

N. J. Court of Errors and Appeals.

IN CHANCERY OF NEW JERSEY.

Between

ELIAS DARBY and JOHN D.

PIERSON, jun., Executors of

Margaret H. Clark, deceased,
Appellants,

and

SEAMAN P. RICHARDS, Ex-

ecutor, &c., of Eliza Y. Rich-

ards, deceased,

Respondent.

} On bill.

ROBERT S. GREEN, *Solicitor, and*

B. WILLIAMSON, *Of counsel with appellants.*

THEO. RUNYON, *Solicitor and counsel with respondents.*

Bill of Complaint.

[Filed May 16, 1867.]

To his Honor Abraham O. Zabriskie, Chancellor of the State
of New Jersey.

Humbly complaining, showeth unto your Honor, your
orator, Seaman P. Richards, of the city of Elizabeth, in the

county of Union, and state of New Jersey, executor of the last will and testament of Eliza Y. Richards, late of said city, deceased, that, in the year of our Lord one thousand eight hundred and sixty-two, at said city, Margaret H. Clark, then widow, and of that city, and mother of said Eliza, departed this life, having first duly made and published her last will and testament, in all respects according to the laws of this state, and in such manner as to pass real and personal estate under said laws; and that said last will and testament of
10 said Margaret bears date on the eighth day of January, in the year aforesaid, and was afterwards, and after the death of said Margaret, duly admitted to probate, and duly proved accordingly before the then surrogate of said county of Union.

And your orator further showeth unto your Honor, that in and by said last will and testament, the said Margaret, after ordering and directing that all her just debts and funeral expenses be paid, did give and bequeath to her daughter, said Eliza, (then Eliza Y. Clark,) all her clothes and wearing
20 apparel, together with the spare bed-room furniture, and also such of her silver as said Eliza might select, the interest accruing upon a bond and mortgage executed by A. D. Tichenor, to secure the payment of six thousand dollars, and also the dividends declared upon her (said Margaret's) shares of the capital stock of the State Bank, at Elizabeth, now the National State Bank, at Elizabeth; and if it should be necessary, for said Eliza's support or comfort, to pay to her such of the principal of said bond and mortgage, or to sell the said stock and pay the proceeds to her; and did give and bequeath to her (said Margaret's) son, James H. Clark, a
30 bond and mortgage executed by Elihu B. Earl, for the sum of one thousand dollars, and also four shares of the stock of the Elizabeth Library Association; and did thereby direct her said executors to carry out the provisions of the last will and testament of Eliza V. Young; for which purpose she did empower her said executors to sell and convey the house and lot devised to her under and by that will; and then said Margaret did, by her said will, give and bequeath all the rest and residue of her estate, both real and personal, to her son, James H. Clark, and her daughter, Eliza Y. Clark, to
40 be divided, share and share alike, to them, their heirs and

assigns, forever; and said Margaret, in and by her said will, made no other or further disposition of her estate, or any part of the same; and said will was in full force and effect at the time of her death; and by it she appointed Elias Darby and John D. Pierson, jun., executors of that will, as in and by said last will and testament of said Margaret, or a duly authenticated copy of the same, now in the possession of your orator, and ready to be produced and proven as this honorable court shall direct, and to which, when produced, your orator, for the greater certainty, prays leave to refer, 10
may and will more fully and at large appear.

And your orator further showeth unto your Honor, that said Elias Darby and John D. Pierson, jun., did, after the death of said Margaret, and after said probate, duly take upon themselves the burthen of the execution of said last will and testament of said Margaret.

And your orator further showeth unto your Honor, that said Eliza Y. Richards, who was the wife of your orator, she having married to your orator after the death of said Margaret, departed this life at said city of Elizabeth, on or about 20
the ——— day of January, eighteen hundred and sixty-seven, having at first duly, and in all respects according to the laws of this state, made and published her last will and testament, which last mentioned last will and testament was, in all respects, duly executed according to the laws of this state, to pass real and personal estate, by which last mentioned last will and testament, which was made and dated on the eighth day of January, eighteen hundred and sixty-seven, said Eliza Y. Richards, after thereby ordering that all her just debts and funeral expenses be paid as soon as convenient 30
after her decease, did give and bequeath all her estate, both real and personal, including her silver ware, whatsoever or wheresoever the same might be situated, to your orator, to him and his heirs forever, and did thereby constitute and appoint your orator and his friend, Ansel E. Parkhurst, of said city of Elizabeth, and the survivor of them, executors of her said last will and testament, and thereby did revoke all wills and codicils theretofore by her at any time made, as in and by said last will and testament of said Eliza Richards, which was duly admitted to probate by the Orphans 40

Court of said county of Union, on the twenty-seventh day of January, eighteen hundred and sixty-seven, and proved accordingly on that day before the surrogate of said county of Union, or a duly authenticated copy of the same, now in the possession of your orator, ready to be produced and proven as this honorable court shall direct, and to which, when produced, your orator, for greater certainty, prays leave to refer, may and will more fully and at large appear.

And your orator further showeth unto your Honor, that
10 he did, on the last mentioned day, duly take upon himself the burthen of the execution of said will of said Eliza.

And your orator further showeth unto your Honor, that said Eliza left no child her surviving; that she had by your orator one child which died in its infancy, before said Eliza's death.

And your orator further showeth unto your Honor, that said Eliza and James H. Clark were the only children of said Margaret.

And your orator further showeth unto your Honor, that
20 no part of the principal of said mortgage was paid to or for the support of said Eliza, and that said bank stock was not, nor was any part of it, sold in her lifetime, but both said mortgage and said bank stock still remain in the hands of said executors of said will of said Margaret.

And your orator further showeth unto your Honor, that, as executor of said Eliza, he is, as he is advised by his counsel, and respectfully submits to your Honor, entitled to receive from said executors of said Margaret the one-half part of the principal of said mortgage, and of the interest which has ac-
30 crued on the said bond and mortgage since said Eliza's death, and all the interest which accrued thereon and was unpaid to her at the time of her death, and one-half of said bank stock, and of all dividends thereon since the death of said Eliza, and all the dividends thereon accrued and unpaid to her at the time of her death.

And your orator further showeth unto your Honor, that while said executors of said Margaret do not dispute your orator's claim to said dividend and interest accrued prior to
40 said Eliza's death, they refuse to pay or assign to your orator said half of said mortgage and bank stock, and of dividends

and interest accrued since her death, on the ground that doubts have arisen whether, under said will of said Margaret, and said will of said Eliza, the same pass to your orator.

And your orator further showeth unto your Honor, that he has, in a friendly manner, requested said executors of said will of said Margaret to pay him said half part of said mortgage, or transfer to him such half part, and to pay to him the half of said interest accrued since the death of said Eliza, and to deliver over to your orator or to assign or transfer to him said half part of said bank stock, and to pay over to him 10 said half part of dividends accrued on the said bank stock since the death of said Eliza; and he well hoped they would have done so, according to his reasonable request, but they have wholly refused so to do as aforesaid, and on the ground aforesaid.

And your orator further showeth, that he is informed and believes, that said James H. Clark claims and alleges that your orator is not entitled to said half part of said mortgage and of said bank stock, and of interest and dividends accrued thereon respectively, since the death of said Eliza, or to any 20 part of the same, but that he, the said James H. Clark, is entitled to the whole of said mortgage, and bank stock, and dividends, and interest accrued thereon respectively, since said Eliza's death; and to support his allegation and claim he alleges, as your orator is informed and believes, that said Margaret died intestate of said mortgage and bank stock, and that on the death of said Eliza he became entitled, as the only next of kin to said Margaret, to said mortgage and bank stock, and interest and dividends accrued since said 30 Eliza's death; but your orator is advised by his counsel, and he respectfully submits, that said allegation of intestacy is untrue, and that if it were true, your orator would still, by virtue of said will of said Eliza, be entitled to said half part of said mortgage and bank stock, and of dividends, and interest thereon, accrued since said Eliza's death.

And your orator further showeth unto your Honor, that said Elias Darby and John D. Pierson, jun., executors as aforesaid, and said James H. Clark, make divers unjust and inequitable pretences in the premises, all of which tend to the manifest wrong, injury, and oppression of your orator. 40

In tender consideration whereof, and forasmuch as your orator is without adequate remedy in the premises at and by the strict rules of the common law, and can only have adequate relief in this honorable court, where matters of this sort are properly cognizable, and your orator is entitled to relief:

To the end, therefore, that the said Elias Darby and John D. Pierson, jun., executors of the last will and testament of said Margaret H. Clark, and said James H. Clark, may, upon
 10 their several and respective coporal oaths, true, full, and perfect answer make, to all and singular the premises, as fully and particularly as if the same were herein again repeated, and them and each of them thereto particularly interrogated, paragraph by paragraph, sentence by sentence, and line by line, and that not only according to the best of their respective knowledge and information, but according to the best of their respective hearsay and belief; and that said Elias Darby and John D. Pierson, jun., as such executors as
 20 aforesaid, may be decreed to pay over or transfer to your orator the one-half part of said bank stock, and of the interest and dividends accrued on said mortgage and bank stock respectively, since said Eliza's death, and to pay to your orator his costs of this suit; and that your orator may have such other or further relief in the premises as to your Honor shall seem meet, and shall be agreeable to equity and good conscience.

May it please your Honor, the premises considered, to grant unto your orator the state's most gracious writ of subpœna, issuing out of and under the seal of this honorable
 30 court, to be directed to said Elias Darby and John D. Pierson, jun., executors as aforesaid, and said James H. Clark, thereon and therein commanding them, and each of them, on a certain day and under a certain penalty, to be and appear before your Honor in this honorable court, then and there to answer all and singular the premises, and to stand to, abide by, and perform, such order, direction, and decree therein, as to your Honor shall seem meet, and shall be agreeable to equity and good conscience.

And your orator will ever pray, &c.

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RUNYON & GUILD,

Solicitors for and of counsel with the complainant.

Answer.

[Filed May 16, 1867.]

*The joint and several answer of Elias Darby and John D. Pier-
son, jun., executors of the last will and testament of Margaret
H. Clark, deceased, and of James H. Clark, to the bill of com-
plaint of Seaman P. Richards, executor of Eliza Y. Richards,
deceased.*

These defendants, now and at all times hereafter, saving and reserving to themselves all manner of benefit and advantage of exception to the many errors and insufficiencies in the complainant's said bill contained, for answer thereto, 10
or to so much and such parts thereof as these defendants are advised is material for them to make answer unto, they answer and say—that they admit that Margaret H. Clark, late of the city of Elizabeth, and mother of Eliza Y. Richards, then Eliza Y. Clark, departed this life in the year eighteen hundred and sixty-two, having first duly made and published her will, bearing date the eighth day of January, in the year eighteen hundred and sixty-two, and that the said will was afterwards admitted to probate and duly proved before the then surrogate of the county of Union. And further, that in 20
and by the said last will and testament, the said Margaret, after ordering and directing that all her just debts and funeral expenses, and the legacies in the said bill mentioned to the said Eliza Y. Clark, did direct her executors to pay to her said daughter the interest accruing upon a bond and mortgage executed by A. D. Tichenor, to secure the payment of six thousand dollars, and also the dividends declared upon her shares of the capital stock of the State Bank at Elizabeth; and if it should be necessary for the support or comfort of her said daughter, to pay to her such of the principal of said 30
bond and mortgage, or to sell the said stock, and pay the proceeds to her; and after the legacies and provisions mentioned in the said will, did give, devise, and bequeath, all the rest and residue of her estate, both real and personal, to her son, James H. Clark, and her daughter Eliza Y. Clark,

to be divided, share and share alike, to them, their heirs and assigns, forever, and did therein appoint the said Elias Darby and John D. Pierson, jun., executors of the said will. And further, that the said executors, after the death of the said Margaret, and after the said probate, took upon themselves the burthen of the execution of the said last will and testament. And further, that the said Eliza Y. Clark was married to the said complainant after the death of the said Margaret, and that the said Eliza departed this life, having
10 first made and published her last will and testament, which was admitted to probate as stated in the said bill, and that the said complainant, as executor, took on himself the execution of the said will. And further, that the said Eliza left no child her surviving, and that she had one child by the said complainant, which child died in its infancy, before the death of its said mother. And further, that the said James H. Clark and Eliza Y. Richards, were the only children of the said Margaret. And further, that no part of the principal of the said mortgage was paid to or for the support or
20 comfort of the said Eliza, and that the said bank stock was not, nor was any part of it, sold in her lifetime, and that both said mortgage and said bank stock remain in the hands of the executors of the said Margaret. And further, that the said complainant, as executor of the said Eliza, is entitled to all the interest which had accrued on the said bond and mortgage, and to all dividends declared on the said bank stock which remained unpaid to the said Eliza at the time of her death.

And these defendants deny that the said complainant, as
30 executor of the said Eliza, is entitled to one-half part of the principal of said mortgage, or to the interest which has accrued thereon since the death of the said Eliza, or to one-half of the said bank stock, or to the dividends declared thereon since the death of the said Eliza. And they show unto your Honor, that the estate of the said Margaret H. Clark, deceased, consisted of a large amount of real and personal property, and that the contingency never happened, upon which it became the duty of the said executors to pay
40 to the said Eliza any part of the principal of the said mortgage, or to appropriate the bank stock; and that the said

Eliza never requested, nor did she desire them to pay anything more than the interest on the mortgage and the dividends on the stock. And these defendants are advised, and respectfully submit, that upon the death of the said Eliza, this defendant, James H. Clark, as the next of kin of the testatrix, Margaret H. Clark, his mother, became, and is now entitled to the said bond, mortgage, bank stock, and the interest and dividends accruing thereon since the death of the said Eliza.

And these defendants deny all unlawful combination and confederacy in said bill charged, without that, that any other matter or thing material for these defendants to make answer unto, and not hereby well and sufficiently answered, confessed or avoided, traversed or denied, is true, to the knowledge or belief of these defendants; all which matters and things these defendants are ready to aver, maintain, and prove, as this honorable court shall direct, and hereby pray that they be hence dismissed, with their reasonable costs in this behalf most wrongfully sustained; and these defendants, as in duty bound, will ever pray, &c. 10

ROBT S. GREEN,

Solicitor and of counsel with defendants 20

Union county, ss.—Elias Darby, John D. Pierson, jun., and James H. Clark, the defendants above named, being severally sworn on their respective oaths, say—that the foregoing answer, so far as it relates to their acts and deeds, is true; and so far as it relates to the acts and deeds of others, they respectively believe it to be true.

ELIAS DARBY, Ex'r.

JOHN D. PIERSON, JUN. 30

JAMES H. CLARK.

Sworn and subscribed before me, at Elizabeth, this sixteenth day of May, 1867.

J. SEIPLE, *Com'r of Deeds.*

Opinion.

The Tichenor mortgage and State Bank shares belonging to the testatrix, Margaret H. Clark, were not bequeathed or disposed of by any specific bequest in her will; they were, therefore, part of the rest and residue of her estate, given equally to her two children, and one-half of them belonged to her daughter, Eliza, at the death of Eliza, and she could dispose of it by will. Had Margaret H. Clark died intestate, as to the principal of that mortgage and those bank shares, the right to them would, at her death, have vested in her two children, equally, as next of kin. Eliza could dispose of her interest in them by will; or, if she had died intestate, they would belong to her husband, under the statute of distribution. In either case, the complainant is entitled to these two funds.

Final Decree.

[Filed July 8, 1867.]

This cause coming on to be heard before the Chancellor, at the present May Term, upon bill and answer, in the presence of Theodore Runyon, of counsel with the complainant, and of R. S. Green, of counsel with the defendants, and the pleadings in the cause having been read and considered—

It is thereupon on this eighth day of July, A. D. eighteen hundred and sixty-seven, by his Honor Abraham O. Zabris-
 kie, Chancellor of the state of New Jersey, ordered, adjudged, and decreed, and the said Chancellor doth hereby order, ad-
 judge, and decree, that the said complainant is entitled to
 receive from the said defendants, Elias Darby and John D.
 Pierson, executors of the last will and testament of Margaret
 H. Clark, deceased, and that the said defendants, upon ser-
 vice upon them, or their solicitor, of a copy of this decree,
 do pay to the said complainant all the interest which, at the

time of the death of Eliza Y. Richards, (late Clark,) the late wife of the said complainant, had accrued upon the bond and mortgage executed by A. D. Tichenor to secure the payment of six thousand dollars, mentioned in the will of the testatrix, Margaret H. Clark, deceased; and all the dividends upon the shares of the capital stock in the State Bank, at Elizabeth, which belonged to the said Margaret at the time of her death, which remained unpaid to the said Eliza at the time of her death; and also, one-half part of all the interest which has accrued upon said bond and mortgage 10 since the death of the said Eliza; and one-half part of all the dividends declared upon the said shares of bank stock since her death; and also, one equal half part of the principal sum secured by the said mortgage, and of the interest to accrue thereon from the date hereof until the same be paid; and one-half of the said shares of bank stock, and of the dividends to be declared thereon from the date hereof, until the said shares be assigned to the said complainant.

And it is further ordered, adjudged, and decreed, that the costs of all the parties to this suit be paid by the said executors out of the residue of the estate of the said Margaret H. Clark, deceased, which came to their hands. 20

A. O. ZABRISKIE, C.

Appeal.

[Filed September 12, 1868.]

The defendants hereby appeal from so much of the final decree made in this court, in the above stated cause, as declares that the said complainant is entitled to receive from the defendants all the interest which, at the time of the death of Eliza Y. Richards, had accrued upon the bond and mortgage executed by A. D. Tichenor, and all the dividends upon 30 the shares of the capital stock of the State Bank at Elizabeth which belonged to the said Margaret at the time of her death, which remained unpaid to the said Eliza at the time of her death; and also, one-half part of the interest which has ac-

crued upon the said bond and mortgage since the death of the said Eliza, and one-half of all the dividends declared on the said shares of bank stock since her death; and also one equal half of the principal secured by the said mortgage, and the interest to accrue thereon from the date of said decree, and one-half of the said bank stock, and of the dividends from the date of said decree until the said shares be assigned to said complainant, to the Court of Appeals in the last resort in all causes of law.

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ROBERT S. GREEN,

Solicitor of complainant and of counsel.

Dated September 10th, 1868.

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

B. WILLIAMSON,

Of counsel with appellant.

Petition of Appeal.

[Filed September 25, 1868.]

COURT OF ERRORS AND APPEALS.

20 Between

Elias Darby and John D. Pierson, executors,
&c., of Margaret H. Clark, deceased,
Appellants,

and

Seaman P. Richards, executor, &c., of Eliza
Y. Richards, deceased,
Appellee.

} *On bill, &c.*

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

30 The humble petition of Elias Darby and John D. Pierson, executors of the last will and testament of Margaret H. Clark, deceased, the appellants in the above stated cause, respectfully show—that your petitioners find themselves ag-

grieved by a final decree made in the Court of Chancery, by his Honor Abraham O. Zabriskie, Chancellor of the state of New Jersey, bearing date the eighth day of July, one thousand eight hundred and sixty-seven, wherein the said Seaman P. Richards, executor of the last will and testament of Eliza Y. Richards, deceased, was complainant, and the said Elias Darby and John D. Pierson, executors of the last will and testament of Margaret H. Clark, deceased, were defendants in this respect, to wit, that the said decree adjudges that the said complainant is entitled to recover from the said defendants, Elias Darby and John D. Pierson, executors of the last will and testament of Margaret H. Clark, deceased, all the interest which, at the time of the death of Eliza Y. Richards, had accrued upon the bond and mortgage executed by A. D. Tichenor, to secure the payment of six thousand dollars, mentioned in the will of the testatrix, Margaret H. Clark, deceased, and all the dividends upon the shares of the capital stock in the State Bank, at Elizabeth, which belonged to the said Margaret at the time of her death, which remained unpaid to the said Eliza at the time of her death; and also, one-half part of all the interest which has accrued upon said bond and mortgage since the death of the said Eliza; and one-half part of all the dividends declared upon the said shares of bank stock since her death; and also, one equal half part of the principal sum secured by the said mortgage, and of the interest to accrue thereon from the date thereof until the same be paid; and one-half of the said shares of bank stock; and of the dividends to be declared thereon from the date thereof, until the said shares be assigned to the said complainant. 20

And your petitioners humbly appeal from that part of the said decree of the Chancellor which decrees as aforesaid, upon the ground that the same is erroneous. Your petitioners therefore pray that the said decree of the said Chancellor may be, in the particulars aforesaid, reversed, set aside, and for nothing holden, and that your petitioners may have such relief in the premises as to this honorable court shall seem meet. 30

Dated Sept. 10th, 1868.

ROB'T S. GREEN, 40

Solicitor and of counsel with appellant.

Answer.

[Filed October 9, 1868.]

The answer of Seaman P. Richards, respondent, to the petition of appeal of Elias Darby and John D. Pierson, jun., executors, &c., of Margaret H. Clark, deceased, and James H. Clark, appellants.

The respondent, not admitting all or any of the matters or things to be true as in and by the said petition of appeal are mentioned and set forth, for answer thereunto says—
10 that he believed it to be true that such decree as is complained of was made by the Court of Chancery, as in the said petition of appeal is mentioned and set forth; but as to the date, substance, and extent thereof, this respondent humbly craves leave to refer thereunto when the same shall be produced.

And this respondent humbly conveys and is advised, that the decree in the matters complained of in said petition of appeal is correct and just, and according to law and the proofs in the said matter, and therefore humbly prays that
20 said decree may be affirmed, and the said appeal dismissed with costs.

THEODORE RUNYON,

Solicitor for and of counsel with the respondent.

Exhibit of Respondent.

In the name of God, amen.—I, Margaret H. Clark, of the city of Elizabeth, in the county of Union, and state of New Jersey, being of sound and disposing mind and memory, do make, pronounce, publish, and declare this
30 as and for my last will and testament, hereby revoking all former wills by me made.

First. I do order and direct all my just debts and funeral expenses to be paid.

Second. I give and bequeath to my daughter, Eliza Y. Clark, all my clothes and wearing apparel, together with the spare bed-room furniture, and also such of my silver as she may select. And I direct my executors to pay to my said daughter the interest accruing upon a bond and mortgage executed by A. D. Tichenor, to secure the payment of six thousand dollars; and also the dividends declared upon my shares of the capital stock of the State Bank, of Eliza- 10
beth; and if it shall be necessary for her support or comfort, to pay to her such of the principal of said bond and mortgage, or to sell the said stock and pay the proceeds to her.

Third. I give and bequeath to my son, James H. Clark, a bond and mortgage executed by Elihu B. Earl, for the sum of one thousand dollars; and also, four shares of the stock of the Elizabeth Library Association.

Fourth. I hereby direct my executors to carry out the provisions of the last will and testament of Eliza V. Young, for which purpose I empower my said executors to sell and 20
convey the house and lot devised to me under and by said will.

Fifth. I give, devise, and bequeath all the rest and residue of my estate, both real and personal, to my son, James H. Clark, and my daughter, Eliza Y. Clark, to be divided, share and share alike, to them, their heirs and assigns, forever.

I hereby nominate, constitute, and appoint Elias Darby and John D. Pierson, jun., executors of this my last will and testament.

In witness whereof, I have hereunto set my hand and seal, this eighth day of January, eighteen hundred and sixty-two.

MARGARET H. CLARK. [L. S.]

Signed, sealed, published, and declared by the said Margaret H. Clark as and for her last will and testament in our presence, who, in her presence, and in the presence of each other, have signed our names, at her request, as witnesses thereto.

ROB'T S GREEN, Elizabeth, N. J.
JOB S. CRANE, Elizabeth, N. J.

In the name of God, amen.—I, Eliza Y. Richards, wife of Seaman P. Richards, of the city of Elizabeth, in the county of Union, and state of New Jersey, being weak in body but of sound and disposing mind and memory, do make, publish, and declare the following to be my last will and testament, that is to say—

I order and direct that all my just debts and funeral expenses be paid as soon as convenient after my decease.

I give, devise, and bequeath all my estate, both real and
10 personal, (including my silver ware,) whatsoever or wherever the same may be situated, to my said husband, Seaman P. Richards, to him and his heirs forever.

I hereby constitute and appoint my said husband, Seaman P. Richards, and my friend, Ansel E. Parkhurst, of said city, and the survivor of them, executors of this my last will and testament, and I hereby revoke all wills or codicils heretofore by me at any time made.

In witness whereof, I have hereto set my hand and seal this eighth day of January, eighteen hundred and sixty-seven.

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ELIZA Y. RICHARDS. [L. S.]

Signed, sealed, published, and declared by the above named testatrix as and for her last will and testament, in the presence of us, who, at her request, in her presence, and in the presence of each other, have signed our names as witnesses hereto.

The word "made," on first page, first erased before execution.

ROB'T E. CHETWOOD.
J. O. MAGIE.