trustee of a majority holding of the voting stock and thus reduce the trust estate to a minority holding, which would be practically valueless in the event of an attempted sale. You are aware that our mother is far advanced in years and an invalid, and over night you may lose your majority holdings. 30

Two of us and our mother, for health and other considerations, are compelled to spend the greater portion of the year away from Philadelphia and are at most times a distance of a thousand or two thousand miles from our trustee and from the business which represents practically our entire estate.

We feel that our property should be invested where the income is fixed and regular and where the risk is not that of a manufacturing business, preferably in legal securities.

We also feel that if the property represented by the trust stock in question could be sold, the corpus of the estate, if an adequate price were received, would be increased, and thus our income would be  
10 increased.

Our management is largely composed of men far advanced in years who have attained an age at which efficient companies demand the resignation of such persons.

The representatives of your company upon the Board of Directors of the S. L. Allen & Co. Inc., are your President and your Trust Officer, neither one of whom has had any practical experience in the  
20 manufacture of agricultural implements and sleds and who constitute only two out of seven directors and who, so far as we have been able to ascertain, have never been able to lay down any broad and comprehensive plan of development for our company.

The combination of banker control, aged directors and officers, beneficiaries all women residing away from Philadelphia and representing absentee capital, the gradual expiration of our patents destroying the monopoly upon which the successful operation  
30 of the business was based, and the gradual encroachment of competitors, our company no longer being the largest manufacturer of sleds, can be regarded as the usual fore-runner to the ultimate and final disintegration of a once prosperous business.

In passing upon the advisability of a sale, could we ask you to consider only the interest of ourselves and the trust estate, and of no other person or per-

sons, and no other estate. Your knowledge and experience in the matter of administering trust estates make such a request more or less unnecessary, but we felt at this time we should definitely state our feeling in the matter. You of course appreciate that your company is under no obligation to anybody other than those persons who are entitled to the benefits of the Trust Estate.

We wish our Trustee to be informed that Charles J. Allen has made the statement that unless the Trust stock is sold to him and at his figure, he will oppose the sale to anyone else. We are also informed that you, as Trustee, would not make a private sale against the opposition of Charles J. Allen. 10

We wish to make it clear at this point that if Charles J. Allen is not willing at once to withdraw that opposition and do so in writing, we can have no further negotiations with him nor with anyone else who employs similar tactics. 20

We want you to know that we consider the presence of Charles J. Allen and associates on the Board of Directors of the company at this time a great menace to the Trust Estate.

These parties are in possession of all the records of the company, are in touch with the banks and bankers of the company and as they have openly threatened us with the statement that they will use their financial and other connections to thwart any sale to anyone else than themselves, we consider the situation an alarming one, and that we are under obligation to inform you at once. 30

In view of the foregoing facts we must reiterate our request and instructions to sell the stock provided a price can be obtained that meets with our joint written approval.

We are advised that such instructions to you are

mandatory under the terms of the testator's will, but aside from any legal aspects of the case, the business situation would seem to call for some statement from you as regards a possible sale of the stock under the conditions.

We wish to define our position clearly and unequivocally. We have given our instructions to you to sell. We do not regard ourselves under any  
10 further obligation other than to pass upon such offers as may be submitted to us for our consideration. But as we regard the situation as critical, we think the matter should not be allowed to drag. Aside from the other considerations stated, we know that if during the next year or years the company should accumulate a deficit rather than a surplus, a sale would be impossible.

We ask you, therefore, to give the matter the prompt and serious consideration that we feel it  
20 deserves.

If we can be of service to you in the matter, we shall be very glad to offer you every aid in our power.

Very truly yours,  
(Signed) Elizabeth R. Allen  
Susan J. Allen  
Emily Allen Elfreth

EXHIBIT NO. 3.

TRENTON TRUST COMPANY  
Trenton, N. J.

November 18, 1926.

To  
Misses Elizabeth R. and Susan J. Allen  
and  
Mrs. Emily Allen Elfreth. 10

In re S. L. Allen Estate

Dear Mesdames:—

We have given careful consideration to your letter of the 8th inst. in which you think it advisable for us, as substituted trustee under the will of the late Samuel L. Allen, to sell the stock of the S. L. Allen and Company and asking us to do so.

We have come to the conclusion that in order to affect a sale it is necessary to fix a selling or an asking price for the stock and this can either be done by you or by us. In a conversation over the telephone with Mr. Elfreth he informed me that he thought you would fix the price if I would obtain certain information for him; such as the original cost of land, cost of building, and a copy of the blue prints and specifications, etc. I took this up yesterday at the office of the S. L. Allen and Company and they promised to have this information for me very shortly. They do not know whether they have the blue prints and specifications of all the buildings or not, but they will give me what they have. 20 30

If there is any other information you desire, will you kindly advise me so that I can obtain it for you at once.

Very truly yours,  
(Signed) Nelson L. Petty  
Trust Officer.

EXHIBIT NO. 4.

Orlando, Florida,  
November 29th, 1926.

The Trenton Trust Company,  
Trenton, N. J.

Attention Mr. Nelson B. Petty

10 Dear Sirs:

We are enclosing herewith a copy of an agreement of sale of the Stock of S. L. Allen & Co., Inc., now held in trust by your company as substituted Trustee under the Last Will and Testament of Samuel L. Allen, deceased.

As their right in the matter of the sale of this stock under our Testator's will is arbitrary and absolute, we are under no obligations to state our reasons in exercising this right. We, however, consider it a matter of courtesy to state to you our reasons, although this is done entirely without prejudice.

20 We wish it to be clearly understood that we would not consider a sale to our brother, Charles J. Allen, for the reason that when we afforded him several months' time to submit an offer and withheld the proposition from all other parties, he refused to inform us of the terms of his offer and at the same time made the threat against us that if we did not  
30 sell to him and at his price, he would oppose the sale to any other party, although he is without power or right to do so and is neither a trustee nor a cestui que trust.

Furthermore, we would not consider a sale to William H. Roberts and his associates, for the reason that William H. Roberts was the partner of

our deceased father and upon his death repudiated the partnership agreement and in the formation of the corporation S. L. Allen & Co. awarded us a minority interest in place of a two-thirds interest that was rightfully ours. He complied with his partnership agreement only after years of litigation and only under the decree of the Chancery Court of New Jersey. We consider it good business to have no further business dealings with a person who has shown that he will perform his contracts only under the compulsion of court orders. 10

We would not want to consent to the sale of the stock to strangers, for the reason that it would result in a number of our relatives losing their present positions, and we understand that the purchaser whose offer we have accepted desires to have the present management remain if they care to do so, with the exception of William H. Roberts, who for several years has expressed a desire to be relieved from the duties and responsibilities of his office. The sale under the conditions of the contract in question would permit, on the part of William H. Roberts, the gratification of a wish and desire now of long standing, i.e., to withdraw from the active participation in the S. L. Allen & Co., Inc. 20

Very truly yours,  
(Signed) Elizabeth R. Allen  
Susan J. Allen  
Sarah H. Allen 30

EXHIBIT NO. 5.

December 22, 1926.

To  
Mrs. Sarah H. Allen  
and  
Misses Elizabeth R. and Susan J. Allen,  
10 414 Magnolia Avenue,  
Orlando, Fla.

In re S. L. Allen Estate

Dear Mesdames:—

We think you should know the present status of  
affairs regarding the sale of stock of the S. L. Allen  
Company, and to a certain extent this is in reply to  
your letter of the 29th ult., in which it was stated  
that a copy of an Agreement of Sale was enclosed.  
This was not enclosed so we have no knowledge of  
20 its contents.

In your letter, however, you state that your right  
in the matter of the sale is arbitrary and absolute.  
Our counsel, Mr. Backes, advises otherwise. I un-  
derstand his position to be this: The right of sale of  
the stock is vested in the trustee and no sale can be  
made by the trustee without the widow and all of  
the children of the late S. L. Allen consenting  
thereto. On the other hand, the trustee would not  
be bound to sell even if the widow and all of the  
30 children consented to a sale unless the trustee was  
satisfied as to the adequacy of the price, and if the  
sale was not for cash the trustee would be better  
protected by obtaining a confirmation of the sale  
from the Court.

After many interviews with Mr. Elfreth and an  
endeavor to effect a sale to someone we arrive at  
the following result: Mr. Charles J. Allen will not

become associated with Mr. Elfreth in the conduct of the business. From what Mr. Allen said yesterday this is final. I have suggested to Mr. Elfreth that the only way out of the difficulty was to sell to the present management, but he informs me that Mrs. Elfreth will not consent to a sale to the present management and Mr. Allen will not consent to a sale to anyone else.

The consequence is that we are blocked in making 10  
a sale.

As long as conditions remain in the above state, we regret to inform you that it seems to be useless for us to negotiate any further for the sale of the stock.

Very truly yours,  
Trust Officer.

NLP:EW

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20

EXHIBIT NO. 6.

TRENTON TRUST COMPANY  
Trenton, N. J.

January 27, 1927.

To  
Mr. W. Henry Elfreth,  
Green Hill Road,  
Overbrook,  
Philadelphia, Pa.

30

Dear Mr. Elfreth:—

I had a personal talk with some of the management of the S. L. Allen Company yesterday and they advised me to tell you that they will not pay

\$1,200,000. for the stock held by us in the S. L. Allen Estate.

Very truly yours,  
(Signed) Nelson L. Petty  
Trust Officer.

NLP:EW

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EXHIBIT NO. 7.

Philadelphia  
Pennsylvania

February 1, 1927

Trenton Trust Company,  
Trenton,  
New Jersey.

Attention Mr. Nelson L. Petty.

20 Dear Sirs:

I have your note of the 27th ult. stating that the management of S. L. Allen & Co. Inc. will not pay \$1,200,000 for the stock of the company held by your company as Trustee.

As I understood the situation the Management was never willing to make an offer for the stock and refused to even consider the proposition except upon an offer from you to sell to them at a stated price. The situation now is that the management  
30 refuses to buy at the stipulated price of \$1,200,000. I take it that the Management is now eliminated from the situation, and we do not have to give further consideration to them. It seems that it has taken them almost a year to formulate a rejection.

I suppose I may assume that I will be accorded equal consideration with the so-called Management,

and I am, therefore, requesting that you write me at once that you are willing to offer to sell the stock to me for the same price, i.e. \$1,200,000, that was given to the Management.

I should also like to be informed at once as to the exact date upon which you could deliver to the purchaser the actual possession of the business.

I also want to know whether upon the payment of \$1,200,000 in cash you could in fact deliver good 10 legal title to the stock in question.

I have the consent of the majority of the Allen family to the proposition of the sale to me for the consideration of \$1,200,000, namely, Sarah H. Allen, Susan J. Allen, Elizabeth R. Allen, and Emily Allen Elfreth, constituting all the beneficiaries of the trust and all the real owners of the stock in question.

May I ask that you give these matters your prompt consideration. 20

Very truly yours,

WHE:HA

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EXHIBIT NO. 8.

WESTERN UNION  
TELEGRAM 30

Trenton Trust Company

Will you inform me by return wire whether you will or will not offer to sell to me the controlling stock interest of S L Allen and Co Inc for one million two hundred thousand dollars in cash

W Henry Elfreth



EXHIBIT NO. 11.

The Trenton Trust Company,  
Trenton,  
New Jersey.

Attention Mr. Nelson L. Petty

Dear Sirs:

I telegraphed your company today stating that, 10  
as I had received no responsive reply to my tele-  
gram of yesterday, asking whether you would offer  
to sell to me the stock of S. L. Allen Co. Inc. for  
\$1,200,000, and as I had stated in the second tele-  
gram that failure to receive a responsive reply I  
would consider as a refusal to sell to me for the  
consideration named, I considered the incident  
closed and was no longer interested in buying at  
any figure.

Instead of replying responsively to my telegram, 20  
you telegraphed me asking whether I would be will-  
ing to pay \$1,200,000 for the stock in question and  
if so to make an offer accordingly and deposit my  
check for \$50,000.

I, thereupon, telephoned your trust officer for an  
explanation of his telegram and asked him if I  
should make an offer to buy the stock in question  
for the consideration named, and if I should deposit  
\$50,000 in cash, would the trust company upon my  
call and upon the payment of the balance of the con- 30  
sideration forthwith deliver the stock in question to  
me properly endorsed and transferred on the books  
of the company. I was told that the Trust Com-  
pany would not do this, that they would not and  
could not sell the stock except with the consent of  
Charles J. Allen. I then knew that you were asking

me to make a deposit of \$50,000 on account of the purchase price knowing that you would not and could not and had no intention of delivering the stock to me upon my call.

I then made a second suggestion, asking whether your company upon the payment of \$50,000 would deposit the stock in escrow with a Philadelphia Trust Company upon the condition that it would be  
10 delivered to me upon the payment of the balance of the purchase price. This, of course, you also refused.

My sole purpose in sending you the telegram was to ascertain whether the stock was in fact for sale for the consideration named and whether in fact you would deliver it. I am fully informed on the subject.

This morning I ascertained through reliable  
20 sources that Charles J. Allen would not consent to the sale to me for the consideration named or for any other consideration or upon any terms. This statement he made today. This is his irrevocable position upon his own solemn statement today, although his attorneys in all probability write you differently. I prefer to rely upon the man's own statement which I, myself, heard him make today.

My sole object in the matter of negotiations for the sale was to obtain for my wife and her sisters and mother a fair price based upon such appraisals  
30 as had been made, and it was thought that a business that showed a surplus of a half million dollars and the possibility of an increased surplus to the amount of a million dollars within the next three or four years should be worth at least \$1,200,000 to any purchaser of the majority interest.

I had hoped to have your cooperation and assistance as Trustee for this estate in obtaining a fair

price for the stock in question. It seemed to all of us that your sole duty was to sell the stock for the benefit of the estate and not to refuse to sell it upon the objection of a party who is neither trustee or beneficiary of the trust estate and who was interested in such sale only as would insure the continuance of his employment by the corporation in question.

The beneficiaries of the estate have now concluded that further business negotiations under the circumstances are entirely futile and it is their intention and my intention as the father and next friend of my children who have a remainder interest in this trust estate to frame an issue and submit the matter to the court for a decision. 10

It is therefore Mrs. Elfreth's and my intention to retain counsel and institute proceedings in the United States Court as soon as the matter can be conveniently arranged. 20

These beneficiaries have always felt that the continuation by your trust company of this management after it had been caught in the act of appropriating the majority stock of the corporation would only result in future trouble for the estate and it now develops that the estate is prevented from selling estate property by this same Management that has no interest in the welfare of this estate and is concerned only in the matter of the continuance in employment in this corporation. 30

Naturally Charles J. Allen and his associates would oppose the sale for a consideration greater than this management can afford to pay, but it is incomprehensible that the Trustee would permit this management to successfully block a sale, be-

cause you as Trustee are under no fiduciary duty or obligation to any of the management.

Very truly yours,  
(Signed) W. Henry Elfreth

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EXHIBIT NO. 12.

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May 17, 1927.

To  
Mrs. Sarah H. Allen,  
414 N. Magnolia Ave.,  
Orlando, Fla.

In re Samuel L. Allen Estate

Dear Mrs. Allen:—

In order to undertake the sale of the stock of the S. L. Allen and Company held by us as trustee, we have had an appraisal made by a man who is qualified to make it and have also asked an investment banker to fix a price at which he thinks the stock could be sold. The value given by them is for the entire amount of the capital stock outstanding and not just that held by us as trustee. The amount of capital stock of the Company outstanding is as follows:

20  
Preferred ..... \$400,000.  
Class B. common stock ..... 350,000.  
Class A. common stock ..... 450,000.

30

Total ..... \$1,200,000.

The stock held by us as trustee is as follows:

Preferred ..... \$104,300.  
Class B. common stock ..... 73,100.  
Class A. common stock ..... 250,000.

Total ..... \$427,400.

The appraisals received by us varied from \$1,500,000. to \$1,850,000. Taking the appraisal of \$1,500,000. and figuring the preferred and B. at par we should receive for the estate's holdings the following:—

Preferred at par .....	\$104,300.	
Class B. common .....	73,100.	
Class A. common .....	416,650.	
	10	
Total .....	\$594,050.	

Taking the appraisal of \$1,850,000. we should receive for the estate's holdings, as follows:—

Preferred at par .....	\$104,300.
Class B. at par .....	73,100.
Class A. ....	611,111.
	30
Total .....	\$788,511.

We had a conference with Miss Elizabeth R. Allen and Mr. and Mrs. Elfreth on Friday last, at which time Mr. Backes was also present and all of us went over these figures very carefully. You have asked us to offer the stock for sale at a price, however, to be subject to your approval and Mr. Backes told them that they should fix the figure at which we should offer it for sale. They decided in the afternoon that they would consent to a sale of the estate's holdings for \$1,200,000 and to offer it to the minority stockholders first and we have already made that offer to them verbally and will make it a formal offer this morning and will advise you as soon as we have their reply.

It was the understanding of all of us present Friday afternoon that the above figures should be treated entirely confidential and not be disclosed to anyone. Will you also kindly treat the matter the same way.

102 *Affidavit of William Henry Elfreth—  
Exhibits*

You have probably heard from Miss Elizabeth R. Allen regarding the interview but I am writing the above as I think you should also be acquainted with the facts from us, and to show you that we are taking steps to sell the stock.

Very truly yours,  
Trust Officer.

NLP:EW

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EXHIBIT NO. 13.

TRENTON TRUST COMPANY  
Trenton, N. J.

May 20, 1927.

To  
Mr. W. Henry Elfreth,  
7037 Green Hill Road,  
Overbrook, Phila., Pa.

20

In re S. L. Allen Estate

Dear Mr. Elfreth:—

At a conference held at this office on the 13th inst. at which you were present, together with Mrs. Elfreth, Miss Elizabeth R. Allen and myself, it was stated to me that Mrs. Allen and her three daughters would consent to sell the stock of the S. L. Allen Company held by us as Trustee for \$1,200,000. and that I was to give Mr. Roberts and his associates the first chance to buy the stock at the above price, and that in case of his refusal I was to offer it to you. I wrote to Mr. Roberts on the 17th inst. offering him the estate's holdings for \$1,200,000. and have received a reply from him today to the effect that he is not interested in the pur-

30

chase of the stock at that figure. We hereby now offer the stock to you for the same price.

The estate's holdings consist of the following:—

Preferred .....	1043 shares
Class B. common .....	731 “
Class A. common .....	2500 “

We would appreciate it very much if you would give us an early reply.

Very truly yours, 10  
(Signed) Nelson L. Petty  
Trust Officer.

NLP:EW

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EXHIBIT NO. 14.

Philadelphia  
Pennsylvania

May 23, 1927 20

Trenton Trust Company,  
Trenton,  
New Jersey.

Attention Mr. Nelson L. Petty

Dear Sirs:

I hereby accept your offer of the 20th instant to sell to me the stock of S. L. Allen & Co. Inc. held in trust by your company under the terms of the will of Samuel L. Allen, deceased, consisting of 1043 Shares of Preferred, 731 Shares of Class B Common, 2500 shares of Class A Common, subject to the following conditions, which conditions I will ask you to accept or reject at your early convenience. 30

(1) That the payment of the consideration of \$1,200,000 and the delivery of the stock cer-

tificates and the transfer on the books of the company shall be accomplished simultaneously at the time of settlement.

(2) That the sale is to be private and not reported to the Court, and if the sale should come before the court this contract is voidable at my option.

10 (3) That proper assurances be given to me at once that actual possession of the corporation will be given to me upon the delivery of the stock and the payment of the consideration, i.e. that transfer will be effected upon the books of the corporation, and that I shall name and have at the time of settlement my own board of directors and officers.

20 (4) That there shall be no diminution of the assets below the amount shown in the financial statement of the company as of July 1, 1926 and January 1, 1927 and that all accretions as to assets from those dates shall pass with the delivery of the stock, and that no amounts be paid out from the treasury except the established current operating expenses, current salaries, and current dividends.

(5) That the records of the company, including ledgers, journals, day-books, and all other records be impounded to insure delivery to the purchaser.

30 (6) That the Trenton Trust Company use its best efforts to prevent its agents or the officers or directors of S. L. Allen & Co. Inc. or their agents or associates from in any manner obstructing the sale to me and that any such obstructing tactics subsequent to our meeting on the 13th instant shall at my option render the contract voidable and void.

(7) That settlement may be made at any time at my option within sixty (60) days after the acceptance of these conditions above enumerated by the Trenton Trust Company.

I would appreciate any early reply.

Very truly yours,  
(Signed) W. Henry Elfreth

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EXHIBIT NO. 15.

TRENTON TRUST COMPANY  
Trenton, N. J.

May 26, 1927.

To  
Mr. W. Henry Elfreth,  
7037 Green Hill Road,  
Overbrook, Phil., Pa.

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Dear Mr. Elfreth:—

In reply to yours of the 23rd inst. in which you accept our offer to purchase the holdings of the preferred and Class B. and Class A. common stock of the S. L. Allen & Company held by us as Trustee of the Samuel L. Allen Estate, subject, however, to seven conditions which you name in your letter: we desire to state that we cannot comply with them. All that we can do is to agree to deliver to you the certificates properly endorsed for transfer, and of course the purchaser will be entitled to all the right, title and interest which the stock certificates may give the holder thereof.

30

Very truly yours,  
(Signed) Nelson L. Petty  
Trust Officer

NLP:EW

EXHIBIT NO. 16.

Philadelphia,  
Penna.

June 3, 1927

Trenton Trust Company,  
Trenton,  
10 New Jersey.  
Attention Mr. Nelson L. Petty

Dear Sirs:

Your letter of the 28th ult. has been duly received.

The conditions that I placed upon the sale of the stock of S. L. Allen & Co. Inc. were for the sole purpose of making sure that the actual possession of the plant would follow the acquisition of the stock upon the payment of my consideration.

20 I am not interested in the purchase of the stock except as it carries with it the actual possession of the plant.

Your statement to the effect that all that you can do is to agree to deliver "the certificates properly endorsed for transfer", is most extraordinary, in view of the fact that actual legal title to stock passes only upon transfer on the stock books of the company, and in view of the fact that your trust officer and president sit on the board of directors of S. L. Allen & Co. Inc. and actually control the company.  
30 For the consideration of \$1,200,000 I would under your scheme have only an equitable interest in the stock.

Your letter has the result only of creating a spirit of distrust on the part of myself and my bankers.

I do not believe that your offer was made to me

in good faith, and I desire to withdraw from the situation.

If you think that you can sell the stock to any other party or parties for \$1,200,000 upon the terms you name, you should have the opportunity to do so, and I assure you you will have no opposition from either the beneficiaries of the estate or from myself.

Very truly yours, 10  
(Signed) W. Henry Elfreth

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EXHIBIT NO. 17.

TRENTON TRUST COMPANY  
Trenton, N. J.

June 7, 1927. 20

To  
Mr. W. Henry Elfreth,  
7037 Green Hill Road,  
Overbrook, Phila., Pa.

In re S. L. Allen Estate

My dear Mr. Elfreth:—

Permit me to make answer to your letter of June 3rd and repeat my former statements to you, as trustee of this estate we will transfer to you or your assigns, the shares of stock held by us as trustee upon the payment of the price. This transfer of all the shares will disqualify Mr. Smith and myself from continuing as directors and will cause a vacancy in the Board. I understand the by-laws to provide that the vacancy can be filled by the remaining directors and the vacancy so filled will hold until the annual election. 30

I have learned that the annual election is held in September. Should the purchase of this stock be concluded before the annual election, the holders will have the right to vote for their nominees.

10 The officers of the Allen Co. cannot refuse to transfer any shares which may be properly assigned and presented for transfer, unless the books have been closed for transfer of shares just before the annual election.

I do not wish to create a spirit of distrust either in you, your bankers or any other prospective purchaser. Whatever your belief may be, you have my sincere assurance that the trustee is acting in absolutely good faith and for the best interest of the beneficiaries. However, if your expression "I desire to withdraw from the situation" means for you to be relieved from pending negotiations, then  
20 let me say the trustee has no means of holding you to this bargain and is relying on your good faith to secure a purchaser and for this purpose only is given you the opportunity to bring about this result.

Very truly yours,  
(Signed) Nelson L. Petty  
Trust Officer

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EXHIBIT NO. 18.

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June 8, 1927

Trenton Trust Company,  
Trenton,  
N. J.

Attention Mr. Nelson L. Petty.

Dear Sirs:

I am in receipt of your letter of the 7th instant,

in regard to the proposed sale of the stock of S. L. Allen & Co., Inc., held in trust by your company, which letter is only a reiteration that you will deliver only an equitable title, together with a detailed statement of your opinion as to the rights of an equitable owner of stock in a Pennsylvania Corporation.

I wish to repeat that I am not interested in the purchase of equitable rights in this stock at any 10 price.

I am only interested in the purchase of the legal title and upon the express condition that actual possession of the plant shall pass to me upon the payment of the consideration.

It is immaterial to me in what manner these results might be accomplished, if they can be accomplished, but as stated before unless legal title and actual possession of the plant passes upon payment of the consideration, I am not interested in consid- 20 ering the proposition.

Very truly yours,

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EXHIBIT NO. 19.

Philadelphia, Pa.

July 11, 1927

Trenton Trust Company,  
Trenton, N. J.

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Attention of Mr. Nelson L. Petty

Dear Sirs:

I have your letter of recent date in regard to the transfer of the stock of S. L. Allen & Co., Inc., and I take it to mean that your company is willing to

go no further than the act of signing the form of assignment on the back of the stock certificates. My telephone conversation with you in regard to this matter was in confirmation of the view that I have stated. If I am wrong, you will kindly correct me.

10 The further statement in your letter to the effect that you do not propose to change any of the directors or officers at your next annual meeting, and I assume that I may also infer that you will not obtain from them their resignations at the time of their election, makes it clear that there is no possibility of obtaining a good, legal, and marketable title to the stock in question.

20 After telephoning you this morning, I consulted with the trust officer of my trust company, and he supports me in all my views in regard to the matter. The endorsement of the stock certificates by you as trustee would not give to the purchaser either the right to receive dividends or the right to vote at elections.

We were both agreed on the legal proposition that if the person in charge of the transfer books had any doubt as to your right to assign the stock he would be quite justified in refusing to make transfer on the books of the company.

30 There is no question in the present case but that the transfer clerk or agent has such a doubt for the reason that you have more or less broadcasted the opinion of your counsel to the effect that you should not and could not sell the stock in question without the consent of Charles J. Allen. There is no question but that your treasurer and transfer agent is well aware of the existing trust and your view on the subject of your rights of sale.

In brief, such title as you propose to give to me

or anyone associated with me would not be regarded as a good legal title on the part of any purchaser from me, nor on the part of any banker who might be asked to lend on the stock as collateral, nor would it be such title as your own treasurer would be willing to accept by transfer on the books of the corporation.

You will bear in mind that your treasurer's personal counsel is a former associate of the late Mr. John G. Johnson, and it is to be presumed that he has such knowledge of corporation law of Pennsylvania as is general knowledge with lawyers and bankers throughout the State. 10

Of course, there is no merit in the contention that Charles J. Allen, who is outside the trust, has any legal right which would enable him to stop a sale, but if your counsel has advised you not to make a sale against his objection, and if such opinion of your counsel has come to the attention of your treasurer, as it of course has, you may rest assured that cognizance will be taken of the fact. 20

What I wanted, and what any other purchaser would want, is a good, legal title, meaning title evidenced by transfer on the books of the company. This title you are not willing to give, nor are you willing to make any effort in the matter.

The continuance of Edward H. Richie in the office of treasurer confirms me in the opinion that a legal title is impossible of attainment. He is interested with other parties in the purchase of this stock, has expressed his opposition to a sale, he has told me personally that he does not think a sale can be consummated except with the consent of Charles J. Allen, and to date he has frustrated every attempt to make a sale to anyone except himself and his associates, the so-called management. 30



Ballinger & Co., as to fixed assets, and the report of Heverle and Hay, Accountants, as to current assets and liabilities, the interest of the Estate in the corporation is as follows:

Class A Common stock, 2500 shares at par,	\$250,000.00	
Class B Common stock, 731 shares at par,	73,100.00	
Preferred Stock, 1043 shares at par,	104,300.00	10
TOTAL		
	\$427,400.00	
To which add 5/9 of the surplus of \$1,626,907.46	903,837.47	

Total Net Worth of the holdings of the Estate \$1,331,237.47

RE-STATEMENT

Class A Common Stock, @ \$461.5349 per share	\$1,153,837.47	
Class B Common Stock, @ \$100 per share	73,100.00	
Preferred Stock, @ \$100 per share	104,300.00	20

NET VALUE OF THE HOLDINGS OF THE ESTATE \$1,331,237.47

Class A Common Stock alone has voting privileges, and after payment of 7% cumulative dividends on the Preferred Stock, and 6% on the Class B Common Stock, Class A Common Stock is entitled to the whole of any additional dividends declared. Class A Common Stock alone shares in the surplus of the corporation after the payment of the par value of Class B Common and the Preferred Stock. 30

The Estate of Samuel L. Allen, Deceased, held in trust, holds five-ninths (5/9) of the entire authorized and outstanding Class A Common Stock.

The total amount of capital stock of the Corporation outstanding is as follows:—

	Preferred .....	\$400,000.
	Class B Common Stock .....	350,000.
	Class A Common Stock .....	450,000.
10	Total .....	<u>\$1,200,000.</u>

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EXHIBIT NO. 21.

Philadelphia, Pa.  
July 15, 1927.

20 Trenton Trust Company,  
Trenton, N. J.

Attention of Mr. Nelson L. Petty.

Gentlemen:

Having received no reply to my letter of recent date, I consider the matter of our negotiations, as regards the sale of the S. L. Allen & Co., Inc. stock to me, or my nominees, as terminated.

The situation, therefore, as it now exists, is this:

1. The so-called management of S. L. Allen & Co., Inc., refuse to purchase the stock in question for  
30 the consideration of \$1,200,000.00.

2. My acceptance of your offer is to sell the stock to me or my nominees for \$1,200,000.00, subject to the condition that I be given legal title, that is, title evidenced by transfer on the books of the company, such as would entitle the owner to vote and receive dividends, stands definitely rejected and refused.

3. The beneficiaries refuse to sell for any less sum for the reason that the appraisals as recently made show that the stock is worth this amount and more.

On behalf of myself and the beneficiaries of this estate, and on behalf of my infant children, acting as their father and next friend, I should like to ask to whom do you think you could sell this stock for any price, accept their cash consideration, and give 10 them no legal title.

It is concluded by all the parties concerned that further negotiations are useless.

Very truly yours,

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EXHIBIT NO. 22.

Philadelphia, Pa., July 16, 1927. 20

Trenton Trust Company,  
Trenton, N. J.

Attention Mr. Nelson L. Petty.

Dear Sirs:—

The refusal of the management of S. L. Allen & Co. Inc. to purchase the Trust Stock of the Company from you as trustee for the sum of \$1,200,000. approximately the amount of the appraised value of the stock, your refusal to sell to anyone else at that figure giving a legal title to the purchaser of 30 the stock, i. e. transfer on the books of the company and giving the purchaser thereby the right to vote the stock and to receive dividends, and the right to vote the stock and to receive dividends, and the many acts on the part of your management, particularly your Treasurer, designed to prevent the sale

to anyone but the management, create an issue that apparently cannot be decided except in the courts.

Before resorting to this means it has been suggested that since there has never been a joint meeting of the parties interested, perhaps such a meeting might result in some solution.

10 Could such a meeting be arranged for a date not later than Saturday next, the meeting to include William H. Roberts, as the owner of one-third of the voting stock, and his son, and Charles J. Allen, owner of one-ninth and yourself as legal owner of five-ninths and the beneficiaries of your Trust Estate as the equitable owners, and myself as the father and next friend of my children who together with the children of Charles J. Allen have valuable remainder interest in the matter.

20 It would seem that both you and your beneficiaries should have a mutual interest in the question which they desire to be the sole subject of the proposed meeting, namely—the conversion of their estate interest from a hazardous business investment to a series of legal investments, that the appraised value of the land of the corporation as shown by the Massey appraisal and that the value of the buildings and machinery as shown by the appraisal by Ballinger Company, Architects, Engineers and Appraisers.

30 A joint meeting can work out a scheme whereby the interest of the estate can be sold at the appraised value or if a plan can be worked out whereby a good part of the capital of the estate can remain in the business under proper safe-guards at the appraisal value, the meeting is worth while calling. If not we can frame our legal issue without further formality.

Kindly inform me by telegram whether such a meeting could be arranged.

Very truly yours,

EXHIBIT NO. 23.

TRENTON TRUST COMPANY

Trenton, N. J.

December 22, 1927.

To

Mr. W. Henry Elfreth,  
7037 Green Hill Road,  
Overbrook, Phila., Pa.

Dear Mr. Elfreth:—

In your letter of the 20th inst. you inquire whether we would deliver legal title to the shares of stock of the S. L. Allen Company held by us as trustee upon the payment of the consideration. 20

I took this up with our Committee this morning and they are of the opinion (and I know it will be the opinion of the members of our Board) that the other stockholders of the S. L. Allen Company should be given an opportunity to purchase the S. L. Allen Estate holdings. If the other stockholders do not want to buy it or if they will not give as much as any one else, then no doubt our Company would sell to any one upon the payment of the consideration and with the consent of the Allen beneficiaries. 30

With best regards, I am

Very truly yours,

(Signed) Nelson L. Petty

Trust Officer

NLP:ES

EXHIBIT NO. 24.

December 24, 1927.

The Trenton Trust Company,  
Trenton, N. J.

Re: Proposed Sale Trust Stock S. L. Allen &  
Co., Inc.

10 Attention: Mr. Nelson L. Petty. Committee in  
charge of sale. And Board of Directors.

Dear Sirs:

Your letter of the 22nd inst. duly received. If  
the beneficiaries or I can place any faith in your  
statements of the letter of the 22nd, you will at  
once take the following action:

20 1. Offer the majority stock interest which you  
now hold to Roberts and the other stockholders for  
the amount of your recent appraisal which you state  
is all that it is worth, or you will ask them a price  
either more or less than you think it is worth, as in  
your discretion may seem best, subject to the ac-  
ceptance or rejection of the beneficiaries. If you  
can think mathematically of any other way of  
offering the stock, that is, for its appraised value,  
or more or less, please be kind enough to do so.

30 2. Or you will ask Roberts and the other stock-  
holders to make you an offer. If you can think of  
any other method of consummating a sale, except  
by an offer made by the buyer or seller, please in-  
form us and we shall be glad to co-operate with you,  
as it offers new principles of law and business of  
which we have to date, no knowledge.

Roberts and the other stockholders have been  
shown your appraisal of the land by Mr. Massey  
of Philadelphia, the very elaborate appraisal of the

buildings and machinery by the Ballinger Co. of Philadelphia, architects and engineers, besides they have in their possession all the records of the company since its founding some forty years ago, access to many of which records, has been denied the beneficiaries and they have had over a year to give consideration to the matter of possible purchase.

Furthermore, your Company has appointed a special appraisal committee and you have called in 10 various banking concerns and should by this time be clear in your own minds.

We therefore ask that within the next week you make an offer to Roberts and the other stockholders and obtain an acceptance or rejection within a week's time, or within this stipulated time we ask you to obtain from Roberts and the other stockholders an offer on their part to purchase the stock in question, or a refusal to do so, as they may elect.

It does not seem unreasonable to ask you after 20 a year's delay to do the thing which you say you want to do—give the stockholders in question an opportunity to bid on this stock.

In your phone conversation with me this morning you stated that if the beneficiaries would consent to the sale of this stock on the basis of your appraised value, namely, \$1,200,000.00, for the entire stock issue of the Company, you would consent to a sale to Roberts and the other stockholders and would deliver the stock in question to the purchasers giving them legal title by transfer on the books. 30

I asked you to immediately confirm this in writing and in order to hasten matters I sent you a telegram the contents of which I made known to you over the telephone in order that the matter might be presented to you in practically your own words.

Copy of the telegram follows:

“Philadelphia, Pa.,  
December 24, 1927.

Mr. Nelson L. Petty,  
c/o. Trenton Trust Co.,  
Trenton, N. J.

10 If the beneficiaries of Allen Estate will fix a price value on the Allen Company trust stock at your appraisal value of one million five hundred thousand dollars for all the stock, being approximately six hundred and eleven thousand dollars for the trust shares, would your Company deliver legal title to Roberts and the other stockholders upon payment of purchase price (Stop). Kindly refer this to your Board and wire me their reply.”

(Sgd.) W. Henry Elfreth.

20 I am prepared to take up any definite proposition from your company at once with the two beneficiaries in Philadelphia and am prepared on two days' notice to take the matter up personally in Florida with the other two beneficiaries, who are in Orlando.

I again call your attention to the business and financial depression which exists practically throughout the entire country and urge you to a speedy action in the matters involved.

Very truly yours,

30

EXHIBIT NO. 25.

DAY LETTER  
PHONED TO WESTERN UNION

York, Pa.

DIRECTORS OF TRENTON TRUST CO.  
TRENTON, N. J.

I was informed this morning over the long distance telephone by Mr. Petty that the directors refuse to ask Mr. Wm. H. Roberts or his associates to make an offer for the S. L. Allen & Co. Inc. stock unless the beneficiaries will first set a price at which they will consent to sell (Stop) Is this correct (Stop) The beneficiaries demand that you ask Roberts for his offer, and submit it to them whatever it is (Stop) Or if he refuses to make an offer that you transmit his refusal (Stop) They demand the action and reply of your board in response to these demands (Stop) Your present resolution is silent on the point involved (Stop) Mr. Pettys statements are so conflicting we must ask the board for confirmation or rejection of them (Stop) The beneficiaries also demand that confidential matters in regard to the proposed sale shall not be shown by you or your officers to Mr Backes or any other former or present attorney for Roberts.

W Henry Elfreth

10  
20  
30

Very truly yours,  
(Signed) Nelson I. Petty  
Trust Officer

N.I.P.:E.W.

EXHIBIT NO. 26.

TRENTON TRUST COMPANY  
Trenton, N. J.

February 3, 1928.

To  
Mr. Harvey F. Knight,  
10 Mechanics Nat'l. Bank Bldg.,  
Trenton, N. J.  
In re Samuel L. Allen Estate  
Dear Mr. Knight:—

20 Last Friday, January 27th, at a conference held  
in Philadelphia at the Bellevue-Stratford, at which  
were present Messrs. Reckitt and Cassel, who  
represented a purchaser for the stock of the S. L.  
Allen Company, Mr. Elfreth and myself, the sug-  
gestion was made by Mr. Elfreth that our directors  
should fix a selling price for the stock of the S. L.  
Allen Company held by us as trustee and offer it  
first to the beneficiaries under the will and their  
associates.

In reply to this, desire to say that inasmuch as  
the management, who are large stockholders, are  
also in the market for the stock, we think that an  
advantage would accrue to the estate by giving both  
an opportunity to buy the stock. In view of these  
30 circumstances we cannot follow Mr. Elfreth's sug-  
gestion.

If you will kindly notify him to this effect it will  
be appreciated.

Very truly yours,  
(Signed) Nelson L. Petty  
Trust Officer.

NLP:EW

EXHIBIT NO. 27.

Sent by Postal Company  
Phoned over Phone 46357  
York Pa. 8:45 A. M.  
2/14/28

To Directors of Trenton Trust Company, 10  
Trenton Trust Company  
Trenton, New Jersey.

On behalf of Sarah H. Allen, Elizabeth R. Allen, Susan J. Allen and Emily Allen Elfreth, who are the beneficiaries of the trust estate created by the will of, Samuel L. Allen deceased, I am authorized and instructed to offer you six hundred and ninety five thousand dollars for all the stock of S. L. Allen & Company, Incorporated held in trust by your company (Stop) This offer is without prejudice to any rights that the beneficiaries of the trust may 20 have under the terms of the will and is open for your acceptance or rejection for forty-eight hours only from the time of its receipt by you (Stop) Charles J. Allen by writing under seal executed some months ago and shown to your trust officer has given his consent to such a sale as this (Stop) Will you kindly acknowledge receipt of this offer by telegram to Yorktown Hotel York Pennsylvania  
W. Henry Elfreth

30

EXHIBIT NO. 28.

WESTERN UNION

P267 73—Trenton NJ 15 443P 1928 Feb 15 PM

5 21

W Henry Elfreth—

Yorktowne Hotel York Penn—

10 Edward W Burt and Edward L Richie for themselves and their associates have offered to purchase all the S L Allen Company stock held by us as trustee for seven hundred thousand dollars and have deposited a cashiers check for seventy thousand dollars to apply on purchase if accepted otherwise to be returned this offer remains open until Friday February 17th at 6 PM will the beneficiaries consent to this sale—

Trenton Trust Company—

20

EXHIBIT NO. 29.

WESTERN UNION

TELEGRAM

5/16/28

To Trenton Trust Company

30 Street and No. (or Telephone Number) Trenton  
Place New Jersey

I have just received a telegram from the beneficiaries (Stop) I am instructed to inform you that there is nothing in your telegram that calls for their consent or dissent (Stop) They must know whether their trustee approves or disapproves of the amount offered (Stop) They are entitled at

this time to the best advice and most definite information at the command of their Trustee (Stop) The offer was not made to them but to you (Stop) There is no proposal from you to them that calls for acceptance or rejection (Stop) Either you approve of the price or you do not (Stop) If you do that, your telegram might as well not have been sent (Stop) If you do approve you should say so (Stop) You may if you wish wire that you approve of the amount and a sale can be affected if beneficiaries also approve (Stop) Or you can wire that you do not approve leaving the beneficiaries to such course as they chose (Stop) Or you can say that you have no advice to give and refuse to make any statement (Stop) In which case the beneficiaries will want a substituted trustee who can advise and who will give information (Stop) The beneficiaries question the good faith of the offerer and of the trustee (Stop) They resent the action of the trustee in permitting their offer to be communicated to the Burt Richie group (Stop) The beneficiaries will accept or reject on presentation any offer which means a possible sale (Stop) Kindly wire me your answer to demands of beneficiaries

W. Henry Elfreth

EXHIBIT 30.

30

WESTERN UNION.

PX4 73—Trenton NJ 16 528P

1928 Feb 16 PM 5 51

W Henry Elfreth—

Yorktowne Hotel York Penn—

The beneficiaries requested us to sell the Allen stock held by us as trustee acting upon that request our committee has valued the stock at six hundred twenty-five thousand dollars and recommended that it be sold at not less than that figure subject to beneficiaries consent we now have a bona fide offer of seven hundred thousand dollars all we want to know is whether they will consent to this sale or not—

10 Trenton Trust Company.

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EXHIBIT 31.

WESTERN UNION

P102 36—Trenton NJ 17 1207P

1928 Feb 17 PM 12 24

W Henry Elfreth—

20 Yorktowne Hotel York Penn—

We believe the offer of Burt and Richie is an advantageous one for the estate and have informed them that it will be accepted subject to beneficiaries consent we again ask for beneficiaries consent or dissent—

Trenton Trust Co.

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EXHIBIT 32.

30

February 17, 1928

Trenton Trust Company

Trenton, N. J.

Gentlemen:

Re: S. L. Allen Company Stock.

On behalf of the beneficiaries of the estate of

Samuel L. Allen, deceased, we are instructed to say that they do not consent to the sale of the stock of S. L. Allen & Co., Inc., held in trust by your company, to Messrs. Roberts, Richie, et al., for \$700,000.00.

However, since you have stated that it would be advantageous to the trust estate to sell the trust stock for \$700,000.00, and since you have further stated your willingness to sell the said stock at the said figure, the beneficiaries desire you to make an offer of the stock to them for the same price for their acceptance, and we are advised on behalf of the beneficiaries that the said offer will be immediately accepted and the sale consented to by them. 10

Very truly yours,

We, the Trenton Trust Company, offer the entire holdings of stock of the S. L. Allen & Co., Inc., held by us in trust to Sarah H. Allen, Elizabeth R. Allen, Susan J. Allen and Emily Allen Elfreth for the sum of \$700,000.00 subject to the consent of the beneficiaries. 20

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EXHIBIT 33.

February 17, 1928.

Trenton Trust Company,  
Trenton, N. J.

Gentlemen:

IN RE. S. L. ALLEN & CO., INC., TRUST STOCK. 30

On behalf of Sarah H. Allen, Elizabeth R. Allen, Susan J. Allen and Emily Allen Elfreth, individually, I am authorized to offer you \$700,000.00 for the stock in question without prejudice to any of their rights as beneficiaries under the Allen Will.

Very truly yours,

We, the Trenton Trust Company offer the entire holdings of stock of the S. L. Allen & Co., Inc., held by us in trust to Sarah H. Allen, Elizabeth R. Allen, Susan J. Allen and Emily Allen Elfreth for the sum of \$700,000.00 subject to the consent of the beneficiaries.

10

I am authorized by the beneficiaries and do hereby on their behalf consent to the sale to them of the stock of S. L. Allen & Co., Inc., now held in trust by your company, for the sum of \$700,000.00. This consent is not to be construed in any event as a consent to a sale to anybody else for this sum or any other sum. In order words, it is consent only to the sale to themselves at a price which the Trenton Trust Company has already said is advantageous to the trust estate and would be accepted by the Trust Company.

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EXHIBIT 34.

TRENTON TRUST COMPANY

Trenton, N. J.

February 17, 1928.

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To

Mr. Harvey F. Knight,  
Trenton, N. J.

In re S. L. Allen Estate

Dear Sir:—

Since we have two purchasers who are bidding the same price for the stock, we have instructed Mr.

*Affidavit of William Henry Elfreth—* 129  
*Exhibits*

Peter Backes, our Counsel in this matter, to secure for us the further direction *for* the Court of Chancery in the premises.

This is in reply to yours of the 17th inst. just received.

Very truly yours,  
(Signed) Nelson L. Petty  
Trust Officer.

NLP:EW

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## OFFER.

(Filed Sept. 7, 1928.)

IN CHANCERY OF NEW JERSEY.

10

Between

EMILY ALLEN ELFRETH,  
Executrix, etc.,*Complainant,*

and

CHARLES J. ALLEN and  
others,*Defendants.*

On Petition, etc.

20

*Trenton Trust Company, Trustee under the Will of  
Samuel L. Allen, deceased:*

Trenton, N. J.

Gentlemen:

The undersigned, beneficiaries under the trust created by the last will and testament of Samuel L. Allen, deceased, protesting against the acts of the Trenton Trust Company, substituted trustee of the trust created by the will of said Samuel L. Allen, deceased, and reserving and not waiving any and all rights of said beneficiaries and/or rights of Emily Allen Elfreth, administratrix *pendente lite* of the estate of Sarah H. Allen, deceased, to protest against the attempted sale of the stock of S. L. Allen & Company, Incorporated, held by said Trenton

Trust Company as trustee as aforesaid, to one Richie and associates, as set forth in the petition filed herein, and its several acts in respect thereto, as well as the inadequacy of price at which said trustee is attempting to make a sale of said stock; and reserving and not waiving the question as to the said stock of said S. L. Allen Company, Incorporated, being specifically bequeathed under the terms of the said Samuel L. Allen's will; and reserving and not waiving the right to insist upon the removal of said Trenton Trust Company, substituted trustee of the trusts created by the said will of Samuel L. Allen, deceased, and the appointment of another trustee in the place and stead of said trustee; and reserving and not waiving any and all other rights that they may have in the estate of the said Samuel L. Allen, deceased; the undersigned beneficiaries protesting that the offer hereby made at the request of the Court for said stock of the S. L. Allen & Company, Incorporated, held by said trustee, is less than the fair value of said stock, and less than the value which can be obtained for said stock, provided the said trustee will fully discharge its duties in that regard and co-operate with a willing purchaser and not favor and co-operate with the present minority interest in said S. L. Allen & Company, Incorporated, in purchasing said stock at a price far below the fair value of said stock; the undersigned beneficiaries, pursuant to the suggestion of the Court, do hereby offer to purchase from you as trustee as aforesaid, all of the capital stock of the S. L. Allen & Company, Incorporated, both preferred and common, Classes A and B, now held by you in said trust, the same to be not less than 1043 shares of preferred stock, 512 shares of Class B common stock and 2500 shares of Class A common stock of said S. L. Allen & Company, Incorporated,

for the sum of seven hundred and fifty thousand dollars (\$750,000). As a part of the said purchase you are to deliver the resignations of not less than four directors of said company and as well as the resignations of the president, secretary and treasurer of said company. Inasmuch as the annual meeting of the company will be held on the third Tuesday of this month this can be accomplished without difficulty.

- 10 It is also understood as a part of this offer that pending its acceptance, no bonus or dividends will be declared and/or paid by the company and that no contracts for officer's salaries or commissions will be approved by your directors until this offer is rejected.

- 20 This offer to remain open for ten days from the date hereof; settlement to be made within ninety days from your acceptance of this offer and its confirmation by the Court of Chancery. Settlement to be made at the office of S. L. Allen & Company, Incorporated, in Philadelphia, at which time the resignations of all officers and the four directors are to be delivered.

- 30 As an earnest of our good faith in the matter, we hereby tender you cashier's check of The First-Mechanics National Bank of Trenton in the sum of fifty thousand dollars (\$50,000), to be applied on account of the purchase price in the event of the acceptance of this offer by you; or to be returned to us in the event of its rejection.

Very truly yours,  
 ELIZABETH R. ALLEN,  
 SUSAN J. ALLEN,  
 EMILY ALLEN ELFRETH.

September 6th, 1928.  
 Handed to Mr. Nelson L. Petty  
 about 4:55 P. M.

ORDER.

(Filed September 7, 1928.)

IN CHANCERY OF NEW JERSEY.

Between

EMILY ALLEN ELFRETH,  
Executrix, etc.,

*Complainant,*

and

CHARLES J. ALLEN and  
others,

*Defendants.*

On Petition, etc  
Order.

10

20

This matter being opened to the Court by Peter Backes, Esquire, of counsel with the petitioner, and in the presence of Scammell, Knight & Reese, of counsel with the answering defendants, and Lewis Starr, Esquire, of counsel with Charles J. Allen, and Robert T. McCracken, Esquire, of counsel with S. L. Allen & Company, Incorporated, and Edward W. Burt and Edward L. Richie and their associates, bidders for the stock held by the trustee, and on reading the petition and affidavits and other exhibits presented in said cause, and it appearing by the pleadings filed herein and argument of counsel that the defendants' claim that the stocks of the S. L. Allen & Company, Incorporated, held by said trustee, were specifically bequeathed by the will of

30

said Samuel L. Allen and upon hearing the argument of the respective counsel, the Court, being of the opinion that said legacies were general and not specific and that the trustee has the right to sell said stock, and upon argument by counsel and after due consideration by the Court, and counsel for the successful bidders hereinafter named having presented a bid for the sum of seven hundred and fifty thousand dollars (\$750,000), subject to certain conditions  
10 as more specifically described in said bid and the Court being of the opinion that said bid should not be received in the form presented, and directing counsel for the said bidders to present a bid in a form similar to that presented by the said Burt and Richie, and an adjournment being taken and counsel being given time within which to submit such a bid, and counsel for the said successful bidders presenting a bid substantially similar in terms to that  
20 of the said Burt and Richie, of seven hundred thousand dollars (\$700,000), for the purchase of the stock held by the trustee, and the Court, after due consideration, directing that the said bidders adjourn to the room immediately adjoining the court room, there to submit their best bids to the trustee, and the trustee thereupon reporting that he had received a bid of seven hundred and fifty-five thousand dollars (\$755,000), from the said hereinafter mentioned successful bidders beneficiaries for all of the stock of the said S. L. Allen & Company, Incorporated, held by said trustee, and the Court being  
30 of the opinion that said offer should be accepted, and after due consideration and hearing the arguments of the respective counsel with respect thereto,

It is, on this seventh day of September, nineteen hundred and twenty-eight, ordered, adjudged and decreed, that the residuary bequest contained in the will of said Samuel L. Allen is a general and not a

specific legacy and that the trustee has power to make sale of said stock, and

It is further ordered, that the bid made by Susan J. Allen, Elizabeth R. Allen and Emily Allen Elfreth for the sum of seven hundred and fifty-five thousand dollars (\$755,000), being the highest and best price bid therefor, should be accepted subject to the terms and conditions of the written bid submitted to the trustee and the said trustee is further ordered, pending the completion of said bid, to vote at the annual meeting of the S. L. Allen & Company, Incorporated, in favor of an adjournment of the stockholders' meeting of the said S. L. Allen & Company, Incorporated, for a period of one month and for such further adjournment until the time set for the completion of the purchase of said stock under said bid. 10

And it is further ordered, that the trustee pay the stenographer in attendance at this hearing the sum of twenty dollars (\$20.00) out of the funds belonging to said trust. 20

E. R. WALKER,  
C.

Respectfully advised,  
JOHN H. BACKES,  
V. C.

## PETITION AND SECOND ACCOUNT.

(Filed Mar. 23, 1929.)

## IN CHANCERY OF NEW JERSEY.

10

Between

EMILY ALLEN ELFRETH,  
*Complainant,*

and

CHARLES J. ALLEN, et

als.,

*Defendants.*


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 On Petition for  
Accounting.  
Petition and Second  
Account.

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*To His Honor, Edwin Robert Walker, Chancellor of  
the State of New Jersey:*

The petition of the Trenton Trust Company, substituted trustee of the estate of Samuel L. Allen, deceased, respectfully shows:

1. Your petitioner was duly appointed substituted trustee of the estate of Samuel L. Allen, deceased,  
30 by an order made in this cause and dated on the 15th day of May, 1923, and herewith presents its second account of its administration of the afore-said estate.

2. The names and addresses of all the persons interested in said accounting are as follows:

Charles J. Allen, Moorestown, N. J.  
Elizabeth R. Allen, Apartment 208 B, Lincoln  
Court Apartments, Overbrook, Pa.  
Susan J. Allen, Apartment 208 B, Lincoln  
Court Apartments, Overbrook, Pa.  
Emily Allen Elfreth, individually and as ex-  
ecutrix of the estate of Sarah H. Allen, 7037  
Greenhill Road, Overbrook, Pa.

3. That at the time of the appointment of your 10  
petitioner as substituted trustee, the principal as-  
sets of the said estate consisted of shares of stock,  
both common and preferred, in the S. L. Allen & Co.,  
Inc., a corporation of the State of Pennsylvania, en-  
gaged in the manufacturing of agricultural imple-  
ments and sleds; that 2500 shares of the common  
stock of the said company held by said estate and  
being part of the assets aforesaid was the majority  
control in the active management of said business,  
and that in order to safeguard the said business, two 20  
of the officers of your petitioner's company: to wit,  
Mr. H. Arthur Smith and Mr. Nelson L. Petty, were  
elected directors of the said company and continued  
in the said offices and in the active supervision of  
said business from the time of its appointment until  
the said stock was sold.

4. That by an order dated the 7th day of Septem-  
ber, 1928, made in this cause, your petitioner was di-  
rected to accept the bid of \$755,000 for all the stock 30  
held by it as substituted trustee in S. L. Allen &  
Co., Inc.; that subsequently said purchase was com-  
pleted and the stock delivered.

5. That your petitioner has invested part of said  
moneys in securities as per the list hereto annexed

and made part hereof, and that it now has on hand the balance of said fund in cash.

6. That the funds now in the hands of your petitioner comprise all the rest, residue and remainder of the estate of Samuel L. Allen, deceased.

7. That Sarah H. Allen, the widow of Samuel L. Allen, was vested with the right of disposition of  
10 two-fifths part of the residue of the estate of Samuel L. Allen; that the said Sarah H. Allen died on the 17th day of March, 1928, leaving a last will and testament and did therein exercise her right to dispose of her two-fifths part in the estate of her late husband; that said two-fifths part of the residue of the estate of Samuel L. Allen, deceased, now held by your petitioner, is now distributable to the executrix named in the will of Sarah H. Allen.

20 8. That the beneficiaries of the estate of Samuel L. Allen, deceased, for the purpose of fixing the price to be paid for the stock of S. L. Allen & Co., Inc., held by your petitioner, engaged the services of Sanderson & Porter to prepare an estimate and valuation on said stock and have contracted an indebtedness to the said Sanderson & Porter of \$5000; that they likewise obtained the services of Heverly & Hay, certified public accountants of S. L. Allen & Co., Inc., to make certain copies and records showing the accounts of S. L. Allen & Co., Inc., and have  
30 incurred an indebtedness to the said Heverly and Hay of \$275; that they have requested that these two sums should be paid out of the assets of the trust fund now in the hands of your petitioner.

9. The following is a summary of its aforesaid account:

AS TO CORPUS.

Accountant charges itself as follows:	
Balance in the hands of substituted trustee as shown by its last previous accounting	\$449,207.55
Amount received during period covered by this account	349,500.00
Total charges	<u>\$798,707.55</u> 10
Accountant prays allowance as follows:	
Amount of disbursements as shown by this account	18,072.23
Balance of corpus in the hands of substituted trustee	<u>\$780,635.32</u>

AS TO INCOME

Accountant charges itself as follows:		20
Balance in hands of substituted trustee as shown by its last previous accounting	\$7548.81	
Amount received during period covered by this accounting	222382.27	
Total charges	<u>\$229931.08</u>	
Accountant prays allowance as follows:		
Amount of disbursements as shown by said account	197848.35	30
Balance of income in the hands of substituted trustee	<u>\$32082.73</u>	

Your petitioner therefore prays that said account may be allowed, and also for the allowance of com-

missions and counsel fees, and also for direction as to whether your petitioner should pay the bills of Sanderson and Porter and Heverly and Hay as requested by the beneficiaries.

TRENTON TRUST COMPANY,  
By NELSON L. PETTY,  
*Trust Officer, Petitioner.*

Dated Trenton, N. J.  
March 25, 1929.

10

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

NELSON L. PETTY, being duly sworn according to law on his oath, deposes and says, that he is the trust officer of the Trenton Trust Company, substituted trustee of the estate of Samuel L. Allen, deceased, the petitioner herein; and that the matters and things therein contained are true to the best of his knowledge and belief.

20

NELSON L. PETTY.

Sworn and subscribed to before me the 25th day of March, 1929.

MIRIAM F. WRIGHT,  
*Notary Public of N. J.*

My commission expires Mar. 21, 1934.

30

First—As to Corpus.

This accountant chargeth itself as follows:

1924

June To balance—in trustee's hands  
according to its first account in

which there were included the following shares of stock of the S. L. Allen Company:

1043 shares, preferred, par \$100.

2500 shares, Class A, common, par \$100.

512 shares, Class B, common, par \$100.

and all the above shares were carried in the former account of the trustee at the face or par value (see also Master's Report filed August, 1925) 10 \$449,207.55

Nov. 28, To amount—realized from the sale of above stocks made under an order in this court in excess of their face or par value.

sold for	\$755,000.		20
par value	405,500.	\$349,500.00	
		\$798,707.55	

This accountant prays allowance as follows:

1924

Aug. 24,	By cash—Stamps on transfer of stock	\$6.00
Sept. 6,	By cash—Charles J. Allen, 1/6 of \$3,333.33, payment received from David Roberts on account of his note held in the estate	30
		555.55
Oct. 16,	By cash—Charles J. Allen, 1/6 of \$6,000.00, payment received from David Roberts	

		on account of his note held in the estate	1,000.00
1925			
Oct.	6,	By cash—Peter Backes, coun- sel fee and taxed costs per order dated September 15, 1925	1,035.56
10	6,	By cash—Samuel Powis, Jr., Special Master in Chancery, fees and allowances per or- der dated Sept. 15th, 1928	710.50
	7,	By cash—Nelson L. Petty, costs	23.09
	14,	By cash—Charles J. Allen, 1/6 of \$666.66, payment received from David Roberts, being balance of his note	111.11
Nov.	5,	By delivery—Charles J. Allen, of 52 shares of preferred stock of S. L. Allen Co., Inc., at par, and a cash payment of \$653.08, being payment of part of balance due him (see Schedule #1 attached)	5,853.08
20	5,	By cash—Stamps for transfer- ring 52 shares of stock of S. L. Allen Co., Inc.	2.08
1927			
Apr.	30,	By cash—Nelson L. Petty, ex- penses incurred in apprais- ing stock of S. L. Allen Co., Inc.	8.25
30			
Aug.	4,	By cash—Ballinger Engineer- ing Appraisal Co. for ser- vices rendered and apprais- ing property of S. L. Allen Co., Inc.	1,400.00

4,	By cash—Edward F. Connolly, for services rendered in ap- praising value of business of S. L. Allen Co., Inc., ex- clusive of physical assets	400.00	
Nov. 15,	By cash—Heverle & Hay, for services rendered in prepara- tion of reports of S. L. Al- len Co., Inc., for five years, 1923, 1924, 1925, 1926, 1927	150.00	10
Dec. 16,	By cash—Commonwealth of Pennsylvania, for certificate of incorporation, letters pat- tent, etc.	5.25	
1928			
Jan. 28,	By cash—Nelson L. Petty, ex- penses attending conference with Messrs. Elfreth & Reck- itt in Phila.	9.00	20
Feb. 16,	By cash—Western Union Tele- graph Co., telegrams	15.99	
17,	By cash—Western Union Tele- graph Co., telegrams	16.35	
Apr. 5,	By cash—Paid for stamps on 219 shares of stock	8.76	
26,	By cash—Secretary of State of New Jersey, copy of will and condicil of Sarah H. Allen	4.00	
May 10,	By cash—Nelson L. Petty, ex- penses attending conference with Mr. McCracken in Phila.	4.00	30
June 22,	By cash—Treasurer of State of New Jersey, inheritance tax against Charles N. and Sam- uel A. Snook, legacies	177.38	

	22,	By cash—Treasurer of State of New Jersey, final payment of tax due against the estate	5,364.12
	29,	By cash—Harry Klag, Jr., service and expenses in serving a petition and orders	16.00
	Sept. 5,	By cash—Nelson L. Petty, expenses attending hearing before Vice-Chancellor Backes	4.92
10	10,	By cash—Jane Brown, reporting proceedings before Vice-Chancellor Backes	20.00
	22,	By cash—Expenses of Messrs. Nelson L. Petty and Peter Backes, two trips to Phila.	9.00
	Oct. 6,	By cash—George H. Snook legacy	1,000.00
	Nov. 30,	By cash—Paid for stamps on transferring S. L. Allen Co., Inc., stock	162.24
20	1929		
	Mar. 23,	By cash—Balance on hand	780,635.32
			<hr/>
			\$798,707.55
			<hr/>

## SECOND—AS TO INCOME.

This accountant chargeth itself as follows:

30	1924		
	June 12,	To balance in trustee's hands according to its first account (see also Master's Report filed August, 1925)	\$7,548.81
	July 1,	To interest on deposits	143.64
	2,	To interest—David Roberts	300.00

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	2,	To dividend—S. L. Allen Co. 1¾% on 1,095 shs. preferred stock	1,916.25	
Aug.	15,	To dividend—S. L. Allen Co. 4% on 731 shs. Class B stock	2,924.00	
	15,	To dividend—S. L. Allen Co. 4% on 2,500 shs. Class A stock	10,000.00	
Sept.	6,	To interest—David Roberts	191.67	
Oct.	1,	To dividend—S. L. Allen Co. 1¾% on 1,095 shs. preferred stock	1,916.25	10
	1,	To dividend—S. L. Allen Co. 1½% on 731 shs. Class B stock	1,096.50	
	1,	To dividend—S. L. Allen Co. 1½% on 2,500 shs. Class A stock	3,750.00	
	14,	To interest—David Roberts	122.78	20
1925				
Jan.	2,	To interest on deposits	192.47	
	2,	To dividend—S. L. Allen Co. 1¾% on 1,095 shs. preferred stock	1,916.25	
	2,	To dividend—S. L. Allen Co. 1½% on 731 shs. Class B stock	1,096.50	
	2,	To dividend—S. L. Allen Co. 1½% on 2,500 shs. Class A stock	3,750.00	30
Apr.	1,	To dividend—S. L. Allen Co. 1¾% on 1,095 shs. preferred stock	1,916.25	
	1,	To dividend—S. L. Allen Co. 1½% on 731 shs. Class B stock	1,096.50	

	1,	To dividend—S. L. Allen Co. 1½% on 2,500 shs. Class A stock	3,750.00
May	18,	To interest—John Zsizseri, due June 1	180.00
July	1,	To interest—On deposits	176.88
	1,	To dividend—S. L. Allen Co. 1¾% on 1,095 shs. preferred stock	1,916.25
10	1,	To dividend—S. L. Allen Co. 2½% on 731 shs. Class B stock	1,827.50
	1,	To dividend—S. L. Allen Co. 5½% on 2,500 shs. Class A stock	13,750.00
Oct.	1,	To dividend—S. L. Allen Co. 1¾% on 1,095 shs. preferred stock	1,916.25
20	1,	To dividend—S. L. Allen Co. 1½% on 731 shs. Class B stock	1,096.50
	1,	To dividend—S. L. Allen Co. 1½% on 2,500 shs. Class A stock	3,750.00
	14,	To interest—David Roberts	40.00
	28,	To interest—John Szezseri, to Dec. 1	180.00
Dec.	15,	To interest—On deposits	129.06
1926			
30	Jan. 2,	To dividend—S. L. Allen Co. 1¾% on 1,043 shs. preferred stock	1,825.25
	2,	To dividend—S. L. Allen Co. 2½% on 731 shs. Class B stock	1,827.50
	2,	To dividend—S. L. Allen Co.	

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	2½% on 2,500 shs. Class A stock	6,250.00	
Feb. 2,	To interest—Wm. B. Pidcock, to Jan. 14	180.00	
Apr. 1,	To dividend—S. L. Allen Co. 1¾% on 1,043 shs. preferred stock	1,825.25	
1,	To dividend—S. L. Allen & Co. 1½% on 731 shs. Class B stock	1,096.50	10
1,	To dividend—S. L. Allen & Co. 3½% on 2,500 shs. Class A stock	8,750.00	
10,	To interest to date on William B. Pidcock mortgage	86.00	
May 28,	To interest—John Zsezseri, to June 1	180.00	
June 15,	To interest—On deposits	31.44	
July 1,	To dividend—S. L. Allen Co. 1¾% on 1,043 shs. preferred stock	1,825.25	20
1,	To dividend—S. L. Allen Co. 1½% on 731 shs. Class B stock	1,096.50	
1,	To dividend—S. L. Allen Co. 4½% on 2,500 shs. Class A stock	11,250.00	
Oct. 1,	To dividend—S. L. Allen Co. 1¾% on 1,043 shs. preferred stock	1,825.25	30
1,	To dividend—S. L. Allen Co. 1¾% on 731 shs. Class B stock	1,279.25	
1,	To dividend—S. L. Allen Co. 3% on 2,500 shs. Class A stock	7,500.00	

	18,	To interest—Joseph E. Hunt, due Oct. 20	180.00
	Nov. 16,	To interest—John Zsizseri, due Dec. 1	180.00
	Dec. 15, 1927	To interest—On deposits	58.22
	Jan. 3,	To dividend—S. L. Allen, 1 $\frac{3}{4}$ % on 1,043 shs. preferred stock	1,825.25
10	3,	To dividend—S. L. Allen, 1 $\frac{3}{4}$ % on 731 shs. Class B stock	1,279.25
	3,	To dividend—S. L. Allen, 3% on 2,500 shs. Class A stock	7,500.00
	Apr. 1,	To dividend—S. L. Allen, 1 $\frac{3}{4}$ % on 731 shs. Class B stock	1,279.25
	1,	To dividend—S. L. Allen, 1 $\frac{3}{4}$ % on 1,043 shs. preferred stock	1,825.25
	1,	To dividend—S. L. Allen 3% on 2,500 shs. Class A stock	7,500.00
20	Apr. 18,	To Interest—Joseph E. Hunt, due April 20	180.00
	May 23,	To interest—John Zsizseri, to June 1	180.00
	June 15,	To interest—On deposits	72.14
	July 1,	To dividend—S. L. Allen Co. 1 $\frac{3}{4}$ % on 1,043 shs. preferred stock	1,825.25
	1,	To dividend—S. L. Allen Co. 1 $\frac{3}{4}$ % on 731 shs. Class B	1,279.25
30	1,	To dividend—S. L. Allen Co. 6% on 2,500 shs. Class A stock	15,000.00
	Oct. 1,	To dividend—S. L. Allen Co. 1 $\frac{3}{4}$ % on 1,043 shs. preferred stock	1,825.25
	1,	To dividend—S. L. Allen Co.	

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	1 $\frac{3}{4}$ % on 731 shs. Class B stock	1,279.25	
1,	To dividend—S. L. Allen Co. 3% on 2,500 shs. Class A stock	7,500.00	
Oct. 10,	To interest—Joseph E. Hunt, to Oct. 20	180.00	
Nov. 3,	To interest—Margaret Zsizseri, to Dec. 1	180.00	
Dec. 15,	To interest—On deposits	100.47	10
Dec. 31,	To dividend—S. L. Allen Co. 1 $\frac{3}{4}$ % on 1,043 shs. preferred stock	1,825.25	
31,	To dividend—S. L. Allen Co. 1 $\frac{3}{4}$ % on 731 shs. Class B stock	1,279.25	
31,	To dividend—S. L. Allen Co. 3% on 2,500 shs. Class A stock	7,500.00	20
1928			
Mar. 31,	To dividend—S. L. Allen Co. 1 $\frac{3}{4}$ % on 1,043 shs. preferred stock	1,825.25	
31,	To dividend—S. L. Allen Co. 1 $\frac{3}{4}$ % on 731 shs. Class B stock	1,279.25	
31,	To dividend—S. L. Allen Co. 3% on 2,500 shs. Class A stock	7,500.00	30
Apr. 20,	To interest—Joseph E. Hunt, to April 20	180.00	
June 1,	To interest—Joseph Zielinski, to June 1 (Margaret Zsezseri mortgage)	180.00	
15,	To interest—On deposits	240.12	
July 2,	To dividend—S. L. Allen Co.		

		1¾% on 1,043 shs. preferred stock	1,825.25
	2,	To dividend—S. L. Allen Co. 1¾% on 512 shs. Class B stock	896.00
	2,	To dividend—S. L. Allen Co. 6% on 2,500 shs. Class A stock	15,000.00
10	Oct. 1,	To dividend—S. L. Allen Co. 1¾% on 1,043 shs. preferred stock	1,825.25
	1,	To dividend—S. L. Allen Co. 1¾% on 512 shs. Class B stock	896.00
	1,	To dividend—S. L. Allen Co. 3% on 2,500 shs. Class A stock	7,500.00
	Oct. 20,	To interest—Joseph E. Hunt, to Oct. 20	180.00
20	Nov. 28,	To interest—On certificate of deposit	270.84
	Nov. 30,	To interest—Joseph Zielinski, to Dec. 1	180.00
	Dec. 15, 1929	To interest—On deposits	550.16
	Jan. 24,	To cash—Interest on call loans to 12/31/28	5,595.25
	Feb. 5,	To cash—Interest on call loans to 1/31/29	3,718.45
30	Mar. 5,	To cash—Interest on call loans to 2/28/29	3,037.43
			<hr/>
			\$229,931.08
			<hr/>

This accountant prays allowance as follows:

1924

June 23,	By cash—Nelson L. Petty, expenses attending director's meeting	\$3.00	
July 1,	By cash—Sarah H. Allen	775.50	
1,	By cash—Elizabeth R. Allen	387.75	
1,	By cash—Susan J. Allen	387.75	
1,	By cash—Emily Allen Elfreth	387.75	
1,	By cash—Charles J. Allen, share of interest received from David Roberts	50.00	10
Aug. 13,	By cash—Susan J. Allen	888.01	
13,	By cash—Elizabeth R. Allen	888.01	
13,	By cash—Emily Allen Elfreth	888.01	
13,	By cash—Sarah H. Allen	1,776.02	
15,	By cash—Charles J. Allen (see trustee's first acct.)	1,195.73	
15,	By cash—Sarah H. Allen	5,000.00	
15,	By cash—Elizabeth R. Allen	2,500.00	20
15,	By cash—Susan J. Allen	2,500.00	
15,	By cash—Emily Allen Elfreth	2,500.00	
Sept. 5,	By cash—Charles J. Allen, 1/6 share of interest received from David Roberts	31.94	
12,	By cash—Nelson L. Petty, expenses attending directors' meeting	4.50	
Oct. 3,	By cash—Sarah H. Allen	2,614.10	
3,	By cash—Elizabeth R. Allen	1,307.05	30
3,	By cash—Susan J. Allen	1,307.05	
3,	By cash—Emily Allen Elfreth	1,307.05	
9,	By cash—Nelson L. Petty, expenses attending directors' meeting	3.00	
14,	By cash—Charles J. Allen, 1/6		

		share of interest received from David Roberts	20.46
Dec. 11,		By cash—Nelson L. Petty, ex- penses attending directors' meeting	3.00
	1925		
Jan. 3,		By cash—Sarah H. Allen	2,614.10
		3, By cash—Elizabeth R. Allen	1,307.05
		3, By cash—Susan J. Allen	1,307.05
10		3, By cash—Emily Allen Elfreth	1,307.06
		15, By cash—Nelson L. Petty, ex- penses attending directors' meeting	3.00
		15, By cash—Samuel F. Rudolph, care of two lots in Friends S. W. Burial Ground	7.50
		23, By cash—Nelson L. Petty, ex- penses attending directors' meeting	3.00
20	Mar. 19,	By cash—Nelson L. Petty, ex- penses attending directors' meeting	3.00
	Apr. 1,	By cash—Sarah H. Allen	2,614.10
		1, By cash—Elizabeth R. Allen	1,307.05
		1, By cash—Susan J. Allen	1,307.05
		1, By cash—Emily Allen Elfreth	1,307.06
		23, By cash—Nelson L. Petty, ex- penses attending directors' meeting	3.00
30	May 14,	By cash—Nelson L. Petty, ex- penses attending directors' meeting	3.00
	June 11,	By cash—Nelson L. Petty, ex- penses attending directors' meeting	3.00
	July 1,	By cash—Emily Allen Elfreth	3,300.00

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	1,	By cash—Sarah H. Allen	6,600.00	
	2,	By cash—Susan J. Allen	3,300.00	
	2,	By cash—Elizabeth R. Allen	3,300.00	
	27,	By cash—Nelson L. Petty, ex- penses attending directors' meeting	3.00	
Aug.	14,	By cash—Nelson L. Petty, ex- penses attending directors' meeting	3.00	
Sept.	10,	By cash—Nelson L. Petty, ex- penses attending Phila. meet- ing	3.00	10
Oct.	2,	By cash—Sarah H. Allen	2,614.10	
	2,	By cash—Elizabeth R. Allen	1,307.05	
	2,	By cash—Susan J. Allen	1,307.05	
	2,	By cash—Emily Allen Elfreth	1,307.05	
	9,	By cash—Sarah H. Allen	800.00	
	9,	By cash—Susan J. Allen	400.00	
	9,	By cash—Elizabeth R. Allen	400.00	
	9,	By cash—Emily Allen Elfreth	400.00	20
	14,	By cash—Charles J. Allen, 1/6 share of interest received from David Roberts	6.66	
	15,	By cash—Nelson L. Petty, ex- penses attending directors' meeting	3.00	
Nov.	5,	By cash—Trenton Trust Co., commission, per order con- firming Master's report filed Sept. 15, 1925	1,147.85	30
	5,	By cash—Charles J. Allen, bal- ance of income due him (see Schedule No. 1A attached)	1,850.44	
	7,	By cash—Accrued interest to date on Wm. B. Pidcock mortgage	113.00	

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	Dec. 5,	By cash—Nelson L. Petty, expenses attending directors' meeting	5.00
	1926		
	Jan. 2,	By cash—Sarah H. Allen	3,500.00
		2, By cash—Susan J. Allen	1,750.00
		2, By cash—Elizabeth R. Allen	1,750.00
		4, By cash—Emily Allen Elfreth	1,750.00
10	7,	By cash—Nelson L. Petty, expenses attending directors' meeting	3.00
	11,	By cash—Samuel F. Rudolph, care of cemetery lots for 1925	7.50
	14,	By cash—Nelson L. Petty, expenses attending directors' meeting	3.00
	Apr. 1,	By cash—Sarah H. Allen	4,400.00
		1, By cash—Elizabeth R. Allen	2,200.00
20		1, By cash—Susan J. Allen	2,200.00
		5, By cash—Emily Allen Elfreth	2,200.00
	15,	By cash—Nelson L. Petty, attending directors' meeting	3.00
	May 13,	By cash—Nelson L. Petty, expenses attending directors' meeting	3.00
	June 18,	By cash—Nelson L. Petty, expenses attending directors' meeting	3.00
30	July 2,	By cash—Sarah H. Allen	5,400.00
		2, By cash—Elizabeth R. Allen	2,700.00
		2, By cash—Susan J. Allen	2,700.00
		6, By cash—Emily Allen Elfreth	2,700.00
	15,	By cash—Nelson L. Petty, expenses attending directors' meeting	3.00

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Aug. 12,	By cash—Nelson L. Petty, expenses attending directors' meeting	3.00	
Sept. 10,	By cash—H. A. Smith, expenses attending	3.00	
Oct. 1,	By cash—Sarah H. Allen	4,000.00	
1,	By cash—Susan J. Allen	2,000.00	
1,	By cash—Elizabeth R. Allen	2,000.00	
1,	By cash—Emily Allen Elfreth	2,000.00	10
23,	By cash—Nelson L. Petty, expenses attending directors' meeting	4.00	
Nov. 15,	By cash—Nelson L. Petty, expenses attending directors' meeting	3.00	
18,	By cash—Nelson L. Petty, expenses attending directors' meeting	3.00	
26,	By cash—Nelson L. Petty, expenses attending directors' meeting	3.00	20
Dec. 9,	By cash—Nelson L. Petty, expenses attending directors' meeting	3.00	
22,	By cash—Nelson L. Petty, expenses attending directors' meeting	3.00	
1927			
Jan. 3,	By cash—Sarah H. Allen	4,000.00	
3,	By cash—Elizabeth R. Allen	2,000.00	30
3,	By cash—Susan J. Allen	2,000.00	
3,	By cash—Emily Allen Elfreth	2,000.00	
4,	By cash—Samuel F. Rudolph, for care of lots in Friends S. W. Burial Ground for 1926	7.50	

	13,	By cash—Nelson L. Petty, ex- penses attending directors' meeting	3.00
	27,	By cash—Nelson L. Petty, ex- penses attending directors' meeting	3.00
	Feb. 4,	By cash—Nelson L. Petty, ex- penses attending directors' meeting and telegram to W. H. Elfreth	3.90
10	10,	By cash—Nelson L. Petty, ex- penses attending directors' meeting	3.00
	Mar. 10,	By cash—Nelson L. Petty, ex- penses attending directors' meeting	3.00
	26,	By cash—Mary Wilson, for making copies of final decree	7.00
20	Apr. 1,	By cash—Sarah H. Allen	4,000.00
	1,	By cash—Emily Allen Elfreth	2,000.00
	1,	By cash—Elizabeth R. Allen	2,000.00
	1,	By cash—Susan J. Allen	2,000.00
	14,	By cash—Nelson L. Petty, ex- penses attending directors' meeting	3.00
	May 12,	By cash—Nelson L. Petty, ex- penses attending directors' meeting	3.00
30	July 2,	By cash—Sarah H. Allen	6,600.00
	2,	By cash—Susan J. Allen	3,300.00
	2,	By cash—Elizabeth R. Allen	3,300.00
	2,	By cash—Emily Allen Elfreth	3,300.00
	Sept. 21,	By cash—Nelson L. Petty, ex- penses attending directors' meeting	5.00
	Oct. 1,	By cash—Sarah H. Allen	4,000.00

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1,	By cash—Elizabeth R. Allen	2,000.00	
1,	By cash—Susan J. Allen	2,000.00	
1,	By cash—Elizabeth Allen El- freth	2,000.00	
7,	By cash—Nelson L. Petty, ex- penses attending directors' meeting	3.50	
14,	By cash—Nelson L. Petty, ex- penses attending directors' meeting	3.00	10
22,	By cash—Nelson L. Petty, ex- penses attending directors' meeting	5.00	
Nov. 30,	By cash—Nelson L. Petty, ex- penses attending directors' meeting	3.00	
Dec. 15,	By cash—Nelson L. Petty, ex- penses attending directors' meeting	3.00	
31,	By cash—Sarah H. Allen	4,000.00	20
31,	By cash—Elizabeth R. Allen	2,000.00	
31,	By cash—Susan J. Allen	2,000.00	
31,	By cash—Emily Allen Elfreth	2,000.00	
1928			
Jan. 4,	By cash—Samuel H. Rudolph, for care of lots in Friends Southwestern Burial Ground for 1927	7.50	
12,	By cash—Nelson L. Petty, ex- penses attending directors' meeting and sending tele- gram	4.27	30
25,	By cash—Sending telegram to Mr. W. H. Elfreth	.33	
Feb. 10,	By cash—Nelson L. Petty, ex-		

		penses attending directors' meeting	3.00
Mar. 15,		By cash—Nelson L. Petty, expenses attending directors' meeting	3.00
Apr. 2,		By cash—Elizabeth R. Allen	2,000.00
	2,	By cash—Susan J. Allen	2,000.00
	2,	By cash—Emily Allen Elfreth	2,000.00
10	3,	By cash—Nelson L. Petty, expenses attending directors' meeting	3.00
	13,	By cash—Nelson L. Petty and Peter Backes, expenses attending directors' meeting	6.00
May 28,		By cash—Telegram to W. H. Elfreth	.90
	28,	By cash—Cost of telegram	.79
June 18,		By cash—Nelson L. Petty, expenses attending directors' meeting	3.00
20			
July 3,		By cash—Susan J. Allen	3,300.00
	3,	By cash—Elizabeth R. Allen	3,300.00
	3,	By cash—Emily Allen Elfreth	3,300.00
Sept. 13,		By cash—Nelson L. Petty, expenses attending directors' meeting	3.00
	27,	By cash—Nelson L. Petty, expenses attending directors' meeting	8.00
30 Oct. 9,		By cash—Elizabeth R. Allen	2,000.00
	9,	By cash—Susan J. Allen	2,000.00
	9,	By cash—Emily Allen Elfreth	2,000.00
	11,	By cash—Expenses of Messrs. Backes, Gummere and Petty attending meeting of directors Oct. 10, and railroad	

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	fare of Messrs. Backes and Petty, Oct. 11		
Nov. 15,	By cash—Nelson L. Petty, Peter Backes and Charles Gummere, expenses attending directors' meeting	9.00	
30,	By cash—Nelson L. Petty, Peter Backes, expenses attending directors' meeting	6.75	10
1929			
Jan. 11,	By cash—Samuel F. Rudolph, for care of lots in Friends Southwestern Burial Ground for 1928	7.50	
16,	By cash—Trenton Trust Company for accrued interest on mortgages purchased:		
	St. Mary's Greek Catholic Church	\$637.50	
	John J. McCartan	90.00	20
	Harry J. Gross	69.67	
	Wm. C. Hipple	75.00	
	John G. Strucker	41.25	913.42
18,	By cash—Trenton Trust Company for cost of recording assignments of mortgages purchased	10.85	
25,	By cash—Elizabeth R. Allen	1,000.00	
25,	By cash—Susan J. Allen	1,000.00	30
25,	By cash—Emily Allen Elfreth	1,000.00	
30,	By cash—Trenton Trust Co. for accrued interest on Independent Order of Odd Fellows Bldg. Association mortgage purchased	225.34	

Feb. 2,	By cash—Trenton Trust Co. for cost of recording assign- ment of I. O. O. F. mortgage	1.55
26,	By cash—S. L. Allen executors, accrued interest on Sarah H. Allen mortgage purchased from March 12, 1928	860.00
Mar. 5,	By cash—Chester A. Coleman, register and recorder, re- cording assignment of S. H. Allen mortgage	4.00
13,	By cash—Susan J. Allen	1,000.00
13,	By cash—Elizabeth R. Allen	1,000.00
13,	By cash—Emily Allen Elfreth	1,000.00
22,	Balance on hand	32,082.73
		<hr/>
		\$229,931.08

20 The above balance of income is subject to the dis-  
tributive share of the income due the estate of Sarah  
H. Allen and payable to the representative of said  
estate:

	1928	
	April 2	\$4,000.00
	July 3	6,600.00
	Oct. 9	4,000.00
	1929	
	Jan. 25	2,000.00
30	Mar. 13	2,000.00
		<hr/>
		\$18,600.00
	Income on hand	\$32,082.73
	Amount due S. H. Allen Estate	18,600.00
		<hr/>
	Balance	\$13,482.73

SCHEDULE No. 1.

Showing calculation of payment of \$5,853.08 of principal made to Charles J. Allen, November 5, 1925.

Balance due Charles J. Allen, according to executor's final account		\$6,148.94	10
Deduct 1/6 of the following:			
Peter Backes, counsel fee and costs	\$1,035.56		
Samuel Powis, Jr., Mas- ter's fees	710.50		
N. L. Petty, costs	23.09		
Internal Revenue stamps on transfer of stock	6.00		
	<hr/>		
One-sixth of	\$1,775.15	295.86	20

Balance due Charles J. Allen, which is to be paid him in the following manner:		\$5,853.08	
By assignment of fifty- two shares of preferred stock of S. L. Allen Company at par	\$5,200.00		
Cash	653.08		
	<hr/>		
	\$5,853.08		30

Charles J. Allen will then have received:  
208 shares preferred stock of the S. L.

Allen Company	\$20,800.00
646 shares common	64,600.00

	Cash		2,319.71
			<hr/>
			\$87,719.71
	Charles J. Allen will be further entitled to one-sixth of the following:		
	1 share of American Golfer		
	1 share of American Golfer preferred		
	Note of N. M. Green, \$239.08		
10	One-sixth of household goods, which he will be entitled to on death of Sarah H. Allen.		
	Balance of estate, after payment to Charles J. Allen of \$5,853.08		
			\$439,912.66
	Deduct the following:		
	Green note	\$239.08	
	Golf stocks	75.00	
	Reserved for payment of request to George H. Snook	1,000.00	1,314.08
			<hr/>
20			\$438,598.58
			<hr/>
	One-fifth equals		\$87,719.71

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SCHEDULE NO. 1A.

Statement correcting amount of income due Charles J. Allen, as shown by page 5 of trustee's first account.

The five beneficiaries received dividends for 5 3/4 years to June 1, 1924, on 965 shares preferred, or dividends on 193 for each.

Charles received dividends on only 156 shares of preferred for same period,

so he should receive dividends at 7% on 37 additional shares for 5 3/4 years.		
Dividends on 37 shares preferred for 5 3/4 years amount to	\$1,489.25	
Net income from other sources (see page 5, substituted trustee's first account) amounted to	\$22,369.89	
Pay Charles J. Allen 5 3/4 years' divi- dends on 37 shares	1,489.25	
	<hr/>	10
Leaves a balance of	\$20,880.64	
Of which Charles J. Allen is entitled to 1/6 or	\$3,480.10	
He has already been paid	2,470.18	
	<hr/>	
Balance due him	1,009.92	
But we paid him	1,195.73	
Or an over-payment of	185.81	
Is therefore entitled to 5 3/4 years' divi- dends on 37 shares	\$1,489.25	20
Less over-payment of	185.81	
	<hr/>	
Is entitled to	\$1,304.44	
In addition Charles J. Allen is entitled to the dividends since June 12, 1924, on 52 shares preferred stock, or	546.00	
	<hr/>	
	\$1,850.44	

The following is a full statement, or list, of the securities, investments and assets of which the balance of the aforesaid estate of Samuel L. Allen, deceased, in the hands of said Trenton Trust Company, trustee as aforesaid, consists, and a statement of all changes made in the securities of the estate since the filing of the inventory: . . .

Securities now in the hands of accountant:		Inventory Value
	2 shares Golf Publishing Company, preferred.	\$50.00
	1 share Golf Publishing Company, common	25.00
	Note of J. M. Greene (of doubtful value)	239.08
	Bond of John Zsizseri & wife to Rudolph V. Kuser, dated May 14, 1921, in the sum of \$6000; secured by mortgage between the same parties recorded in book 307 of mortgages, pages 206, etc., Mercer County, covering premises No. 714 S. Clinton Ave., Trenton, N. J., interest at 6%, payable June 1st and Dec. 1st.	6000.00
10		
	Bond of Joseph E. Hunt to Trenton Trust Company, dated April 20, 1926, for \$6000, secured by mortgage between same parties recorded in book 429, pages 476, etc., Mercer County, covering premises No. 232 E. Front Street, Trenton, N. J. Interest at 6%, payable April 20th and October 20th.	6000.00
20		
	Bond of St. Mary's Greek Catholic Church to Mechanics' National Bank of Trenton, N. J., dated February 16, 1922, for \$100,000, (now reduced to \$85,000) secured by mortgage recorded in book 322, page 75, etc., covering premises Adeline & Grand Streets. Interest at 6%, payable June 1st & Dec. 1st.	85000.00
30		
	Bond of John J. McCartan to Trinity M. E. Church of Trenton, N. J., dated Jan. 15, 1925, for \$12,000, secured by mortgage, recorded in book 296, pages	12000.00

194, etc., covering premises No. 117 Perry Street. Interest at 6%, payable June & Dec. 1st.		
Bond of Harry Gross & wife to Clara T. Stratton & husband, dated May 27, 1922, for \$11000, secured by mortgage, recorded in book 324, page 272, etc., covering premises No. 1202 W. State Street. Interest at 6%, payable June 8th and Dec. 8th.	11000.00	
		10
Bond of Wm. C. & Elizabeth L. Hipple to Trenton Trust Company, dated October 2, 1928, for \$10,000, secured by mortgage recorded in book 498, page 269, etc., covering premises No. 109 Kensington Avenue, interest at 6%, payable June & Dec. 1st.	10000.00	
Bond of John G. & Mary Strucker to Luella J. Margerum, dated May 1, 1923, for \$10,000, (now reduced to \$5000), secured by mortgage, recorded in book 346, page 488, etc., covering premises Market & Jackson Streets. Interest at 6%, payable June 1st & Dec. 1st.	5000.00	
		20
Bond of the Independent Order of Odd Fellows Building Association of Trenton, N. J. to Mercer Trust Company, dated November 9, 1927, for \$25,000, secured by mortgage recorded in book 479, page 1, etc., covering premises No. 541-3 E. State Street. Interest at 5½%, payable June 1st & December 1st.	25000.00	
		30
Bond of Theodore T. Tams to Trenton Trust Company, substituted trustee, etc., dated Feb. 2, 1929, for \$15,000,	15000.00	

	secured by mortgage, etc., in book 899, page 1, etc., covering premises 36 Inlet Terrace, Belmare, New Jersey. Interest at 6%, payable February and August 8th.	
	Bond & Warrant of Sarah H. Allen, widow, to United Security Life Ins. & Trust Company of Pennsylvania, dated November 6, 1926, for \$15,000	15000.00
10	secured by mortgage recorded in book 45, page 341, etc., Monroe County, Pa., covering premises Pocono Township, Pa. Interest at 6%, payable May & November 6th.	
	Bond of Charlotte Cook Bigelow & A. Caryl Bigelow, her husband to Trenton Trust Company, substituted trustee, etc., dated March 1, 1929, for \$20,000, secured by mortgage, recorded	20000.00
20	in book 509, page 151, etc. Interest at 6%, payable May & Sept. 1st. Covering premises No. 37 Fisher Place.	
	Cash Principal	
	On Call	\$550,000.00
	On hand	20,321.24
		<u>570321.24</u>
	Balance of corpus in accountant's hands	<u>\$780,635.32</u>
30	Balance of income in accountant's hands	<u>\$32,082.73</u>

The following changes have been made by accountant since filing its first account:

The \$10,000 note of David Roberts was paid as follows:

1924		
Sept. 6,	\$3333.33	
Oct. 15,	6000.00	
1925		
Oct. 14,	666.67	\$10,000.00
	<hr/>	

On Dec. 1, 1924, accountant invested \$6000 in the John Zsizseri mortgage covering premises No. 714 S. Clinton Ave., which is now owned by Joseph Zielinski and which mortgage is now held by accountant. 10

On Nov. 7, 1925, accountant invested \$6000 in a bond and mortgage given by Wm. B. Pidcock, recorded in book 365 of mortgages, page 386, etc., Mercer County, covering premises Gardner & Homan Avenues.

On Nov. 5, 1925, accountant assigned to Charles J. Allen 52 shares of preferred stock of the S. L. Allen Company at its face value, being in partial payment of share of legacy due him. 20

On April 10, 1926, the Wm. B. Pidcock mortgage was paid off and accountant invested \$6000 in the Joseph E. Hunt mortgage, which is now held by accountant and more fully described above.

On April 4, 1928, the S. L. Allen Company redeemed 219 shares of its Class B stock at par, accountant received \$21,900.

On Nov. 28, 1928, accountant received \$755,000, being the amount realized from the sale of the following stocks of the S. L. Allen Company: 30

2500 shares of Class A.

512 shares of Class B.

1043 shares preferred.

On Jan. 16, 1929, accountant invested in the following mortgages:

\$12,000 in the bond and mortgage of John J. Mc-  
Cartan.

\$85,000 in the bond and mortgage of St. Mary's  
Greek Catholic Church.

\$11,000 in the bond and mortgage of Harry J.  
Gross.

\$10,000 in the bond and mortgage of Wm. C. &  
Elizabeth L. Hipple.

10 \$ 5,000 in the bond and mortgage of John G. &  
Mary Strucker.

All of the above mortgages are now held by ac-  
countant and more fully described above.

On Jan. 30, 1929, accountant invested \$25,000 in  
the I. O. O. F. Building Association bond and mort-  
gage, which is now held by accountant and more  
fully described above.

20 On Feb. 8, 1929, accountant invested \$15,000 in a  
bond and mortgage of Theodore T. Tams, which is  
now held by accountant and more fully described  
above.

On Feb. 26, 1929, accountant invested \$15,000 in  
bond and mortgage of Sarah H. Allen, which is  
now held by accountant and more fully described  
above.

On March 1, 1929, accountant invested \$20,000 in  
bond and mortgage of Charlotte Cook Bigelow,  
which is now held by accountant and more fully  
described above.

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

NELSON L. PETTY, being duly sworn according to law, on his oath saith, that he is the vice-president and trust officer of the Trenton Trust Company, the substituted trustee in the foregoing account named, and that the said account is in all things just and true, both as to the charges and discharges thereof, according to the best of his knowledge and belief. 10

NELSON L. PETTY.

Subscribed and sworn to before me, this 23rd day of March, A. D., 1929.

MIRIAN F. WRIGHT,  
*Notary Public of N. J.*

My commission expires Mar. 21, 1934.

A true copy,

FERD. GARRETSON,  
*Clerk.*

20

30

## MASTER'S REPORT.

(Filed April 1, 1929.)

## IN CHANCERY OF NEW JERSEY.

10

Between

EMILY ALLEN ELFRETH,  
*Complainant,*

and

CHARLES J. ALLEN, *et*  
*als.,**Defendants.*On Petition.  
Master's Report.

20

In pursuance of an order of this court in the above stated cause made on the 23rd day of March, 1929, whereby the account of the Trenton Trust Company, substituted trustee under the will of Samuel L. Allen, deceased, filed with the clerk of this court was referred to me, Alexander Trapp, one of the Masters of this court to state and audit the same.

30 I, Alexander Trapp, Master in Chancery of New Jersey, do hereby respectfully report to the Court, that in the presence of Nelson L. Petty, trust officer of the Trenton Trust Company, trustee as aforesaid, I did audit said account now on file; that said trustee produced his books to me and I examined the same and compared the items of said account with entries in said books both as to re-

ceipts and expenditures thereof, with which said trustee has charged himself and for which it prays allowances, as well as all the vouchers for disbursements made by the trustee.

I do further report that I also examined the securities held by said trustee belonging to said estate and its bank books and other records showing the monies now in the hands of said trustee, and I do find and report as follows:

That I have audited the account now on file as to the trustee's receipts from both the corpus and income of said estate, and also the disbursements made therefrom by said trustee, and I find and report that said account as stated both as to the amounts with which said trustee has charged itself as well as with the amount for which it disbursed and prays allowances, as well as the balances now in the hands of the trustee as shown in said account, is in all respects full, true and correct both as to the sums and times of payment as therein stated. 10

And I further report that I have made and herewith state a correct summary of said account as follows: 20

AS TO CORPUS.

RECEIPTS

Balance in the hands of the substituted trustee as shown by its last accounting	\$449,207.55	30
Amount received during period covered by the present account	349,500.00	
Total receipts	\$798,707.55	

DISBURSEMENTS

Total disbursements	18,072.23
	<hr/>
Balance of corpus in the hands of substituted trustee	\$780,635.32

## AS TO INCOME

## RECEIPTS

	Balance in hands of substituted trustee	
10	as shown by last accounting	\$ 7,548.81
	Amount received during period covered by this account	222,382.27
		<hr/>
	Total receipts	\$229931.08
	DISBURSEMENTS	
	Total disbursements	197848.35
		<hr/>

	Balance of income in the hands of substituted trustee	
		\$ 32082.73
20	And I do further report that the trustee now holds the following securities as part of the corpus of said trust estate:	
	Balance of corpus	\$780,635.32
	Securities consisting of stocks, bonds and mortgages as shown by the list attached to said account:	
	Stocks	75.00
	Note	239.08
	Bonds and mortgages	210000.00
30	Cash on hand	570321.24
		<hr/>
	Income:	
	Balance in cash	\$32,082.73

And I do further report to the Court that the account now on file should be allowed.

All of which is respectfully submitted this 30th day of March, 1929.

(Signed) ALEXANDER TRAPP,  
*Master in Chan-  
cery of New  
Jersey.*

AFFIDAVIT. 10

(Filed 6/7/29.)

IN CHANCERY OF NEW JERSEY.

Between	}	On Bill, &c. 20 Affidavit.
EMILY ALLEN ELFRETH, <i>Complainant,</i>		
and		
CHARLES J. ALLEN, <i>et</i> <i>als.,</i> <i>Defendants.</i>		

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

NELSON L. PETTY, being duly sworn according to law on his oath, deposes and says: 30

I am the trust officer of the Trenton Trust Company and as such I have represented the estate of Samuel L. Allen, deceased, in all matters relating to said trust and especially the sale of the stock of the S. L. Allen & Co., Inc., held in said trust.

That on June 25, 1926, Elizabeth R. Allen, Susan J. Allen and Emily Allen Elfreth, in writing, requested and directed the said trustee to sell the stock in the S. L. Allen & Co., Inc., held in said trust, the price, however, to be subject to their written approval.

10 On November 8, 1926, Elizabeth R. Allen, Emily Allen Elfreth and Susan J. Allen, constituting a majority of the beneficiaries of said trust and also of the said family of the late Samuel L. Allen again requested the trustee in writing to make sale of said stock, urging as a reason therefor, that all the property they possessed was represented by said stock and subject to the hazards and risks to which all manufacturing enterprises are liable; and further urged that for nearly two years they had received no income, and further urged that the death of any of them would deprive the trustee of a  
20 majority holding of the voting stock and reduce the trust estate to a minority holding which would be practically valueless in an attempted sale; and further urged that they felt that their property should be invested where the income is fixed and regular and where the risk was not that of a manufacturing business; and further that if the property representing the trust stock in question could be sold, the corpus of the estate, if an adequate price were to be received, would be increased and thus their income would be increased, and further that the  
30 gradual expiration of the patents destroyed the monopoly upon which the business was based and because of the encroachment of competition, the business was no longer the largest manufacturers of sleds, and in view of these facts the beneficiaries again reiterated their request and instructions to the trustee to sell the stock, provided a price could

be obtained that met with their joint written approval.

It was due to these requests in writing and numerous personal requests made at the interviews had between the beneficiaries and myself, that the trustee undertook to obtain a purchaser for said stock.

That on November 29, 1926, Sarah H. Allen, Elizabeth R. Allen and Susan J. Allen notified the trustee in writing, that they had enclosed a copy of an agreement of sale of stock of S. L. Allen & Co., and further that as their rights in the matter of the sale of this stock was arbitrary and absolute, that they were under no obligation to state to the said trustee their reasons for exercising this right, and further they urged that it was to be clearly understood that they would not consider a sale of said stock to their brother, Charles J. Allen, and further that they would not consider a sale to William H. Roberts and his associates, and further that they would not consent to a sale of the stock to strangers for it would result in a number of relatives losing their present positions. No copy of an agreement of sale was enclosed in said letter nor was the same ever presented to the trustee although the trustee has been informed that such attempted sale had been made to one William Henry Elfreth. Several more interviews were had by me with the beneficiaries as well as with William Henry Elfreth. No conclusions were reached.

On December 6, 1926, William Henry Elfreth gave notice to the trustee in writing informing it that he had made an offer to the majority of the family of Samuel L. Allen, deceased; namely, Sarah H. Allen, the mother, Elizabeth R. Allen, Susan J. Allen and Emily Allen Elfreth, the daughters, for the purchase of all the stock of S. L. Allen &

Co., Inc., now held in trust; that they had accepted his offer and had consented to the sale and had signed an order upon the trustee to consummate the sale by delivery of the stock to the purchaser; and further that he had requested the Allen family to refrain from giving to the trustee the specific terms of the offer, restricting themselves to giving the trustee simply notice that their written consent had been given, and at the same time that he also wished  
10 to give notice that his offer had been accepted and that the authorization and request to make conveyance of the stock together with the written consent, would be delivered in due course. No such offer, order, acceptance or authorization referred to in said letter was ever delivered to the trustee nor did the trustee ever learn the contents of said documents.

Thereupon on December 22, 1926, I notified said parties that after many interviews with Mr. Elfreth  
20 in an endeavor to effect a sale, I had arrived at the following results: that Charles J. Allen would not become associated with Mr. Elfreth in the conduct of the business, that this was final; and further that I had suggested to Mr. Elfreth that the only way out of the difficulty was to sell to the present management, but he informed me that Mrs. Elfreth, his wife, would not consent to a sale to the present management and Mr. Allen would not consent to a sale to anyone else, and that the consequence was  
30 the blocking and making of a sale.

On January 27, 1927, Mr. Elfreth after a further conference with me intimated that his principals would consent to a sale of the stock for \$1,200,000. On this day, I notified Mr. Elfreth that after a personal talk with the management of the Allen Co., they advised me to tell him that they would not pay \$1,200,000 for the stock.

On February 3, 1927, the said William Henry Elfreth telegraphed me requesting to know if the trust company would or would not offer to sell him the controlling stock interest from \$1,200,000 in cash. To this telegram I replied on February 3rd, "Will you pay \$1,200,000 for the Allen stock held in the estate? If so, make the offer in writing with a deposit of \$50,000."

On February 4, 1927, William Henry Elfreth telegraphed me as follows: "Having received no responsive reply to my telegram asking whether you would or would not offer to sell me the majority stock interest of S. L. Allen & Co., for \$1,200,000 I regard this as stated as a refusal. I am not now interested in buying at any figure and the incident is closed." 10

Beginning 1926 the beneficiary urged the trustee to sell its stock in the Allen Co.

In the trustee engaged the services of E. J. Connelly to make a survey of the company's business and its future prospects with a view of fixing the value of said stock. This summary and survey was made and submitted to the trustee's board of directors and committee of three, thereafter made a personal survey to learn the value of said stock and reported that a sale should be made. 20

On or about May 20, 1927, I, at the special request of William Henry Elfreth secured the services of Ballinger Engineering Appraisement Co., to make an appraisement of the value of the stock held in said trust. That said company made said appraisement and a copy thereof was furnished to William Henry Elfreth and the beneficiaries and their counsel. 30

That on May 23rd of the same year after a conference between this deponent, Mrs. Elfreth and

Miss Elizabeth Allen and the said William Henry Elfreth, it was agreed that the three daughters would consent to sell the stock of the Allen Co., for \$1,200,000 and that the first chance to buy the stock at that price should be given to Mr. William H. Roberts and his associates. I submitted said offer to Mr. Roberts and received a reply to the same saying in effect, that he was not interested in the purchase of the stock at that figure and thereupon I offered the stock to the said William Henry  
10 Elfreth for the same price.

I received an acknowledgment of said offer from Mr. Elfreth and an acceptance thereof subject to a number of conditions among them being, that the sale should be made private and not reported to the Court, that the trustee give proper assurance that actual possession of the corporation would be given to him and that the transfer would be effected upon the books of the corporation and that he  
20 should name and have at the time of settlement his own board of directors and officers. I replied to him on May 26th of that year in substance, that the trustee could not comply with the seven conditions stated by him, but that they would agree to deliver to him the certificates of stock properly endorsed for transfer and that the purchaser would be entitled to all the rights, title and interest which the stock certificates may give the holder thereof.

On June 3rd, the said William Henry Elfreth notified the trustee that the conditions placed upon the  
30 sale of stock were for the sole purpose of making sure that actual possession to the plant would follow the acquisition of the stock upon the payment of the consideration and that he wasn't interested in the purchase of the stock except as it carried with it the actual possession of the plant.

On June 8, 1927, the said William Henry Elfreth

notified the trustee that he wished to repeat that he was not interested in the purchase of the equitable rights of this stock at any price, that he was only interested in the purchase of the legal title and upon the express condition that the actual possession of the plant shall pass to him upon the payment of the consideration.

Again on July 8, 1927, I notified the said William Henry Elfreth that confirming a conversation had between us over the telephone, that the trustee was willing to sell to him or his nominee the shares of stock of the S. L. Allen Co., for \$1,200,000, the shares to be transferred to him or to such person as he may name upon payment of the purchase price, and further that the trustee would not undertake to secure the resignation or discharge of any officer or director of the company and if that became necessary, the purchaser of the stock must exercise that right. 10

On October 4, 1927, I notified Mr. William H. Roberts informing him that the Allen beneficiaries had withdrawn their fixed price of \$1,200,000 for the stock held in trust and asked him if he had an offer to make for said stock, and further requested to ascertain from him if his stock was for sale, and if so, at what price, and to this letter, I received a reply from the said Mr. Roberts under date of October 8th, saying that while they were interested in the stock, they did not think it advisable under existing conditions to make a new offer at this time and that in regard to his own stock, the same was not for sale. 20 30

On October 14, 1927, Messrs. Scammell, Knight and Reese, attorneys for the beneficiaries and engaged to represent them and their interest, notified the trustee that they had a prospective purchaser for the stock in one, Ernest Rickett of Chi-

cago, Illinois, and requested certain information, which I furnished. I gave them all the information and data then available and I also had a conference with the said Mr. Rickett in company with Mr. Elfreth all with a view of bringing about a sale of this stock; that after numerous conferences and after the furnishing of all the information in the possession of the trustee, and arranging for a personal inspection of the plant by the said Rickett, 10 the said Rickett notified me under date of May 26, 1927, that he felt that the most difficulty in effecting any sale of the Allen estate, would be occasioned by the large decrease in the profits for the past year, and after further correspondence, the said Rickett under date of December 8, 1927, advised me that he was inclined to believe that, based upon the total of \$1,500,000 as the value of all the stock of the Allen Co., including the stock held by Roberts and his associates, that we may be able 20 to get together, and that on December 20, 1927, Mr. Elfreth wrote the trustee a letter in which he makes inquiry whether the trustee would sell the then present holdings to the said Rickett for the sum of \$611,275, and further stating that Mr. Rickett had asked him whether this consideration would be satisfactory and that before replying to this point, the beneficiaries wanted to know from the trustees whether it would deliver the title to the shares in question to Mr. Rickett and his associates upon the 30 payment of the consideration, and further stated when the trust company was in a position to state upon what terms they were willing to sell, the beneficiaries were prepared to give their decision in the matter, and further urged that as the business was in a state of depression at that time throughout the entire country with the exception of one or two places, and that there was no sign of improve-

ment and gave possibilities of financial shrinkage in the near future, the beneficiaries would consider their trustee negligent unless it gave the matter immediate attention, as any delay at this time might make this or any other sale impossible at this or any other time in the near future and a delay might result in the trustee being compelled to carry the business through a non-dividend paying period, a condition which happened a few years ago under the present management, during which time of almost two years, the beneficiaries had no income whatsoever from this business. 10

After further communication with the said William Henry Elfreth and the said Ernest Rickett, it was agreed that the stock at the price named should first be offered to the present management, and on December 24th, the said William Henry Elfreth in writing for the beneficiaries directed that an offer of the majority interests held in the said trust, should be offered to the said Roberts and the other stockholders for the amount of their recent appraisal and requested that such offer should be made within a week's time. 20

On December 24, 1927, William Henry Elfreth wrote to this trustee and requested to know whether the trustee would accept an offer of \$611,000, for the trust shares from Roberts, and further stated that he was prepared to take up any definite proposition from the trustee with the two beneficiaries in Philadelphia, and again called the attention of the trustee to the business and the financial depression which existed throughout practically the entire country and urging that the trustee make an immediate sale. Negotiations were then undertaken by me for the trustee with the said William H. Roberts and his associates, which resulted in an offer being made to the trustee under date of February 15, 1928, 30

by Edward W. Burt and Edward L. Richie to purchase all of the stock held by said trustee for the aggregate price of \$700,000 and deposited with the trustee as an earnest of good faith, a cashier's check on the National Bank of North Philadelphia in the sum of \$70,000. At this time the period of limitation for the consent of the beneficiaries had not expired and that every effort was made by this deponent to obtain said consent from the beneficiaries  
10 proved futile and as a consequence, I returned to the said Messrs. Burt and Richie, their said check.

Thereupon further negotiations were taken up between Mr. Elfreth and myself, and Mr. Elfreth through his attorneys, Scammell, Knight and Reese, endeavored to obtain from this deponent, an acceptance of an offer to purchase at a like price, the said stock, but made no deposit nor gave any assurance that the sale would be consummated.

That pending these negotiations, Sarah H. Allen,  
20 the widow of the said testator, died testate; that on April 4, 1928, Charles J. Allen, Edward W. Burt and Edward L. Richie and William H. Roberts, offered to purchase from the trustee, 1500 shares of Class A common stock and offered to pay therefor, the sum of \$210 per share which offer was refused on April 12, 1928, because of the uncertainty as to the number of shares of Class A stock which might remain in said trust fund, and, therefore, returned the said offer and the deposit of \$31,500.

30 That some time before June 8, 1928, S. L. Allen & Co., Inc., redeemed 219 shares of Class B common stock and paid the trustee therefor, the sum of \$21,900 and thus reduced the number of shares of Class B common stock held by the trustee to 512 shares.

From the time of the appointment of the Trenton Trust Company, substituted trustee to the time of

the completion of the purchase, two of its officers were elected directors in the Allen Co., and supervised the general policy of the company and attended all the directors' meetings and one of them attended every directors' meeting held by the company.

On June 8, 1928, the said Edward W. Burt and Edward L. Richie on behalf of themselves and their associates offered to purchase from the trustee, all of the capital stock of S. L. Allen & Co., Inc., both preferred and common, Classes A and B now held by the trustee or so much thereof as they may be in a position to sell, not less, however, than  $\frac{3}{5}$  of each class of total number of shares consisting of 1043 shares of preferred stock, 512 shares of Class B common stock and 2500 shares of Class A common stock, and agreed to pay for the preferred and the Class B stock, \$100 per share and for the Class A common stock, the sum of \$210 per share, or an aggregate of \$680,500, and as an earnest of good faith deposited with the said trustee, a cashier's check in the sum of \$50,000 to be applied to account of the purchase price.

The trustee accepted said offer subject to reporting the same to and receiving the confirmation of the same from the Court of Chancery of New Jersey.

That in addition to the statements herein contained in this affidavit, as to the negotiations and endeavors made by me and by the trustee to secure a purchaser for said stock, I made every endeavor and have held numerous conferences with the said William H. Elfreth claiming to represent the beneficiaries, excepting Charles J. Allen and with their counsel in an effort to bring about a satisfactory sale of the stock held by the trustee, but all efforts proved of no avail excepting the offer above men-

tioned which was submitted to the Court of Chancery for its determination and instruction.

That under the supervision of the trustee the management of said company was not disturbed and the beneficiaries of this trust estate received yearly the following amounts in dividends:

	1923, from date of appointment	\$17,878.75
	1924	35,601.00
	1925	37,782.00
10	1926	46,350.75
	1927	49,918.00
	1928	49,151.50
		<hr/>
	Total	\$236,682.00

which said trustee distributed to said beneficiaries as received.

On the rule to show cause as to the above offer, a hearing was had and competitive bidders presented themselves and the trustee then at the suggestion of the Court, submitted the said stock to the highest bidders which resulted in a final bid of \$755,000 being offered for the said stock holdings. Said bid was submitted to the Court and confirmed and was accepted by the trustee. The estate thereby realized the sum of \$74,500 in excess of the bid presented by Messrs. Burt, Richie and his associates.

After the acceptance of the bid, the trustee and counsel furnished and secured for the counsel of the purchasers, copies and records of the company showing its organization, by-laws, financial statements and other data. During this time we held daily conferences with the counsel for the purchasers and counsel for us.

On September 12, 1928, after the bid for the purchase of the Allen estate stock had been confirmed by the Court and accepted by the trustee, the board

of directors of the Allen Co., passed a resolution authorizing its treasurer to purchase 40% of Class B common stock of the company, thus impairing the liquidated assets of the company and benefiting the minority stockholders who had the majority of Class B common stock; that the trustee immediately took steps to secure the rescission of said resolution, which was done after holding a number of conferences with counsel for all parties and of the company.

That between the time of acceptance of said bid and for sixty days thereafter this trustee and its counsel attended all the annual meetings, elected a majority of its board of directors who resigned after the purchase was completed.

That at the time this trust estate came into the possession of this trustee, there remained certain matters of taxes on the income of Samuel L. Allen, deceased, which the Federal Government laid against the estate in the sum of \$9813.33; that on October 12, 1928, the trustee succeeded in adjusting and compromising said tax for the sum of \$1802.40, thus saving the estate the sum of \$8010.93. Likewise the State of New Jersey held an unpaid tax claim for collateral inheritance tax laid by the comptroller of the State against the said estate of Samuel L. Allen, amounting to the sum of \$5364.12. That on May 23, 1928, the counsel of the trustee succeeded in adjusting the said tax for \$4946.75, thus saving the estate the sum of \$417.37; that the taxes so adjusted were paid by the trustee.

Since the death of Sarah H. Allen in March, 1927, the trustee and its counsel have held a great many conferences and consultations, both with the beneficiaries and with W. Henry Elfreth who represented them and with Scammell, Knight and Reese, the counsel engaged by the beneficiaries, and these con-

ferences were all for the purpose of effecting the purchase and bringing about the distribution of the estate.

NELSON L. PETTY.

Sworn and subscribed to before me the 25th day of March, 1929.

MARY W. WILSON,  
*Notary Public of N. J.*

10

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AFFIDAVIT.

(Filed 6/7/29.)

IN CHANCERY OF NEW JERSEY.

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Between

EMILY ALLEN ELFRETH,  
*Complainant,*

and

CHARLES J. ALLEN, *et*  
*als.,*

*Defendants.*

On Petition, &c.  
Affidavit.

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

PETER BACKES, being duly sworn according to law on his oath, deposes and says:

I have been the counsel of the Trenton Trust Company in the Allen estate since its appointment

as substituted trustee. Mr. Petty, the trust officer of said trust company, has consulted me in all matters relating to the Allen Co. affairs and particularly as to the trustee's right to representation on the board of directors, the result of the company's management, payment of dividends, distribution, etc.

Then when the question of selling the trust stock-holding in the Allen Co. was requested by the beneficiaries before the expiration of the ten year time limit in the Samuel L. Allen will, again the trust officer and the beneficiaries held a number of consultations with me and as a result of which the trust officer and myself devoted days to securing for them and for their agent, Mr. W. Henry Elfreth, appraisements, schedules and other data in our effort to learn the value of this stock of the Allen Co. held by the trustee so as to bring about an advantageous sale thereof for the estate. This effort commenced in the fall of 1926, and continued down to the time when the purchase of the stock was completed in 1928. I have read Mr. Petty's affidavit made by him in this matter and I verify the statements therein recited. I did not keep an accurate account of all the services I rendered, but I present herewith a partial list of such records as I have commencing in 1926 and continuing through the years 1927, 1928 and down to the present time in 1929.

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1926.

October 26, Conference with Mr. Petty and Mr. Elfreth 4 to 6 P. M.

October 28, Conference all morning with Elfreth, Petty, Charles Allen and wife and Misses Allen.

November 26, Consultation with Mr. Petty.

November 26, Examination of stock certificates, 7%  
A. & B. stock.

December 2, Conference 2 hours, with Petty and  
Elfreth on sale of stock, etc.

December 3, Conference with Petty.

December 3, Preparation of statement denying sale  
of stock of company to Elfreth. Phoned Richie  
in Philadelphia to deny Ledger story.

10 December 9, Conference with Elfreth and Petty, all  
afternoon from two o'clock to five.

December 20, Conference with Petty. Telephoned  
McCracken in Philadelphia.

December 20, Another conference with Petty.

December 30, Conference with Petty, and telephone  
conference with Charlie Allen.

December 31, Conference with Petty and answered  
Elfreth's telegram.

1927

20 January 4, Conference with Charlie Allen, William  
Roberts, Jr., and Nelson Petty, 2½ hours.

January 18, 3 hours conference with trustee and  
Elfreth.

February 3, 4 and 5, Conference with Petty and  
Elfreth, offer \$1,200,000 for stock.

February 3, 4 and 5, Conference on Elizabeth R.  
Allen's demand for payment of legacy stock  
which was taken, should be redeemed by the  
company in cash.

30 February 3, 4 and 5, Further conference with Petty,  
on letters and telegrams from Elfreth on his  
threats to bring suit.

February 8, Conference with Petty and Mrs. Allen,  
1 hour.

March 21, Conference with trustee, from three  
o'clock until six.

March 26, Conference with Charles J. Allen and  
wife and Mr. Petty.

- May 13, Conference with Mr. Petty, W. Henry Elfreth and wife and Elizabeth Allen, consulting about Connelly's report on value of Allen Co. stock, 2 hours.
- May 16, Conference with Roberts, Richie, Charles J. Allen and general manager, with Petty, trying to effect a settlement and sale of Allen estate stock from 2 to 4 P. M.
- June 6, Conference with Petty, and letter to Elfreth, 1 hour. 10
- June 16, Conference with Petty, Richie, Taylor on sale of Allen stock, 1 hour.
- July 7, Conference in Philadelphia to Allen Co. from ten-thirty A. M. to 3 P. M.
- July 18, Conferences with Elfreth for two days.
- July 22, Two conferences with Petty, and conference over telephone with Elfreth.
- July 22, Telephone conference with W. H. Roberts, Jr.
- August 1, Conference with Petty, Mr. A——— 20  
of Ballinger's and Elfreth, 2 hours, report, etc.
- August 2, Conference with Mr. Roberts, Mr. Richie, Mr. Petty, 1½ hours.
- August 4, Conference with Petty and Elfreth, 2:30 to 4.
- August 30, Conference with N. L. Petty, letter, &c., on sale of stock.
- Sept. 13, Conference with Petty, Knight of Scammell, Knight and Reese, attorney for Elfreth, 2 to 3:30 P. M. in re Allen Co. 30
- Sept. 30, Consultation with Mr. Petty.
- Nov. 16, Conference with N. L. Petty and telephone to Richie, Allen Co. treas., Elfreth negotiations &c.
- Dec., 29, Numerous conferences with Petty about sale of stock; preparation of resolution making offer to

1928

- January 16, Conference with Petty as to additional tax on sale of homestead.
- January 16, Examination of papers, and phone McCracken who had the matter in charge when the tax was laid against heirs.
- February 14, and 15th, Conference with Mr. Petty.
- February 14, and 15th, Another conference with Petty, Richie, Allen, Roberts and Burt, 2½ hours.
- 10 February 14, and 15, In Philadelphia with Mr. McCracken and received offer for Allen stock, 3 hours.
- February 16, Two conferences on bid from Burt, with Petty and Mr. Smith, on sale of stock.
- February 16, Telegram to beneficiaries and Elfreth.
- February 16, Conferences were for two hours.
- February 17, Conference with Petty on sale of stock.
- February 17, Two other conferences with Petty and
- 20 Knight.
- February 17, Telephoned to McCracken in Philadelphia.
- March 12, Conference with Petty, Scammell, in re sale stock of Allen Co., 1 hour.
- April 5th and 6th, Received offer from Allen Co. to purchase 1500 shares common stock.
- April 5th and 6th, Conference with Ritchie, Petty and Knight, 2 hours, telephoned McCracken.
- April 5th and 6th, Conference with Scott Scammell.
- 30 April 7, Telephone conference with McCracken.
- April 11, To Philadelphia to attend meeting with Nelson Petty, all afternoon.
- April 12, Conference by phone (2 calls) with McCracken and Petty.
- April 12, All day with Petty and committee of trust company rejecting bid saying that we would make application.

- May 25, Compromise settlement of taxes arranged with New Jersey Collateral Inheritance Tax, submitted the same to Mr. Petty, two conferences.
- May 14, To Philadelphia to see Mr. McCracken.
- May 14, To Camden, West Jersey Trust Co., deposit of \$25,000, secured releases, &c.
- May 18, Conference with Mr. Kelly, Tax Department.
- May 18, Prepared and furnished N. L. Petty affidavit, showing present status of estate. 10
- June 1, In Philadelphia, conference with Mr. McCracken, offer renewed, 3 hours.
- June 18, All afternoon, preparing petition, conference with Petty on offer to purchase stock.
- June 19, All day completing above petition and other documents, appointment of administrator pendente lite of the estate of Sara H. Allen, and order.
- June 11, Conference with Petty and bank committee, Stokes, Sinclair and Bedford, submitted offer to purchase Allen Co. stock. 20
- June 11, Further conference with Petty.
- June 11, Prepared new form of offer, 2 hours.
- June 8, Conference with Mr. McCracken, Burt, Richie and Nelson Petty, received an offer to purchase Allen stock, 1 hour.
- June 8, All day preparing petition for Court reporting offer.
- June 25, Securing service on Emily Allen Elfreth, et als., of petition, order and order in Prerogative Court. 30
- June 21, Conference by phone, McCracken on sale of stock.
- June 21, All day working on the matter.
- June 20, Obtaining orders to show cause, and had Mrs. Elfreth appointed administratrix pen-

- dente lite of the estate of Sarah H. Allen, 2 hours.
- July 2, Rule to show cause why bid should not be accepted adjourned to July 24, 1928.
- July 2, Telephoned McCracken.
- July 17, Conference with Bloor and telephoned to West Jersey Title Co., requesting them to forward bonds, &c.
- 10 July 19, Conference with Bloor, prepared order to deliver securities and cash, also copy of William Casselman's letter.
- July 24, Called Roberts for Scammell on phone, 15 minutes.
- July 28, Conference from ten to twelve with Charlie Allen and N. Petty.
- July 31, To Newark, hearing on sale by trustee of Allen Co. stock, adjourned for two weeks at Allenhurst.
- 20 August 23, To Allenhurst with Scott Scammell, conference with Vice-Chancellor as to adjournment and hearing of this case.
- August 24, To Allenhurst with Scott Scammell before V. C. Backes.
- August 27, Prepared affidavits, &c., brief and argument, &c.
- August 27, Phoned McCracken outlined affidavits &c., wanted.
- August 27, Conference with Nelson Petty.
- August 29, All day preparing affidavits, brief and conference with Petty in re sale of stock.
- 30 August 30, To Philadelphia to obtain additional affidavits &c., and preparing brief, and conference with Petty.
- September 4, Return day order to sell stock before V. C. Backes in Newark.
- September 4, Argued matter and same was adjourned to Sept. 7th.

- September 6, All day preparing brief, bid for stock, &c.
- September 7, All day in Chancery on sale of stock.
- September 10, Interview with trust officer, Trenton Trust Co., more information to Elfreth.
- September 10, Filed order confirming sale.
- September 13, Conference with Scammell, Petty and again Smith, in re stock dividend.
- September 17, Conference with Nelson Petty.
- September 18, Attended meeting of stockholders of 10 Allen Co., in Philadelphia, all afternoon.
- September 19, Conference with V. C. Backes, Scammell, in Trenton from ten to eleven-thirty.
- September 19, Another conference with Scammell, Petty, McCracken, and notice to Co., examination of law and by-laws, all afternoon.
- September 29, All afternoon preparing for meetings, &c. Phoned McCracken, two conversations.
- September 29, Interviewed Petty, all morning.
- September 24, All day conferences with McCracken, 20 et als.
- September 25, All morning, conference with Scott Scammell, Nelson Petty and Smith.
- September 25, Went to Philadelphia in afternoon for stockholders' meeting; also attended directors' meeting.
- October 2, Conference with Petty and Reese.
- October 3, Telephoned Richie to give Hay certain data &c., 2 phone calls.
- October 10, All afternoon in Philadelphia, attend- 30 ing directors' meeting.
- October 11, To Philadelphia with Petty, met Mrs. Elfreth and W. Henry Elfreth. All morning gone. Told Elfreth he could not go through factory.
- October 22, Prepared notice of directors' meeting.

October 22, Conference with Petty, McCracken and Richie, 2 phone calls to McCracken.

November 1, Conference with Petty, on information Elfreth wants. Wrote Heverly & Hay and Burt to furnish it, dictated letter, &c.

November 14, Attended directors' meeting, S. L. Allen & Co., Inc., in Philadelphia all afternoon.

November 28, Meeting in Philadelphia, transfer of stock &c., all afternoon; complete reorganization of board &c.

10 December 3, Conference with Petty and Pierrpont as to right of trustee to invest fund on call money.

PETER BACKES.

Sworn and subscribed to before me the 23 day of April, 1929.

LEWIS REDMAN,  
*Master in Chancery  
of New Jersey.*

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AFFIDAVIT.

(Filed 6/7/29.)

IN CHANCERY OF NEW JERSEY.

Between

EMILY ALLEN ELFRETH,  
Executrix, etc.,

*Complainant,*  
and

CHARLES J. ALLEN and  
others,

*Defendants.*

On Petition, etc.  
Affidavit.

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

I, WILLIAM HENRY ELFRETH, being duly sworn according to law on my oath depose and say:

I desire to refer to my affidavit, a copy of which is hereto annexed,\* which was presented in answer to the petition filed in this cause for the approval of this Court to the sale made by the trustee of the stock held by it in the S. L. Allen & Company, Incorporated. I believe this answers in part the affidavit made by Nelson L. Petty, the trust officer of the Trenton Trust Company in the statements which he makes in support of the application for

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\*Footnote: In order to save repetition, this affidavit is not here re-printed, but will be found on pages 67 to 129, inc.

commissions on corpus and income. There are, however, other matters which I desire to state in addition to those set forth in the affidavit.

They are: The Trenton Trust Company made no effort to assist the beneficiaries in bringing about a sale of this stock for an advantageous sum. The amount received at the time of the sale was brought about entirely through my efforts and the efforts of counsel whom the beneficiaries employed to resist  
10 the sale of the stock to the so-called management interest, and it was only through the efforts of counsel for the beneficiaries that we were able to realize a sum in excess of the amount previously bid by the management. The amount of the bids received by the trustee from the management, as will be seen by my affidavit, was largely, if not wholly due to my efforts on behalf of the beneficiaries. I believe if the trustee had co-operated with the beneficiaries a larger sum could have been realized for this stock.  
20 The proceedings show that the beneficiaries were, as a result of the attitude of the trustee, suddenly placed in a position where it was necessary, in order to prevent a sale by the trustee at an inadequate price, to raise a large sum of money to deposit as an earnest of any bid they might make, and were still left in the position where they must raise a large sum of money to protect their property from being sacrificed, and it was under these most trying circumstances that the beneficiaries were able  
30 with the assistance of their counsel, to raise the money sufficient to make good their bid which was \$74,500.00 in excess of the offer which the trust company had actually accepted.

The next point which I desire to draw the Court's attention to is that in Mr. Petty's affidavit they claim to have adjusted in inheritance tax amounting to \$9813.33 for the sum of \$1802.40. My in-

formation is that this saving was made in connection with the executor's accounts of Samuel L. Allen, deceased, and was done entirely through the efforts of a tax accountant who was employed by the trust company and who subsequently rendered a very considerable bill which was paid out of the executor's funds, and has nothing whatever to do with this accounting.

Further with respect to the work and labor of the trustee in connection with the handling of the estate, I find that upon an examination of the minutes of the corporation that Mr. Petty did attend several of the directors' meetings, but at no time made any motion of any substantial moment in connection with the conduct of the business. Mr. Arthur Smith, the president of the trust company, attended one and possibly two meetings of the board, and at one meeting of the board offered a resolution doubling the compensation and bonus to the officers which was greatly in excess of the amount determined upon by the officers of the company. This, of course, was not of any material assistance to the stockholders by way of dividends, but added very greatly to the expenses of operating the business. 10 20

Outside of these services the only action of the trustee was to receive the dividends as and when the same were declared and paid.

On a previous accounting the trustee showed that they had in hand a corpus of \$449,207.55 and income received of \$65,767.12. Based on this accounting the trustee was allowed by order dated September 15, 1927, \$1147.85 as commissions and Mr. Peter Backes was allowed the sum of \$1,000.00 as counsel fee. Obviously the Court did not allow 5% on income and a like amount upon corpus, as counsel and the trustee have requested in this application. 30

With respect to the services rendered by Mr.

Peter Backes as set forth in his affidavit, I respectfully submit that a large part of these services are services of a character which the trustee is compensated for by the commissions allowed for services rendered the estate, and if the trustee receives assistance for such services which are included in the commissions, they, under the cases, must necessarily compensate their own counsel for these services from these commissions.

- 10 With respect to the services rendered during the present proceedings to sell the stock held by the trustee, a large part of these services were entirely unnecessary, except as to the question as to whether the stock was specifically bequeathed under Mr. Allen's will and whether the offer made by the management should be accepted. The trust company by its acceptance of the offer of the management disposed of both questions, and all that counsel was required to do was to formally present the petition to the Court for its approval, but it was in  
20 opposition to the acceptance of this offer that the need for counsel's efforts were required and those efforts were supplied by counsel for the beneficiaries and they did all the work in bringing to a successful conclusion the sale of this stock.

WILLIAM HENRY ELFRETH.

Sworn to and subscribed before me, this 28th day of May, A. D., 1929.

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RUTH E. WOLF,  
*Notary Public.*

My commission expires January 20, 1930.

OPINION.

(Filed Sept. 19, 1929.)

COURT OF CHANCERY OF NEW JERSEY. 10

Chambers of  
Maja Leon Berry,  
Vice-Chancellor.

Toms River, New Jersey.  
June 21, 1929.

Scott Scammell, Esquire,  
Mechanics National Bank Bldg.,  
Trenton, N. J.

Dear Sir:

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Your letter advising me of your intention to take an appeal from the order fixing counsel fees and commissions in the Allen estate is received. I do not have time to write any opinion in this matter, but I should be perfectly satisfied if you use my letter in lieu of an opinion.

Very truly yours,  
MAJA LEON BERRY.

MLB/ELS

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Chambers of  
Maja Leon Berry,  
Vice-Chancellor.

Toms River, N. J.,  
June 7, 1929.

Peter Backes, Esq.,  
Trenton Trust Building,  
Trenton, N. J.  
Scott Scammell, Esq.,  
10 Mechanics National Bank Building,  
Trenton, N. J.

Dear Sirs:

In the matter of *Elfreth v. Allen and others*, I have examined the petition and second account of the Trenton Trust Company, substituted trustee of the estate of Samuel L. Allen, deceased, and have decided to allow the trustee commissions at the rate of 4% of both the corpus and income involved in this accounting. The corpus involved, I understand, 20 to be about \$312,000 and the income approximately \$222,000. As to counsel fees, I shall allow Mr. Backes, as counsel for trustee, the amount asked by him, namely, \$25,000. I will also approve the payment of the bills for services of Sanderson & Porter and Heverly & Hay mentioned in the petition.

I am not unmindful of the fact that these allow-  
ances are in excess of those contended for by counsel for the beneficiaries of the trust but I have examined all the papers submitted to me with a 30 great deal of care and have read with much interest the affidavits respecting services of counsel and trustee. In my judgment both are entitled to compensation not only for the actual labor performed by them in the discharge of their duties but also for the responsibility which they assumed in this matter. This responsibility was a very considerable

one and involved on the part of the trustee the practical management of the business of S. L. Allen & Co., Inc., for the past six years. I have not overlooked the fact that it is claimed by the beneficiaries that the services of the trustee in this respect were little more than perfunctory, but as the trustee was vested with control of the company by reason of its stock ownership, I cannot see how its duties as trustee could have been discharged without the exercise of a practically complete control and there is no suggestion that the trustee has not performed its full duty. Naturally the detail work in a manufacturing organization of this kind would not be done by the trustee but its policy would be subject to the approval of the trustee and subject to change at its behest. It is quite obvious that the efforts of the trustee and its counsel in effecting a sale of the stock of S. L. Allen & Co., Inc., resulted very beneficially to those interested in the trust and I feel that this fact presents a strong argument in favor of the fees allowed. It cannot be expected that responsible institutions will accept trusts of this nature and discharge them with fidelity unless reasonable compensation is made for their services. 10

With respect to counsel fees allowed to Mr. Backes, much of what I have already said with respect to the services of the trustee applies as well to him, but in addition to that it may be said that there is no yardstick by which the services of counsel can be uniformly measured. The responsibility assumed by him in advising the trustee, under the circumstances of this case, was great, and the service cannot be estimated merely by a computation of the actual time devoted to the work. It seems to me that the services of eminent counsel in connection with a trust involving almost a million dol- 20 30

lars and extending over a period of six years, ought to be worth the allowance here indicated if they are worth anything.

I shall not write any opinion in this matter unless an appeal is intended and in that event only after the summer vacation, as I have not the time now to prepare such opinion.

Counsel may mail to me at Toms River form of decree passing this account and making the allowances suggested, or, if a form cannot be agreed upon, it may be noticed before me in Newark next Tuesday, or on June 25th, or at Long Branch any Thursday this month.

I am returning to Mr. Backes copy of petition and account left with me when this matter was presented and I am filing the other papers.

Very truly yours,

MAJA LEON BERRY.

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ORDER ALLOWING SECOND ACCOUNT AND  
FIXING COMMISSIONS AND COUNSEL  
FEES.

(Filed June 15, 1929.)

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IN CHANCERY OF NEW JERSEY.

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Between  
EMILY ALLEN ELFRETH,  
    *Complainant,*  
and  
CHARLES J. ALLEN, *et*  
    *als.,*  
                    *Defendants.*

On Petition.  
Order Allowing Sec-  
ond Account and  
Fixing Commissions  
and Counsel Fees. 20

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It appearing that the Trenton Trust Company, substituted trustee, has filed its duly verified petition and account in the Court of Chancery, praying that its said account on file with the clerk of said court might be approved and allowed and that its fees and allowances and the allowance of its counsel might be fixed; and it further appearing that by an order dated the 23rd day of March, 1929, it was among other things ordered that Charles J. Allen, Susan J. Allen, Elizabeth R. Allen and Emily Allen Elfreth, individually and as executrix of the estate of Sarah H. Allen, do show cause before the Chancellor at the Chancery Chambers, in the Industrial 30

204    *Order Allowing Second Account and  
Fixing Commissions and Counsel  
Fees*

Building, Broad Street, Newark, New Jersey, on Tuesday, the 2nd day of April, 1929, at the hour of ten o'clock in the forenoon of said day, why said account should not be allowed and the commissions and counsel fees fixed; and it was further ordered that said account be referred to Alexander Trapp, one of the Masters of this court, to state and audit  
10 the same and report thereon before the return day of said order; and it was further ordered that a copy of said order (which need not be certified) should be served on the parties within five days from the date thereof; and it further appearing that a copy of said order was duly served on the said parties; and it further appearing that the said Master has made his report dated on the 30th day of March, 1929, wherein he reported that the said  
20 account as filed is in all things correct and that the same should be allowed; and it further appearing that the hearing in this matter has been adjourned until this day.

And now this matter coming on for hearing in the presence of Peter Backes, of counsel with the substituted trustee, and Scott Scammell, of Scammell, Knight and Reese, of counsel with the beneficiaries and others, and upon hearing said counsel on the application for the allowance of said account, the fixing of the substituted trustee's com-  
30 mission, the payment of counsel fees, the payment of the claim of Sanderson & Porter and Heverly & Hay, and the fixing of the Master's fee, it is on this 15th day of June, 1929, ordered, that the said account of the Trenton Trust Company, substituted trustee of the estate of Samuel L. Allen, deceased, be and the same is hereby allowed.

And it is further ordered, that said substituted

*Order Allowing Second Account and*      205  
*Fixing Commissions and Counsel*  
*Fees*

trustee do pay to Messrs. Anderson & Porter, the sum of five thousand dollars for their services in appraising the value of the stock of the S. L. Allen & Co. and to Messrs. Heverly & Hay, certified public accountants, for copies of the accounting of S. L. Allen & Co., the sum of two hundred and seventy-five dollars.

And it is further ordered, that the said substituted trustee, be allowed the sum of four per cent commission on the two-fifths share, part or portion of the corpus of said estate distributable to Emily Allen Elfreth, executrix of the estate of Sarah H. Allen, deceased, and the further sum of four per cent commissions on the total amount of income of \$222,382.27 received by the said substituted trustee as shown by said accounting, as compensation and allowance for its services as such substituted trustee. 10

And it is further ordered, that said substituted trustee pay to its solicitor, Peter Backes, the sum of twenty-five thousand dollars as his allowance for services rendered therein to the entire estate, together with his taxed costs. 20

And it is further ordered, that the said substituted trustee do pay to Alexander Trapp, Master, the sum of two hundred dollars for his services in stating and auditing said account.

E. R. WALKER,      30  
C.

Respectfully advised,  
MAJA LEON BERRY,  
V. C.

A true copy.  
FERD GARRETSON,  
Clerk.

## NOTICE OF APPEAL.

(Filed June 25, 1929.)

## IN CHANCERY OF NEW JERSEY.

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Between

EMILY ALLEN ELFRETH,  
*Complainant,*

and

CHARLES J. ALLEN and  
others,*Defendants.*On Petition.  
Notice of Appeal.

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Susan J. Allen, Elizabeth R. Allen and Emily Allen Elfreth, beneficiaries under the last will and testament of Samuel L. Allen, deceased, hereby appeal to the Court of Errors and Appeals in the last resort in all causes, from so much of the order made in the above-entitled cause on the fifteenth day of June, nineteen hundred and twenty-nine, by the Honorable Edwin Robert Walker, Chancellor of the State of New Jersey, on the advice of Honorable

30 Maja Leon Berry, one of the Vice-Chancellors of this court, as directs that the Trenton Trust Company, substituted trustee under the will of Samuel L. Allen, deceased, be allowed the sum of four per cent commission on the two-fifths share, part or portion of the corpus of the estate of the said Samuel L. Allen, deceased, distributable to Emily

Allen Elfreth, executrix of the estate of Sarah H. Allen, deceased, and which directs the further sum of four per cent commissions on the total amount of income of \$222,382.27 received by the said substituted trustee as shown in the account filed by the said substituted trustee, as compensation and allowance for its services as such substituted trustee, and from so much of the said order which directs that the said substituted trustee pay to its solicitor, Peter Baekes, the sum of twenty-five thousand dollars as his allowance for services rendered therein to the entire estate, together with his taxed costs. 10

Dated, June 24, 1929.

SCAMMELL, KNIGHT & REESE,  
*Solicitors for and of Counsel  
with Susan J. Allen, Elizabeth  
R. Allen and Emily Allen  
Elfreth.*

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

SCOTT SCAMMELL,  
*Of Counsel with Susan  
J. Allen, Elizabeth R.  
Allen and Emily Allen  
Elfreth.*

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## PETITION OF APPEAL.

(Filed July 12, 1929.)

NEW JERSEY COURT OF ERRORS AND  
APPEALS.

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Between

EMILY ALLEN ELFRETH,  
*Complainant,*

and

CHARLES J. ALLEN and  
others,*Defendants.*} On Appeal from  
} Court of Chancery.  
} Petition of Appeal.

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

The petition of Susan J. Allen, Elizabeth R. Allen and Emily Allen Elfreth, beneficiaries under the last will and testament of Samuel L. Allen, deceased, the appellants in the above-entitled cause, respectfully shows that:

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1. The petitioners find themselves aggrieved by certain parts of an order made in the Court of Chancery by his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, on the advice of the Honorable Maja Leon Berry, one of the Vice-Chancellors of the said Court of Chancery, bearing

date the fifteenth day of June, nineteen hundred and twenty-nine, in the above-entitled cause, wherein your petitioners were the beneficiaries of a trust fund created by the last will and testament of Samuel L. Allen, deceased, whose estate is involved in the above-entitled cause, in this respect, to wit: that the said order of the said Court of Chancery orders that there be allowed to the Trenton Trust Company, substituted trustee under the said will of Samuel L. Allen, deceased, the sum of four per cent 10  
commission on the two-fifths share, part or portion of the corpus of the estate of the said Samuel L. Allen, deceased, distributable to Emily Allen Elfreth, executrix of the estate of Sarah H. Allen, deceased, and further orders that there be allowed the further sum of four per cent commissions on the total amount of income of \$222,382.27 received by the said substituted trustee, as shown in the account filed by the said substituted trustee; as the compensation and allowance for its services as such 20  
substituted trustee, and further orders that the said substituted trustee pay to its solicitor, Peter Backes, the sum of \$25,000.00 as his allowance for services rendered therein to the entire estate, together with his taxed costs, and your petitioners appeal from that part of the said order of the Chancellor which orders as aforesaid, upon the ground that the same is erroneous:

First, in that the amounts allowed to the said Trenton Trust Company, substituted trustee as 30  
aforesaid, are grossly excessive;

Second, that the amount directed to be paid to Peter Backes, Esquire, Solicitor for the said Trenton Trust Company, substituted trustee as aforesaid, is grossly excessive;

Third, that the services of the said Peter Backes, Esquire, solicitor for said substituted trustee, consisted largely of services which were of such nature that they could and should have been rendered by the said substituted trustee rather than by its solicitor, and compensation for which said services was and should have been included in the allowance of the said substituted trustee and it was the duty of the said substituted trustee to perform the said services;

Fourth, that the evidence submitted by the solicitor for the substituted trustee as to the nature and extent of his legal services rendered, was insufficient to justify an allowance by the Vice-Chancellor to said solicitor of the sum of \$25,000.00 for his services.

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

SCAMMELL, KNIGHT & REESE,  
*Solicitors for and of Counsel  
with Appellants.*

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ANSWER.

(Filed July 19, 1929.)

NEW JERSEY COURT OF ERRORS AND APPEALS.

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Between	}	On Appeal from Court of Chancery. Answer.
EMILY ALLEN ELFRETH, <i>Complainant,</i>		
and		
CHARLES J. ALLEN and others, <i>Defendants.</i>		

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The Trenton Trust Company, substituted trustee under the will of Samuel L. Allen, deceased, 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 15th day of June, 1929, made and entered in the Court of Chancery, in the cause for that purpose mentioned in the said petition, as therein stated; but as to the substance and form thereof, it prays to refer thereto when the same shall be produced. 30

The Trenton Trust Company, substituted trustee under the will of Samuel L. Allen, deceased, answering the petition of appeal, denies that the amounts

allowed by the Honorable Edwin Robert Walker, Chancellor, on the advice of the Honorable Maja Leon Berry, Vice-Chancellor, to it and to Peter Backes, solicitor and counsel of said substituted trustee, are grossly excessive; and further answering says, it is advised and believes, that the said order is agreeable to equity, and it prays that the same may be affirmed, with costs.

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PETER BACKES,  
*Solicitor and of Counsel.*

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NEW JERSEY COURT OF ERRORS  
AND APPEALS.

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Between

EMILY ALLEN ELFRETH, Executrix, etc.,  
*Complainant-Appellant,*  
and

CHARLES J. ALLEN, Executor, *et als.*,  
*Defendants,*  
ELIZABETH R. ALLEN and SUSAN J. ALLEN,  
Executrices, etc.,  
*Defendants-Appellants.*

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ON BILL, ETC.

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ON APPEAL FROM COURT OF CHANCERY.

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BRIEF ON BEHALF OF APPELLANTS.

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QUESTIONS INVOLVED.

This is an appeal from certain parts of an order made in the Court of Chancery by his Honor Edwin Robert Walker, Chancellor, on the advice of the

Honorable Maja Leon Berry, one of the Vice-Chancellors of the Court of Chancery, bearing date the fifteenth day of June, nineteen hundred and twenty-nine, which said parts of the said order allow to the Trenton Trust Company, substituted trustee under the last will and testament of Samuel L. Allen, deceased, as commissions, 4% on a certain portion of the corpus of the trust estate, and 4% on the income of the entire estate, and to Peter Backes, Esquire, its counsel, the sum of \$25,000 as a counsel fee for his services rendered to the estate.

This appeal is taken on the ground that the said allowances are excessive.

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FACTS.

On and before March 28, 1918, one Samuel L. Allen and William H. Roberts carried on a business for the manufacture of sleds and farming implements under a partnership agreement, under the terms of which agreement it was provided that upon the death of one of the two partners a corporation should be formed by the surviving partner and the legal representatives of the deceased partner, and that they should take stock in the said corporation in proportion to their respective interests in the said business. At the time of the formation of the said partnership, the said Samuel L. Allen had contributed the sum of \$30,000.00 capital, and the said William H. Roberts had contributed the sum of \$15,000.00 capital (Case, page 1 to page 2, line 10, inclusive).

On March 28, 1918, the said Samuel L. Allen died, leaving a last will and testament whereby he ap-

pointed his daughter, Emily Allen Elfreth, complainant-appellant, his wife, Sarah H. Allen, now deceased, his son, Charles J. Allen, defendant, and his daughters, Elizabeth R. Allen and Susan J. Allen, defendants-appellants, as the executors and trustees thereof (Case, page 2, line 11). The said surviving partner, William H. Roberts, organized a corporation under the laws of Pennsylvania in accordance with the terms of the said partnership agreement, which corporation was known as S. L. Allen & Co., Inc. (Case, page 2, line 19).

In apportioning the capital stock of the said S. L. Allen & Co., Inc., the said William H. Roberts divided the same in such a way as not to give a two-thirds interest in the stock having voting power to the legal representatives of the said Samuel L. Allen, and one-third of such stock to himself, but in fact he so apportioned the stock that the said William H. Roberts held a much greater proportion of the voting stock than one-third and the legal representatives of the said Samuel L. Allen, deceased, held a much smaller voting interest than two-thirds (Case, page 3, line 31).

By decree of the Court of Chancery of the State of New Jersey, dated May 15, 1923, it was decreed that the said stock of the said S. L. Allen & Co., Inc., be reapportioned by the said corporation and by the said William H. Roberts, in such a manner that the legal representatives of the said Samuel L. Allen, deceased, receive a two-thirds interest in the voting stock of the said corporation and the said William H. Roberts and his associates receive a one-third interest in the voting stock of the said corporation (Case, page 7, line 9, to page 8, line 29).

In the same proceeding the legal representatives of Samuel L. Allen, deceased, to wit: his wife, Sarah

H. Allen, and his children, Charles J. Allen, Elizabeth R. Allen, Susan J. Allen and Emily Allen Elfreth, were relieved of their duties as trustees under the said will of the said Samuel L. Allen, deceased, and the Trenton Trust Company of Trenton, N. J., was appointed trustee in the place and stead of the said Sarah H. Allen, Charles J. Allen, Elizabeth R. Allen, Susan J. Allen and Emily Allen Elfreth (Case, page 9, line 11). Thereupon, the said Trenton Trust Company accepted said trust and entered upon its duties as such trustee. The said Trenton Trust Company filed its first account with the Court of Chancery in the said cause on June 26, 1924 (Case, page 11), which said account was duly confirmed by order of the said Court of Chancery, filed September 15, 1925 (Case, page 30).

The said Trenton Trust Company continued and still continues to act as substituted trustee under the last will and testament of the said Samuel L. Allen, deceased.

The said Samuel L. Allen provided by the terms of his last will and testament that none of the shares of the capital stock of the corporation to be formed after the death of one of the partners, as above stated, which stock might come into the possession of his executors, should be sold by his said executors or by his trustees, within a period of ten years from the date of his death, unless a majority of his family (which family he expressly stated to mean his wife and four children, or a majority of them living at that time) should approve in writing of the same being sold, in which case he authorized and directed the sale thereof (Case, page 33, line 21).

On or about June 25, 1926, a letter signed by Sarah H. Allen, Elizabeth R. Allen, Susan J. Allen and Emily Allen Elfreth was sent to the Trenton Trust Company, substituted trustee, in which the

said beneficiaries requested and directed the said Trenton Trust Company, substituted trustee, as aforesaid, to sell the said stock of the S. L. Allen & Co., Inc., held by it as such trustee, the price, however, to be subject to the approval of the said persons (Case, page 68, line 18, and Case, page 82). The said letter was the beginning of a long series of letters and other communications relating to the sale of the said stock and negotiations for the sale of the said stock with prospective buyers, which will be more fully considered later in this brief.

The trust estate being administered by the Trenton Trust Company in this matter, consisted of five-sixths of the residuary estate of Samuel L. Allen, deceased, the other one-sixth having been bequeathed outright to a son of the testator, Charles J. Allen. The income from the said five-sixths of the residuary estate was paid out as follows: Two-fifths to Sarah H. Allen, widow of the testator, and one-fifth each to the three daughters of the testator, to wit: Elizabeth R. Allen, Susan J. Allen and Emily Allen Elfreth (Case, page 33, line 37, to Case, page 35, line 20).

The testator provided (Case, page 36, line 4) that upon the death of one of the said women beneficiaries of the said trust, the part from which the one so dying received the income during her life, should be subject to a power of appointment to be exercised by the one so dying. At the time of the filing of the second account, which is considered in this appeal, the widow, Sarah H. Allen, had died on March 12, 1928, and exercised her power of appointment over the two-fifths share of the trust estate from which she had received the income during her life (Case, page 37, line 14).

The ten year period limited by the said Samuel L. Allen, deceased, in his will, during which his trustees

were unable to sell the said stock without the consent of a majority of his family, expired on March 18, 1928 (Case, page 81, line 27).

In June, 1928, said Trenton Trust Company, substituted trustee, presented a petition which was filed on June 25, 1928 (Case, page 32), in which petition it stated that it had accepted an offer for the purchase of said stock in S. L. Allen & Co., Inc., held by it as substituted trustee, subject to the approval of the Court of Chancery (Case, page 39, line 29).

The beneficiaries, Elizabeth R. Allen, Susan J. Allen and Emily Allen Elfreth, objected to the confirmation of the said offer by the said Court of Chancery on the ground, among others, that the said trustee had no power to sell the said stock without the consent of the beneficiaries and that the price offered for the said stock was inadequate (Case, pages 61 to 65).

At the time the matter was presented before the Court of Chancery a bid higher than that already accepted by the Trenton Trust Company, substituted trustee, was submitted on behalf of the beneficiaries, Elizabeth R. Allen, Susan J. Allen and Emily Allen Elfreth, whereupon it was ordered by the said Court of Chancery that the bidders adjourn to a room immediately adjoining the court room, there to submit their bids to the trustee, whereupon the said Elizabeth R. Allen, Susan J. Allen and Emily Allen Elfreth, submitted a bid of \$755,000.00 for the said stock, which bid was the best received, and which bid was thereupon directed to be accepted by the said Trenton Trust Company, substituted trustee (Case, page 134, line 6, *et seq.*).

The said purchase of the said stock was completed and cash paid to the said Trenton Trust Company therefor (Case, page 137, line 28).

On March 23, 1929, the Trenton Trust Company,

substituted trustee, filed its petition and second account in the said cause, which petition and second account prayed for the allowance of commissions and counsel fees (Case, page 136).

The application for commissions and counsel fees coming on to be heard before the Honorable Maja Leon Berry, one of the Vice-Chancellors of the Court of Chancery, he decided that the Trenton Trust Company, substituted trustee, as aforesaid, should be allowed a commission of 4% on the total amount of income received by said substituted trustee, as shown by its said second account, which income amounted to \$222,382.27, and the further sum of 4% commission on the two-fifths share, part or portion of the corpus of the estate of the said Samuel L. Allen, deceased, which passed to the executor and trustee of the said Sarah H. Allen, deceased, under a power of appointment exercised by her at the time of her death by her last will and testament, which share of the corpus amounted to approximately \$312,000.00. The Vice-Chancellor further ordered that Peter Backes, Esquire, solicitor for the Trenton Trust Company, substituted trustee, be allowed a counsel fee of \$25,000.00 for services rendered in the above described matter to the entire estate, together with his taxed costs (Case, pages 203, 205).

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ARGUMENT.

It is respectfully submitted that the order allowing the Trenton Trust Company, substituted trustee, 4% commissions on the amount of corpus of the two-fifths share of the estate of Samuel L. Allen, and

allowing 4% commissions on the amount of income received by said Trenton Trust Company, substituted trustee, is erroneous in that the said amounts so allowed are excessive.

It is further submitted that the amount of \$25,000.00 directed to be paid to Peter Backes, Esquire, solicitor for Trenton Trust Company, substituted trustee, is erroneous in that said amount is excessive.

It is further submitted that the amount allowed Peter Backes, Esquire, is erroneous in that the services of said Peter Backes consisted largely of services which were of a nature that they could and should have been rendered by the said substituted trustee and compensation for which said services was and should have been included in the allowance of the said substituted trustee.

It is further submitted that the amount allowed to Peter Backes is erroneous, inasmuch as the evidence submitted by him as to the nature and extent of his legal services rendered was vague and insufficient to justify an allowance of \$25,000.00 for such services.

#### 1. THE ALLOWANCE TO TRENTON TRUST COMPANY, SUBSTITUTED TRUSTEE, WAS EXCESSIVE.

(a) With the exception of its efforts to sell the stock held by it as substituted trustee to the management of the S. L. Allen & Co., Inc., the services of the Trenton Trust Company consisted of (1) collecting dividends on stock delivered to it at the time of its appointment, paying out income, and (2) attending directors' meetings of S. L. Allen & Co., Inc.

(b) The services with respect to the sale of the said stock consisted largely, if not entirely, of an attempt to sell the said stock to the management of the said company, and when the stock was finally sold the actual price received by the Trenton Trust Company for the sale of the said stock was substantially increased through the efforts of the beneficiaries, rather than through the efforts of the Trenton Trust Company.

II. THE ALLOWANCE TO PETER BACKES, ESQUIRE, SOLICITOR FOR THE SUBSTITUTED TRUSTEE, WAS EXCESSIVE, AND THE MEMORANDUM SUBMITTED BY HIM, SETTING OUT HIS SERVICES, DOES NOT SHOW WHETHER THEY CONSISTED OF LEGAL SERVICES, OR WHETHER THEY WERE SUCH THAT THEY SHOULD HAVE BEEN PERFORMED BY THE SUBSTITUTED TRUSTEE IN ITS CAPACITY AS SUCH, AND FURTHERMORE THE SAID MEMORANDUM WAS VAGUE AND INSUFFICIENT TO JUSTIFY AN ALLOWANCE OF \$25,000.00 FOR THE SERVICES SET OUT THEREIN.

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I. (a) WITH THE EXCEPTION OF ITS EFFORTS TO SELL THE STOCK HELD BY IT AS SUBSTITUTED TRUSTEE TO THE MANAGEMENT OF THE S. L. ALLEN & CO., INC., THE SERVICES OF THE TRENTON TRUST COMPANY CONSISTED ALMOST ENTIRELY OF

(1) COLLECTING DIVIDENDS ON STOCK DELIVERED TO IT AT THE TIME OF ITS APPOINTMENT, PAYING OUT INCOME, AND

(2) ATTENDING DIRECTORS' MEETINGS  
OF S. L. ALLEN & CO., INC.

It will be noted that from the substituted trustee's *first* account (Case, page 21) that the estate received by the Trenton Trust Company from the executors of Samuel L. Allen, deceased, at the time of the appointment of the said substituted trustee, consisted almost entirely of the shares of stock of S. L. Allen & Co., Inc. The only other items of any size, received by the Trenton Trust Company at the time of its appointment, were notes of one David Roberts of ten thousand dollars (\$10,000.00), and cash amounting to six thousand two hundred ninety-three dollars and forty-seven cents (\$6,293.47), making a total corpus of \$449,207.55. In the second account (Case, pages 136 to 169), upon which said second account the commissions and counsel fees involved in this appeal were allowed, the said corpus amounting to \$449,207.55, as shown in the first account, was carried forward (Case, page 141), and the only other item of corpus appearing in the second account of the said substituted trustee is the amount realized from the sale of the stocks of the S. L. Allen & Co., Inc., in excess of their par value. This item of the amount realized from the said sale will be taken up later in this brief, and for the present we will confine ourselves to a discussion of the duties of the substituted trustee with respect to the trust estate, leaving out of consideration at this time everything connected with the sale of the said stocks.

Upon an examination of the trustee's second account it will be observed that no extraordinary efforts on the part of the substituted trustee were required with respect to *disbursements on account*

of corpus, practically all of the said disbursements being of cash payments (Case, page 141, line 25, to page 144, inclusive).

With respect to the *receipt of income* shown by the trustee's second account, the great bulk of the receipts by the said substituted trustee consisted of the dividends paid on the said stock of S. L. Allen & Co., Inc., and the balance of the said receipts consisted of interest payments by third parties (Case, page 144, line 29, to Case, page 150, inclusive).

With respect to *disbursements of income*, the great bulk consisted of payments of cash to Sarah H. Allen, Susan J. Allen, Elizabeth R. Allen and Emily Allen Elfreth, beneficiaries under the trust created by the will of Samuel L. Allen, deceased (Case, pages 151 to 160), and the shares of each in the estate were definitely fixed by the will of their father, the late Samuel L. Allen (Case, page 35, line 3), and it is respectfully submitted that no great difficulties were encountered by the substituted trustee in making the said disbursements.

During the period covered by the said second account, the said substituted trustee received payment of the above-mentioned note of David Roberts of \$10,000.00, and invested in certain mortgages (Case, page 166, line 33, to Case, page 168, inclusive). Most of the said investments in mortgages have been made from the cash received from the sale of the stock of S. L. Allen Co., Inc. (Case, page 167, line 29, to Case, page 168, inclusive).

It is respectfully submitted that the above statement briefly sets forth the services of the substituted trustee, with two exceptions: first, those surrounding the sale of the stock of the S. L. Allen & Co., Inc., which as before stated, will be later considered, and second, the activities of the said substi-

tuted trustee as the holder of a majority of the voting stock interest in S. L. Allen & Co., Inc.

In its petition and second account (Case, page 137, paragraph 3), the said substituted trustee states that in order to safeguard the said business, two of the officers of the Trenton Trust Company, to wit: Mr. H. Arthur Smith and Mr. Nelson L. Petty, were elected directors of the said company and continued in the said offices and in the active supervision of the said business from the time of its appointment until the said stock was sold. It is respectfully submitted that in the period covered by the said second account of the said substituted trustee, to wit: June 23, 1924, to March 22, 1929, from the statement of disbursements during that period, it appears that H. Arthur Smith attended exactly one directors' meeting (Case, pages 151 to 160). This inference is corroborated by the affidavit of William Henry Elfreth (Case, page 197, line 9), in which Mr. Elfreth states that he examined the minutes of the S. L. Allen & Co., Inc., and that the said H. Arthur Smith attended one and possibly two meetings of the board of directors, and at one meeting offered a resolution doubling the compensation and bonus to the officers of the company, which was greatly in excess of the amount determined upon by the officers themselves. It is submitted that Mr. Smith's services as a director to the company and to the beneficiaries of the trust under which the Trust Company, of which he was president (Case, page 18), was acting as trustee, were not highly valuable. Mr. Petty, on the other hand, did attend directors' meetings during the period covered by the said second account on an average of one a month, but according to Mr. Elfreth's affidavit (Case, page 197, line 9), Mr. Petty made no motion at any of the said meetings

which materially affected the conduct of the business of S. L. Allen & Co., Inc.

It is possible that Mr. Petty made no such motions owing to the fact that his duties as trust officer of the Trenton Trust Company would not enable him to devote the time necessary to understanding thoroughly the business of manufacturing sleds and farming implements. In all probability his ordinary duties as a trust officer would not qualify him to manage or dictate the policies of a business of that nature.

Vice-Chancellor Berry in his opinion (Case, page 201, line 3), in commenting upon the activities of the Trenton Trust Company in the affairs of S. L. Allen & Co., Inc., states, "I have not overlooked the fact that it is claimed by the beneficiaries that the services of the Trustee in this respect were little more than perfunctory, but as the Trustee was vested with the control of the company by reason of its stock ownership, I cannot see how its duties as Trustee could have been discharged without the exercise of a practically complete control and there is no suggestion that the Trustee has not performed its full duty. Naturally the detail work in a manufacturing organization of this kind would not be done by the Trustee, but its policy would be subject to the approval of the Trustee and subject to change at its behest."

It is respectfully submitted that if the situation outlined by Vice-Chancellor Berry actually existed and the Trenton Trust Company performed its full duty by doing practically nothing, it is no basis for the commissions allowed in this matter. In another case decided by Vice-Chancellor Berry, namely, *in re Larrabee*, 98 N. J. Eq. 655, at page 656, the Vice-Chancellor's reasoning was somewhat different. He there stated (bottom of page 656):

“From the testimony which was taken on this appeal, it appears, however, that the executor’s part in the conduct of the various business enterprises was merely supervisory; that the actual detail of all of the business was attended to by employees, most of whom were in the employ of the testator at the time of his death. The executor had a large business of his own at Lakehurst, N. J., which is ten miles from the site of the business enterprises of the testator and the executor’s supervision of the estate’s business was accomplished through occasional visits to *Lakewood*, on which occasions he consulted with the employees and signed checks in blank in sufficient numbers to accommodate the needs of the business so that the employees could make disbursements as required. These visits would usually occupy from one to two hours’ time, about half of which time, according to the testimony was devoted to the actual business personally owned and operated by the executor.”

It is submitted that Vice-Chancellor Berry’s statements in the Larrabee case would apply equally well to the case before this Court, for as above seen any duties exercised by the substituted trustee with relation to the carrying on of the business of S. L. Allen & Co., Inc., were purely supervisory and accomplished through the monthly attendance of Mr. Petty at a directors’ meeting, at which meetings he made no suggestions or resolutions which had any effect upon the business policy or activities of S. L. Allen & Co., Inc. Furthermore, the business was being run under the direction of its president, William H. Roberts, who was a partner of Samuel

L. Allen in the business at the time of the death of Mr. Allen, and by other officers who had always been with the company. Incidentally the said Roberts was the same person who had, at the time of Mr. Allen's death, made a division of the stock of the company which resulted in Mr. Allen's heirs being deprived of the control of the company to which they were entitled, which situation was remedied only by the action of the Court of Chancery of this State. The Trenton Trust Company, substituted trustee, the holder of the controlling interest in the company, continued Mr. Roberts in his office as president, and as a director.

I. (b) THE SERVICES WITH RESPECT TO THE SALE OF THE SAID STOCK CONSISTED LARGELY, IF NOT ENTIRELY, OF AN ATTEMPT TO SELL THE SAID STOCK TO THE MANAGEMENT OF THE SAID COMPANY, AND WHEN THE STOCK WAS FINALLY SOLD THE ACTUAL PRICE RECEIVED BY THE TRENTON TRUST COMPANY FOR THE SALE OF THE SAID STOCK WAS SUBSTANTIALLY INCREASED THROUGH THE EFFORTS OF THE BENEFICIARIES, RATHER THAN THROUGH THE EFFORTS OF THE TRENTON TRUST COMPANY.

At the time of the appointment of the Trenton Trust Company as substituted trustee of the last will and testament of Samuel L. Allen, deceased, it received as part of the estate of the said Samuel L. Allen, certain shares of the capital stock of S. L. Allen & Co., Inc. (Case, page 21). The said Samuel L. Allen having died on March 28, 1918 (Case, page

2, line 12), provided by his last will and testament that none of the stock of S. L. Allen & Co., Inc., which might come into the possession of his executors, should be sold by them, or by the trustees named thereunder, within a period of ten years from and after the date of his death, unless a majority of his family, which he expressly stated to mean his wife and four children, or a majority of them living at that time, should approve in writing of the same being sold, in which case he thereby authorized and directed the sale thereof (Case, page 33, line 21).

Surviving the said Samuel L. Allen were his wife, Sarah H. Allen, and his four children, Charles J. Allen, Elizabeth R. Allen, Susan J. Allen and Emily Allen Elfreth (Case, page 8, line 17).

On June 25, 1926, Sarah H. Allen, Elizabeth R. Allen, Susan J. Allen and Emily Allen Elfreth, directed the Trenton Trust Company, substituted trustee, to sell the said stock in S. L. Allen & Co., Inc., the price to be subject to their approval (Case, page 68, line 18, and Case, page 82, Exhibit 1). The request to sell the said stock was followed on November 8, 1926, by an additional request to sell (Case, page 83), in which latter written request the three daughters of the said Samuel L. Allen, deceased, stated that among other reasons they wished the stock sold, *first*, because of the risk of having their entire income invested in an industrial enterprise; *second*, that they were all women having no experience in the manufacturing business, and that the officers and board of directors consisted of individuals who, upon the death of their father, used legal means to divest them of their majority interest in the company, and *third*, that the death of any one of them might result in reducing the trust estate to a minority holding which would be of much less value than a majority, and they felt that their prop-

erty should be invested where the income was fixed and regulated and where the risk would not be as great as a manufacturing business, preferably in legal securities.

After the said letter was sent and received by the said substituted trustee, several letters were written by both parties which concerned mostly the question as to who must consent to a sale of the said stock (Case, pages 89 to 92, inclusive), but no definite results were reached. The first constructive step towards a sale of the said stock was taken at a conference held on January 27, 1927, between Mr. Nelson L. Petty, trust officer of the Trenton Trust Company, substituted trustee, and Mr. William Henry Elfreth (Case, page 50, line 23). Mr. Elfreth was the husband of Emily Allen Elfreth, one of the daughters of the said Samuel L. Allen, deceased, and also an attorney-at-law, who acted in certain instances on behalf of Sarah H. Allen, widow of the said Samuel L. Allen, deceased, and on behalf of Elizabeth R. Allen, Susan J. Allen and Emily Allen Elfreth, the daughters of the said Samuel L. Allen, deceased (Case, page 57, line 27).

At the said conference of January 27, 1927, Mr. Elfreth stated that his principals would consent to a sale of the stock for \$1,200,000.00, which statement Mr. Petty communicated to the management of S. L. Allen & Co., Inc., who stated that they would not pay that amount for the stock held by the said substituted trustee (Case, page 93, Exhibit 6).

On February 1, 1927, Mr. Elfreth wrote to the trustee requesting the trustee to state that it would be willing to sell the stock to him at the same price, that is, \$1,200,000.00 (Case, page 94, Exhibit 7). This letter was confirmed by telegram (Case, page 95, Exhibit 8), and in response thereto the Trenton Trust Company wired Mr. Elfreth asking if he

would pay the said amount, and if so, to make the offer in writing, with a deposit of \$50,000.00 (Case, page 96). Mr. Elfreth replied by a telegram, stating that as the telegram of the Trenton Trust Company was not responsive, he would regard it as a refusal, and consider the incident closed (Case, page 96, Exhibit 10). This last telegram, however, must be read in connection with a letter (Case, page 97, Exhibit 11) which was sent at the same time by Mr. Elfreth to Mr. Petty, in which Mr. Elfreth states his position, namely, that he had telephoned Mr. Petty asking him if he (Mr. Elfreth) should make an offer to buy the said stock and deposit \$50,000.00, whether the Trenton Trust Company would upon payment of the balance, deliver the stock properly endorsed and transferred on the books of the company. Mr. Elfreth was informed (Case, page 97, line 33) that the Trust Company would not sell the stock at the said price, except with the consent of Charles J. Allen, the son of the said Samuel L. Allen, deceased.

It is respectfully submitted that the Trenton Trust Company had no reasonable basis upon which to make such a refusal, inasmuch as the terms of the will of Samuel L. Allen, deceased, were perfectly clear upon the point that the consent of only a *majority* of his family was necessary in order to empower his trustees to make sale of the said stock (Case, page 33, line 21, *et seq.*). The said statement of the Trenton Trust Company that no sale could be made without the consent of *all* of the children of the said Samuel L. Allen, deceased, had been made at a previous time by Mr. Petty in a letter of December 22, 1926 (Case, page 92, Exhibit 5), and it is submitted that there was absolutely no reasonable basis existing in the will of the said Samuel L. Allen, deceased, for such a statement or conclusion, and that a refusal to sell the stock based upon

that reason was not carrying out the terms of the trust as set forth in the will. Furthermore, Charles J. Allen, the person whose consent was deemed by the Trust Company to be so essential, was not even a *cestui que* trust under the trust, his share having been willed to him outright, and the *only* beneficiaries of the trust being executed by the said substituted trustee, were the four women who had consented to and directed the sale of the said stock, to wit: Sarah H. Allen, Elizabeth R. Allen, Susan J. Allen and Emily Allen Elfreth. The provisions of the will creating the trust are found (Case, pages 34 and 35). The Trenton Trust Company's attitude at this time was strongly favorable to the management of S. L. Allen & Co., Inc., rather than favorable to the beneficiaries of the trust under which the Trust Company was acting as substituted trustee. As above stated, it would be difficult to construe the words of the will of Samuel L. Allen, deceased, into meaning that his *entire* family, rather than just a majority, would be necessary in order to consent to a sale of the stock. In view of the other attempts of the management of the company, including Charles J. Allen, to buy the stock, Mr. Allen's refusal to consent to a sale of the stock to *anyone other than the management* certainly cannot be taken as an act for the protection and benefit of his mother, Sarah H. Allen, and his sisters, Elizabeth R. Allen, Susan J. Allen and Emily Allen Elfreth. It would appear to us that the duty of the substituted trustee in a situation of that kind would be to do its utmost to protect and to respect the wishes of the *cestuis que* trust rather than to lean towards a very forced construction in order to favor persons outside of the trust in their efforts to obtain the trust estate at the lowest price possible. Charles J. Allen was associated with William H. Roberts, Edward W. Burt

and Edward L. Richie in negotiating for the purchase of the stock of the Allen Company (Case, page 182, line 20), and references herein to the "management," "William H. Roberts and his associates," "Burt and Richie and their associates," include the said Charles J. Allen.

It might be noted here that in Mr. Petty's affidavit, which is found Case, page 177, line 1, *et seq.*, which affidavit was submitted at the time the request for trustee's commissions was made, Mr. Petty neglected to mention the said letter of February 4, 1927, while he did set out the telegrams, which telegrams without the letter, placed the transaction in a false light.

From that time until May 17, 1927, negotiations with the said substituted trustee were discontinued, and during that period Mr. Elfreth made unsuccessful attempts to agree with Charles J. Allen upon some policy as to the sale or purchase of the said stock (Case, page 71, line 34, *et seq.*).

On May 17, 1927, Mr. Petty wrote to Mrs. Sarah H. Allen in which letter he set out an appraisal of the stock of S. L. Allen & Co., Inc., in which he also mentioned a conference held with Miss Elizabeth R. Allen and Mr. and Mrs. Elfreth, at which conference it was decided to offer the said stock to the management who were minority stockholders of the company for \$1,200,000.00 (Case, page 100). By letter of May 20, 1927, written to Mr. Elfreth, the trustee informed him that William H. Roberts and his associates were not interested in the purchase of the stock at \$1,200,000.00, and thereupon the said Trust Company offered to sell the said stock to Mr. Elfreth at that price.

By letter of May 23, 1927 (Case, page 103), Mr. Elfreth accepted the said offer subject to certain conditions, which conditions were—1: that the pay-

ment of the consideration and delivery of the stock certificates and transfer on the books of the company should be accomplished simultaneously at the time of settlement; 2: that the sale should be private and not reported to the Court; 3: that actual possession of the corporation pass at the time of the payment of the consideration; 4: that there be no diminution in the assets; 5: that delivery of the records of the company be insured; 6: that the Trenton Trust Company use its best efforts to prevent obstruction of the sale by the management of S. L. Allen & Co., Inc., and 7: that settlement be made within sixty days of acceptance. On May 26, 1927, the Trenton Trust Company, substituted trustee, stated that it could not comply with the said conditions, and that all it could agree to do was to deliver to Mr. Elfreth the stock certificate properly endorsed for transfer.

By letter of June 3, 1927 (Case, page 106), Mr. Elfreth explained the purpose of the conditions enumerated in his former letter and stated that he withdrew his offer, but on June 7, 1927 (Case, page 107), negotiations were reopened by letter of the Trenton Trust Company, and on June 8, 1927, Mr. Elfreth, in a letter of that date, stated as follows:

“I am only interested in the purchase of the legal title and upon the express condition that actual possession of the plant shall pass to me upon the payment of the consideration.

It is immaterial to me in what manner these results might be accomplished, if they can be accomplished, but as stated before, unless legal title and actual possession of the plant passes upon payment of the consideration, I am not interested in the proposition.”

On July 8, 1927 (Case, page 179, line 8), the substituted trustee notified Mr. Elfreth that the trus-

tee would sell the stock for \$1,200,000.00, and would transfer the shares to him but that the trustee would not undertake to affect the resignation or discharge of any director or officer of the company. Mr. Elfreth replied to this letter by letter dated July 11, 1927 (Case, page 109, Exhibit 19), in which he stated that his bankers supported him in his belief that a mere endorsement of the stock certificates by the Trenton Trust Company, as trustee, would not give the purchaser either the right to receive dividends, or the right to vote at elections, and that if the person in charge of the transfer books had any doubt as to the trustee's right to assign the stock, he would be justified in refusing to make the transfer on the books of the company. He stated further (Case, page 111, line 27), that with Edward H. Richie in the office of treasurer, the said Richie having been interested with others in the purchase of the said stock, a transfer on the books of the company was made impossible, inasmuch as the said Richie had stated personally that he did not think a sale could be consummated, except with the consent of Charles J. Allen, and further (Case, page 112), that Mr. Elfreth's only thought was, that if the substituted trustee would place in the office of treasurer a man who had no personal interest in frustrating the sale of the stock in question, that possibly when it came time for settlement, with a neutral person acting as transfer agent and with the trustee's co-operation, what appeared to be a difficult situation might possibly be worked out with satisfaction to all concerned.

It is respectfully submitted that based upon the Trenton Trust Company's appraisements (Case, page 100, Exhibit 12), \$1,200,000.00 was an exceptionally good price to obtain for the said stock, and that even though the trustee thought Mr. Elfreth's

request unreasonable, it could have taken more steps at that time to satisfy him and his bankers than were actually taken. Furthermore, it is submitted that Mr. Elfreth was not unreasonable in supposing that Edward H. Richie would be a party to frustrating a sale of the said stock to individuals other than himself and his fellow officers of S. L. Allen & Co., Inc. The said Richie was closely associated with Charles J. Allen, Edward W. Burt and William H. Roberts (Case, page 182, line 19), where it is shown that the said parties were associated in offering to purchase from the trustee certain shares of voting stock. It has been seen that at the time of the death of Samuel L. Allen, deceased, the said William H. Roberts made such a division of stock that he received more of the voting stock than the amount to which he was entitled, and it has been further seen that the said Charles J. Allen refused to consent to a sale to parties other than the management of the said company, even though he was not a beneficiary of the trust. Is it, therefore, unreasonable to suppose that the said Richie, being very much interested in buying the stock himself, would block a sale to other parties in the event that he thought he had any possible grounds for so doing, which grounds, as stated in Mr. Elfreth's letter, might be found in the opinion of the Trenton Trust Company that a valid sale could not be made without the consent of Charles J. Allen.

[As a further indication of the attitude of the management and directors of S. L. Allen & Co., Inc., to interfere in any way possible with a sale of the said stock to parties other than themselves, on September 12, 1928, after the bid for the purchase of the Allen Estate stock had been accepted by the trustee upon the direction of the Court of Chancery, the board of directors of the said company passed a res-

olution authorizing its treasurer to purchase 40% of Class B Common Stock of the company, thus impairing the liquid assets of the company and benefiting themselves (the minority stockholders), who had the majority of Class B Common Stock (Case, page 184, line 35)].

An additional effort to negotiate a sale of the said stock was made on July 16, 1927, when Mr. Elfreth wrote the Trenton Trust Company (Case, page 115, Exhibit 22), and suggested a joint meeting of the parties interested as a possible solution of the question, the said parties being Charles J. Allen, owner of one-ninth of the voting stock; William H. Roberts, owner of one-third of the voting stock; William H. Roberts, Jr., the Trenton Trust Company, the women beneficiaries of the trust estate, and Mr. Elfreth. Mr. Elfreth at a personal conference with Mr. Petty was informed that the suggestion met with no response from the management (Case, page 74, line 20).

After those attempts to effect a sale had failed, the beneficiaries succeeded in arousing the interest of one Ernest Reckitt, of Chicago (Case, page 74, line 24, and Case, page 179, line 33). Mr. Reckitt was a man of considerable financial standing and his interest was such that he came east from Chicago to confer with Mr. Petty and a representative of a banking firm, with a view to obtaining information regarding the value and possibilities of a sale of the said stock. After some preliminary letters with respect to the value of the stock and tentative prices (Case, page 175, and Case, page 180), upon inquiry of the trustee as to whether the trustee would sell the said stock to Mr. Reckitt for the sum of \$611,275.00, and whether the trustee would deliver the title to the shares to Mr. Reckitt upon the payment of the consideration (Case, page 180, line 20),

the Trenton Trust Company by letter of December 22, 1927 (Case, page 117), stated that they desired to give the other stockholders of S. L. Allen & Co., Inc. (the management), an opportunity to purchase the said stock, and the beneficiaries through Mr. Elfreth agreed that the said stock should be offered to William H. Roberts and his associates (Case, page 181, line 13). The Trenton Trust Company thereupon refused to ask William H. Roberts, or his associates, for an offer for the S. L. Allen & Co. stock, unless the beneficiaries first set a price at which they would consent to sell (Case, page 76, line 20; Case, page 121, Exhibit 25).

At this point we desire to call attention to the fact that at no time had the said Trenton Trust Company asked the said Roberts and his associates to make a bid for the said stock, but continued and repeatedly insisted that the beneficiaries of the said trust fix a price at which they would consent to sell before any offer was requested from Roberts and his associates. It is respectfully submitted that such an attitude on the part of the trustee was unjustified, and that in view of the fact that the Trust Company knew that Roberts and the minority stockholders were interested in the stock, it should have requested them to make an offer for transmission to the beneficiaries. *Up to this point every offer and suggestion as to price which had been made was made by the beneficiaries, or some prospective purchaser found by the beneficiaries.*

On *February 14, 1928*, William Henry Elfreth, acting on behalf of Sarah H. Allen, Elizabeth R. Allen, Susan J. Allen and Emily Allen Elfreth, made an offer of \$695,000.00 for all of the stock of S. L. Allen & Co., Inc., held in trust by the said Trenton Trust Company (Case, page 123). On *February 15,*

1928, the Trenton Trust Company, substituted trustee, notified Mr. Elfreth by telegram that Edward W. Burt and Edward L. Richie, for themselves and their associates, had offered to purchase all of the said stock for \$700,000.00, and had deposited a cashier's check for \$70,000.00 to apply on the purchase, if accepted, the said offer to remain open until Friday, February 17th, at six P. M. (Case, page 124, Exhibit 28).

On February 17, 1928, the Trenton Trust Company sent another telegram to Mr. Elfreth (Case, page 126, Exhibit 31), in which it stated that it believed the offer of Burt and Richie to be an advantageous one, and that it was accepted subject to the beneficiaries' consent. (Edward W. Burt and Edward L. Richie were associated with Charles J. Allen and William H. Roberts in negotiating for the purchase of the stock (Case, page 182, line 20), and references above to William H. Roberts and his associates includes Charles J. Allen, Edward W. Burt and Edward L. Richie.)

*On February 17, 1928, the beneficiaries wrote to the Trenton Trust Company (Case, page 126, Exhibit 32), stating that they did not consent to the sale of the stock for \$700,000.00 to Messrs. Roberts, Richie, et al., but that if the Trenton Trust Company would offer the stock to the beneficiaries for the same price, to wit: \$700,000.00 that the beneficiaries would immediately accept the said offer and immediately consent to such a sale, and on February 17, 1928, an offer was made to the Trenton Trust Company on behalf of Sarah H. Allen, Elizabeth R. Allen, Susan J. Allen and Emily Allen Elfreth, of \$700,000.00 for the stock in question (Case, page 127, Exhibit 33), and attached thereto (Case, page 128, line 11) was the consent of the said beneficiaries*

*to the sale to them at that price.* On the said date of February 17, 1928, in a letter addressed to Mr. Harvey Knight, of the firm of Scammell, Knight & Reese, who were representing the beneficiaries in this transaction (Case, page 77, line 9), the Trenton Trust Company stated that since it had two purchasers who were bidding the same price for the stock, they intended to secure the direction of the Court of Chancery in the premises (Case, page 128, Exhibit 34).

It is respectfully submitted that this decision of the Trenton Trust Company showed a decided and unquestionable desire to sell the said stock to no one except the management of S. L. Allen & Co., Inc. The Trenton Trust Company had stated that an offer of \$700,000.00 made by Burt, Richie and others was advantageous and had accepted it. The beneficiaries refused to consent to such sale and made the same offer themselves, and stated that they did consent to such a sale. Therefore, if the Trenton Trust Company believed that the said price was an advantageous one, and since they were able under the terms of the will to accept only one of the two offers, and since they had already accepted one offer and could not carry out the sale because of the beneficiaries' refusal, it is difficult to understand why they did not accept the only offer which they could accept at the same advantageous price.

Furthermore, we wish here to call attention to a statement in the affidavit of Mr. Nelson L. Petty, the trust officer of the Trenton Trust Company, which amounts to a gross misrepresentation of the efforts of the Trenton Trust Company with respect to the said sale. At Case, page 181, line 34, after mentioning the Reckitt negotiations, Mr. Petty states: "Negotiations were then undertaken by me for the

Trustee, with the said William H. Roberts and his associates, which resulted in an offer being made to the Trustee under date of February 15, 1928, by Edward W. Burt and Edward L. Richie to purchase all of the stock held by said Trustee for the aggregate price of \$700,000.00," etc. Mr. Petty there states that *his* efforts resulted in the said offer of \$700,000.00 and neglects to state that the day before the said offer was made, without any activity on the part of the Trenton Trust Company, they had received an offer from the beneficiaries of \$695,000.00, which offer of the said beneficiaries was unquestionably responsible for the offer of Roberts and his associates of \$700,000.00, and which undoubtedly Mr. Petty, or some officer of the Trenton Trust Company, had communicated to the said Roberts and others. In addition to that fact, the Trust Company immediately accepted the \$700,000.00 offer of Burt and Richie subject to the approval of the beneficiaries and made no suggestion that the beneficiaries bid slightly more than Roberts and the others.

On page 182, line 13, Mr. Petty attempts to justify the Trust Company's action in not accepting the offer of the beneficiaries, and states as a reason that no deposit was made, nor was any assurance given that the sale would be consummated. As a reply to this statement, it is submitted that in a letter of the Trenton Trust Company of February 17, 1928, when the bid was before it (Case, page 128, Exhibit 34), the Trenton Trust Company makes no mention of any such reason, nor does it ask of the beneficiaries any assurances. In that letter it merely says that having two bids of the same amount it will ask instructions of the Court, ignoring entirely the fact that the sale to one bidder was consented to, while there was no consent to a sale to the other bidder.

Furthermore, it will be noted that during later negotiations the bid of Susan J. Allen, Elizabeth R. Allen and Emily Allen Elfreth for the sum of \$755,000.00 was accepted (Case, page 135, line 3), and the sale at the said price completed and the stock delivered (Case, page 137, line 28), which fact indicates that the beneficiaries were not making frivolous bids.

After its letter of February 17, 1928, in which the Trenton Trust Company said that it would seek the advice of the Court of Chancery respecting the sale of the stock, the Trenton Trust Company neglected to take any steps in any Court and did nothing up to and including March 18, 1928, when the ten year period limited in the will of Samuel L. Allen, deceased, expired (Case, page 81, line 28). Sarah H. Allen, in the meantime, on March 12, 1928, had died (Case, page 81, line 27).

Thereafter, in June, 1928, the Trenton Trust Company accepted an offer for the stock held by it as trustee, from Messrs. Burt and Richie, and their associates, in the amount of \$680,500.00, subject to the confirmation of the Court of Chancery. (We believe that the said amount of \$680,500.00 was substantially the same as the previous offer of \$700,000.00, certain shares of non-voting stock having been redeemed or purchased by the corporation in the meantime.)

Again it is respectfully submitted that the Trenton Trust Company took great pains to favor the management of S. L. Allen & Co., Inc., in the efforts of the said management to buy the stock. Although the Trenton Trust Company had previously taken the attitude that when one offer or suggestion as to an offer had been made, it was wiser to submit it to other possible bidders (Case, page 117, Exhibit 23),

in June, 1928, after the ten year period had expired during which period the consent of the beneficiaries was necessary to a sale, the trustee accepted the management's offer without any communication of any sort to the beneficiaries to give them an opportunity to make a higher bid for the stock. That the beneficiaries would undoubtedly have hesitated before consenting to a sale at the said price of \$680,500.00 is shown by the fact that, upon the matter being presented to the Court of Chancery, a bid was submitted on behalf of the beneficiaries of \$750,000.00 (Case, page 130), which was subsequently amended to a bid of \$700,000.00 upon the direction of the Court (Case, page 134, line 10), and the respective bidders adjourning to a room adjoining the Court (Case, page 134, line 24), Susan J. Allen, Elizabeth R. Allen and Emily Allen Elfreth submitted a bid of \$755,000.00, which was the highest and best price bid therefor, which said bid was accepted (Case, page 135), and the purchase was subsequently completed and the stock delivered (Case, page 137, line 28).

It is here respectfully submitted that the Trenton Trust Company, substituted trustee, allowed a valuable right to pass from the beneficiaries when it allowed the ten year period to expire, during which period the said beneficiaries had some control over the sale of the stock from which practically their whole income was derived.

It is further submitted that the said substituted trustee also ran considerable risk in not doing all in its power to sell the said stock before the death of Sarah H. Allen, the widow of Samuel L. Allen, deceased, inasmuch as the will of Samuel L. Allen, deceased, provided (Case, page 36, line 4) that upon the decease of any of the beneficiaries of the said

trust, that is, his wife or any one of his daughters, that the proportionate part of the principal or corpus of the said trust estate, as that upon which the one so dying should be entitled to the income immediately before and at the time of her death should pass to such person or persons as she might by her last will and testament direct, limit or appoint, and in default of such appointment to pass by the Intestate Laws of the State of New Jersey.

It is submitted that it was very possible that a portion of the stock held by the Trenton Trust Company as substituted trustee, might have passed under the said power of appointment, and that thereupon the said Trenton Trust Company would have lost all power of sale over the said stock. Had the stock so passed, the stock remaining in the hands of the trustee would have diminished from the majority interest in said S. L. Allen & Co., Inc., to a minority interest, which possibility was dispelled only by the order of the Chancellor (on the advice of Vice-Chancellor Backes), dated September 7, 1928 (Case, page 133), in which, on line 34, it was ordered that the residuary bequest in the will of the said Samuel L. Allen, deceased, was a general and not a specific legacy, and that the trustee had power to make sale of the said stock after the death and the exercise of the said power of appointment of Sarah H. Allen, deceased, the said power of appointment having been exercised by her will (Case, page 37, line 14, *et seq.*).

It is respectfully submitted that it has been shown under Subdivision I (a) of this brief, that the services of the Trenton Trust Company, substituted trustee in this estate, were not particularly arduous, with the exception of the activities with respect to the sale of the stock as above outlined,

and it is further submitted that their activities in the said sale were not of a nature which would entitle them to the very large allowance granted them in this case, to wit: 4% on the corpus which passed under the power of appointment exercised by Sarah H. Allen, deceased, in her last will and testament, and 4% on the income of the entire estate. The two-fifths share of the corpus which passed under the power of appointment exercised by Sarah H. Allen, deceased, amounts to approximately \$312,000.00, and the income on the entire estate amounts to approximately \$222,000.00 (Case, page 200, line 19), and commissions were allowed at the said percentages on those approximate figures.

The said Trust Company, on Case, page 184, line 17, makes it appear that the said Trust Company was responsible for the realization of the sum of \$74,500.00 in excess of the bid presented by Messrs. Burt, Richie and their associates. As above seen, the said amount was realized purely by the efforts and activities of the women who were the beneficiaries under the trust (Case, page 135). At page 185, line 16, the said Trenton Trust Company states that it succeeded in adjusting and compromising a Federal Government tax which resulted in the saving to the estate of the amount of \$5,364.12. It appears that this tax saving was made in connection with the *executor's* accounts of Samuel L. Allen, deceased, rather than by or through the trustee's account, that it was paid for and has nothing whatever to do with the trustee's account (Case, page 196, line 34).

Sections 129 and 130 of the Orphans' Court Act, 3 Comp. Stat., p. 3860, govern the allowances of commissions to executors, administrators, guardians or trustees, which sections provide as follows:

Sec. 129. LIMITATION OF RATES.—On the settlement of the accounts of executors, administrators, guardians or trustees under a will, their commissions, over and above their actual expenses, shall not exceed the following rates: On all sums that come into their hands, not exceeding one thousand dollars, seven per centum; if over one thousand dollars, and not exceeding five thousand, four per centum on such excess; if over five thousand dollars and not exceeding ten thousand, three per centum on such excess; and if over ten thousand dollars, two per centum on such excess; provided, that the commissions of executors, administrators and trustees in any estate where the receipts exceed the sum of fifty thousand dollars, shall be determined by the Orphans' Court on the final settlement of their accounts according to the actual services rendered, not exceeding five per centum on all sums which come into their hands. (P. L., 1898, p. 762.)

Sec. 130. COMMISSION ALLOWED UPON PROPERTY REMAINING IN HAND OF EXECUTOR, Etc.—Whenever, in pursuance of the provisions of any will, or by the direction of the court, any property from which income is derived shall remain in the hands of or be entrusted to executors, administrators with the will annexed, or trustees under a will, or commissioners in partition, the income or interest of which is required to be paid to any legatee or other person who may be entitled thereto, it shall and may be lawful, upon any accounting, either intermediate or final, for the court before which said account shall be presented for settlement and allowance, to consider the actual

pains, trouble, and risk of such accountant, and to allow such commission upon the interest or income received as by the said court shall be deemed fair and just; provided, that said allowance shall not exceed the sum of five per centum on such interest or income. (P. L., 1898, p. 762, as amended P. L., 1901, p. 178.)

The estate involved in this matter is large enough that it falls under the five per centum limitation of Section 129 above set out.

Although the facts are probably different in every case brought before the courts in which an allowance for commissions and counsel fees is asked, it is submitted that there are several cases in this State which show the tendency of the courts in allowing such commissions and fees.

The Court of Errors and Appeals in the case of *In re Account of New Jersey Title Guarantee and Trust Company*, 76 N. J. Eq. 293, an allowance of 5% on income was approved, but no allowance on corpus was made. The Court of Errors and Appeals was influenced in this decision to allow 5% on income, by the fact, among others, that a large proportion of the estate was invested in the stock of a manufacturing corporation, subject to the hazards of business and necessarily involving some risk to the trustees. In approving the allowance, however, of the said percentage on income, the Court stated:

“In approving this allowance, however, we are not to be understood as approving the custom, if it be a custom, as suggested, of allowing a trustee five per cent on the income in all cases. It is quite evident that a different test of the propriety of the allowance is prescribed by Section 130 of the Orphans' Court Act P. L.

1898, page 762. The Act authorizes the allowance of such commission upon the interest or income as the court shall deem fair and just, considering the actual pains, trouble and risk of the accountant. It then provides that the allowance shall not exceed five per cent, a sufficiently plain intimation that it may well be less. No doubt in the case of estates where the income is small, five per cent may be properly allowed in order to give the trustee compensation sufficient to induce proper men to assume the responsibility, but in a case like this, where the annual income is large, it must require unusual circumstances to justify the allowance of the full rate of commission, and we are not to be understood as holding that, even in this case, so large an allowance would be proper in the future."

Another fact which influenced the Court of Errors and Appeals in confirming the allowance of five per cent commission on the income, was the fact that several interested parties permitted the deduction of commissions at that rate without objection. With respect to the allowance of commissions upon the corpus of the estate, the Court stated:

"As to the allowance of a commission upon the corpus of the estate, we think that the trustee has administered the trust for so short a time, and has had so little to do with making or changing investments, that no commission on the corpus ought to have been allowed. The cestui que trust is of such an age that it may fairly be expected that the trust will continue for thirty or forty years longer, and if the present commission were allowed to a trustee who

has served some seven years only, and has practically done nothing but receive and disburse the income of investments already made, it might result in leaving too small a fund available for the payment of future commissions."

In *Lyon v. Bird*, 79 N. J. Eq. 157, 164, the present Chancellor, then Vice-Ordinary, stated:

"The allowance of commissions on principal and on the collection and disbursement of income must be made with reference to the actual pains, trouble and risk of those administering the estate; and commissions on the principal, where the estate, as in this case, exceeds \$50,000.00, must be determined with reference to the actual services rendered and the maximum rate should be allowed only where clearly earned—never for the mere asking."

*Runkle v. Smith*, 90 N. J. Eq. 478, is a decision by Vice-Chancellor Lane, in which the authorities are reviewed at some length.

In that case the executor took over from an administrator *pendente lite* in 1916 the assets of the estate, the principal taken over amounting to \$1,954,590.92, inventory value. Of this amount, \$1,850,377.57 was represented by stocks and other securities of about ninety different kinds in about seventy-five different corporations, many of the stocks and bonds being inactive. The first account filed in 1917, one year after the executor took over the estate, showed a total income receipt of \$232,493.02, of which there had been received from the administrator *pendente lite* \$187,366.12. The executor showed a net increase of \$133,299.46 from the time he took over the estate, had transacted ninety-

one separate sales of securities and had left in his hands some twenty-six securities, notes, etc., at an inventory value of \$102,250.00. He had disbursed \$2,025,103.46, represented by 107 vouchers, excluding those representing interest on legacies. There were thirty-one legacies provided for in the will, which were paid by the executor. From 1917, the date of the first account, to 1919, a period slightly less than two years, the executor continued, under the order of the Court of Chancery to liquidate the estate, and under his administration the estate showed a substantial increase in liquidation value over inventory, in spite of some worthless securities. The inheritance tax laws of various States, as also the stock tax transfer laws, had to be considered and complied with, and also the income tax law of the United States. Numerous assignments were made by the residuary legatee, which added to the difficulties of the executor, and the executor submitted affidavits of services rendered which covered thirty-eight closely typewritten pages.

In addition to this, the executor appeared in an involved suit, and for all of the said services received as commissions the amount of \$75,000.00.

It is respectfully submitted that if the executor in that case was allowed only \$75,000.00, the substituted trustee in the case before this Court should not be allowed the sum of 4% on income amounting to over \$222,000.00, and 4% on a two-fifths share of the corpus of the trust estate, which two-fifths share amounts to approximately \$312,000.00. It is submitted that if a 4% commission is allowed upon the two-fifths share of the corpus which passed under the power of appointment exercised by Sarah H. Allen, deceased, it is probable that upon final settlement of the estate, the substituted trustee will ask

4% on the remaining three-fifths share of the corpus, inasmuch as the services rendered by the trustee were rendered to the entire estate, and furthermore, it would be inequitable and unjust to allow commissions of 4% on the said two-fifths share while not allowing an equal amount on the remaining three-fifths share on final settlement, for the two-fifths share received no more benefit than the remaining three-fifths. Assuming that the trustee asked 4% on the corpus of the remaining three-fifths shares, the total allowance on the corpus would be 4% of \$780,000.00, or \$31,200.00. The commissions of 4% on \$222,000.00 income amounts to \$8,880.00, or a total of \$40,080.00, without considering other possible allowances on income in the future.

In the case of *Runkle v. Smith, supra*, the amount involved was much over twice as great as that involved in this case, and it is submitted that the services rendered by the executor were much more complicated and arduous. In addition to these facts the trust in the present case has been administered by the substituted trustee for a period of less than six years from the date of its appointment to the filing of its second account, and will continue to run during the lives of Elizabeth R. Allen, Susan J. Allen and Emily Allen Elfreth. It is, therefore, respectfully submitted that the allowances made by the Court of Chancery to the Trenton Trust Company, substituted trustee, were excessive.

II. THE ALLOWANCE TO PETER BACKES, ESQUIRE, SOLICITOR FOR THE SUBSTITUTED TRUSTEE, WAS EXCESSIVE AND THE MEMORANDUM SUBMITTED BY HIM SETTING OUT HIS SERVICES DOES NOT SHOW WHETHER THEY CONSISTED OF LEGAL SERVICES, OR WHETHER THEY WERE SUCH THAT THEY SHOULD HAVE BEEN PERFORMED BY THE SUBSTITUTED TRUSTEE IN ITS CAPACITY AS SUCH, AND FURTHERMORE, THE SAID MEMORANDUM WAS VAGUE AND INSUFFICIENT TO JUSTIFY AN ALLOWANCE OF \$25,000.00 FOR THE SERVICES SET OUT THEREIN.

It is respectfully submitted that the affidavit and memorandum presented by Peter Backes, Esquire (Case, page 186), at the time he requested an allowance for counsel fees, does not justify the allowance of \$25,000.00 made by Vice-Chancellor Berry, which memorandum was the only evidence of legal services before the Vice-Chancellor at the time the said allowance was made.

The cases of this State hold that a fiduciary charged with the management of property has a right to employ counsel when necessary or proper to protect the estate or to enable him properly to manage it, and the reasonable charges for such services will be paid out of the estate. But he will not be allowed compensation for work, though done by counsel, as he in contemplation of law is bound to do himself. *Kingsland v. Scudder*, 36 N. J. Eq. 284; *Lyon v. Bird*, 79 N. J. Eq. 157, 164; *In re Steelman's Estate*, 87 N. J. Eq. 270; *In re Larrabee*, 98 N. J. Eq. 655, 663.

In *Kingsland v. Scudder*, *supra*, page 286, the Ordinary (Runyon) stated:

“In other words, if he (the fiduciary) chooses to employ others to do his work he must pay them himself; as in the case cited, where the amount paid by the administrator to an accountant for making up his account was disallowed. An appeal will lie from a decree allowing or denying counsel fees in the account of an executor, administrator, guardian or trustee. *Anderson v. Berry*, 2 McCart. 232; *Pomeroy v. Mills*, 8 Stew. Eq. 442; *Middleton v. Middleton*, Id. 115. In the case in hand there is no evidence what services, except the applications for orders for investment, were rendered by Mr. Weart to the executor in the discharge of his duty as such. For whatever services as counsel, rendered by Mr. Weart, were necessary to enable the executor to discharge his duty to the estate, there should be an allowance. But not so as to services rendered to the residuary legatees in watching over their interest or otherwise, or for doing work for the estate which the executor himself was bound to do, or which was within his province and for which his commissions are to be his compensation. Such a discrimination in charges for counsel fees was made in Wolfe’s case.”

And in *Lyon v. Bird*, *supra*, at page 164, Chancellor Walker, at that time Vice-Ordinary, stated:

“The rule regulating the allowance of commissions I take it, is that such allowance on the principal or income of an estate, must be made directly by the Orphans’ Court to the executor or trustee who out of such allowance must com-

pensate agents, whether attorneys or others, for performing the representative's duties."

In the case of *In re Larrabee*, 98 Eq. 655, Vice-Chancellor Berry applied the rule above stated, where at page 664 he stated:

"I am firmly convinced that the allowance to him (counsel for the executrix) by the Orphans' Court was exorbitant in view of the fact that the bulk of his services was for the benefit of the executrix and not of the estate."

And again on page 664:

"I do not by this mean to intimate that the whole services performed by Mr. Garrison are of no greater value than this reduced allowance; in fact I believe that he is entitled to additional compensation, but this he should collect from the executrix and not from the estate."

In view of the above statement of law it is respectfully submitted that Mr. Backes' affidavit (Case, page 186) does not include a sufficient statement of services rendered to the substituted trustee, which were not services which should have been rendered by the said substituted trustee itself, upon which to base an allowance to be paid from the trust estate of \$25,000.00.

At Case, page 187, line 1, Mr. Backes states, "Mr. Petty, the trust officer of the said Trust Company has consulted me in all matters relating to the Allen Company's affairs and particularly as to the trustee's right to representation on the Board of Directors, the result of the company's management, payment of dividends, distribution," etc. It is submitted that it was certainly the trustee's duty to

decide the result of the company's management, and whether or not dividends should be paid, these duties being questions of policy governing the management of the company itself.

In the next paragraph of Mr. Backes' affidavit (Case, page 187, line 8, *et seq.*), Mr. Backes states that at the expiration of the ten-year period he, together with the trust officer of the substituted trustee, devoted days to securing appraisements, schedules and other data in the efforts of the substituted trustee to learn the value of the stock of the Allen Company. From this statement, also, it is respectfully submitted that those duties were duties of the trustee, and not such as would require the aid of counsel learned in the law.

Mr. Backes' itemized statement (Case, page 187, line 31, to Case, page 194) is somewhat vague and uncertain as to the actual nature of the services rendered, but upon an examination of the statement it will appear that the following items appear to relate to *legal* services rendered:

1928

Jan. 16, Conference with Petty as to additional tax on sale of homestead (Case, page 190);

Jan. 16, Examination of papers, and phone McCracken who had the matter in charge when the tax was laid against heirs (Case, page 190);

May 18, Conference with Mr. Kelly, Tax Department (Case, page 191);

May 25, Compromise settlement of taxes arranged with New Jersey Collateral Inheritance Tax, submitted the same to Mr. Petty, two conferences (Case, page 191);

June 8, All day preparing petition for Court reporting offer (Case, page 191);

June 18, All afternoon, preparing petition, conference with Petty on offer to purchase stock (Case, page 191);

June 19, All day completing above petition and other documents, appointment of administrator pendente lite of the estate of Sara H. Allen, and order (Case, page 191);

June 20, Obtaining orders to show cause, and had Mrs. Elfreth appointed administratrix pendente lite of the estate of Sarah H. Allen, 2 hours (Case, page 191);

June 21, All day working on the matter (Case, page 191);

June 25, Securing service on Emily Allen Elfreth, et als., of petition, order and order in Prerogative Court (Case, page 191);

July 2, Rule to show cause why bid should not be accepted adjourned to July 24, 1928 (Case, page 192);

July 31, To Newark, hearing on sale by trustee of Allen Co. stock, adjourned for two weeks at Allenhurst (Case, page 192);

August 23, To Allenhurst with Scott Scammell, conference with Vice-Chancellor as to adjournment and hearing of this case (Case, page 192);

August 24, To Allenhurst with Scott Scammell before V. C. Backes (Case, page 192);

August 27, Phoned McCracken outlined affidavits, &c., wanted (Case, page 192);

August 27, Prepared affidavits, &c., brief and argument, &c. (Case, page 192);

August 29, All day preparing affidavits, brief and conference with Petty in re sale of stock (Case, page 192);

August 30, To Philadelphia to obtain addi-

tional affidavits, &c., and preparing brief, and conference with Petty (Case, page 192);

Sept. 4, Return day order to sell stock before V. C. Backes in Newark (Case, page 192);

Sept. 4, Argued matter and same was adjourned to Sept. 7th (Case, page 192);

Sept. 6, All day preparing brief, bid for stock, &c. (Case, page 193);

Sept. 7, All day in Chancery on sale of stock (Case, page 193);

Sept. 10, Filed order confirming sale (Case, page 193);

Sept. 19, Conference with V. C. Backes, Scammell, in Trenton from ten to eleven-thirty (Case, page 193);

Sept. 19, Another conference with Scammell, Petty, McCracken, and notice to Co., examination of law and by-laws, all afternoon (Case, page 193);

Dec. 3, Conference with Petty and Pierrpont as to right of trustee to invest fund on call money (Case, page 194).

Certain other items may or may not be services rendered in a legal capacity to the substituted trustee, for example:

1926

Nov. 26, Examination of stock certificates, 7% A. & B. stock (Case, page 188);

Dec. 2, Conference 2 hours, with Petty and Elfreth on sale of stock, etc. (Case, page 188);

1927

Feb. 3, 4 and 5, Conference with Petty and Elfreth, offer \$1,200,000 for stock (Case, page 188);

Feb. 3, 4 and 5, Conference on Elizabeth R.

Allen's demand for payment of legacy stock which was taken, should be redeemed by the company in cash (Case, page 188);

Feb. 3, 4 and 5, Further conference with Petty, on letters and telegrams from Elfreth on his threats to bring suit (Case, page 188).  
1928

May 14, To Camden, West Jersey Trust Co. deposit of \$25,000, secured releases, &c. (Case, page 191);

July 17, Conference with Bloor and telephoned to West Jersey Title Co., requesting them to forward bonds, &c. (Case, page 192);

July 19, Conference with Bloor, prepared order to deliver securities and cash, also copy of William Casselman's letter (Case, page 192);

Sept. 29, All afternoon preparing for meetings, &c. Phoned McCracken, two conversations (Case, page 193);

Nov. 28, Meeting in Philadelphia, transfer of stock, &c., all afternoon; complete reorganization of board, &c. (Case, page 194).

Still other items were clearly not services of a legal nature and were services which either the trustee itself should have performed, or for which it should pay counsel who does perform them. An example of services of this nature are the items set out as follows:

1926

December 3, Preparation of statement denying sale of stock of company to Elfreth. Phoned Richie in Philadelphia to deny Ledger story (Case, page 188);

1927

May 13, Conference with Mr. Petty, W. Henry

Elfreth and wife and Elizabeth Allen, consulting about Connelly's report on value of Allen Co. stock, 2 hours (Case, page 189);

May 16, Conference with Roberts, Richie, Charles J. Allen and general manager, with Petty trying to effect a settlement and sale of Allen estate stock from 2 to 4 P. M. (Case, page 189);

June 16, Conference with Petty, Richie, Taylor on sale of Allen stock, 1 hour (Case, page 189);

Dec. 29, Numerous conferences with Petty about sale of stock; preparation of resolution making offer to (Case, page 189).

1928

Feb. 14 and 15, In Philadelphia with Mr. McCracken and received offer for Allen stock, 3 hours (Case, page 190);

April 12, All day with Petty and committee of Trust Company rejecting bid saying that we would make application (Case, page 190);

May 18, Prepared and furnished N. L. Petty affidavit, showing present status of estate (Case, page 191);

June 8, Conference with Mr. McCracken, Burt, Richie and Nelson Petty, received an offer to purchase Allen stock, 1 hour (Case, page 191);

June 11, Conference with Petty and bank committee, Stokes, Sinclair and Bedford, submitted offer to purchase Allen Co. stock (Case, page 191);

Sept. 10, Interview with trust officer, Trenton Trust Co., more information to Elfreth (Case, page 193);

Sept. 18, Attended meeting of stockholders of

Allen Co., in Philadelphia all afternoon (Case, page 193);

Sept. 25, Went to Philadelphia in afternoon for stockholders' meeting; also attended directors' meeting (Case, page 193);

Oct. 3, Telephoned Richie to give Hay certain data, &c., 2 phone calls (Case, page 193);

Oct. 10, All afternoon in Philadelphia attending directors' meeting (Case, page 193);

Oct. 11, To Philadelphia with Petty, met Mrs. Elfreth and W. Henry Elfreth. All morning gone. Told Elfreth he could not go through factory (Case, page 193);

Nov. 1, Conference with Petty, on information Elfreth wants. Wrote Heverly & Hay and Burt to furnish it, dictated letter, &c. (Case, page 194);

Nov. 14, Attended directors' meeting, S. L. Allen & Co., Inc., in Philadelphia all afternoon (Case, page 194).

The balance of the items set out in Mr. Backes' affidavit are statements of conferences with different individuals, the nature of which conferences is not disclosed.

It is submitted that the services set out in the said affidavit which are of a legal nature and which were necessary and for which services it was necessary for the substituted trustee to obtain the advice of counsel, fall far short of justifying the allowance of \$25,000.00 for counsel fees payable out of the trust estate, and it is further submitted that it would be most unfair to beneficiaries of trusts administered by the Courts of this State, were the Courts to allow large counsel fees payable out of the estate upon affidavits and memoranda of the na-

ture of the one submitted by Mr. Backes. It does not set out with any degree of certainty the nature of the services rendered for which the allowance is asked, nor in many cases the time consumed. Beyond question Mr. Backes spent considerable time on this matter, but we believe that most of the time was spent in carrying out duties which the trustee should or could have carried out. It is further submitted, however, that even though every item submitted by Mr. Backes related to purely legal services, the amount would still be excessive.

Although it is difficult to find precedents for facts on allowances of counsel fees and commissions, it is stated by Vice-Chancellor Berry in the case of *In re Larrabee*, *supra*, at page 661:

“While ‘each case (of allowances to fiduciaries) must depend upon its own circumstances and be tested and controlled by the criterion intended by the Statute-compensation,’ yet the rule of law respecting allowances of compensation as applied in similar cases is helpful.”

For that reason we wish to call attention to the allowances to counsel and others in the case of *Runkle v. Smith*, 90 Eq. 478, above cited. Beginning at page 485 Vice-Chancellor Lane states the services performed by counsel as follows:

“So far as the executor asks permission to charge against the estate the \$2,500 sums paid to Archer and Smith, the application will be denied for the reason that the affidavits submitted are not sufficiently precise to warrant the court in placing any value upon their services. Whatever services Archer or Smith performed for the estate must be considered as

embraced within the services performed by the executor for which the additional allowance of \$25,000 will be made.

The executor was justified in view of the situation of the estate in having the assistance of counsel. Counsel have brought or defended some ten separate suits. They have attended to the inheritance tax matters as well as the transfer tax. Their services are enumerated in some twenty-one pages of closely typewritten matter. They have attended both in the Orphans' Court and in this court continuously during the past two years. They have been obliged to consider questions with respect to the construction of the will as to whether the tax on the share of the legatees over should be paid by the executor out of the residuary estate or out of the trust funds. They have been obliged to consider the income tax law and also the effect of the numerous assignments. They have heartily co-operated in the conduct of this case with the result that the estate has been distributed as expeditiously as it has, and with as little litigation. Again, since the institution of these proceedings, I have had personal knowledge of the work performed by counsel. They have kept in touch with the court as the work progressed. The pleadings on file in this cause, among others, those in which they have asked for the instruction of the court with respect to the disposal of securities, &c., will indicate, to some extent, the amount of work done. I am convinced that the amount which they ask in addition to the \$25,000, to wit, \$10,000, is not excessive and it will be allowed.

Counsel for complainant in the cause asks

for \$7,500 additional, or a total allowance of \$11,000, he having already received \$3,500. I cannot speak too highly of the work performed by Mr. Moore in this case. The situation at the time he came into it representing Harry G. Runkle, the residuary legatee, was most involved. He worked out the scheme of filing the bill which resulted in the administration of the estate in this court. As before stated, there were some fourteen defendants at the time the bill was filed, many of them non-residents and the number has been increased from time to time so that there are now over thirty. The fact that the litigation has been completed in one suit is no indication of the amount of work done. If the litigation had not been taken over in the manner that it was there would have been many independent suits. Complainant's counsel has kept the record in shape from the time of the institution of the suit down to the present time. The work in this case which would, in an ordinary case, be considered routine work had to be performed by Mr. Moore personally. In view of the numerous assignments with their different provisions and the fact that the court was administering in one suit two trust funds, extreme care had to be taken in orders disbursing the residuary estate and the income that over or improper payments be not made. Counsel has been called upon, during the course of the litigation, to argue and submit briefs on five distinct propositions, some of them, indeed I may say most of them, novel. He has been some twenty-one times in court and never uselessly. The memorandum of services which he has submitted covers some twenty-seven typewritten pages. I think that a total payment to

him of \$10,000, or \$6,500 more than he has already received, will not be excessive and it will be allowed."

Although this Court is not controlled in any sense by the action of the United States Supreme Court in matters of this kind, we wish to call attention to the case of *Newton v. Consolidated Gas Company, et al.*, 259 U. S. 101, in which case the question involved was the allowance to a Master. The Master filed detailed statements showing the nature and responsibility of his duties, the number of hours occupied on specific dates in hearings; preparing opinions, etc., with the equivalent number of days reckoned at five hours each. The rule for the compensation of Masters in the District Courts of the United States is governed by Equity Rule #68, which provides:

"The District Court may \* \* \* appoint a Master pro hac vice in any particular case. The compensation to be allowed to every Master shall be fixed by the District Court in its discretion having regard to all of the circumstances thereof, and the compensation shall be charged upon and borne by such of the parties in the case as the Court shall direct."

Mr. Justice McReynolds, in delivering the opinion of the Court, stated:

"The value of a capable Master's services cannot be determined with mathematical accuracy; and estimates will vary, of course, according to the standard adopted. He occupies a position of honor, responsibility and trust; the court looks to him to execute its decrees thoroughly, accurately, impartially and in

full response to the confidence extended; he should be adequately remunerated for actual work done, time employed and the responsibility assumed. His compensation should be liberal, but not exorbitant. The rights of those who ultimately pay must be carefully protected; and while salaries prescribed by law for judicial officers performing similar duties are valuable guides, a higher rate of compensation is generally necessary in order to secure ability and experience in an exacting and temporary employment which often seriously interferes with other undertakings. See *Finance Committee of Penna. v. Warren*, 82 Fed. 525, 527; *Middleton v. Bankers' & Merchants' Tel. Co.*, 32 Fed. 524, 525.

Having regard to these general principles and the special value of knowledge possessed by the trial court, much weight must be given to its opinion. Ordinarily we may not substitute our judgment for its deliberate conclusions, nor interfere with the exercise of its discretion. But when that court falls into error, which amounts to abuse of discretion and the cause comes here by proper proceedings, appropriate relief must be granted.

Notwithstanding protracted, painstaking and for the most part excellent services rendered by the Master and the large amounts involved in these causes, after viewing the records and considering the circumstances disclosed, we cannot doubt that the allowances are much too large—certainly twice and three times what they should be. If the time devoted to the entire service—282 days—be accepted as equivalent to one year, the total allowance is fifteen times the

salary of the trial Judge and eight times that received by Justices of this court.

It may be compared to the compensation of the Mayor of New York City—\$15,000, the salaries of the Governor and members of the Court of Appeals of New York—\$10,000, and the \$17,500 paid to Judges of the Supreme Court in the City of New York. Although none of these can be taken as a rigid standard they are to be considered when it becomes necessary to determine what shall be paid to an attorney called to assist the court. His duties are not more onerous or responsible than those often performed by Judges.

So far as the several decrees undertake to adjudicate the Master's compensation they will be reversed and the causes remanded with instructions to fix the same within the following limitations and in the cause wherein the Consolidated Gas Company is appellee here (No. 750) not exceeding \$28,750—one-half of the amount heretofore allowed; in each of the other 7 causes Nos. 751, 752, 753, 832, 833, 844 and 845, not exceeding one-third of the amount heretofore allowed therein; and in the 8 cases allowances totalling not more than \$49,250. Such further action in conformity with this opinion as may be necessary shall also be taken."

It is therefore respectfully submitted that the allowances made by Vice-Chancellor Berry in this matter upon the substituted trustee's second account for trustee's commissions and counsel fees, were excessive and that they should be reduced.

Respectfully submitted,  
SCAMMELL, KNIGHT & REESE,  
*Solicitors for and of Counsel  
with Appellants.*

The first part of the paper is devoted to a general discussion of the problem. It is shown that the problem is of great importance in the theory of the structure of matter. The second part is devoted to a detailed study of the problem. It is shown that the problem is of great importance in the theory of the structure of matter. The third part is devoted to a detailed study of the problem. It is shown that the problem is of great importance in the theory of the structure of matter.

## New Jersey Court of Errors and Appeals

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EMILY ALLEN ELFRETH,  
Executrix, etc.,  
*Complainant-Appellant,*

*v.*

CHARLES J. ALLEN, Execu-  
tor et al.,

*Defendants.*

ELIZABETH R. ALLEN and  
SUSAN J. ALLEN, Execu-  
trices, etc.,

*Defendants-Appellants.*

On Bill, Etc.

On Appeal from Court  
of Chancery.

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### BRIEF ON BEHALF OF SUBSTITUTED TRUSTEE AND ITS COUNSEL.

This is an appeal from so much of an order of the Court of Chancery, dated April 2, 1929, filed June 15, 1929 (Case, page 203), which fixes the commission of the substituted trustee at four per cent. on the income and on two-fifths part of the corpus and the allowance of \$25,000 to its counsel for the services rendered to the entire estate, on the grounds that said allowances so made are (1) grossly excessive; (2) that the services rendered by counsel should have been rendered by the substituted trustee and included in its allowance; and (3) that the evidence submitted did not justify the allowance made to counsel (Case, pages 205-210).

## FACTS.

Samuel L. Allen died March 28, 1917. At the time of his death, he was a member of the partnership of S. L. Allen & Co. William H. Roberts was the surviving partner of said partnership. These two men had been engaged as partners for thirty years prior to the death of Samuel L. Allen, and after his death, William H. Roberts, the surviving partner, in accordance with their partnership agreement, organized under the laws of the Commonwealth of Pennsylvania, the corporation known as S. L. Allen & Co., Inc.

Samuel L. Allen was survived by his widow, Sarah H. Allen, by one son, Charles J. Allen, and three daughters, Susan J. Allen, Elizabeth R. Allen and Emily Allen Elfreth. They were the beneficiaries, executors and trustees under his last will. Differences arose between them. This resulted in the bringing of the above entitled action in the Court of Chancery by Emily Allen Elfreth, executor, &c., against her co-executors and trustees, and against William H. Roberts and S. L. Allen & Co., Inc.

After protracted litigation between the parties and the filing of the accounts by the executors and trustees of said estate, the litigation was finally determined by a decree made by the Honorable Edwin Robert Walker, Chancellor, dated May 15, 1923 (Case, pages 1 to 10 inclusive). By the same decree, the trustees under the will of Samuel L. Allen, deceased, were relieved and discharged from further administering said estate, and the Trenton Trust Company was then appointed substituted trustee in their place and stead. Said decree also re-apportioned the stock of S. L. Allen & Co., Inc., between the representatives of Samuel L. Allen and William H. Roberts, by apportioning a two-thirds interest in the voting stock of said corporation to the representatives of Samuel L. Allen, deceased, and a one-third interest in the voting stock of said corporation to William H. Roberts and his associates (Case, page 7, line 8 to page 8, line 29).

The said substituted trustee qualified and received from the former trustees, 1,095 shares of the preferred stock of

S. L. Allen & Co., Inc., 2,500 shares of class A common stock and 731 shares of class B common stock of said company. The 2,500 shares of class A common stock had the majority voting control of the stock of said company (Case, page 21).

The said substituted trustee filed its first account on June 26, 1924 (Case, page 11), and the same was approved September 15, 1925 (Case, page 30).

Samuel L. Allen by his will provided that none of the shares of the capital stock of the corporation formed by his partner under their partnership agreement, which stock might come into the possession of his executors and trustees, should be sold within a period of ten years from the date of his death, unless a majority of his family should approve in writing of the same being sold, in which case he authorized and directed the sale thereof (Case, page 33, line 21).

On June 25, 1926, Sarah H. Allen, Elizabeth R. Allen, Susan J. Allen and Emily Allen Elfreth requested and directed the substituted trustee to sell the stock held by it in S. L. Allen & Co., Inc., the price, however, to be subject to the approval of said persons (Case, page 68, line 18, and page 82).

Commencing at that time and continuing until the sale of the stock, a long series of letters, telegrams and other communications was interchanged between the substituted trustees and the persons named therein, all of which are more fully and at length set forth in the affidavits made by William Henry Elfreth (Case, page 67 and continuing to page 129), and Nelson L. Petty (Case, page 173 and continuing to page 186).

From the date of the above mentioned letter, the substituted trustees made repeated efforts to sell the stock.

The estate held in trust by the substituted trustee consisted of five-sixths of the residuary estate of Samuel L. Allen, deceased. The income thereon was payable to and the substituted trustee did pay to Sarah H. Allen, the widow, two-fifths thereof, and one-fifth to each of the three daughters of the testator (Case, page 33, line 37 to page 35, line 20).

Sarah H. Allen, the widow of Samuel L. Allen, died March 12, 1928. By her will she exercised the power of

appointment given her under her husband's will over the two-fifths share of his estate (Case, page 37, line 14).

During the ten-year period after the death of Samuel L. Allen, the substituted trustees received several bids for the stock held by it but the beneficiaries would not give their consent to the sale of said stock to the bidders therefor. After the expiration of said ten-year period, the substituted trustee received a bid for the stock which it considered to be a favorable one, and on June 15, 1928, the Trenton Trust Company, substituted trustee, presented its petition setting forth the offer it had received for the stock of S. L. Allen & Co., Inc., and prayed for the advice and direction of the Court of Chancery in the premises, and the determination of the court whether the offer submitted in said petition should be accepted; and praying for the instruction and direction whether said stock should be sold, and the method and manner of making said sale, and whether the same should be sold in one parcel or in lots, and if so, at what price, whether at private or public sale, and for other and further relief (Case, page 39, line 29).

The beneficiaries, Elizabeth R. Allen, Susan J. Allen and Emily Allen Elfreth, filed their answer objecting to the confirmation of said offer so submitted to the court on the ground that said substituted trustee had no power to sell said stock without the consent of the beneficiaries, and that the price offered for the same was inadequate (Case, page 61 to 65) *and also on the ground that the two-fifths of the shares in the Allen company* disposed of by the will of Sarah H. Allen was a specific legacy under the will of her husband, and consequently this substituted trustee had no power to sell the same.

By an order of the Court of Chancery dated September 7, 1928, the court found that the residuary bequest contained in the will of Samuel L. Allen was a general legacy and authorized the substituted trustee to make sale of said stock, and further confirmed a bid of \$755,000 made by Susan J. Allen, Elizabeth R. Allen and Emily Allen Elfreth, and directed the substituted trustee to accept the same.

The sale of said stock so authorized was completed and the cash paid to the Trenton Trust Company, substituted trustee (Case, page 137, line 28).

On March 23, 1929, the Trenton Trust Company, substituted trustee, filed its petition and second accounting, praying for the allowances of commission and counsel fee (Case, page 136), and the matter came on for a hearing before the Honorable Maja Leon Berry, Vice-Chancellor, who made the order dated March 23, 1929, and filed June 15, 1923 (Case, page 203). Such part of this order as allowed the substituted trustee a four per cent. commission on the income and also on a two-fifths part of the corpus of the estate now to be distributed, and an allowance of \$25,000 to its counsel, Peter Backes, is now appealed from.

#### ARGUMENT.

It is respectfully submitted that so much of the order of the Vice-Chancellor which allowed the Trenton Trust Company, substituted trustee, four per cent. commission on the amount of the corpus of a two-fifths share of the estate of Samuel L. Allen, and also four per cent. commission on the amount of the income received by the substituted trustee, is not excessive, and it is further submitted that the amount of \$25,000 directed to be paid to Peter Backes, its solicitor, is not excessive.

#### THE ALLOWANCE TO THE TRENTON TRUST COMPANY, SUBSTITUTED TRUSTEE, IS NOT EXCESSIVE.

It is argued in the brief of the appellant that the Vice-Chancellor in fixing the allowances to the trustee was limited by the 129th and 130th sections of the Orphans Court act, 3 Comp. Stat. 3860. Assuming this to be so, still the commission allowed is less than the maximum provided for in said statute. It is respectfully submitted, however, that this act is not applicable and does not govern the Court of Chancery in fixing the allowances in matters where the Court of Chancery has the supervision of the trustee appointed by it. The case of *Van Houten v. Van Houten*, 45 Eq. 796, was an

appeal from the allowance of commissions to two trustees appointed by the Court of Chancery in place of the trustees named in the will of one Rachel Van Houten. Objection was raised by the appellant that the Chancellor had no authority to allow more than the rates fixed by section 110 of the "Act respecting the Orphans Court, and relating to the powers and duties of the ordinary and the Orphans Court and surrogates." Dixon, judge (at page 812), speaking for the Court of Errors and Appeals, said:

"This objection is not tenable. The practice of allowing compensation to executors, administrators, guardians and trustees has long prevailed in New Jersey. *Den v. Allen*, Penn. \*35, \*44; *State Bank v. Marsh*, Sax, 288, 296. The earliest legislation limiting such allowances was passed March 17, 1855, as a supplement to 'An act respecting the Orphans Court and the power and authority of surrogates.' Nix. Dig. 561. Under that title it could not constitutionally control the Court of Chancery, and it was very soon judicially considered not to have that effect. *Holcombe v. Holcombe*, 2 Beas. 415-419. The present legislation is under a title somewhat broader, but which, still, does not attempt to embrace the Court of Chancery. The discretion of that court on this subject is unfettered by statute."

In *Babbitt v. Fidelity Trust Company*, 72 Eq. 760, citing the above case, Vice-Chancellor Garrison said:

"The discretion of this court in this class of cases as to the amount to be allowed is unfettered by statute, and the compensation should be based on the nature and amount of the services rendered and the risk incurred by the trustee."

These decisions clearly show that the matter of an allowance of a commission is one resting solely in the discretion of the Chancellor. We respectfully submit that there has been no abuse of this discretion.

The Vice-Chancellor in fixing these allowances in the case at issue, said (Case, page 200, line 27):

"I am not unmindful of the fact that these allowances are in excess of those contended for by counsel for the beneficiaries of the trust, but I have examined all the papers submitted to me with a great deal of care and have read with much interest the affidavits respecting services of counsel and trustee. In my judgment both are entitled to compensation not only for the actual labor performed by them in the discharge of their duties but also for the responsibility which they assumed in this matter. This responsibility was a very considerable one and involved on the part of the trustee the practical management of the business of S. L. Allen & Co., Inc., for the past six years. I have not overlooked the fact that it is claimed by the beneficiaries that the services of the trustee in this respect were little more than perfunctory, but as the trustee was vested with control of the company by reason of its stock ownership, I cannot see how its duties as trustee could have been discharged without the exercise of a practically complete control and there is no suggestion that the trustee has not performed its full duty. Naturally the detail work in a manufacturing organization of this kind would not be done by the trustee but its policy would be subject to the approval of the trustee and subject to change at its behest. It is quite obvious that the efforts of the trustee and its counsel in effecting a sale of the stock of S. L. Allen & Co., Inc., resulted very beneficially to those interested in the trust and I feel that this fact presents a strong argument in favor of the fees allowed. It cannot be expected that responsible institutions will accept trusts of this nature and discharge them with fidelity unless reasonable compensation is made for their services.

With respect to counsel fees allowed to Mr. Backes, much of what I have already said with respect to the services of the trustee applies as well to him, but in addition to that it may be said that there is no yardstick by which the services of counsel can be uni-

formly measured. The responsibility assumed by him in advising the trustee, under the circumstances, of this case, was great, and the service cannot be estimated merely by a computation of the actual time devoted to the work. It seems to me that the services of eminent counsel in connection with a trust involving almost a million dollars and extending over a period of six years, ought to be worth the allowance here indicated if they are worth anything."

The substituted trustee was vested with the stock control of this large manufacturing concern, and it was confronted with the necessity of seeing to it that the business of the S. L. Allen & Co., Inc., was not disturbed and that the earnings of said business should not be impaired, but should be continued and that proper management for the business should be maintained to the end that the business and property of the corporation might be conserved. It was confronted with the situation of selecting other management or continuing the then present management to carry on said business. In carrying out this duty, the substituted trustee made a thorough investigation of the business and the persons in charge and learned that the then engaged persons, headed by William H. Roberts, who were the minority control, had since the death of his former partner, Samuel L. Allen, continued the business successfully, had organized a new corporation and had earned dividends which paid the beneficiaries a good income. As a result of its investigations, the substituted trustee determined that it would be most advantageous to the beneficiaries to keep the present management in the active control of the business. In order to further safeguard the interest given into its care, the substituted trustee elected two of its officers and directors as directors of the said S. L. Allen & Co., Inc., and thereafter it was at all times fully advised as to the conditions and affairs of the said company and its management. These directors continued and this same management was maintained by the substituted trustee during the entire time, commencing from the date of the order appointing the substituted trustee in 1923 and continuing yearly thereafter un-

til the stock was sold in 1928. That the confidence thus bestowed by this substituted trustee in this management was not misplaced is evidenced by the fact that during the period of six years, this management earned for this substituted trustee, dividends amounting to the sum of \$236,682 (Case, page 184), commencing with the year 1923, earning \$17,878.75 and ending with the year 1928 when the same stockholdings earned \$49,151.50.

It must be remembered that the substituted trustee at all times had the absolute supervision and control over this business and did exercise such control, and in this respect it not only performed actual labor, but it assumed the risk and responsibility of the management of the business of S. L. Allen & Co., Inc.

The fact that this substituted trustee undertook a great responsibility in assuming the control of the business of S. L. Allen & Co., Inc., is an element which cannot be disregarded when considering the commission which has been awarded to said substituted trustee. This was a large and prospering business and to undertake the active control of such a business was no mean task and one involving great risk as well as responsibility.

Nelson L. Petty, one of the officers of the Trenton Trust Company, also being its trust officer, was made a director of S. L. Allen & Co., Inc., and attended all of its meetings of the board of directors. It may be that there is no record of any motions made by him at the meetings, but it would be absolutely unfair to assume from this that he was inactive and took no part in the management of the business, since motions at directors' meetings are not the only way of exercising control and supervision over a business. The substituted trustee, through Mr. Petty, did in fact keep a constant supervision and control over all the acts and policies of this corporation.

The appellants in their brief attempt to draw an analogy between the facts of the instant case and those set out in *In Re Larrabee*, 98 Eq. 655. In that case Vice-Chancellor Berry shows that the executórs' conduct of the enterprises there involved was purely supervisory, i. e., that they were purely perfunctory and consisted mainly of signing checks

and receiving reports that the business was in good condition. Surely no analogy can be drawn between the inactivity of the executor in that case, and the constant and careful supervision over the business which was exercised by the substituted trustee in the instant case through continued attendance of its trust officer at all the directors' meetings and in otherwise keeping in constant touch with the affairs of the business.

We cannot expect a trustee upon whom falls the duty of running a business, to be an expert in technical matters involved in the business. All that can be asked of said trustee is that it should keep a constant and careful control over the management of the business. This substituted trustee has well pursued its duty of control and supervision and has expended much time and effort in so doing, and it would be the grossest injustice to term its efforts "mere perfunctory supervision."

In addition to the services rendered by the substituted trustee in the management of the business, it also received and disbursed large sums of money as is shown by the accounts filed by it (Case, page 136).

And in addition to these services, the substituted trustee also rendered valuable services in respect to its attempt to make a sale of the stock of the late Samuel L. Allen held by it in S. L. Allen & Co., Inc. For nearly three years this substituted trustee was continually making efforts to secure such a purchaser as would be beneficial to the *cestuis que trust* and during this three-year period the officers of this substituted trustee held numerous conferences with the beneficiaries and especially with William Henry Elfreth who claimed to represent them.

The substituted trustee expended considerable time and great effort in holding these conferences, in its attempts to consummate the sale, in complying with the demands for information, in making appraisements of the property and of the condition of the company, and finally in consummating the sale, all of which are more fully set out in and evidenced by the affidavits of William Henry Elfreth (Case, pages 67 to 129), and Nelson L. Petty (Case, pages 47 and 173).

Furthermore, this substituted trustee after the death of Sarah H. Allen, successfully resisted the demand of her beneficiaries that the two-fifths share of the stock of the S. L. Allen & Co., Inc., be turned over to them, and by so doing was able to hold for sale such stock as amounted to the voting control of S. L. Allen & Co., Inc.

The management of the business of the S. L. Allen & Co., Inc., at the time of the appointment of the substituted trustee was in the hands of such founders of the business as were still living. This management continued up until the time of the sale of the stock. The substituted trustee made efforts to sell the stock to this management. The appellants in their brief seek to attach some stigma to the actions of the substituted trustee in so doing. It is respectfully submitted that it is erroneous for them to do so and an attempt on their part to prejudice the court. This respondent so contends because the management had a greater interest in this business than any other prospective purchaser could have had. The business was the product of their efforts. They knew its true value and its possibilities, and furthermore they had a sentimental attachment to the business which would greatly enhance its value in their estimation. From this it can clearly be seen that the management would undoubtedly be willing to pay the highest possible price for this business, and it is respectfully submitted that the acts of the substituted trustee in trying to sell the business to the management were done with the best interests of the beneficiaries always in mind, and clearly were not done on account of any bias in favor of the management.

Considering the time and effort and risk expended by the substituted trustee in managing the business, attempting to sell the stock, administering the trust estate, and finally consummating the sale, and adding to that the fact that the sale was of such great advantage to the beneficiaries, it cannot be said that a four per cent. commission on the income and four per cent. on two-fifths of the residuary estate is an unreasonable allowance.

THE ALLOWANCE MADE TO THE COUNSEL FOR  
THE SUBSTITUTED TRUSTEE IS  
NOT EXCESSIVE.

It is respectfully submitted that the records in this case, and the affidavits submitted at the hearing, justify the allowance to counsel made by the Honorable Maja Leon Berry, Vice-Chancellor.

For a period of six years, counsel rendered to the substituted trustee valuable legal services. He advised the trustee as to its right and duty to be represented on the board of directors of S. L. Allen & Co., Inc., and its duty to exercise control and supervision over the management of said company. Counsel also advised the trustee on the question as to its right to make sale of the stock during the ten year period following the death of Samuel L. Allen and advised whether the bequest of the residuary estate was general or specific, and also whether the stock held in the trust could be sold by the trustee without the beneficiaries' consent and whether on the death of Sarah H. Allen, the widow of Samuel L. Allen, the substituted trustee could be compelled to turn over to her legal representatives, two-fifths of the shares held by it in the S. L. Allen & Co., Inc., and counsel was frequently and continuously called upon to advise it as to its duties and rights under the S. L. Allen will. Counsel through his efforts secured a favorable settlement of the collateral inheritance taxes for said substituted trustee. Counsel also attended with the trustee and aided and assisted its trust officer in negotiating the sale of the stock of S. L. Allen & Co., Inc.; prepared the contract which was subsequently submitted to the court, prepared the petitions and order, and brought the parties into court and had several hearings before the court on the question of the confirmation of the sale. Subsequently counsel together with the substituted trustee attended at the closing of the sale and the transfer of the stock to the purchaser. Counsel held numerous conferences during the term of the substituted trustee with it and with the beneficiaries and with W. Henry Elfreth, their representative, *and was consulted in every matter relating to the management of the trust estate and*

*the attempted sales and final sale of the stock held by the said substituted trustee.* When we add to all of this the great responsibility and risk undertaken by counsel in being legal adviser to such a vast estate and the perplexity of the problems involved therein, it cannot be said that the allowance made to him is excessive.

Appellants in their brief contend that the substituted trustee should pay counsel for his services out of the commissions allotted to it (which commissions they also seek to reduce). The Honorable Vice-Chancellor Berry at the hearing on this matter had all the facts before him, and that he did give the question of fixing allowances due consideration is evidenced by his opinion (Case, page 200).

The power to allow counsel fees is discretionary and is vested in the Chancellor. 1 Comp. Stat, page 445, section 91, provides that:

“In any cause, matter or proceeding in the Court of Chancery, the Chancellor may make such allowances by way of counsel fee to the party or parties obtaining the order or decree as shall seem to him to be reasonable and proper.”

*Henn v. Heath*, 141 Atl. Rep. 769, was an appeal from the refusal of the Chancellor to allow a counsel fee to complainant's solicitor in an uncontested foreclosure proceeding. The Court of Errors there held:

“The matter of the allowance of a counsel fee in a Chancery suit is one resting in the discretion of the Chancellor. He may make such allowance in any case in which he shall deem it proper to do so; but when he justly concludes that it would be unfair and inequitable to allow a counsel fee in a given case, his refusal to make such allowance is a proper and wise exercise of his discretion.”

In the case of *In Re Welsh*, 93 Eq. 303, Vice-Chancellor Backes said in answer to the contention that counsel fees are creatures of statute:

“Allowance of counsel fees rests solely on statutes except where trust funds in the control of the court are being administered.”

Thus it clearly appears that the power exercised by Vice-Chancellor Berry was vested in him both by statute and by well established practice in Chancery and was limited only by the exercise of his discretion.

It is respectfully submitted that the services of counsel were at all times required by the substituted trustee and that such services were rendered to and accepted by said trustee; that it was not contended and cannot be shown that the Vice-Chancellor has abused his judicial discretion; that the fee allowed is not excessive and that the Vice-Chancellor so determined when granting the same; and that therefore the discretion exercised by the Vice-Chancellor should be sustained and the fee allowed.

It is respectfully submitted that so much of the order made by the Vice-Chancellor as is appealed from should be affirmed and this appeal dismissed.

PETER BACKES,  
*Solicitor for and of Counsel With  
Substituted Trustee.*

