
COURT OF ERRORS—NEW JERSEY.

James H. Gulick, & al.,

Appellants,

and

The Executors of William Gulick,

Respondents.

} *On Appeal from
Chancery.*

Appellants' Points.

1. The construction of a will is to be made upon the entire instrument, and not merely upon disjointed parts of it; and consequently all its parts must be construed with reference to each other.

2 *Wms. on Exrs.* 974. *Smith v. Bell*, 6 *Peters.* U. S. *Sup. Co.* 68, 76, 79, &c.

2. The bequest to Abby Maria by the fifth clause of the will, is a bequest of the interest of \$10,000, to be paid to her during her life. She has only a life estate; and as she died without 10 having a child, the principal goes into the residue of the estate, and is disposed of by the residuary clause.

3. The testator in disposing of his property, intended that there should be an equality among his children. If the will is so construed as to give Abby Maria only a life estate, under the fifth clause, such equality is maintained, otherwise it is not.

4. Although as a general rule the gift of the interest or produce of a fund (without limitation as to its continuance) is, when standing by itself, held to be a gift of the principal; yet if from the context of the whole will, and the nature of the subject, it appears that the produce only of the fund was intended for the legatee, the gift of the interest will not pass the principal.

5 *Roper on Leg.* 1478. *Joslyn v. Hammond*, 3 *Mylne & Keen*, 110.

Richards v. Clark's Exrs., 3 *C. E. G.* 327.

and (*S. C.*) 6 *C. E. G.* 361

IN CHANCERY OF NEW JERSEY.

Between

*Alexander Gulick and Job G. Olden,
Executors, &c. of William Gulick, de-
ceased,*

Complainants,

and

James Gulick, and others,

Defendants.

Bill, &c.

Bill for Construction of Will, &c.

[Filed July 17, 1874].

*To his Honor Theodore Runyon, Chancellor of the State of
New Jersey :*

Humbly complaining, show unto your honor, your orators,
Alexander Gulick and Job G. Olden, both of the county of
Mercer, in the State of New Jersey, executors of the last will
and testament of William Gulick, late of the township of Prince-
ton, in the county and state aforesaid, deceased, that the said
William Gulick being possessed of and well entitled to consider- 10
able real and personal estate, made and published his last will
and testament in writing, bearing date on the thirtieth day of
July, in the year of our Lord one thousand eight hundred and
fifty-five, and duly executed the same, as by law is required for
the passing of real and personal estate, and therein and thereby
did amongst other things, give, devise and bequeath as follows,

- that is to say: 2. "I give and bequeath to my son James the sum of ten thousand dollars, to be placed out at interest on bond and mortgage; the bonds and mortgages to be taken in the name of my executors, and the interest to be paid annually, to my son James, by my executors, for his sole and separate use, and in no wise liable for the debts of my said son James, and after his death to go to his children, share and share alike. 3. "I give and bequeath to my executors, and to the survivor of them, the farm on which the family of my son William A.
- 10 Gulick now lives, (together with other real estate described in said will,) on trust, nevertheless, that my said executors and the survivor of them, should receive the rents, issues and profits of the said real estate so devised to them, and pay the same to my son, William A. Gulick and his present wife Sarah, each and every year during their lives, to their sole and separate uses, and in no wise liable for the debts of my said son William; and after the death of my said son William and his present wife, I devise and bequeath all the said real estate, so held in trust for my said son William and his present wife, to
- 20 their children, share and share alike." 4. "I give, devise and bequeath to my son Alexander, the farm upon which I now live, containing about seventy acres, adjoining lands of Jacob Gulick and others, to have and to hold the same during his natural life, and after his death to go to his children, share and share alike." 5. "I give and bequeath to my daughter Abbe Maria, the sum of ten thousand dollars, to be placed out at interest on bond and mortgage, so soon as my estate can be collected, without sacrifice, the bonds and mortgages to be taken in the names of my executors, or the survivor of them, in trust
- 30 for my said daughter, Abbe Maria, and the interest to be paid annually to her by my said executors, or the survivor of them, for her sole and separate use, and in no wise liable for the debts, or subject to the control of any man she may marry; should she marry and have a child or children, then after her death I give the said ten thousand dollars to such child or children." 6. "I give and bequeath to my daughter Elizabeth H., the sum of ten thousand dollars, to be placed out an interest on bond and mortgage, as soon as my estate can be collected, without sacrifice, the bonds and mortgages to be taken in the names of my executors,

other than my son-in-law Edward Armstrong, and of the survivor of them, in trust for my said daughter, Elizabeth H., and the interest to be paid annually to her, by my said executors, for her sole and separate use, and in no wise liable for the debts, or subject to the control of her present or any future husband, and after her death to go to her children, share and share alike." All the rest and residue of my estate, both real and personal, I give, devise and bequeath to my five children, James, William, Alexander, Abbe Maria and Elizabeth H., in fee simple, to be equally divided among them, share and share 10 alike." It is my will that nothing herein contained shall be so construed as to discharge either of my said children from any claim on bond, judgment, note, book account or otherwise, which I may have against him or her at the time of my death, but that the said claim shall be inventoried as part of my estate. And I do hereby constitute and appoint my sons James and Alexander, and my son-in-law Edward Armstrong, executors of this my last will and testament.

And your orators further show unto your honor, that the said William Gulick afterwards made and published a codicil to his 20 said last will and testament, which codicil bears date on the fourteenth day of February, A. D. eighteen hundred and sixty-three, and was duly executed and attested, as required by law; and therein and thereby the said William Gulick did, as regards his son William, but not as to his other children, named in the residuary clause of his will above set forth, revoke said gift, devise and bequest, and did thereby give, devise and bequeath the one equal fifth part of all the rest and residue of his estate, both real and personal, to his executors in said codicil 30 named, and the survivor of them, but in trust nevertheless for the use and benefit of Sarah, the present wife of his said son William, during her life, and to be in no wise subject to his debts or control, and after her death the same to go to the children of his said son William and his said wife Sarah, in fee simple, in equal parts, and in case any of said children should die in the lifetime of their said mother, leaving issue, then such issue should take the same share their parents, if living, would have taken. And in and by said codicil the said William Gulick did revoke the appointment of executors made in and by his original will, and

did thereby constitute and appoint your orators, and the survivor of them, executors of said last will and testament, and the said codicil thereto, and did give them full power to sell that part of his real estate not specifically devised in and by said last will and the said codicil. As in and by the said last will and testament and the codicil thereto, or the probate thereof, to which your orators crave leave to refer, when produced will appear.

And your orators further show unto your Honor, that the said
 10 William Gulick departed this life on or about the fifteenth day of August, in the year of our Lord one thousand eight hundred and sixty-five, without having altered or revoked his said last will and testament or the said codicil thereto, save as such will is revoked or altered by the said codicil, hereinbefore set forth, leaving all of his five children in said will named, and Sarah the said wife of his son William him surviving. And that your orators afterwards, to wit: on or about the sixth day of September, A. D. eighteen hundred and sixty-five, duly proved the said
 20 last will and testament and the said codicil thereto, before _____, Surrogate of the county of Mercer, as by the probate thereof will appear; and that your orators thereupon took upon themselves the burthen of the execution of the said last will and of the said codicil thereto.

And your orators further show unto your Honor, that pursuant to the provisions of the said last will and testament, your orators placed out at interest on bond and mortgage the sum of ten thousand dollars, in trust for the said Abbe Maria Gulick, and that the interest thereof was paid to her annually by your orators, for her sole and separate use, during her life and until
 30 her death, as hereinafter mentioned, according to the directions of said last will and testament.

And your orators further show unto your Honor, that the said Elizabeth H. (daughter of the said William Gulick, and wife of the said Edward Armstrong), late of Germantown, in the State of Pennsylvania, now deceased, made and published her last will and testament in writing in due form of law, bearing date on the tenth day of July, A. D. eighteen hundred and sixty-five, and therein and thereby did appoint her husband, the said Edward Armstrong, and John Jordan, of the city of Phila-

delphia, executors thereof. And your orators further show, that afterwards, to wit: on or about the _____ day of _____, A. D. eighteen hundred and sixty-_____, the said Elizabeth H. Armstrong departed this life without having altered or revoked her said last will and testament.

And your orators further show unto your Honor, that they are ignorant whether the said last will and testament of the said Elizabeth H. Armstrong was afterwards duly proved by the said Edward Armstrong and John Jordan, the executors therein named, or either of them, or whether they or either of 10 them took upon themselves or himself, the burthen of the execution thereof, or did renounce their executorship. But your orators show that they are informed that John B. Gest, of the city of Philadelphia, has been appointed administrator *cum testamento annexo* of the said Elizabeth H. Armstrong, deceased, and is now her sole legal representative; and they leave it to the said John B. Gest to make such proof of his right to and interest in the personal estate of the said Elizabeth H. Armstrong, deceased, as, he may be advised, is necessary, and as is agreeable to the practice of this honorable court. 20

And your orators further show unto your Honor, that the said Abbe Maria Gulick (daughter of the said William Gulick, deceased), late of the county of Mercer, in the State of New Jersey, made, published and declared her last will and testament in writing in due form of law, bearing date on the eighth day of September, A. D. eighteen hundred and seventy-one, and therein and thereby did, among other things, appoint Augustus G. Richey, of Trenton, in the State of New Jersey, sole executor thereof.

And your orators further show unto your Honor, that afterwards, to wit: on or about the twentieth day of May, A. D. 30 eighteen hundred and seventy-three, the said Abbe Maria Gulick departed this life without having altered or revoked her said last will and testament.

And your orators further show unto your Honor, that the said last will and testament of the said Abbe Maria Gulick, deceased, was afterwards, to wit: on or about the fifth day of June, A. D. eighteen hundred and seventy-three, duly proved by the said Augustus G. Richey, and that he has taken upon himself the burthen of the execution thereof. 40

And your orators further show unto your Honor, that since the death of the said Abbe Maria Gulick, they have kept invested upon bond and mortgage the said sum of ten thousand dollars (which, pursuant to the directions of the said last will of the said William Gulick, deceased, they placed out at interest and paid such interest to the said Abbe Maria Gulick during her lifetime), and have not paid over the principal thereof, or the interest accrued thereon, to any person whomsoever. And your orators further show, that for the reasons hereinafter men-
 10 tioned, they are at loss to know how, and to and among what persons the said sum of ten thousand dollars is to be distributed and paid.

And your orators further show unto your Honor, that the said William Gulick, deceased, had at the time of the execution of his said will and the said codicil thereto, and left him surviving, five children, James Gulick, William A. Gulick, Alexander Gulick (one of your orators), Abbe Maria Gulick, and Elizabeth H. Armstrong, wife of Edward Armstrong, a daughter-in-law Sarah Gulick, then and now wife of the said William A. Gulick.

20 And your orators further show unto your Honor, that the fifth section of the said last will and testament of William Gulick, deceased, is in the words following, to wit: "I give and bequeath to my daughter Abbe Maria, the sum of ten thousand dollars, to be placed out at interest on bond and mortgage as soon as my estate can be collected without sacrifice; the bonds and mortgages to be taken in the names of my executors, or the survivor of them, in trust for my said daughter Abbe Maria, and the interest to be paid to her by my executors, or the survivor of them, for her sole and separate use, and in no way
 30 liable for the debts, or subject to the control of any man she may marry; should she marry and have a child or children, then after her death, I give the said ten thousand dollars to such child or children." And your orators further show that the said Augustus G. Richey, executor of the last will of Abbe Maria Gulick, as aforesaid, claiming an interest in the said sum of ten thousand dollars, insists that the said William Gulick, deceased, meant and intended, in and by the fifth section of his said will, to bequeath the said sum to his daughter Abbe Maria, absolutely, with full power, in case she should *not* marry and

have a child or children, to dispose of said sum in and by her last will and testament; while the said James Gulick, William A. Gulick, and Sarah his wife, and John B. Gest, administrator cum testamento annexo, of Elizabeth Harrison Armstrong, deceased, claiming an interest in the said sum of ten thousand dollars, insist that the said William Gulick, deceased, meant and intended, in and by the said fifth section, to give the interest annually, arising from the said sum, to his daughter Abbe Maria, during her life only, and in case she should *not* marry and have a child or children, then the said sum of ten 10 thousand dollars should fall into and become part of the residue of his estate, and be disposed of according to the residuary clause of his said will, as the same is altered and modified by the said codicil thereto.

And your orators further show unto your Honor, that if your Honor should be of opinion that the said sum of ten thousand dollars, with the interest accrued thereon, should fall into and become part of the residue of the estate of the said William Gulick, deceased, that they are entitled to hold and retain in their hands the one equal share of such fund to be by them 20 invested, and the income therefrom applied pursuant to the trust mentioned and declared in the said codicil to the said last will and testament of the said William Gulick. And that your orator, Alexander Gulick, is also entitled absolutely in his own right to the one equal share of such fund as one of the children and residuary legatees of the said William Gulick, deceased.

And your orators further show unto your Honor, that, in consequence of the conflicting claims, so as aforesaid set up to the said sum of ten thousand dollars, they are at loss to know how to divide or to whom they ought to pay the said sum of ten 30 thousand dollars.

And your orators are advised by their counsel learned in the law, that, under the circumstances of this case, they ought not, and cannot safely, pay and distribute said sum among the said claimants, or among any of them to the exclusion of others; and that your orators ought to come into this court to receive such assistance and direction in the discharge of their duty as executors as the case may require.

And your orators further show unto your Honor that, they are desirous and ready to make a statement of and concerning 40

the said sum of ten thousand dollars, and the interest accrued thereon, and of the nature of the investment of such fund; and they are also desirous that the said will of said William Gulick deceased, and the said codicil thereto, should be construed, and the true meaning thereof declared by a decree of this court; and that your orators may be directed how the said sum of ten thousand dollars is to be divided, and to whom and in what parts the same is to be paid; and also that they may receive such further directions as to their duty as executors as the circumstances of the case may require. But now so it is, may it please your Honor, that the said several claimants do continue to insist upon their respective claims as hereinbefore more fully set forth, and distress and annoy your orators in a manner contrary to equity and good conscience. In tender consideration whereof and inasmuch as your orators can have adequate relief and assistance only in a Court of Equity where matters of this nature are properly cognizable and relievable. To the end, therefore, that the said James Gulick, William A. Gulick, and Sarah his wife, and John B. Gest, administrator *cum testamento* 20 *annexo*, as aforesaid, and the said Augustus G. Richey, executor as aforesaid, may severally set forth what right or interest they have, or claim to have, in the said sum of ten thousand dollars, under the said fifth section of the said last will of William Gulick deceased, or otherwise, and how they make out and support their claims. And that the said last will and testament of the said William Gulick deceased, and the said codicil thereto may be established; and that the true construction of said will and codicil, and especially of the said fifth section of said will may be ascertained and declared; and that your orators may 30 have the direction of this honorable court, as to whom, and how, and in what manner, the said sum of ten thousand dollars, bequeathed to the said Abbe Maria Gulick in and by the said fifth section of said will, with the interest accrued thereon, is now to be paid and distributed, and also such aid in the further discharge of their duties as executors, as aforesaid, and such further and other relief in the premises as the nature of the case may require, and may be agreeable to equity and good conscience. May it please your Honor to grant unto your orators the writ of subpœna of the State of New Jersey, issuing

out of and under the seal of this honorable court, to be directed to the said James Gulick, William A. Gulick and Sarah his wife, John B. Gest, administrator *cum testamento annexo*, as aforesaid, and Augustus G. Richey, executor, as aforesaid, commanding them and each of them, at a certain day and under a certain penalty, therein to be expressed, personally to be and appear before your Honor in this honorable court, then and therein to answer the premises, and to stand to, abide and perform such decree therein as to your Honor shall seem meet.

And your orators shall ever pray, &c.

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CALEB S. GREEN & SON,
Solicitors.

And CALEB S. GREEN,
Of Counsel with Complainants.

Answer of James H. Gulick and others.

[Filed September 4, 1874].

The answer of James H. Gulick and William A. Gulick and Sarah his wife, three of the defendants to the bill of complaint of Alexander Gulick and Job G. Olden, executors of the last will and testament of William Gulick, deceased, complainants. 20
These defendants now, and at all times, saving and reserving to themselves all benefit and advantage of exception to the errors, uncertainties and imperfections in the complainants' said bill contained, for answer thereto or to so much and such parts thereof as these defendants are advised it is material or necessary for them to make answer unto, they answering say: That they admit that William Gulick, now deceased, being in his lifetime seized and possessed of, or entitled to, considerable real and personal estate, did on or about the thirtieth day of July, in the year eighteen hundred and fifty-five, make and 30
publish his last will and testament in writing, bearing date on that day, and that he executed the same in the manner required

by the laws of this state, in order to pass real and personal estate, and that said will is of the purport set forth in said bill, but for greater certainty they pray leave to refer to said will or to a duly certified copy thereof when the same shall be produced.

And they further admit, that on or about the fourteenth day of February, in the year eighteen hundred and sixty-three, the said William Gulick made and executed in writing a codicil to his said will, which said codicil was dated the day and year last
10 aforesaid, and that said codicil is to the effect mentioned and set forth in said bill of complaint, but for greater certainty these defendants pray leave to refer to said codicil, or to a duly certified copy of the same when produced.

And these defendants admit that the said William Gulick departed this life on or about the fifteenth day of August, in the year eighteen hundred and sixty-five, leaving his said will and codicil in full force (except so far as said will is revoked or altered by said codicil) and leaving surviving him five children to wit, these defendants, James H. Gulick and William A.
20 Gulick, and also the said Alexander Gulick, Abbe Maria Gulick and Elizabeth H. wife of Edward Armstrong.

And they further admit that the said Alexander Gulick and Job G. Olden named in said codicil, did after the death of said testator, prove the said will and codicil before the Surrogate of the county of Mercer, in this state, who granted to them letters testamentary thereon, and that said executors thereafter took upon themselves the burthen of executing said will, and proceeded to the discharge of their duties as such executors.

And these defendants have heard, and believe it to be true,
30 that said executors did in pursuance of the provisions of said will place out at interest the sum of ten thousand dollars as in the bill of complaint is set forth, and that they collected and paid the interest to the said Abbe Maria Gulick for her use, during her life according to the directions of said will.

And these defendants admit that Elizabeth H. Armstrong, daughter of said testator and wife of Edward Armstrong, died after the decease of said testator, and at or about the time in that respect in the complainants' bill mentioned, and these defendants have heard and believe it to be true that the said

Elizabeth H. Armstrong left a last will and testament in writing, and that John B. Gest has been appointed administrator of her estate, with the said will, but these defendants are not informed and cannot answer as to the contents of said will, nor as to the particulars of the appointment of said John B. Gest as administrator as aforesaid. And these defendants leave the parties interested in the said matters to make such proof thereof as they may be advised.

And these defendants admit that the said Abbe Maria Gulick, daughter of said testator, has departed this life since the death 10 of the said testator, and they have heard that she left a last will and testament in writing, and that she therein appointed Augustus G. Richey, in the complainants' bill named, executor thereof, and that he has since her decease proved said will, and taken upon himself the burthen of executing the same; but of the particulars in regard to said will and the proving of the same, these defendants have no knowledge, except on information, and they leave such proof to be made in regard to the same, as the parties interested therein may be advised.

And these defendants further say, that the said Abbe Gulick 20 was never married, and that all the other children of the said testator were married before and at the time the said testator, William Gulick, made and executed his said will and codicil.

And these defendants further say, that they are advised, and they respectfully submit to this court, that it was the meaning and intention of the said testator, William Gulick, that his said executors should put out at interest, on bonds and mortgages, to be taken in the names of said executors, the sum of ten thousand dollars, in trust for the said Abbe Maria Gulick, and that the interest thereof should be collected by said executors and 30 paid to said Abbe Maria for her use during her life; and that in case she married and had a child or children, then after her death, that said sum of ten thousand dollars should go to such child or children, but in case she died unmarried then that said ten thousand dollars should go into the residue of his estate; and that such intention of said testator is plainly expressed in his said will. And these defendants respectfully insist, that it is the duty of the said complainants as executors of said will, to consider the said ten thousand dollars as part of the residue of

the estate of said testator, and to pay and distribute the same accordingly, and these defendants claim their proper share and proportion of the same under the said will.

And these defendants have heard and admit it to be true, that the said Augustus G. Richey, as executor of the last will and testament of said Abbe Maria Gulick, claims to be entitled to the said sum of ten thousand dollars, but these defendants submit, that according to the true meaning and construction of said will of the said William Gulick, such claim is not well
10 founded. That the said Abbe Maria having died unmarried, she had only a life interest in said sum of ten thousand dollars, and that at her decease the same belonged to the estate of said William Gulick as a part of the residue thereof.

And these defendants submit themselves to the judgment of this honorable court, in regard to the true construction and meaning of the said will and codicil of said William Gulick.

All which matters and things these defendants are and will be ready to aver, maintain and prove, as this honorable court shall direct, and they pray to be hence dismissed with their rea-
20 sonable costs and charges in this behalf sustained.

J. WILSON,

Solicitor for and of Counsel with said Defts.

Answer of Augustus G. Richey Ex'or, &c.

[Filed September 25, 1874].

To the Honorable Theodore Runyon, Chancellor of the State of New Jersey :

The answer of Augustus G. Richey, sole executor of the last will and testament of Abbe Maria Gulick, late of the county of Mercer, State of New Jersey, deceased, one of the defendants
30 to the bill of complaint of Alexander Gulick and Job G. Olden, executors of the last will and testament of William Gulick, late of the township of Princeton, in the county of Mercer, and State of New Jersey, deceased.

This defendant now and at all times hereafter, saving and reserving to himself all manner of benefit and advantage of

exception to the many errors, uncertainties and insufficiencies in the said bill of complaint contained, for answer thereunto, or, unto so much and such parts as this defendant is advised is material for him to answer unto, he answers and says: He admits that the said William Gulick was possessed of, and well entitled to, considerable real and personal property in his lifetime, and being so possessed thereof he made and published his last will and testament, in writing, bearing date on the thirtieth day of July, in the year of our Lord one thousand eight hundred and fifty-five, and duly executed the same as by law is required for the passing of real and personal estate, as set out in the said bill of complaint, and therein, amongst other things did give and bequeath as follows, that is to say:

"5. I give and bequeath to my daughter, Abbe Maria Gulick, the sum of ten thousand dollars, to be placed out at interest on bond and mortgage, so soon as my estate can be collected without sacrifice; the bonds and mortgages to be taken in the names of my executors, or the survivor of them, in trust for my said daughter, Abbe Maria Gulick, and the interest to be paid annually to her by my said executors, or the survivor of them, for her sole and separate use, and in no wise liable for the debts or subject to the control of any man she may marry; should she marry and have a child or children, *then* after her death, I give the said ten thousand dollars to such child or children."

And this defendant, in further answering, admits, that the said William Gulick, the testator, had at the time of the execution of said will and the said codicil, (both of which are set out at length in the complainants' said bill of complaint), and left him surviving, five children, to wit: James Gulick, William A. Gulick, Alexander Gulick, Abbe Maria Gulick and Elizabeth H. Armstrong, wife of Edward Armstrong.

And this defendant further answering, saith, that the said William Gulick, in his said last will and testament, and in the said codicil appended thereto, made provision for each one of his said children specifically, as in and by the said last will and testament and the codicil thereto, and the probate thereof to which this defendant refers and begs leave to produce, if it shall become necessary so to do.

And this defendant further answering admits, that the said William Gulick departed this life on or about the fifteenth day

of August, in the year of our Lord one thousand eight hundred and sixty-five, without having altered or revoked his said last will and testament, or the said codicil thereto, save as his said will is altered by the said codicil, and that the said Alexander Gulick and Job G. Olden, the complainants in said bill of complaint afterwards, to wit: on or about the sixth day of September, in the year of our Lord one thousand eight hundred and sixty-five, proved the said last will and testament, and the said codicil thereto, before the then Surrogate of the county of
 10 Mercer, as by the probate thereof will appear, and that the said executors took upon themselves the burthen of the execution of the said will and codicil thereto.

And this defendant in further answering admits, that he has been informed that the said complainants, the executors of the last will and testament of William Gulick, deceased, did, pursuant to the provisions of the said last will and testament, place out at interest on bond and mortgage, the said sum of ten thousand dollars, so as aforesaid given by the said testator to the said Abbe Maria Gulick, in trust for the said Abbe Maria
 20 Gulick, and paid her the interest thereon during her life, according to the directions of the said last will and testament; but when the last payment of interest was made to the said Abbe Maria Gulick, by the said executors, this defendant is not informed, and he cannot, therefore, state how much interest had accrued on the said ten thousand dollars at the time of the decease of the said Abbe Maria Gulick, which had not been paid.

And this defendant further answering, saith that he admits that the said Abbe Maria Gulick, the legatee named in the said
 30 last will and testament of the said William Gulick, deceased, made and published her last will and testament in due form of law, bearing date on the eighth day of September, in the year of our Lord one thousand eight hundred and seventy-one, and therein and thereby did, among other things, appoint this defendant, Augustus G. Richey, sole executor.

And this defendant in further answering, saith that he admits that afterwards, to wit: on or about the twentieth day of May, in the year of our Lord one thousand eight hundred and seventy-three, the said Abbe Maria Gulick departed this life with-

out having altered or revoked her said last will and testament, and that afterwards, to wit: on or about the fifth day of June, in the year of our Lord one thousand eight hundred and seventy-three, this defendant duly proved the said last will and testament before John H. Scudder, Esquire, Surrogate of the county of Mercer aforesaid, as by the probate thereof, now in the possession of this defendant, will when produced more fully appear, and thereupon this defendant took upon himself the burthen of the execution of the said will.

And this defendant in further answering, saith that in the 10
said last will and testament of the said Abbe Maria Gulick, deceased, after providing for the payment of her just debts, funeral expenses, and the erection of a suitable tombstone over her grave, the rest and residue of her estate is disposed of as follows, to wit: "Fourth. All the rest and residue of my estate, including the proceeds of the sale of my real estate, whatsoever and wheresoever, I give and bequeath to the four children of my beloved sister Elizabeth Harrison Armstrong, deceased, to be equally divided between them, share and share alike, that is 20
to say, one-fourth thereof to each one of my said nieces, to wit: Bessie, wife of Henry Bayard, Kate R. Armstrong, Julia M. Armstrong and Louisa C. Armstrong, to be equally divided between them share and share alike."

And this defendant further answering, saith that the said Abbe Maria Gulick remained a feme sole all her life, never having been married to any one and never had any child or children; and, therefore, this defendant insists, that the said sum of ten thousand dollars, given by the said William Gulick, in the fifth section of his said last will and testament, to his said 30
daughter Abbe Maria Gulick, became and was absolutely hers, as she did not marry and had no child or children; and that she had full right and ample power to dispose of the said sum of ten thousand dollars, so as aforesaid given to her in and by her last will and testament; and that this defendant, as executor of the said Abbe Maria Gulick, is, therefore, interested in the said sum of ten thousand dollars, and is entitled to collect and receive the same for the use and benefit of the legatees named in the said will of the said Abbe Maria Gulick, deceased.

And this defendant further answering, says that he insists 40
that it was clearly the intention of the said William Gulick, the

testator in *said will*, to make the said bequest of the said sum of ten thousand dollars to the said Abbe Maria Gulick *absolute*; and that such absolute gift was not taken away, by the following language connected with such bequest, to wit: "should she," (meaning the said Abbe Maria Gulick), "marry and have a child or children, then after her death, I give the said ten thousand dollars to such child or children." As the said Abbe Maria Gulick never was married and never had any child or children, such bequest, therefore, to the said Abbe Maria was absolute, 10 and the said legacy of ten thousand dollars, therefore, comprises a part of the residue of the estate of the said Abbe Maria Gulick, deceased, and is disposed of under the fourth clause of her said last will and testament above set out.

And this defendant further answering, charges and insists that the said William Gulick, deceased, did not mean and intend in and by the fifth section in his said last will and testament to give the interest to his said daughter Abbe Maria Gulick during her life *only*, and in case she should not marry and have a child or children, then that the said sum of ten thousand dollars 20 should fall into and become part of the residue of *his estate*, as no provision is made for the contingency of his said daughter Abbe Maria's dying without leaving a child or children, and this should be taken as evidence of the said William Gulick's intention, that in such an event the said gift to his said daughter Abbe Maria should be absolute.

And this defendant denies all and all manner of unlawful combination and confederacy wherewith he is by the said bill charged; without that, that there is any other matter or thing in the said complainants' bill of complaint contained, material or 30 necessary for this defendant to make answer unto, and not herein and hereby well and sufficiently answered, confessed or avoided, traversed or denied, is true to the knowledge and belief of this defendant, all which matters and things this defendant is ready and willing to aver, maintain and prove, as this honorable court shall direct, and humbly prays to be hence dismissed with his reasonable costs and charges in his behalf most wrongfully sustained.

THEODORE C. MAPLE,
Solicitor of Defendant.

40 AUGUSTUS G. RICHEY, *Executor, &c.*

Opinion.

THE CHANCELLOR. The bill is filed by the executors of the last will and testament of William Gulick, deceased, late of Princeton in this State, for the construction of a bequest of \$10,000 therein, in favor of his daughter Abbe Maria. The will is dated July thirtieth, 1855. By it the testator gave to his son James ~~\$2,000~~, to be placed out at interest on bond and mortgage; the bonds and mortgages to be taken in the names of his executors and the interest to be paid annually to James by the executors for his sole and separate use, and to be in no wise liable for his debts, and after his death to go to his children on equal shares. And he gave to his executors and to the survivor of them, the farm on which the family of his son William A. Gulick then lived, together with other real estate described in the will, in trust nevertheless; that the executors, and the survivor of them, should receive the rents, issues and profits of that real estate and pay them to William and William's then wife, each and every year during their lives, to their sole and separate use, the same to be in no wise liable to the debts of William; and after the death of William and his then wife, he devised the real estate so held in trust for them, to their children in equal shares. To his son Alexander he devised the farm on which the testator then lived, for life, with remainder to Alexander's children in fee, in equal shares. To his daughter Abbe Maria, who was unmarried, he bequeathed as follows: "I give and bequeath to my daughter Abbe Maria, the sum of ten thousand dollars, to be placed out at interest on bond and mortgage, so soon as my estate can be collected, without sacrifice; the bonds and mortgages to be taken in the names of my executors, or the survivor of them, in trust for my said daughter, Abbe Maria, and the interest to be paid annually to her by my said executors, or the survivor of them, for her sole and separate use, and in no wise liable for the debts, or subject to the control of any man she may marry; should she marry and have a child or children, then after her death I give the said ten thousand dollars to such child or children." To his married daughter, Elizabeth H., he gave a like sum, to be placed at interest in like manner, and on the like trust, except that he provided that

* \$10,000.

the bonds and mortgages should be taken in the names of the executors other than her husband, he being one of the executors, and after her death the money bequeathed to her should go to her children in equal shares. All the rest and residue of his estate, both real and personal, he gave, devised and bequeathed absolutely to his five children above named, in fee simple, in equal shares. He appointed his sons, James and Alexander, and his son-in-law, Edward Armstrong, executors. By a codicil to the will, dated February fourteenth, 1863, he revoked the
 10 gift to William in the residuary section of the will, and instead thereof, gave, devised and bequeathed the one equal one-fifth part of all the rest and residue of his estate, both real and personal, to his executors in the codicil named, and the survivor of them, but in trust nevertheless, for the use and benefit of Sarah, the then wife of William, during her life, and to be in no wise subject to the debts or control of William, and after her death it was to go to the children of her and William absolutely, in equal shares; and in case any of these children should die in
 20 the lifetime of their mother, leaving issue, such issue should take the same share as their parents, if living, would have taken. By the codicil he revoked the appointment of executors made in the will, and appointed the complainants, Alexander Gulick and Job Olden, executors.

Abbe Maria did not marry. She died on or about the twentieth of May, 1873, leaving a will, by which, after providing for the payment of her debts and funeral expenses, and the erection of a tombstone over her grave, she gave all her property to the children of her sister Elizabeth. Her executor claims the \$10,000 mentioned in the above quoted section of the
 30 will. On the other hand, it is claimed that it passed under the will of William Gulick, deceased, to those who are now interested in the residuum of his estate; or if not, then to his next of kin. The executor of Abbe Maria insists, that subject to the qualifying trust and conditional limitation she took the gift of \$10,000 absolutely. On the other hand, it is insisted that she took only the interest of it for life.

The testator gave to Abbe by the bequest under consideration, \$10,000, to be held by his executors or the survivor of them, in trust for her, and the interest to be paid annually to
 40 her by the executors or the survivor of them, for her sole and

separate use, and not to be liable for the debts or subject to the control of any husband she might have; and he further provided, that if she should marry and have a child or children, then after her death the \$10,000 were to go to such child or children. In its terms the bequest is absolute; besides, the produce of the fund is given to her without limit as to time.

That in this case passed the fund itself. 2 *Roper on Legacies*, 1476, and seq.; *Adamson v. Armitage* 19, *Ves.* 416; *Manning v. Craig*, 3 *Green's Ch. R.* 436; *Haig v. Swiney*, 1 *Sim. & Sta.* 489; *Billing v. Billing*, 5 *Sim.* 232; *Hawkins v.* 10 *Hawkins*, 7 *Sim.* 173; *Clarke v. Gould*, 7 *id.* 197; *Humphrey v. Humphrey*, 1 *Sim. N. S.* 536. The testator nowhere provides that the \$10,000 shall go over to any one, or fall into the residue of his estate in case Abbe should not have lawful issue. The plan of his will manifestly was to give his children equal shares of his estate. All the rest of his children except Abbe were married and had children living when the will was made.

In the case of each of the others he gives the parent or parents the use or interest for life, and at his, her or their death, the fund or the real estate to his, her or their children. 20 There is no clause of accruer in any instance, and he makes no provision in regard to the fund or property in case neither the children nor their issue should survive the parent to whom the interest or use for life is given. Abbe has no interest under the will in the particular devises and bequests to her brothers and sisters, and their children. Equality, therefore, does not require that they should have any in the bequest to her. It is clear from the language of the bequest under consideration, that the testator intended to give the \$10,000 to Abbe, settling 30 it on her to protect it against any husband she might have, and securing it in case she should marry and have issue, to her child or children. Where there is a gift to children or other legatees, the shares being given absolutely in the first instance, followed by a direction to settle the shares upon trusts which do not exhaust the whole interest, the legatees take their shares absolutely, subject to the qualifying trusts. And where the testator provides that the portion of his daughters shall be held in trust by his executors or other persons appointed for the purpose, during the life of the daughters, and go to their children or issue, if any such they have, at their decease, this is 40

- regarded as a qualification or limitation of the estate of such daughters only as leave children or issue, and will not affect the vested or transmissible character of the shares of such daughters as die without leaving children or issue. *Hawkins on Wills*, 267; 2 *Redfield on Wills*, 649; *Jarman on Wills*, 749, 784; *Whittell v. Dudin*, 2 *Jac. & W.* 279; *Hulme v. Hulme*, 9 *Sim.* 644; *Mayer v. Townsend*, 3 *Beav.* 443; *Jackson v. Noble*, 2 *Keen* 590; *Alston v. Davis*, 2 *Head. (Tenn.)* 266. This principle was recognized in *Wurt's Exr's v. Page*, 4, *C. E. Green*, 365.
- 10 Abbe having died without issue, this qualification or limitation of her estate did not affect its vested or transmissible character. Nor is the fact of the settlement to her use, free from the control of any husband she might have, evidence that the testator intended that she should have a life estate only. *Adamson v. Armitage*; *Whittell v. Dudin*; *Jackson v. Noble*; *Mayer v. Townsend*; *Wurt's Exr. v. Page*. The case of *Joslyn v. Hammond*, 3 *M. and K.* 110, was relied on by counsel for the residuary legatees, and next of kin of William Gulick, as authority for holding that the testator died intestate of the
- 20 ten thousand dollars mentioned in the bequests under consideration.

That case, however, is clearly distinguishable from this. There the testator gave his whole property to his wife, on condition that she should pay an annuity to his mother for the life of the latter, and he directed that at the death of his wife, the whole of his property should be equally divided between those of his children who might survive her. He provided that in case of the re-marriage of his wife, each of his children on arriving at the age of twenty-four, should be paid four hundred

30 pounds. He left one child surviving him, and a posthumous child was born. Both died in the lifetime of the widow, without issue. The widow married again and died, leaving her husband surviving her.

It was held that in the events which had happened the testator's property was undisposed of, and that the next of kin, and not the second husband in right of his wife, were entitled to it. The decision in that case was put upon the ground that from the whole context of the will it was apparent, that it was the intention of the testator, that in no event the wife should

40 have other than a life estate, and that it was not a probable

intention to be imputed to him, that if his children died in the lifetime of his widow, leaving families, she on her second marriage should enjoy the whole property.

In the case before me, there is nothing either in the terms of the bequest or in the context to indicate that the testator intended that Abbe should have no more than a life interest. The testator not only begins the bequest by giving her the money absolutely, but follows that gift by an unlimited gift of the interest of the money, and making no limitation over to any person *in esse*, he merely declares a limitation dependent on the happening of a contingency. 10

He does not give \$10,000 to Abbe for life, providing that if she marry and have issue the money is to go to such issue; but he gives the money to her, setting it to her use with a limitation over in case a certain contingency shall happen.

The testator evidently did not intend to die intestate of the money mentioned in this bequest, and it is difficult to conceive why, if his intention had been that Abbe should have a life interest only, he did not, when dealing with the fund in view of the contingency alluded to, and with the possibility, if not the probability before him, that she would not have issue, give direction to the fund at her death in the event of her dying without issue. The probability that she would not marry, and that if she did she would not have issue, seeing that she was at the date of the will well advanced in life must have presented itself to him. 20

There will be a decree that the fund be paid over with its accumulations to the executor of Abbe.

Decree.

[Filed December 22, 1874].

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This cause coming on to be heard at a regular term of the Court of Chancery in the presence of Caleb S. Green, Esquire, of counsel with the complainants, of James Wilson, Esquire, of counsel with the defendants, James Gulick and William A. Gulick and Sarah his wife, and of Barker Gummere, Esquire, of counsel with the defendant, Augustus G. Richey, executor,

&c., of Abbe Maria Gulick, deceased, no one appearing on behalf of the defendant, John B. Gest, administrator, &c., of Elizabeth H. Armstrong, deceased; and the bill of complaint and the respective answers of the defendants, James Gulick and William A. Gulick and Sarah his wife, and of the defendant, Augustus G. Richey, executor, as aforesaid, having been read and the arguments of counsel thereon heard and considered, and it now appearing to the satisfaction of the chancellor that the bill of complaint in this cause was properly filed by the

10 complainants, executors of the last will and testament of William Gulick, deceased, to settle the construction of certain clauses therein, and for directions as to carrying the same into execution; and the chancellor being of opinion that the gift of ten thousand dollars to Abbe Maria Gulick, the daughter of the testator, in and by the fifth section of his said will is absolute in its terms, and that she having died without issue, its vested and transmissible character is not affected by the qualifying trust and conditional limitation annexed thereto, and that the

20 said fund of ten thousand dollars, with the accumulated interest thereon, should be paid over to the executor of Abbe Maria Gulick, deceased; and it further appearing that process of subpœna for the defendant, John B. Gest, administrator with the will annexed of Elizabeth H. Armstrong, deceased, was duly issued and returned with a written acknowledgment of the service thereof signed by the said John B. Gest, administrator as aforesaid, and that no answer, plea or demurrer to the complainants' bill has been filed by said defendant, within the time limited by law, or at any other time.

It is therefore on this twenty-second day of December, in the

30 year of our Lord one thousand eight hundred and seventy-four, by His Honor, Theodore Runyon, Chancellor of the State of New Jersey, ordered, adjudged and decreed that the complainants' bill be, and the same hereby is, taken as confessed against the defendant, John B. Gest, administrator as aforesaid, and the complainants are entitled to the order and protection of the court in the premises; and it is further ordered, adjudged and decreed that the legacy of ten thousand dollars so as aforesaid bequeathed by the said William Gulick, deceased, to his daughter, Abbe Maria Gulick, in and by his last will and testa-

40 ment, with the interest accumulated thereon, on the securities

in which the same may now be invested, in pursuance of the directions contained in the will of the said William Gulick, deceased, be paid over and assigned by the complainants to Augustus G. Richey, executor of the last will and testament of Abbe Maria Gulick, deceased, but not until the expiration of fifteen days from the date of this decree; and it is further ordered and decreed that the complainants are entitled to their costs of this suit to be taxed, including a counsel fee of one hundred dollars, to be paid out of the said trust fund; and it is further ordered that it be referred to Charles E. Green, Esquire, 10 one of the Masters of this Court, to take an account of the said trust fund and of the interest received and accrued thereon, and of the payments made on account of said interest to the said Abbe Maria Gulick in her lifetime, and to ascertain and report what allowances should be made to the complainants for commissions on the income of said trust estate, and their expenses in administering the same, the balance of principal and interest remaining in their hands to be paid under this decree.

THEODORE RUNYON, *Chancellor.*

Appeal.

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[Filed December 24, 1874].

James H. Gulick and William A. Gulick and Sarah his wife, defendants in the above stated cause, hereby appeal to the Court of Errors and Appeals in the last resort in all cases, from so much of the decree made in said cause, bearing date on the twenty-second day of December, in the year eighteen hundred and seventy-four, as orders and decrees that the legacy of ten thousand dollars bequeathed by the said William Gulick, dec'd, to his daughter Abbe Maria Gulick, in and by his last will and testament, with interest accumulated thereon, or the securities 30 in which the same may be now invested in pursuance of the

directions contained in said will, be paid over and assigned by the complainants to Augustus G. Richey, executor of the last will and testament of said Abbe Maria Gulick.

Dated December 24, 1874.

J. WILSON,
Solicitor and of Counsel with said Defendants.

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

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J. WILSON,
Of Counsel with said Defendants.

Petition of Appeal.

[Filed March 10, 1875].

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

The petition of James H. Gulick and William A. Gulick, and Sarah his wife, respectfully shews : That your petitioners find themselves aggrieved by a final decree made in the Court of Chancery by the Honorable Theodore Runyon, Chancellor, bearing date on the twenty-second day of December, in the 20 year eighteen hundred and seventy-four, in a cause wherein the said Alexander Gulick and Job G. Olden, executors of the last will and testament of William Gulick, deceased, are complainants, and your petitioners and others are defendants ; and your petitioners respectfully appeal from the said decree, upon the ground that the same is erroneous in this, to wit : that the said decree, orders and decrees, that the legacy of ten thousand dollars bequeathed by the said William Gulick, to his daughter Abbe Maria Gulick, in and by his last will and testament, with the interest accumulated thereon, or the securities in which the 30 same may be invested, in pursuance of the directions contained in the will of said William Gulick, be paid over and assigned to Augustus G. Richey, executor of the last will and testament of the said Abbe Maria Gulick ; whereas the said Augustus G.

Richey is not, as such executor, entitled to receive the same; and also for that the said decree is, in divers other respects, erroneous and contrary to law.

Your petitioners therefore pray, that the said decree in the particulars aforesaid, may be reversed, set aside and for nothing holden, and that your petitioners may have such further relief in the premises as to this honorable court shall seem meet.

J. WILSON,
Solicitor for and of Counsel with Appellants.

Answer to Petition of Appeal.

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[Filed April 7, 1875].

Answer of Alexander Gulick and Job G. Olden, executors of the last will and testament of William Gulick, deceased, respondents to the petition of appeal of James H. Gulick and others, appellants.

These respondents not confessing or acknowledging all or any of the matters of things to be true as in and by the said petition of appeal are contained and set forth, for answer thereunto, say, that they believe it to be true that such decree as is complained of by the appellants, was made by his Honor, the Chancellor, in the Court of Chancery, as in the said petition of appeal is set forth; but as to the date, substance and contents thereof these respondents humbly crave leave to refer thereto, when the same shall be produced. And the respondents are advised and believe that the said decree is agreeable to equity and justice, and they humbly pray that the same may be in all things affirmed, and that the said petition of appeal may be dismissed by this honorable court, with costs to be adjudged to these respondents.

ELMER E. GREEN,
Solicitor. 30

F. KINGMAN, of Counsel.



