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Notice of Appeal.

(Filed April 17, 1926.)

IN CHANCERY OF NEW JERSEY

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Between

RALPH W. SKINNER, as Substituted
Trustee under the Last Will and
Testament of Adonijah S. Boyd,
Deceased, etc.,

Complainant,

and

JANE H. BOYD, et als.,

Defendants.

20

Deborah Price and Langworthy Franklin Carr Price (named in the bill as Rodman M. Price, Jr.), infants, by Deborah C. Price, their mother, next friend and guardian ad litem, appeal to the Court of Errors and Appeals from so much of the final decree made in this court in the above stated cause as finds and decrees in effect that these appellants are not issue of Fanny S. Price, within the meaning of the term "issue" as used in the Will of Adonijah S. Boyd.

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These appellants appeal from so much of the Eighth, Ninth, Tenth, Eleventh, Twelfth and Thirteenth numbered paragraphs of the decree in so far as the several aliquot parts assigned

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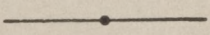
Notice of Appeal.

to Matilda C. S. T. P. Kopf and Rodman M. Price are concerned, and in so far as these appellants are not adjudged to share in so much of the estate as would have belonged to Fanny S. Price were she living.

February 24, 1926.

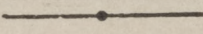
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RICHARD BOARDMAN,
Solicitor for Deborah Carr Price,
next friend and guardian ad
litem of Deborah Price and Lang-
worthy Franklin Carr Price, Infant-
Appellants.



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

RICHARD BOARDMAN,
Of Counsel.



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Petition.

(Filed May 4, 1926.)

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between

RALPH W. SKINNER, as Substituted
Trustee under the Last Will and
Testament of Adonijah S. Boyd,
Deceased,

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*Complainant-Respondent,**and*

JANE H. BOYD, et als.,)

Defendants.

On Appeal
from
Chancery.,

and

DEBORAH PRICE and LANGWORTHY
FRANKLIN CARR PRICE, Infants,
by DEBORAH C. PRICE, their next
friend and Guardian Ad Litem,

20

Defendants-Appellants.

TO THE HONORABLE COURT OF ERRORS AND
APPEALS:

The petition of Deborah Price and Langworthy
Franklin Carr Price (named in the bill as Rod-
man M. Price, Jr.), infants, by Deborah C. Price,
their mother, next friend and guardian ad litem,
appellants in the above entitled cause, respect-
fully show: 30

1. Petitioners find themselves aggrieved by a
final decree, made in the Court of Chancery, by
His Honor, Edwin Robert Walker, Chancellor
of the State of New Jersey, which decree bears
date the eighth day of February, 1926, in a
certain cause in the said Court of Chancery, 40

Petition of Appeal.

wherein Ralph W. Skinner, as Substituted Trustee under the Last Will and Testament of Adonijah S. Price, deceased, is complainant, and Jane H. Boyd, Rodman M. Price, Matilda C. S. T. P. Kopf, your petitioners and others are defendants, for the following reasons:

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(a) That the said decree finds and decrees in effect that these appellants are not issue of Fanny S. Price, within the meaning of the term "issue" as used in the Will of Adonijah S. Boyd.

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(b) That in and by the Eighth, Ninth, Tenth, Eleventh, Twelfth and Thirteenth numbered paragraphs of the decree, these appellants are not adjudged to share in so much of the Estate as would have belonged to Fanny S. Price, were she living:

(c) That an aliquot part of the share of the Estate of Adonijah S. Boyd, which would have belonged to Fanny S. Price, were she living, was not, by the said decree, assigned to these appellants equally with Matilda C. S. T. P. Kopf and Rodman M. Price:

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2. Petitioners appeal from the decree of the Chancellor in so far as these appellants are decreed not to be issue of Fanny S. Price, within the meaning of the term "issue" as used in the Will of Adonijah S. Boyd, and from so much of the Eighth, Ninth, Tenth, Eleventh, Twelfth and Thirteenth numbered paragraphs of the decree, in so far as the several aliquot parts assigned to Matilda C. S. T. P. Kopf and Rodman M. Price are concerned, and in so far as these appellants are not adjudged to share in so much of the estate as would have belonged to Fanny H. Price, were she living.

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RICHARD BOARDMAN.
Solicitor for and Of Counsel
with Appellants.

Bill of Complaint.

(Filed March, 1924.)

IN CHANCERY OF NEW JERSEY

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

The complainant, Ralph W. Skinner, of the City of Newark, Essex County, New Jersey, respectfully shows: 10

1. That complainant is the Substituted Trustee under the Last Will and Testament of Adonijah S. Boyd, late of the County of Bergen, New Jersey, deceased, and is Substituted Administrator with the Will annexed of said Adonijah S. Boyd, deceased, and is acting as hereinafter set forth as agent and attorney of the adults interested in the estate of Adonijah S. Boyd. 20

2. That the said Adonijah S. Boyd died October 5, 1890, having first made and executed his Last Will and Testament, which was duly admitted to probate by the Surrogate of the County of Bergen, New Jersey, on October 18, 1890: that in said paragraph "Fifth" of said Will the said testator gave, devised and bequeathed unto William E. Skinner all the rest and residue of his estate, real and personal, for and during the natural life of one Adelaide Barling, upon the trusts created and declared in said paragraph "Fifth" of said Will hereinafter set forth: that thereafter and on March 26, 1913, the said William E. Skinner was, by the Orphans' Court of the said County of Bergen, on his own application, discharged as such Trustee, and the complainant was, by an Order of said Court made on the same day, appointed trustee in the place 30

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Bill of Complaint.

and stead of said William E. Skinner to execute and complete the trusts created and declared in said Will, and that thereupon the said complainant duly qualified as such Substituted Trustee by entering bond to the Ordinary of this State as required by the Order of his appointment, and
 10 entered upon the duties of his trust and has ever since continued therein; that on February 11, 1923, said Aedlaide Barling departed this life:

3. That paragraph "Fifth" of said Will of Adonijah S. Boyd, deceased, was in language following:

"FIFTH: All the rest and residue of my estate real and personal whatsoever and wheresoever I do hereby give devise and bequeath unto William
 20 E. Skinner of Hackensack aforesaid for and during the natural life of said Adelaide Barling in trust nevertheless for the uses and purposes following, that is to say, to retain and keep in his own hands all the said rest and residue of my personal estate and the same to invest in such securities as shall be deemed best by him, or put out at interest, on bond secured by bond and mortgage to alter and change investments and securities as he may
 30 think best, to renew and extend loans to call loans in and receipt for the same, and the moneys thereby received to invest or put out at interest as aforesaid to grant leases of all the messuages lands and tenements whereof I shall die seized or possessed, (the lands hereinbefore devised to said Adelaide Barling for and during her natural life excepted) and to determine the same to collect the income, interest, rents issues and
 40 profits accruing from said rest and residue of my estate real and personal, and after making all necessary repairs and paying all taxes and as-

Bill of Complaint.

assessments and other necessary charges and expenses in and about the management of the said rest and residue of my estate, to pay, annually at such time and place as he may deem expedient the equal one seventh part of the remainder of said income, interest rents, issues and profits, to the said Adelaide Barling, the equal one seventh part thereof to each of my nephews James Boyd son of my deceased brother Adam Boyd, and John Quackenbush son of my deceased sister Helen, and the equal one seventh part thereof to each of my nieces, Kate Hopper wife of Albert Hopper, Fanny Price wife of Gouverneur Price, Sophie Benjamin wife of John V. Benjamin and Jane Boyd, daughter of my deceased brother Adam Boyd, and if any of my said nephews or nieces shall die during the lifetime of said Adelaide Barling, leaving issue, to pay to such issue the share of said remainder which my said nephew or nieces legally represented by such issue would have been entitled to receive of living; and if any of my said nephews or nieces shall die during the lifetime of said Adelaide Barling without issue to pay the share of said remainder which my said nephew or niece, who shall so die, would have been entitled to receive if living, to the survivors or survivor of my aforesaid nephews and nieces, and to the issue of any of them who shall have died leaving issue, in equal shares share and share alike, except that, issue paid under this provision shall be paid only that share which my said nephew, or niece who shall be legally represented by such issue would have been entitled to receive if living."

4. That the said James Boyd named in said paragraph "Fifth" of said Will died intestate

Bill of Complaint.

April 3, 1907, and left him surviving his wife, Catharine Boyd, and two sons, David W. Boyd and William A. Boyd, and no other child and no descendant of any deceased child, and no letters of administration have ever been taken out on his estate; that said David W. Boyd, at the time of
10 the death of his father, said James Boyd, was married to his present wife, Eurania R. Boyd, and had two children, namely, Viola M. Boyd, now the wife of Leslie White, and Ruth K. Boyd; that said David W. Boyd has had no other descendant except Claire R. White, daughter of said Viola M. White, who was born on September 14, 1923; that said William A. Boyd, at the time of the death of his father, said James
20 Boyd, was married to his present wife, Mary E. Boyd; that at the time of the death of his father, said James Boyd, said William A. Boyd had never had any children, but three children have since been born to him, namely, Mabel G. Boyd, James A. Boyd and Dorothy E. Boyd, the youngest of whom, said Dorothy E. Boyd, was born in the month of April 1916; that Kate S. Hopper named in said paragraph "Fifth" of said
30 Will departed this life on February 26, 1917, leaving her surviving her husband, Albert G. Hopper, who has since died, but leaving no descendant her surviving; that Fanny S. Price named in said paragraph "Fifth" of said Will departed this life on November 25, 1920, and left her surviving her husband, Gouverneur Price, and her daughter, Matilda C. S. T. P. Kopf, wife of Frederick C. Kopf, and her son, Rodman M. Price, and no other child and no descendant
40 of any deceased child; that said Fanny S. Price left a last Will and Testament, which shortly

after her death was duly admitted to probate by
 the Surrogate of Bergen County, New Jersey,
 and is of record in the office of said Surrogate,
 by which she devised and bequeathed the residue
 of her estate, real personal and mixed, and ex-
 pressly set forth that she included therein her
 interest in the Estate of said Adonijah S. Boyd,
 to her daughter, Matilda C. S. T. P. Kopf, and **10**
 her son, Rodman M. Price, share and share alike;
 that said Matilda C. S. T. P. Kopf had but one
 child by her marriage with said Frederisk C.
 Kopf, which child, a son, predeceased the said
 Fanny S. Price, and the said Matilda C. S. T. P.
 Kopf had no descendant living at the time of
 the death of her said mother, nor has any child
 since been born to her; that said Rodman M.
 Price, at the time of the death of his said mother, **20**
 Fanny S. Price, was married to Deborah C. Price,
 and he then had two children, his daughter,
 Deborah Price, and his son, Rodman M. Price.
 Junior, who is sometimes known as Langworthy
 Franklin Carr Price, and no other child has ever
 been born to him, nor has he ever had any other
 descendant; that said Rodman M. Price, son of
 Fanny S. Price, claims to have been divorced
 from said Deborah C. Price by decree of the **30**
 Corporation Court of the City of Alexandria,
 Virginia, made on July 8, 1921, and he has since
 married May E. Price, whose name was formerly
 May E. Mahoney; that complainant is informed
 that said Deborah C. Price denies the validity
 of said decree of divorce, and claims she is still
 the wife of said Rodman M. Price; that said
 Rodman M. Price, on September 9, 1922, made
 and delivered to Robert S. Ross a deed of trust
 for the benefit of certain of his creditors, by **40**

Bill of Complaint.

which he conveyed to said trustee as security for the payment of their claims all his interest in the property, real and personal, to which he then was or might thereafter become entitled by virtue of the trust created by the Will of Adonijah S. Boyd, deceased:

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5. That the complainant has made distributions, under the provisions of said paragraph "Fifth", of the net income coming into his hands as Trustee, in the following manner:

From the time of his appointment and qualification as Trustee until the death of Kate S. Hopper, complainant distributed in the following manner, to wit:

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To Fanny S. Price, Jane H. Boyd, Sophia Benjamin, Kate S. Hopper, John F. Quackenbush, and Adelaide Barling, each a seventh part of such net income, and to William A. Boyd and David W. Boyd, sons of the aforesaid James Boyd, deceased, each a fourteenth part thereof;

From the time of the death of the said Kate S. Hopper to the time of the death of the said Fanny S. Price, complainant distributed the said net income in the following manner, to wit:

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To the said Adelaide Barling a seventh part thereof, and to the said Fanny S. Price, Jane H. Boyd, Sophia Benjamin, and John F. Quackenbush, not only a seventh part thereof to each, but also to each a fifth part of the share thereof which but for the death of Kate S. Hopper would have been payable to her; and to the said William A. Boyd and David W. Boyd, not only to each a fourteenth part thereof, but also to each a tenth part of the share thereof which but for the death of said Kate S. Hopper would have been payable to her:

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From the time of the death of the said Fanny S. Price the said net income, so far as distributed—upwards of \$2,000.00 being undistributed—has been distributed in the same manner as after the death of the said Kate S. Hopper, except that the share of the said Fanny S. Price has been distributed as follows:

10

The original seventh part thereof payable to said Fanny S. Price under said paragraph "Fifth" of said Will has been distributed to her daughter, Matilda C. S. T. P. Kopf, and her son, Rodman M. Price, share and share alike, and a fifth part of the seventh part of the net income that would have been payable to said Kate S. Hopper but for her death, has been paid to the said Matilda C. S. T. P. Kopf and Rodman M. Price, as executors of the Will of Fanny S. Price, deceased:

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6. That the distribution by complainant's predecessor in the trust were made (like the distribution made by the complainant) upon the construction of paragraph "Fifth" of said Will that the gift of income in the case of the death in the lifetime of said Adelaide Barling of any of the nephews or nieces of said Adonijah S. Boyd named in said paragraph, leaving issue was by the terms of said paragraph "Fifth" limited to such issue as legally represented said nephews and nieces so dying, respectively, to wit:—such issue as were next of kin of the nephew or niece so dying—and that in the case of nephews and nieces named in said paragraph, dying in the lifetime of said Adelaide Barling, without leaving issue, the share of the one so dying would go to the survivors of said nephews and nieces and to

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Bill of Complaint.

the issue legally representing such of them as had died leaving issue, to wit:—such issue as were next of kin of the nephew or niece so dying; that the aforesaid distributions have been made without any question or protest as to their correctness but now that said Adelaide Barling is dead
 10 and the trust is to be closed and the estate, real and personal, of Adonijah S. Boyd fully distributed, the claim has been made by various parties other than those to whom distribution has been made as aforesaid, that they are entitled to share equally with such issue on the theory that the gift, whether of personalty or realty, is to issue generally of the several deceased nephews and nieces respectively and *per capita*.

20 7. That the complainant is advised that for his protection he is entitled to have a construction of paragraph "Fifth" of the Will, as to the method of distribution therein provided for.

8. That the complainant further shows that paragraph "Fourth" of said Will made the following provision:

30 "FOURTH: I do hereby give devise and bequeath unto Adelaide Barling, the half sister of my deceased wife Fanny, all that lot tract or parcel of land and premises situate lying and being in the Village of Hackensack in the township, county and state aforesaid, having a frontage on Essex Street in said village of about one hundred and eighty feet on which said lot are built my dwelling house in which I now reside and other buildings and all the furniture household goods and other personal property in said
 40 dwelling house and other buildings contained save the two portraits before mentioned, and the

Bill of Complaint.

monies, promissory notes, bonds and mortgages, certificates of shares of stock, and other securities and books of account which may be therein at the time of my decease for and during the term of her natural life she keeping the same in good repair and condition and paying the taxes and assessments and other charges thereon imposed by law." 10

9. That by paragraph "Sixth" of said Will hereinafter set forth, the testator provided for the distribution of his estate, real and personal, so as aforesaid held in trust under paragraph "Fifth" of said Will, and also of the property bequeathed by paragraph "Fourth" of said Will to Adelaide Barling for her lifetime: 20

10. That by said paragraph "Sixth" the executors, William E. Skinner and David St. John, named in said Will, were ordered, directed and empowered, in case it should be necessary in order to make a satisfactory and fair decision of testator's estate among his devisees and legatees after the decease of said Adelaide Barling, to sell all of the testator's real estate at public or private sale for the highest price that could be obtained by them or the survivor of them for the same, and to make, execute and deliver to the purchasers thereof good and sufficient deeds of conveyance in law for the same, and to make, execute and deliver to the purchasers thereof good and sufficient deeds of conveyance in law for the same, and the proceeds of said sales, and the testator's personal estate, or what should be realized therefrom, to distribute and pay over as provided in said paragraph "Sixth". 30 40

11. That paragraph "Sixth" of said Will is in language following:

Bill of Complaint.

“SIXTH: Upon the decease of the said Adelaide Barling, I do hereby give, devise and bequeath all the real and personal estate hereinbefore given devised and bequeathed to her for and during her natural life. And also all the rest and residue of my real and personal estate hereinbefore given, devised and bequeathed to said William E. Skinner for and during the life of the said Adelaide Barling in trust as aforesaid to my two nephews and four nieces aforesaid, in equal shares, share and share alike; and if any of my said nephews or nieces shall have died during the lifetime of the said Adelaide Barling leaving issue who shall be living at the time of the decease of said Adelaide Barling, I do hereby give, devise and bequeath to such issue the share of my said nephew or niece legally represented by such issue. And if any of my said nephews or nieces shall have died during the lifetime of said Adelaide Barling without leaving issue or leaving issue who shall all have died prior to the decease of said Adelaide Barling, I do hereby give, devise and bequeath the share of my said nephew or niece who shall have so died, to the survivors or survivor of my said nephews and nieces, and to the issue of any of them who shall have died leaving issue who shall be living at the time of the decease of said Adelaide Barling, in equal shares, share and share alike. except that issue taking under this provision, shall take only the share of my said nephew or niece who is legally represented by such issue. And in case it shall be necessary in order that a satisfactory and fair division of my estate be made among my devisees and legatees aforesaid after

Bill of Complaint.

the decease of said Adelaide Barling, then I do hereby order and direct and empower the hereinafter named executors of this my Last Will and Testament or the survivor of them, to sell all my real estate at public or private sale for the highest price that can be obtained by them or the survivor of them for the same, and to make execute and deliver to the purchasers thereof good and sufficient deeds of conveyance in the law for the same, and the proceeds of said sales, and my personal estate or what shall be realized therefrom to distribute and pay over to my said devisees and legatees in the proportion hereinbefore stated. The foregoing provisions respecting the disposition of my real and personal property have been made by me understanding that my niece Lizzie S. Quackenbush, daughter of my deceased sister Elizabeth has been well provided for by others." 10 20

12. That William E. Skinner, one of the executors named in said Will, departed this life on March 9, 1915, and David St. John, the other executor named therein, departed this life on September 14, 1917, both dying in the lifetime of the said Adelaide Barling; that said Rodman M. Price, Matilda C. S. T. P. Kopf, Jane H. Boyd, Sophia Benjamin, John F. Quackenbush, William A. Boyd and David W. Boyd, being adult remaindermen under said Will, entitled to share in the real and personal estate of said testator, or the proceeds of the sale thereof, and the said Robert S. Ross, as Trustee under the aforesaid deed of trust, made by Rodman M. Price, filed in the Office of the Surrogate of the County of Bergen aforesaid on or about April 4, 1923, instruments in writing setting forth that 30 40

Bill of Complaint.

10 they were of opinion that it was necessary, in order that a satisfactory and fair division of the estate of said testator be made among his devisees and legatees, that the real and personal estate of said testator be sold under the power for that purpose conferred by his Will on the executors thereof, and that by reason of the decease of both of said executors in the lifetime of Adelaide Barling, it was necessary that a Substituted Administrator with the Will annexed of said testator be appointed to make such sale and distribute the proceeds thereof and otherwise complete the administration and distribution of said estate, and thereby they renounced their right to such administration and requested the appointment of complainant; thereupon on April 10, 20 1923, letters of substitutionary administration with the Will annexed of said testator were issued by the Surrogate of the said County of Bergen to complainant, who thereupon entered into bond to the Ordinary of this State as required by the Order of his appointment and entered upon his duties as such Administrator, and has ever since continued therein.

30 13. That complainant as Administrator aforesaid has made four sales of lands of the testator, all of which have been approved and confirmed by the Orphans' Court of the several counties in which said lands are situated, and he has delivered deeds for three of said sales and received the purchase money thereof, to wit, the sum of \$37,000.00; that from the remaining sale there will be realized the sum of \$5,000.00, which he 40 expects to have in hand shortly; that there remains of the tracts of land of which the testator died seized upwards of fourteen tracts; that an

Bill of Complaint.

approximate value of these tracts would be upwards of \$100,000.00:

14. That the parties interested in the distribution of said estate in complainant's hands, and to come into his hands, are urging a distribution of the same; that the claim is made on behalf of certain of them that the estate in complainant's hands as Substituted Administrator is to be distributed in the manner hereinbefore set forth in relation to the distribution of income under paragraph "Fifth" of said Will, that complainant is also advised there may be some question as to whether the said Fanny S. Price, having survived the said Kate S. Hopper who died in the lifetime of Adelaide Barling without leaving issue, was not at the time of her death vested with an absolute interest in the fifth part of the share of the estate, real and personal, of said Adonijah S. Boyd to which said Kate S. Hopper would have been entitled had she lived to survive said Adelaide Barling, and as to whether the said Gouverneur Price is not entitled to an estate by the courtesy in so much of said fifth part as is real estate, and as to whether the said fifth part, subject to such right of courtesy, passed under the Will of said Fanny S. Price to those taking thereunder, or passed under the Will of said Adonijah S. Boyd to such of her issue as take thereunder; that complainant is desirous of making distributions from time to time of the funds in his hands, and that shall come into his hands, but is advised that by reason of the conflicting claims as to the proper method of distribution thereof and the questions as to who may be entitled thereto, he cannot safely do so without a construction of paragraph "Fifth" and "Sixth"

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Bill of Complaint.

of said Will, and that he is entitled to such construction for his protection.

15. That on a distribution of the funds that are now in, and will hereafter come into the hands of the complainant, the parties now living who have received the income distributed under paragraph "Fifth" of said Will in the proportions
 10 aforesaid, will be entitled to further distributions which will more than equal any erroneous distributions of income made to any of them by reason of the construction placed by complainant on paragraph "Fifth", if the said construction be found erroneous; that complainant is advised he is entitled, in the event that it should be ad-
 20 judged that he has made erroneous distributions of income, to have the same adjusted and made good out of the funds that are now in, and will hereafter come into his hands payable to the parties who have received such erroneous distributions.

16. That since the death of said Adelaide Barling the complainant has collected and received the rents, issues and profits on the estate, real and personal, of the testator referred to in paragraph "Sixth" of said Will, and adults entitled
 30 to share in said estate have executed and delivered to him a power of attorney authorizing him to exercise the general control, supervision and management of the real and personal property belonging to the estate of said testator, and to exercise, pending the settlement and distribution of said estate, the powers exercised by him over said property as Substituted Trustee under the Will of said testator.

40 17. That upon his appointment as such Substituted Trustee as aforesaid there came into the hands of complainant deeds for two tracts of

Bill of Complaint.

land (the same not being any of the lands hereinbefore referred to), one thereof made by Mary R. Christie and husband to William E. Skinner as Trustee under the Last Will and Testament of Adonijah S. Boyd, deceased, dated September 5, 1895, and recorded in the Office of the Register of the County of Hudson in Book 631 of Deeds for said County on pages 43 &c., for a tract of land situate in the Town of West Hoboken in said Hudson County, particularly described therein; that said deed was made by the said Mary R. Christie and husband to the grantee therein in satisfaction of a certain final decree of foreclosure entered in the Court of Chancery of New Jersey on August 12, 1895, for \$6,153.58, besides costs, (whereof \$5,500.00 was the principal amount of the mortgage next hereinafter mentioned), in a suit of said William R. Skinner as such Trustee against said Mary R. Christie and others to foreclose a mortgage made by said Mary R. Christie and her husband to the said Adonijah S. Boyd in his lifetime, dated May 1, 1890, and recorded in said Register's Office in Book 242 of Mortgages for said County of Hudson on pages 119 &c.; that said premises have been productive of some income since the appointment of complainant as Substituted Trustee, which has been distributed by complainant with the other income of said trust; the other of said deeds made by Eliza L. Brinkerhoff and her husband to the said William E. Skinner as Trustee under the Last Will and Testament of Adonijah S. Boyd, deceased, dated February 3, 1898, and recorded in the Office of the Clerk of the County of Bergen, New Jersey, in Book 462 of Deeds for said County on pages 221 &c., for a tract of land situate in the Borough of Woodridge, form-

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Bill of Complaint.

erly in the Township of Lodi, in the said County of Bergen, particularly described therein; that said deed was made by the said Eliza L. Brinkerhoff and husband to the grantee therein in satisfaction of a certain final decree of foreclosure entered in the lifetime of said Adonijah S. Boyd

10 in the Court of Chancery of New Jersey on about January 2, 1890, for \$856.00, besides costs, (whereof \$800.00 was the principal amount remaining unpaid on the mortgage next hereinafter mentioned), in a suit of said Adonijah S. Boyd against said Eliza L. Brinkerhoff and husband to foreclose a mortgage made by said Eliza L. Brinkerhoff and husband to the said Adonijah S. Boyd dated November 2, 1888, and recorded

20 in the said Clerk's Office of the County of Bergen on pages 341 &c.; that said premises have been productive of some income since the appointment of complainant as Substituted Trustee, which has been distributed by complainant with the other income of said trust: that complainant expects to succeed in selling both of said tracts last referred to shortly, and that upon the said sale there will arise questions as to how much of said proceeds is to be credited to principal and

30 how much to income of the trust estate; that the complainant is advised that he is entitled to the direction and aid of this court in determining the questions that will arise in relation to the proceeds of the sale of the said two tracts of land:

18. That the aforesaid Kate S. Hopper, who died on February 26, 1917, died testate, and David W. Boyd aforesaid is the surviving executor of her Will; that Fanny S. Price, who died November

40 25, 1920, died testate, and the aforesaid Matilda C. S. T. P. Kopf and Rodman M. Price are the

Bill of Complaint.

executors of her Will; that Adelaide Barling, who died February 11, 1923, died testate, and The Hackensack Trust Company is the executor of her Will:

19. That there is no accounting pending by complainant as Substituted Trustee under the Will of Adonijah S. Boyd or as Substituted Administrator with the said Will annexed, or as agent and attorney, under the power of attorney hereinbefore mentioned, for the collection of the rents, issues and profits of said estate since the death of Adelaide Barling: 10

20. That of the parties hereinbefore mentioned and hereinafter made defendants, the said Ruth K. Boyd and Mabel G. Boyd are infants under the age of twenty-one years but over the age of fourteen years, and the said James A. Boyd, Dorothy E. Boyd, Claire R. White, Deborah Price and Rodman M. Price, Junior, sometimes known as Langworthy Franklin Carr Price, are infants under the age of fourteen years; the said John F. Quackenbush was, by the City Court of Mount Vernon, New York, by order dated the fifth day of December, 1909, adjudged insane and committed to the Society of the New York Hospital, Bloomingdale Hospital, White Plains, New York, an institution for the custody and treatment of the insane, at which place and under which commitment the said John F. Quackenbush is now confined: 20 30

21. That for the reasons aforesaid the complainant is without adequate relief in the courts of law, and therefore prays:

(a) That the said Jane H. Boyd, Sophia Benjamin, John F. Quackenbush, Gouverneur Price, Matilda C. S. T. P. Kopf, Frederick C. Kopf, her 40

Bill of Complaint.

husband, Rodman M. Price, May E. Price, Deborah C. Price, Deborah Price, Rodman M. Price, Junior, sometimes known as Langworthy Franklin Carr Price, Robert S. Ross as trustee under deed of trust dated September 9, 1922, made by Rodman M. Price, the said Matilda C. S. T. P. 10 Kopf and Rodman M. Price, as executors of the Last Will and Testament of Fanny S. Price deceased, William A. Boyd, Mary E. Boyd, his wife, Mabel G. Boyd, James A. Boyd, Dorothy E. Boyd, David W. Boyd, Eurania R. Boyd, his wife, Viola M. White, Leslie White, her husband, Claire R. White, Ruth K. Boyd, Catharine Boyd, said David W. Boyd as surviving executor of the Last Will and Testament of Kate S. Hopper, 20 deceased, and The Hackensack Trust Company as executor of the Last Will and Testament of Adelaide Barling, deceased, may answer this Bill of Complaint and each statement therein made, without oath:

(b) That this court will construe paragraphs "Fifth" and "Sixth" of the Will of Adonijah S. Boyd, and direct and determine who are entitled to distribution of the principal and income referred to therein, and the proportional interests 30 in said principal and income, and whether the real estate is to be taken as converted, and if not who are entitled to the same and in what proportions:

(c) That this court may direct and determine what are the rights as to principal and income in the proceeds of the sales of the two tracts of land hereinabove referred to in paragraph 17., and who are entitled thereto and in what proportions: 40

(d) That complainant may account in this court as Substituted Trustee aforesaid, as Substituted Administrator with the Will annexed,

Bill of Complaint.

and as agent and attorney under the power of attorney hereinbefore mentioned for the collection of the rents, issues and profits received by him since the death of the said Adelaide Barling, and distribute the funds that are in, or will come into, his hands upon said accountings in this court pursuant to the directions of this court: 10

(e) That if it is found that there have been erroneous distributions of income under paragraph "Fifth" of the Will that the parties who received such may be charged with the same, and the same adjusted and deducted from the sums found due them, and their shares charged with such erroneous distributions:

(f) That the complainant have leave to account from time to time in this court until the final distribution of moneys in his hands, or that will come into his hands, in all of the aforesaid capacities: 20

(g) That there be reserved to the complainant leave to apply in this court for any further or additional instructions or relief that he may require in the course of the administration of the property in his hands, or that will come into his hands, in all the aforesaid capacities:

(h) That complainant may have such other or further relief in the premises as shall be agreeable to equity and as the nature of the case shall require: 30

(i) That a writ of subpoena may issue commanding said defendants to answer this Bill of Complaint, and to abide by such decree as this court may make in the premises.

EDWARD M. & RUNYON COLIE, 40
Solicitors for and of counsel
with complainant.

Amendment of Bill.

Filed March, 1924.)

IN CHANCERY OF NEW JERSEY

Between

10 RALPH W. SKINNER, as Substituted
Trustee under the Last Will and
Testament of Adonijah S. Boyd,
Deceased, etc.,

Complainant,

and

JANE H. BOYD, et als.,

Defendants.

On bill &c.

20 Complainant above named herewith amends
the Bill of Complaint herein as follows:—

1. By adding at the end of paragraph 18 of
the Bill of Complaint herein, the following:—
“* * * *the aforesaid Catharine Boyd died in-
testate November 30, 1923, no administrator of
her estate having been appointed previous to
the filing of the Bill of Complaint herein.”

EDWARD M. & RUNYON COLIE,

Solicitors for and of

30 counsel with complainant.

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Answer and Counter Claim.

(Filed July, 1924.)

IN CHANCERY OF NEW JERSEY

Between

RALPH W. SKINNER, as Substituted
Trustee under the Last Will and
Testament of Adonijah S. Boyd,
Deceased, etc.,

*Complainant,**and*

JANE H. BOYD, et als.,

Defendants.

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On bill etc.,
Answer
and
Counter
Claim

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The answer of Deborah Price and Langworthy Franklin Carr Price (mentioned in the bill as Rodman M. Price, Jr), minors under the age of fourteen years, by Deborah C. Price, Guardian ad litem, appointed herein for the purpose of defending this action, says:

1. That, as to the matters and things set up in the bill, the bill as amended and the additions to bill by way of supplement, not herein expressly denied, these infant defendants being unable to admit the same, make formal denial thereof and leave the complainant to make such proof in the premises, pursuant to the rules of the court, as complainant may be advised is necessary:

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Answer and Counter-claim.

2. These defendants are grand-children and issue of Fanny Price, niece of Adonijah S. Boyd, the construction of whose Will is sought in this case;

10 3. That Deborah C. Price, the mother of these infant defendants, now is the wife of Rodman M. Price;

4. These defendants deny that Rodman M. Price either claims to have been divorced, or has in fact been divorced from the said Deborah C. Price by a decree of the Corporation Court of the City of Alexandria, Virginia, made on July 8, 1921;

20 5. They deny that Rodman M. Price has married May E. Price, whose name was formerly May E. Mahoney;

30 6. They deny that Rodman M. Price, on September 9, 1922, made and delivered to Robert S. Ross, a deed of trust for the benefit of certain of his creditors, by which he conveyed to the said trustee, as security for the payment of their claims, all his interest in the property, real and personal, to which he then was or might thereafter become entitled, by virtue of the trust created by the Will of Adonijah S. Boyd, deceased, but these defendants, further answering say that any paper writing or other instrument, which the said Rodman M. Price may have executed to the said Robert S. Ross, was fraudulent, null and void, and was a fraud upon the creditors of said Rodman M. Price, and especially upon these defendants as hereinafter more specifically set forth;

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Answer and Counter-claim.

7. That the construction under which moneys, otherwise payable to Fanny Price, in case she were living, paid since her death to Matilda C. S. T. P. Kopf and Rodman M. Price under the construction mentioned in the first part of paragraph Six of the Bill of Complaint were paid under an erroneous, false and strained construction, and that the proper construction of the said Will makes these defendants issue of the said Fanny Price and entitled presently, each to receive one-fourth of all sums otherwise payable to Fanny S. Price, and that, on further distribution, the moneys heretofore withheld from them, should be paid to them under and pursuant to the true construction of the said Will;

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8. These defendants believe that complainant is entitled to the protection contended for by him under the Fifteenth paragraph of the bill of complaint;

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9. On August 21, 1919, Deborah C. Price, the mother of these defendants, and the then and present legal custodian of these defendants, filed a petition in the Probate Court in and for the County of Suffolk, Massachusetts, in which County the said Deborah C. Price then resided, wherein she alleged the birth of these defendants, and prayed, among other things, that the Court should make such order as it deemed expedient concerning her support and the care and custody and maintenance of said minor children. The said Probate Court in and for the County of Suffolk was a Court of record, having jurisdiction of the matters and things set up in the said petition;

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Answer and Counter-claim.

10. On August 22, 1919, personal service of process of the citation issued on the said petition mentioned in the preceding paragraph, was made upon Rodman M. Price, the defendant therein named, at Boston, in Suffolk County aforesaid, by John P. Silsby, the Deputy Sheriff, duly deputized by the Sheriff of Suffolk County, to make service thereof;

11. On October 2, 1919, the Probate Court of Suffolk County decreed that petitioner (said Deborah C. Price) have the care and custody of the minor children, and that Rodman M. Price pay to the said petitioner, for the support of herself and minor children, the sum of Twenty-five Dollars forthwith and the further sum of Twenty-five Dollars on each Monday thereafter until the further order of the Court.

12. Between October, 1919, and March, 1920, both inclusive, said Rodman M. Price paid to said Deborah C. Price, pursuant to the terms of the said decree last above mentioned, in weekly payments, sums aggregating Four Hundred and Fifty Dollars (\$450) and no payments in addition thereto have been made.

13. On March 31, 1924, the Probate Court of Suffolk County, after a hearing, made an order reciting that the sum of Five Thousand, One Hundred Dollars (\$5,100.) is due from the said Rodman M. Price, and remains unpaid under said decree of said court dated October 2, 1919, and decreed that an execution issue in favor of Deborah C. Price, petitioner, for the sum of Five Thousand, One Hundred Dollars (\$5,100.) against the goods, chattels and lands of the said Rodman

Answer and Counter-claim.

M. Price, and thereafter, execution did issue, but at this time, remains unsatisfied;

14. That at all times and especially from and after the second day of October, 1919, the said Rodman M. Price was under legal obligation to support these defendants, and that any deed of trust or assignment that Rodman M. Price, on September 9, 1922, or at any other time may have made, or attempted to have made to Robert S. Ross, was fraudulent, null and void against these defendants; 10

15. The deed of trust by Rodman M. Price, made or attempted to have been made under date of September 9, 1922, to Robert S. Ross was without consideration, made without the knowledge or assent of the creditors or persons therein enumerated, has remained secret from the creditors named in it and from other creditors not included in it, and was made simply for the purpose of defeating these defendants and Deborah C. Price, their mother and natural guardian, from their and her just dues, and is fraudulent, null and void, of all of which the said Robert S. Ross had due notice; 20

16. These defendants, in so far as they may do so, join in the several prayers of the bill of complaint. 30

By way of counter claim against Rodman M. Price and Robert S. Ross, two of the defendants:

(1) The allegations of Paragraph Nine to Fifteen inclusive of the foregoing answer, are hereby set up by way of counter claim against Rodman M. Price and Robert S. Ross to the same effect as if they were herein expressly repeated. 40

Answer and Counter-claim.

These defendants therefore pray that the deed of trust from Rodman M. Price to Robert S. Ross, mentioned in the bill of complaint as having been made, on September 9, 1922, may be decreed to be fraudulent, null and void.

- 10 (2) That these defendants may have such other and equitable relief against the said Rodman M. Price and Robert S. Ross as may be consonant with equity and good conscience.

DEBORAH C. PRICE,
Guardian ad litem
of Deborah Price and
Langworthy Franklin Carr Price.
By Richard Boardman,
her Solicitor and Of Counsel.

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Answer of Deborah C. Price and Counter-Claim.

IN CHANCERY OF NEW JERSEY

Between

RALPH W. SKINNER, as Substituted
Trustee under the Last Will and
Deceased, etc.,

Complainant,

and

JANE H. BOYD, et als.,

Defendants.

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On bill &s.

The answer of Deborah C. Price to the bill of complaint says: 20

1. Paragraphs One, Two and Three are admitted;

2. That the allegations of Paragraph Four are admitted down to and including the statement that Rodman M. Price, at the time of the death of his mother, was married to this defendant. This defendant denies, however, that Rodman M. Price obtained a valid decree of the Corporation Court of the City of Alexandria, on July 8th, 1921, or at any other time, or that he has since legally married May E. Mahoney, and denies that Rodman M. Price, on September 9, 1922, legally made or delivered to Robert S. Ross, a deed of trust, but this defendant says that the decree of the Corporation Court of the City of

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Answer of Deborah C. Price and Counter-claim.

- Alexandria, Virginia, if any, was fraudulent, null and void, and obtained by a fraud, both upon the said court, upon the laws of Virginia and upon the laws of this State, and that the said decree is without validity, and that any marriage or reputed marriage of Rodman M. Price to May E.
- 10 Mahoney was fraudulent, null and void, and that any assignment or deed of trust, made or attempted to be made by Rodman M. Price to Robert S. Ross, such is set up in the Fourth Paragraph, was fraudulent, null and void, and made without consideration, and that the said deed was made for the purpose of defrauding this defendant and the other creditors of Rodman M. Price and the children of Rodman M. Price; that the said,
- 20 deed was not only without consideration, but was made and delivered and has been maintained in secrecy, and that the said Robert S. Ross received the said deed or assignment knowing and chargeable with notice of the fraud, and participated in the fraud of the said Rodman M. Price, and that the said deed or assignment is wholly fraudulent, null and void against this defendant and against the other persons defrauded thereby:
- 30 3. In respect to the allegations of Paragraph Five, this defendant is without sufficient information to either admit or deny the same, and leaves the complainant to make such proof thereof as he may be advised;
4. That the construction of the Will set up in Paragraph Six is not the true construction of the said Will;
- 40 5. Paragraph Seven is admitted and Paragraphs Eight, Nine, Ten and Eleven are admitted in so

Answer of Deborah C. Price and Counter-claim.

far as they are consistent with the statements and tenor of the Will and the true construction thereof as hereinafter mentioned;

6. Paragraphs Twelve and Thirteen, this defendant has not sufficient information either to admit or deny the same, and therefore leaves the complainant to make such proof as he may be advised is necessary and proper; 10

7. As to Paragraph Fourteen, this defendant says that Deborah Price and Langworthy Franklin Carr Price, the two children of this defendant and of Rodman M. Price, are issue of Fanny S. Price;

8. This defendant admits that the complainant is entitled to the protection mentioned in Paragraph Fifteen of the complaint; 20

9. As regards allegations of Paragraphs Sixteen, Seventeen, Eighteen and Nineteen, this defendant is without sufficient information to admit or deny the same and therefore leaves complainant to make such proof as he may be advised is necessary and proper;

10. Paragraphs Twenty and Twenty-one are admitted; 30

11. In respect to the additions to the bill by way of supplement, this defendant is not concerned and therefore makes no answer.

By way of counter-claim exhibited by this defendant against Rodman M. Price and Robert S. Ross, two of the defendants, this defendant says:

1. On the 20th day of August, 1919, Deborah C. Price, then residing in Boston, in the Court 40

Answer of Deborah C. Price and Counter-claim.

of Suffolk, presented her petition to the Probate Court in and for the County of Suffolk, State of Massachusetts—a court of record having full jurisdiction under the statutes of the State of Massachusetts, of suits brought by wives against their husbands for separate support—alleging
 10 that her husband failed, without just cause, to furnish suitable support for her and had deserted her, and that she was living apart from her said husband, for justifiable cause, and specifying that Rodman M. Price had failed to furnish suitable support for her children and herself, and that
 20 on the 15th day of April, 1919, her said husband deserted her, and that two children had been born to the said marriage, and prayed the said court to make such order as it deemed expedient concerning her support and the maintenance of her said minor children;

2. Thereafter, due personal notice of said petition and the application thereunder was given to the defendant by service in hand by a Deputy Sheriff of Suffolk County, as appears by a copy of the return of the Deputy Sheriff:

30 3. On October 2, 1919, a decree of the said Probate Court was duly made, which directed the defendant, Rodman M. Price, to pay to said petitioner, for the support of herself and said minor children, the sum of Twenty-five Dollars forthwith, and the further sum of Twenty-five Dollars on each and every Monday thereafter until the further order of said court;

40 4. Between October, 1919, and March, 1920, both inclusive said defendant paid to Deborah C. Price pursuant to the terms of said decree.

Answer of Deborah C. Price and Counter-claim.

in weekly payments, sums aggregating Four Hundred and Fifty Dollars, and no payment in addition to that has been made; ,

5. On or about December 31, 1920, the defendant, Rodman M. Price, applied to the said Probate Court of Suffolk County, for a revocation of the said decree, and that he might be allowed to appear and defend on the merits, and on the filing of the said petition, the said Probate Court made an order that the petitioner, said Rodman M. Price, pay over, for the use of his wife, Deborah C. Price, the sum of Five Hundred Dollars, to enable her to appear and defend said petition: 10

6. Said Rodman M. Price has failed to pay over to his wife the said sum of Five Hundred Dollars, to enable her to appear and defend the said petition, and the said order remains unrevoked and in full force and effect; 20

7. On March 31, 1924, the Probate Court of Suffolk County, after a hearing, made an order reciting that the sum of Five Thousand, One Hundred Dollars (\$5,100.) is due from the said Rodman M. Price, and remains unpaid under said decree of said court dated October 2, 1919. and decreed that an execution issue in favor of Deborah C. Price, petitioner, for the sum of Five Thousand, One Hundred Dollars (\$5,100) against the goods, chattels and lands of the said Rodman M. Price, and thereafter, execution did issue, but at this time, remains unsatisfied: 30

8. That at all times and especially from and after the second day of October, 1919, the said Rodman M. Price was under legal obligation to support defendant and her infant children, and 40

Answer of Deborah C. Price and Counter-claim.

that any deed of trust or assignment that Rodman M. Price, on September 9, 1922, or at any other time may have made, or attempted to have made to Robert S. Ross, was fraudulent, null and void against this defendant, Deborah C. Price:

10 9. The deed of trust by Rodman M. Price, made or attempted to have made under date of September 9, 1922, to Robert S. Ross was without consideration, made without the knowledge or assent of the creditors or persons therein enumerated, has remained secret from the creditors named in it and from other creditors not included in it, and was made for the purpose of defeating the defendant, Deborah C. Price, and her children from her and their just dues, and
20 is fraudulent, null and void, of all of which the said Robert S. Ross had due notice;

10. Section 5103 of the Code of Virginia, in stating the causes for divorce, gives the wilful desertion or abandonment by either party of the other for a period of three years as a cause for which a divorce from the bond of matrimony may be decreed. And the courts of Virginia, construing the
30 said section, have held that the desertion, to justify a decree for an absolute divorce, must be a wilful desertion without justification or excuse, and the court to which the evidence is submitted, can only determine whether or not such desertion is wilful by having all the facts and circumstances fully and frankly presented to it;

11. Section 5105 of the Code of Virginia aforesaid provides that no suit for divorce shall be
40 maintainable unless one of the parties has been domiciled in the State of Virginia for at least one

Answer of Deborah C. Price and Counter-claim.

year preceding the commencement of the suit:

12. Section 5108 provides that where a suit for divorce is brought against a person who is not a resident of Virginia, the plaintiff must file an affidavit that the defendant is not a resident, whereupon an order of publication shall be entered against the defendant by the Clerk of the Court; 10

13. Section 6069 of the said Code provides that every affidavit for an order of publication shall state the last known post office address of the defendant against whom publication is asked, or if such address is unknown, the affidavit shall state the fact and the Clerk shall file a certificate of the fact in the papers in the case. 20

14. Section 6070 of said Code provides that every order of publication shall be published once a week for four successive weeks and that there shall be mailed, a copy thereof to each of the defendants, at the post office address given in the affidavit;

15. In the case of *Kelly vs. Kelly*, reported in 118 Va. 376, the Virginia Court held that a decree of the Suffolk County Probate Court of Massachusetts, decreeing separate maintenance against a husband, in favor of a wife, was entitled to full faith and credit under Section 1 of Article 4 of the Constitution of the United States, and that such a decree for separate maintenance is a bar to proceedings in the Virginia Courts for a divorce on the ground of her desertion: 30

16. Reference is hereby made to the provisions of the said Code and to other provisions for greater certainty, and to the decisions and laws of the State of Virginia; 40

Answer of Deborah C. Price and Counter-claim.

17. The decree of the Suffolk Probate Court, if it had been brought to the attention of the Virginia Court, would have been given recognition as a full and complete bar to the action brought by Rodman M. Price against Deborah C. Price. The failure to disclose to the Virginia
 10 Court the existence of the said decree of the Suffolk County Probate Court, was a fraud upon this defendant and a fraud upon the Corporation Court of the City of Alexandria;

18. At the time of the institution of the proceedings in Virginia, and during the pendency of the said proceedings, and on July 8, 1921, neither Rodman M. Price, nor Deborah C. Price were domiciled in the State of Virginia, nor was
 20 one or either of them at any time within a year prior to the institution of the said proceedings, or within three years prior to the institution of the said proceedings, domiciled in Virginia, and any representation made to the contrary, to the Corporation Court of the City of Alexandria, was a fraud upon that court, and a fraud upon this defendant, Deborah C. Price;

19. At the time of the institution of said proceedings, the said Rodman M. Price well knew
 30 the post office address of Deborah C. Price, the defendant therein, yet no notice of the pendency of the proceedings in the Virginia Court was given to the said Deborah C. Price, or in any wise brought to her attention, and the failure of the said Rodman M. Price to bring notice of the said proceedings to the attention of Deborah C. Price, was a fraud upon her and upon the Corporation
 40 Court of the City of Alexandria;

Answer of Deborah C. Price and Counter-claim.

20. On the 31st day of December, 1920, said defendant, Rodman M. Price made application to the Probate Court of Suffolk County, Massachusetts, and secured leave to press the said application on terms, with which terms he never complied. The said Rodman M. Price failed to disclose to the Corporation Court of the City of Alexandria, Virginia, the making of the said application to the Probate Court of Suffolk County, Massachusetts, and the actions of the Suffolk County Probate Court therein, which failure was a fraud upon the Corporation Court of the City of Alexandria, and a fraud upon this defendant, Deborah C. Price;

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21. The fraudulent acts and concealments on the part of Rodman M. Price rendered the decree mentioned, wholly null and void under the laws of the State of Virginia, and the said decree being fraudulent, null and void under the laws of Virginia, is of no greater effect in the State of New Jersey than in the State of Virginia and is not entitled to full faith and credit in the State of New Jersey; And on the 25th day of June, 1924, said decree by the court granting set aside by the decree of said court;

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22. The decree, being fraudulent, null and void under the laws of Virginia, having been procured by the fraud of the defendant, Rodman M. Price, the said decree is wholly inoperative, fraudulent, null and void in this State;

23. The allegations in Paragraph Ten to Twenty-one, both inclusive, of this counter-claim were set up, by way of special replication in an action recently determined in the Court of Chan-

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Answer of Deborah C. Price and Counter-claim.

cery, wherein Deborah C. Price was complainant and Rodman M. Price was defendant. The said allegations were undenied and were taken as confessed in said action, and the Court of Chancery took and maintained its jurisdiction in the premises as an action between husband and wife.
10 and the adjudication in that case is an adjudication that the said Rodman M. Price and Deborah C. Price were, on the date of the final decree made therein, to wit, March 24, 1924, husband and wife, and that the said alleged decree of the Corporation Court of Virginia was fraudulent, null and void;

24. On May 26, 1924, the Court of Chancery, in the cause between Deborah C. Price and Rodman M. Price aforesaid, made an order amending
20 the final decree and directing the said Rodman M. Price to pay to said Deborah C. Price, the sum of Two Hundred and Ninety-five Dollars (\$295.) and thereafter, an abstract of the said final decree so amended was filed in the office of the Supreme Court of this State, and the said decree now is a lien upon the property of said Rodman M. Price within the State of New Jersey;

25. This defendant, Deborah C. Price, and the
30 defendant, Rodman M. Price, were married on June 25, 1912;

26. Two children were born of the marriage mentioned in the next preceding paragraph, namely, Deborah Price, born November 28, 1913, and Langworthy Franklin Carr Price, born October 22, 1917;

27. The defendant, Rodman M. Price, without
40 any justifiable cause, has abandoned this defendant,

Answer of Deborah C. Price and Counter-claim.

Deborah C. Price, and has separated himself from her and refuses and neglects to maintain and provide for her and for their two children, Deborah Price and Langworthy Franklin Carr Price; this defendant, Deborah C. Price, therefore prays:

(1) That the defendants, Rodman M. Price and Robert S. Ross, may answer this counter-claim. and each and every allegation therein contained: 10

(2) That the said Rodman M. Price may be decreed to pay to this defendant, Deborah C. Price, the sum of Five Thousand, One Hundred Dollars (\$5,100.) or such other sum as may be found due on the decree of the Court of Massachusetts herein mentioned;

(3) That the assignment from Rodman M. Price to Robert S. Ross may be set aside and decreed by this court to be fraudulent, null and void, both against this defendant, Deborah C. Price, and as against her children, and as against all other creditors of said Rodman M. Price defrauded thereby; 20

(4) That it may be decreed that the decree of the Corporation Court of Alexandria, Virginia, in a cause brought by Rodman M. Price against this defendant, was obtained by the fraud of the said Rodman M. Price, and is fraudulent, null and void; 30

(5) That it may be decreed that such suitable support and maintenance be paid and provided by the said Rodman M. Price for this defendant, Deborah C. Price, and her children by the marriage of the said Rodman M. Price and Deborah C. Price, and to be made out of the 40

Answer of Deborah C. Price and Counter-claim.

property of the said Rodman M. Price, for such time as the nature of the case and circumstances of the parties render suitable for such maintenance;

- (6) That the estate, property and effects of
- 10** Rodman M. Price within this State, and the rents and profits thereof may be sequestered to compel his appearance and the performance of any decree or order which may be made herein;

(7) That your petitioner may have such other relief in the premises as may be equitable and just.

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RICHARD BOARDMAN,
Solicitor for and Of Counsel
with Deborah C. Price.
Defendant and Counter Claimant.

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Answer of Rodman M. Price.**IN CHANCERY OF NEW JERSEY**

Between

RALPH W. SKINNER, as Substituted
Trustee under the Last Will and
Testament of Adonijah S. Boyd,
Deceased, etc.,

Complainant,

and

JANE H. BOYD, et als..

Defendants.

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On Bill, &c

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The answer of Rodman M. Price to the bill of complaint filed in the above entitled cause says that:

1. The allegations of paragraphs 1, 2 and 3 of the said bill of complaint are admitted.

2. The allegations of paragraph 4 are admitted except as the same are changed by the supplemental bill filed by the complainant in the above entitled cause. And it is further expressly alleged by this defendant that he obtained a decree of divorce from said Deborah C. Price on July 8, 1921 from the Corporation Court of the City of Alexandria, Virginia. That thereafter he married May E. Price, formerly known as May E. Mahoney. That on September 9, 1922, said defendant made and delivered to Robert S. Ross a deed of trust for the benefit of certain of his creditors.

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Answer of Rodman C. Price.

3. The allegations of paragraph 5 are admitted as far as the same are within the knowledge of this defendant, as to the other facts alleged, defendant is without knowledge or information upon which to form a belief.

10 4. This defendant says that the construction of the will of said Adonijah S. Boyd as set forth in paragraph 6 is the true construction of the said will.

5. The allegations of paragraphs 7, 8, 9, 10 and 11 are admitted.

20 6. This defendant has no knowledge or information upon which to form a belief as to the allegations of paragraph 12 and 13 of said complaint.

30 7. As to paragraph 14, this defendant says that Deborah C. Price and Langworthy Franklin Carr Price, children of this defendant and Deborah C. Price are not issue of Fanny S. Price under the terms of said will of said Adonijah S. Boyd. This defendant further says that said Gouvenour Price is not entitled to a right to an estate by courtesy under said will.

8. This defendant admits that complainant is entitled to protection mentioned in paragraph 15 of the complaint.

40 9. This defendant is without knowledge or information upon which to form a belief as to the allegations of paragraphs 16, 17, 18 and 19 except that defendant admits that Fanny S. Price died November 25, 1920 testate, and this defendant, together with Matilda Kopf are executors of her will.

Answer of Rodman C. Price.

10. The allegations of paragraphs 20 and 21 are admitted. Are admitted as far as this defendant has knowledge of the same: as to other facts, defendant has no knowledge or information upon which to form a belief.

Answer to counter-claim filed against this defendant by Deborah C. Price. 10

1. The allegations of paragraph 1 are admitted.

2. The allegations of paragraph 2 are denied.

3. The allegations of paragraph 3 are admitted.

4. The allegations of paragraph 4 are denied except that this defendant admits that payments in the amount of \$450. were made to Deborah C. Price. 20

5. The allegations of paragraph 5 are admitted.

6. The allegations of paragraph 6 are admitted.

7. The allegations of paragraph 7 are admitted.

8. The allegations of paragraph 8 are denied. 30
This defendant says that he is not under any legal obligation to support said Deborah C. Price and her infant children, but on the contrary says that said Deborah C. Price wilfully deserted said defendant and abandoned him.

This defendant further says that said deed of trust to Robert S. Ross was not fraudulent but was made in good faith for a valuable consideration. It was made for the express purpose of 40
for the purpose of defeating the defendant Deborah C. Price and her children from her and their just dues.

Answer of Rodman C. Price.

9. The allegations of paragraph 9 are denied.

10. The allegations of paragraphs 10, 11, 12, 13, 14, 15, and 16, 17, 18, 19, 20, 21, and 22 are

11. The allegations of paragraph 23 are denied.

10 This defendant further says that said allegations set forth in paragraphs 10 to 21 inclusive were not taken as confessed in said former action between said Deborah C. Price and this defendant, on the contrary, said allegations were set up in a special replication and under Rule 74 of the Court of Chancery rules, issue is deemed to be joined on new matter set up by the complainant.

20 12. The allegations of paragraph 24 are admitted. This defendant says that said allowance to said Deborah C. Price as rendered by said decree is illegal and contrary to the rules of the court of Chancery and is void and of no force and effect and this defendant herein makes application to set the said decree aside.

13. The allegations of paragraphs 25 and 26 are admitted.

30 14. The allegations of paragraph 27 are denied.

15. For a further defense to said counter-claim this defendant says:

That said decree of said Probate Court in and for the County of Suffolk, State of Massachusetts, hereinbefore set forth in the said counter-claim is not a final decree under the laws of the State of
40 New Jersey which is entitled to full faith and

Answer of Rodman C. Price.

credit in the State of New Jersey or entitled to be recognized by reason of international comity existing between the states.

For a further defense this defendant says:

That said Probate Court in and for the County of Suffolk of the State of Massachusetts did not have jurisdiction over the person of this defendant or the subject matter of said suit for that said Deborah C. Price was not domiciled in the State of Massachusetts at the time she commenced her said action for the further reason that the said defendant was not domiciled or a resident in the State of Massachusetts at the time of the commencement of said suit.

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For a further defense, defendant says that he will object in the trial of the said counter-claim in the present action on the grounds that the same was not connected with nor a part of the issue in the suit of Ralph H. Skinner, etc., vs. Jane H. Boyd, et al.

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For a further defense this defendant says that said decree of the said Probate Court in and for the County of Suffolk, State of Massachusetts, has been duly held to be not a final decree such as is entitled to full faith and credit of the State of New Jersey by the opinion of Vice Chancellor Fielder heretofore filed in a cause recently pending in the Court of Chancery wherein Deborah C. Price was complainant and this defendant was defendant.

30

For a further defense this defendant says that the said Deborah C. Price is a non-resident of the State of New Jersey; that this defendant is a non-resident of the State of New Jersey that the said defendant Deborah C. Price and this defendant never had their marital domicile or residence

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Answer of Rodman C. Price.

within the State of New Jersey, nor did said defendant Deborah C. Price ever reside in the State of New Jersey.

10 For a further defense this defendant says that said order of said Probate Court of Suffolk County made March 31st, 1924 was made without notice to the defendant, Rodman M. Price, and said notice was without jurisdiction over said defendant, Rodman M. Price. That said Rodman M. Price was not a resident of the State of Massachusetts at the time said order was made or said hearing was held; that no notice of said hearing was served upon said Rodman M. Price.

HEINE, BRADNER & LAID,
Solicitors for Defendant

20

Rodman M. Price.

Replication in Common form etc.

Reply to Answer to Counter-Claim.

30 Deborah C. Price, defendant and counter-claimant, joins issue on the answer of Rodman M. Price to her counter-claim.

RICHARD BOARDMAN,
Solr. for Deborah C. Price.

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**Order Amending Answer and Counter-
Claim of Deborah C. Price.**

IN CHANCERY OF NEW JERSEY

Between

RALPH W. SKINNER, as Substituted
Trustee under the Last Will and
Testament of Adonijah S. Boyd,
Deceased, etc.,

Complainant,

and

JANE H. BOYD, et als.,

Defendants.

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On application of Richard Boardman, Solicitor
for Deborah C. Price, counter-claimant, It Is OR-
DERED that the answer and counter-claim of the
said Deborah C. Price, filed herein, be and they
hereby are amended by adding at the end of
Paragraph Two of the answer, the following
words:

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“And the said decree of July 8, 1921, was set
aside on the ground of fraud, by the said court
granting it on June 25, 1924.”

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And it is further ORDERED that the following
paragraph be inserted as Paragraph (21-A) in
the said counter-claim, between Paragraphs 21
and 22 of said counter-claim:

“(21-A) On the 25th day of June, 1924,
the said Corporation Court of the City of

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Order Amending Answer and Counter-claim.

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Alexandria, Virginia, after argument of counsel in the said cause wherein the said Rodman M. Price was complainant, and Deborah C. Price was defendant, on the petition of the defendant, it was solemnly adjudged, ordered and decreed that each and all of the provisions of the decree entered in said cause on the 8th day of July, 1921, wherein *inter alia*, a decree *a vincula matrimonii*, was granted said Rodman M. Price, be and the same hereby is vacated, set aside and decreed to be null and void and of no force and effect. And nothing further remaining to be done in said cause, it was ordered stricken from the docket."

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E. R. WALKER,
C.

Respectfully advised,
John H. Backes,
V. C.

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**Answer to Amendment of Counter-
Claim.**

IN CHANCERY OF NEW JERSEY

Between

RALPH W. SKINNER, as Substituted
Trustee under the Last Will and
Testament of Adonijah S. Boyd,
Deceased, etc.,

Complainant,

and

JANE H. BOYD, et als.,

Defendants.

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The defendant, Rodman M. Price, by way of answer to the amended counter-claim filed herein on the second day of March, 1926 says that

1. He repeats the allegations of the answer to the counter-claim and he denies the amendment to paragraph 2 of the answer as set forth in said amendment.

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2. He denies the allegations of Paragraph 21A as amended and repeats all of the defenses set forth in the original answer to said counter-claim heretofore filed.

HEINE, BRADNER & LAIRD,
Solicitors for Defendant
Rodman Price.

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Opinion.**IN CHANCERY OF NEW JERSEY**

Between

10 RALPH W. SKINNER, as Substituted
Trustee under the Last Will and
Testament of Adonijah S. Boyd,
Deceased, etc.,

Complainant,

and

JANE H. BOYD, et als.,

Defendants.

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1. A devise or bequest to "issue", without more, includes all descendants, and they share equally. A devise or bequest to the "issue" of a deceased nephew or niece "legally represented by such issue" means to heirs or next of kin.

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2. A bequest of the income of a trust fund to a class and upon the death of a member his share over to the survivors and their "issue"; upon the death of a survivor the share so taken passes to his personal representative.

3. Profits on the sale of securities taken for a debt are to be apportioned between the principal and income in the ratio which the principal sum involved bears to the interest due on the debt at the time when the securities are realized upon.

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4. Upon a devise of lands, a power of sale, exercised, does not operate as a conversion

Opinion.

of the realty into personalty and the devisees take the proceeds as land subject to the inchoate right of dower and curtesy of their spouses.

For complainant, EDWARD M. & RUNYON COLIE.
For defendants, RICHARD BOARDMAN, CON-
GLETON, STALLMAN & HOOVER, WURTS & PLYMPTON 10
and HEINE, BRADNER & LAIRD.
BACKES, V. C.

The complainant, administrator c. t. a. of Adonijah S. Boyd, deceased, and as substituted trustee thereunder, and as agent of the cestuis que trustent therein, filed this bill to settle his accounts, and to be advised as to the true meaning of the will and the manner of distributing the estate.

The testator by the fourth clause of his will gave to Adelaide Barling for life his homestead in Hackensack and the furnishings. By the fifth clause he devised and bequeathed the residue of his estate to William E. Skinner, in trust, during the lifetime of Adelaide Barling, to pay the net income, one seventh to Adelaide Barling and a one seventh to each of his two nephews and four nieces: James Boyd, John Quackenbush, Kate Hopper, Fannie Price, Sophie Benjamin and Jane Boyd, and then added: 20

“and if any of my said nephews or nieces shall die during the lifetime of said Adelaide Barling, leaving issue, to pay to such issue the share of said remainder which my said nephews or nieces legally represented by such issue would have been entitled to receive if living; and if any of my said nephews or nieces shall die during the lifetime of said Adelaide Barling without leaving issue to pay the share of said remainder which my said nephew or niece, who shall so die, would 30 40

Opinion.

10 have been entitled to receive if living, to survivors or survivor of my aforesaid nephews and nieces, and to the issue of any of them who shall have died, leaving issue, in equal shares share and share alike, except that, issue paid under this provision shall be paid only that share, which my said nephew or niece who shall be legally represented by such issue would have been entitled to receive if living."

By the sixth clause, upon the decease of Adelaide Barling, he devised and bequeathed the rest and residue of his estate to his two nephews and four nieces in equal shares, and added:

20 "and if any of my said nephews or nieces shall have died during the lifetime of the said Adelaide Barling leaving issue who shall be living at the time of the decease of said Adelaide Barling, I do hereby give, devise and bequeath to such issue the share of my said nephew or niece legally represented by such issue. And if any of my said nephews or nieces shall have died during the lifetime of said Adelaide Barling without leaving issue or leaving issue who shall have died prior to the decease of said Adeliade Barling, I do
30 hereby give, devise and bequeath the share of my said nephew or niece who shall have so died, to the survivors or survivor of my said nephews and nieces, and to the issue of any of them who shall have died leaving issue who shall be living at the time of the decease of Adelaide Barling, in equal shares, share and share alike, except that issue taking under this provision, shall take only the share of my nephew or niece, who is legally represented by such issue."

40 He further provided:

Opinion.

“And in case it shall be necessary in order that a satisfactory and fair division of my estate be made among my devisees and legatees aforesaid after the decease of said Adelaide Barling, then I do hereby order and direct and empower the hereinafter named executors of this my last will and testament or the survivor of them to sell all my real estate at public or private sale for the highest price that can be obtained by them or the survivor of them for the same, and to make execute and deliver to the purchasers thereof good and sufficient deeds of conveyance in the law for the same, and the proceeds of said sales, and my personal estate or what shall be realized therefrom to distribute and pay over to my said devisees and legatees in the proportion hereinbefore stated.”

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Adelaide Barling died February 11, 1923. James Boyd, Kate Hopper and Fannie Price predeceased her, and in that order. James Boyd left two sons, one of whom had children and a grandchild. Kate Hopper died childless. Fannie Price left a son and daughter; the son had two children.

1. The first question is, Did the testator intend, that upon the death of his nephews and nieces in the lifetime of Adelaide Barling their issue should take the income and principal per stirpes or per capita? Uncontrolled “issue” includes all descendants, and they share equally. *Weehawken Ferry Co. v. Sisson*, 17 N. J. Eq. 475; *Inglis v. McCook*, 68 N. J. Eq. 27. It is contended on the one hand that the words “legally represented by such issue”, as used four times in the will, limits the issue, while on the other hand it is insisted that those words, simply define the share the issue were to take. They obviously do

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Opinion.

not limit the share the issue were to take, because, the restriction as to the share is otherwise specifically defined as the share the nephews or nieces "would have been entitled to receive if living." On the contrary they were intended to and do

10 limit the issue to those who legally represent a deceased nephew or niece; that is to say, those who would take personalty under the Distribution Act and those who would take realty under the Descent Act. *Chasy v. Gowdy*, 43 N. J. Eq. 95; *Howell v. Gifford*, 64 N. J. Eq. 180; *Howell v. Westbrook*, 69 N. J. Eq. 641; *Coyle v. Coyle*, 73 N. J. Eq. 528; *Platt v. Johnson*, 87 N. J. Eq. 403. If the testator, a lawyer, had intended that

20 all the descendants of deceased nephews and nieces should take share and share alike he would not have been at pains to qualify issue as those by whom the deceased nephews and nieces are legally represented. The qualification would have been unnecessary. In the interpretation of wills every word must be given due consideration, and where, as here, in a gift to a class, such as issue or descendants generally, superadded words tending to define or limit the class must be given significance, and when the ordinary meaning of issue

30 clearly appears to have been modified, effect must be given to the modification in the sense in which it carries out the intention of the testator. Children of deceased nephews and nieces take to the exclusion of their descendants.

2. The next question is, Did so much of the share of income bequeathed to Mrs. Hopper, which upon her death passed to Mrs. Price, go to the

40 latter's issue upon her death. The bequest of the income over to the surviving nephews and nieces

Opinion.

was an independent gift; it vested in her, in Mrs. Price, and upon her death became a part of her estate, payable to her executor. *Boggs v. Boggs*, 69 N. J. Eq. 497; *Trenton Trust & Safe Deposit Co. v. Cook*, 88 N. J. Eq. 516.

3. The estate held two mortgages, and pending foreclosure the mortgagors conveyed to the trustee, who since has sold the premises at a profit. The profit is to be apportioned between the principal and income in the ratio which the principal sum involved bears to the interest due upon it at the time when the security was realized upon. *Hagan v. Platt*, 48 N. J. Eq. 206; *Tuttle's Case*, 49 N. J. Eq. 259, *Parker v. Sealey*, 56 N. J. Eq. 110; *Trenton Trust & Safe Deposit Co. v. Donnelly*, 65 N. J. Eq. 119. 10 20

4. The remaining question is, Was there a conversion of the realty into personalty? The reason for this query is, that some of the takers under the will have spouses who claim inchoate rights of dower and courtesy. The real estate was devised directly to the testator's nephews and nieces and they held vested estate, subject to being divested if they died in the lifetime of Adelaide Barling, and consequently dower and courtesy attached. There was no conversion at the death of the testator and none by the exercise of the power of sale by the trustee, who has since sold some of the land. There is nothing in the will to indicate that the testator intended the land to be converted, and so converted to be distributed as personalty. The power of sale was only for the convenience of the estate and the purposes of the will. The sales did not disturb the rights which were vested in the takers under the will 30 40

Opinion.

at the termination of the trust estate, nor those which at that time inured to the respective spouses. The proceeds must be regarded as land and distributed accordingly. *Cook v. Cook*, 20 N. J. Eq. 375; *Moore v. Robbins*, 53 N. J. Eq. 137; *Alabone Estate*, 75 N. J. Eq. 527; *Meeker v. Forbes*, 84 N. J. Eq. 271; aff'd 86 N. J. Eq. 255; *Albright v. Van Voorhis*, 104 Atl. 27.

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The spouses of those who died in the lifetime of Adelaide Barling are not entitled because their spouses were not seized.

The divorced wife of Rodman Price, one of the takers under the will, sets up that his divorce is invalid and that she is entitled to an inchoate right of dower in the land of which he became seized under the will. That issue has yet to be tried.

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Final Decree.

(Filed February 8, 1926.)

IN CHANCERY OF NEW JERSEY

Between

RALPH W. SKINNER, as Substituted
Trustee under the Last Will and
Testament of Adonijah S. Boyd,
Deceased, etc.,*Complainant,**and*

JANE H. BOYD, et als.,

Defendants.

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On Bill,
etc.

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This cause coming on to be heard before the Court upon Bill, Amended Bill and Answers, Replications and Briefs, in the presence of Edward M. & Runyon Colie, solicitors for and of counsel with the complainant; Richard Boardman, solicitor for and of counsel with the defendants Deborah C. Price and Deborah Price and Rodman M. Price, Jr., (sometimes known as Langworthy Franklin Carr Price), infants, appearing and answering by said Deborah C. Price, as their guardian ad litem appointed in this cause; Congleton, Stallman & Hoover, solicitors for and of counsel with the defendants Matilda C. S. T. P. Kopf, individually and as executrix of the last will and testament of Fanny S. Price, and Frederick C. Kopf: Wurts & Plympton, sol-

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icitors for and of counsel with the defendant The
 Hackensack Trust Company, as executor of the
 last will and testament of Adelaide Barling, de-
 ceased; and Heine, Bradner & Laird, solicitors
 for and of counsel with the defendants Rodman
 M. Price, individually and as executor of the last
 10 will and testament of Fanny S. Price, deceased,
 and Robert S. Ross, as trustee for certain credi-
 tors of Rodman M. Price under a deed of trust
 dated September 9, 1922; Thomas Barber, Clerk
 of this Court, appointed guardian ad litem of the
 infants, Ruth K. Boyd, Claire R. White, Mabel
 G. Boyd, James A. Boyd and Dorothy E. Boyd,
 having entered appearance and filed an answer
 as such guardian for said infants; and John F.
 20 Quackenbush, one of the defendants, having died
 pending this cause and the cause having been by
 petition revived against James Q. Carpentier, as
 executor of the last will and testament of John
 F. Quackenbush, and against Susan Quackenbush,
 said James Q. Carpentier, individually, Mary
 Francis Myers, Alma L. Carpentier, Alfred H.
 Myers and The Ministers, Elders and Deacons
 constituting the Consistory of the Reformed
 30 Church of Mount Vernon, New York, (incorpor-
 ated under the name of Reformed Dutch Church
 of Mount Vernon), being all of the beneficiaries
 and their spouses under the will of said John F.
 Quackenbush; and an appearance having been en-
 tered in this cause for the said James Q. Carpen-
 tier, as such executor, and for all of the said
 beneficiaries under the will of said John F.
 Quackenbush and their spouses, by Francis J.
 Holl, their solicitor, and a decree pro confesso
 40 against them all having been entered by consent
 of said solicitor in writing, and a decree pro con-

Final Decree.

resso having been taken against all the other defendants in said cause, excepting the aforesaid answering defendants; and the pleadings and proofs having been read and the arguments of counsel had and the Court having duly considered the same;

And it appearing to the Court that the complainant, Ralph W. Skinner, is substituted trustee in the place of William E. Skinner, deceased, under the last will and testament of Adonijah S. Boyd who died October 5, 1890, and is substituted administrator with the will annexed, by appointment of the Orphans' Court of Bergen County, New Jersey, of said Adonijah S. Boyd, deceased, and is acting, since the death of Adelaide Barling, hereinafter referred to, as agent and attorney of the adults interested in the estate of said testator.

And it appearing that by the Fourth clause of the will of Adonijah S. Boyd he gave to Adelaide Barling, for life, the homestead in Hackensack and the furnishings, and by the Fifth clause he devised and bequeathed the residue of his estate to said William E. Skinner in trust during the lifetime of Adelaide Barling to pay the net income—one seventh to Adelaide Barling and one seventh to each of his two nephews and four nieces; James Boyd, John Quackenbush, Kate S. Hopper, Fanny S. Price, Sophia Benjamin, and Jane Boyd; and did provide as follows:

“and if any of my said nephews or nieces shall die during the lifetime of said Adelaide Barling leaving issue, to pay to such issue the share of said remainder which my said nephews or nieces legally represented by such issue, would have been entitled to receive if

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Final Decree.

10 living; and if any of my said nephews or nieces shall die during the lifetime of said Adelaide Barling without leaving issue to pay the share of said remainder which my said nephew or niece, who shall so die, would have been entitled to receive if living, to the survivors or survivor of my aforesaid nephews and nieces, and to the issue of any of them who shall have died leaving issue, in equal shares share and share alike, except that issue paid under this provision shall be paid only that share which my said nephew, or niece who shall be legally represented by such issue would have been entitled to receive if living."

20 and by the Sixth clause, upon the decease of Adelaide Barling, he did devise and bequeath the rest and residue of his estate to his said two nephews and four nieces in equal shares, and added:

30 "and if any of my said nephews or nieces shall have died during the lifetime of the said Adelaide Barling leaving issue who shall be living at the time of the decease of said Adelaide Barling, I do hereby give devise and bequeath to such issue the share of my said nephews or nieces legally represented by such issue. And if any of my said nephews or nieces shall have died during the lifetime of said Adelaide Barling without leaving issue or leaving issue who shall all have died prior to the decease of said Adelaide Barling I do hereby give devise and bequeath the share of my said nephew or niece who shall have so died, to the survivors or survivor of my said nephews and nieces, and to the issue of any of them who shall have died leaving issue who shall be living at the time of the decease of said Adelaide Barling, in equal shares share

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Final Decree.

and share alike, except that issue taking under this provision, shall take only the share of my said nephew or niece, who is legally represented by such issue."

And further provided:

"And in case it shall be necessary in order 10
that a satisfactory and fair division of my estate be made among my devisees and legatees aforesaid after the decease of said Adelaide Barling, then I do hereby order and direct and empower the hereinafter named executors of this my last will and testament or the survivor of them, to sell all my real estate at public or private sale for the highest price that can be obtained by them or the survivor of them for the same, and to make, 20
execute and deliver to the purchaser thereof good and sufficient deeds of conveyance in the law for the same, and the proceeds of said sales and my personal estate or what shall be realized therefrom to distribute and pay over to my said devisees and legatees in the proportion hereinbefore stated."

And it appearing to the Court that the said Adelaide Barling died February 11, 1923; that James Boyd, Kate S. Hopper and Fanny S. Price predeceased her and in that order; that said 30
James Boyd died intestate April 3, 1907, and left him surviving his wife, Catherine Boyd, and two sons, David W. Boyd and William A. Boyd, and no other child and no descendants of any deceased child; that said Catherine Boyd died intestate in the year 1923, prior to the filing of the Bill of Complaint in this cause, and administration on her estate was on January 28, 1924, 40
committed to William A. Boyd, who has entered an appearance in this cause; that said David W.

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Boyd is married and his wife's name is Eurania R. Boyd and at the time of the death of his father he had two children, viz: Viola M. White, wife of Leslie White, and Ruth K. Boyd; that the only other descendant David W. Boyd ever had is Claire R. White, daughter of said Viola M. White, born September 14, 1923; that the said William A. Boyd is married and his wife's name is Mary E. Boyd and at the time of the death of his father, James Boyd, he had never had any children, but three children have since been born to him, all of whom are still living, viz: Mabel G. Boyd, James A. Boyd and Dorothy E. Boyd, the youngest of whom, said Dorothy E. Boyd, was born in the month of April, 1916; that the said Kate S. Hopper died February 26, 1917, leaving a will of which said David W. Boyd is the surviving executor and leaving her surviving her husband, who has since died, but no descendent; that Fanny S. Price died November 25, 1920, leaving her surviving Gouverneur Price, her husband, and her daughter, Matilda C. S. T. P. Kopf, wife of Frederick C. Kopf, and her son, Rodman M. Price, and no other child and no descendent of any deceased child, and by her will devised and bequeathed the residue of her estate to her said daughter and son, share and share alike; that said Matilda C. S. T. P. Kopf had but one child by her marriage with said Frederick C. Kopf, which child predeceased the said Fanny S. Price, and said Matilda C. S. T. P. Kopf had no descendant living at the time of the death of her mother, nor has any child since been born to her; that the said Rodman M. Price at the time of the death of his mother, Fanny S. Price, was married to Deborah C. Price and then had two

Final Decree.

children, viz: his daughter Deborah Price and his son, Rodman M. Price, Jr., (who is sometimes known as Langworthy Franklin Carr Price), and no other child was thereafter born to him until more than a year after the death of the said Adelaide Barling.

And it appearing to the Court that the said Rodman M. Price on September 9, 1922, made and delivered to Robert S. Ross a deed of trust for the benefit of certain of his creditors, by which he conveyed to said trustee, as security for the payment of their claims, all his interest in the property, real and personal, to which he then was or might thereafter become entitled by virtue of the trust created by the will of Adonijah S. Boyd, deceased.

And it appearing to the Court that on January 25, 1924, said John F. Quackenbush executed a deed of trust of all his property, including all property to which he was entitled under the will of Adonijah S. Boyd, deceased, to one James Q. Carpentier, for and during the life of said Quackenbush; and that the said John F. Quackenbush died February 12, 1925, and by his will proved in the Surrogate's Court of Westchester County, New York on April 22, 1925, he appointed James Q. Carpentier sole executor thereof, who has duly qualified, and that by said will, after giving a legacy of \$5000. to the Minister, Elders and Deacons constituting the Consistory of the Reformed Church of Mount Vernon, New York, he bequeathed and devised all his estate, real and personal, one half thereof to his sister Martha Carpentier (who predeceased him) or to her children or their representatives in case of her death, and one half thereof to his uncle John H. Quack-

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Final Decree.

enbush (who predeceased him), or to his children or their representatives in case of his death; that said Martha Carpentier left her surviving her son, James Q. Carpentier, whose wife is Aimee L. Carpentier, and her daughter, Mary Frances Myers, whose husband is Alfred H. Myers; and that Susan Quackenbush, daughter of John H. Quackenbush, is the only descendant of the said John H. Quackenbush living at the death of said John F. Quackenbush; that said James Q. Carpentier, as trustee for said John F. Quackenbush under the above mentioned deed of trust, has, pursuant to the provisions thereof, made, executed and delivered and caused to be recorded in the Bergen County Clerk's office a deed from himself, as such trustee, to himself, as executor of the last will and testament of John F. Quackenbush, of all the property, real, personal and mixed, to which he is or may be entitled as trustee as aforesaid and which said John F. Quackenbush was or might have been entitled to together with his right, title and interest under the will of said Adonijah S. Boyd, deceased.

And it appearing to the Court that upon the appointment of the complainant as such substituted trustee under the will of Adonijah S. Boyd, deceased, there came into his hands deeds for two tracts of land, one thereof made by Mary R. Christie and husband to William E. Skinner, as trustee under the last will and testament of Adonijah S. Boyd, deceased, for a tract of land in the Town of West Hoboken, New Jersey, which deed was made to the grantee therein in satisfaction of a final decree of foreclosure entered in the Court of Chancery of New Jersey on August 12, 1895, for \$6153.58, besides \$77.55 costs of suit, upon a

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mortgage held by said testator at the time of his death; the other thereof made by Eliza L. Brinkerhoff and husband to William R. Skinner, as trustee under the last will and testament of Adonijah S. Boyd, deceased, for a tract of land in the Borough of Woodridge, New Jersey, which deed was made to the grantee therein in satisfaction of a final decree of foreclosure entered in the Court of Chancery of New Jersey in the lifetime of the said Adonijah S. Boyd on January 13, 1890, for \$856.00, besides \$64.99 costs of suit. 10

And the Court being of opinion that under the last will and testament of said testator the children of deceased nephews and nieces, to the exclusion of their descendants, upon the death of such nephews and nieces in the lifetime of Adelaide Barling, took the share of the income to which the said nephew or niece so dying was entitled, under the trust created by said will; and also the share of the nephew and niece so dying in the corpus of the estate, both real and personal, upon their surviving the death of said Adelaide Barling. 20

And the Court being of the opinion that upon the death of Kate S. Hopper without issue in the lifetime of Adelaide Barling, her share of the income passed as an independent gift to John F. Quackenbush, Sophia Benjamin, Jane H. Boyd and Fanny S. Price, nephew and nieces of said testator named in his will who survived Kate S. Hopper, and to David W. Boyd and William A. Boyd who survived Kate S. Hopper and who are children of James Boyd, deceased, a nephew of testator named in his will who predeceased Kate S. Hopper, and who together take their 30 40

Final Decree.

father's share therein, and that the share therein so passing to Fanny S. Price became upon her death a part of her estate, payable to her executors.

10 And the Court being of the opinion that upon the death of Kate S. Hopper without issue, in the lifetime of Adelaide Barling, her share of the corpus of the estate, both real and personal, on the death of said Adelaide Barling vested in and passed to John F. Quackenbush, Sophia Benjamin and Jane H. Boyd, nephew and nieces of testator named in his will who survived Adelaide Barling, and to David W. Boyd and William A. Boyd, who survived Adelaide Barling and who are children of James Boyd, deceased, a nephew
20 of testator named in his will who predeceased Adelaide Barling, and who together take their father's share therein, and to Matilda C. S. T. P. Kopf and Rodman M. Price, who survived Adelaide Barling and who are children of Fanny S. Price, deceased, a niece of said testator named in his will who predeceased Adelaide Barling, and who together take their mother's share therein.

30 And the Court being of opinion that the profits arising upon the sale of the above mentioned premises conveyed by Mary R. Christie and husband to William E. Skinner, as trustee under the last will and testament of Adonijah S. Boyd, deceased, and the profits arising on the sale of the above mentioned premises conveyed by Eliza L. Brinkerhoff and husband to William E. Skinner, as trustee under the last will and testament of Adonijah S. Boyd, deceased, over and above the amount due on the securities respectively represented by said conveyances at the date of the
40 death of Adonijah S. Boyd, should, respectively,

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be divided, as between corpus and income, in the proportion that the amount due on said securities at the date of the death of Adonijah S. Boyd, plus the amount due for interest on said securities from the death of Adelaide Barling to the realization of said securities by the consummation of the sales of the real estate representing the same, calculated at the rate of interest borne by said securities, bears to the amount due for interest on said securities from the death of Adonijah S. Boyd to the death of Adelaide Barling, calculated at the rate of interest borne by said securities, giving credit on said interest for said periods, respectively, for all income received from said real estate, respectively, during the said periods, respectively.

And the Court being of opinion that under the provisions of the will of Adonijah S. Boyd there was no conversion of the realty into personalty by virtue of the power of sale given in and by the last will and testament of said Adonijah S. Boyd, but that the real estate of said testator passed to the parties aforesaid as devisees thereunder and was subject to the rights of curtesy and dower of the spouses of those who were living at the death of Adelaide Barling and that said estates of dower and curtesy attached to the respective shares of the devisees in the proceeds of the sales of said lands.

And the Court being of opinion that the complainant, as substituted trustee under the will of said testator, as substituted administrator with the will annexed of said testator, and as agent and attorney of the adults interested in the estate of said testator, should settle his accounts in this Court.

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And the Court being of opinion that the questions arising under the pleadings and proceedings in this cause as to the respective rights and interests in the share of Rodman M. Price, in the estate of said testator and the income thereof and the profits arising on the sales of the real estate representing the aforesaid mortgage and decree, including the question as to whether the defendant Deborah C. Price or the defendant May E. Price is entitled to an inchoate right of dower in the lands of which Rodman M. Price became seized under the will of said testator, cannot now be determined, inasmuch as the counter-claims filed in this cause by Deborah C. Price and by Deborah Price and Rodman M. Price, Jr., sometimes known as Langworthy Franklin Carr Price, by their guardian ad litem, against said Rodman M. Price and Robert S. Ross, setting up that Rodman M. Price's divorce obtained against said Deborah C. Price is invalid and that the said deed of trust is fraudulent and void as against them and the creditors of said Rodman M. Price, have not yet been tried; and the Court being of the opinion that the share of said Rodman M. Price in the corpus of the estate of said testator, and in the income thereof, and the profits arising on the sales of the real estate representing the aforesaid mortgage and decree, should be held by the complainant to await the further decree of this court.

It is thereupon on this 8th day of February, 1926, by his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, on motion of Edward M. & Runyon Colie, of counsel with the complainant, ordered, adjudged and decreed, and the Chancellor, by virtue of the power and au-

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thority of this Court, does hereby order, adjudge and decree:

1. That the accounts of the complainant, as substituted trustee under the last will and testament of Adonijah S. Boyd, deceased, since his last accounting allowed by the Orphans' Court of Bergen County, and as substituted administrator with the will annexed of said Adonijah S. Boyd, deceased, and as agent and attorney of the adults interested in the estate of said Adonijah S. Boyd, be taken in this cause under the direction of this Court. 10

2. That in stating the account as substituted trustee under the will of said testator, the complainant shall charge himself, as to corpus, with the corpus of said trust fund in his hands representing the assets that came into his hands as substituted trustee in the place of William E. Skinner, trustee appointed under the Fifth clause of the will of said Adonijah S. Boyd, including therein the real estate representing the mortgage made by Mary R. Christie and husband to Adonijah S. Boyd and the final decree of foreclosure in this Court entered at the suit of said Boyd against Eliza L. Brinkerhoff and husband, aforesaid; and in addition thereto with the proportion of the profits arising on the sales of the real estate representing said mortgage and decree, apportionable to the corpus of said trust, calculated in the manner in this decree hereinabove set forth. 20 30

3. That in stating said account as to income, the complainant shall charge himself with the balance of income on the corpus of said estate, real and personal, ascertained to be in his hands 40

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upon his last accounting allowed by the Orphans' Court of Bergen County, and in addition thereto with the income accrued and collectible on such corpus since the expiration of the period covered by such accounting, except the income accrued and collectible from said real estate (other than that representing the aforesaid mortgage and decree), as to which he shall charge himself, as trustee, only up to the death of Adelaide Barling — (the income after her death from said real estate having been collected by the complainant in his capacity as attorney and agent of the adult defendants); and in further addition thereto with the proportion of the profits arising on the sales of the real estate representing the mortgage and decree aforesaid, apportionable to the income of said trust, calculated in the manner in this decree hereinabove set forth.

4. That in stating the account as agent and attorney of the adults interested in the estate of said testator, the complainant shall charge himself with the income accrued and collectible from the aforesaid real estate (other than that representing said mortgage and decree) from the death of Adelaide Barling up to the conveyances thereof by the complainant, as substituted administrator with the will of said testator annexed.

5. That in stating the account as substituted administrator with the will of said testator annexed, the complainant shall charge himself, as to corpus, with the assets in his hands representing the assets that came into his hands as substituted administrator with the will of said testator annexed, in the place of the deceased executors under said will, and in addition thereto with the

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proceeds of the sales of the real estate whereof said testator died seized.

6. That in stating said account as to income, the complainant shall charge himself with the income accrued and collectible on said assets so received and on the proceeds of the said sales of said last mentioned real estate. 10

7. In all aforesaid accountings, allowance shall be made to the complainant for all proper items of discharge.

8. That the parties entitled to, and their respective proportions of, the corpus of said trust fund ascertained to be in the hands of the complainant representing the assets that came into his hands as substituted trustee in the place of William E. Skinner as aforesaid, including therein the real estate representing the mortgage and decree aforesaid and the proportion of the profits arising on the sales of the real estate representing said mortgage and decree, apportionable to the corpus of said trust, are as follows: Jane H. Boyd: her original $\frac{1}{6}$ th thereof, plus her $\frac{1}{5}$ th of the $\frac{1}{6}$ th share of Kate S. Hopper thereof, to wit: $\frac{1}{5}$ th; Sophia Benjamin: her original $\frac{1}{6}$ th thereof, plus her $\frac{1}{5}$ th of the $\frac{1}{6}$ th share of Kate S. Hopper thereof, to wit: $\frac{1}{5}$ th; William A. Boyd and David W. Boyd, sons of James Boyd, in equal shares; the original $\frac{1}{6}$ th share of James Boyd thereof, plus their $\frac{1}{5}$ th of the $\frac{1}{6}$ th share of Kate S. Hopper thereof, to wit: $\frac{1}{5}$ th; Matilda C. S. T. P. Kopf and Rodman M. Price, children of Fanny S. Price, in equal shares: the original $\frac{1}{6}$ th share of Fanny S. Price thereof, plus the said Fanny S. Price's $\frac{1}{5}$ th of the $\frac{1}{6}$ th share of Kate S. Hopper thereof, to wit: $\frac{1}{5}$ th said Rod- 20 30 40

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10 man M. Price's share subject to the further decree of this Court upon the questions arising under the pleadings and proceedings in this cause as to the respective rights and interests therein; and James Q. Carpentier, as executor of the last will and testament of John F. Quackenbush, is entitled to receive the original $\frac{1}{6}$ th share of John F. Quackenbush thereof, plus the said John F. Quackenbush's $\frac{1}{5}$ th of the $\frac{1}{6}$ th share of Kate S. Hopper thereof, to wit: $\frac{1}{5}$ th.

20 9. That the parties entitled to, and their respective proportions of, the balance of income on the corpus of said estate, real and personal, ascertained to be in the hands of the complainant upon his last accounting allowed by the Orphans' Court of Bergen County, and the income accrued and collectible on such corpus from the expiration of the period covered by such accounting to the death of Adelaide Barling, are as follows: Jane H. Boyd: her original $\frac{1}{7}$ th thereof, plus her $\frac{1}{5}$ th of the $\frac{1}{7}$ th share of Kate S. Hopper thereof, to wit: $\frac{6}{35}$ ths; Sophia Benjamin: her original $\frac{1}{7}$ th thereof, plus her $\frac{1}{5}$ th of the $\frac{1}{7}$ th share of Kate S. Hopper thereof, to wit: $\frac{6}{35}$ ths; 30 William A. Boyd and David W. Boyd, sons of James Boyd, in equal shares: the original $\frac{1}{7}$ th share thereof of James Boyd, plus their $\frac{1}{5}$ of the $\frac{1}{7}$ th share of Kate S. Hopper thereof, to wit: $\frac{6}{35}$ ths; Matilda C. S. T. P. Kopf and Rodman M. Price, children of Fanny S. Price, in equal shares: the original $\frac{1}{7}$ th share thereof of Fanny S. Price, to wit: $\frac{5}{35}$ th, said Rodman M. Price's share subject to the further decree of this 40 Court upon the questions arising under the pleadings and proceedings in this cause as to the respective rights and interests therein; Matilda C.

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S. T. P. Kopf and Rodman M. Price, as executors of the last will and testament of Fanny S. Price; the said Fanny S. Price's $\frac{1}{5}$ th of the $\frac{1}{7}$ th share of Kate S. Hopper thereof, to wit: $\frac{1}{35}$ th. The Hackensack Trust Company, as executor of the last will and testament of Adelaide Barling: the said Adelaide Barling's $\frac{1}{7}$ th share thereof, to wit: $\frac{5}{35}$ ths; and James Q. Carpentier, as executor of the last will and testament of John F. Quackenbush, is entitled to receive the original $\frac{1}{7}$ th share thereof of John F. Quackenbush, plus the said John F. Quackenbush's $\frac{1}{5}$ th of the $\frac{1}{7}$ th share of Kate S. Hopper thereof, to wit: $\frac{6}{35}$ ths. 10

10. That the parties entitled to, and their respective proportions of, the income accrued and collectible on the corpus of the said personal estate, since the death of Adelaide Barling, (including the net rents arising from the real estate representing the aforesaid mortgage and decree and the bank interest on so much of the net proceeds arising on the sales of said real estate as represents both the original corpus and the proportion of the profits arising on said sales apportionable to corpus), are as follows: Jane H. Boyd: her original $\frac{1}{6}$ th thereof, plus her $\frac{1}{5}$ th of the $\frac{1}{6}$ th share of Kate S. Hopper thereof, to wit: $\frac{1}{5}$ th; Sophia Benjamin: her original $\frac{1}{6}$ th thereof, plus her $\frac{1}{5}$ th of the $\frac{1}{6}$ share of Kate S. Hopper thereof, to wit: $\frac{1}{5}$ th; William A. Boyd and David W. Boyd, sons of James Boyd, in equal shares: the original $\frac{1}{6}$ share thereof of James Boyd, plus their $\frac{1}{5}$ th of the $\frac{1}{6}$ th share of Kate S. Hopper thereof, to wit: $\frac{1}{5}$ th; Matilda C. S. T. P. Kopf and Rodman M. Price, children of Fanny S. Price, in equal shares; the original $\frac{1}{6}$ th share thereof of Fanny S. Price, plus the 20 30 40

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10 said Fanny S. Price's $\frac{1}{5}$ th of the $\frac{1}{6}$ th share of Kate S. Hopper thereof, to wit: $\frac{1}{5}$ th, said Rodman M. Price's share subject to the further decree of this Court upon the questions arising under the pleadings and proceedings in this cause as to the respective rights and interests therein; and James Q. Carpentier, as executor of the last will and testament of John F. Quackenbush, is entitled to receive the original $\frac{1}{6}$ th share of John F. Quackenbush thereof, plus the said John F. Quackenbush's $\frac{1}{5}$ th of the $\frac{1}{6}$ th share of Kate S. Hopper thereof, to wit: $\frac{1}{5}$ th.

20 11. That the proportion of the profits (and the bank interest on the same) arising on the sales of the real estate representing the mortgage and decree aforesaid, apportionable to the income of said trust, should be divided in the proportion that the amount due for interest on said securities, calculated at the rate of interest borne by said securities, from the death of Adonijah S. Boyd to the death of James Boyd, the amount due thereon for interest calculated at the same rate from the death of James Boyd to the death of Kate S. Hopper, the amount due thereon for interest calculated at the same rate from the death of Kate S. Hopper to the death of Fanny S. Price, and the amount due thereon for interest calculated at the same rate from the death of Fanny S. Price to the death of Adelaide Barling, bear to each other; and that the parties entitled to and their respective proportions of the same are as follows: Jane H. Boyd: her original $\frac{1}{7}$ th thereof, plus her $\frac{1}{5}$ th of the $\frac{1}{7}$ th share of Kate S. Hopper in the part thereof apportionable to the period from the death of Kate S. Hopper to the death of Adelaide Barling; Sophia Benjamin:

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her original $\frac{1}{7}$ th thereof, plus her $\frac{1}{5}$ th of the $\frac{1}{7}$ th share of Kate S. Hopper in the part thereof apportionable to the period from the death of Kate S. Hopper to the death of Adelaide Barling; The Hackensack Trust Company, as executor of the last will and testament of Adelaide Barling: the said Adelaide Barling's $\frac{1}{7}$ th part thereof; **10**
 the Administrator, when appointed, of James Boyd: said James Boyd's $\frac{1}{7}$ th share in the part thereof apportionable to the period from the death of Adonijah S. Boyd to the death of James Boyd; William A. Boyd and David W. Boyd, sons of James Boyd, in equal shares: the original $\frac{1}{7}$ th share of James Boyd in the part thereof apportionable to the period from the death of James Boyd to the death of Adelaide Barling, plus their $\frac{1}{5}$ th of the $\frac{1}{7}$ th share thereof of Kate S. Hopper in the part thereof apportionable to the period from the death of Kate S. Hopper to the death of Adelaide Barling; David W. Boyd, as surviving executor of the last will and testament of Kate S. Hopper; the said Kate S. Hopper's $\frac{1}{7}$ th share in the part thereof apportionable to the period from the death of Adonijah S. Boyd to the death of Kate S. Hopper; Matilda C. S. T. P. Kopf and Rodman M. Price, as executors of the last will and testament of Fanny S. Price; the original $\frac{1}{7}$ th share of Fanny S. Price in the part thereof apportionable to the period from the death of Adonijah S. Boyd to the death of Fanny S. Price, plus said Fanny S. Price's $\frac{1}{5}$ th of the $\frac{1}{7}$ th share thereof of Kate S. Hopper in the part thereof apportionable to the period from the death of Kate S. Hopper to the death of Adelaide Barling; Matilda C. S. T. P. Kopf and Rodman M. Price, children of Fanny S. Price, in equal shares; the original $\frac{1}{7}$ th share of Fanny S. **20**
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Price in the part thereof apportionable to the period from the death of Fanny S. Price to the death of Adelaide Barling, said Rodman M. Price's share subject to the further decree of this Court upon the questions arising under the pleadings and proceedings in this cause as to the respective rights and interests therein; and James Q. Carpentier, as executor of the last will and testament of John F. Quackenbush, is entitled to receive the original $\frac{1}{7}$ th share thereof of John F. Quackenbush, plus the said John F. Quackenbush's $\frac{1}{5}$ th of the $\frac{1}{7}$ th share of Kate S. Hopper thereof.

12. That the parties entitled to, and their respective proportions of, the income accrued and collectible from the aforesaid real estate (other than that representing said mortgage and decree) from the death of Adelaide Barling up to the conveyances thereof by the complainant, as substituted administrator with the will of said testator annexed, are as follows: Jane H. Boyd: her original $\frac{1}{6}$ th thereof, plus her $\frac{1}{5}$ th of the $\frac{1}{6}$ th share of Kate S. Hopper thereof, to wit: $\frac{1}{5}$ th; Sophia Benjamin: her original $\frac{1}{6}$ th thereof, plus her $\frac{1}{5}$ th of the $\frac{1}{6}$ th share of Kate S. Hopper thereof, to wit: $\frac{1}{5}$ th; William A. Boyd and David W. Boyd, sons of James Boyd, in equal shares; the original $\frac{1}{6}$ th share thereof of James Boyd, plus their $\frac{1}{5}$ th of the $\frac{1}{6}$ th share of Kate S. Hopper thereof, to wit: $\frac{1}{5}$ th; Matilda C. S. T. P. Kopf and Rodman M. Price, children of Fanny S. Price; in equal shares, the original $\frac{1}{6}$ th share of Fanny S. Price thereof, plus the said Fanny S. Price's $\frac{1}{5}$ th of the $\frac{1}{6}$ th share of Kate S. Hopper thereof, to wit: $\frac{1}{5}$ th, said Rodman M. Price's share subject to the further decree of this Court upon the questions arising under

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the pleadings and proceedings in this cause as to the respective rights and interests therein; and James A. Carpentier, as executor of the last will and testament of John F. Quackenbush, is entitled to receive the original $\frac{1}{6}$ th share of John F. Quackenbush's $\frac{1}{5}$ th of the $\frac{1}{6}$ th share of Kate S. Hopper thereof, to wit: $\frac{1}{5}$ th. 10

13. That the parties entitled to, and their respective proportions of, the assets in the hands of the complainant, representing the assets that came into his hands as substituted administrator with the will of said testator annexed in the place of the deceased executors under said will, and in the proceeds of the sales of the real estate whereof said testator died seized and in the income arising from such assets so received and from the proceeds of said sales of said real estate, are as follows: Jane H. Boyd: her original $\frac{1}{6}$ th thereof, plus her $\frac{1}{5}$ th of the $\frac{1}{6}$ th share of Kate S. Hopper thereof, to wit: $\frac{1}{5}$ th; Sophia Benjamin: her original $\frac{1}{6}$ th thereof, plus her $\frac{1}{5}$ th of the $\frac{1}{6}$ th share of Kate S. Hopper thereof, to wit: $\frac{1}{5}$ th; William A. Boyd and David W. Boyd, sons of James Boyd, in equal shares: the original $\frac{1}{6}$ th share thereof of James Boyd, plus their $\frac{1}{5}$ th 20
30 of the $\frac{1}{6}$ share of Kate S. Hopper thereof, to wit: $\frac{1}{5}$ th; Matilda C. S. T. P. Kopf and Rodman M. Price, children of Fanny S. Price, in equal shares: the original $\frac{1}{6}$ th share of Fanny S. Price thereof, plus the said Fanny S. Price's $\frac{1}{5}$ th of the $\frac{1}{6}$ th share of Kate S. Hopper thereof, to wit: $\frac{1}{5}$ th, said Rodman M. Price's share subject to the further decree of this Court upon the questions arising under the pleadings and proceedings in this cause as to the respective 40
rights and interests therein; and James Q. Car-

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pentier, as executor of the last will and testament of John F. Quackenbush, is entitled to receive the original 1/6th share of John F. Quackenbush thereof, plus the said John F. Quackenbush's 1/5th of the 1/6th share of Kate S. Hopper thereof, to wit: 1/5th.

- 10 The share of William A. Boyd in the net proceeds of the sales of said lands, other than those representing the said mortgage and decree, is subject to the inchoate right of dower of his wife, Mary E. Boyd; the share of David W. Boyd in the net proceeds of the sales of said lands, other than those representing the said mortgage and decree, is subject to the inchoate right of dower of his wife, Eurania R. Boyd; the share of Ma-
- 20 tilda C. S. T. P. Kopf in the net proceeds of the sales of said lands, other than those representing the said mortgage and decree, is subject to the inchoate right of curtesy of her husband, Frederick C. Kopf; the share of Rodman M. Price in the net proceeds of the sales of said lands, other than those representing the said mortgage and decree, is subject to the inchoate right of dower of either Deborah C. Price or May E. Price, whichever may be hereafter determined as his
- 30 wife.

14. That the share of Rodman M. Price in the corpus of the estate of said testator and in the income thereof and the profits arising on the sales of the real estate representing the aforesaid mortgage and decree, shall be held in the hands of the complainant to await the further decree of this Court as to the questions arising under the pleadings and proceedings in this cause as to the
- 40 respective rights and interests in the share of

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Rodman M. Price in the estate of said testator and the income thereof and the profits arising on the sales of the real estate representing the aforesaid mortgage and decree.

15. There is reserved by this decree to the complainant and all the parties defendant herein the right to apply in this cause for further relief and instructions in relation to any matter raised under the decree in this cause or on said accountings. 10

It is further ORDERED that out of the funds in the hands of the complainant there shall be paid the taxed costs of the complainant in this cause and the taxed costs of the jointly answering defendants Matilda C. S. T. P. Kopf, individually and as Executrix of the Last Will and Testament of Fanny S. Price, and Frederick C. Kopf, and the taxed costs of the answering defendant The Hackensack Trust Company, as Executor of the Last Will and Testament of Adelaide Barling, deceased, and the taxed costs of the answering defendant Deborah C. Price (excluding the taxed costs on her counter-claim filed in this cause against the defendants Rodman M. Price and Robert S. Ross), and the taxed costs of the answering defendants Deborah Price and Langworthy Franklin Carr Price (mentioned in the Bill in this cause as Rodman M. Price, Jr.), answering by Deborah C. Price, their guardian ad litem appointed herein for the purpose of defending this action, (excluding the taxed costs on their counter-claim filed in said cause against Rodman M. Price and Robert S. Ross), and the taxed costs of the answering defendant Rodman M. Price (excluding therefrom the taxed costs on his answer to the counter-claim filed against 20 30 40

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him by Deborah C. Price and the defense set up by him to said counter-claim); and that counsel fees be included in said taxed costs as follows:

10 In the taxed costs of the complainant, a counsel fee of Two thousand five hundred dollars (\$2500.) to Edward M. & Runyon Colie, of counsel with the complainant.

In the taxed costs of Deborah C. Price, a counsel fee of One thousand dollars (\$1000.) to Richard Boardman, of counsel with Deborah C. Price and Deborah Price and Langworthy Franklin Carr Price.

20 In the taxed costs of Rodman M. Price, a counsel fee of Five hundred dollars (\$500.) to Heine, Bradner & Laird, of counsel with Rodman M. Price.

In the taxed costs of Matilda C. S. T. P. Kopf, individually and as Executrix of the Last Will and Testament of Fanny S. Price, and Frederick C. Kopf, a counsel fee of Five Hundred dollars (\$500.) to Congleton, Stallman & Hoover, of counsel with Matilda C. S. T. P. Kopf, individually and as Executrix of the Last Will and Testament of Fanny S. Price, and Frederick C. Kopf.

30 In the taxed costs of The Hackensack Trust Company, as Executor of the Last Will and Testament of Adelaide Barling, deceased, a counsel fee of Fifty Dollars (\$50.) to Wurts & Plympton, of counsel with The Hackensack Trust Company, as Executor of the Last Will and Testament of Adelaide Barling, deceased.

E. R. WALKER,
C.

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

Testimony.**IN CHANCERY OF NEW JERSEY**

November 19, 1924.

Between

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RALPH W. SKINNER, as Substituted
Trustee under the Last Will and
Testament of Adonijah S. Boyd,
Deceased, etc..

*Complainant,**and*

JANE H. BOYD, et als.,

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Defendants.

Transcript of shorthand notes of testimony
taken in the above entitled matter before
his Hon. John H. Backes, Vice Chancellor,
at the Chancery Chambers in the City of
Newark, New Jersey, in the presence of
Messrs. Edward M. & Runyon Colie, for
complainants; Messrs. Congleton, Stallman
& Hoover for Matilda C. S. T. P. Kopf, Mr.
Richard Boardman for Deborah C. Price,
Messrs. Heine, Broadner & Laird for Robert
S. Ross and Rodman M. Price, Messrs. Wurte
& Plymton, for the Hackensack Trust Com-
pany and Mr. Francis J. Holl for defendant
William A. Boyd.

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Ralph W. Skinner—Direct.

RALPH W. SKINNER sworn for the complainant.

DIRECT EXAMINATION BY MR. COLIE:

Q. Mr. Skinner, where do you reside? A. 343 Clifton Avenue, Newark.

10 Q. Are you a member of the bar of this state? A. Yes, sir.

Q. Have you a certified copy of the will of Adonijah S. Boyd? A. I have.

MR. COLIE: I offer that in evidence.
Paper marked Exhibit C-1.

Q. William E. Skinner, the trustee named in that will, was your father? A. Yes, sir.

20 Q. When did he die? A. 9th of March, 1915.

Q. Was there an order discharging him prior to his death? A. Yes, sir.

Q. Have you got a copy of that? A. I have.

Q. Please produce it. (A. Producing paper.)

MR. COLIE: I offer it in evidence.
Paper marked Exhibit C-2.

Q. So you were appointed succeeding trustee in his lifetime then? A. Yes, sir.

30 Q. What is the date of your appointment? A. 26th of March, 1913.

Q. Is that a copy of your appointment? (Indicating) A. Yes, sir.

MR. COLIE: I offer it in evidence.
Paper marked Exhibit C-3.

Q. You are now acting also in the capacity of administrator with the will annexed? A. I am.

40 Q. Have you a copy of the petition for the order appointing you as such? A. I have.

Ralph W. Skinner—Direct.

MR. COLIE: I offer it in evidence.

Paper marked Exhibit C-4.

Q. Was there a final account of William E. Skinner as trustee? A. Yes, sir.

Q. Have you a certified copy of the final account? A. I have. 10

Q. Please produce it. A. (Producing paper.)

MR. COLIE: I offer it in evidence.

Paper marked Exhibit C-5.

Q. Have you the date of the death of Adelaide Barling? A. 11th of February, 1923.

MR. COLIE: I offer in evidence certified copy of the last will and letters testamentary granted thereon. 20

Papers marked Exhibits C-6 and C-7.

Q. Have you since the death of Mrs. Barling been collecting the rents and managing this estate?

MR. COLIE: I want to offer this certified copy of the letters of administration with the will annexed.

Paper marked Exhibit C-8. 30

Q. Now, have you power of attorney by which you have been collecting the rent since? A. I have.

Q. Will you produce it please? A. (Producing paper.)

MR. COLIE: I offer it in evidence.

Paper marked Exhibit C-9.

Q. One of the parties in interest in this estate was one Quackenbush, wasn't he? A. Yes, sir. 40

Ralph W. Skinner—Direct.

Q. One of the nephews. Had he conveyed his interest in this estate to anybody? A. To James Q. Carpentier.

Q. Have you the deed? A. I have.

MR. COLIE: I offer it in evidence.

10 Paper marked Exhibit C-10.

Q. Where is it recorded? A. In Bergen County. Made by John F. Quackenbush.

THE COURT: No wife?

WITNESS: No. Dated the 25th day of January, 1924, and recorded in the Bergen County Clerk's Office, Liber 1246, page 454.

20 Q. Do you know whether or not there was a power of attorney also from Quackenbush to Carpentier? A. I do. I have a duplicate original of it. It has not been recorded.

Q. What is the date of the death of Mrs. Price? A. 25th of November, 1920.

Q. Can you tell us approximately, what funds you have—have you a fund in hand as trustee? A. Yes, sir.

Q. Can you tell us approximately what it is? A. \$3,446.28.

30 Q. Have you a fund in hand as administrator with the will annexed? A. I have.

Q. Approximately what amount at present? A. I will have to refer—(interrupted)

Q. About? A. I think about \$44,000.

Q. Have you funds in hand to be distributed in relation to the other power of attorney? A. I have.

Q. Approximately what? A. About \$5800.

40 Q. Have you a bond and mortgage from Brinkerhoff to Boyd? A. I produce them and offer them in evidence.

Ralph W. Skinner—Direct.

THE COURT: Two bonds?

WITNESS: Bond and mortgage affecting Ridgewood property—

THE COURT: What do you mean by Ridgewood?

WITNESS: Ridgewood in Bergen County.

10

Q. Will you just give the stenographer the date of the mortgage and place of record of it?

WITNESS: It is dated November 2, 1888, made by Eliza L. Brinkerhoff and Enoch her husband, to Adonijah S. Boyd and is recorded in the Bergen County Clerk's Office, November 27, 1888, in Book E-3 of Mortgages, page 341.

MR. COLIE: I offer it in evidence.

20

Paper marked Exhibit C-12.

Q. Was that foreclosed? A. In Mr. Boyd's lifetime.

Q. Have you a copy of the decree of foreclosure? A. I have. It was filed January 13, 1890.

Paper marked Exhibit C-13.

Q. What was the amount of that decree? A. \$856 for principal and interest.

30

THE COURT: Do you offer the files in evidence?

MR. COLIE: Yes, sir, I offer the file of that case in evidence.

Q. Now, that property was conveyed by Brinkerhoff to whom? A. To my father.

Q. After the decree? A. Yes, sir.

Q. Give your father's full name? A. To my father, trustee, by deed dated February 3, 1898.

40

Q. Your father's name is what? A. William E. Skinner.

Ralph W. Skinner—Direct.

10 MR. COLIE: I have the deed and offer it in evidence, it is made by Eliza L. Brinkerhoff and Enoch her husband to William E. Skinner, trustee, under the last will and testament of Adonijah S. Boyd, deceased, dated February 3, 1898, recorded in the Bergen County Clerk's Office February 5, 1898, in Book 462 of Deeds, page 221.

Papers marked Exhibits C-14 and C15.

Q. Mr. Skinner, that property, has it been sold since you were administrator with the will annexed? A. Yes, sir; it has been sold.

Q. Has it realized a profit over and above the amount due on that decree? A. It has.

20 Q. During the time that you have been trustee has there been any income from that property? A. Yes, sir.

Q. And the net income has been disposed of how by you? A. It has been distributed to the beneficiary under the will.

Q. You do not mean specifically, but you mean with the other funds? A. I do.

30 THE COURT: As part of the general income of the estate?

WITNESS: Yes, sir.

Q. When was that property sold? A. The deed was delivered, I think, on the 2nd of August of this year.

Q. How much? A. \$2200. gross.

THE COURT: Net?

WITNESS: \$2034.75.

40 THE COURT: The net income from that property from the time the mortgagor made the deed until it was sold, would it equal the amount of interest on the principal sum?

Ralph W. Skinner—Direct.

Q. Do you understand the question? The Court wants to know whether the income equals six percent on that decree, plus—no—it wouldn't be the decree, would it, your Honor?

THE COURT: It is so near—(interrupted).

MR. COLIE: All right.

10

THE COURT: About. Do you say about?

MR. COLIE: Did you mean the net income?

THE COURT: That is what I asked.

Q. From the time of the death of Boyd up to the date of sale? A. The net income appears to be about \$1600 from the time of the death of Mr. Boyd to the present time.

Q. To the time of sale you mean. A. To the time of sale, yes.

20

Q. Have you got there the figures that will enable us to tell this?

THE COURT: Have you got the calculation of interest between that time?

WITNESS: No, sir.

MR. COLIE: It is not the amount of interest from the decree.

THE COURT: I asked him if he had the compilation. We can make it. It is a matter of accounting later on.

30

Q. Now, have you a bond and mortgage on the West Hoboken property? A. I have, and produce a mortgage made by Mary R. Christie and Gamaliel R. Christie, her husband to Adonijah S. Boyd dated May 1, 1890 and recorded May 2, 1890, in Hudson County Register's Office in Book 242 of mortgages on page 119.

Q. What was the amount of the mortgage? A. \$5500.

40

Ralph W. Skinner—Direct.

MR. COLIE: I offer it in evidence.

Paper marked Exhibit C-16.

MR. COLIE: I also offer the bond to secure the mortgage.

Paper marked Exhibit C-17.

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MR. COLIE: I also produce and offer in evidence the certified copy of the final decree of foreclosure at the suit of William E. Skinner as trustee against Mary R. Christie and others, filed August 12, 1895 for \$6,153.58, principal and interest, and I also offer in evidence the files in the cause entitled between William E. Skinner as trustee, etc., complainant, and Mary R. Christie, et als., defendants.

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Paper marked Exhibit C-18.

Q. Have you a deed for that property? A. I have.

MR. COLIE: I offer in evidence deed by Mary R. Christie and Gamaliel R. Christie her husband, to William E. Skinner as trustee under the last will and testament of Adonijah S. Boyd dated September 5, 1895 and recorded in the Hudson County Register's Office September 6, 1895, in Book 631 of Deeds, on page 43.

30

Paper marked Exhibit C-19.

Q. That property has not yet been sold? A. No.

Q. Have you, from knowledge of property in the vicinity and information obtained from real estate agents, a notion as to whether that property is on sale going to produce an increment over and above the amount of the mortgage? A. I have.

40

Q. Will it or will it not? A. It will, I am confident.

Ralph W. Skinner—Direct.

Q. According to the figures you have, about what? A. It should sell for about \$15,000.

Q. Excess? A. No. The excess would be—it will sell for about \$15,000 gross, at least.

Q. Has it been income producing property? A. Some, yes.

10

THE COURT: Not equal to the amount of interest?

WITNESS: I couldn't state that.

THE COURT: Have you the figures of what it yielded?

WITNESS: I have the gross yieldage, yes, sir.

THE COURT: Not the net?

WITNESS: No.

20

THE COURT: The figures you gave me before on the other property, were they net or gross?

WITNESS: Net. I haven't completed my calculations of this West Hoboken property. I have the gross, \$9311.

Q. Under the figures, as you recall them, approximately, would there be income to give to the life tenant out of the proceeds of the sale of these two properties? A. I think so.

30

MR. COLIE: There is an exemplified copy of the administration on the estate of Catherine Boyd I wish to offer in evidence, widow of James Boyd, one of the nephew beneficiaries under the will.

Paper marked Exhibit C-20.

NO CROSS EXAMINATION.

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David Boyd—Direct.

DAVID BOYD sworn for complainant.

DIRECT EXAMINATION BY MR. COLIE:

Q. Where do you live? A. 237 Prospect Street, Ridgewood, New Jersey.

10 Q. And you are a son of James Boyd? A. Yes, sir.

Q. Who was a nephew of Mr. Boyd—Adonijah S. Boyd? A. Yes, sir.

Q. When did your father die? A. About fifteen years ago.

Q. Do you know the exact date? A. No, I do not.

Q. Year? A. No, I do not know the year, fifteen years ago.

20 Q. If I should name it to you would you know—would you recall it? April 3, 1907, is that about right? A. Yes, sir.

Q. Did he leave a will? A. No sir.

Q. Whom did he leave in the way of next-of-kin or heirs? A. Why, his wife was living at the time and two sons, my brother and myself.

Q. And his wife is dead? A. Yes, sir.

Q. And your sister? A. No sister.

30 Q. Brother and yourself are living? A. Yes, sir.

Q. William? A. Yes, sir.

Q. When did your mother die? A. Last year, November.

Q. Can you tell us when Mrs. Hopper died? A. Why, I think it was around February, 1917.

Q. Have you a copy of her will? A. Yes, sir; I have.

40 Q. Will you produce it? A. (Producing paper)

David Boyd—Direct.

MR. COLIE: I offer it in evidence.
Paper marked Exhibit C-21.

Q. Have you got a copy of the letters testamentary issued on that will? A. Yes, sir.

Q. Please produce that? A. (Producing paper). 10

MR. COLIE: I offer it in evidence.
Paper marked Exhibit C22.

Q. Now, at the time that your father—your aunt, Mrs. Hopper, had no issue, no children—did she? A. No, sir.

Q. Now, at the time of your father, James Boyd's death, had you children living? A. Yes, sir. 20

Q. How many? A. Two.

Q. Will you kindly give us their names and ages at his death? A. Ages at his death?

Q. Yes, approximately? A. Viola M. Boyd.

THE COURT: How old is she now?

WITNESS: She is 23. And Ruth K. Boyd now 21.

Q. And your brother Will, at the time of your father's death, had he any children living? A. No, sir. 30

Q. Has he any children living now? A. Yes, sir.

Q. What are their names, if you know? A. There is William Alexander Boyd.

Q. How old? A. I think he is about 14.

Q. And who else? A. And Mabel Boyd, sixteen, and Dorothy Boyd—she is in the neighborhood of ten, I think. 40

COMPLAINANT RESTS.

Matilda Kopf—Direct

MATILDA C. S. T. P. KOPF sworn for defendant.

DIRECT EXAMINATION BY MR. CONGLETON:

10 Q. Mrs. Kopf, you are a daughter of the late Fanny Price? A. Yes, sir.

Q. Who was one of the nieces named in the will we are considering here this morning? A. Yes, sir.

Q. By the fifth clause of the will. When did your mother die? A. November 25, 1920.

Q. Did she leave a will? A. Yes, sir; she did.

Q. And it has been probated? A. Yes, sir; it is.

20 MR. CONGLETON: I offer in evidence certified copy of the last will and testament of Fanny S. Price, deceased, probated in Bergen County Surrogate's Office.

MR. BOARDMAN: I object as immaterial.

THE COURT: Objection overruled.

Paper marked Exhibit D-1.

30 Q. Mrs. Kopf, at the time of your mother's death, who were her next-of-kin and heirs? A. Just two children.

Q. You and your brother? A. Rodman and myself.

Q. And your father survived your mother? A. My father survived.

Q. And he is still living? A. He is still living.

Q. What is his name? A. Gouverneur Price.

Q. Did your brother at the time of your mother's death have children living? A. Yes, sir.

40 Q. And can you give their names and approximate ages? A. I really do not know.

Q. You can give their names? A. Yes, sir; one was Deborah.

Matilda Kopf—Cross.

Q. How old is she? A. I think eleven, the 28th of November. I am not sure.

Q. And the son? A. The son—there is a question about his name. At first it was Rodman, I believe it has been changed now to Longworthy.

Q. About how old? A. I think, judge, he will be seven, this last October. I am not sure. 10

Q. And no others? A. That is all Rodman had at that time.

Q. Have you any children? A. No; I had one. He passed away.

Q. Prior to your mother's death? A. Yes, sir.

CROSS EXAMINATION BY MR. BOARDMAN:

Q. The mother of Deborah Price and Rodman Price, Jr., was Deborah Carr Price? A. Yes, sir. 20

Q. Where were your brother and Deborah Carr Price married, in Washington? A. In the State of Washington.

Q. In the State of Washington? A. Yes, sir.

Q. 25th of June, 1912, they were married? A. I believe it was in 1912.

THE COURT: Have you finished, Mr. Congleton?

MR. CONGLETON: I think so. 30

MR. BRADNER: I would like to prove the assignment from Rodman Price to Robert S. Ross.

THE COURT: Put it in evidence.

MR. BOARDMAN: I object. I represent infants. I do not think it is provable. I think there ought to be proof made.

THE COURT: What have I got to do in this case with the ultimate distribution of the funds? 40

Ralph W. Skinner—Direct.

MR. BOARDMAN: Eventually you will. I do not think it is material at this moment.

THE COURT: Let it go in subject to more formal proof upon the final distribution. Let us have it as part of the history of the case.

10 MR. BOARDMAN: I am satisfied. I represent infants and cannot consent to anything.

MR. BRADNER: I offer the assignment.

Paper marked Exhibit D-2.

THE COURT: Without formal proof at this time, as part of the history of the case. No other effect at this time.

TESTIMONY CLOSED.

20

IN CHANCERY OF NEW JERSEY

January 14, 1925.

30 Transcript of shorthand notes of testimony taken in the above entitled matter before his Honor John H. Backes, Vice Chancellor, at the Chancery Chambers in the City of Newark, New Jersey, on notice, in the presence of the parties as before.

RALPH W. SKINNER recalled for further examination.

DIRECT EXAMINATION BY MR. COLIE:

40 Q. Mr. Skinner, at the former hearing there

Ralph W. Skinner—Direct.

was testimony in relation to a property known in that testimony as the West Hoboken property. Will you kindly state the facts so far as that property is concerned in its relation to the estate? A. The property was conveyed by Mr. Boyd in his lifetime to Mary R. Christie. She gave back a purchase money mortgage, made in May, 1890, which Mr. Boyd held at the time of his death in October, 1890. 10

Q. How much was the mortgage? A. For \$5500. It appeared subsequent to Mr. Boyd's death that at the time of the conveyance there were large arrears of taxes from 1877, I think to 1887 or 1889 unpaid. Mrs. Christie defaulted in payment of interest on the mortgage and declined to pay any more interest until the arrears of taxes had been paid by the trustee. The trustee filed a bill to foreclose and on December 24, 1894 the final decree was entered in the Court of Chancery by which it was decreed that the unpaid taxes were a valid lien on the property. 20

Q. In her favor—in Mrs. Christie's favor? A. Yes, sir, and that there was due to the town of West Hoboken for those taxes and interest to November 20th, 1894, \$1349.45, and the trustee was decreed to pay those taxes and satisfy the lien, and that if he failed to pay them within thirty days from the date of the decree Mrs. Christie should pay them and the amount paid allowed to her and as a credit on account of the amount due on the mortgage. The trustee paid the taxes with the interest and also the costs of the town of West Hoboken which amounted to \$18.02. Those taxes and those costs were paid out of the corpus of the estate. And the amount of Mrs. Christie's costs were credited on the bond. Pending that suit—(interrupted). 30 40

Ralph W. Skinner—Direct.

Q. What was the amount of those costs, do you know? A. \$83.92. Pending that foreclosure suit the court directed Mrs. Chirstie to pay \$500 on account of the amount due on the mortgage, and she paid that, and it was credited on the bond. The mortgagor being in default again a later and second bill to foreclose was filed and resulted in a decree of foreclosure entered in favor of the complainants on August 12th, 1895 for \$6153.58. Of that amount \$5500 was principal and the balance, \$653.58—(interrupted).

10

Q. What suit was that on?

THE COURT: What was the basis of that suit?

WITNESS: It was on the same mortgage.

20

THE COURT: The mortgage had gone to decree, hadn't it?

MR. COLIE: No. There was a decree in the Court of Chancery that she be allowed on her answer in the foreclosure suit.

THE COURT: Then decree was entered in favor of the complainants.

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MR. COLIE: In favor of the defendants. It turned out to be a question as to whether she was or was not to be allowed this amount of liens and taxes. There were two foreclosure suits. The decree being taken as final which charged Boyd with these taxes which were a lien under his deed.

Q. Now, Mr. Skinner, continue, will you. A. In this second foreclosure suit the decree was entered August 12, 1895, as stated, for the amount of the mortgage, \$5500 and arrears of interest, making a total amount of \$6153.58. and the complainant's costs were taxed at \$77.55. In Sep-

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Ralph W. Skinner—Direct.

tember Mrs. Christie and her husband executed a deed to the trustee in satisfaction of the foreclosure decree, so that it never went to a sale.

Q. In favor of the trustee in what capacity?

A. As trustee.

Q. Under this will? A. As trustee under the last will and testament of Adonijah S. Boyd, deceased.

10

Q. That is from the deed, is it? A. Yes, sir, from the premises in the deed, and the is upon trust nevertheless and for the uses and purposes expressed and declared in the last will and testament of Adonijah S. Boyd, deceased.

Q. All right. Go on. A. Since that time—since the date of that deed—the former trustee and myself as his successor have collected the income, the rents and profits—rents and income from the property, paying taxes and other disbursements.

20

Q. Can you tell me whether taxes had accrued at the time of the conveyance made by Mrs. Christie? A. Yes, sir; there were taxes for the year 1890, 1, 2, 3, 4, 5; I think they were.

Q. What did they amount to? A. \$487.90, and were paid by the trustee out of the corpus.

30

Q. Now were there payments on account of assessments—local improvements? A. There were four assessments for local improvements.

Q. What did they amount to? A. \$1,157.09.

Q. Now, Mr. Skinner, have you from the accounting made a statement of the total amount due on the mortgage with interest figured up to the death of Mrs. Barling, the original life tenant, and also of the income that has been received, net and gross income that has been received up to the time of her death? A. I have.

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Ralph W. Skinner—Direct.

MR. COLIE: I will offer it as an exhibit.
Paper marked Ex. 23.

THE COURT: Is that your statement?

WITNESS: Yes, sir.

10 Q. Mr. Skinner, at the last hearing you referred to a Wood Ridge property involved in this estate in which a deed was taken by the trustees also.
A. Yes, sir, but before I go into that I want to correct the statement, that the arrears of taxes did not include 1890, but were from 1891 to 1895 inclusive—both inclusive.

THE COURT: That is the statement of the West Hoboken property?

WITNESS: Yes, sir.

20 THE COURT: Any correction of the statement that you submitted?

WITNESS: No, sir. It is correct in the statement.

Q. Now you refer to the Wood Ritge property in the former testimony? A. Yes, sir.

30 Q. And gave the history of that. Now, have you made a like statement in regard to the property as to the amount of accumulated interest and thenet income? A. I have. That was a final decree foreclosure at the date of Mr. Boyd's death, and the amount of the decree was entered to the date of Mr. Boyd's death, and the amount of tax costs with interest to the date of his death totalled in all \$962.72. I have also figured the interest from the date of Mr. Boyd's death to the date of Mrs. Barling's death on February 11, 1923 and find that the interest on that total of 962.72 for that period amounts to \$1868.71.
40 The gross receipts of income collected by my

Ralph W. Skinner—Direct.

father as trustee and myself from the date of Boyd's death to the present time amounts to \$3393.38 and the total disbursements for the same period amounts to \$1926.38, so that the net income is \$1467. This deducted from the total interest leaves a balance of interest of \$401.71.

Q. And you stated what was realized from the property, haven't you? A. In my former testimony, the net proceeds amounts to \$2034.75. As I testified before the West Hoboken property has not yet been sold.

10

MR. COLIE: I offer the statement in evidence.

(Paper marked Ex. C-24.)

Q. Since the death of Adonijah S. Boyd how has the income disposed of under the fifth paragraph of the will been distributed by your predecessor and yourself? A. From the date of Mr. Boyd's death in 1890 down to the date of the—(interrupted).

20

Q. What date did you give? A. In 1890, October 5th, down to the date of the death of James Boyd, who was the first of the beneficiaries of income to die, and who died April 3rd, 1907, the income was distributed one-seventh to Miss Barling, one-seventh to John F. Quackenbush—the same fraction to each of the others, Jane H. Boyd, Sophia Benjamin, Fanny Price, Kate F. Hopper and James Boyd. There was one-seventh to each of the named beneficiaries in the will. Now from the death of James Boyd until the death of Kate F. Hopper on February 26, 1917, the income was distributed in the same manner as prior to James Boyd's death except that the seventh of income that James Boyd had received

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Ralph W. Skinner—Direct.

prior to his death was thereafter paid to his two sons, Edward W. Boyd and William A. Boyd.

Q. Equally? A. Equally. They were the only two children he ever had.

10 Q. Go on, from the date of the death of Kate F. Hopper; A. From the death of Kate F. Hopper the income was distributed in the same manner until the death of Fanny F. Price on the 25th of November, 1920. The net income was distributed in the same manner as from the death of James Boyd to that of Mrs. Hopper, Miss Barling always receiving only one-seventh; Fanny S. Price, Jane H. Boyd, Sophia Benjamin and John F. Quackenbush receiving not only their original one-seventh but also each a one-fifth
20 of the share of income that had thretofore been distributed to Mrs. Hopper, and William Boyd and David W. Boyd receiving not only each a one-fourteenth, together making up the share that their father James Boyd had received, prior to his death, but also each of them a one-tenth part of the share that Mrs. Hopper had received up to the time of her death, that is, rather, the share that she would have received but for her death.

30 Q. On from the death of Fanny S. Price? A. From the date of the death of Fanny S. Price on November 25th, 1920, down to the date of the death of Adelaide Barling on February 11, 1923. the income was distributed in the same manner as after the death of Mrs. Hopper and up to the time of the death of Mrs. Price, except that as to the one-fifth part theretofore distributed to Mrs. Price of the income that Kate Hopper would have received had she lived, the income was
40 paid to her executors, and except also that after the making of a deed of trust by Rodman M. Price on September 9, 1922 to Robbert S. Ross.

Ralph W. Skinner—Direct.

the payments of the income was made to the trustee under that deed of trust—the share of the income that otherwise would have been paid to Rodman M. Price. There was only one distribution of income made after the execution of the deed of trust. That was made about November or December, 1922, and Miss Barling died in February, 1923, and no income has been distributed since that time. 10

Q. How have you distributed the original one-seventh which Fanny Price would have been entitled to had she lived? A. That has been paid in equal parts to Rodman M. Price and Matilda C. S. T. P. Kopf, her two children—the only two children she left her surviving.

Q. Do you know the name of the wife of David W. Boyd? A. Eurania R. Boyd, and Mary E. Boyd is the wife of William A. Boyd. 20

Q. Who was Viola M. White? A. David W. Boyd at the time of the death of his father James A. Boyd in 1907 had two children living. He never had any other children. They were his daughters Viola M. Boyd and Ruth A. Boyd. They are both still living. David W. Boyd has never had any other descendants except that Viola married one Leslie White and one child has been born to her, Claire R. White, who was born September 14, 1923. 30

Q. Who is Ruth K. Boyd? A. Ruth K. Boyd is the other daughter I have mentioned of David W. Boyd. She became of age on the 25th of August, 1924.

Q. Now these children of William A. Boyd were all born as in relation to the death of James Boyd—(interrupted).

A. They were all born subsequent to the death 40

Ralph W. Skinner—Direct.

of James Boyd. There are only three of them. There have never been more than three. The oldest was Mabel K. Boyd.

10 Q. Mabel G. A. Mabel G. Boyd, and she was born March rd, 1908; the second child was James A. Boyd, and the third child Dorothy E. Boyd, born March 3rd, 1908; the second child was James Hopper died February 25th, 1917.

Q. Now they were all born prior to the death of Mrs. Hopper? A. Yes, sir.

20 Q. What about Deborah Price, who is she? A. Rodman M. Price is the son of Fanny Price and he married Deborah C. Price and by her had two children, the oldest was Deborah Price, who was born November 28th, 1913, and the second child was Rodman M. Price, Jr., who is now known as Langworthy Franklin Carr Price and he was born October 22, 1917. Rodman Price claims to have been divorced—(interrupted).

Q. That hasn't anything to do with it. A. These were the only two children of Rodman M. Price born up to the date of Miss Barling's death, or for at least a year thereafter.

30 Q. Well, there is another child of Rodman M. Price.

MR. BOARDMAN: I object.

MR. COLIE: How can that be incompetent?

MR. BOARDMAN: How can he prove it?

WITNESS: John F. Quackenbush and Jane H. Boyd had never married; Sophia Benjamin is a widow, has been a widow for many years.

40 Q. What was the date of the death of David St. John one of the

Q. Is there any accounting pending in the Or-

Ralph W. Skinner—Cross.

phans' Court—any Orphans' Court by you in any of the capacities in which you are bringing this suit? A. There is none. None pending in any Orphans' Court or in any other court.

CROSS EXAMINATION BY MR. BOARDMAN:

Q. Mr. Skinner, the figures on these two statements you put in are figures that you would swear to in detail if required to at length, is that right? A. I have made them up from certified copies and office copies—I think principally certified copies of the accounts filed by my father and myself. 10

Q. And they are correct? A. And as accurately as I know how to do it.

Q. The distribution you have testified to is the distribution you have set up in your bill—you haven't varied from it but you simply confirm that statement? A. The same distribution that I have set up in the bill. 20

Q. And any omission of a name would be inadvertant? The statement in the bill is the statement that you stand by, is it not? A. Yes, sir. I do not think I have omitted any names.

Q. Was the case of Skinner against Christie reported? A. Yes, sir. 30

Q. Can you give us the citation? A. I cannot offhand, no. It can readily be found in the book.

Q. Under that name? A. Yes, sir, Skinner against Christie.

TESTIMONY CLOSED.

**Stipulation as to Facts not included in
Testimony.**

IN CHANCERY OF NEW JERSEY

	B e t w e e n 10 RALPH W. SKINNER, as Substituted Trustee under the Last Will and Testament of Adonijah S. Boyd, Deceased, etc., <div style="text-align: right;"><i>Complainant</i></div> <div style="text-align: center;"><i>and</i></div> JANE H. BOYD, et als., <div style="text-align: right;"><i>Defendants.</i></div>	On bill &c.
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20 It is hereby stipulated and agreed that the following facts not included in the testimony taken shall be considered as proven in the case with the same force and effect as if testimony had been taken establishing the same.

30 1. That the property known as West Hoboken property was sold and conveyed by Boyd in his lifetime to Mary R. Christie, who gave back a purchase money mortgage for \$5,500.00. Subsequent to Boyd's death it appeared that there were large arrears of taxes unpaid and a lien against the property at the time of the conveyance to her. The Trustee filed his bill to foreclose the mortgage, and she set up the arrears of taxes and that Boyd was bound to convey to her free of encumbrances. Pending said suit, the court ordered that said Christie should pay \$500.00 on account of the amount due on the mortgage, which she

40 did and the Trustee credited her therewith (the amount not equalling the amount of interest then

Stipulation as to Facts.

due). She obtained a decree that the taxes unpaid at the time of conveyance to her were a valid lien on the premises, and that there was due to the Town of West Hoboken for those taxes with interest from November 20, 1894, \$1,349.45, and that the Trustee pay the same and satisfy the lien, and if he fail to do so within thirty days from the date of the decree she should pay the same, and the amount should be allowed to her as a credit on account of the amount due on the mortgage. Thereupon the Trustee paid said taxes. The decree further ordered that the costs of the Town of West Hoboken amounting to \$18.02 should be paid by the Trustee, and the Trustee paid said costs out of principal and the amount of Mary R. Christie's costs to wit. \$83.92 was credited on the bond. Mary R. Christie being in default, the Trustee filed another bill, resulting in final decree of foreclosure entered August 12, 1895, for \$6,153.58 (\$5,500.00 of which was principal) and complainant's costs \$77.55. Thereupon the Trustee took a deed from said Christie for said premises on the trusts set forth in the Will of Boyd, and paid arrears of taxes accruing subsequent to the conveyance of said premises to said Christie amounting to \$487.90. The complainant and his predecessor in the trust from time to time paid assessments for local improvements, amounting to \$1,157.09. All said assessments were included in the general disbursements of the trust. Said property has produced some net income which has been included in the general receipts of the estate and distributed with the general income of the estate, excepting that the taxes paid pursuant to the beforementioned decree and also the arrears of

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Stipulation as to Facts.

taxes above set forth were charged to corpus.

2. That from the death of Adonijah S. Boyd distribution has been made under the provisions of Paragraph FIFTH of the Will of Adonijah S. Boyd of the net income coming into the hands of
 10 said William E. Skinner as Trustee, and coming into the hands of complainant as Substituted Trustee in the following manner:

From the death of Adonijah S. Boyd until the death of James Boyd on April 3, 1907; To Fanny S. Price, Jane H. Boyd, Sophia Benjamin, Kate S. Hopper, John F. Quackenbush, James Boyd, and Adelaide Barling, each a seventh part of such net income;

20 From the death of James Boyd until the death of Kate S. Hopper in or about February 1917: To Fanny S. Price, Jane H. Boyd, Sophia Benjamin, Kate S. Hopper, John F. Quackenbush, and Adelaide Barling, each a seventh part of such net income, and to William A. Boyd and David W. Boyd, sons of the aforesaid James Boyd deceased, each a fourteenth part thereof:

30 From the death of Kate S. Hopper to the death of Fanny S. Price, on November 25, 1920: To said Adelaide Barling, a seventh part thereof: to said Fanny S. Price, Jane H. Boyd, Sophia Benjamin, and John F. Quackenbush, not only a seventh part thereof to each, but also to each a fifth part of the share thereof which but for the death of Kate S. Hopper would have been payable to her; and to said William A. Boyd and David W. Boyd, not only to each a fourteenth
 40 part thereof, but also to each a tenth part of the share thereof which but for the death of Kate S. Hopper would have been payable to her:

Stipulation as to Facts.

From the death of Fanny S. Price the net income, so far as distributed, has been distributed in the same manner as after the death of Kate S. Hopper, except that the share of Fanny S. Price has been distributed: the original seventh part thereof payable to her under said Paragraph FIFTH of the Will of Adonijah S. Boyd has been distributed to her daughter Matilda C. S. T. P. Kopf and her son Rodman M. Price, share and share alike, except that after the execution and delivery by Rodman M. Price on September 9, 1922, to Robert S. Ross of a deed of trust for the benefit of certain of his creditors a payment of net income, part of said original seventh part thereof of said Fanny S. Price, was distributed by a check drawn to the order of Robert S. Ross, Trustee under deed of trust dated September 9, 1922, made by Rodman M. Price, and a fifth part of the seventh part of the net income that would have been payable to said Kate S. Hopper but for her death has been paid to the said Matilda C. S. T. P. Kopf and Rodman M. Price, as executors of the will of Fanny S. Price, deceased.

No distribution of income has been made since the death of Adelaide Barling on February 11, 1925.

3. That Eurania R. Boyd is the wife of David W. Boyd, and that Mary E. Boyd is the wife of William A. Boyd; that Viola M. White, daughter of David W. Boyd, is the wife of Leslie White, and has only one child, Claire R. White; who was born September 14, 1923; that Ruth K. Boyd, daughter of David W. Boyd, became of age in the month of August, 1924; that all of William A. Boyd's children were born subsequent to the

Stipulation as to Facts.

10 death of James Boyd, the eldest, Mabel G. Boyd, having been born March 3, 1908, and that they were all born prior to the death of Kate S. Hopper; that Deborah Price, one of the children of Rodman M. Price, was born November 28, 1913, and Rodman M. Price Jr., another child of Rodman M. Price, was born October 22, 1917, subsequent to the death of Kate S. Hopper, which occurred February 26, 1917; that John F. Quackenbush and Jane H. Boyd have never married; and that Sophia Benjamin is a widow; and that David St. John, one of the executors of the Will of Adonijah S. Boyd, died September 14, 1917.

20 4. That there is no accounting pending in the Orphans' Court by the complainant in any of the capacities in which he brings this suit.

EDWARD M. & RUNYON COLIE,

Solr. for Complainant.

30 Solr. for Deborah C. Price, individually and as guardian ad litem of the infants, Rodman M. Price, Jr. (sometimes known as Langworthy Franklin Carr Price) and Deborah Price and said infants Rodman M. Price, Jr. (sometimes known as Langworthy Franklin Carr Price) and Deborah Price.

Solrs. for Hackensack Trust Company, as Executor of the last will and testament of Adelaide Barling, deceased.

40 Solrs. for Matilda C. S. T. P. Kopf, individually and as executrix of Fanny S. Price, and Frederick C. Kopf, her husband.

Solrs. for Robert S. Ross, Trustee, and Rodman M. Price, individually and as Executor of Fanny S. Price.

Exhibit C-1—Will of Adonijah S. Boyd.

In the name of God, Amen, I Adonijah S. Boyd of the township of New Barbadoes in the County of Bergen and State of New Jersey being of sound and disposing mind memory and understanding, do make, publish and declare this, my last will and testament in manner following that it to say:

10

First: It is my will and I do order, that all my debts and funeral expenses be paid and satisfied so soon as it can conveniently be done after my decease.

Second: I do order and direct that a suitable monument be erected over the grave of my deceased wife Fanny at an expense of about Five hundred dollars, in case such monument shall not have been already erected during my life time.

20

Third: I do hereby give and bequeath to my niece Kate Hopper, wife of Albert Hopper my own portrait and the portrait of my mother, and I do hereby direct and require the executors hereinafter named and appointed to give said portraits to my said niece so soon as they can conveniently after entering upon their duties as executors.

Fourth: I do hereby give devise and bequeath unto Adelaide Barling, the half sister of my deceased wife Fanny, All that lot tract or parcel of land and premises situate lying and being in the village of Hackensack in the township County and State aforesaid, having a frontage on Essex Street in said village of about one hundred and eighty feet on which said lot are built my dwelling house in which I now reside and other buildings and all the furniture household goods

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Exhibit C-1—Will of Adonijah S. Boyd.

and other personal property in said dwelling house and other buildings contained save the two portrait before mentioned, and the monies, promissory notes, bonds and mortgages, certificates of shares of stock, and other securities and books of account which may be therein at the time of my
 10 decease for and during the term of her natural life she keeping the same in good repair and condition and paying the taxes and assessments and other charges thereon imposed by law.

Fifth: All the rest and residue of my estate real and personal, whatsoever and wheresoever I do hereby give, devise and bequeath unto William E. Skinner of Hackensack aforesaid for and during the natural life of said Adelaide Barling in
 20 trust nevertheless for the uses and purposes following that is to say, to retain and keep in his own hands all the said rest and residue of my personal estate and the same to invest in such securities as shall be deemed best by him, or put out at interest on bond secured by bond and mortgage, to alter and change investments and securities as he may think best, to renew and extend loans to call loans in and receipt for the
 30 same, and the moneys thereby received to invest or put out at interest as aforesaid, to grant leases of all the messages lands and tenements whereof, I shall die seized or possessed, the lands herein devised to said Adelaide Barling for and during her natural life excepted, and to determine the same to collect the income, interest, rents issues and profits accruing from said rest and residue of my estate real and personal, and after making all necessary repairs and paying all taxes and assessments and other necessary charges and ex-
 40 penses in and about the management of said rest

Exhibit C-1—Will of Adonijah S. Boyd.

and residue of my estate to pay annually at such time and place as he may deem expedient the equal one seventh part of the remainder of said income, interest, rents, issues and profits, to the said Adelaide Barling, the equal one seventh part thereof to each of my nephews, James Boyd, son of my deceased brother Adam Boyd, and John Quackenbush son of my deceased sister Helen, and the equal one seventh part thereof to each of my nieces, Kate Hopper wife of Albert Hopper, Fanny Price wife of Gouverneur Price, Sophie Benjamin, wife of John V. Benjamin and Jane Boyd, daughter of my deceased brother Adam Boyd, and if any of my said nephews or nieces shall die during the lifetime of said Adelaide Barling, leaving issue, to pay to such issue the share of said remainder which my said nephew or nieces legally represented by such issue, would have been entitled to receive if living; and if any of my said nephews or nieces shall die during the lifetime of said Adelaide Barling without leaving issue to pay the share of said remainder which my said nephew or niece, who shall so die, would have been entitled to receive if living, to the survivor or survivors of my aforesaid nephews and nieces and to the issue of any of them who shall have died leaving issue, in equal shares share and share alike, except that issue paid under this provision shall be paid only that share, which my said nephew, or niece who shall be legally represented by such issue would have been entitled to receive if living.

Sixth: Upon the decease of the said Adelaide Barling I do hereby give, devise and bequeath all the real and personal estate hereinbefore given devised and bequeathed to her for and during her

Exhibit C-1—Will of Adonijah S. Boyd.

10 natural life, And also all the rest and residue of my real and personal estate hereinbefore given devised and bequeathed to said William E. Skinner for and during the life of the said Adelaide Barling in trust as aforesaid to my ^{two} five nephews and four nieces aforesaid in equal shares share and share alike, and if any of my said nephew

(Insert - Case p. 114, line 16, after word "issue")

the share of my said nephew or niece legally represented by such issue.

20 such issue. And if any of my said nephews or nieces shall have died during the lifetime of said Adelaide Barling without leaving issue or leaving issue who shall all have died prior to the decease of said Adelaide Barling, I do hereby give, devise and bequeath the share of my said nephew or niece who shall have so died, to the survivors or survivor of my said nephews and nieces, and to the issue of any of them who shall have died leaving issue who shall be living at the time of the decease of said Adelaide Barling, in equal shares share and share alike, except that issue taking under this provision, shall take only the share of my said nephew or niece, who is legally represented by such issue, And in case it shall be necessary in order that a satisfactory and fair division of my estate be made among my devisees and legatees aforesaid after the decease of said Adelaide Barling, then I do hereby order and direct and empower the hereinafter named executors of this my last will and testament or the survivor of them, to sell all my real estate at public or private sale for the highest price that can be obtained by them or the survivor of them for the same, and to make, execute and deliver to the

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Exhibit C-1—Will of Adonijah S. Boyd.

natural life, And also all the rest and residue of
 my real and personal estate hereinbefore given
 devised and bequeathed to said William E. Skin-
 ner for and during the life of the said Adelaide
 Barling in trust as aforesaid to my ^{two} five nephews
 and four nieces aforesaid in equal shares share
 10 and share alike, and if any of my said nephews or
 nieces shall have died during the life time of the
 said Adelaide Barling leaving issue who shall be
 living at the time of the decease of said Adelaide
 Barling, I do hereby give devise and bequeath to
 such issue. And if any of my said nephews or
 nieces shall have died during the lifetime of said
 Adelaide Barling without leaving issue or leaving
 issue who shall all have died prior to the decease
 20 of said Adelaide Barling, I do hereby give, devise
 and bequeath the share of my said nephew or
 niece who shall have so died, to the survivors or
 survivor of my said nephews and nieces, and to
 the issue of any of them who shall have died
 leaving issue who shall be living at the time of
 the decease of said Adelaide Barling, in equal
 shares share and share alike, except that issue
 taking under this provision, shall take only the
 30 share of my said nephew or niece, who is legally
 represented by such issue, And in case it shall be
 necessary in order that a satisfactory and fair
 division of my estate be made among my devisees
 and legatees aforesaid after the decease of said
 Adelaide Barling, then I do hereby order and di-
 rect and empower the hereinafter named execu-
 tors of this my last will and testament or the
 survivor of them, to sell all my real estate at public
 or private sale for the highest price that can be
 40 obtained by them or the survivor of them for the
 same, and to make, execute and deliver to the

Insert

the share of such

Exhibit C-1—Will of Adonijah S. Boyd.

purchasers thereof good and sufficient deeds of conveyance in the law for the same, and the proceeds of said sales and my personal estate or what shall be realized therefrom to distribute and pay over to my said devisees and legatees in the proportion hereinbefore stated. The foregoing provisions respecting the disposition of my real and personal property have been made by me understanding that my niece Lizzie S. Quackenbush, daughter of my deceased sister Elizabeth has been well provided for by others.

10

Seventh: I do hereby revoke all wills and testaments by me at any time heretofore made.

Eighth: I do hereby nominate, constitute and appoint the said William E. Skinner and David St. John, both of Hackensack aforesaid executors of this my last will and testament.

20

In Witness whereof I have hereto set my hand and seal this seventh day of February Eighteen hundred eighty-eight.

A. S. BOYD (Seal)

Signed, sealed, published and declared by the said Adonijah S. Boyd, to be his last will and testament in the presence of us, who were present at the same time and who at his request, and in his presence and in the presence of each other have hereto subscribed our names as witnesses.

30

C. B. DEMAREST,
Essex Street,
Hackensack, N. J.

G. B. DEMAREST,
Essex Street,
Hackensack, N. J.

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**Exhibit D-2—Assignment from Rodman
Price to Robert S. Ross.**

THIS INDENTURE, made the 9th day of September, 1922,

BY AND BETWEEN Rodman M. Price, party of the first part, and Robert S. Ross, party of the second part, as Trustee,

10 WITNESSETH * * * WHEREAS the said Rodman M. Price desires to provide for the securing of certain debts hereinafter set forth, and

WHEREAS, the said Robert M. Price is a beneficiary of a trust created by the will of Adonijah S. Boyd, probated in the Surrogate's Court of Bergen County, State of New Jersey, in October 1890,

NOW THEREFORE this Indenture

20 WITNESSETH that the party of the first part for and in consideration of the premises and the sum of One (\$1.00) Dollar to him duly paid by the party of the second part, and in order to secure the payment of the debts and obligations hereinafter set forth, has granted, bargained, sold, remised, released, warranted, conveyed, confirmed, transferred and set over, and by These Presents does grant, bargain, sell, remise, release, warrant, convey, transfer and set over unto the

30 party of the second part, the Trustee, his successors and assigns all his right, title and interest which he now has or which he may hereafter have to all property both real and personal to which he may be or become entitled by virtue of the trust created by the will of Adonijah S. Boyd, formerly of the Township of New Barbadoes, in the County of Bergen, State of New Jersey, which will was probated in the Orphans'

Exhibit D-1—Assignment, Price to Ross.

Court in the said County of Bergen, State of New Jersey, in October of the year 1890.

To have and to hold the property hereby conveyed and assigned unto the Trustee, his successors and assigns, forever.

BUT in trust nevertheless for the benefit and security of each and every creditor of the said party of the first part, to the extent of these present claims, or as to such amount as may remain unpaid, and for the enforcing of payment thereof in accordance with the true intent and meaning of this Indenture, and without preference of one creditor over the other by reason of priority and time of the creation of such indebtedness, except as may be hereinafter provided. 10

It is hereby understood and agreed that the creditors of the said party of the first part and the amounts of their claims are as follows: 20

Irving National Bank of New York	\$1600.00
Commercial Investment Trust Company of New York	400.00
Ritter Brothers, of New York	400.00
Stratton Bliss & Co. Inc., New York	900.00
Broadway Central Bank of New York	5000.00
Robert S. Ross, of New York	1500.00

AND it is further understood and agreed that, should James McCreery & Company, who now claim to be a creditor of the said party of the first part in the amount of \$800.00, secure final judgment against the party of the first part, they shall thereby become entitled to be included in this schedule and participate in the benefits of this Agreement to the extent of their judgment; and likewise, should Deborah Price, the former wife of the party of the first part, secure a judgment against him, she also shall thereby participate in this Agreement to the amount of 30 40

Exhibit D-1—Assignment, Price to Ross.

her judgment, provided both or either of these judgments are secured before the settlement of the claims above set forth.

10 THE party of the first part hereby covenants and agrees to and with the party of the second part, the aforesaid as Trustee, that in case the above mentioned claims shall remain unpaid at the date upon which the party of the first part, as beneficiary under the trust above mentioned attains the benefits of the said trust, these benefits shall be applied by the Trustee to the discharge of these claims.

20 AND it is hereby further mutually covenanted and agreed by and between the parties to The Presents that Robert S. Ross, for himself and his successor or successors, hereby accepts the trust and assumes the duties hereby created and imposed upon him, and only on the following terms and conditions, to wit:

(1) The recitals of facts herein contained shall be taken as statements by the party of the first part, and shall not be construed as made by the said Trustee.

30 (2) The said Trustee shall be under no obligation or duty to perform any acts hereunder, or to defend any suit in respect hereof, unless duly indemnified to his satisfaction.

(3) The said Trustee shall not be answerable for anything whatever in connection with this trust, except wilful misconduct or gross negligence, nor shall he be personally liable for any debts contracted thereby.

40 A reconveyance of the said property shall be made by the party of the second part, or his successors in trust to the party of the first part,

Exhibit D-1—Assignment, Price to Ross.

his successors or assigns, at the expense of the party of the first part, on full payment of the indebtedness aforesaid, and such conveyance shall constitute and be a full release and discharge of the premises and the properties hereinbefore described from the lien and incumbrance of this Indenture and trust.

10

IN WITNESS WHEREOF the said Rodman M. Price, party of the first part, has hereunto set his hand and seal the day and year first above written; and to evidence his acceptances of the trust hereby created, Robert S. Ross, Trustee, has hereunto set his hand and seal the day and year first above written.

RODMAN M. PRICE.
ROBERT S. ROSS.

20

In presence of:

STATE OF NEW YORK)
COUNTY OF NEW YORK } ss.:

On the 9th day of September, 1922, BEFORE ME came Rodman M. Price and Robert S. Ross, to me known to be the individuals described in and who executed the foregoing Instrument, and they acknowledged to me that they executed the same.

30

A. N. STEWART.

Notary Public, Queens County
Queens Co, Reg. No. 2812 N. Y. Co.
No. 526, Commission expires 1924.

(Notarial Seal)

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THE HISTORY OF THE

10
The first part of the history of the
island of New Zealand, as far as
the discovery of it is concerned,
is a subject of great interest and
importance. It is a subject which
has attracted the attention of
many of the most distinguished
writers of the age.

11
The second part of the history of the
island of New Zealand, as far as
the discovery of it is concerned,
is a subject of great interest and
importance. It is a subject which
has attracted the attention of
many of the most distinguished
writers of the age.

12
The third part of the history of the
island of New Zealand, as far as
the discovery of it is concerned,
is a subject of great interest and
importance. It is a subject which
has attracted the attention of
many of the most distinguished
writers of the age.

13
The fourth part of the history of the
island of New Zealand, as far as
the discovery of it is concerned,
is a subject of great interest and
importance. It is a subject which
has attracted the attention of
many of the most distinguished
writers of the age.

14
The fifth part of the history of the
island of New Zealand, as far as
the discovery of it is concerned,
is a subject of great interest and
importance. It is a subject which
has attracted the attention of
many of the most distinguished
writers of the age.

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New Jersey Court of Errors and Appeals.

Between

RALPH W. SKINNER, Substituted
Trustee under the Last Will and
Testament of Adonijah S. Boyd,
Deceased,

Complainant-Respondent.

and

JANE H. BOYD, et als.,

Defendants.

and

DEBORAH PRICE and LANGWORTHY
FRANKLIN CARR PRICE, Infants,
by DEBORAH C. PRICE, their next
friend and Guardian ad litem,

Defendants-Appellants.

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On Appeal
from
Chancery.

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BRIEF FOR APPELLANTS.

I.

Statement of Facts.

Are Deborah Price and Langworthy Franklin Carr Price, issue of Fanny Price, their grandmother, as the term is used in the Will of Adonijah S. Boyd?

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The Court of Chancery, Vice Chancellor Backes sitting, answered this question in the negative. The case is here on an appeal from that finding.

The question arises under a bill filed for the administration of the Estate of Adonijah S. Boyd.

10 Adonijah S. Boyd devised the residue of his estate, consisting very largely of real estate, to a Trustee, to pay the income in equal shares to his six nephews and nieces and Adelaide Barling, during the lifetime of Adelaide Barling, and upon the death of Adelaide Barling the Trustee was to distribute the estate to the six nephews and nieces, and there was a provision that if any of the nephews and nieces should die in the lifetime of Adelaide Barling, leaving issue, to pay to such issue, the share of said remainder which such nephew or niece legally represented by such issue would have been entitled to receive, if living.

20 Fanny Price, one of the said nieces, died November 25, 1920, leaving a daughter, Matilda C. S. T. P. Kopf, and a son, Rodman M. Price, and grandchildren, Deborah Price and Langworthy Franklin Carr Price, children of the said Rodman M. Price.

Adelaide Barling died February 11, 1923.

30 The appeal in this case challenges so much of the decree of the Court of Chancery as directs the payment of the share, both of principal and interest, that would have been paid to Fanny Price, had she not died, to Mrs. Kopf and Rodman Price, to the exclusion of Deborah Price and Langworthy Franklin Carr Price.

II.**Grounds of Appeal.**

In the petition of appeal, the following are alleged as reasons:

(a) That the said decree finds and decrees in effect that these appellants are not issue of Fanny S. Price, within the meaning of the term "issue" as used in the Will of Adonijah S. Boyd. 10

(b) That in and by the Eighth, Ninth, Tenth, Eleventh, Twelfth and Thirteenth numbered paragraphs of the decree, these appellants are not adjudged to share in so much of the Estate as would have belonged to Fanny S. Price, were she living.

(c) That an aliquot part of the share of the Estate of Adonijah S. Boyd, which would have belonged to Fanny S. Price, were she living, was not, by the said decree, assigned to these appellants equally with Matilda C. S. T. P. Kopf and Rodman M. Price. 20

III.**Argument.**

(1) Deborah Price and Langworthy Price are issue of Fanny Price. This is admitted on all sides and is supported by most complete authority. In the language of the law, there is no word that is more purely a technical word than this word "issue". 30

"Standing uncontrolled by the context, the word 'issue' is synonymous with descendants, therefore, unless in some way limited in its sense, it embraces equally the son and his children." 40

These are the words of Chief Justice Beasley, speaking for this court. How appropriate they are in this case, can better be seen by a longer excerpt from the case:

Weehawken Ferry Co. v. Sisson 17 N. J. Eq. p. 475, at 484: Beasley, Chief Justice:

10 "The clause to be construed, and on which the controversy depends, is that portion of the limitation of the trusts, which relates to the disposition of the property after the expiration of the life estate. The direction to the trustees is 'to convey the whole of said premises to said Mindert Garrabrants (3d), &c., and to such other lawful issue as he,' the settler 'may then have living, share and share alike, in fee simple.' The descendants of the settler were his son, Mindert (3d), and the two daughters of Mindert (3d); and the question is whether these two daughters answer to the description of 'such other lawful issue' in the foregoing clause of the deed; and whether, therefore, as such, they take equally with their father.

20 "That the granddaughters are as much the 'issue' of their grandfather, as their father was, cannot be denied. Standing uncontrolled by the context, the word 'issue' is synonymous with descendants. Therefore, unless in some way limited in its sense, it embraces equally the son and his children. The argument then attains this point, is there, in the language of the deed, or what I consider the same thing, the decree, anything to limit the signification of this term?

30 "It is said that the intention could not have been to distribute the property equally, between the son and the descendants of the son. But we cannot legitimately know anything of the intention, except from the language of the deed. And even if the intention were certain, it could not limit the effect of a term of clear signification. If the terms used were doubtful, then the intent of the parties would become material. But the words of

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a deed cannot be curtailed or distorted from their full and proper signification, although the court might be satisfied that such words have been employed ignorantly, or by inadvertence, and express a meaning different from that intended. The word 'issue' clearly means grandchildren, and as the intent must be ascertained from the language employed, we are bound to consider that it was intended to embrace descendants of the second, as well as of the first degree. The word cannot be limited except by express words, or a necessary inference tantamount to express words. * * *

"That the word issue has, in law, the signification thus ascribed to it, is the common doctrine of the books. 'The word *issue*,' says *Jarman*, vol. 2, p. 33, 'when not restrained by the context, is co-extensive and synonymous with descendants, comprehending objects of every degree. And here the distribution is per capita, not per stirpes.'

"Where the description 'issue' is employed in a will as a word of purchase, it will, in its ordinary import, comprise all those who claim as descendants from or through the person to whose issue the bequest is made, i. e., grandchildren and great grandchildren, as well as children; and in order to restrain this usual sense of the word, a clear intention must appear upon the will. 2 *Williams on Ex'rs* 999.

"But in addition to the fact that this word issue has the extent of signification which the above named writers attribute to it, a still more important feature remains to be noticed, which is, that *in deeds* the word invariably has a technical meaning, being always used as a word of purchase, and when so used universally including descendants of every degree. The judicial decisions and text writers all concur on this point, as will conclusively appear from the following citation."

In 1911, Vice Chancellor Leaming applied this

rule to the construction of a will. In *Security Trust Co. v. Lovett*, 78 N. J. Eq. 445, at 448, the Vice Chancellor says:

10 "It will be observed that testator has not directed that the share of any son or daughter who dies leaving issue should go to the children of such son or daughter; the provision is that the share shall be divided between the 'issue' of the child or children dying with issue. Three of the children of testator have died since the death of testator and before the death of the widow, and each of the three so dying have left children who are now alive, and some of these children now alive (grandchildren of testator) have living children (great grandchildren of testator) who were born prior to the death of the widow of testator.

20 "It is settled in this state that the word 'issue' in its ordinary meaning, embraces grandchildren and remoter descendants, as well as children, and that meaning must be attributed to the word when used in a will as here used, unless from the will it can be clearly ascertained that a more restricted meaning was intended by testator. Unless so restricted it includes children of a living child. *Ingliss v. McCook*, 68 N. J. Eq. (2 Robb.) 27, 40, 41; *Price v. Sisson*, 13 N. J. Eq. (2 Beas.) 168, 177, 178; S. C. on appeal, 17 N. J. Eq. (2 C. E. Gr.) 475, 485; 30 *Coyle v. Coyle*, 73 N. J. Eq. (3 Buch.) 528. I find nothing in the will in question from which it may be properly determined that the word 'issue' was used by testator with any meaning other than its ordinary meaning; indeed, the will contains no provision which even suggests that idea. It is plain, therefore, that the grandchildren of testator's children share in the distribution."

40 Unless therefore, there are words in the will which restrict the meaning of this technical word

"issue" to Mrs. Kopf and Rodman Price, admittedly Deborah Price and Langworthy Price must share with their parent. The only words in the will, which have been suggested as supplying such a limit are the words referring to representation, which appears in four different places but always in the same context, always in the same grammatical construction. This subject we have discussed below in the paragraphs that follow. 10

If, however, it is assumed in the first place that Adonijah S. Boyd, a lawyer, used this technical legal word in its ordinary technical sense, and that he meant by the term "issue" to include children situated as Deborah and Langworthy Price are situated in reference to their grandmother, Fanny Price, then the whole argument of respondents loses its force, for if it be assumed that Deborah and Langworthy are issue under the will of Adonijah S. Boyd, then they *legally represent* their grandmother in the strictest sense of that word. 20

Bouvier, p. 464:

"Representation of Persons. A fiction of the law, the effect of which is to put the representative in the place, degree, or right of the person represented.

"The heir represents his ancestor, *the devisee, his testator*; the executor, his testator; the administrator, his intestate." 30

In each of the four instances in which the words referring to representation are used in the will of Mr. Boyd, it is assumed therein that the issue do represent the nephew and niece, and in each instance there is no limitation of the word *issue*, but in each instance it is the *share* of the nephew and niece that is limited. In other words, upon the death of Fanny Price, her issue 40

were admitted to participate in her share and not to a general participation with the surviving nephews and nieces in the entire residue of the estate.

(2) The opinion of the Vice Chancellor requires comment. The point in the opinion of the Vice Chancellor that is challenged by this appeal
 10 is that which he numbers One (Case p. 55). He states the question thus:

“The first question is, Did the testator intend that, upon the death of his nephews and nieces in the lifetime of Adelaide Barling, their issue should take the income and principal *per stirpes* or *per capita*?”

Of course, that is not the question raised by the pleading, discussed in the briefs, discussed by
 20 the Vice Chancellor himself or decided by the Vice Chancellor. It was never considered whether Deborah Price and Langworthy Price took *per capita* or *per stirpes*. The question raised, and the question decided, was whether or not they took at all, and that question, the Vice Chancellor decided in the last sentence of this same numbered paragraph in these words:

“Children of the deceased nephews and
 30 nieces take to the exclusion of their descendants.”

Nowhere in the opinion is there any discussion of whether these grandchildren take *per capita* or *per stirpes*. This strange confusion of the issue in the Vice Chancellor’s mind seems to be reflected in the balance of his argument.

“Uncontrolled ‘issue’ includes all descendants and they share equally.” That is correct. “It is contended on the one hand by
 40 the word ‘legally represented by such issue’

as used four times in the will, limits the issue, while on the other hand it is insisted that those words simply define the share the issue were to take."

This undoubtedly was part of the argument. The Vice Chancellor then proceeds:

"They obviously did not limit the share the issue were to take *because the restriction as to the share is otherwise specifically defined* as the share the nephews or nieces 'would have been entitled to receive if living'."

This argument he repeats in a slightly different form.

The argument that because a lawyer has said something in one way, it is impossible that he meant to say the same thing in a fuller and more complete way, is a very strange argument. If there is any trait of the legal profession that is marked, and a matter of constant and persistent practice, it is that of amplification and repetition. Even in our solemn instruments, we "give, bequeath and devise" or we "grant, bargain, sell, alien, remise, release, convey and confirm", even if we no longer "enfeoff" the grantee. The habit is so well nigh universal that the point requires no further illustration.

The Vice Chancellor says:

"If the testator, a lawyer, had intended that all the descendants of deceased nephews and nieces should take share and share alike, he would not have been at pains to *qualify issue* as those by whom deceased nephews and nieces are legally represented."

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It is respectfully insisted that the testator did not "*qualify issue*" by these words. Grammatically, in every instance, it is *the nephew or niece* "legally represented" or it is *the share* "*of the nephew or niece* who shall be legally represented". In every instance, it is the *share* that is limited and qualified grammatically, and there is nothing to vary the grammar because the repetition of the form indicates, not that Mr. Boyd did not know what he was saying, but that he did know what he was saying. If these words limiting the share which issue were to take, had not been used it might have been thought that upon the death of Fanny Price, for instance, her issue came in and shared with the other nephews and nieces in the whole estate. It was that contingency that Mr. Boyd provided against in each instance.

To take but one illustration, we ask if anything could be clearer than this:

"Except that issue paid under this provision shall be paid only that *share which my said nephew or niece who shall be legally represented by such issue* would have been entitled to receive if living." (Case p. 113).

If the grammatical structure of a will can be changed, the Court of Chancery can make and alter wills at random. The construction placed upon these words by the Vice Chancellor, does violence to the grammatical construction, to the plain intent of the language and to the technical meaning of a technical word. In this case, the technical word "issue" was used by a lawyer in his own carefully drawn will.

(3) By the 13th Paragraph of the Bill (Case p: 16.) it appears that, at the time of the filing of the bill, the administrator, under the order of the Orphans' Court, had already sold and conveyed \$37,000. worth of real estate; that he had

sold \$5,000. worth, which he had not conveyed; and that there remained land valued at upwards of \$100,000. Under the decree of the court, this land is unconverted and remains real estate. It is only by the virtue of the fact that modern statutes have given administrators with the will annexed power to sell real estate in order to pay devisees, that the Court of Chancery acquires any jurisdiction to construe this will in respect to the several estates of the respective devisees. In such a situation, we respectfully submit that the doctrine that "Equity follows the law", should have been applied. 10

We respectfully submit that Deborah Price and Langworthy Price, issue of Fanny Price, are devisees under the Will of Adonijah S. Boyd and that the law, as laid down by Chief Justice Beasley in *Weehawken Ferry Co. v. Sisson*, should have been followed. We repeat his language as it is especially appropriate to this situation: (17 N. J. Eq. p. 485). 20

"It is said that the intention could not have been to distribute the property equally, between the son and the descendants of the son. But we cannot legitimately know anything of the intention, except from the language of the deed. And even if the intention were certain, it could not limit the effect of a term of clear signification. If the terms used were doubtful, then the intent of the parties would become material. But the words of a deed cannot be curtailed or distorted from their full and proper signification, although the court might be satisfied that such words have been employed ignorantly, or by inadvertence, and express a meaning different from that intended. The word 'issue' clearly means grandchildren, and as the intent must be ascertained from the language employed, we are bound to consider that it was intended to embrace descendants of 30 40

the second, as well as of the first degree. The word cannot be limited except by express words, or a necessary inference tantamount to express words."

In this will of Adonijah S. Boyd, this technical word is used by a lawyer, in a technical instrument, to define the succession to real estate. In order to hold that this technical word was not used in its technical sense, the Court of Chancery has had to do violence to the grammatical construction of the language of the will in four instances. In this, we submit, the Court of Chancery erred.

Respectfully submitted,
RICHARD BOARDMAN,
Of Counsel with Deborah
Carr Price, Guardian Ad Litem
of Appellants.

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New Jersey Court of Errors and Appeals

Between

RALPH W. SKINNER, as substituted trustee under the last will and testament of Adonijah S. Boyd, deceased, etc.,

Complainant-Respondent,

and

JANE H. BOYD, *et als.*,

Defendants,

and

DEBORAH PRICE and LANGWORTHY FRANKLIN CARR PRICE, infants, by DEBORAH C. PRICE, their next friend and guardian *ad litem*,

Defendants-Appellants.

*On Appeal
from
Chancery.*

On Bill, etc.

Sat Below:
Walker, C.
Backes, V.-C.

BRIEF FOR RALPH W. SKINNER, AS SUBSTITUTED TRUSTEE UNDER THE WILL OF ADONIJAH S. BOYD, DECEASED, ETC., COMPLAINANT-RESPONDENT.

The complainant filed his bill that he might be advised as to the true meaning of the Will and the manner of distributing the estate.

The appeal raises but one question: that is whether, under the provisions of the Will of Adonijah S. Boyd, upon the death of a nephew or niece who was a primary beneficiary under his Will, the children of such deceased nephew or niece take the share of the nephew or niece deceased exclusively, or whether *their* children

participate with them in the share of the nephew or niece who was such primary beneficiary. This question is decided by the Vice-Chancellor in the first division of his opinion.

This question depends upon the construction to be given to the words "legally represented by such issue," as used four times in said Will in connection with the word "issue."

FACTS.

Adonijah S. Boyd, a member of the Bar of this State, died December 5, 1890. His Will was admitted to probate by the Surrogate of Bergen County, New Jersey, on October 18, 1890.

The portions of his Will pertinent to the present inquiry we print for the convenience of the Court, italicizing ourselves the words above referred to wherever they occur in the Will:

"FOURTH. I do hereby give devise and bequeath unto Adelaide Barling, the half sister of my deceased wife Fanny. All that lot tract or parcel of land and premises situate, lying and being in the Village of Hackensack in the township, county, and state aforesaid having a frontage on Essex Street in said village of about one hundred and eighty feet on which said lot are built my dwelling house in which I now reside and other buildings and all the furniture household goods and other personal property in said dwelling house and other buildings contained save the two portraits before mentioned and the monies, promissory notes, bonds and mortgages, certificates of shares of stock, and other securities and books of account which may be therein at the time of my decease for and during the term of her natural life she keeping the same in good repair and condition and paying the taxes and assessments and other charges thereon imposed by law.

“FIFTH. All the rest and residue of my estate, real and personal whatsoever and wheresoever I do hereby give, devise and bequeath unto William E. Skinner of Hackensack aforesaid for and during the natural life of said Adelaide Barling in trust nevertheless for the uses and purposes following, that is to say, to retain and keep in his own hands all the said rest and residue of my personal estate and the same to invest in such securities as shall be deemed best by him, or put out at interest on bond secured by bond and mortgage, to alter and change investments and securities as he may think best, to renew and extend loans to call loans in and receipt for the same, and the moneys thereby received to invest or put out at interest as aforesaid to grant leases of all the messages lands and tenements whereof I shall die seized or possessed the lands hereinbefore devised to said Adelaide Barling for and during her natural life excepted and to determine the same to collect the income interest, rents issues and profits accruing from said rest and residue of my estate, real and personal, and after making all necessary repairs and paying all taxes and assessments and other necessary charges and expenses in and about the management of said rest and residue of my estate, to pay, annually, at such time and place as he may deem expedient, the equal one seventh part of the remainder of said income, interest rents, issues and profits to the said Adelaide Barling, the equal one seventh part thereof to each of my nephews, James Boyd, son of my deceased brother Adam Boyd, and John Quackenbush son of my deceased sister Helen, and the equal one seventh part thereof to each of my nieces Kate Hopper wife of Albert Hopper, Fanny Price wife of Gouverneur Price, Sophie Benjamin wife of John V. Benjamin and Jane Boyd daughter of my deceased brother Adam Boyd; and if any of my said nephews or nieces

shall die during the lifetime of said Adelaide Barling leaving issue, to pay to such issue the share of said remainder which my said nephew or nieces *legally represented by such issue* would have been entitled to receive if living; and if any of my said nephews or nieces shall die during the lifetime of said Adelaide Barling without leaving issue to pay the share of said remainder which my said nephew or niece, who shall so die, would have been entitled to receive if living, to the survivors or survivor of my aforesaid nephews and nieces and to the issue of any of them who shall have died leaving issue. in equal shares share and share alike, except that issue paid under this provision shall be paid only that share, which my said nephew, or niece who shall be *legally represented by such issue* would have been entitled to receive if living.

“SIXTH. Upon the decease of the said Adelaide Barling I do hereby give, devise and bequeath all the real and personal estate hereinbefore given devised and bequeathed to her for and during her natural life, And also all the rest and residue of my real and personal estate hereinbefore given devised and bequeathed to said William E. Skinner for and during the life of the said Adelaide Barling, in trust as aforesaid to my two nephews and four nieces aforesaid, in equal shares share and share alike, and if any of my said nephews or nieces shall have died during the lifetime of the said Adelaide Barling leaving issue who shall be living at the time of the decease of said Adelaide Barling, I do hereby give devise and bequeath to such issue the share of my said nephews or nieces *legally represented by such issue*. And if any of my said nephews or nieces shall have died during the lifetime of said Adelaide Barling without leav-

ing issue or leaving issue who shall all have died prior to the decease of said Adelaide Barling I do hereby give devise and bequeath the share of my said nephew or niece who shall have so died, to the survivors or survivor of my said nephews and nieces, and to the issue of any of them who shall have died leaving issue who shall be living at the time of the decease of said Adelaide Barling, in equal shares share and share alike, except that issue taking under this provision, shall take only the share of my said nephew or niece, who is *legally represented by such issue*, And in case it shall be necessary in order that a satisfactory and fair division of my estate be made among my devisees and legatees aforesaid after the decease of said Adelaide Barling, then I do hereby order and direct and empower the hereinafter named executors of this my last will and testament or the survivor of them, to sell all my real estate at public or private sale for the highest price that can be obtained by them or the survivor of them for the same, and to make, execute and deliver to the purchaser thereof good and sufficient deeds of conveyance in the law for the same, and the proceeds of said sales, and my personal estate or what shall be realized therefrom to distribute and pay over to my said devisees and legatees in the proportion hereinbefore stated. The foregoing provisions respecting the disposition of my real and personal property have been made by me understanding that my niece Lizzie S. Quackenbush, daughter of my deceased sister Elizabeth has been well provided for by others."

At the death of Adonijah S. Boyd all the primary beneficiaries named in the foregoing paragraphs were living.

Adelaide Barling died February 11, 1923.

James Boyd, one of the beneficiaries, died April 3, 1907, leaving two sons, David W. Boyd and William A. Boyd. David W. Boyd at the death of James Boyd had two children, Viola M. Boyd, now the wife of Leslie White, and Ruth K. Boyd, both of whom are living, and said David W. Boyd has never had any other issue except Claire R. White, daughter of said Viola M. White, who was born September 14, 1923. William A. Boyd, at the time of the death of his said father, James Boyd, had no issue, but three children have since been born to him prior to the death of Adelaide Barling, namely: Mabel G. Boyd, James A. Boyd and Dorothy E. Boyd, all of whom are infants.

Fanny S. Price, another of the beneficiaries of the Will, died November 25, 1920, leaving her surviving her daughter, Matilda C. S. T. P. Kopf, and her son, Rodman M. Price, and no other children nor any issue of any deceased children.

Matilda C. S. T. P. Kopf had no issue who survived either Fanny S. Price or Adelaide Barling.

Rodman M. Price, son of Fanny S. Price, has two children, his daughter, Deborah Price, and his son, Rodman M. Price, Jr., sometimes known as Langworthy Franklin Carr Price.

This appeal is taken by Deborah Price and Langworthy Franklin Carr Price, infants, by Deborah C. Price, their next friend and guardian *ad litem*.

There is no appeal on behalf of the children of David W. Boyd and William A. Boyd.

The complainant and his predecessor in the trust have distributed the income in accordance

with the rule laid down in the opinion of the Vice-Chancellor (Case, p. 101 *seq.*).

ARGUMENT.

The claim is that under the provisions of the Will of Adonijah S. Boyd, above quoted, Deborah Price and Langworthy Franklin Carr Price participate equally with their living father, Rodman M. Price, in the property disposed of by the Will, both income and principal.

It is useless to cite authorities as to the meaning of the word "issue," when that word is unqualified by other language in the Will. An examination of the language of Paragraph Fifth of the Will discloses that the word "issue" is clearly qualified by words which limit its meaning so as to embrace only such issue as are next of kin of the nephew or niece dying in the lifetime of Adelaide Barling. The following is the language first occurring in Paragraph FIFTH of the Will, after the gift by name to the nephews and nieces of testator:

"If any of my said nephews or nieces shall die during the lifetime of said Adelaide Barling, leaving issue, to pay to such issue the share of said remainder (referring to remainder of income after disbursements) which my said nephew or nieces *legally represented by such issue* would have been entitled to receive if living."

It is fundamental that all the words of a Will, if it is possible, must be given a meaning expressive of an intention by the testator. The words "legally represented by" occur twice in Paragraph FIFTH relating to income and twice in Paragraph SIXTH relating to principal. If

we omit from the above quoted provision the words italicized above, it reads as follows:

If any of my said nephews or nieces shall die during the lifetime of said Adelaide Barling, leaving issue, to pay to such issue the share of said remainder which my said nephew or nieces * * * would have been entitled to receive if living.

Such is *not* the provision of the Will, for it omits the words "legally represented by such issue." But the emasculated language would have the meaning claimed by the Appellants for the full language.

We think it is clear that there is a substantial difference in the meaning of the provision of the Will if read with these words instead of without. It is to be remembered that Adonijah S. Boyd was a member of the Bar of this State, and must be assumed to have been familiar with legal language, and the repetition of the phrase "legally represented by" twice in the disposition of income and twice in the disposition of principal clearly shows that he attached legal significance to the words. If he intended a gift to issue generally, the language of the Will as above shown, excluding these words, would have clearly expressed that intention. The words "legally represented by" clearly limit the word "issue" to such as legally represented a deceased nephew or niece. Can any issue be said to "legally represent" a decedent other than as to personalty issue who are next of kin and others than—as to real estate—issue who are heirs at law. This Will cannot be interpreted so as to ignore the words "legally represented by." While the exact language here used, qualifying the word "issue," does not appear to have been passed upon by the courts, nevertheless there are a

number of cases construing words which have practically the same significance.

In *King v. Cleveland*, 4 De G. and J. 477, it was held that the words "legal personal representative" were equivalent to "next of kin" in a gift of personalty. This case is cited with approval in *Howell v. Gifford*, 54 N. J. Eq., page 188, and in *Howell v. Westbrook*, 69 N. J. Eq., page 642.

In *Smith v. Palmer*, 7 Hare 225, it was held that the words "legal representative, or representatives if more than one, share and share alike" were to be interpreted as equivalent to persons entitled to take the personal estate under the Statute of Distributions. This case is cited with approval in *Welsh v. Crater*, 32 N. J. Eq., page 181.

In *Booth v. Vicars*, 1 Coll. 6, the word "next" was held sufficient to overcome the idea of gift to the executors as personal representatives, where the phrase used was "to next legal representative."

The cases are numerous in the Reports of other States where a like meaning has been given to the words "legal representative" or "legal representatives."

In *Chasy v. Gowdy*, 43 N. J. Eq. 95, where the gift was to children or their "legal representatives," it was held that as related to real estate the words "or to their legal representatives" were used in the sense of "heirs."

In *Howell v. Gifford*, 64 N. J. Eq. 180, the words "legal representatives" were held at page 190 to have the meaning of "next of kin," and it was thereupon declared that so far as the estate was land it went to the heirs, and so far as it was personalty it went to the next of kin.

In *Howell v. Westbrook*, 69 N. J. Eq. 641, it was held that in a gift and devise "unto all my brothers and sisters and their representatives after the decease of my wife," the word "representatives" meant "next of kin" under the Statute of Distribution.

In *Coyle v. Coyle*, 73 N. J. Eq. 528, where there was a gift generally to issue, it was held that the addition of the words "shall take the share their parent would have taken if living" limited the issue to the children of the parent and excluded the grandchildren, the construction turning upon the use of the word "parent." To the same effect is *Dennis v. Dennis*, 86 N. J. Eq. 423, page 428, Ct. of Err. & App.

In *Platt v. Johnson*, 87 N. J. Eq. 404, the Court held that it was settled law that the words "legal representative" referring to land had the significance of "heirs." At page 406 the Court says, referring to the Will there under construction: "Next, and last, in case of the decease of both daughters without issue, then the residuary estate was to be equally divided among testator's legal representatives, meaning concededly, his heirs and next of kin—heirs in this case, as we are only dealing with real estate."

With the utmost diligence we have been unable to find any case where the words "legally represented by" or any words in any sense equivalent thereto, have not been held to limit the word "issue" so as to confine it to issue who are next of kin in case of personalty and heirs in case of real estate.

Where we have, as here, a recurring fixed phrase attached to a gift, that phrase is to be interpreted in accordance with its significance where it first occurs in the Will. It is assumed

in all the cases that the meaning that it acquires in its first usage, controls its meaning elsewhere, unless there is some context giving it a different significance.

The first instance in which the phrase "legally represented by" appears in the Will is in the Fifth paragraph where the gift over is of the one-seventh of the income given a nephew or niece who shall die in the lifetime of Adelaide Barling *leaving issue*, and the direction is:

"And if any of my said nephews or nieces shall die during the lifetime of said Adelaide Barling *leaving issue*, to pay to such issue the share of said remainder which my said nephew or nieces legally represented by such issue, would have been entitled to receive if living."

The second instance in which these words occur in Paragraph FIFTH is where the gift over is of the one-seventh of the income given said nephew and nieces, in the event that any of them shall die in the lifetime of Adelaide Barling *without leaving issue*. There the direction is:

"to pay the share of said remainder (referring to remainder of income after disbursements) which my said nephew or niece, who shall so die, would have been entitled to receive if living, to the survivors or survivor of my aforesaid nephews and nieces, and to the issue of any of them who shall have died *leaving issue*, in equal shares share and share alike, except that, issue paid under this provision shall be paid only that share, which my said nephew, or niece who shall be legally represented by such issue would have been entitled to receive if living."

The words "legally represented by such issue" occurring here, have the same meaning as when used in the preceding portion of the Paragraph.

The meaning contended for by the Appellants would be expressed without the use of the words "who shall be legally represented by such issue." If we omit from the above quoted provision the words italicized above, it reads as follows:

"to pay the share of said remainder which my said nephew or niece who shall so die would have been entitled to receive if living to the survivors or survivor of my aforesaid nephews or nieces or the issue of any of them who shall have died leaving issue in equal shares share and share alike, except that issue paid under this provision shall be paid only that share which my said nephew or niece * * * would have been entitled to receive if living."

Such is not the provision of the Will, for it omits the words "legally represented by such issue." But the emasculated language would have the meaning claimed by the Appellants for the full language.

Under the settled rule of construction the words "who shall be legally represented by such issue," omitted from the above, must be given a meaning in the interpretation of the Will and must be taken as qualifying the word "issue." As already said the same language is used in both the Fifth and Sixth paragraphs of the Will.

It seems to us that the testator intended in the event of the death, leaving issue, of any of his nephews and nieces, specifically named, that the share of the income that went to such nephew or niece should go to his or her issue who are next of kin, that is to say, should go to such issue of the nephew or niece so dying as would take under the Statute of Distributions as *legally representing* the deceased nephew or niece, and that he intended that the share of the principal of his personal estate that would have gone to

such nephew or niece should go in the same manner; and further, that he intended that the share of his real estate that would have gone to such nephew or niece should go to such issue of the nephew or niece so dying as would be the heirs at law of such deceased nephew or niece under the Statute of Descent; and we think that the testator has adequately expressed his intentions by the use of the words "legally represented by such issue."

Considering the grammatical construction of the clauses in the Fifth and Sixth paragraphs containing the word "issue" and "legally represented by such issue," it is apparent that the word "issue" is modified by the words "legally represented by." The claim that grammatically the words "legally represented by" modify the word "share" is not correct. The word "share" is modified by the entire clause beginning with the word "which," and it is apparent that unless the words "legally represented" qualify the word "issue" they would have no meaning whatever in the sentence.

To us the recurring word "legally" qualifying "represented" as used in the recurring phrase "legally represented by such issue" is a clear indication that the testator used such words with an appreciation of their legal significance.

The subject of each of the clauses under consideration contained in Paragraphs Fifth and Sixth of the Will is the provision for issue of the nephews and nieces after the death of a nephew or niece. The noun used in the clause is the word "issue." This noun "issue" is used a second time in each clause, in immediate association with the words "legally represented by such"; the noun "issue" being used twice, and

the second time in conjunction with these qualifying words, under the rules of construction of language, must be taken as so qualified wherever used in the same clause.

The Brief for the Appellants comments upon the Opinion of the Vice-Chancellor and states that the Briefs before him did not discuss the question whether the Appellants took *per capita* or *per stirpes*. As to that, Mr. Boardman is in error. The Brief on behalf of Rodman M. Price contained the following statement:

“It was the intention of the testator that the issue should take *per stirpes* and not *per capita*. This is made perfectly apparent by the words ‘legally represented’ and it is perfectly apparent that the testator meant *per stirpes*.”

The above quotation from the Brief referred to is based on the settled law clearly stated by Chancellor Magie in his elaborate opinion in *Inglis v. McCook*, 68 N. J. Eq. page 39, where he says:

“When I took up the will for consideration I was greatly impressed by the fact that Henry Day who was a lawyer of great reputation in framing the Sixth Paragraph of his Will provided for the disposition of the fund thereby created, in certain eventualities, to the lawful issue of himself or his children, had taken care to express that such issue should take *per stirpes* and not *per capita*, such a disposition, it cannot be doubted, would have excluded from any benefit thereunder the descendants of any living stirp. When the testator in framing the Fifth Paragraph of his Will made different disposition of the fund thereby created, upon the death of his wife to his lawful issue without any qualifying phrase, the omission seemed to me to be so significant in respect to his intention so as to justify me in re-

quiring a re-argument and I have had the benefit thereof."

The statement in the Brief for Rodman M. Price and the doctrine laid down in *Inglis v. McCook* cited by the appellants' brief below and here, on another point, was the occasion of the language used by the Vice-Chancellor.

Under the doctrine so well established, where there is language qualifying the word "issue" by restricting the word "issue" to representation, only those who are representatives in law can take. The grandchildren of Fanny Price—the children of Rodman M. Price—are not legal representatives of Fanny Price. They would have been legal representatives in case of the death of their father, Rodman M. Price, but adopting the language quoted above, Rodman M. Price is a "living stirp" and there can be no representation of a "living stirp."

On page 7 of the appellants' brief is a quotation from Bouvier, page 464, which states:

"The heir represents his ancestor, the devisee his testator, the executor his testator, the administrator his intestate."

This statement does not cover the situation where the representation distinctly referred to is by issue legally representing. Under a provision as to real estate, issue legally representing a decedent are his heirs and as to personalty the next of kin, provided they are issue.

In appellants' insistence that the words "legally represented by" qualify the word "share" and not "issue," they fail to note that in the second statement in the Fifth paragraph above quoted and again in the second statement in the Sixth paragraph, the shares are clearly

defined—the language is that those entitled to take shall take “in equal shares share and share alike,”—and that the words “legally represented by” are wholly useless unless they are taken as qualifying the word “issue” and restricting the same to those who “legally represent” the deceased nephew or niece.

It is respectfully submitted that the decree of the Court of Chancery as appealed from should be affirmed.

EDWARD M. & RUNYON COLIE,
Of Counsel with the Complainant-Respondent.

We hereby adopt the foregoing brief as our argument on behalf of our respective clients in the above-stated cause.

HEINE, BRADNER & LAIRD,
Of Counsel with Rodman M. Price and
Robert S. Ross, Defendants-Respondents.

CONGLETON, STALLMAN & HOOVER,
Of Counsel with Matilda C. S. T. P. Kopf,
Defendant-Respondent.

