

New Jersey Court of Errors and Appeals

Between

OSCAR KEEN, Trustee, etc.,

Complainant-Respondent,

and

A. GIFFORD PLUME, *et al.*,

Defendants-Appellants.

On Bill, etc.

*On Appeal
from Court
of Chancery.*

Brief for Appellant, Archer Gifford Plume.

A summary of the facts will be found in the brief of Messrs. Barrett & Barrett, for the defendants Lockwood and others (pages 1-5 inclusive).

The defendant Archer Gifford Plume is the sole survivor of the children of the testatrix Susan Plume, and is the sole survivor of the remaindermen mentioned in the close of the 17th paragraph of her will, which paragraph gives rise to the questions presented by the four appeals in this suit.

There are three main questions now before the court:

1. Did the testatrix Susan Plume die intestate as to the residue of her estate now in the hands of the trustee?
2. If not, to whom should said residue be distributed under the seventeenth paragraph of her will?
3. If said residue should be distributed under the seventeenth paragraph of the said will to others beside Archer Gifford Plume, should it be distributed as personalty or realty?

I.

**The Testatrix Susan Plume died
~~Intestate.~~**

The only clause of the will which concerns the present contest is the seventeenth (pp. 214-217), which deals with the residue of the estate.

At the very outset of the discussion it must be presumed as a matter of law that Susan Plume died testate. It is entirely settled that it cannot be assumed that a testator had any intention of dying intestate and the court will endeavor to so construe the will as to prevent intestacy either whole or partial.

In *Liegh vs. Savidge*, 1 McCarter 124, page 134, Chancellor Green said:

"A will ought not to be so construed as to produce such intestacy. The natural and reasonable presumption is that when a will is executed the testator designs to dispose of his entire estate and does not intend to die intestate as to any part of his property."

In *Yawger vs. Yawger*, 10 Stew. 216, p. 218, the court said:

"Now the law prefers a construction which will prevent a partial intestacy. *Vernon vs. Vernon*, 53 N. Y., 351."

In *Bonnell vs. Bonnell*, 2 Dick. 540, p. 547, Vice-Chancellor Green said, p. 547:

"Further, the construction contended for results also in an intestacy in the unsold portions of the real estate as to the share of any child dying without issue. It cannot be assumed that the testator had any such intention; the whole will shows this was farthest from his thoughts. *Leigh vs. Savidge*, 1 McCart. 124; *Yawger vs. Yawger*, 10 Stew. Eq., 216."

In *Carter vs. Gray*, 13 Dick., 411, Vice-Chancellor Grey said, p. 415:

"A will ought not to be construed so as to impute to the testator a purpose to die intestate of the fee if it can be avoided. *Wadley vs. North*, 3 Ves., *367.

"This rule has been accepted in this country, and it has been held in Pennsylvania that no presumption of an intent to die intestate will arise where the words of the testator will carry the whole estate (*Stehman vs. Stehman*, 1 Watts, 475), and in New York that the law prefers a construction of a will which will prevent a partial intestacy to one which will permit it (*Vernon vs. Vernon*, 53 N. Y., 361), and in this state in *Yawger vs. Yawger*, 10 Stew. Eq., 218.

"When the question presented requires the construction of a residuary clause, the courts have a strong disposition so to interpret it as to prevent an intestacy with regard to any part of the testator's property. *Leake vs. Robinson*, 2 Mer., *386."

In the case at bar it appeared that this will was filed and proved on March 25th, 1864, and that during all the intervening years it had been regarded by the numerous parties in interest thereunder as disposing of the estate of the testatrix. This fact, together with the rule of law above invoked, will make the court most reluctant to now set aside the will if upon any reasonable construction it can be sustained.

The seventeenth paragraph of the will (pp. 214-217) analyzes as follows:

It divides the residue into sixteen-sixteenths.

Of this, five-sixteenths are given outright to Archer Gifford Plume, and another five-sixteenths to Mary Josephine Lockwood.

This leaves for consideration the remaining six-sixteenths.

This six-sixteenths is divided by the testatrix into two sections, one section comprising one-third of this residue, and the other section two-thirds of the residue.

The whole six-sixteenths part is given to the executors, in trust, and they are directed to disburse the rents, issues and profits thereof, or in case the *corpus* is changed from realty to personalty, to disburse the income thereof in the same way as the rents, issues and profits were to be disbursed.

The will is complete in its directions as to the disposition of that section of the six-sixteenths part constituting one-third.

This one-third is disposed of as follows:

a. The rents, issues and profits thereof to Sarah Virginia for her life (p. 215, ll. 1-4).

b. On the death of Sarah Virginia, the rents, issues and profits or the income of this one-third go to the children her surviving, and on the youngest of such children attaining the age of twenty-one, the *corpus* of this one-third "to such child or children to be held by or divided between them share and share alike" (p. 216, ll. 37-40).

c. If Sarah Virginia should leave no children (which was the fact), then the *corpus* of the said one-third "shall be conveyed or paid to my children Mary Josephine Lockwood, Samuel W. and Archer Gifford Plume, the same to be held between them share and share alike" (p. 217, ll. 2-6).

This completely disposes of the one-third section of the six-sixteenths part, both as to income and *corpus*.

The two-thirds section of the six-sixteenths part is not so completely disposed of by the language of the will itself, but I contend that the intention of the tes-

tatrix is clear to dispose of it both as to income and *corpus* as completely as was the case in the one-third section. And having in mind the presumable intention of the testatrix, it is inconceivable that she could have actually intended to dispose of the *corpus* of the one-third section, and die intestate as to the *corpus* of the two-thirds section.

The will deals with this two-thirds section both as to income and as to *corpus*, and there is a clear distinction throughout the seventeenth paragraph as to the disposition of the one and the other.

After providing for the setting aside of this two-thirds section of the six-sixteenths part, the will provides that out of this two-thirds the executors shall pay to John I. Plume, grandson, a sum equivalent to six per cent. on two thousand dollars, or one hundred and twenty dollars, a year, and that the remainder of the income of said two-thirds section should be paid to Samuel W. (p. 215, ll. 4-11).

In this it will be observed the testatrix was dealing purely with the income derivable from the *corpus* of this two-thirds section.

The will contains a provision as to what disposition should be made of the rents, issues and profits of this two-thirds section in case Samuel W. should die before his son John I. attained the age of twenty-one years (p. 215, ll. 12-25)—which did not in fact happen. This clause deals solely with the rents, issues and profits, and provides that in case Samuel W. should die before John I. attained the age of twenty-one years, John I. should receive in lieu of the one hundred and twenty dollars above provided for, a sum equivalent to six per cent. on four thousand dollars, or two hundred and forty dollars a year until he attained the age of twenty-one years, and the remainder of the rents, issues and profits of the said two-thirds section to be paid to the testatrix's children Mary Josephine, Sarah Virginia and Archer Gifford.

It will be noted that these three individuals are the same as those who in the closing part of the will (p. 217, l. 20) are to receive the residue of the *corpus* of this two-thirds section, when John I. became twenty-one and Samuel W. is dead.

This clause last discussed, however, did not become operative because Samuel W. did not die before his son, John I., became twenty-one, but read with the last clause of the will, it shows the intention.

In the closing part of the will the testatrix deals with this two-thirds section *both* as to income and *corpus*.

Immediately following that part of the will where she disposes of the *corpus* of the one-third section, as already pointed out, she deals with the disposition of the two-thirds section (p. 217, ll. 7-25). First she orders that upon John I. attaining the age of twenty-one years, he received out of the *corpus* the sum of four thousand dollars.

Next she deals with income as opposed to *corpus* for she provides that if her said grandson (John I.) shall not live to be twenty-one, then the whole income arising from the said two-thirds section is to be paid to her son, Samuel W.

She next deals with the *corpus* of the two-thirds section again and provides for its disposition upon the death of Samuel W., and orders that of the *corpus* of the said two-thirds section her executors shall "convey to or pay to my three children, Mary Josephine Lockwood, Sarah Virginia and Archer Gifford Plume, the same to be held or equally divided between them share and share alike."

It will be observed here that these three persons are the same persons who were to receive the income of the remainder of the two-thirds section which was disposed of in case Samuel W. died before John I. became twenty-one. It seems to have been clearly the intention of the testatrix, therefore, that these three,

or, as I shall later contend, such of them as should survive, should receive the benefit of this two-thirds section after the intermediate trusts had been disposed of. The possible construction suggested in the bill (p. 8, l. 20) and now contended for by John I. Plume, "that apparently the only gift over after the termination of the life estate of the said Samuel W. Plume was in the event that the said John I. Plume should not attain to the age of twenty-one years, and that if this be the proper construction of said clause of said will, then said Susan Plume may have died intestate as to the final disposition of the moneys," is not a construction which is in accordance with the intention of the testatrix as the same may be gathered from the four corners of the will. This last sentence of the seventeenth paragraph (p. 217, ll. 7-25) can only be accurately understood as we keep in mind that it deals with both income and *corpus*.

It dealt first with the *corpus*—when John I. became twenty-one he received four thousand dollars. This has been paid him. Next it dealt with income as opposed to *corpus* and provided that if John I. should not live to be twenty-one, the whole income of the said two-thirds section should be paid to Samuel W. Although John I. did not die before becoming twenty-one, this clause has been decreed by the Court of Chancery in the case of *Plume vs. Morris* (pp. 17-24)—which decree is not and cannot now be attacked—as authorizing the payment of the income to Samuel W. during his life. (see p. 23, ll. 1-5).

These dispositions of *corpus* and income were predicated under the will on whether John I. did or did not survive the age of twenty-one. The clause then takes up an entirely new disposition of the *corpus* (p. 217, l. 19). It has already provided for John I. if he lived to be twenty-one and it has provided for Samuel during his lifetime if John I. did not become twenty-one. It now deals with the *corpus* of the two-thirds section

on the death of Samuel W. and says that it should be conveyed or paid to the three children named of the testatrix. The word "and" in the line (p. 217, l. 19) "and upon his death" is entirely superfluous and may be disregarded. The word "upon" should begin a new sentence and was evidently intended to, for it deals with the new situation which would arise on the death of Samuel W.

Having in mind the strong desire of the court to preserve the testacy, there seems to be ample ground in the will upon which to predicate a construction for the disposition of the residue.

Aside from this independent construction which I have suggested the testacy of the testatrix has, as already indicated, been adjudicated by the Court of Chancery in the earlier case of *Plume vs. Morris*.

This same will was before ~~that~~ court in the case of *Samuel W. Plume vs. Staats S. Morris*, and the record in that case is in evidence here (p. 97, l. 20 to p. 98, l. 7). The final decree in that case (Exhibit B. annexed to the bill, p. 17, and Exhibit C. 2 in evidence, p. 54, ll. 12-20) set forth the result of the construction of the will by Vice-Chancellor Van Fleet, and was consented to by counsel for all parties. This decree recites *verbatim* the language of the seventeenth section of the will which is now before the court (p. 17, l. 30 to p. 20, l. 37). The decree, after reciting this section of the will, goes on to further say: "and it further appearing that the trusts in said will named so far as they relate to and affect that portion of the residue in which Sarah Virginia Plume was interested are completed, the said Sarah Virginia Plume having died and her share having been distributed (this would seem to effectively dispose of any claim of the heirs of Sarah Virginia Plume in this case), and that the four thousand dollars directed to be paid to John I. Plume has been paid and that

the only moneys left in the hands of the said Staats S. Morris at the time of the filing of the bill in this case were that portion of the residue, the income of which was by the said will directed to be paid to Samuel W. Plume during his lifetime." There are other recitals and then the decree by its terms orders, adjudges and decrees (p. 22, l. 40) "that the moneys and other estate in the hands of the said Staats S. Morris at the time of the filing of the bill in this cause, and the moneys and estate now in the hands of Oscar Keen, trustee, are that portion of the residue of the estate of Susan Plume, deceased, the income of which was by the will of the said Susan Plume directed to be paid to Samuel W. Plume during his lifetime." Here is a direct adjudication of the Court of Chancery that the will now under construction provides that the income of the balance of the two-thirds section of the six-sixteenths part should after John I. Plume attained the age of twenty-one be paid to Samuel W. Plume during his lifetime. This adjudication must stand. It cannot be called in question in this suit. It was made on the application of Samuel W. Plume through whom the defendant John I. Plume now claims in this suit. The materiality of this is here: The contention is that when John I. attained the age of twenty-one years no gift over was made of the residue of the *corpus*, *i. e.*, that part of the two-thirds section which was left after the four thousand dollars had been paid to John I. If, therefore, Susan Plume can be said to have died intestate as to this residue, she became intestate on the day that John I. Plume attained the age of twenty-one, for the suggested failure of a gift over of the residue then became apparent, if ever, but the Court of Chancery has decreed that that portion of the two-thirds section which remained after deducting John I.'s four thousand dollars therefrom, is that portion of the estate, the income of which was, by the will of the said Susan

Plume, directed to be paid to Samuel W. Plume during his lifetime. That necessarily means that after John I. became twenty-one, and after the alleged intestacy occurred, this court regarded the provisions of the will as operative and controlling and decreed that the income of this supposedly undisposed of remainder should under the terms of the will be paid to Samuel W. during his lifetime.

It is perfectly obvious that if Susan Plume had died intestate as to this residue, the court would never have decreed that by the terms of her will the income thereof should be paid to Samuel W. A *fortiori*, when the Court of Chancery in the earlier suit, decreed that that portion of the residue now before the court was that portion of the estate, the income of which by the terms of the will was to be paid to Samuel W. during his lifetime, notwithstanding that John I. Plume was still alive, the Court of Chancery upheld the will and by its decree settled once and forever that Susan Plume did not become intestate as to the residue of her estate when John I. became twenty-one years of age; and not only that, but, settled also, it seems to me, that there was no failure of a gift over.

It must result, therefore, that the will disposed of this residue of *corpus*. Susan Plume is no more intestate now than she was on the day when John I. Plume became twenty-one, and if the will at that time governed the disposition of the income of this residue, it has equal force now to govern the disposition of the *corpus* of the residue.

For the reasons, therefore, first, that the court will, if possible, seek to uphold the will and prevent a partial intestacy; second, that the intention of the testatrix as gathered from the will itself shows that this residue was disposed of, and third, that the Court of Chancery by its decree in another suit has already in effect settled this controversy in favor of the will, I

contend that Susan Plume did not die intestate as to the residue now in court.

The learned Vice-Chancellor who decided this case assumed it outright, for he nowhere even discusses it in his opinion, but decides the case upon the fundamental assumption that the only question before him is the interpretation of the will.

II.

By a proper construction of the Will, and particularly the seventeenth paragraph thereof, the Defendant, Archer Gifford Plume is entitled to the whole of the residue, as the sole survivor of the remaindermen.

It was evidently the intention of the testatrix that the remainder, both the income and *corpus*, of the two-thirds section of the six-sixteenths part should go to her children, Mary Josephine Lockwood, Sarah Virginia and Archer Gifford Plume, or, as I contend, the survivor of them. These three last named children of necessity received either a contingent or vested remainder. My contention is that on either theory the whole of the estate must be awarded to the defendant Archer Gifford Plume.

(a) Was it a contingent remainder?

The learned Vice-Chancellor decided that the three remaindermen named in the close of the seventeenth paragraph of the will, namely, Mary Josephine Lockwood, Sarah Virginia and Archer Gifford Plume, took a vested interest in the remainder upon the death of the testatrix. By his construction they did not come into the present enjoyment of the fund until upon the death of Samuel W. The facts are that both Mary Josephine Lockwood and Sarah Virginia died many years before Samuel W. The contention of counsel for the

Lockwoods (Messrs. Barrett & Barrett) and the position of the Vice-Chancellor was that the certainty of the death of Samuel, coupled with the words "upon his death," made the devise to the three remaindermen a vested as opposed to a contingent interest.

I am not prepared to say that the laws of vested remainders as laid down by the Vice-Chancellor is wrong. But the language of these closing words must be read with the context of the whole seventeenth paragraph. The real question is: what was the interest as gathered from the four corners of the will? The seventeenth paragraph, as already pointed out, divides the remaining six-sixteenths there dealt with into two sections, which I have denominated the one-third section and the two-thirds section. The one-third section, after the life interest of Sarah Virginia therein was ended, was to be paid to Mary Josephine Lockwood, Samuel W. and Archer Gifford Plume (p. 217, ll. 1-6) upon a double contingency; first, that Sarah Virginia, the life tenant, should die leaving a child or children her surviving (p. 216, l. 20), and, second, that the child so surviving should attain the age of twenty-one years (p. 216, l. 30).

Obviously, therefore, the remainder which Mary Josephine Lockwood, Samuel W. and Archer Gifford Plume took in the *corpus* of this one-third section was a contingent remainder, and the language which the testatrix used in disposing of this contingent remainder to these three remaindermen was, "the same to be held or equally divided between them, share and share alike" (p. 217, l. 5). The same identical language is used by the testatrix in disposing of the *corpus* of the two-thirds section now the subject of dispute, to Mary Josephine Lockwood, Sarah Virginia and Archer Gifford Plume, "the same to be held or equally divided between them, share and share alike" (p. 217, l. 23).

Moreover standing by itself, the language of the will (p. 217) indicates that the passing of four thousand dollars of the *corpus* of the two-thirds section to Mary Josephine Lockwood, Sarah Virginia and Archer Gifford Plume, was as to that four thousand dollars contingent upon John I. Plume not attaining the age of twenty-one years, for the taking out of that four thousand dollars from the *corpus* of the two-thirds section and the payment of it to John I. Plume was contingent upon his attaining the age of twenty-one years, and if he had not attained that age, obviously that four thousand dollars would have remained in the *corpus* of the two-thirds section, to have been passed on to the remaindermen. It cannot be said, therefore, that these three remaindermen had a vested interest in the entire *corpus* of the two-thirds section.

It appears, therefore, that as to the *corpus* of the one-third section, and as to four thousand dollars of the *corpus* of the two-thirds section, the testatrix devised a contingent remainder to the remaindermen whom she named to receive the fund in each case.

When she came to deal with the disposition of the *corpus* of the two-thirds section upon the death of Samuel, so far as the language of the will indicates, she was dealing with the entire fund, the payment of four thousand dollars out of the *corpus* to John I. not having been made because John I. on the assumption of the will (although contrary to the fact, as now appears) had not attained the age of twenty-one years.

The learned Vice-Chancellor interpreted the language to convey to the three remaindermen a vested interest, although upon his own interpretation of the will it must necessarily have resulted that at least four thousand dollars out of the two-thirds interest was a contingent remainder, and in view of the fact that John I. did attain the age of twenty-one years, the contingency operated against the three remainder-

men and the four thousand dollars was taken out of the *corpus* of the two-thirds section and paid over to John I., and cannot be received by the three remaindermen.

Can it be said, therefore, that the testatrix intended to create a contingent remainder as to four thousand dollars of the *corpus* of the two-thirds section and a vested remainder as to the balance of the *corpus* of the two-thirds section?

It seems to me that in view of the fact that she decreed a contingent remainder as to the *corpus* of the one-third section and a contingent remainder as to four thousand dollars of the *corpus* of the two-thirds section, she must logically be held to have intended a contingent remainder as to the balance of the *corpus* of the two-thirds section. If that is correct then the learned Vice-Chancellor improperly applied the law, for the will shows an intention contrary to that accorded it by the Vice-Chancellor. And if the testatrix intended a contingent remainder, it necessarily passes to Archer Gifford Plume, as the survivor.

b. If it be held that the remainder was a vested as opposed to a contingent remainder, nevertheless under the language of this will Archer Gifford Plume as the sole survivor is entitled to the whole of the fund.

If it be held to have been a vested remainder, then I, of necessity, admit that unless the will indicated the contrary, the interest vested at the death of the testatrix and that the heirs of the remaindermen would succeed to their respective interests.

The paramount consideration, however, is to arrive at the intention of the testatrix, and if from the language of the will it appears that the testatrix intended a different distribution, that intention will be carried out.

I contend that under the language of the will the testatrix did intend a different distribution, and that

even assuming the remainder was a vested one, nevertheless the heirs of those now deceased have no interest, but that the survivor alone—Archer Gifford Plume—is entitled to take.

The devise here was (p. 217, l. 21), “to my three children Mary Josephine Lockwood, Sarah Virginia and Archer Gifford Plume—the same to be held, or equally divided between them share and share alike.”

The will does not use terms signifying an intention that upon the death of either of them, their share shall descend to “their heirs or assigns.”

The language which is employed in connection with this residue is the same language which is employed in connection with the residue of the one-third section, concededly a contingent remainder (p. 217, l. 5), “the same to be held or equally divided between them share and share alike,” and this language thus twice used, is quite similar to that used in dealing with the income of the two-thirds section in the event that Samuel predecease John I. before he became twenty-one, where the will says (p. 215, l. 23), “to my children (naming them), in equal proportions, share and share alike.” In each of these three instances, where the rights of remaindermen are dealt with the testatrix uses no language whatever to indicate that the interest of any one should descend to his heirs or assigns. There being no words expressing any intention that the interest of any remainderman shall descend to his heirs and assigns, such an intention cannot be presumed or implied. Even the words “heirs and assigns” standing by themselves would not prevent a legacy from lapsing. This is settled in *Hand vs. Marcy*, 1 Stew., 59, where the court held that of themselves they would not save the legacy from lapsing but would be held to be words of limitation.

Now the language of the testatrix twice used is “the same to be held or equally divided between them share and share alike.” From these words it would

seem that the testatrix intended that the property in question should be held by Mary Josephine, Sarah Virginia and Archer Gifford and by them alone. If it had been her intention that the heirs of any of the above named legatees should take in the event of the death of either of them before the death of the life tenant, it would have been quite an easy matter to have so expressed it in the will. Instead of that the language is such as to make it clearly appear that those who were to take, were the persons specifically named and none others, "the same to be held or equally divided between *them*."

The language is unusual. It is "held" or "equally divided" between them. The fact that the testatrix said that the residue should be "held" by them would indicate a bequest to them personally as opposed to their heirs and assigns, and the fact that she then went further and said, "or equally divided between them" would indicate that she anticipated that perhaps one or more of the legatees would die and that the holding of this residue should be by the one or more who survived.

The testatrix did not say one-third to Mary, one-third to Sarah and one-third to Gifford, nor did she say the same to be held by them share and share alike, but she did say "the same to be held or equally divided between them share and share alike," and under this language she must have meant first, that the gift was personal as opposed to the heirs and assigns of any or either of them, and secondly, that it was only the survivor or survivors who were to divide or hold the remainder.

I contend, therefore, that even though it be held that the remainder was a vested one, nevertheless the plain language of the will overcomes the legal effect which would ordinarily result from that fact, and the will must be construed to mean that Archer Gifford

Plume as the survivor of the three is entitled to the whole residue.

Counsel for John I. Plume in criticizing the opinion of the learned Vice-Chancellor in treating the last clause of the seventeenth paragraph of the will as containing a gift over to the remaindermen named (whether they take a vested or contingent interest makes no difference on the argument against John I. Plume) say (Brief, pp. 18-19) :

"It is submitted that the clause is properly read as follows:

" 'And I do further order that * * * the Trustees * * * if my said grandson shall not live to that age, then to pay the whole income * * * to my said son Samuel W. and upon his death, the said two-thirds * * to convey to or pay to my three children, Mary, Sarah and Archer.' "

"In other words, that the gift over upon which the learned Vice-Chancellor relied is referred clearly and solely to the contingency of the grandson, this appellant, not attaining 21; that as the grandson did attain 21, the gift over never took effect."

The complete answer to this contention is found in the decree of the Court of Chancery in *Plume vs. Morris*, pages 17-24, which decree stands unreversed and cannot now be collaterally attacked.

The contention of counsel for John I. Plume is that payment of the whole of the income to Samuel W. during his life is contingent on the death of John I. Plume before he attains the age of twenty-one years, and he says in his brief that as the grandson, John I. Plume, did attain the age of twenty-one, that the gift over never took effect. By using the words "the gift over" he refers to the disposition of the *corpus*, but his argument applies equally to the disposition of the income, for if the payment of the whole of the income to Samuel W. was dependent on the death of John I.

before the age of twenty-one, the payment of the income to Samuel W. after John I. attained the age of twenty-one could never have been made if the contention of counsel is correct. But the Court of Chancery in *Plume vs. Morris* has settled by its decree (p. 23, ll. 1-5) that the income of the *corpus* of the two-thirds section, less the four thousand dollars paid to John I. upon his becoming twenty-one, should be paid to Samuel W. during his lifetime, and by thus decreeing the Court of Chancery has settled the contention that there was no gift over adversely to the contention of John I. Plume. If there is any failure of a gift over of the *corpus*, there was equally a failure of a gift over of the income. The case as to the one is no stronger than as to the other. The Court of Chancery in a decree which stands unreversed and cannot now be attacked, has said that there was no failure of a gift over as to the income. *A fortiori* there is no failure of a gift over as to the *corpus*.

III.

There was no conversion under the Will and the Estate should not devolve under the provisions of the Will as personality.

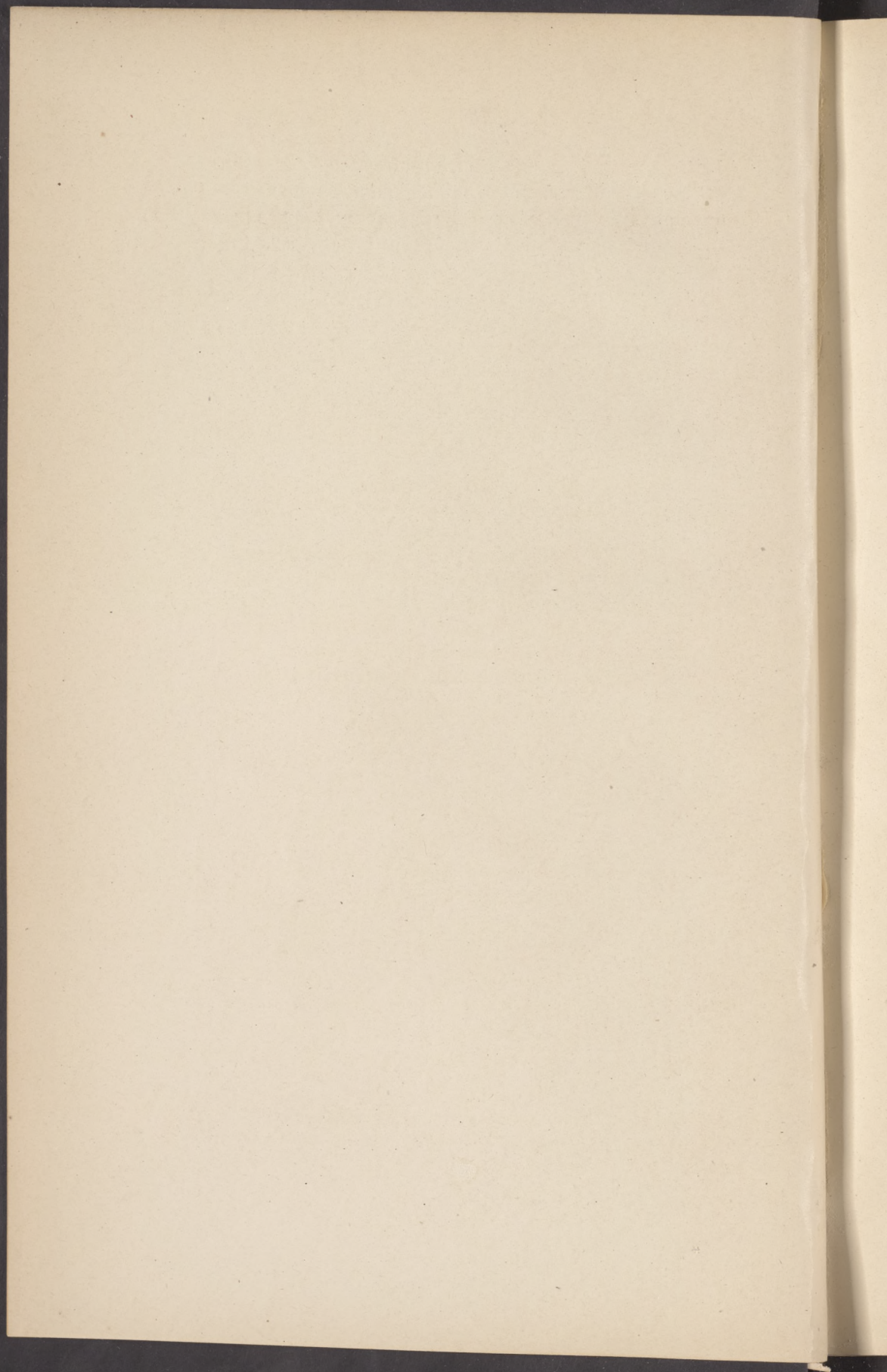
I concur in the contentions of Mr. Martin, counsel for John I. Plume (Brief, p. 21, point 3), and Messrs. Barrett & Barrett, counsel for the Lockwoods (Brief, pp. 20-24, point V). upon this point. At the time of the death of Sarah Virginia Tugman the fund now in court was represented by land (p. 284), and her share of the estate (assuming for the sake of argument that the residue should be divided into three parts, as the Vice-Chancellor decided) would therefore descend to her heirs at law of which the defendant Archer Gifford Plume is one.

I also concur in the contention of counsel for John I. Plume (Brief, pp. 22-24, points 4 and 5) upon the questions of the paternity of the defendant, Edward C. Plume, and the exclusion of the letters relating thereto.

Respectfully submitted,

CONOVER ENGLISH,
Of Counsel with Appellant,
Archer Gifford Plume.

November Term, 1913.



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Brief for Edward C. Plume, Henry Young, Jr., Administrator of the Estate of John V. Plume, Deceased, and Littleton Kirkpatrick, Administrator of the Estate of Marion P. Wallace, Deceased, Appellants and Respondents.

STATEMENT.

The bill of complaint was filed by the trustee under the will of Susan Plume, deceased, and asked for directions as to the final distribution of the funds in his hands. These funds are the proceeds of the sale of real estate of which testatrix died seized.

The Court of Chancery decided that the will, so far as this fund was concerned, created a vested remainder in favor of Susan Plume Tugman, deceased, Mary Josephine Lockwood, deceased, and A. Gifford Plume. That court also held that the fund should be treated as personalty, and accordingly decreed that the shares of the deceased remaindermen should be paid to their personal representatives.

The briefs of the other appellants fully set forth the facts in detail and we forbear a repetition of them.

Specification of Grounds of Appeal.

These appellants, who claim under John V. Plume, deceased, the eldest son of the testatrix, contend that the gift in remainder was conditioned upon the death of John I. Plume before he attained the age of twenty-one years, and that, as he passed that age, the gift failed and testatrix died intestate as to the final distribution of the fund.

These appellants also contend that there was no equitable conversion by the will, and, as none of the real estate was sold before the death of Sarah Plume Tugman, whatever interest she had under the will descended to her heirs.

If either of these contentions is sustained, the court will be asked to decide a question of fact left undecided by the Court of Chancery, namely, whether the appellant Edward C. Plume is the grandson of the testatrix, Susan Plume.

The defendants, John I. Plume and A. Gifford Plume, by their separate appeals each claim the entire fund. This brief will take up the several contentions and the question of fact above indicated.

Argument.

I.

The Gift in Remainder to Sarah Plume Tugman, Mary Josephine Lockwood and A. Gifford Plume was conditioned upon John I. Plume dying a minor.

The funds in dispute are that portion of the estate of Susan Plume, deceased, mentioned in the seventeenth paragraph of her will as two-thirds of six-sixteenths part of the residue of her estate remaining after the payment of the legacy of \$4,000 to John I. Plume.

The will is printed in full in the case, pages 210-217. The seventeenth paragraph of the will is as follows:

Seventeenth. All the rest and residue of my estate both real and personal, not hereinbefore disposed of, and of which I shall die seized and possessed, I do dispose of as follows, viz.———

I give bequeath and devise to my son Archer Gifford Plume, the equal undivided *five-sixteenths* parts thereof, to have and to hold the same, unto him his heirs and assigns forever———

I give bequeath and devise unto my daughter Mary Josephine wife of Gershom Lockwood, the equal undivided *five sixteenths* parts thereof, to have and to hold the same unto her, her heirs and assigns forever, *And as to the remaining equal undivided six sixteenths* parts thereof—I give bequeath and devise the same unto the said Isaac Van Wagenen, and Charles L. C. Gifford and the survivor of them, to have and to hold the same upon and for the trusts, intents and purposes hereinafter mentioned and expressed of and concerning the same; that is to say. In trust, that they and the survivor of them, shall collect, take and receive, the rents issues and profits of said equal un-

divided six sixteenths parts, of said rest and residue of my estate, and pay the same in equal half yearly payments as follows.—namely—. *One third* part of said rents issues and profits to my daughter Sarah Virginia. for her sole use and benefit during her natural life. And out of the remaining two thirds parts thereof to pay towards the support and education of my grandson John I. Plume, son of my son Samuel W Plume, a sum equivalent to the interest at six per cent on Two thousand dollars, and the remainder of said two thirds of said rents, issues and profits to pay to my said son Samuel W.———

But if my said son Samuel W. should die, before his said son John I, shall have attained the age of twenty one years, leaving his said son him surviving, then to pay out of said two thirds of said rents issues and profits, towards the support and education of my said grandson, in lieu of the sum hereinbefore directed to be paid, a sum equivalent to the interest at six per cent. on Four thousand dollars, the same to be paid him until he shall attain the age of twenty one years, in equal half yearly payments, and the remainder of said two thirds of said rents issues and profits, pay to my children Mary Josephine Lockwood, Sarah Virginia and Archer Gifford Plume in equal proportions, share and share alike———

And I do hereby authorize and empower, the said Isaac Van Wagenen, and Charles L. C. Gifford and the survivor of them, if at any time they or the survivor of them shall think it advisable so to do, to sell and convey at such time or times, and at either public or private sale, and for such price and prices as they or the survivor of them shall deem proper in fee simple or for any less estate, the whole or any part of the said equal undivided six sixteenths parts of the said remainder of my estate, in this article of my last will, given them in trust, and to make and execute good and sufficient conveyances in the law, for the same,

And the proceeds of such sale or sales safely and securely to invest, and keep invested on Bond and mortgage upon real estate in the City of Newark, which shall be free from all prior incumbrance, and worth at least double the amount invested thereon, except in cases where a mortgage may become necessary to secure in part the payment of purchase money. of any of the real estate which may be sold by virtue of the power granted in this article of my last will and testament, and the interest arising from such investments to pay in half yearly payments to my said daughter Sarah Virginia, my grandson John I Plume and my said son Samuel W Plume, in the same manner and proportion, in all and every respect, as in this article of my last will is directed. concerning the payment of the rents issues and profits of said equal undivided six sixteenths parts of the said residue of my estate, so as aforesaid given in Trust. And I do further order and direct, that if my said daughter Sarah Virginia shall at the time of her death leave a child, or children her surviving, that the said one third part of the said rents issues and profits of the said equal undivided six sixteenths parts of my said estate, so held in trust as aforesaid, or if the same shall have been sold then the one third part of the interest arising from the proceeds of the sale thereof, shall be paid towards the support and education of such child or children, in equal proportions, until such child, or if more than one, the youngest of such children, shall attain the age of Twenty one years, And upon such child attaining said age, then the equal undivided one third part of said equal undivided six sixteenths parts of the said residue of my estate, so given and held in trust as aforesaid, or the third part of the proceeds of said six sixteenths parts, if the same shall have been sold, shall be conveyed, or paid, by said Isaac Van Wagenen and Charles L. C Gifford, or the survivor of them, to such child or children, to be held,

by, or divided between them, share and share alike *But if* my said daughter shall not leave a child or children her surviving, then the said one third, or if the same shall have been sold, the proceeds thereof, shall be conveyed, or paid, to my children Mary Josephine Lockwood, Samuel W. and Archer Gifford Plume, the same to be held, or equally divided between them, share and share alike. *And*, I do further order and direct, that upon my said grandson John I. Plume attaining the age of twenty one years, the said Isaac Van Wagenen, and Charles L. C Gifford or the survivor of them shall pay to him out of the remaining two thirds of said equal undivided six sixteenths parts of said residue of my estate, so by them held in trust, the sum of Four thousand dollars, but if my said grandson, shall not live to that age, then to pay the whole income arising from said two thirds of said equal undivided six sixteenths parts of said residue of my estate, to my said son Samuel W, and upon his death, the said two thirds, or if the same shall have been sold, the proceeds thereof, to convey to, or pay to my three children Mary Josephine Lockwood, Sarah Virginia and Archer Gifford Plume,—the same to be held, or equally divided between them share and share alike—

1. THE PRESUMPTION AGAINST PARTIAL INTESTACY DOES NOT APPLY TO THIS WILL.

As we have stated, John V. Plume was the eldest son of the testatrix. No provision is made for him by the terms of the will (with trivial exceptions), nor is any reason given in the will for his exclusion.

“The heirs of a decedent are not to be disinherited unless a clear intention appears by the language of the will to that effect.”

3 Jarman on Wills (R. & T.), page 704.

Graydon vs. Graydon, 25 N. J. Eq., 561.

Holton vs. White, 23 N. J. L., 330, 334.

Woodruff vs. White, 78 N. J. Eq., 410; 79 N. J. Eq., 225.

Shaner vs. Wilson, 56 Atl., 1086 (Pa.).

This presumption seems to be stronger than the presumption against partial intestacy. Such appears to have been the opinion of Chancellor Green in deciding the case of *Leigh vs. Savidge*, 14 N. J. Eq., 124-134. In that case the question was whether or not certain legacies were chargeable on the real estate; if not, there was a partial intestacy and land escheated to the state. It was held that the legacies were chargeable on the land. But the Chancellor said:

"If, therefore, there was an heir to take the estate undisposed of by the will, the legal presumption would be that it was not the design of the testator that he should be disinherited, or the inheritance charged with legacies."

In the case of *Woodruff vs. White*, *supra*, Vice-Chancellor Garrison said at page 415:

"While it is true that the court will endeavor to so construe a will as to prevent intestacy, it is equally true that the intention to disinherit an heir must clearly appear before that result will be effectuated, and that even the desire of the court to prevent intestacy does not permit it to disregard unambiguous and clear language which produces intestacy, or to substitute or supply language to prevent it."

This case was subsequently affirmed by the Court of Appeals.

Similar language was used by the court in the case of *Shaner vs. Wilson*, 56 Atl., 1086 (Pa.), as follows:

"One of these rules chiefly invoked in the present case, is that a testator is to be presumed as intending not to die intestate; but another rule of quite equal and perhaps still greater force, is that the heir is not to be disinherited except by express words or necessary implications."

2. THE WILL MUST BE CONSTRUED IN THE LIGHT OF THE TERMS USED AND THE WORDS MUST BE GIVEN THEIR LEGAL AND NATURAL IMPORT.

This rule is so familiar that we do not cite authorities therefor, but proceed at once to a discussion of the language used by the testatrix.

The court below held that a vested remainder was created by the last clause of the seventeenth paragraph in these words: "And upon his death, the said two-thirds, or if the same shall have been sold, the proceeds thereof, to convey to, or pay to my three children, Mary Josephine Lockwood, Sarah Virginia and Archer Gifford Plume—the same to be held, or equally divided between them share and share alike."

Clearly this clause has no meaning if read alone; it is tied to the preceding part of the sentence as closely as possible. To understand what is meant by "his death" we must look back to find Samuel referred to; "said two-thirds" refers back in the sentence to the residuary estate, and to learn who is "to convey" we must go to the very beginning of the sentence where the testatrix orders and directs the trustees so to do. The whole sentence must be read together and then it appears that the payment in question is conditioned upon John I. Plume dying a minor. "But if my said grandson shall not live to that age, then to pay the whole income arising from said two-thirds of said equal undivided six-sixteenths parts of said residue of my estate, to my said son Samuel W., and upon his death, etc."

While the testatrix clearly indicates the disposition of this fund in the event that John should die under age, she is absolutely silent concerning any disposition thereof in the event of John's attaining the age of twenty-one years. Whether the failure so to provide was done by design or through negligence is

immaterial. The cardinal fact is, she failed to make the provision, and intestacy is the natural result. As Vice-Chancellor Garrison said in the case of *Woodruff vs. White*, 78 N. J. Eq., at p. 415:

"Even the desire of the court to prevent intestacy does not permit it to disregard unambiguous and clear language which produces intestacy, or to substitute or supply language to prevent it." He also says in the same case: "It is argued * * * that the fifth clause above quoted should be so construed as to dispose of all the estate, and those cases are cited which maintain the unquestioned principle that, if possible, a will shall be so construed as to dispose of all the estate. The difficulty is that to make the language in question dispose of all the estate would not be construction but creation—in other words, it would be to make a will and not to construe the one which the testator made."

The provisions of the paragraph in question preclude the possibility of any other construction than that of intestacy.

The will clearly provides that if John I. Plume attains the age of twenty-one years, he is to receive four thousand dollars out of the two-thirds of the residue. It would, therefore, be impossible to pay said two-thirds to Mary, Sarah and Gifford, and if testatrix had so intended to do she would have used language indicating an intention to give what was left after the payment of the four thousand dollars, such as "the said two-thirds, or the balance thereof, in case my grandson shall attain the age of twenty-one years." This may seem at first thought an oversight on the part of the draftsman, but when it is considered that the residuary estate consisted wholly of undeveloped real estate on the outskirts of Newark, and which was of little value when the testatrix died in 1864, it will be seen that the four thousand dollars formed a very

large part of the two-thirds of the six-sixteenths of the residuary estate.

The cardinal rule for the construction of wills is that the intent of the testator shall be gathered from the words of the will, and that the testator is presumed to have meant exactly what he wrote. The words are to be construed according to their ordinary meaning and the usual rules of grammar.

The rule that the testatrix meant what she said is peculiarly applicable in this case because of the evident care taken in drawing this will. For instance, the words "bequeath" and "devise" are in all instances used correctly, and the word "heirs" is used with every devise of realty in fee, and never with a gift of personalty.

No general scheme for the distribution of testatrix's estate appears in the will from which the court can infer an intent that the fund in question should go to Mary, Sarah and Gifford. While this is so, it is to be noted, however, that Mary, Sarah and Gifford were to be the recipients of the income of this fund in case of Samuel's death during John's minority. This gift of income precludes the supposition that the testatrix intended that Mary, Sarah and Gifford should receive the corpus upon Samuel's death in every event. If she had so intended, she would have provided in case of Samuel's death during John's minority that the trustee retain sufficient to pay John's annuity and should pay the balance of the estate immediately to Mary, Sarah and Gifford.

Assuming all the matters stated in the brief on behalf of the Lockwood family to be true, such arguments cannot have any force in either adding to or taking from the clear language of the will. It is difficult to understand how the inquiry in this matter can involve the consideration of all the matters referred to in the brief from page 12 to page 17. The only question is, does the will provide for the disposal of this

portion of the estate upon John's attaining his majority, or does it not?

The learned vice-chancellor has not considered in his opinion the question of whether this gift was conditioned upon John's dying a minor.

We respectfully submit for the reasons above stated, that the gift in remainder to Mary, Sarah and Gifford was conditioned upon the death of John I. Plume during minority, and, as the condition was not fulfilled, Mrs. Plume died intestate as to the fund in question.

II.

The Claim of Archer Gifford Plume to the whole fund should not prevail.

Gifford Plume contends that while the gift in remainder to Mary, Sarah and Gifford was not contingent on the death of John I. before attaining twenty-one, it was contingent on their surviving Samuel, and therefore, he concludes as he was the only one of the three who survived Samuel, he is entitled to the whole fund.

Our first contention in respect to this point is, as we have argued under point I, that the testatrix died intestate, and that no estate vested in A. Gifford Plume under the terms of that paragraph of the will.

Our second contention is that if the court find that the testatrix did dispose of that portion of her estate by the seventeenth paragraph of her will: (1) she created a vested remainder which vested upon her death in A. Gifford Plume, Mary Lockwood and Sarah Virginia Tugman. This point has been thoroughly considered by the learned vice-chancellor in his opinion (Case, p. 305) and we therefore do not argue it. (2) But if the court should find that the remainder did not vest upon the death of the testatrix, but that

it was a contingent remainder, then we insist that this is not such a gift as would vest the entire estate in the survivor of the three, namely, A. Gifford Plume.

It is well established "if the gift is to a class and one or more die before the period of distribution, the survivors take the whole gift, but if the gift is to individuals, the survivors only take their original share." 30 A. & E. Enc. of Law, 718. And a gift to a class is there defined as "a gift to a number of persons not named who are included and comprehended under the same general description and who bear a certain relation to the testator. * * * But a gift is not a gift to a class when it is to named individuals, the number and share being certain."

This matter is so well settled by the authorities that we do not argue it further. We submit that the following will be the consequences in the various alternatives suggested.

1. If the court find that the gift in remainder to Mary, Sarah and Gifford was contingent upon their surviving Samuel, then the shares given Mary and Sarah, fail because of their death in Samuel's lifetime and their shares should now be distributed among the general heirs of the testatrix.

2. If the court find that the gift in remainder to Sarah, Mary and Gifford vested on the death of the testatrix, then the share given Sarah should be distributed among her heirs.

III.

There was no Equitable Conversion by the Will.

The entire fund now in dispute is the proceeds of the sale of real estate which testatrix owned at the time of her death in 1864. None of this real estate was sold previous to the death of Sarah Plume Tugman. Mrs. Tugman died in 1866, intestate, without issue, leaving her surviving her husband, and therefore, if this court sustains the court below in the conclusion that the interest of Mrs. Tugman vested, the point arises whether that interest passed to her husband or descended to her heirs, and whether her share in the fund should now be decreed to be paid to her administrator or divided among her heirs at law. The legal principles covering this question are very clearly stated in the following cases from which we quote:

Wurts vs. Page, 19 N. J. Eq., 375:

"The doctrine of equitable or notional conversion is well established. *Oberly vs. Lerch*, 3 C. E. Green, 346-575. * * * Wherever a testator has positively *directed* his real estate to be sold and distributed as money, it will be considered for the purposes of succession as personal. But in this case there is no such direction. The direction to sell is contained in the fourth item of the will, and simply *authorizes* and *empowers* his executors to sell any part of his real estate in case they should *at any time* deem it advisable. This is not a direction to convert, but, on the contrary, it is a seeming direction to let it remain as real estate, until it became advisable from time to time to sell it. If this were the only part of the will to guide us, the real property could not be considered as converted into personal property until actually sold. But the question of conversion is a question of intention; and the real ques-

tion is, did the testator intend his lands should be converted into money at all events before distribution?"

In *Kouvalinka vs. Geibel*, 40 N. J. Eq., at page 444, Vice-Chancellor Bird says:

"I have consulted a great many cases, and have found none going so far as to hold that an equitable conversion arises in case a sale depends upon the request of a third person, or upon the discretion of the executor or trustee, until the request has been made or the discretion has been exercised in making a sale. But I think, where the testator authorizes a sale under either of the conditions named, and a sale is made accordingly, conversion is complete. In *Wurts Exrs. vs. Page*, 4 C. E. Green, 365-375, in speaking of the discretionary powers in such cases, the court said: 'The real property could not be considered as converted into personal property *until actually sold*.' In *White vs. Howard*, 46 N. Y., 144, 162, the court says in such case there can be no conversion in the 'absence of an actual sale' (citing authorities)."

Cook vs. Cook, 20 N. J. Eq., 375.

Parker vs. Glover, 42 N. J. Eq., 559.

McKiernan vs. McKiernan (N. J.), 74 Atl., 289.

Armour vs. Murray, 74 N. J. L., 351.

A clear intention on the part of the testatrix in the case at bar to consider her estate as realty until actually converted by the trustee, we submit, is apparent from a perusal of the seventeenth paragraph. In the first place, the main directions of that paragraph to the trustee contemplated that the distribution should be made of "rents, issues and profits" arising from the land which she owned at time of her death. Following this is an authorization in case the trustee deems it advisable so to do, to sell the same or any

part of it, and at the end of the paragraph there is a direction to the trustee "to convey" such of the land as has not been sold to the beneficiaries named, and she distinguishes between the "rents, issues and profits" from her estate as it was at her death and the "interest arising from the proceeds of sale," and for purposes of distinguishment she speaks several times in the same paragraph of the "two-thirds" and "proceeds."

This brings the case at bar squarely within the principles just stated. Certainly this will does not contain positive directions to the trustees to convey. This being so, we submit that Sarah P. Tugman became vested with the equitable title to the one-third of two-thirds of six-sixteenths of the real estate of which her mother, the testatrix, died seized, and that the character of this property remained unchanged up to the time of her death, and that when she died it descended to her heirs at law, and that her husband took no interest therein.

It may be urged that the division by the testatrix of her estate into so many parts evidenced an intention that the land be sold, since money is more easily divisible than land, but her residuary estate was a farm of twenty-two acres which was later physically partitioned and the share of the trustee set off from the rest. This share of the trustee which produced the fund in question, was sold in some twenty-one separate parcels covering a period of some thirty years, and therefore, no intention to convert can be gathered from the division of the estate into sixteen parts.

The gift of \$4,000 to John I. Plume at twenty-one required a conversion of part of the estate, but it is well established that when a part of the estate must be converted for a specific purpose, the balance of the estate will not be held to be converted thereby.

Winants vs. Terhune, 15 N. J. Eq., 185.

Cook vs. Cook, 20 N. J. Eq., 375.

It is sometimes held that a mingling of personal and real property in one fund works a conversion; but in this case there was no such mingling, as the entire residue was real estate. Testatrix is presumed to have known what property she had and therefore to have known that her whole residuary estate would be realty.

It is submitted that if the court hold that Mrs. Tugman was entitled to a vested remainder in the fund in question, and that she held the same at the time of her death, that the same vested in her heirs at law upon her decease. These were John Visser Plume, a brother (who died intestate, leaving him surviving two children, Edward and Marion), Mary Josephine Lockwood, a sister; Kate Plume Underhill, daughter of George Winter Plume, a brother; Samuel W. Plume, a brother, and Archer Gifford Plume, a brother.

We will discuss in a subsequent part of this brief the question of the right of the children of John V. Plume to take the share of John V. Plume.

IV.

The Claim of John I. Plume to the entire fund cannot be sustained.

The appellant, John I. Plume, claims that on a reading of the whole will, there is fairly to be implied therefrom a gift to him of this fund if he attained the age of twenty-one years and survived his father, Samuel, as actually happened, and in the alternative he claims that a gift of the fund was made absolutely to his father Samuel, subject to certain limitations over, all of which are now eliminated by the failure of the

contingency. The claim is based upon a reading of the provisions of the seventeenth paragraph of the will.

Counsel fails to indicate any particular part of the will to support his contention or to point out any especial words showing an implied gift to John I. Plume.

This case may be distinguished for the cases of *Denise vs. Denise*, 37 N. J. Eq., 163, and *Holton vs. White*, 23 N. J. Eq., 330, relied on by counsel. Both those cases are examples of the familiar principal that a gift by implication arises where there is a gift over in case of the death of an heir before a certain time, and there is no gift of any part of the property to the heir if he does not die in that time.

In *Denise vs. Denise*, *supra*, Vice-Chancellor Van Fleet, said:

"A devise or bequest may arise from implication. *Any words* in a will which manifest an intention to create or give a legacy are sufficient for that purpose. In deciding whether a legacy is given by implication or not, conjecture must not be taken for implication. To create a bequest in that way, the implication on which it is founded must be a necessary one, not natural necessity, but so strong a probability of an intention to give must appear that an intention contrary to that which is imputed to the testator can not be supposed to have existed in his mind."

In the case at bar it will be seen that the testatrix clearly intended to give John I. Plume a legacy of \$4,000 upon his attaining the age of twenty-one years, provided he lived to that age. This is clearly expressed as also the provision for him, of income for his support and education. This express gift of a part of the fund precludes an implied gift of the balance of the fund.

We submit that further than this the will may be searched in vain for the slightest evidence of any intention to make any other gift to John.

John I. Plume claims in the alternative that the clause in the will which directs the trustee "out of the remainder of said two-thirds of said rents, issues and profits to pay to my said son, Samuel W." should be construed as an outright gift of the fund. His counsel relies on several cases which lay down the rule that a gift of income without limitation as to time is a gift of the principal.

We submit that in every case relied on by counsel, where the rule that a gift of income carries the principal, has been applied, that there has been either a direct gift of the fund or the income to the legatee or else a gift to the trustees which has been executed by the statute of uses, or else there are words showing a clear intention that the beneficiary should receive the whole fund. We have not found any case in which a gift of a fund to the trustee with directions to perform active duties and to pay over the income has been held to be a gift of the fund to the beneficiary of the income. But even if this rule were applicable in this case, it should not prevail when the contrary intention appears.

2 Roper Legacies, 1467.

House vs. Ewen, 37 N. J. Eq., 368, at 373.

In the will of Susan Plume the intention clearly appears that Samuel W. Plume should not have more than a life interest. If the testatrix intended that he should have had a larger interest, she must have intended not only to benefit him but also his estate, that is, his heirs, next of kin or whomever he might designate in his will, or else perhaps John I. Plume, who was at the time the will was made, Samuel's only child. But we note (case, page 215, lines 11-25), that if Samuel should die before John should reach the age of twenty-one, leaving John surviving, then the income is to be paid to Gifford Plume and others; in other

words if John is left an orphan, at an early age, then the money which he would otherwise enjoy through his father, and which he would need most in such an event, is to be taken away from him. That clearly shows that the testatrix did not intend to benefit John. We also note (case 217, lines 15-25), that if John should die before he should reach the age of twenty-one, then the fund was to be given to Gifford and others on the death of Samuel. This shows that the testatrix did not intend to benefit other children of Samuel who might be born thereafter, or his estate in general.

We submit that the gift of rents, issues and profits to Samuel W. was expressly limited to his life; that before his son attained the age of twenty-one, he was to receive the balance above the provision for the benefit of his son, and when the son attained that age Samuel was to receive the whole income until his death. No other inference can be drawn from the very clear language of the will.

The very fact that counsel can argue with some appearance of reason that the whole fund should be paid to Gifford Plume, and also that the whole fund should be paid to John I. Plume, and also that the whole fund should be divided between Gifford Plume, the representatives of Mary Josephine Lockwood, and the representatives of Sarah Virginia Tugman, shows the great uncertainty of this will. If any one of these arguments is sustained by this court, the very person whom testatrix intended to receive this fund, may be entirely shut out from it.

We therefore suggest that justice will be best secured by dividing this property according to the equitable principles of the law of descent.

V.**The Question of Pedigree.**

If these appellants are sustained either in their contention that Mrs. Plume died intestate as to the final distribution of the fund or in their contention that the share of Sarah Virginia Tugman descended to her heirs and is not payable to her administrator—then, in either case, a question of pedigree is presented for decision.

John V. Plume was a son and one of six heirs of the testatrix, Mrs. Susan Plume, and he was a brother and one of five heirs of Mrs. Tugman. These appellants maintain that John V. Plume married Marion A. Huguenin and died intestate, leaving surviving his widow and two children, Marion P. Wallace and the appellant Edward C. Plume; that the widow has since died and also that the daughter Marion has since died intestate and childless. The respondents deny that John V. Plume ever lawfully married, and also deny that the appellant Edward C. Plume is his son even if he were married. Thus arise the questions of fact in this case.

THESE QUESTIONS SHOULD BE DECIDED BY THIS COURT.

The Court of Chancery did not decide the question of pedigree because a decision was unnecessary under the interpretation of the will adopted by that court. But all the evidence bearing on this question was presented to the court that could be presented under any view of the case. That evidence is now before this court printed in full in the case, pages 70 to 209 and 220 to 278.

This court should decide these matters from the testimony already taken and not send the case back for a retrial. The general rule is that the Appellate Court will render such judgment as the inferior court

under all the circumstances of the case should have given.

Newark and N. Y. R. R. Co. vs. Newark, 23 N. J. Eq., 515, 521.

Decker vs. Ruckman, 28 N. J. Eq., 614.

2 *Enc. of Pl. & Pr.*, 402.

We therefore proceed to a consideration of the parentage of the appellant, Edward C. Plume.

JOHN V. PLUME LAWFULLY MARRIED
MARION A. HUGUENIN.

1. The Plume family Bible, introduced in evidence by the complainant, shows that John V. Plume and Marion A. Huguenin were married February 8, 1849 (case, p. 58). This record is entitled to the greatest weight, as no doubts have been cast on it as an authentic family record, and the entries being in the handwriting of Mary J. Lockwood, one of the children of Susan Plume (case, p. 66).

2. The proof of this marriage is corroborated by the testimony of Mrs. Slade, who was a daughter of Mrs. John V. Plume by her first marriage; that her mother wrote her that she and Mr. Plume were married in New Orleans (case, p. 153), and that other relatives told her of this marriage (case, p. 156).

3. The marriage was recognized impliedly, by the testatrix, Susan Plume, when she left a bequest to John V. Plume's daughter Marion (case, p. 211).

4. The evidence of co-habitation of John V. Plume and Marion A. Huguenin as man and wife from the time of marriage till his death thirty-five years later, is uncontradicted. The respondent Gifford Plume testified that Mr. and Mrs. John V. Plume lived at Newark at the home of the testatrix and her husband for some time after their marriage (case, p. 101); that then John V. Plume went to California, leaving his wife at his parents' home in Newark, and that she later joined him in the west (case, p. 102); that dur-

ing the fifties they lived together at Peekskill for about three years (case, pp. 108 to 110).

We have also in the testimony of Edward C. Plume (case, pp. 71 to 74), a picture of the happy married life of Mr. and Mrs. John V. Plume in California, from about 1876 until Mr. Plume's death in 1884. This testimony is corroborated by letters of Mr. and Mrs. John V. Plume in which they constantly refer to each other (case, pp. 221 to 234).

5. To controvert this chain of evidence, there is the testimony of John V.'s brother, Gifford Plume (case, p. 105), that his father made the accusation that John V. and Marion were not man and wife, and that Samuel Plume wrote to Gifford that Marion was married at the time she took up with Mr. Plume (case, p. 127).

The testimony of Mrs. Heiser (case, p. 137), that she was told by her father Gershon Lockwood, brother-in-law of John V. Plume, that Marion had deserted her husband and two children for Mr. Plume.

6. This constitutes the whole of the evidence submitted to the court to disprove the marriage of Mr. and Mrs. Plume, and it is absolutely rebutted by the decree of divorce of Mrs. Plume from her first husband, Seymore R. Bonner (case, p. 263), several years before her marriage to Mr. Plume, and the act of the Legislature of Georgia especially allowing her to remarry (case, p. 276).

We have dwelt thus long on this phase of the case only because the evidence presented to disprove the marriage is of exactly the same character as the evidence offered to disprove the parentage of Edward C. Plume, namely, insinuations and vague rumors.

We were fortunately able to produce the decree of the court, and the act of the Legislature, which establish the truth as to the marriage, but births are not matters of record, and therefore we are unable to present exactly the same kind of proof in rebuttal of the insinuations with reference to the parentage of Edward C. Plume.

EDWARD C. PLUME IS THE SON OF THE
LATE JOHN V. PLUME AND MARION, HIS
WIFE.

The most reliable sources of proof of pedigree are declarations of the persons who are in a position to know the truth. We would expect in this case that the facts relating to Edward C. Plume's parentage would be known by his parents, his sister Marion, and his half-sister, Mrs. Slade, his uncles Samuel and Gifford, and his aunt Mrs. Lockwood and her husband. We will consider these several sources.

1. *Mr. and Mrs. John V. Plume.* Edward C. Plume testified that he was brought up by Mr. and Mrs. John V. Plume, and always recognized by them as their son (case, pp. 70 to 73).

We would especially call attention to the marriage of their daughter Marion in 1879, a very prominent social affair, attended by General Grant. On this occasion Edward was seated with his parents in the front pew of the church, a most emphatic recognition of him as their son (case, pp. 73 and 74).

Edward's testimony is fully corroborated by the letters written him by his parents, fourteen of which are in evidence. For instance, the letter of February 5, 1884, when Edward was twelve years old (case, p. 220), addressed "My dear Eddie," and signed "With much love, your affectionate papa, John V. Plume," in which Mr. Plume says, "Papa wrote you again yesterday. By that and my daily letters you will observe papa has not forgotten you, although you are at Los Angeles, 500 miles away from us. When you are an obedient little man papa always loves you and is ever mindful of your welfare and happiness, but when not, it always render me very unhappy and miserable, consequently am compelled to scold you, which is always very painful; more so indeed, than it can possibly be to you. Therefore, I sincerely hope that you will never again give me cause."

Another good example of these letters is the one of January 29, 1884 (case, p. 228), addressed "My darling son" and signed "I am always your loving mother, M. A. Plume." Part of this letter here follows: "Did you take the drive around town that you anticipated? You must be sure and go and see an orange grove. Do you put your napkin on at your meals? I hope so, for only very common people eat without, they have no such things. I trust your table manners will improve under Tatty's supervision alone. I have strong hopes. Do you remember to lift your cap always when speaking to anyone or passing ladies? Have you taken a bath?"

"I wish, dear Eddie, that you would commit to memory one verse each day in the Bible while you are away. Let Tat find in St. John the chapter beginning 'Let not your heart be troubled.' She learned it and several other chapters in the same way. Everybody says you make such fine capital letters; and papa thought the direction of my letter could not be your writing—too good. Continue to excel."

Other letters of the same sort written by Mr. and Mrs. Plume are on pages 220 to 234 of the case.

2. *Marion Plume Wallace.* The recognition of Edward Plume by his sister Marion is also emphatic, as is shown by her note in his autograph album signed "Your loving sister, Marion H. Stone (page 257), and also in the paper writing in the form of her will (page 250). The latter is entitled to great weight because of the solemnity always attending the execution of a will. The fact that it is not witnessed and has never been probated does not take away from its force, since its authenticity is unquestioned. By this will she gave her property to "my brother Edward C. Plume."

3. *Leila B. Slade.* Mrs. Slade is the daughter of Mrs. John V. Plume by her first husband, Mr. Bonner. Her testimony showed that she was not in a position

to give first hand information on the subject, as she saw her mother only once (case, p. 152), when she was a small child, and Marion Plume only once (case, p. 155), and Edward C. Plume only since this case began (case, p. 155). And the Plumes were never mentioned in her family (case, p. 161). She testified, however, that her mother in writing her always referred to Edward as a son (case, p. 154). Q "In any letter that you ever received from your mother in which Edward was spoken of, was he spoken of in any way except as her son?" A "Never—Marion was a daughter and Edward a son—those were the only two children she had that lived. I think she lost two or three children—two children." One of these letters is in evidence (case, p. 259).

We would note that Mrs. Slade's interest in this controversy is opposed to Edward C. Plume's. For if his claim to be a son of John V. Plume is defeated, and the fund is treated as personalty, Mrs. Slade would take the share of John V. Plume, as the next-of-kin of her mother Mrs. Plume, and of her half sister Marion Plume Wallace.

4. *Mr. and Mrs. Lockwood.* Mrs. Heiser and Harry D. Lockwood testified that they never heard of Edward C. Plume during the lifetime of their parents (case, pp. 120 and 139), but Mrs. Heiser also testified that her mother, Mrs. Lockwood, never entered into the history of John V. Plume's marriage (case, p. 137), and so it is not surprising that she never mentioned Edward, and it does not appear that she ever mentioned the daughter Marion. We also notice that the Lockwoods lived in New York and John V. Plume in California, and it is improbable that the two families corresponded or ever saw each other after Mr. Plume left Peekskill about 1860, eleven years before Edward's birth. It also appears that Lockwood and John V. Plume had a bitter quarrel (case, p. 270, line 9).

5. *Samuel W. Plume.* Three letters from Samuel W. Plume to Gifford Plume written in 1907, were introduced by respondents to show that he denied Edward Plume's parentage. We would call attention to one of these letters dated August 13, 1905 (case, p. 110), in which Samuel Plume writes to Gifford: "You say John's boy called on you. John V. Plume never had a son, only two children, Marion and the infant in our tomb. If he had a son he would now be over fifty years. * * * At the time, 1853, I left S. F., John's wife had no son, and besides, was too old to have a child. When he lived at Peekskill I lived with him, in 1856, and he had no son. This goes to prove this boy a fraud."

This letter shows that Samuel had no knowledge at all on the subject. He merely argues from the age of Mrs. Plume, and the fact that John V. Plume had no son in 1856 (fifteen years before Edward's birth), that Edward's claim is unfounded. The two other letters (case, pp. 111 and 113), are to the same effect.

It then appears that Gifford wrote to Samuel, December 30, 1907, asking him for the sake of peace, to recognize Edward (case, p. 268). It is probable also, that Samuel had about this time made some investigation of Edward's claim, at any rate, he afterward most emphatically recognized Edward as his nephew. See his letter of February 29, 1908 (case, p. 249), addressed to Edward, in which he says: "I am going to make my will next week, and will make a provision for you also as one of my executors and after my death, combine yourself with my son, and the others against my *brother*, who intends to take possession of the estate now possessed by me. By the whole of you combining and employing *one* lawyer, the expense will be less by a great deal. It is just and right that you should all get your just dues." It is interesting to note in this letter that Samuel refers to the suit which is now before the court, and recognized Edward as his

nephew, in connection with the very suit now pending. See also his letter of April 12, 1908 (case, p. 248), addressed to Edward, and signed, "I am your affectionate uncle, S. W. Plume," in which he says: "I have made my will, and in it I have only included you and my son, who are to immediately after my death to take my body to Newark and place it in our family tomb in Mount Pleasant Cemetery. I will leave plenty of money to defray all expenses, and more. All my property, moneys, etc., is divided equally between you. I will send you a copy as soon as possible."

Samuel made application in behalf of Edward for membership in Sons of American Revolution (case, p. 239). The italics are in the hand writing of Samuel W. Plume (page 79, line 14). In this application form, Samuel stated that Edward was the son of John V. Plume.

It is difficult to tell whether this change of position on Samuel's part was the result of the letter from Gifford above mentioned, or of a real change in opinion due to investigation. We suggest that the latter is more apt to be the case. Samuel had such an intense dislike for Gifford (see letters, case, pp. 246 and 249) that it is unlikely that Gifford could influence him. It is also improbable that a mere desire to be polite would cause Samuel to make a will leaving half of his property to Edward (see letters, case, pp. 248 and 245 and testimony of John I. Plume, case, p. 206).

Samuel's son, John, testified (case, p. 195, *et seq.*) to conversations with his father in 1908 and 1909, in which Samuel denied Edward's parentage. We would suggest that this testimony should be received with great care. John I. Plume is a hostile party in this suit. He has been rendered more antagonistic by the fact that Edward instituted a contest against the probate of Samuel's will, by which he left everything to

John and revoked the former will in favor of Edward (case, p. 91).

The testimony also bears internal evidence of a lack of frankness. It was not the first time John had heard of Edward (case, p. 194), but he says it was the first time his father had mentioned him (case, p. 194), although his father had been having a vigorous correspondence on the subject with Gifford Plume for three years. John did not regard it as an important conversation, it was just a casual talk, and yet the witness pretends to quote his father word for word (case, pp. 198-206). He also states that his father's charges were repeated in the presence of Gifford Plume, and yet Gifford Plume, although on the stand both before and after John testified, did not corroborate at all this important testimony.

We suggest, moreover, that even if John's testimony be given the fullest weight, still the claim of Edward is unimpaired, as the fact that Samuel had little or no knowledge of the subject, appears both from the letter of August 31, 1905, above mentioned, and from John's testimony (case, p. 201), that Samuel never spoke of receiving any letter from John V. Plume or his family, except one from Mrs. Plume written in 1887. Also, John was characterized by his father, Samuel, as a "dirty dog" (case, p. 111, l. 40), and "sharp and treacherous as a snake" (case, p. 112, l. 14).

6. *Archer Gifford Plume.* Gifford Plume is a party hostile to Edward, and yet his weight in this controversy is entirely in support of Edward's claim. His letters (case, pp. 250-257) admit of no other interpretation than that Edward is the son of his brother, John. We would first call attention to the letter written by him to Samuel Plume, which has not been produced, but the answer to which, dated August 31, 1905 (page 110) is in evidence. This latter letter says: "There are some parts of your letter I do not

understand * * * you say John's boy called on you," showing that Gifford at that time, to members of his family, spoke of Edward as his nephew without thinking there was any need for explanation.

A large number of his letters to Edward are in evidence. Good examples of these are the letters of January 31 and December 12, 1908. In the former (case, p. 254), we find: "In regard to the Cincinnati Society, it is something which cannot be bought, it is subject to inheritance only. It descends from the member to his oldest son. If he dies without leaving a son, it then goes to his brother, and so on down. Now your father inherited it and was elected to membership, but where, I don't know, but he had an elegant badge made, but what became of it I don't know. Now it descends to you, and if your son lives, to him, and so on down. If I only knew what State your father was commissioned, it would be quite easy for you to prove your claim."

And in the latter letter (case, p. 251): "I have delayed writing as I have expected to accomplish something for you, but have been put off from time to time by the Secretary. I have made application for you to membership in the Cincinnati Society, but have run up against a lot of red tape, but think I will be able eventually to land you."

See also letters (case, pp. 251 to 257). These letters stand as Gifford's position on the question of Edward's parentage, and they are most emphatically corroborated by Gifford's silence on the subject while on the stand in this cause. Gifford testified on three different occasions, and was examined at length by counsel of such eminence that we may be certain that everything to which he might testify injurious to Edward's claim, has been brought to the attention of the court. He was examined at length in the attempt to show that John V. Plume's marriage was unlawful, but not one question was he asked to show that Ed-

ward was not John's son. We would inquire, for instance, why he was not asked if John V. Plume or his wife had ever spoken or written of Edward in any way except as their child, or even the bald question: Is the defendant, Edward C. Plume, the son of your brother, John?

7. *Medical testimony.* Mrs. Plume was fifty-two years and four months old when Edward was born. It was suggested that at such an advanced age childbirth is impossible. Dr. Washington and Dr. Holmes both testified (case, p. 175, *et seq.*) that there was nothing in the case which made it impossible from the standpoint of medical science, that Edward is the son of Mrs. John V. Plume. Dr. Washington stated that the average age at which a woman ceases to bear is from forty-five to fifty years (case, p. 176), only two years younger than Mrs. Plume's age when Edward was born. The doctors agreed that such a case is an exception, but we suggest that the evidence has fully established that Mrs. Plume was the mother of Edward, unusual as such a case may be.

We insist that not one man in ten of the age of forty, whose parents and immediate family are dead, could present a case of such strength as has been made by Edward C. Plume.

We respectfully submit that the evidence has established conclusively, that John V. Plume and Marion A. Huguenin were lawfully married, and that the defendant, Edward C. Plume is their son.

DISTRIBUTION OF JOHN V. PLUME'S SHARE.

At the death of John V. Plume part of the real estate had been sold and part remained unsold. In accordance with the rules mentioned in Part III of this brief his interest in the unsold land descended to his heirs, Edward C. Plume and Marion P. Wallace.

His interest in that part of the fund which is the proceeds of the earlier sales should be paid to his administrator, Henry Young, Jr.

All the land was converted by sale before the death of Mrs. Wallace in 1900; therefore the interest which she inherited from her father should be paid to her administrator, Littleton Kirkpatrick.

These three interests can be readily calculated from the accounts of the trustees.

For the reasons stated, the decree should be reversed, and a decree made for the payment of one-fifth of the fund to these Appellants, or, if not, then for the payment of one-fifteenth of the fund to these Appellants.

Respectfully submitted,

YOUNG & BIGELOW,

*Solicitors for Appellants, Edward
C. Plume, Henry Young, Jr., Ad-
ministrator and Littleton Kirk-
patrick, Administrator.*

JOHN O. BIGELOW,

THOMAS L. RAYMOND,

Of Counsel.

New Jersey Court of Errors and Appeals

Between

OSCAR KEEN, Trustee, &c.,
Complainant-Respondent,
and

A. GIFFORD PLUME, *et al.*,
Defendants-Appellants.

On Bill, &c.

On Appeal.

**BRIEF for HARRY D. LOCKWOOD,
ANDREW FLETCHER LOCKWOOD,
GEORGE G. LOCKWOOD and ALICE
LOCKWOOD OLMSTEAD.**

Statement of Facts.

The bill of complaint in this suit was filed by the complainant Oscar Keen, as trustee under the will of Susan Plume, deceased, for the construction of the said will, and for instructions respecting the distribution of the balance of the trust funds remaining in his hands.

Susan Plume died January 17, 1865, leaving as her last will and testament the instrument which is now before the court for construction, a copy of which appears on page 210 of the State of Case. The testatrix was the wife of John I. Plume, who predeceased her, and eleven children were born of their marriage. Of these children five predeceased their mother, leaving no issue. The remaining six children and their representatives are as follows:

1. John Visser Plume was born July 31, 1814, and died April 26, 1884. He married Marion Alethia

Hugenin February 8, 1849, and she died February 7, 1891. Three children were born of their marriage, two of whom died in infancy; the other, Marion Hugenin Plume, born November 25, 1851, married Dudley Stone, and after his death George Wallace, who also predeceased her. She died intestate and without issue November 29, 1900 (Case, pp. 57, 58, 72, 75.)

Henry Young, Jr., administrator of John V. Plume, and Littleton Kirkpatrick, administrator of Marion Plume Wallace, are parties to this suit.

Edward C. Plume, who claims to be a son of John V. Plume, but whose parentage is disputed, is also a party to this suit.

2. Mary Josephine Plume was born December 15, 1823, and married Gershom Lockwood February 26, 1846. Mrs. Lockwood died December 19, 1880, and Gershom Lockwood died December 11, 1893. They had five children:

- a. Joseph Plume Lockwood, born May 31, 1847, died October 28, 1864, intestate and unmarried.
- b. George Plume Lockwood, born December 8, 1849, died March 1, 1883. He married Adelaide von Kulen Kampfe, who died March 23, 1898. They had three children:
 1. Mary Alice Lockwood, who was born January 23, 1871, and married Ernest S. Olmstead, is a party to this suit.
 2. George G. Lockwood, born April 30, 1872, who is also a party to this suit.
 3. Mary Josephine Lockwood, who died in infancy.
- c. John Plume Lockwood was born May 19, 1852, and died December 15, 1897, intestate. He married Isabel Fletcher and they were divorced December 30, 1887. They had two children:

1. Mary Josephine Lockwood, who died in infancy:
 2. Andrew Fletcher Lockwood, who was born July 1, 1880, and is a party to this suit.
 - d. Susan Winter Lockwood was born May 2, 1855, and married Edward Heiser. Mr. Heiser died March 15, 1883, and Mrs. Heiser is a party to this suit.
 - e. Harry D. Lockwood was born January 13, 1858, and is a party to this suit. (Case, pp. 59, 62-65.)
3. George Winter Plume was born February 19, 1828, and died in March, 1857. He married Kate Clement March 3, 1853, and she also is dead. They had one child, Kate Plume, who was born December 27, 1853, married Henry B. Underhill, and is a party to this suit. (Case, p. 60.)
4. Samuel Winter Plume was born April 15, 1830, and died November 2, 1909. He married Harriet Peacock March 3, 1855, and she predeceased him. They had one child, John I. Plume, who was born January 11, 1856, and is a party to this suit. (Case, pp. 60-61.)
5. Archer Gifford Plume was born May 23, 1832, is unmarried, and is a party to this suit. (Case, p. 61.)
6. Sarah Virginia Plume was born December 15, 1834, and died May 11, 1866, intestate and without issue. She married Charles H. Tugman February 11, 1864, and he also is dead. (Case, pp. 61-62.)

Jay Ten Eyck, administrator *ad pros* of Mrs. Tugman, is a party to this suit.

Mary Josephine Lockwood, who died December 19, 1880, left a last will and testament in which she bequeathed all of her personal property to her daughter Susan W. Lockwood (now Mrs. Heiser), and also devised to her real estate on Mt. Prospect ave. in the City of Newark. All the residue of her real estate

she devised as follows: One-fourth part each to her children Susan W. Lockwood (now Mrs. Heiser); John P. Lockwood (now represented by Andrew Fletcher Lockwood, and Harry D. Lockwood); and the remaining one-fourth part to her grandchildren, George G. Lockwood and Alice Lockwood (now Mrs. Olmstead).

The controversy in this suit involves the construction of the seventeenth paragraph of the will of Susan Plume in so far as it relates to two-thirds of six-sixteenths or one-fourth of the residue of the estate of the testatrix, which is held by the trustee for distribution.

The portion of the will which is in dispute reads as follows:

“And, I do further order and direct, that upon my said grandson John I. Plume attaining the age of twenty-one years, the said Isaac Van Wagenen, and Charles L. C. Gifford or the survivor of them shall pay to him out of the remaining two-thirds of said equal undivided six-sixteenth parts of said residue of my estate, so by them held in trust, the sum of four thousand dollars, but if my said grandson, shall not live to that age, then to pay the whole income arising from said two-thirds of said equal undivided six-sixteenths parts of said residue of my estate, to my said son Samuel W., and upon his death, the said two-thirds, or if the same shall have been sold, the proceeds thereof, to convey to, or pay to my three children, Mary Josephine Lockwood, Sarah Virginia and Archer Gifford Plume,—the same to be held, or equally divided between them share and share alike.”

The claims of the various parties in interest to the fund held by the complainant are as follows:

John I. Plume, individually and as executor of Samuel W. Plume, claims the whole of the fund upon the ground of an implied gift.

Edward C. Plume, Henry Young, Jr., administrator of John V. Plume, and Littleton Kirkpatrick, admin-

istrator of Marion P. Wallace, claim a one-fifth interest, upon the ground that the disposition of her estate in the last clause of the seventeenth paragraph of the testatrix's will, was conditional upon John I. Plume dying before he arrived at the age of twenty-one years, and that as he survived that age the testatrix died intestate as to this portion of her estate.

Archer Gifford Plume claims the whole fund upon the ground that the last clause of the seventeenth paragraph of the testatrix's will created a contingent remainder, the contingency being that only the survivor of the three persons named should succeed to the fund.

Susan W. Heiser claims that the last clause of the seventeenth paragraph of the will of the testatrix created a vested remainder in the three persons named therein; that there was an equitable conversion of the real estate of the testatrix into personalty, and that therefore, under the will of her mother, Mary Josephine Lockwood, she is entitled to the one-third part of the fund which was devised to her mother, and also to one-fifth of the one-third part devised to Sarah Virginia Plume Tugman to which her mother was entitled as one of the heirs at law of Mrs. Tugman.

Harry D. Lockwood, Andrew Fletcher Lockwood, George G. Lockwood and Alice Lockwood Olmstead, also contend that a vested remainder was created, but claim that there was no equitable conversion of the real estate of the testatrix until it was actually sold, and that therefore, under the will of Mary Josephine Lockwood, they are entitled to share with Mrs. Heiser in such portion of the fund claimed by her as represents real estate which was not actually sold until after Mrs. Lockwood's death.

Jay Ten Eyck, administrator *ad pros* of Sarah Virginia Plume Tugman, claims one-third of the whole fund, upon the ground that a vested remainder was created, and that there was an equitable conversion of all of the real estate of the testatrix.

Grounds of Appeal.

In the Court of Chancery, Vice-Chancellor Howell held that the last clause of the seventeenth paragraph of the will of the testatrix created a vested remainder in the persons named therein, and that there was an equitable conversion of the real estate into personalty.

The decree appealed from stated that the whole estate should be considered and treated as personalty, and after providing for the payment of the allowances for commissions, costs and counsel fees, directed the executors of the trustee to pay over the balance of the trust fund as follows:

One-third part thereof to A. Gifford Plume;

One-third part thereof to Susan W. Heiser;

One-third part thereof to the administrator of Sarah Virginia Plume Tugman, deceased, when one shall be lawfully appointed and qualified, and if no such administrator be appointed and qualified within thirty days from the date of this decree, the said complainants are hereby ordered and decreed to pay the said one-third into this court, there to remain until this court shall otherwise order.

We submit that the decree was erroneous in declaring that the whole of the estate should be treated as personalty and directing the distribution of the trust fund upon that basis.

Brief of Argument.

I. *The question of the parentage of Edward C. Plume should not be decided on this appeal.*

At the hearings in the Court of Chancery a large amount of testimony was taken respecting the parentage of Edward C. Plume, which was the only issue of fact in the case. He claimed to be the son of John Visser Plume, but this claim was denied by the other parties in interest, who maintained that he was the illegitimate son of Marion Hugenin Plume, a daughter of John Visser Plume.

We submit that this issue of fact should not be determined by the court on the present appeal.

If the decree of the Court of Chancery be affirmed, Edward will not be entitled to share in the trust fund in any event; and if the decree be reversed, the controversy as to the share of John V. Plume will be between Edward and the administrator of Marion P. Wallace, who are represented in this suit by the same counsel. The other defendants are only incidentally interested as next of kin of Mrs. Wallace, if Edward is not the son of John V. Plume.

This question of fact was not passed upon by Vice-Chancellor Howell, as it was immaterial, in view of his decision on the points of law involved, and we submit that it should not be determined in the first instance by this court on appeal.

II. *The testatrix disposed of all of her property by her will.*

The only legal point involved in this case is as to the proper construction of the seventeenth paragraph of the will in question (Case, pp. 214-217), in so far as it affects the portion of the residue of the testatrix's estate now in the hands of the trustees. It seems to us that the clause, when properly construed, makes a complete and final disposition of all of the residue.

This portion of the will has been partially executed by the trustees. The five-sixteenths part of the residue bequeathed and devised to Archer Gifford Plume has been paid to him; the five-sixteenths part bequeathed and devised to Mary Josephine Plume, wife of Gershon Lockwood, has been paid to her; the remaining six-sixteenths were taken possession of by the trustees and subsequently converted into money and invested on bond and mortgage security as provided by the will. One-third of the rents, issues and profits thereof was paid to Sarah Virginia Plume, during her lifetime, and after her death in 1866, intestate and without issue, one-third of the residue of the six-sixteenths above mentioned was paid to Mary Josephine Lockwood, Samuel W. Plume and Archer Gifford Plume, share and share alike. The provisions of the will with respect to this portion of the residue, therefore, have been fully performed. This was done without any objection having been raised in respect thereto.

The only portion of the seventeenth paragraph of the will remaining to be considered, concerns the remaining two-thirds of the residue of the six-sixteenths given to the trustees as aforesaid. In respect to this the trustees were directed, while this portion of the estate was in the form of real estate, to collect the rents, issues and profits thereof, and "out of the remaining two-thirds parts thereof to pay towards the support and education of my grandson John I. Plume, son of my son Samuel W. Plume, a sum equivalent to the interest at six per cent. on two thousand dollars, and the remainder of said two-thirds of said rents, issues and profits to pay to my said son Samuel W. But if my said son Samuel W. should die before his said son John I. shall have attained the age of twenty-one years, leaving his said son him surviving, then to pay out of said two-thirds of said rents, issues and profits towards the support and education of my said grandson in lieu of the sum hereinbefore directed to

be paid, a sum equivalent to the interest at six per cent. on four thousand dollars, the same to be paid him until he shall attain the age of twenty-one years, in equal half-yearly payments, and the remainder of said two-thirds of said rents, issues and profits, pay to my children Mary Josephine Lockwood, Sarah Virginia and Archer Gifford Plume in equal proportions share and share alike."

It will be observed that this portion of the will only has to do with the rents, issues and profits, and therefore, terminated at the time the real estate was sold and turned into cash and invested on bond and mortgage by the trustees. In pursuance of this portion of the will the trustees, until the property was turned into cash, paid John I. Plume from the rents, issues and profits of the said two-thirds portion of the residue the sum of one hundred and twenty dollars in half yearly payments, and the remainder thereof to Samuel W.

Nothing was ever done by the trustees under the last sentence of the last mentioned clause, because Samuel W. did not die before his son John I. reached the age of twenty-one years. It was only upon this contingency that they were directed to do anything, and since the contingency did not happen, there was nothing that they could do pursuant to this provision, but, on the contrary, it became wholly inoperative.

The next clause of the seventeenth paragraph of the will provided that the trustees might at any time turn the real estate into cash and invest it on bond and mortgage, and pay the interest or income arising from the two-thirds of the residue now under consideration to John I. and Samuel W. Plume, "In the same manner and proportion in all and every respect" as they had previously paid to them, respectively, the rents, issues and profits of the real estate, that is to say, "to pay towards the support and education of my grandson, John I. Plume, son of my son Samuel W. Plume,

a sum equivalent to the interest at six per cent. on two thousand dollars, and the remainder of the said two-thirds (of said rents, issues and profits) to pay to my said son Samuel W. Plume." This distribution was continually made by the trustees until John I. Plume arrived at the age of twenty-one years. At this time the will provided that a different distribution should be made of a portion of the estate now under consideration. This provision was as follows:

"I do further order and direct, that upon my said grandson John I. Plume attaining the age of twenty-one years, the said Isaac Van Wagenen and Charles L. C. Gifford or the survivor of them shall pay to him out of the remaining two-thirds of said equal undivided six-sixteenth parts of said residue of my estate, so by them held in trust, the sum of four thousand dollars, but if my said grandson, shall not live to that age, then to pay the whole income arising from said two-thirds of said equal undivided six-sixteenths parts of said residue of my estate, to my said son Samuel W., and upon his death the said two-thirds, or if the same shall have been sold, the proceeds thereof, to convey to or pay to my three children Mary Josephine Lockwood, Sarah Virginia and Archer Gifford Plume, the same to be held, or equally divided between them share and share alike."

Upon the arrival of the testatrix's grandson John I. Plume at the age of twenty-one years, the trustees paid to him the sum of four thousand dollars, and under orders of the court thereafter continued to pay the income from the remaining portion of the estate to his father, Samuel W. in half yearly payments until the time of his death which occurred in the year 1909. Upon the death of Samuel W. the question arose as to the disposition of the balance of the residue remaining in the hands of the trustees, and it is that question that is now before the court for decision. We submit

that the answer to this question is found in the last clause of the paragraph of the will above quoted, which clause reads as follows:

“And upon his (Samuel’s) death the said two-thirds or if the same shall have been sold the proceeds thereof to convey to or pay to my three children Mary Josephine Lockwood, Sarah Virginia and Archer Gifford Plume the same to be held or equally divided between them share and share alike.”

On the contrary, it is claimed by Edward C. Plume, Henry Young, Jr., administrator, and Littleton Kirkpatrick, administrator, that the testatrix died intestate as to the portion of her estate in question. This contention is based upon the argument that the testatrix made no disposition of this residue other than that contained in the last clause of the seventeenth paragraph of her will, which disposition was conditional upon John I. Plume dying before he arrive at the age of twenty-one years, and as he survived that age, this gift of the residue never became operative, and therefore the testatrix died intestate as to this portion of her estate.

This contention seems to us fundamentally unsound, for it relies entirely upon the grammatical construction and punctuation of the will. Such an argument must necessarily be based upon the assumption that the instrument being construed has been drafted in accordance with definite rules of grammar and punctuation which have been religiously followed throughout the instrument in question. Here, however, it is very clear from a most superficial examination of the whole will that even the ordinary rules of grammar and punctuation were not observed. Whatever weight therefore might ordinarily be given to such an argument, it is entirely without force in the present case and directly in conflict with the rule that both grammatical construction and punctuation will

be disregarded when their application leads to a result in violation of the clear intention of the testatrix as evidenced by the will when taken as a whole and construed in the light of the circumstances surrounding the testatrix at the time it was made.

In every case the fundamental and cardinal rule is that the intention of the testatrix, if not inconsistent with some established rule of law or with public policy, must control, and it is the duty of the courts to ascertain such intention and to give force and effect to the scheme that she had in mind for the disposition of her estate. (American and English Ency. of Law, Vol. 30, p. 661.) The natural and reasonable presumption is that when so solemn and important an instrument as a will is executed, the testatrix intends to dispose of her estate and does not intend to die intestate as to any part of her property, which presumption is overcome only when the intention of the testatrix to do otherwise is plain and unambiguous or is necessarily implied. (American and English Ency. of Law, Vol. 30, p. 668, par. h.) The intention of the testatrix to die testate as to all of her property plainly appears in the present case. In this connection, it should first be observed that the first clause of the last sentence of the will has to do with a gift of four thousand dollars to the grandson, John I., upon his arriving at the age of twenty-one years, while the next clause has to do with a gift to Samuel of the income of the residue in question, including the four thousand dollars in case John I. should not live to the age of twenty-one years, and the last clause has to do with a gift of the residue after Samuel's death. Having different subjects and beneficiaries, obviously these clauses were intended to be entirely independent of each other except in so far as any one in case it should become effective would necessarily limit the operation of the others. But the gift of the income to Samuel during his life and the gift of the principal of the resi-

due after his death do not even bear such a relation because both can be operative without taking anything one from the other. In other words, these two gifts of the residue should not be held to have been limited by the condition which immediately precedes the gift of the income and is applicable to that gift alone. The insertion of such a condition concerning the income at this point was necessary because that contingency had not previously been provided for in the will. The disposition of the rents, issues, profits and income in the previous part of the seventeenth paragraph had been made upon the assumption that John I. would attain the age of twenty-one years, and that Samuel W. would survive during that period. In such event, John was to get the yearly interest on two thousand dollars for his support and education, and four thousand dollars upon his arrival at the age of twenty-one years, and the remainder of said two-thirds of said rents, issues, profits or income in case the real estate was changed into money and invested, was to be paid to Samuel W. It remained to provide for the case where John should not arrive at the age of twenty-one years and his father should survive that period, and accordingly the testatrix here directed that in such event the trustees should "pay the whole income arising from the said two-thirds of said equal undivided six-sixteenths parts of said residue of my estate to my said son Samuel W."

In answer to this contention, it is argued that notwithstanding these facts, the gift of the principal of the residue must be held to be dependent upon the condition that John should die before he reached the age of twenty-one years because it includes the whole of the two-thirds of the residue which would be divisible between the parties named only in case John died before he arrived at the age of twenty-one years, whereas, if it had been intended that this clause should be effective in case John arrived at the age of twenty-

one years, its appropriate subject would have been "the balance of the residue;" that is to say, "the residue less four thousand dollars for John." On the contrary, we submit that the very fact that she did make "the balance of the residue" the subject of this clause, but assumed to deal therein with the whole two-thirds of the residue likewise shows that her intention to die testate whether John reached the age of twenty-one years or not. If she had dealt with "the balance of the residue" only, these words would have clearly confined the gift to "two-thirds of the residue less four thousand dollars payable to John," and would not have covered the situation at all in case John died before he arrived at the age of twenty-one years. In such event there would have been four thousand dollars left undisposed of by her will, while, on the other hand, the testatrix, by dealing with the whole of the residue in the clause, not only covered the contingency last mentioned, but also the contingency of John's surviving the age of twenty-one years, as it is plainly evident that John was to get four thousand dollars if he arrived at that age, and consequently the residue would be correspondingly reduced in that event. The words used in the last clause of the will therefore were equally applicable to the case where John should survive as well as to the case where he should die before he reached the age of twenty-one years, and this was the only single phrase that could have been used to cover both contingencies. Whatever the contingency, the trustees were directed to divide the residue of the testatrix's estate between her daughters Mary Josephine Lockwood and Sarah Virginia Plume, and her son Archer Gifford Plume, share and share alike. This seems very obvious to us, and we submit without qualification that the use of such comprehensive language in this last clause of her will, when considered in view of every contingency that might arise, shows absolutely the intention of the tes-

tatrix to dispose of every bit of her property by will and not die intestate as to any of it. As has already been observed, the first portion of the seventeenth paragraph concerning the portion of the estate now in question deals only with the *rents, issues and profits* thereof. The next portion of the seventeenth paragraph concerning the portion of the estate now in question deals only with the *income*. The last portion of the seventeenth paragraph deals only with the *principal*. Whether Samuel should die before or after John reached the age of twenty-one years, the gift to John was limited in amount and whether John should attain or should not attain the age of twenty-one years, the gift to Samuel was limited to the income from the residue alone. From the provisions of the will, therefore, it is very evident that it was the intention of the testatrix, except for the payment of four thousand dollars to John upon his arrival at the age of twenty-one years, to keep the principal of the residue intact during Samuel's life, and it was only upon his death that it was directed to be divided between Mary Josephine Lockwood, Sarah Virginia and Archer Gifford Plume. We submit therefore that this being the first, last and only disposition made by the testatrix of this portion of her estate, and being without limitation or qualification, must necessarily have been intended by her to effectuate a complete disposition thereof.

The correctness of this conclusion is also apparent from the other parts of the will in question. The testatrix's gift to John Visser Plume was specifically limited to a picture of himself and to other items of personal property which he had had in possession for years and which the testatrix evidently thought were not of sufficient value to require him to pay the express necessary to return them from California. Years before he had cursed his father and herself in their presence and was ordered from the house by

them, after which he had had nothing to do with them or they with him. Under these circumstances it can hardly be said that the mother in dividing the property, most of which she had received from the father, would intend that he should participate in her estate by virtue of the intestate laws after she had gone to the trouble of making a will as comprehensive as the one in question. Admittedly she had expressly provided that neither he nor his heirs should receive any portion of her estate in case John I. Plume should not survive the age of twenty-one years. Upon what theory then can it be claimed that she intended that he and his heirs should participate if John I. Plume should survive that age? The happening or non-happening of this contingency bears no relation to John V. Plume and affords no reason for the change in the disposition of the residue which is alleged to depend thereon.

On the other hand, the construction for which we contend is supported by the general scheme of the will, and the parties designated to participate in the residue of both income and principal were the same. In case Samuel should die before his son John should reach the age of twenty-one years, John was to receive the income of four thousand dollars and the remainder of the rents, issues and profits were to go to Mary Josephine Lockwood, Sarah Virginia and Archer Gifford Plume. In case Samuel should not die before John reached the age of twenty-one years, the same disposition was made of the principal; John was to be paid four thousand dollars and the remainder was to be divided between Mary Josephine Lockwood, Sarah Virginia and Archer Gifford Plume.

Such a construction of the will covers every contingency and is the only construction that will carry into effect the very evident intention of the testatrix to die testate as to all of her property and intestate as to none of it. We submit therefore, that it should be

adopted by the court and that as now Samuel W. is dead and his son John I. has arrived at the age of twenty-one years and has received his four thousand dollars, the balance of the residue should be divided between the said Mary Josephine Lockwood, Sarah Virginia Plume and Archer Gifford Plume, or their respective legal representatives, share and share alike, pursuant to the express terms of the will.

III. *There was no implied gift of the residue of the estate to either Samuel W. Plume or John I. Plume.*

John I. Plume claims that while the gift of the residue contained in the last clause of the will never became operative because of the fact that he survived the age of twenty-one years, nevertheless, the testatrix did not die intestate as to this portion of her estate, but on the contrary, it passed to Samuel W. Plume under the previous provisions of the will giving him the remainder of the *rents, issues and profits* and income thereof after he, John I. Plume, had been paid therefrom a stipulated sum for his support and education, and that he is now entitled to it as the heir at law and sole representative of Samuel W. Plume; and that if this contention is not true, then there was an implied gift thereof to John I. Plume arising out of the fact that four thousand dollars of the principal was given to him and that there being no gift of the balance, he also became the legatee or devisee thereof.

It is difficult to see any substantial basis for either contention, for even if it be assumed that the last clause of the seventeenth paragraph was inoperative because John attained the age of twenty-one years, still there is nothing to show the slightest intention that either Samuel or John should have the residue in addition to the provision already made for them. The contingencies of Samuel dying before John reached the age of twenty-one years and of John dying

before he reached that age, were provided for. In the one case the gift to John was limited in amount and in the other the gift to Samuel was limited to the income of the residue. What possible reason could there be for making a different disposition if both of them survived that time?

Moreover, the decree entered in the cast of *Samuel W. Plume vs. Staats S. Morris* (Case, p. 17), disposed of the claim now made that there was an implied gift of the residue to Samuel W. Plume. The bill in that suit was filed by Samuel W. Plume subsequent to the time that John I. Plume arrived at the age of twenty-one years. It prayed among other things that the income arising from the residue should be paid to him during his life, which relief was afterwards granted and the trustee directed to carry the same into effect by the final decree entered therein January 18th, 1892. If there was an implied gift to Samuel W. Plume of the whole of the residue in question in case John arrived at the age of twenty-one years, it follows that upon John's arriving at that age, Samuel should have received the whole of this portion of the residue absolutely and should not have been limited to the income arising therefrom during his life. Obviously, therefore, Samuel was not entitled to the relief granted to him in that case on the theory now advanced by his son John I. Plume.

This decision, we submit, is *res adjudicata* as to the claim now made by John I. Plume as the representative of Samuel, and is binding upon this court while dealing with the same question involved in that suit, namely, the proper construction of the will. It was argued that the decree entered in the case of Plume against Morris was a consent decree, but it seems to us that this fact makes it even more binding upon a party who is now attempting to have the court make a decision in his favor absolutely inconsistent with the decree entered in the former suit. At least, it

amounted to a practical construction of the will participated in by Samuel and consequently estops Samuel and his representative from now making any other claim inconsistent therewith.

IV. *The remainder created by the last clause of the seventeenth paragraph of the testatrix's will was vested and not contingent.*

This brings us to the point where the interests of Archer Gifford Plume and the interests of Mary Josephine Lockwood and her heirs divide. The counsel for Mr. Plume, in the Court of Chancery, treated the gift of the residue to Mary Josephine Lockwood, Sarah Virginia Plume and Archer Gifford Plume, as a contingent remainder, and attempted to show that since the death of Samuel did not occur until after the death of Mary Josephine Lockwood and Sarah Virginia Plume, therefore, the whole residue should be given to Archer Gifford Plume, who still survives. The truth is that in making this claim, the counsel for Archer Gifford Plume overlooked the fundamental distinction between a vested and a contingent remainder. A remainder is defined in the law of real property as an estate limited to commence after the determination of a particular estate created by the same instrument dividing the same subject of property. (*American & English Ency. of Law*, Vol. 24, p. 377, *Preston on Estates*.) A remainder is vested whenever the preceding estate is limited so as to terminate upon an event certain to happen, although the time of the happening of that event may be uncertain; while a contingent remainder has been defined as "a remainder limited so as to depend on an event or condition which may never happen or be performed until after the termination of the preceding estate." (*American & English Ency. of Law*, Vol. 24, p. 395, *Fearne on Contingent Remainders*, p. 73.) Obviously the uncertainty necessary to a contingent remainder was never

present in the case under consideration. Here the devise was to Samuel W. Plume for life and upon his death to be divided between three other persons who were *in esse* at the time of the death of the testatrix. The event upon which the preceding estate was to determine was certain to happen and was the same event upon the happening of which the remindermen were to come into possession. This situation presents a typical case of a vested remainder. Also in the will the trustees in disposing of the residue are expressly directed "to convey to or pay to *my three children* Mary Josephine Lockwood, Sarah Virginia and Archer Gifford Plume, the same *to be held or equally divided between them share and share alike.*" (Case, p. 217.) In no event is the interest of any of them contingent upon the survivorship either of Samuel W. Plume or of each other. Clearly the estates of all of them (equitable estates though they were) became vested immediately upon the death of the testatrix and consequently upon the death of any of them descended to his or her heirs, respectively. Any other result would be in direct violation of the clearly expressed intention of the testatrix.

V. *The real estate of the testatrix retained its original character until actually sold and converted into personalty.*

At the hearing it appeared that the property of the testatrix at the time of her death consisted wholly of real estate except certain personal effects specifically bequeathed to her children, and some other items of personal property, amounting to the value of \$3,149.13. (Case, p. 287.)

The testatrix's debts amounted to \$3,946.84. (Case, p. 285.) Also a number of legacies were given by the testatrix's will which together amounted to several times more than the value of the personal property left by her. Since the debts and legacies were required

to be paid primarily out of the personalty, it is perfectly clear that all of the property from which the fund now in question arose must originally have been real estate. The only question, therefore, is whether or not that fund has by reason of the provisions of the will or subsequent events lost its original character of real estate, and if so, at what period and to what extent.

In construing the will of course the court's primary purpose in all cases is to ascertain and determine the intention of the testator as expressed therein. Consequently in cases where the property disposed of consists in whole or part of realty, the courts have frequently held that irrespective of its physical form, they will treat it as personalty whenever it is clear that the testator intended that it should be so treated. But before this doctrine known as "equitable conversion" becomes applicable, the testator's intention must appear clearly and explicitly, and the direction to the trustee to convert the property must be imperative. *Wurts' Executors vs. Page*, 19 N. J. Eq. (4 C. E. Green), p. 365; *Dutton vs. Pugh*, 45 N. J. Eq. (18 Stew.), p. 426; *Roy vs. Monroe*, 47 N. J. Eq. (2 Dick.), p. 356; *Crane vs. Bolles*, 49 N. J. Eq. (4 Dick.), p. 373; *Moore vs. Robbins*, 53 N. J. Eq. (8 Dick.), p. 137.

If it is optional, however, with the executors whether to sell or not to sell, or if it is only an authority to sell without any direction, then the land retains its character as land until actually sold. *Cook vs. Cook*, 20 N. J. Eq. (5 C. E. Green), pp. 375, 377; *Parker vs. Glover*, 42 N. J. Eq. (15 Stew.), p. 559; *Condit vs. Bigalow*, 64 N. J. Eq. (19 Dick.), p. 504; *Romaine vs. Hendrickson's Executors*, 29 N. J. Eq. (9 C. E. Green), p. 231.

In *McKiernan vs. McKiernan* (N. J.), 74 Atl. Rep., p. 289, the court held:

"The rule that money directed to be employed in the purchase of land, and that land directed

to be sold and turned into money are to be considered that species of property into which they are directed to be converted, applies only when there is a positive direction to convert, and a mere power is not sufficient."

Howell, V. C., said:

"The doctrine of equitable conversion was mooted in a leading case so early as 1779 in *Fletcher vs. Ashburner*, 1 Bro. C. C., 497, 1 W. & T. L. C., 968. Sir Thomas Sewell, *M. R.*, in the opinion says that nothing was better established than this principle that money directed to be employed in the purchase of land and land directed to be sold and turned into money, are to be considered as the species of property into which they are directed to be converted, and this in whatever manner the direction is given, whether by will, by way of contract, marriage, articles of settlement, or otherwise, and whether the money is actually deposited or only covenanted to be paid, whether the land is actually conveyed or only agreed to be conveyed, the owner of the fund or the contracting parties may make land money or money land. There must, however, be a positive direction to convert. A mere power is not sufficient. *Romaine vs. Hendrickson*, 24 N. J. Eq., 231. It is only where the will or other instrument under which the action must be taken commands or absolutely requires the land to be sold that the conversion takes place. *Roy vs. Mouroe*, 47 N. J. Eq., 356, 20 Atl., 481. Chancellor Zabriskie says in *Cook vs. Cook*, 20 N. J. Eq., 375: 'When land is directed to be sold absolutely and positively without any time fixed for the sale, it is considered as converted into money from the death of the testator, but for this the direction must be imperative. If it is optional with the executor whether to sell or not to sell, or if it is

only an authority to sell without any direction, then the land retains its character as land until it is actually sold. If the direction of the will as to the proceeds requires a sale, it is equivalent to a positive direction to sell, and the land is deemed personal property from the death of the testator.' This declaration of the law has received the approval of this court in many cases. *Wurts vs. Page*, 19 N. J. Eq., 365; *Dutton vs. Pugh*, 45 N. J. Eq., 426, 18 Atl., 207, s. c. on appeal 46 N. J. Eq., 554, 21 Atl., 950, under the name of *Jones vs. Jones*."

As will be remembered, the fund in question comprises only the residue disposed of by the last portion of the seventeenth clause of the testatrix's will (Case, pp. 210, 214). After providing for the collection of the *rents, issues and profits* thereof, the will authorizes and empowers the trustees "*if at any time they or the survivor of them shall think it advisable so to do* to sell and convey at such time or times and at either public or private sale and for such price and prices as they or the survivor of them shall deem proper in fee simple or for any less estate, the *whole or any part* of the said equal undivided six-sixteenths part of the said remainder of my estate in this article of my last will given them in trust, and to make and execute good and sufficient conveyance in the law for the same." Then after disposing of one-third of the residue absolutely and providing for the distribution of the *rents, issues and profits* of the remaining two-thirds of the residue, *or if the same shall have been sold*, the income of the proceeds arising therefrom until the death of the testatrix's son, Samuel W. Plume, the will proceeds "and upon his (Samuel's) death the said two-thirds, *or if the same shall have been sold* the proceeds thereof to convey to or pay to my three children, Mary Josephine Lockwood, Sarah Virginia and Archer Gifford Plume, the same to be

held or equally divided between them share and share alike."

Obviously the authorization of the trustees to sell the property was not absolute but discretionary only. It is not a direction to sell all of the residuary estate but "the whole or *any part*" thereof. These words "or any part thereof" necessarily imply the power or option of selling or not selling some of the land in the trustees' discretion. If the power be construed to be imperative it can only be upon the theory that all of the real estate must be sold by the trustees. If as to any part of it the sale need not be made, then plainly an option as to conversion exists. *Condit vs. Bigalow*, 64 N. J. Eq., 504. Moreover, in this case it is expressly stated that the sale need only be made at the option of the trustees. The conversion of the real estate is directed to be made only "if at any time they or the survivor of them shall think it advisable so to do." This cannot in any sense be construed as a direction to convert the real estate, but on the contrary thereof, must be considered as an express direction to let it remain and be finally divided as real estate unless the trustees shall meanwhile from time to time think best to sell it. Such a conclusion is also imperative from a reference to the last clause of the will providing for such final distribution wherein the trustees are directed "to convey" the said two-thirds, *or if the same shall have been sold* "to pay" the proceeds thereof "to my three children, Mary Josephine Lockwood, Sarah Virginia and Archer Gifford Plume."

Under the authorities above cited, therefore, we submit the property in question did not change its original character of real estate until it was actually turned into cash by the trustees, and therefore, until such conversion must be treated as real estate. *Kouvalinka vs. Geibel*, 46 N. J. Eq. (13 Stew.), p. 445.

The testatrix died in 1865; her daughter Sarah Virginia Tugman died in 1866. None of the real estate

was sold until 1868. Clearly, therefore, since Mrs. Tugman died intestate, her whole interest at the time of her death having been real estate, immediately became vested in her heirs at law and not in her personal representatives.

There is no dispute as to the persons who were the heirs at law of Mrs. Tugman. They were John Visher Plume, Mary Josephine Lockwood, Kate Plume Underhill (daughter of George Winter Plume), Samuel W. Plume and Archer Gifford Plume.

We therefore submit that Mary Josephine Lockwood inherited from her sister Mrs. Tugman, one-fifth part of Mrs. Tugman's share in the residue of the testatrix's estate, in addition to the one-third part of the residue to which she, Mrs. Lockwood, was entitled under the will.

Mary Josephine Lockwood died December 19, 1880, leaving a last will and testament (Case, p. 298), by which she bequeathed all of her personal property to her daughter, Susan W. Lockwood, now Mrs. Heiser, and also devised to her a lot on Mount Prospect avenue in the City of Newark. All the residue of her real estates she devised as follows: One-fourth part to her daughter Mrs. Heiser, one-fourth part to her son John P. Lockwood (represented in this case by his son Andrew Fletcher Lockwood), one-fourth part to her son Harry D. Lockwood, and the remaining one-fourth part to her grandchildren George G. Lockwood and Alice Lockwood (now Mrs. Olmstead).

At the date of Mrs. Lockwood's death a part of the real estate of Mrs. Plume devised to the trustees had been sold, but a larger part was sold between that time and 1898, when the last sale was made. (Case, pp. 288-295.) It is clear therefore, that in accordance with the rule laid down in the cases above cited, Mrs. Heiser is entitled to receive such portion of Mrs. Lockwood's share of the trust estate as represents real estate which had been converted into personalty by sale

before Mrs. Lockwood's death. Such portion as represents real estate sold after that time, passed under the residuary clause of Mrs. Lockwood's will in the proportions therein specified. What portion of the trust estate represents realty in 1880 and what portion represents personalty can easily be computed from the trustees' account.

For the reasons stated we submit that the decree of the Chancellor in this case, should be reversed in so far as it determines that the whole estate in the hands of the executors of the trustee should be treated as personalty, and directs the distribution of the trust fund upon that basis.

Respectfully submitted,

BARRETT & BARRETT,

Solicitors for Defendants,

Harry D. Lockwood,

Andrew Fletcher Lockwood,

George G. Lockwood and

Alice L. Olmstead.

New Jersey

Court of Errors and Appeals

Between	}	On four appeals from First ^{final} de- cree.
OSCAR KEEN, Trustee, etc.,		
Complainant,		
and		
A. GIFFORD PLUME, and others,		
Defendants.		

BRIEF OF APPELLANT JOHN I. PLUME

Statement

The principal issue on all the appeals from the final decree in this case, is the proper construction of the seventeenth clause of the will of Susan Plume. The original will was offered in evidence and is reproduced with the original spacing and punctuation as Exhibit C-1 (pp. 210 to 218 inclusive of the printed case). The seventeenth paragraph extends from p. 214 to p. 217 inclusive, of the case. Susan Plume died January 17, 1865, and under this clause of her will, six-sixteenths of the residue was given to trustees, whom complainant succeeded. One-third of that fraction was disposed of in accordance with the will; out of the remaining two-thirds, a payment of four thousand dollars was made in accordance

with the will; the income from the balance was paid by the Trustee to Samuel W. Plume, a son of decedent, during his life, pursuant to a decree of the Court of Chancery partly construing this clause, which was attached to the bill of complaint as Exhibit B, and is printed on pp. 17 to 24 of the case. Said Samuel W. Plume died November 2, 1909, whereupon the Trustee applied to the Court of Chancery for instructions as to the disposition of the principal fund in his hands, and the appeals to this Court are taken from the decree of the Court on that application.

The personal estate of the decedent was not sufficient to pay the debts and legacies, and the proceeds of sale of some of decedent's lands was applied to that purpose. The entire fund now in Court, therefore, represents the proceeds of the sale of lands.

The entire fund is claimed by this appellant, under the construction of the will to be presented in this brief. The entire fund is also claimed by another appellant, A. Gifford Plume, on a construction advanced on his behalf. On neither of these constructions is it material whether the fund be regarded as realty or personalty. Still another construction was adopted by the Court of Chancery, as set out in the opinion on pp. 302 to 309, which gives one-third of the fund to A. Gifford Plume, one-third to the representative of Mrs. Lockwood, and the remaining one-third to the representative of Mrs. Tugman, three of the decedent's children below mentioned. Still a fourth construction of this will is contended for by certain appellants who claim that, as to the fund now in Court, the decedent died intestate by making no provision in the will for its final disposition. On this last construction, or on the construction adopted by the Court of Chancery, it further becomes necessary to decide whether

the fund is to be treated as personalty or as realty, and if personalty, then at what date the conversion took place; the parties who would take as heirs at law being in several instances different from those who would take as personal representatives.

Susan Plume, the testator, left surviving five children, and the child of a deceased son, as stated on p. 9, namely:

John Visser Plume (generally misspelt John Fisher Plume in the printed case, Mary Josephine Lockwood, Samuel W. Plume, A. Gifford Plume, and Sarah Virginia Plume, afterward Mrs. Tugman, children, and Kate C. Plume, a grandchild, daughter of George W. Plume, a deceased son.

Mrs. Tugman, a daughter of decedent, died intestate May 11, 1866, leaving an alleged husband, but no issue. At the time of her death, none of the real estate had been sold. Therefore, *if* she took any vested interest and it was at that time properly treated as realty, her share descended to her heirs at law, who were the remaining heirs of Susan Plume. The same persons likewise took the entire fund *if* testator died intestate as to its final disposition.

A. Gifford Plume, one of the decedent's children, and Kate C. Plume, now Kate Underwood, the grandchild, both survive.

Mary Josephine Lockwood died December 19, 1880. She left a will and several children. In the present disposition of her share, *if any*, this appellant is not interested.

Decedent's son, Samuel W. Plume, died, as before stated, leaving this appellant, John ~~W.~~ I. Plume, as his sole heir at law, and also leaving a will under which this appellant would take his father's interest, if any, whether real or personal. All the real estate had been converted by sale before the death of Samuel W. Plume.

John Visser Plume died April 26, 1884 (case p. 72). At this time, the cash in the Trustee's hands, part of the present fund, representing proceeds of sale of real estate, amounted to \$16,398.56 (case p. 293), less the \$4,000 legacy to this appellant, or \$12,398.56, and the remainder of the present fund was in the form of real estate, the title being in the name of the Trustee. The residuary lands had been theretofore partitioned (as mentioned in the note at the top of p. 293); and the parties interested in the fraction of the residue not put in trust, had quit-claimed, pursuant to the partition decree, to the Trustee (then S. S. Morris), by the deed Exhibit C-4 (pp. 300-302) the lands allotted to him in partition as the remaining trust estate; that is, the $\frac{2}{3}$ of the $\frac{6}{16}$ of the residuary estate.

John Visser Plume, left surviving a daughter, Marion Plume Wallace, who died a widow, intestate and without issue, November 29, 1900 (case p. 75). At this time, all of the real estate had been sold and converted into cash.

John V. Plume left surviving no other issue, except the defendant, Edward C. Plume, who claims to be a son of John Visser Plume, and therefore as heir of John Visser Plume and of his alleged sister, Marion, claims to be entitled to the entire share of John Visser Plume, except so much, if any, as is payable to the Administrator of John Visser Plume and to the Administrator of the said Marion P. Wallace.

The other defendants all deny that Edward C. Plume is the son of John Visser Plume, thus raising a question of fact which must be determined, if it is held that any part of the fund went to John V. Plume, and was realty at his death in 1884, at which time most of the residue was still in the form of unsold land, as before mentioned.

Grounds of Appeal

1. This appellant contends that the decree is erroneous in awarding the fund in Court to be divided equally between A. Gifford Plume, the representative of Mrs. Lockwood, and the representative of Mrs. Tugman, and claims that on a proper construction of the will, the entire fund should be paid to this appellant.

2. This appellant further contends that if the whole fund is not awarded to him, the testator should be decreed to have died intestate, and then this appellant should take his proportionate share as an heir at law of the testator.

3. This appellant further contends that in case intestacy is decreed, or in case this Court should adopt the construction of the Court of Chancery that one-third of this fund was vested in Mrs. Tugman, then in either event the fund should be treated as having continued as realty until such time as it was by sale actually converted into personalty, so that

(a) The share of Mrs. Tugman should be treated as wholly realty, being all unconverted at the time of her death, and this appellant be decreed entitled to his proportionate share as one of her heirs at law; and

(b) The share of John Visser Plume, whether derived as one of the heirs at law of decedent by intestacy, or derived from Mrs. Tugman as one of her heirs at law, should be treated as personalty only to the extent of the proportion which had been actually converted at his death; and as to the balance, should be treated as realty and therefore descending to his heir or heirs at law.

4. This appellant further contends that John Visser Plume left no legitimate descendants; but even if it is held that Marion P. Wallace was his

legitimate daughter and that some part of this fund vested in him, either as heir of the decedent or as heir of Mrs. Tugman, then that so much thereof as was unconverted at the death of John Visser Plume passed to Marion P. Wallace, as his heir at law, and the same having been all converted during her lifetime, should now be paid to her Administrator, and that no part should be paid to the defendant, Edward C. Plume.

5. This appellant further contends that in no event can a decree be made in favor of the defendant, Edward C. Plume, because the Court of Chancery rejected an offer of evidence adverse to the claim of Edward C. Plume; and the evidence so wrongfully rejected not being before the Court, then in case of reversal of this decree on any construction which would make it necessary to pass on his claim, the cause must be reopened to permit the introduction of this evidence. Several letters written by the defendant, A. Gifford Plume, to Edward C. Plume, wherein the writer addressed Edward C. Plume as "Nephew" and signed as "Your affectionate uncle," or words to that effect, were offered in evidence on behalf of the defendant, Edward C. Plume. These letters were marked Ident. 2, 3, 4, 5, 6, 7, 8 and 8-A, and are printed on pp. 250 to 257. A Gifford Plume on re-direct and cross-examination, on pp. 128, 132, 133, 135 and 136, was asked to explain why in one or more of those letters he addressed the defendant Edward C. Plume, as nephew and signed as uncle. Those questions were objected to and the Court sustained the objection and excluded from the record the witness' explanation, which this appellant insists should have been permitted.

Argument

1. *This appellant is entitled to the entire fund.*

The first contention of this appellant, John I. Plume, is that on a reading of the whole will, there is fairly to be implied therefrom a gift to him of this fund if he attained the age of twenty-one and survived his father, Samuel, as actually happened. This contention is made on the authority of *Denise's Exrs. v. Denise*, 37 N. J., Eq. 163, and *Holton v. White*, 23 N. J., L. 330, beside other cases below mentioned. If such construction is not adopted, then this defendant contends that the fund was given absolutely to his father, Samuel, subject to certain conditional limitations over, all of which are now eliminated by the failure of the contingencies.

The seventeenth paragraph of the will purports to dispose of all the residue. Substantially one-third of this residue is given to the son, Archer Gifford, and has been set off to him; approximately another third is given to a daughter, Mary Josephine Lockwood, and has been set off to her; the remaining third, or, to be exact, six-sixteenths is made a trust fund and is again divided into thirds, one third being given to the daughter, Sarah Virginia, for her natural life, and out of the remaining *two-thirds*, the interest on Two Thousand dollars, is given to this appellant, as grandson, during his minority, "and the remainder of said two-thirds of the rents, issues and profits" of this trust is directed to be paid to *Samuel*, the father of this defendant, and son of testatrix (p. 215 lines 10-11). "*But if Samuel should die before this appellant attained twenty-one years, leaving this appellant surviving, then to double the income payable to this appellant until his majority, and to pay 'the*

remainder of said two-thirds of said rents, issues and profits" to testator's children, Mary, Sarah Virginia and Archer Gifford in equal proportions (p. 215 lines 12-25), with power of sale to the executors (the proceeds of sale to be invested and paid in the same proportions). Then follows a provision that if Sarah Virginia should leave a child or children, her third of the trust fund should be conveyed or paid to such child or children; otherwise, be conveyed or paid to Mary, Samuel, and Archer Gifford, share and share alike (p. 216 line 18 to p. 217 line 7). This has been done. And the will further directs (p. 217, lines 8-15), that upon this appellant attaining the age of twenty-one, the trustees shall pay him the sum of Four thousand dollars; *but if this appellant shall not live to that age*, then to pay the whole income of this two-thirds to Samuel, and upon his death to convey or pay the same to the said Mary, Sarah Virginia and Archer Gifford, share and share alike (p. 217, lines 16-24).

If on a construction of this clause it is held that Samuel only had a life interest in this trust fund, then it is clear there is no express gift over after Samuel's death in the contingency which occurred, namely, that John I., this defendant should live to the age of twenty-one. Therefore, if there is no implied gift, the testatrix died intestate as to the final disposition of this fund. It is fairly clear from the will that she did not intend to leave anything undisposed of. The very prolixity of the will indicates that she thought she was covering the entire ground; yet the contingency which was not expressly provided for, that this appellant *should* attain twenty-one years, is the very contingency which was most likely to occur and must have been in her mind. The irresistible inference is that she supposed this contingency was

provided for. Now as she expressly provided that it should go to Mary J., Sarah V. and Archer Gifford in case this appellant should *not* live to twenty-one, it necessarily follows that she could not have supposed it would go to them if he *did* live to twenty-one. Therefore, we may assume she believed this fund was to go to this appellant; or we must conclude either that an intended paragraph or clause was omitted in writing out the will for execution, or that the decedent neglected to provide for the most probable contingency.

What is the intention of the testatrix so far as she has expressly stated it? To restate the substance of so much of this clause as relates to the original fund of two-thirds of the six-sixteenths, omitting the prolix verbiage, she said:

"I desire to give to my grandson an allowance."

"I desire the balance paid Samuel."

"But if Samuel dies before my grandson is twenty-one, I wish the grandson's allowance increased during his minority, and until my grandson is twenty-one, I desire the balance paid to three other children."

"When my grandson attains twenty-one, I wish him to have \$4,000 of principal (the income from the balance still being paid Samuel)."

"But if my grandson never reaches twenty-one, then Samuel is to have the whole income, and upon his death, his line being then extinct, my three other favorite children shall have the whole of it."

Viewed in this light, it seems clear that testatrix intended that on the death of Samuel, *his son having attained twenty-one*, the fund should not go over out of Samuel's line, but should go to Samuel's son.

This case seems expressly governed by the decision of the Supreme Court in the case of *Holton v. White*, 23 N. J., L. 330, later approved in ~~this~~ ^{the} Court. The will there said:

“And further, it is my will and desire that in case of the decease of my son Eli before the expiration of said lease, then the house and lot called Oak Island, together with its appurtenances, shall descend to my son Andrew and his heirs and assigns forever.”

The Court said (p. 335):

“In the present case the devise over is to Andrew, one of the six children of the testator, on the contingency of Eli’s dying before the expiration of the lease referred to in the former part of the will. It is not a limitation over to the heirs-at-law, but to one of the heirs-at-law. If Eli can not take this property by implication in case he lives beyond the expiration of the lease, the question is, what was to become of it, according to the intention of the testator. He did not mean to die intestate in regard to it, for, in addition to his declaration in the introductory part of the will that he means to dispose of such things as God has blessed him with, he makes distinct mention of these very premises. He did not mean that his heirs general should take it, for he gave it in distinct terms to his son Andrew on a certain contingency, which did not happen. And, for the same reason, it is clear to my mind he did not mean that it should be sold by his executors. I can not resist the conviction that the intention of the testator, as gathered from the whole will, was to devise these premises to Eli, in

case he survived the lease, and that he takes an estate in them by necessary implication."

This decision was approved in ~~this~~ ^{the} Court ^{of Chancery} in the case of *Denise v. Denise*, 37 N. J., Eq. 163, above cited, and the rule of a gift by implication is well established in this State as well as in other jurisdictions. See also:

Hannemen vs. Richter, 62 N. J., Eq.

365, affirmed on the opinion of the

Court of Chancery, 63 N. J., Eq. 803.

Shimer v. Shimer, 50 N. J., Eq. 300.

Kendall v. Kendall, 36 N. J., Eq. 91.

Culhane v. Fitzgibbons, 86 N. Y. Supl., 710.

Ex parte Rogers, 2 Madd., 576.

Crowder v. Clowes, 2 Ves. Jr., 448.

Wainewright v. Wainewright, 3 Ves. Jr., 558.

Cropton v. Davies, L. R., 4 C. P., 159.

In the case of *Hannemen v. Richter*, testator made a gift in trust for his two daughters and a sister until his two daughters should attain twenty-one, * * * and if any or either of the devisees should die prior to the execution of the trust, then the estate to go to the survivor or survivors. The Court said, (p. 368):

"It will be observed that while there is a devise to the husband in trust for a fixed period and an express provision that death before that period had elapsed will cast the estate upon the survivors or survivor, there is no express provision in case all the beneficiaries survive that period."

"* * * The testatrix can not be presumed to have intended to die intestate with respect to any part of the real estate in question."

(p. 369)

"A devise by implication, will be recognized where the testatrix used the words manifesting an intent to give by so strong a probability that the contrary intent can not be supposed to have existed in her mind."

"* * * The gift to the survivors * * * in case of the death of one or more before the period had elapsed, shows an intent to dispose of all the interest in the lands in question in case all of the three beneficiaries survived beyond that period."

In case of *Shimer vs. Shimer*, testator's will gave his son J. one-fifth of the residuary estate, he to receive the income during life, and in case of his death without issue, his share to go "to his surviving brothers and sisters." "In case J. should leave a child or children, said child or children to receive said income annually until the youngest of them arrives at the age of twenty-one years, and as long as one or either of them shall live; but in case of the death of all of them without issue the said one-fifth share to go to my children as aforesaid."

The Court held:

"J.'s child on reaching her majority, is entitled to have the principal of the fund in question, the limiting of the interest of J.'s children during their minority to the income only, manifesting that the testator intended them to have the principal if they survived that age, and that the gift over should take effect *only* upon their dying under age without issue."

The Court said, p. 304:

"This result is also in harmony with the other result which arises from the gift of the income to the children during minority without any unconditional gift over, *viz.*,

that upon the arrival of the youngest child to maturity there is a gift by implication of the principal fund to the children."

p. 305.

"The conclusion to which I have come seems to me to be in consonance with the general scheme of the will."

"The testator evidently intended to make a complete disposition of his estate. The fund in question is a part of the residue. It seems plain enough that the testator intended the share to go to his son Jacob's issue, and not to go over to his brothers and sisters unless that issue failed. By limiting the interest of Jacob's children during their minority to the income only, he manifested clearly enough that he intended them to have the principal if they survived that age and that the gift over should take effect only upon their all dying under age, without issue."

In the case of *Kendall v. Kendall*, testator creates a trust and authorizes the trustee to pay from the proceeds to three children named such sums as the trustee's judgment might dictate, and provided "and in case of the death of my said son, J. K. and of my said daughters, H. E. B. and S. C. M. and their children, without leaving any child or children them surviving, then I give, devise and bequeath all said residue or remainder of my estate, real and personal, after the death of my wife, to my heirs-at-law bearing the Kendall name."

The Court said, p. 97 (beginning on last line p. 96):

"Although the testator does not, in terms, give the fee in the residue to the children of this three children named in that clause, yet he does so by implication.

He evidently did not intend that the property, after the death of his children, should go to his heirs generally bearing the name of Kendall, unless neither his children's children nor any children of the latter, should be living to take the property. But he unquestionably intended that at his children's death, their children should take the fee in their parent's shares, and if his grandchildren should not be alive, his great-grandchildren should take. A fee will pass by will by implication of law.

“ * * * By implication the gift is for the benefit of those three children of the testator for their respective lives, and in equal shares, and after their death the property will go to their respective children per stirpes. But if, at the death of the widow, the three children and their children be all dead, without having left any child surviving them, the property will go to the testator's heirs-at-law of the Kendall name.”

There being such a rule, it is submitted that a clearer case than the present for its application could hardly be found.

It appears from the will of this appellant's grandfather, John I. Plume, the husband of the testatrix, (Ex. D-D case pp. 271-4, especially p. 272 l. 29-35), and if the testatrix had first died, Samuel was to be treated in the same manner as all the other children, except John Visser Plume, who was then in California, and not on the best of terms with his parents, (case pp. 101-5). It also appears from the testimony of Gifford, (case p. 207), that after the death of Samuel's father, and shortly before the making of the will of Susan, now under construction, the circumstances of Samuel became such it was inadvisable for him to

hold property in his name in this jurisdiction. It therefore seems natural that the testatrix should have provided in her will for giving Samuel only a life interest and then giving his share over to his child, which means this appellant, John I. Plume. No other reason appears why Samuel should not have been provided for in the will of testatrix in accordance with her husband's will. This circumstance should increase the disposition of the Court to imply a gift over to this appellant under the authority of the cases above cited.

The defendants, A. Gifford Plume, and the heirs of Mary J. Lockwood and the Administrator of Sarah Virginia Tugman contend, and the Court of Chancery held, that under the same provisions of the will, this trust fund is given over to them; but this gift over can only arise out of one of two clauses, both of which are *expressly conditioned* on contingencies which did not occur: The first one, *if Samuel should die before this appellant should attain the age of twenty-one*, and being solely a gift during his minority; and the other, *if this appellant should not live to the age of twenty-one*.

The first gift over (on p. 215) reads:

"But if my said son Samuel W. should die, before his said son John I, shall have attained the age of twenty-one years, leaving his said son him surviving, then to pay out of said two-thirds of said rents, issues and profits, towards the support and education of my said grandson, in lieu of the sum hereinbefore directed to be paid, a sum equivalent to the interest at 6 per cent on four thousand dollars, the same to be paid him until he shall attain the age of twenty-one years, in equal half yearly payments, and the remainder of said two-thirds of said rents, issues and profits, pay to my children Mary Josephine Lockwood,

Sarah Virginia and Archer Gifford Plume in equal proportions, share and share alike."

This is expressly conditioned on Samuel dying before this appellant attained 21, and therefore can not now take effect. Moreover, this only purports to make provisions during the minority of this appellant, as was admitted before the Court of Chancery in the argument of counsel for the Lockwoods and Archer Gifford Plume.

The second gift over (on p. 217), after directing an advancement of principal to this appellant at his majority, reads:

"but if my said grandson shall not live to that age, then to pay the whole income arising from *said two-thirds*" (unreduced)
 * * * to Samuel, "and upon his death, *the said two-thirds*" (likewise unreduced) over to Mary, Sarah and Archer.

It seems clear that this gift over must be construed as expressly contingent upon the death of this appellant before attaining his majority. Not only is it contained in the same paragraph and sentence as the mention of the contingency; but the words describing the fund given over "*the said two-thirds*," clearly contemplate that what is to go over if at all is the whole two-thirds, unreduced by the advancement to this appellant. The unreduced said two-thirds would only be intact to go over in case this appellant died under 21. The very language of the gift over, therefore, as well as the context, shows it to be contingent upon this appellants' prior death. Moreover there is no apparent reason why Samuel and his issue should be cut off with only a life interest. Mrs. Lockwood, Sarah Virginia, and Archer Gifford had already been provided for by direct gifts. The share of Sarah Virginia was expressly given only for her life, but the gift over of her share was only

in default of issue. Samuel already had a son. If his share was to be given over it would naturally be only in case of the prior death of Samuel's son. Why then should a forced construction be adopted to deprive both Samuel and his issue of the fee of this share, for the benefit of others already provided for. If the testatrix had somewhere shown an intention to disinherit Samuel's line, there might be a reason for such a construction, yet in fact testatrix gave Samuel in fee a part of the share of Sarah Virginia in the event of her death without issue, thus showing the good feeling of the testatrix to Samuel.

The learned Vice Chancellor in his opinion relied entirely on the supposed gift contained at the very end of the will (printed on p. 217 beginning at l. 20). He quotes the entire clause in his opinion at the top of p. 304 and later says (p. 305): "If the above quoted clause created a remainder in A. Gifford Plume, Mary J. Lockwood and Sarah V. Tugman, which vested upon the death of the testatrix * * *, it would be unnecessary to examine the claims of any of the other defendants," and concludes that a vested remainder was created. The rules of law laid down in the following pages of the opinion are unquestionably sound, but it is submitted do not apply to the will now under review. The distinction between a vested and contingent remainder, as quoted by the learned Vice Chancellor, from a New Jersey case, and printed in the first paragraph p. 308, is *clearly* settled; but in the following paragraph, the learned Vice Chancellor said:

"It is very clear that Mr. Plume, Mrs. Lockwood and Mrs. Tugman at the date of the death of testatrix had a present fixed right of future enjoyment in the said fund, and that if the intermediate particular estate were removed they would have a present fixed right of present enjoyment."

It is submitted that the Vice Chancellor clearly erred in thus applying the rule to this case. If the intermediate particular estate, that of Samuel W. Plume, had been removed at the death of the testatrix, the gift over would not then immediately have taken effect, because that gift over was only, as stated a few lines before, "If my said grandson shall not live to that age."

It is respectfully submitted that the learned Vice Chancellor after properly disposing of the claim of A. Gifford Plumé to the entire fund, failed to observe that there were other claimants besides the estates of Mrs. Lockwood and Mrs. Tugman. The serious question in construing a limitation over, such as that relied upon by the Vice Chancellor in this case, is to what event or clause expressed in the will can the limitation over fairly be referred. This rule or distinction is clearly explained in the decision of this Court in the case of *Patterson v. Madden*, 54 N. J. Eq., 714, on pp. 724 and 725. The learned Vice Chancellor in the present case reads the last part of this will substantially as follows (commencing on p. 217, l. 7):

"And I do further order and direct that
* * * the Trustee * * * (skipping to
l. 16), pay the whole income * * * to my
said son Samuel W. and upon his death,
the said two-thirds * * * to convey to or
pay to my three children, Mary, Sarah and
Archer,"

thus treating the last clause containing the gift over as if it should stand in opposition or in continuation of the direction at the beginning of the sentence as above quoted. It is submitted that the clause is properly read as follows:

"And I do further order that * * * the
trustees * * * if my said grandson shall
not live to that age, then to pay the whole

income * * * to my said son Samuel W. and upon his death, the said two-thirds * * * to convey to or pay to my three children, Mary, Sarah and Archer."

In other words, that the gift over upon which the learned Vice Chancellor relied is referred clearly and solely to the contingency of the grandson, this appellant, not attaining 21; that as the grandson did attain 21, the gift over never took effect.

The contention therefore, of an express gift over to any one but this appellant is without foundation.

There remains to be considered the alternative construction that it was an outright gift to Samuel, which in the contingencies that occurred has not been defeated. The will first provides, as above stated, for payment to this appellant out of the two-thirds in question, of interest on \$2,000 "and the remainder of said two-thirds of said rents, issues and profits *to pay to my said son Samuel W.*" (case p. 215, l. 9-11). This standing by itself would be construed as an outright gift of all the remainder.

Gulick v. Gulick, 25 N. J. Eq., 324; affirmed 27 N. J. Eq., ~~489~~ 498.

Thomae v. Thomae, 18 Atl., 355.

Traphagen v. Levy, 45 N. J. Eq., 448.

Dawling v. Dawling, L. R. 1 Ch., 612.

The portions of the seventeenth paragraph following the above clause make provisions for various gifts over in contingencies there mentioned, none of which happened, so that all the gifts over are now disposed of, and the provision above quoted remains the sole provision applying to the fund in question. If there is not an implied gift to this appellant, cutting down the gift to Samuel above mentioned, then said gift to Samuel is now effective, all other gifts over being disposed

of; and the fund in Court should be paid to this appellant as executor of Samuel, or as heir and devisee of Samuel.

Courts do not favor a construction that will admit of partial intestacy, and they will adopt any reasonable interpretation which will prevent it. *Lippincott v. Pancoast*, 41 Eq., 21.

It is submitted that under this rule, the Court should make every effort to construe this will as giving this fund to this appellant, or to his father, Samuel, under the reasoning sought to be established by this brief.

It is claimed on behalf of A. Gifford Plume that this is *res adjudicata* by virtue of the decree in the suit of Samuel W. Plume against Staats S. Morris, *et al.*, copy of which is attached to the bill of complaint, (case pp. 17-24). But that decree does not in any way refer to the principal of this fund, nor is there anything in the decree bearing on the disposition of the fund. Neither is any argument nor estoppel to be derived from that suit. This appellant was not a party to that suit, and whatever the reason the decree in that suit failed to pass upon the final disposition of this fund, such reason can not now affect this appellant and would not have prevented his father Samuel from making claim to the fund in his lifetime.

2. *If not wholly paid to this appellant, the fund should be distributed as in intestacy.*

If the whole fund is not awarded to this appellant either by implying a direct gift to him, or as representative of an entire gift to Samuel, then this appellant contends that the testatrix died intestate as to the fund in the contingencies ^{which} ~~with~~ occurred.

There is no conceivable implied gift to any person, except this appellant, or his father, Samuel. It is submitted that the preceding portion of this

brief shows that there is no express gift to Mrs. Lockwood, Mrs. Tugman and Archer Gifford Plume, except on a specific contingency, which did not happen, and there is no claim of a gift to anyone else. Therefore, the only remaining alternative is that in the contingency, the testatrix made no disposition of the fund and died intestate as to it. In which case, of course, this appellant will take as representative of his father Samuel, one of the heirs at law and next of kin of the testatrix.

3. *There was no conversion by the will.*

This appellant contends that this fund must be treated as having continued as realty until actually converted in installments from time to time by sale from time to time of the parcels of land which it represents. The general rule is well established in this state that unless explicit and imperative direction for sale is given in a will, the property disposed of thereby will not be converted so long as it remains unchanged in form, and that when an actual change of form takes place, the conversion arises then and not until then.

See:

Parker v. Glover, 42 N. J. Eq., 559.

Condit v. Bigalow, 64 N. J. Eq., 504;

mine v. Hendrickson 24 N. J. Eq., 236. *at 237*

There is in this will no direction to sell, but only a mere power and authority. Nor is there anything in the general scheme of the will to compel a sale, but on the contrary testatrix in all her dispositions clearly contemplated that some or all of her estate might remain as realty until finally "conveyed" to the ultimate beneficiary.

It is further submitted that the reasoning contained in the further memorandum of the learned Vice Chancellor on the question of conversion (pp. 310 to 311) should lead to the same result.

If this conclusion is correct, then there is no question that the shares, if any, of Mrs. Tugman

and John Visser Plume should devolve as stated in sub-paragraphs "a" and "b," under the third ground of appeal before mentioned.

4. *John Visser Plume died without issue.*

This appellant contends that neither Marion Plume Wallace nor Edward C. Plume was a legitimate heir of John Visser Plume. As this point was not passed on in the Court of Chancery and as the testimony thereon is voluminous it may be that if such legitimacy becomes material, this Court will not attempt to decide it in the first instance, but will refer it back to the Court of Chancery for determination, especially as it is contended (under this appellant's fifth ground of appeal), that some evidence on the point was wrongfully excluded. Only a brief reference will, therefore, be made to the question of fact.

The standing of Marion P. Wallace is based on an alleged marriage between John Visser Plume and Marion Alethea Huguenin Bonner. It is submitted that no valid marriage between them was proved. It is clearly established that they were living together unlawfully before she was divorced by her first husband. No marriage subsequent to her divorce has been proved, and under the well established rules, there is no presumption that the removal of an impediment has changed an unlawful relation to a lawful one.

The claim of Edward C. Plume is likewise based on the assumed validity of the same supposed marriage. If the marriage is valid, then Edward's claim to be a son of John Visser Plume is based first on letters to him from John Visser Plume and Marion Alethea Huguenin, addressed to him as "son" and signed respectively "Father" and "Mother;" also upon letters from Archer Gifford Plume and Samuel W. Plume, addressed to him as "nephew" and signed respectively as "Uncle." The explanation of the letters from Samuel and Archer Gifford Plume afforded by the letter from the latter to

Samuel, dated December 30, 1907, Ex. D-B p. 268 of the case, destroys entirely the probative force of the "Nephew" letters.

The extreme age of his alleged mother at the time of his birth, makes it unlikely that he was the child of Marion Alethea. Edward when on the stand misstated by 12 years the date of his alleged mother's birth (case p. 86, l. 33-4; p. 149, l. 26-9; and p. 151 l. 7-9). If this misstatement was wilful on his part his entire testimony is discredited; if he was wrongly informed by his alleged mother, as to her age, that of itself tends to show he was, for the same reason, misinformed by her as to his real parentage. He has failed to produce the slightest corroboration from his boyhood associates, who must be many in number; he has failed even to mention the name of one of them, thus leaving his opponents no opportunity to investigate the correctness of his story. He claims Mrs. Slade to be his own half sister, and testified (p. 145, l. 20) that he understood she had been dead for several years, although his counsel had been in communication with her only a few months before (p. 163, l. 33-5, pp. 158, l. 188-9). He offers no explanation of his failure to produce Effie Louise Collins, the daughter of Mrs. Mims, whom he claims also as a half sister and whom his own evidence places as living in New York. Even Mrs. Slade does not testify that she believes him to be her brother. His only evidence of probative force, therefore, is the group of letters from his alleged parents. All of these letters are explained by the assumption that his reputed parents desired during his boyhood to keep him from the knowledge of his true parentage. In view of his failure to produce corroboration, which must be accessible to him, and in view of the actual misstatements made by him, whether intentional or through misinformation, it is submitted that the letters from John Visser Plume and Marion Alethea, must be construed as written to conceal his parentage from him; and his claim therefore wholly fails.

5. *Evidence adverse to Edward C. Plume was wrongly excluded.*

The evidence so excluded is stated specifically in the fifth ground of appeal *supra*. Edward C. Plume offered in evidence letters written to him by Archer Gifford Plume, which letters on their face recognized Edward as a regular member of the family. These letters were marked Identification 2, 3, 4, 5, 6, 7, 8 and 8-A, and printed on pp. 250 to 257. Various counsel opposing the claim of Edward C. Plume directed questions to A. Gifford Plume, the writer of these letters, calling for an explanation by the writer of these letters, of the apparent recognition of the relationship of Edward. These questions appear on pp. 128, 132, 133, 135 and 136. On objection to the questions, the Court of Chancery excluded from the record any explanation by the witness. It is submitted that this was clearly error and that in case the legitimacy of Edward becomes material, the case must be reopened to permit this explanation to be given.

It is therefore submitted that the decree of the Court of Chancery should be reversed, and a decree should be directed for the payment to this appellant of the entire fund; or failing that, the decree should be reversed and remanded to the Court of Chancery to enter a decree distributing the fund to the heirs at law of the decedent, but directing payment to the administrators or executors of such as have died, of so much of the share of any heir as had actually been converted into personalty at the date of death of such heir.

Respectfully submitted,

J. H. THAYER MARTIN,

Of Counsel with Appellant, John I.
Plume, Individually and as Executor of
Samuel W. Plume, deceased.

New Jersey Court of Errors and Appeals

Between

OSCAR KEEN, Trustee, etc.,

Complainant-Respondent,

and

A. GIFFORD PLUME, *et al.*,

Defendants-Appellants.

On Bill, &c.

On Appeal

from

Final

** Decree.*

Brief for Jay Ten Eyck, Administrator ad pros of Susan Plume Tugman, Deceased, Respondent.

This case involves the construction of the seventeenth item of the will of Susan Plume, deceased. After an extended hearing and argument the Vice-Chancellor decided that the decedent died testate as to the final disposition of the four-sixteenths of the residue of her estate mentioned in said paragraph and by it bequeathed to her trustees; that she thereby created a remainder, which immediately vested in Sarah V. Plume (Tugman), Mary J. Lockwood and A. Gifford Plume; and that by the terms of her will there was an equitable conversion of the residue of her estate as of the date of her death. (See opinion and supplemental opinion on pages 303-309 of the printed case).

A decree was entered pursuant to the terms of those opinions which directed the fund in question to be divided as follows:

One-third to A. Gifford Plume,

One-third to Susan W. Heiser, and
 One-third to the administrator of Sarah V. Plume
 Tugman.

Four appeals have been taken from that decree.

(1) A. Gifford Plume, who contends that the bequest in question was:

(a) Contingent.

(b) That there was no conversion of the residue until actual sale thereof.

(2) Edward C. Plume and others who claim:

(a) That the testatrix died intestate as to the final disposition of the fund.

(b) That there was no conversion until actual sale.

(3) John I. Plume whose claim is:

(a) That there was an implied gift to him of the whole fund, or

(b) That otherwise the testatrix died intestate as to the final disposition thereof.

(c) That there was no conversion until actual sale.

(4) Harry D. Lockwood and others who contend there was no conversion of the fund until the actual sale thereof.

Thus four questions are presented:

(1) Is the real estate of which the testatrix died seized to be considered as having been converted into personalty as of the date of her death or as of the date of the actual sale thereof?

(2) Did the testatrix die testate or intestate as to the final distribution of the fund in question?

(3) Was the bequest of this fund vested or contingent?

(4) Can a gift of the whole fund to John I. Plume be implied?

THE FUND SHOULD BE CONSIDERED AS HAVING BEEN CONVERTED INTO PERSONALTY AS OF THE DATE OF THE DEATH OF THE DECEDENT.

In order to work an equitable conversion there must be either:

1. A positive direction to sell.
2. An absolute necessity to sell in order to execute the will.
3. Such a blending of real and personal estate by the testatrix in her will as will clearly show that she intended to create a fund out of both real and personal estate and to bequeath said fund as money.

Hunts Appeal, 105 Pa. St., 128.

VanNess vs. Jacobus, 17 N. J. E., 153.

Wurts' Exr. vs. Page, 19 N. J. E., 365.

If the direction to convert is positive the conversion will be deemed to have taken place as of the time of the death of the testatrix.

McKeernan vs. McKeernan, 74 At. Rep., 289.

Cooks' Exr. vs. Cooks' Admr., 20 N. J. E., 375.

Dutton vs. Pugh, 45 N. J. E., 427.

But if there is only a discretionary powers of sale the land retains its character as land until actually sold.

Cooks' Exr. vs. Cooks' Admr., *supra*.

Condit vs. Bigelow, 64 N. J. E., 504.

Kouvalinka vs. Geibel, 40 N. J. E., 443.

The intention of the testator must be drawn from the will, and, even though there were no direction to convert but a seeming direction to let remain as real estate until it became advisable from time to time to sell, the real question to be determined is, did the

testatrix intend her lands to be converted into money before distribution.

Wurts' Err. vs. Page, 19 N. J. E., 365.

In *Roy vs. Hankins*, 47 N. J. E., 356, it is held that where from the nature of the estate and the necessity to convert a large portion to raise money to pay a legacy there would be deemed to be a conversion of the whole and that this was so in spite of a provision in the will as follows: "and the residue of my estate to pay over or convey to my son."

Note the similarity in language to that used in the will of Susan Plume.

It is more material for the purpose of effectuating the intention of the testatrix to observe that she did not distinguish between real and personal estate but treated it all as one fund and treated it as personalty.

Scudder vs. Vanarsdale, 13 N. J. E., 109.

In the present case the testatrix died possessed of personal property worth but three thousand one hundred and forty-nine dollars and thirteen cents (\$3,149.13) (Exhibit D. 2, page 286), all of it specifically bequeathed, and three pieces of real estate, two of which were specifically devised, the third a farm of twenty-two acres which returned an annual rental of but two hundred dollars (\$200) (pages 281-285 and Exhibit D. 1, page 288, lines 17 and 18).

The farm was apparently subject to two mortgages, one for twenty-five hundred dollars (\$2,500), held by The Newark Savings Institution (see account, page 291, line 35); the other for seventeen hundred and fifty dollars (\$1,750.00), (page 290, line 12). The former mortgage was not paid until June third, eighteen hundred and sixty-eight.

In order to pay the debts and legacies it was necessary to raise a sum in excess of ten thousand dollars (\$10,000), and to sell portions of the farm of twenty-two acres for that purpose (pages 288-289). From

the income of two hundred dollars (\$200) it was necessary to pay the interest on the mortgage of twenty-five hundred dollars (\$2,500.00) held by the Newark Savings Institution, amounting to one hundred and seventy-five dollars (\$175) per year (page 291, lines 3, 5, 7, 24 &c.). No interest was paid on the seventeen hundred and fifty dollars (\$1,750) mortgage which was held by the executor, unless it was included in the item on line 9, page 292.

There was thus a net income from the residue of the estate of not over twenty-five dollars a year.

Out of the one-fourth of this amount the trustees were directed to pay to John I. Plume one hundred and twenty dollars (\$120) a year, and under a certain contingency, two hundred and forty dollars (\$240) a year; the balance of the income to Samuel W. Plume and upon his death to be divided between three persons—Sarah V. Plume Tugman, A. Gifford Plume and Mary J. Lockwood.

These circumstances make it very apparent that the testatrix intended that the farm should be sold and the proceeds of sale invested so as to raise a large income and that there was an absolute necessity for the conversion of the real estate of the testatrix in order to carry out the provisions of her will.

It is contended that there was a mere authorization to sell and not a direction to do so and that the words "or if the same shall have been sold, the proceeds thereof" show there was no intention on the part of the testatrix that there should be a conversion as of the date of her death.

The use of the latter expression served only to indicate that if her estate should not have actually been converted as the testatrix intended it should be, she wished no mistake of her intention as to the final distribution of the fund to arise from an imperfect description of the trust property that remained in the hands of the trustee; and the ordinary signification

of the words "authorize and empower" must give way to the evident intention as indicated by the circumstances of the case, as in the case of *Wurts' Ears. vs. Page, supra.*

The question of conversion must be considered even if the court should hold that the testatrix died intestate as to the final distribution of the fund in question as is contended on behalf of some of the appellants, for in case of intestancy, if the estate was converted by the will as of the date of the death of the testatrix one-sixth of the fund would pass to the administrator of Sarah V. Plume Tugman, who was one of the six children of the testatrix.

THE WILL MAKES A COMPLETE DISTRIBUTION OF THE *CORPUS* OF THE FUND.

The court will adopt a construction which will prevent an intestancy as to any portion of the testator's estate, it being presumed that having made a will it was the intention to provide for disposition of all the property of which he died seized.

Yawger vs. Yawger, 10 Stewart, 216-218.

Bonnell vs. Bonnell, 2 Dick., 540-547.

Carter vs. Gray, 13 Dick., 411-415.

The rule invoked on behalf of Edward C. Plume that the heirs of the decedent are not to be disinherited unless a clear intention appears from the language of the will to that effect, can have no application here because it is clear that the intention of the testatrix was to give to John V. Plume nothing but the articles mentioned in the sixth item of the will. The reason why he did not share in the remainder of the estate is apparent from the testimony:

It has been contended that because, with regard to the final disposition of this fund, a comma was used after the name Samuel W., the intention is manifest that the entire clause which follows should take effect

only if John I. Plume died before arriving at the age of twenty-one years, but the intention of the testatrix that after the death of Samuel W., whether or not John I. Plume reached the age of twenty-one years, Sarah V. Plume Tugman, A. Gifford Plume and Mary J. Lockwood should become entitled to the four-sixteenths in question, or the remainder thereof, is clear, and this court has not hesitated, when attempting to effectuate the intention of a testatrix to supply verbal omissions, to correct inaccuracies of grammar and improprieties of terms and to change words or supply them where necessary.

McMurtrie vs. McMurtrie, 15 N. J. L., 276.

Brown vs. Mugway, 15 N. J. L., 330.

VanHouten vs. Pennington, 8 N. J. E., 745.

THE BEQUEST OF THE FUND TO SARAH V. PLUME TUGMAN, A. GIFFORD PLUME AND MARY J. LOCKWOOD WAS VESTED.

The Vice-Chancellor in his memorandum (page 303), has fully discussed this point and the authorities bearing upon it.

The contention that because so far as the four thousand dollars to be paid to John I. Plume out of the four-sixteenths constituting the fund, was concerned, it might be held to be contingent, the bequest of the whole fund should be considered contingent, is not logical.

The further contention that the bequest of the four-sixteenths of the fund should be considered as contingent because the bequest of two-sixteenths of the same residue to A. Gifford Plume, Mary J. Lockwood, Samuel W. Plume in the event of the death of Sarah V. Plume Tugman without leaving issue which arrived at the age of twenty-one years was contingent, is based upon a false premise for that bequest was also vested.

The fact that it might be divested by the birth of children of Sarah V. Plume Tugman, who lived to arrive at the age of twenty-one years did not prevent its vesting.

2 *Washburne on Real Property*, page 227.

Smith vs. Camelford, 2 Ves., 698, Note 2.

VanDyke's Admr. vs. Vanderpoels Admr., 14 N. J. L., 198 at 205.

Budd vs. Haines, 52 N. J. E., 488.

THERE BEING NO INTESTANCY, NO GIFT OF THE WHOLE FUND TO JOHN I. PLUME CAN BE IMPLIED.

Even if the contention on behalf of John I. Plume that if the gift of the four-sixteenths of the residue over to Sarah V. Plume Tugman, A. Gifford Plume and Mary J. Lockwood was to take effect only in case John I. Plume died before arriving at the age of twenty-one years said John I. Plume would be entitled to the whole fund, were sound, no such implication can arise because as has been shown the gift of the fund to the three persons above mentioned was a vested legacy to take effect at all events at the death of Samuel W. Plume.

It is respectfully submitted that the decree appealed from should be upheld in all respects.

JAY TEN EYCK,

HUGH B. REED,

Of Counsel.

New Jersey Court of Errors and Appeals

Between

OSCAR KEEN, Trustee, etc.,

Complainant,

and

A. GIFFORD PLUME, and others,

Defendants.

On four

Appeals from

Final Decree.

Reply Brief for John I. Plume.

The appellant, John I. Plume, being also a respondent to the other appeals, submits the following points in reply to briefs of the other parties interested in these appeals, the court at the argument having given leave to submit supplemental briefs.

1.

If the question of fact as to the parentage of Edward C. Plume is to be determined on these appeals, this appellant on that point adopts the argument contained on pages 30 to 34 of the brief of Chauncey G. Parker, counsel for Susan W. Heiser.

2.

In reply to the claim of the appellant, Archer Gifford Plume, that the whole fund is payable to him, this appellant adopts the argument of Barrett & Barrett, counsel for Harry D. Lockwood and others (found on pages 19 and 20 of their brief), and the

argument of Young & Bigelow, counsel for Edward C. Plume, and others (found on pages 11 and 12 of their brief).

3.

On the question of an equitable conversion of testatrix' residuary real estate by virtue of the provisions of the will authorizing sale of lands, this appellant adopts the argument of Barrett & Barrett (found on pages 20 to 26), and the argument of Young & Bigelow (found on pages 13 to 16). This appellant also calls the attention of the court to the fact that this Belleville avenue farm (which counsel for Mrs. Heiser contends could not possibly be partitioned in diminutive shares), was in fact divided into city lots and several of those lots sold by lot number shortly after the death of testatrix. (See Case, page 288, line 30, "July 1, 1867, proceeds of sale, lots 11, 12, 13 and 20, \$4,915.") It also appears that the portion of this farm set off to the trustee for Samuel W. Plume was sold by the various trustees in at least twenty-one different parcels (see case pages 293, 294 and 295), and several of these sales, or parcels, comprised more than one lot. The account itself shows one of the twenty-one sales as covering six lots (Case, page 294, line 9). Moreover, the diminutive fractions become much simpler when it is recalled that the one-third of six-sixteenths, being Sarah Virginia Tugman's share, merely means one-eighth of the total residue, while two-thirds of six-sixteenths means one-quarter of the total residue. And while it may be admitted that the testatrix contemplated her trustees would have to sell part of her lands to raise the \$4,000 gift to John I. Plume at his majority, it is obvious that she must have known that \$4,000 could easily be raised "without selling all her lands." In fact the \$4,000 is an insignificant part of the more than \$40,000 set apart to the trustees for Samuel W. Plume. The fact that this

farm, one-quarter of which was sold for over \$40,000, was rented for only \$200, indicates that testatrix considered it not as farm property but as property valuable for city lots.

4.

Counsel for Edward C. Plume and others attempt to distinguish the case of *Holton vs. White*, relied on by this appellant, on the principle that

“a gift by implication arises where there is a gift over in case of the death of an heir before a certain time, and there is no gift of any part of the property to the heir if he does not die in that time.”

But in the case of *Holton vs. White*, there was an express gift to the heir Eli of the entire plantation, and it is only in respect to the house and lot called Oak Island that the gift by implication arose.

5.

The remaining points made in the briefs of counsel opposing this appeal and to which this reply is directed, may be summarized in the general statement that they claim the gift at the end of the will (to Mary, Sarah and Archer) was not contingent on John I. Plume dying under twenty-one, but was a complete and vested gift of the residue (thereby excluding our claim of an informal gift to Samuel, or to John I. by implication, or intestacy); and they insist that the decree in the Court of Chancery in the old case of *Plume vs. Morris* conclusively establishes their position.

All the parties in this cause, except this appellant and those parties represented by Young & Bigelow, contend that there was no intestacy as to the *corpus* of this fund because (they say) the final gift over at the end of the will (page 217, lines 19 to 24) was not

contingent on John I. Plume dying under twenty-one. They argue that the remainder of the seventeenth paragraph shows the testatrix did not intend to die intestate and therefore the will should be construed to prevent intestacy, even though such construction violates her real intention. But a testator rarely intends to die intestate as to any part of his property. Where courts have decreed a partial intestacy, it is almost universally because of testator's inadvertance.

Counsel all admit that the preceding clause "then to pay the whole income arising from said two-thirds to my said son, Samuel W." (page 217, lines 17-18) is contingent upon the grandson dying under twenty-one, but argue that such a clause was necessary to prevent an intestacy as to the income on the \$2,000 in case the grandson died under twenty-one; and therefore that this clause, including the contingency, was only an interjection not affecting the context, and that the contingency would not apply to the following gift of corpus. But no such contingent interjection was needed to prevent an intestacy of this trifling income, for it was fully covered by the previous provision for payment of "the remainder of said two-thirds of said rents, * * * to my said son, Samuel W." (found on lines 10 and 11, page 215). Therefore, this appellant maintains that the contingency must be considered a material part of the whole closing sentence, and cannot be disregarded as a mere interjection.

It is further contended that the first gift to Samuel (page 215, lines 10-11), which is not limited in point of time, related solely to rents and terminated on the sale of the property; but this first gift did not so terminate because the succeeding provision for payment of income after sale of the land directs payment to Samuel and John I. "in the same manner and proportion" as is directed concerning rents (page 216, lines 12-13).

It is further argued that the word "and" preceding this last gift over (page 217, line 19) should be treated as superfluous, and the following words "upon the death" as commencing a new sentence. It is also suggested that the rules of grammar and punctuation were not observed by this testator; that in this last clause she meant "the whole residue, or the balance in case of deduction of \$4,000," and for that reason used the words "the said two-thirds" (page 217, line 19); and further that because the last portion of this paragraph deals only with principal and the prior clause deals only with income, therefore the contingency applying to the income should not apply to the corpus; and that no reason appears why the gift over should be contingent on an unimportant question of whether the grandson, John I. Plume, died under twenty-one, or lived a few days over that age; and that this contingency as to the death of the grandson under twenty-one applied only to the quantity of the gift over and not to the quality of the gift. These arguments might be formidable if there were nothing in the seventeenth paragraph except these last few clauses; but it is submitted their force disappears when the whole seventeenth paragraph is considered. It cannot be truthfully said that the rules of grammar or punctuation are generally disregarded, although the will is distinctly prolix; nor is it reasonable to discard the actual punctuation or to strike out the word "and," unless such a course is necessary to make sense. The general scheme of this clause was that the residue should go primarily to Mrs. Lockwood, Mrs. Tugman, A. Gifford Plume and Samuel W. Plume. Mrs. Lockwood and A. Gifford Plume were given their shares outright. The shares of Sarah Virginia and Samuel W. were given to trustees. The share of Sarah Virginia was expressly limited to her life and on her death was expressly given to her children, if any, and was given over in case

she died without leaving surviving children; but in that event, Samuel was given in fee a one-third of Sarah Virginia's share. After observing this evidence that testatrix desired Samuel to share in Sarah Virginia's fraction in the same way as Archer Gifford and Mrs. Lockwood, how is it possible to believe that testatrix intended Samuel and his children, if he should leave any, were to be wholly cut off from the quarter set off for Samuel's benefit? It happens that Samuel left no children but John I., for whom a slight direct provision was made; but the will must now be construed precisely as it would be if Samuel had left several other children. At the time the will was made, John I. was living and it was natural for his grandmother to make some small provision for him; but Samuel was only thirty-two when the will was made and lived for nearly fifty years afterward. If several children had been born to Samuel after this will was made and were now asking for this fund, would the court say that testatrix intended to cut off Samuel and all his children from any interest in this quarter share and give part of it to Sarah Virginia. It is submitted that any such intention of testatrix is incredible. If she had intended to cut down Samuel *and his line* to a bare life estate in his own fraction, would she have given him a fee in Sarah Virginia's fraction? If it is therefore apparent that she did not actually intend to cut off Samuel's line, the next question is whether the language actually used forces the court to do so.

It is submitted that this seventeenth paragraph cannot be understood on any theory but that in writing it out for execution the draughtsman omitted between the word "and" and the words "upon his death," in line 19, page 217, a paragraph substantially similar to the paragraph beginning on page 216, line 18, with the words "and I do further order and direct that if my said daughter, Sarah Virginia," &c., and

concluding with the first line on page 217, "but if my said daughter shall not leave a child or children her surviving then." A paragraph such as this, inserted as indicated in line ¹⁹~~20~~, would make the whole will understandable and coherent.

This court cannot now introduce the suggested paragraph and could not do so even on the clearest and most convincing evidence that just such an omission had occurred, but if this court is convinced that testatrix intended such a provision in her will, the language actually used may be construed so as to accomplish such intention.

Even if this court shall conclude that testatrix had no intention of inserting such a provision, nevertheless, it is insisted by this appellant that the condition "but if my said grandson shall not live to that age" cannot be disconnected from the gift over of the corpus. If it is once admitted that this condition creates a contingency as to the amount of the gift over, whether it is to be the entire two-thirds, or the balance after deducting \$4,000, then it must follow that the contingency dominates the gift completely. The words "the said two-thirds" (page 217, line 19), following the same words three lines above in the admittedly contingent clause relating to the income, cannot be disregarded; nor can they be explained away by saying testatrix meant "the said two-thirds or the balance thereof if John I. shall have received his \$4,000," for nowhere has the draughtsman of this will sought to be so concise.

Opposing counsel further claim that the decree in the case of *Plume vs. Morris* is a bar. This court obviously is not bound by any decree of the Court of Chancery, but even if it were, and even if this appellant had been a party to that case, the decree therein carefully refrains from passing on any question relating to the disposition of the corpus of this fund after the death of Samuel, and purports only to dis-

pose of income. Even in describing the fund, the decree calls it "that portion," * * * "the income of which," etc., thus carefully avoiding any intimation as to its final disposition; so the decree cannot possibly affect the question of intestacy, because no one claims there was ever any intestacy as to income. The intestacy would be only as to the disposition of the corpus after the death of Samuel W. Plume, and the decree is based solely on the clear gift to him of income (even if no more), found on lines 10 and 11, page 215, and is not based at all on the latter part of the will. Whether the testatrix was intestate as to this corpus or not, Samuel was clearly entitled to the income (even if no more) under this first gift, so that the decree in the case of *Plume vs. Morris* rests on that gift, and not at all on the last clause of this will.

Therefore, no disposition which can now be made of the corpus can possibly be inconsistent in any way with the decree in the case of *Plume vs. Morris*.

Respectfully submitted,

J. H. THAYER MARTIN,
*Of Counsel with Appellant, John I.
 Plume, Individually and as Execu-
 tor of Samuel W. Plume, Deceased.*

New Jersey Court of Errors and Appeals

Between

OSCAR KEEN, Trustee, etc.,

Complainant,

and

A. GIFFORD PLUME, *et als.*,

Defendants.

*On Appeals
of A. Gifford
Plume, John I.
Plume,
Edward C.
Plume,
and Harry D.
Lockwood,
et als.*

Brief of Susan W. Heiser, Respondent.

The facts of this case are briefly summarized in the brief of Barrett & Barrett, counsel for Harry D. Lockwood, *et als.*, and that summary is not objected to by the respondent Mrs. Heiser except so far as especially noted in this brief.

The controversy arises out of the decree of the Chancellor made May 17, 1913, giving directions to the trustees under the will of Susan Plume, deceased (p. 312), whereby the sum of \$40,569.90 and all interest thereon since the date of the supplemental account, after payment of counsel fees and expenses was ordered paid, one-third to A. Gifford Plume, one-third to Susan W. Heiser, one-third to the administrator of Sarah V. Tugman, deceased, when appointed.

The will of the testatrix is Exhibit C. 1 (Record, p. 210), and the controversy is over the meaning of the 17th clause of that will (p. 214). The respondent refers to pp. 1 to 5 of brief of Barrett & Barrett for a statement of the genealogical history of the Plume family and for a statement of the claims of the various parties in interest.

The case was tried before Vice-Chancellor Howell and in his opinion (p. 302), and further opinion (p. 309), the Vice-Chancellor discussed claims of the various parties and gave his reasons for his decree.

The Vice-Chancellor decided—

(1) That the testatrix created a vested remainder in the residue of two-thirds of six-sixteenths of her estate in Sarah Virginia Tugman, A. Gifford Plume, Mrs. Mary J. Lockwood (p. 305).

And (2), that the shares of the various legatees went to them as personalty and now belong to the personal representatives of Mrs. Tugman so far as her share is concerned, and to Mrs. Heiser, daughter of Mrs. Lockwood, under the first paragraph of Mrs. Lockwood's will, and to A. Gifford Plume, equally.

The Vice-Chancellor's decision on the first question on pp. 305-308, is full and needs no additional support by the citation of authorities.

But appellants deny this view of the will and make the following claims:

John I. Plume claims the whole of the fund alleging an implied gift.

Marion P. Wallace's administrators and the said John I. Plume claim that the testatrix was intestate as to this remainder.

A. Gifford Plume claims the whole fund as the survivor of himself and his two sisters.

If the Vice-Chancellor's views are correct with respect to the vested remainder in A. Gifford Plume, Sarah Virginia Tugman and Mary J. Lockwood, there remains a further controversy as to the distribution

of the funds in the hands of the trustees between children of said Mary J. Lockwood. The same point comes up in other branches of the case with reference to the share of Sarah Virginia Tugman. That question is—was the real estate of the testatrix converted into money by operation of the doctrine of equitable conversion? If it was as Howell, V. C., held, then all of the one-third belongs to Mrs. Heiser, under paragraph 1 of Mrs. Lockwood's will (p. 298), and all of Sarah Virginia's share goes to the administrators of Mrs. Tugman. If that doctrine did not apply and there was no equitable conversion, then all the heirs at law of Mrs. Tugman claim under the statute of descent, and the children of Mrs. Lockwood other than Mrs. Heiser, respondent, claim that Mrs. Heiser's share passed under the second paragraph of Mrs. Heiser's will (p. 298).

If, therefore, there was an intestacy as to the remainder of six-sixteenths of the estate after the death of Samuel W. Plume, or if Mrs. Tugman's interest went to her as land and not in money, the court must determine who are the heirs at law of Mrs. Susan Plume and of Mrs. Tugman, and a contest thereupon arises as to whether or not Edward Plume was the legitimate son of John V. Plume. V. C. Howell refused to decide this question since under the construction that he took of the will this decision was unnecessary (p. 309).

Point I.

On the death of Susan Plume, January 17, 1865, a vested remainder in six-sixteenths of the estate devised and bequeathed under paragraph 17 of the will, subject to a life interest in Samuel W. Plume and certain payments in favor of John I. Plume his son, was created in A. Gifford Plume, Sarah Virginia Tugman, Mary J. Plume Lockwood.

I refer to opinion of V. C. Howell (p. 305) and his decision on that subject and cases therein cited.

Point II.

The claim of John I. Plume to a gift by implication is imaginary.

The will is clear that John I. was not to have the trust estate in remainder under any circumstances.

The testator's plan was to give the income of \$2,000 to support John I. during his minority, and to give him \$4,000 at twenty-one. If his father (Samuel W.), who of course would share in the burden of his support during minority, should die before John I. reached twenty-one, then John I. should have a larger provision for that purpose, *i. e.*, the income of the \$4,000 till twenty-one. This is all he was to get.

Counsel claims that the testatrix did not provide for the contingency of John I. reaching twenty-one, and surviving his father.

This seems rather absurd in view of the last part of the 17th clause (p. 217, ll. 8-25). The testatrix had already directed that the income of two-thirds of the trust estate should be paid to Samuel W., except a sum equal to six per cent. on \$2,000 for John I.'s benefit till twenty-one (p. 215, ll. 4-11). She then directs that upon John I. reaching twenty-one he shall have

\$4,000 (p. 217, ll. 8-15). And goes on that if her grandson should not live to that age, then the whole income should go to Samuel W.

If this clause were not in the will, there would have been an intestacy as to the income of the \$2,000, upon the happening of this very event, *i. e.*, John I.'s dying before his father and before twenty-one. So this is cleared up by these words. And then comes the final clause—"And upon his (Samuel's) death, the said two-thirds to go" to Mary J., Sarah V., and A. Gifford—the very thing that V. C. Howell has directed to be done.

How could anything be clearer?

John I. did not die before twenty-one, so such condition did not take effect. If the last sentence were tied up to this condition so that the condition could be separated from it, there might be something to say on the theory of an intestacy, but there is nothing to show a gift by implication. John is never to take the remainder in any event—and is not to take anything after twenty-one, and the father, Samuel W., is given nothing but a life interest.

If Samuel W. dies before John I. reaches 21, the same persons take as when he dies after John I. reaches 21 (p. 215, l. 22; p. 217, l. 21). So it is clear that neither John I. nor Samuel W. are to have the two-thirds.

The cases cited by Mr. Martin have no application. In *Holton vs. White*, 23 N. J. L., 330, there was a gift to a legatee, of certain real property, with the duty of paying all the debts and all the legacies mentioned in the will. The property was called "the plantation on which I now live," and it was "subject to be leased for thirty-one years after my death by my executors for the payment of my debts and legacies," all in favor of brothers and sisters of the son Eli who was the devisee.

Then the testator said, "If my son Eli should depart this life before the expiration of said lease, then the house and lot called Oak Island together with its appurtenances, shall descend to my son Andrew."

There was no other gift over of this house and lot.

Eli survived the lease, and the court held that there was a devise of the house and lot to Eli, by express words or by implication.

Green, *C. J.*, held that there was an express devise to Eli (23 N. J. L., 427), and Ogden, *J.* concurred. Nevius, *J.*, only relied on the devise by implication. But the case has no application here for there is a clear implication that John I. Plume was to take nothing after twenty-one. And at twenty-one he was to take \$4,000. How could he take both?

The other cases are equally inapplicable.

Thus in *Denise's Executors vs. Denise*, 37 N. J. Eq., p. 163, the testator directed that the residue should be disposed of as follows:

"I do order and direct that the residue of my estate be equally divided between my following named children, share and share alike; that is to say, to my sons, Tunis, William T., John H., Sidney C., Rusha and David D. Denise, and my daughter Sarah Jane Jackson and in case any of my said seven children last named should die without leaving lawful issue, then, in that case, I order that the share of such as may die without issue, to be divided amongst the survivors of the above named seven of my children, share and share alike." (p. 165)

Then added:

"In case any of my said seven children last named should die without leaving lawful issue, then, in that case, I order that the share of such as may die without issue, to be divided amongst the survivors of the above named seven of my children, share and share alike." (p. 169.)

Certain children survived the testator and had children who survived the testator, but such children of the testator died before distribution of the fund. The question in the case was whether the children of such deceased children should take their parent's shares respectively.

The court held, first, that it was plain that the testator did not intend to die intestate as to any part of his estate. Secondly, that a devise or bequest might arise from implication and any words in a will which manifest an intention to give or create a legacy, are sufficient for that purpose, and said:

"In deciding whether a legacy is given by implication or not, conjecture must not be taken for implication. To create a bequest in that way, the implication on which it is founded must be a necessary one; not natural necessity, but so strong a probability of an intention to give must appear, that an intention contrary to that which is imputed to the testator, cannot be supposed to have existed in his mind." (p. 170.)

The court held that it was clear from this provision of the will that the issue of children who died before distribution, should take that share of the residuary estate which the will gave to their parent.

In the present case, there is no such provision in the will. There is nothing in the will to show that Samuel W. Plume should have an interest in the remainder in any event, and there is no gift to his child or children except that which gives an annuity to John I. Plume, Samuel's only son, until he reaches his majority and gives him a lump sum at that time.

The rule *expressio unius exclusio alterius* applies here.

The other cases cited by Guild & Martin in their brief are even more remote to the matter in hand than the two on which they chiefly rely.

Point III.

There is no intestacy under the will of Susan Plume as to the two-thirds of the six-sixteenths of the said estate in remainder after the death of Samuel W. Plume.

This point is very fully discussed by Messrs. Barrett & Barrett in their brief (pp. 7-17), and what is said in that brief on that point is here reiterated.

The chief point relied on by counsel for John I. Plume for claiming that there was intestacy is that the gift over was expressly contingent upon the death of John I. Plume before attaining his majority.

And for this two grounds are stated—first, that the condition is in the same paragraph and sentence as the gift over. And, secondly, the gift over is of the said two-thirds unreduced by the legacy of \$4,000 to John I. Plume payable, when he was twenty-one.

Messrs. Barrett & Barrett meet the first point made by John I. Plume's counsel on p. 11 and 12 of their brief, and in point of fact, the claim of John I. Plume rests wholly upon a matter of punctuation. Counsel for John I. Plume contend that a gift over should not be read in connection with all the will, but should be read only in connection with the sentence, a few lines above, relating to the disposition of income on the two-thirds after John I. Plume's death and before he reached the age of twenty-one years. Such a construction is far fetched in the extreme, for it is apparent upon a reading of the will and these words relied upon, that the testatrix was thinking of what would happen to the income set aside for John I. Plume until he reached the age of twenty-one years, and she desired and so directed that this whole income should be paid to her son Samuel W. Counsel cannot take the gift over and attach it to one portion of the will containing a condition and so claim that there was no gift over unless that condition happened.

The testatrix on p. 215, l. 12, expressly provided for the case where Samuel W. died before John I. reached twenty-one. If John I. was to have his father's share, one would think that the testatrix would have so declared at that point of the will.

Every intendment is against intestacy, and, therefore, the claim of John I. Plume in this respect should not be adopted.

Nor is there any force in the argument based upon the use of words "the said two-thirds," counsel arguing that the said testatrix should have said, "the balance of the said two-thirds." The testatrix did not say the whole of the two-thirds, and the words used plainly mean the said two-thirds in the hands of the trustees at the time of the death of Samuel W. Plume. If, therefore, Samuel W. Plume had died before John I. Plume had reached twenty-one years, the said two-thirds would have meant the principal of the estate subject to the charge in favor of John I. Plume, *i. e.*—interest at six per cent. on \$4,000 until John I. Plume reached his majority and the sum of \$4,000 paid at that time. For it is an elementary rule that the whole will must be read together, so that if possible every part thereof may stand.

Point IV.

The real estate of the testatrix was converted into personalty in the eyes of the law from the time of the death of the testatrix.

Mrs. Plume died on January 17, 1865. She left a personal estate of \$3,149.13 (p. 287). This property consisted of personal belongings and household goods all of which were disposed of specifically by the will, a bond of John G. Winter which was specifically bequeathed to two children, Mrs. Lockwood and Mrs. Tugman (Art. 14, p. 211), and a bond of one Samuel J. Gustin for \$1,250.

She gave money legacies as follows:

Marion H. Plume, \$20.00. (Art. 8.)

Kate Plume, \$20.00. (Art. 9.)

Second Presbyterian Church, \$100. (Art. 12.)

Foster Home, \$100. (Art. 13.)

The trustees for granddaughter Kate Plume, \$2,000, income of which to be paid for her support until marriage or attaining twenty-one years, and then the principal. (Art. 15.)

The estate was liable to debts (pp. 290, 291, 292), besides a mortgage to the Newark Savings Institution. These debts and legacies amounted to nearly \$17,000 (p. 292), and lands were sold by the executor to pay the debts (pp. 288, 289).

The executor was sworn and testified on these matters (pp. 282-285), and said also that the only real estate consisted of a house on Washington street, a house on State street (p. 282, l. 1), three lots adjoining these houses (p. 282, l. 12), and a farm on Belleville avenue, Newark, running through to Mt. Prospect avenue, containing twenty-two acres (p. 282, ll. 20-32). The State street house was given to A. Gifford Plume under the will (Art. 3), the Washington street house to daughters (Art. 16), and the gifts of these two houses included the lots so that the only property possessed by the testatrix at the time of her death for the purpose of raising these legacies and paying the debts and for carrying out the provisions of the will contained in the seventeenth clause thereof, was the farm which brought in \$200 a year.

Now the will gave undivided parts in this real estate as follows:

To A. Gifford Plume, five-sixteenths parts (p. 214, l. 22); to Mary J. Lockwood, five-sixteenths parts (p. 214, l. 26); and to trustees under the said seventeenth clause, six-sixteenths parts (p. 214, l. 30).

Note that the gifts and devises of these parts were undivided parts and were not separate and distinct

parcels of lands. This distinction is important in view of the language of the will later to be referred to.

The executor filed his accounts in 1871 (p. 228), and showed that during the six years following the death of the testatrix, he had realized only \$200 a year from the farm by way of income, and had sold lands amounting to something over \$13,000 (pp. 288, 289).

The trustees named under the will refused to act and no trustee was appointed for some time; then one Staats S. Morris was made trustee and in the year 1878 and 1879 the real estate was partitioned between the parties (p. 293), and six-sixteenths of the residuary real estate was set off on June 18, 1879 to said Morris as trustee (p. 300, Exhibit C. 4).

None of the real estate had been sold at the time of Mrs. Tugman's death in the year 1867, and at the time of Mrs. Lockwood's death on December 19, 1880 (p. 59, l. 34), lands to the amount of \$13,900 had been sold by the trustee (p. 293). From that time down to the present time the remaining lands have been sold realizing altogether \$40,569.90, or thereabouts (p. 297).

All these lands were sold in the lifetime of Samuel W. Plume who died November 2, 1909 (p. 8).

With these facts before the court it will be possible to give an intelligent meaning to the peculiar provisions of the seventeenth clause of the will with reference to the said trust estate.

The testatrix was providing for the support and maintenance (1) of her daughter, Sarah Virginia Tugman; (2) of her son, Samuel W. Plume; (3) for the support and education of her grandson, John I. Plume; (4) for the support and education of unborn children of Sarah Virginia Tugman; (5) for the payment of her debts and legacies and for the division of her estate into a number of small separate parts.

In order to carry into effect the provisions of the will it is highly important that the estate should produce income for it is the income which is to be devoted to all of the purposes above mentioned.

That the testator expected the real property to be sold for the real purposes of raising income is shown by the power of sale (p. 215, l. 26). They are authorized to sell the whole or any part of the said equal undivided six-sixteenths parts of the remainder of her estate, and this too, though undivided interests had already vested, five-sixteenths in Mrs. Lockwood, and five-sixteenths in Mrs. Tugman. Moreover, the testatrix's intention as to sale is shown by her direction that the profits of the sale should be invested in bonds and mortgages, and the income paid in half yearly payments to her daughter Sarah Virginia, her grandson, John I. Plume, and her son Samuel W. Plume, in the same proportion as she had then directed as to the rents, issue, and profits of her estate. Since this provision immediately follows the authority to sell and the testatrix makes no direct provision for sale, in order to make distribution she must have contemplated the six-sixteenths of the property should be sold at once.

Next, a sum equivalent to six per cent. on \$2,000 is to be paid out of the income of the estate semi-annually, to John I. Plume (p. 215, l. 6), for his support and education, and in case of his father's death before him, a sum equivalent to interest at six per cent. on the sum of \$4,000 is to be paid him semi-annually for the same purpose (p. 215, l. 12), and the remainder of the income is to be paid semi-annually to Samuel W. Plume as to two-thirds, and as to one-third to Sarah Virginia Tugman. Note that there is no direction to sell in order to make these sums except the power given to raise income, and when John I. Plume reaches the age of twenty-one years the testatrix says that the trustees "shall pay to him out of

the remaining two-thirds of said equal undivided six-sixteenths parts of said residue of my estate, so by them held in trust, the sum of \$4,000" (p. 217, l. 8). This clearly shows that the testatrix expected the residue then to be money.

And when she comes to dispose of the principal she directs that it should be *divided among her children equally share and share alike*. This was not the gift of an undivided interest as was the case in the earlier portion of this very article, but is a direction for the payment of separate interests to each. Thus in case Sarah Virginia should die leaving children, the income of one-third should be paid for the support and maintenance of her children in equal proportions until the youngest child reach twenty-one years when the one-third of the six-sixteenths should be divided between such children share and share alike (p. 216, ll. 20 to 40). And if Sarah Virginia shouldn't leave any child or children her surviving, then in the same way the trust estate should be divided equally between Mary J. Lockwood, Samuel W. Plume and A. Gifford Plume, share and share alike, and finally upon the death of Samuel W. Plume, two-thirds of the six-sixteenths is to be divided among Mary Josephine Lockwood, Sarah Virginia Tugman, and A. Gifford Plume, equally, share and share alike.

The court should further note the diminutive share which must be created in this parcel of unimproved real estate in case it should be thought that the testatrix did not require the trustees to sell the property.

Thus she is to divide one-third of the undivided five-sixteenths into three parts if Sarah Virginia left no children, and in case she left children, then the trustees must divide one-third of five-sixteenths into as many parts as Mrs. Tugman left children. How could this be possible and the division be equal when the lands were a farm and useful only for farm purposes. So, moreover, as to the two thirds of six-six-

teenths, the trustees would be required to divide the same into three parts and to do it so that the shares should be equal and each share should share alike with every other share. How could this be done without a sale?

The testatrix, repeatedly, in the will, uses the phrase as follows: "The equal undivided one-third part of certain equal undivided six-sixteenths parts of the said residue of my estate so given and held in trust as aforesaid, or the one-third part of the proceeds of said six-sixteenths parts, if the same shall have been sold," and then requires that this property should bring income and should be equally divided later on between a number of interests. Does this not show that the testatrix expected, nay, more, required that the said trust estate should be sold and converted into money? Bear in mind that the whole undivided six-sixteenths parts are lumped together in the hands of the trustees for all the purposes of the seventeenth clause, and these equal divisions must be made at different times, perhaps long apart from each other. Therefore, the proviso, "if the same shall have been sold"—means only that the testatrix supposed that it might be possible that the property might not be sold by the trustees at the period of distribution for they had been given a discretion as to time of actually making sale and she wished to have it clear on the will that the proceeds of all sales should go in the same manner as if the property had not been sold. "If" in such a case means "when." (Raw., *in re* 26 Ch. D. 601; Taylor's Settlement, 9 Hare, 596; Exp. Hardy, 30 Beav., 206.) These words so often repeated add emphasis to intent that a sale should take place.

And lastly, observe that the trustees are wholly without any power to raise income, except by selling and converting into money. There is no power to improve the lands, to borrow money for that purpose, or to use the proceeds of lands for that purpose. Sell

they must if income is to be raised. And the rents were wholly insufficient even to pay the annuity to John I. Plume.

Therefore, taking the whole clause together, it is urgently submitted that the testatrix imperatively directed her executors to sell her property in order to raise income and in order to make division, and gave the proceeds to the legatees in remainder.

The time and manner of sale were the only things that were left to the discretion of the executors. She did not wish to sacrifice her estate. Any one of the life tenants could have applied to the Court of Chancery to require the trustees to comply with the evident direction of the testatrix shown in the face of the will.

The case is like *Crane vs. Bolles*, 49 N. J. Eq., 373, 379, where the will empowered the executors to sell "upon the request or by the consent of the majority of my said children," and Chancellor McGill, p. 379, said:

"The children may move the executors to action, at the proper time, by a request, or the executors, at such time may demand from the children their consent. If there be negligent disregard of the duty thus imposed on the executors and children, or an obstinate refusal upon the part of either, the assistance of this court, to compel the due execution of the trust may be invoked. The object of the provision for request or consent is to secure notice and co-operation between the executors and the children and to prevent unreasonable sacrifice of the property, not to admit the interposition of arbitrary will to defeat a proper sale, and not to leave it to discretion, either of the children or executors, whether there shall be a sale at all."

All the cases hold that the mere fact that trustees are given discretion as to the time or manner of sale

does not make the duty of sale less imperative, if that duty actually exists.

Wurts vs. Page, 19 N. J. Eq., 375, the court says:

“Wherever a testator has positively *directed* his real estate to be sold and distributed as money, it will be considered for the purposes of succession as personal. But in this case, there is no such direction. The direction to sell is contained in the fourth item of the will, and simply *authorizes* and *empowers* his executors to sell any part of his real estate in case they should *at any time* deem it advisable. This is not a direction to convert, but, on the contrary, it is a seeming direction to let it remain as real estate, until it became advisable from time to time to sell it. If this were the only part of the will to guide us, the real property could not be considered as converted into personal property until actually sold. But the question of conversion is a question of intention; and the real question is, did the testator intend his lands should be converted into money at all events before distribution? In this case, it seems to me that the directions in other parts of the will show clearly that he did so intend. In the first place, in the first clause he says: ‘I do hereby order and direct that my said trustees shall *invest the proceeds* of my estate, after settlement and my just debts paid, as a joint and common fund for the benefit of my said heirs, or they may be separately invested for the benefit of each respectively, in their several proportions.’ The spirit of this whole direction shows that conversion was intended. It would be difficult to invest unsold lands, or to invest each share separately, if in undivided lands; and no direction is given for division. And the subject to be invested is the *proceeds* of the estate, which implies a sale of the real estate. Again, in the limitation over,

the expression is, shall 'be merged in the general fund.' And in the direction to loan to Charles Wurts, he says his object is to preserve the loan as part of the *trust fund* created by his will. Again, he directs the portions of his sons and his grandsons, *to be paid* to them when they respectively arrive at the age of twenty-two. All these directions show that he intended that his estate should be converted into money before it was distributed by his trustees; and they would be required to convert it into money before distribution, and to pay it over in that form. And the rule is well settled, that if the will requires the real estate to be converted into money at all events, notwithstanding the executors may have discretion as to the time, it must be considered as converted into money from the death of the testator."

In *Cook vs. Lanning*, 40 N. J. Eq., p. 369, the will after ordering payment of debts and funeral expenses gave life annuities to his brother George and his wife and several pecuniary legacies.

The will then directed that none of these legacies should be paid until after the death of the testator's brother and his brother's wife, and "after their death the balance of my estate, if any, to be equally divided between Ralph Lanning" and four other persons. It appeared that the testator owned other real estate besides a house and lot specifically devised, worth about \$12,000 and the personal property was far short of paying the legacy.

Chancellor Runyon held that the legacies were charged upon the lands and then directed a conversion of the estate:

"The testator intended that his estate, except so much as should be required to satisfy the bequests in favor of George and his wife, should be accumulated by his executors until the death of both those legatees. The payments and division

are to be made by the executors. They should sell the whole of the real estate, except the part devised to Theodore L. Jones, and invest the proceeds with the balance of the personal property, if any, remaining after paying the debts and the expenses of settling the estate until George's death. Out of the income they are to pay him his annuity and the interest on the legacies to Stacy and James H. Lanning, and William Van Sant, the interest of which legacies is given to him for life by the will. After his death they are to pay the legacies which will be then payable and make the division of the residue."

In *Roy vs. Monroe* (47 N. J. Eq., p. 356)—the testator by his will after directing the payment of his debts and funeral expenses gave all his property real and personal to his executors in trust to carry out the directions and bequest of his will and authorized them to sell all of his real estate.

He then directed his executors to pay the net income of his estate to his wife for the joint support of herself and his son until his son should arrive at the age of twenty-one years, and he gave all of his estate to his wife in case his son should die before attaining twenty-one years. The will then provided (p. 357):

"When my son attains the age of twenty-one years, then I desire my executors to take from my estate the sum of \$10,000, and the residue of my estate pay over or convey to my son. Said sum of \$10,000 I direct my executors to invest, and keep invested, and the interest and dividends arising and accruing therefrom pay over to my son, but not to any creditor or assignee of his, upon his sole and personal receipt, during his natural life, and at his death pay said sum of \$10,000 to his children."

The testator died possessed of a very trifling amount of personal property, but he held title in his own right

to two parcels of land. This land was sold by the executor for less than \$12,000 to the estate. The son died in the lifetime of the mother. The question was whether the money which was acquired from real estate belonged to the heirs at law or the next of kin of the son.

The court (Van Fleet, *V. C.*), said, p. 359, 360:

"No doubt can, therefore, be entertained, I think, that the money in dispute here must be regarded as having been converted from land into money by the direction of the testator, and that it must accordingly be held, in conformity to well-established principle, that so far as the testator has disposed of the money thus raised, it must pass to those who are entitled to take under his will as personalty and not as land. For, as the leading case on this subject declares, nothing is better established than this principle: that money directed to be employed in the purchase of land, and land directed to be sold and turned into money, are to be considered as that species of property into which they are directed to be converted. *Fletcher vs. Ashburner*, 1 Lead. Cas. Eq. (4th Am. ed.), 1120. This principle is the natural result of the dominion which the law confers upon every property owner, who is *sui juris*, over that which he owns in his own absolute right. He has power to do with his own whatever he pleases, so long as he does not attempt to apply it to uses forbidden by law, and in the exercise of this power he has a right to decide what shall be the nature of his property after his death, and who shall take it and whether they shall take it as land or as personalty. By force of this principle, it is clear, I think, that the testator's son, on attaining twenty-one, became entitled to the whole of the testator's estate, except the \$10,000, and that he took such residue as per-

sonalty. The direction of the will is, that when the son attains the age of twenty-one years the executors shall take \$10,000 from the estate, and then, in the language of the will, 'and the residue of my estate pay over or convey to my son.' The direction to pay or convey would indicate that the testator meant that his son should take the residue, either in money or land, in whichever form it might exist when he became entitled to it, *but as it was impossible, in consequences of the condition of the testator's estate, and the nature of the property which he left, to raise the \$10,000 without selling all his lands, and as equity regards that as done which ought to have been done, it would seem to be clear, according to the principle which must rule in such cases, that the residue, by force of the will, became personalty on the day the testator's son attained full age.* There can be no question that if the will had been executed just as the testator meant it should be, that the residue of his estate would, on the day his son attained full age, have consisted entirely of personalty. My judgment is, that the residue passed to the son as personalty, and hence so much of the fund in controversy as represents the residue must be awarded to the son's administrator."

In the case of *Crane vs. Bolles*, 49 N. J. Eq., p. 373, the testator possessed about \$100,000 worth of personal estate and three valuable parcels of real estate in Newark, his homestead, another residence, and a business site, and after directing the payment of his debts and funeral expenses he gave his widow the use of his homestead and the furniture therein for her life, and further gave her an annuity of \$1,500 to be paid out of the rents of his business property so long as the said premises should remain unsold, and after its sale, as thereafter provided, he gave to her in lieu of the annuity the income on \$25,000 of the proceeds of the sale.

All the residue of his personal estate he gave to his eight children share and share alike.

The testator further gave the other residence to his daughter Emma C. Adams to be enjoyed during her widowhood.

The will then provided as follows:

"Secondly:—I hereby authorize and empower my said executors upon the request or by the consent of the majority of my said children to sell, either at public or private sale and for such price or prices as my said executors shall deem proper, all or any part of my real estate wherever situated."

Excepting the homestead which might be sold after the death of his wife and the other residence which might be sold after the remarriage or decease of his said daughter, and after retaining thereout \$25,000 to be invested for the wife, and \$5,000 to be invested for the daughter, the executors were directed to divide and apportion the residue of the net proceeds of sale of the said real estate among the said eight children.

The executors were directed to manage the real estate and to pay to and divide among the said eight children in equal shares, the net rents and the annuity of \$1,500 from the Broad street premises given to the widow, the same to be paid from the rents until the latter premises were sold.

On the death of the wife the \$25,000 invested for her was given to the children in equal shares, so likewise the \$5,000 invested for the daughter, Emma C. Adams.

A number of questions arose under the will, but the most important feature was the matter of whether or not there was equitable conversion of the real estate. Chancellor McGill held that there was such equitable conversion and says, p. 378:

"It is observed, upon reading the will, that the testator does not expressly make permanent dis-

position of his real estate. He does not expressly devise the fee. His will, however, bears, upon its face, such evidence of thought and deliberation that, upon reading it, the mind is constrained to conclude that intestacy as to any interest in the estate was not thought of. The obvious scheme was to first securely provide for the testator's wife, and then, after securing a home for his widowed daughter, divide the remainder of his estate, reduced to money, equally among all his children. The conversion of real estate into money was to be deliberate, instead of forced and hasty. The personalty was to be divided at once, but the realty, which would be liable to greater sacrifice by immediate sale, was to be put in control of the executors of the will, who, while a favorable opportunity to sell it was awaited, were to lease and care for it, and, after paying the expenses of its care and management out of the income they should receive, were to divide the residue of that income equally among the testator's children or their issue."

The chancellor further laid stress on the fact that the annuity was to last only so long as the premises should remain unsold saying—"This expression imports not only that sale was to be inevitable, but "that it was to make place within the life of the wife." So the executors were to preserve, manage and keep productive the Broad street property "until the sale." And the chancellor said: "Herein again the inevitable event—sale—was contemplated,"

Furthermore the chancellor said, p. 379:

"The will made no provisions for either failure to sell or failure of the children to request or consent to a sale. No other disposition of the real estate was made, and the only apportionment contemplated was in money or chattels. Thus, it appears to me, the testator's intention is unequivocal."

cally shown, that his real estate shall be converted into money. To accomplish his purpose, a sale of the real estate must take place, and therefore a sale is imperative. Although, then, there be no express command to sell, such a command must be implied. That being so, it follows that the action required of the executors and children is subordinate to the requirement of sale and must be controlled by it. When an opportune time to sell arrives, the children must consent and the trustees must sell."

Wurts Executors vs. Page, 4 C. E. Cr., 365, 375, was quoted and followed.

This case went a very long way for the will did not make any residue of the real estate in express terms, nor was there any peremptory direction to the executors to sell the property, but the court realized that it was a case of a parent providing for his children, and thought that the gift of the residue of the personal estate followed by an authority to the executors to convert the real estate into personal estate justified the view that there was an equitable conversion and that the testator contemplated and intended that all of his children should take under the will all of his property not specifically or generally bequeathed or devised and that they should take it as personal property and not as real property.

In the case of *Cruikshank vs. Parker*, 52 N. J. Eq., 310, before the Court of Errors and Appeals, it appeared that the testator died seized of both real and personal estate, and after giving his widow the homestead for life, and the income of a fund of \$100,000 for her support, he devised and bequeathed all the rest and residue of his estate to his executors "In trust and to and for the purposes following, viz: (1) That they sell, dispose of and convey the same at public or private sale at such times and on such terms as they in their discretion may think proper. (2) That

"they divide such real and personal estate, or the proceeds thereof into four equal parts or shares one of such shares for each of my daughters."

The children survived, and a large part of the lands were partitioned. Thereafter the trustee sold part of the lots set off to Mrs. Paret, one of the children, in the partition, and the question in the case was whether the trustees continued to have the power of sale notwithstanding the partition.

The sixth clause of the will gave the executors power "to manage the property till division or sale," and to make all "divisions and partitions of his real and personal estate or the proceeds thereof" and to deliver all necessary deeds therefor, &c.

Mrs. Paret's share was hers only for life, the title being in trust.

The chancellor held that the trustees had no power of sale with respect to these lands (51 N. J. Eq., 21), because the direction to sell was not imperative, but was a mere power annexed to the duty to make division and when that was accomplished the power failed.

But the Court of Errors took a different view. The legal estate, they held, was to "be held and invested and kept invested," and they were directed to "collect and pay or apply the interest and income thereof to the use of" Mrs. Paret and after her death to pay and assign such residue to her heirs absolutely.

The intention that this share should be invested and kept invested was regarded as paramount, and the power of sale as necessary to carry it into effect. The court might well have added that the intent to convert the whole estate was equally paramount, and had only been defeated by the children taking their shares in specie which of course they had a right to do under the doctrine of "election."

The case of *Dutton vs. Pugh*, 45 N. J. Eq., 426, affirmed on appeal, 46 N. J. Eq., 554, cited by Messrs. Barrett & Barrett in their brief is really in favor of

the views maintained in this brief. It is true that the language of the will, relating to the selling of the residue of the estate, used the word "direct," the language being "I direct my executors to sell the residue of my estate at public or private sale in such way and manner and on such terms and conditions as they may deem proper and best, and to execute and deliver deeds for said real estate to the purchaser or purchasers thereof." But if there were no other words in the will relating to the sale of the lands, these words would have been treated as a power. The residuary clause, however, left no doubt on the situation, for the testator provided, "the residue of my estate after paying taxes, charges, expenses and commissions, etc., I give and devise to my nieces and nephews as follows": (here 24 persons are named) "to be equally divided between them and the survivors and survivor of them."

It was quite clear from the paragraph as to sale and the paragraph as to the residue, that there was an equitable conversion and the Chancellor so held; this view being affirmed by this court for the reasons given by the Chancellor.

The Chancellor, after quoting the ninth paragraph of the will directing that his residuary estate shall be divided and "devised" as indicated in the succeeding paragraphs, held that the word "devised" did not defeat the application of the conversion, and said, "Whenever that word is used it is coupled with another word suited to the disposition of personalty, evidencing thereby an intention that whatever the species of property dealt with might be, whether realty or personalty, there would be an apt word to transfer it. It was probably the testator's belief that when the conversion of his realty had actually taken place, the character of the property, for all purposes, would remain unchanged. In the distribution, then, of this

estate the residue is to be considered as personal property."

Authorities elsewhere are the same.

Ashby vs. Palmer, 7 R. C. (1 Merivale, 296) 38—where the gift of real and personal estate in trust to sell as soon as convenient, and out of money thereby raised and with the rents and profits of the real estate until sale, to pay debts and with the surplus to bring up, maintain and educate testator's daughter Elizabeth until twenty-one or marriage; but if she should die unmarried under twenty-one, the money, or the real estate unsold should go to A.

Elizabeth lived to twenty-one and died a lunatic.

None of the real estate was sold.

Sir William Grant held that Elizabeth's administrator, not her heir, should take, as there was a conversion in equity.

See also *Ford vs. Ford*, 70 Wisc., 19; 7 R. C., p. 23, and cases cited.

In *Mower vs. Orr*, 7 Hare, 475, a testator after stating that his property consisted of copyholds, leaseholds houses, merchandise in Australia, cash at his bankers and in the public funds and that it was so scattered about and not realized, he could not say what he should die with, divided it into *twenty shares*, sixteen of which he disposed of by giving a certain number to each of his three sons absolutely, and as to the remaining four, he gave two to his daughter absolutely, and two to be invested in the funds for the use of his children, and he appointed two of his sons executors requesting them to get his property together and divide it according to his intentions. Vice-Chancellor Wigram held that the testatrix must be understood as directing a conversion of his copyhold estate into personalty, and said, "that the division of the entire property into a number of shares, and the directions as to the investment and disposition of some of them, precluded the supposition that he intended the copyholds to remain unsold."

Point V.

If conversion was imperative, it will be considered as having taken place from the testator's death.

Cook vs. Cook, 5 C. E. Gr., 375.

1 Jarman on Wills (Randolph & Caldecott) p. 179, and cases cited.

Point VI.

Even though there was no imperative direction to convert contained in Mrs. Plume's will, and part of her lands given in trust was not sold until after Mrs. Lockwood's death, yet since there was a valid power in the trustees to convert for the purposes of investment, and of paying the income to life beneficiaries, and of distribution to those in remainder, and this power was exercised by the trustees for these purposes, the proceeds must devolve as money, and not as land, and go to Mrs. Lockwood's executor as money, and not as land, and hence belong to Mrs. Heiser under that provision of Mrs. Lockwood's will, which gives her her mother's personal property.

This is the view of Vice-Chancellor Howell, who says:

"It is the physical change of land to money effected by a valid testamentary power to perform an act which was evidently in the contemplation of the testatrix which establishes the rule upon the foundation of reason" (p. 311).

There is no doubt but that trustees are often given powers which divest beneficiaries of interests in favor of other beneficiaries. 2 Jarman on Wills, Randolph & Talcott's ed., 604; *Brown vs. Bigg*, 7 Vesey, 279. For instance, if a trustee should be authorized to increase an annuity in favor of one beneficiary, and should so increase it, the residuary legatee would be deprived

of a sum equal to such increase. So if a testator should direct that his executors should in their discretion dispose of his lands, and that the proceeds of such sales should be given to A, and the balance of the lands should go to B, the fact of the conversion of land into money would become the test on which a beneficiary would take or not take. And the present case resembles such a case. Mrs. Heiser had a vested interest in the residue. The testatrix was not concerned as to how much of it should consist of land or how much of it should consist of money. It was not to be paid or conveyed to her till Samuel W. Plume's death, and then Mrs. Lockwood and the others should take it as it then was. If the sale of all the land had been made in Mrs. Lockwood's lifetime, unquestionably all the proceeds would be now treated as money. It could not possibly be considered anything else. Now how could Mrs. Lockwood have any concern in the form in which it was to be at her death? On the theory that there was only a power, she could not compel nor prevent its exercise. The testatrix and the trustees had everything to say about that. The testatrix said, if my trustees sell my lands, my daughter Mrs. Heiser shall take money—or if my trustees shall not sell my land, my daughter Mrs. Heiser shall take land. And if part be sold, and part remain, then she shall take both land and money.

Now this being Mrs. Plume's will, Mrs. Lockwood's representative thereby has no equity, requiring this land to be treated as one kind of property or another. If she has no equity, how could her heir or personal representative have any? They must be content with what should come to them respectively on the death of Samuel W. Plume. If money the personal representative of Mrs. Lockwood would take it, if land the heir of Mrs. Lockwood would take it. And there being a will of Mrs. Lockwood, a gift of her personal property carries the fund in the trustees hands.

This, as I understand it, is the reasoning of the Vice-Chancellor.

Most of the cases cited in opposition to this view, are where a conversion has been made for some other purpose than distribution. For instance, *Cook vs. Cook*, 5 C. E. Gr., 375, was where lands were sold to pay debts; and *Roy vs. Monroe*, 47 N. J. Eq., 356, was where land was sold to pay a legacy which lapsed or where there is a sale consequent upon an intestacy. (*Fletcher vs. Ashburner*, 1 Bro. C. C., 497.) In such cases the sale is not made for the purpose of carrying out the gift to the very person who takes. But when this occurs, it would seem that the sale should relate back to the time of the death of the testator, and the fund should be treated as converted pursuant to the will exactly as if there had been a positive direction to convert, and a gift of the proceeds.

Point VII.

If the court should hold that there was no equitable conversion of the real property held in trust under Mrs. Susan Plume's will and that the property must be considered as converted from the time when the actual conversion took place, then the decree below must be modified so that the balance remaining after deducting the costs and expenses of the suit should be treated as personalty and realty in the proportion which the net proceeds of sales of land prior to the death of Mrs. Lockwood bears to the net proceeds of sales of land after that time, so far as relates to the share of Mrs. Lockwood in the residue. It appears in the case that prior to Mrs. Lockwood's death, net proceeds of sales of land amounted to \$13,900.00. After Mrs. Lockwood's death, sales of land were made amounting to \$29,143.56, from which should be deducted the expenses of sale.

With respect to Mrs. Tugman's interest, none of the land was sold at the time of Mrs. Tugman's death so that it must be treated altogether as real property under this view of the case. And all of Mrs. Tugman's heirs at law must share in this.

Point VIII.

Edward C. Plume failed to prove that he was the heir at law of John Visser Plume, deceased.

The heirs at law and next of kin of Mrs. Sarah Virginia Plume Tugman consist of her brother, A. Gifford Plume, and the descendants of her deceased brothers and sisters. These are: (1) descendants of Mary Josephine Lockwood, sister of Mrs. Tugman; (2) the sole child of George W. Plume, brother of Mrs. Tugman, named Kate Plume Underhill; (3) John I. Plume, only son of Samuel W. Plume, deceased, brother of Mrs. Tugman, and (4) the legitimate descendant of John Visser Plume, deceased, if any there be. One Edward C. Plume claims to be a son of John Visser Plume and the legitimacy of his claim was the only issue of fact in the case.

John Visser Plume was born July 31, 1814, and died April 26, 1884 (p. 72). He was married to Marion Alethia Huguenin, February 8, 1849 (p. 58), and she died on February 7, 1891 (p. 75).

John Visser Plume had by this marriage two children, first, Joseph W. Plume who died in infancy, born 1849, died 1850. Second, Marion Huguenin, born November 25, 1851, died November 29, 1900 intestate and without issue (p. 58).

Apart from his own statements, Edward C. Plume first appears in written evidence in the year 1884. He was then living with John Visser Plume and his wife and their daughter, Marion. He was then treated by John Visser Plume and his wife as their son. This

all appears from original letters written by the father and mother at this time to their son (p. 220 *et seq.*). Marion Plume, daughter of John Visser Plume, also referred to Edward as her brother, but he was not known to A. Gifford Plume or his brother, Samuel W. Plume, or other members of the family until the year 1905. The matter seems not to have been mentioned at the time of John V. Plume's death, and was not mentioned by John V. Plume's widow during the years thereafter, and about the year 1887, John V. Plume's widow appealed to Samuel W. Plume for help for herself and child and did not speak of children (p. 269); her daughter, Marion, then lived with her, being the person intended by the letter, and the first time when either Samuel Plume or Gifford Plume or the Lockwoods knew of this Edward Plume was on August 13, 1905, when Samuel Plume wrote a letter to his brother, A. Gifford Plume (p. 110) saying that Edward Plume was the natural son of Marion, the daughter of John V. He reiterated this in letters written in 1907 (pp. 112, 113).

These letters from Samuel W. Plume, now deceased, were introduced in evidence under the rule as to declarations of deceased persons with reference to pedigree. His statements to his son, John, are to the same effect (p. 198, 199) but it appears that Samuel W. changed his attitude towards Edward and urged his brother, Gifford, not to persecute the boy and not to allow a scandal of the Plume family to go any further (p. 243 *et seq.* and p. 199, l. 20).

Samuel and Gifford's notions of Edward Plume were that he was the son of the younger Marion born out of wedlock. Edward, however, claims that he was the son of John Visser Plume and the elder Marion born August 12th, 1871. At this time the elder Marion (born April 13, 1819, p. 151) was 52 years 4 months old; John V. Plume was 57 years old. The younger Marion was 20.

Edward Plume purposely misstated the date of his alleged mother's birth giving the year as 1831 and she was 60 years old (86) but the family Bible of Mrs. John V. Plume's first husband was produced (p. 151). This showed that Mrs. Plume was born in 1819 and was 72 years old when she died. Edward Plume produced no written or other evidence as to the time of his birth or his parentage contemporaneous therewith. John Visser Plume, his wife and daughter, lived in California (p. 71), and Edward Plume was born while Mrs. John Visser Plume and her daughter, Marion, were in Florida (p. 70).

Mrs. John V. Plume had a previous marriage in the year 1836 to one Seymour R. Bonner. After becoming the mother of four children, her husband charged her with adultery with John V. Plume in a suit for divorce commenced in the State of Georgia on August 5, 1844. This suit was tried and Mrs. Plume was found guilty and a decree of divorce was made on January 8, 1846 (p. 266). She was, however, under a disability to marry a second time, but this disability was removed by an act of the legislature of Georgia, approved December 3, 1847 (p. 276), and on February 8, 1849, John Visser Plume and the said Marion Alethia Hugenin, surnamed Bonner, were married. It will appear, therefore, that this lady had children by her first husband as early as the year 1837, and she had children by her second husband in the year 1849 and 1851, and according to Edward C. Plume had a further child twenty years later in the year 1871.

Outside of Edward Plume's own testimony and the letters written by his deceased parents from the year 1884 on, Edward Plume has no corroboration whatever for his story. No witness knew him as the son of John Visser Plume before 1884. No contemporaneous testimony as to his birth and parentage is produced. The children of his alleged mother by her

first husband have no knowledge of him until Edward had grown up (p. 153, p. 259) and do not help his story in any degree. No family Bible is produced, and while John Visser Plume reported the birth of his two early children to his relatives in Newark so that the particulars thereof were entered in the Plume family Bible, no notice of Edward Plume's existence appears to them until 1905 when Edward was at least twenty-four years old.

The theory of the family about Edward Plume is set forth in the letter of Samuel W. Plume written August 13, 1905 (p. 110). This was that the younger Marion had lived as the mistress of a man in New York, when she was a young woman, and was about to become a mother, that she was taken to Florida to avoid scandal where she gave birth to the child, Edward C. Plume, and her parents determined to bring the child up as their child so that her reputation should not suffer. Later they brought her out in society in a generous way in San Francisco, and she was there married to a man by the name of Stone in the most public manner in the year 1879. The people were very prominent and General U. S. Grant was in California at the time and attended her wedding.

The burden is on Edward C. Plume to establish his legitimacy, and it is submitted that he has failed to make out his case. His own testimony is of little weight and the corroboration that he furnishes consists of declarations made so long after the event and under circumstances which would prompt false declarations, so that little weight can be given to them. On the other hand, his story is extremely improbable. It is most unusual that he should be able to produce so many declarations made in 1884, and yet not able to bring a single witness to swear to his legitimacy who knew the circumstances in early days or a scrap of documentary evidence on this point. He is repudiated to his uncles. His other near relatives never

heard of him. His alleged mother and father were past the age when it was probable that they would have children, and Edward C. Plume has not sustained the burden of establishing his legitimacy which the law requires in a case of this sort.

November, 1913.

CHAUNCEY G. PARKER,
Of Counsel.

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Filed March 23, 1910.

In Chancery of New Jersey.

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To his honor, Mahlon Pitney, Chancellor of the State of New Jersey:

HUMBLY COMPLAINING shows unto your honor your orator, OSCAR KEEN, of the City of Newark, County of Essex and State of New Jersey, as trustee under the will of Susan Plume, deceased.

1. That Susan Plume, late of the County of Essex in the State of New Jersey, departed this life on or about the nineteenth day of January, eighteen hundred and sixty-four, resident in the said County of Essex, leaving a last will and testament bearing date the twelfth day of December, eighteen hundred and sixty-two, and duly probated before the Surrogate of the County of Essex on or about the twenty-fifth day of March, in the year eighteen hundred and sixty-four, and recorded in the office of the Surrogate of said Essex County in Book N of Wills for said County on page three hundred and eighty-four.

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2. That paragraph seventeenth of said last will and testament was in words and language following:

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Seventeenth. All the rest and residue of my estate both real and personal not hereinbefore disposed of and of which I shall die seized and possessed I do dispose of as follows, viz. I give, bequeath and devise to my son, Archer Gifford Plume, the equal undivided five-sixteenths parts thereof to have and to hold the same unto him, his heirs and assigns forever. I give, bequeath

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and devise unto my daughter, Mary Josephine, wife of Gershom Lockwood, the equal undivided five-sixteenths parts thereof, to have and to hold the same unto her, her heirs and assigns forever. And as to the remaining equal undivided six-sixteenths parts thereof, I give, bequeath and devise the same unto the said Isaac Van Wagenen and Charles L. C. Gifford and the survivor of them, to have and to hold the same upon and for the trusts, intents and purposes hereinafter mentioned and expressed of and concerning the same, that is to say. In trust that they and the survivor of them shall collect, take and receive the rents, issues and profits of said equal undivided six-sixteenths parts of said rest and residue of my estate and pay the same in equal half-yearly payments as follows, namely: One-third part of said rents, issues and profits to my daughter, Sarah Virginia, for her sole use and benefit during her natural life and out of the remaining two-thirds parts thereof to pay towards the support and education of my grandson, John I. Plume, son of my son, Samuel W. Plume, a sum equivalent to the interest at six per cent. on two thousand dollars and the remainder of said two-thirds of said rents, issues and profits to pay to my said son, Samuel W. But if my said son, Samuel W., should die before his said son, John I. shall have attained the age of twenty-one years leaving his said son him surviving, then to pay out of said two-thirds of said rents, issues and profits towards the support and education of my said grandson in lieu of the sum hereinbefore directed to be paid a sum equivalent to the interest at six per cent. on four thousand dollars, the same to be paid him until he shall attain the age of twenty-one years, in equal half-yearly payments and the remainder of said two-thirds of said rents, issues

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and profits, pay to my children, Mary Josephine Lockwood, Sarah Virginia and Archer Gifford Plume, in equal proportions, share and share alike. And I do hereby authorize and empower the said Isaac Van Wagenen and Charles L. C. Gifford and the survivor of them, if at any time they or the survivor of them shall think it advisable so to do, to sell and convey at such time or times and at either public or private sale and for such price or prices as they or the survivor of them shall deem proper in fee simple or for any less estate, the whole or any part of the said equal undivided six-sixteenths parts of the said remainder of my estate in this article of my last will given in trust; and to make and execute good and sufficient conveyances in the law for the same, and the proceeds of such sale or sales safely and securely to invest and keep invested on bond and mortgage upon real estate in the City of Newark which shall be free from all prior incumbrance and worth at least double the amount invested thereon, except in cases where a mortgage may become necessary to secure in part the payment of purchase money of any of the real estate which may be sold by virtue of the power granted in this article of my last will and testament, and the interest arising from such investments to pay in half-yearly payments to my said daughter, Sarah Virginia, and grandson, John I. Plume, and my said son, Samuel W. Plume, in the same manner and proportion in all and every respect, as in this article of my last will is directed concerning the payment of the rents, issues and profits of said equal undivided six-sixteenths parts of the said residue of my estate so as aforesaid given in trust, and I do further order and direct that if my said daughter, Sarah Virginia, shall at the time of her death leave a child or

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children her surviving, that the said one-third part of the said rents, issues and profits of the said equal undivided six-sixteenths parts of my said estate so held in trust as aforesaid of if the same shall have been sold, then one-third part of the interest arising from the proceeds of the sale thereof shall be paid towards the support and education of such child or children in equal proportions, until such child, or if more than one the youngest of such children shall attain the age of twenty-one years and upon such child attaining said age, then the equal undivided one-third part of said equal undivided six-sixteenths parts of the said residue of my estate so given and held in trust as aforesaid, or the third part of the proceeds of said six-sixteenths parts of the same shall have been sold shall be conveyed or paid by said Isaac Van Wagenen and Charles L. C. Gifford or the survivor of them, to such child or children to be held by, or divided between them share and share alike. But if my said daughter shall not leave a child or children her surviving then the said one-third or, if the same shall have been sold, the proceeds thereof shall be conveyed or paid to my children, Mary Josephine Lockwood, Samuel W. and Archer Gifford Plume the same to be held, or equally divided between them share and share alike, and I do further order and direct that upon my said grandson, John I. Plume, attaining the age of twenty-one years, the said Isaac Van Wagenen and Charles L. C. Gifford or the survivor of them shall pay to him out of the remaining two-thirds of said equal undivided six-sixteenths parts of said residue of my estate, so by them held in trust the sum of four thousand dollars, but if my said grandson shall not live to that age, then to pay the whole income arising from said two-thirds of said equal undivided six-sixteenths parts of said

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residue of my estate to my said son, Samuel W., and upon his death the said two-thirds or if the same shall have been sold, the proceeds thereof, to convey or pay to my three children, Mary Josephine Lockwood, Sarah Virginia and Archer Gifford Plume, the same to be held or equally divided between them share and share alike.

3. That the trustees in said paragraph of said will named declined to act as such and that one Staats S. Morris was duly appointed trustee under said will in their place and stead, and duly took upon himself the burden of the administration of the trusts therein contained; that Sarah Virginia Plume named in said clause departed this life in or about the year eighteen hundred and sixty-seven, and the trusts in said clause so far as they relate to and affect that portion of the residue in which the said Sarah Virginia Plume was interested were long ago completed and her share distributed; that the four thousand dollars directed to be paid to John I. Plume by said clause was long ago paid, and that the only monies left in the hands of the said Staats S. Morris as trustee were that portion of the residue, the income of which was, by the said clause of said will, directed to be paid to Samuel W. Plume during his lifetime.

4. That the said Staats S. Morris departed this life on or about the twenty-sixth day of October, eighteen hundred and eighty-eight, and thereafter, by an order made on the petition of Susan W. Heiser and Harry D. Lockwood for the appointment of a trustee under the last will of Susan Plume, deceased, in the room and stead of Staats S. Morris, deceased, your orator was, on or about the thirtieth day of January, eighteen hundred and eighty-nine, appointed trustee in the room and stead of the said Staats S. Morris, to execute the trusts mentioned and declared in and by the last will and testament of Susan Plume, late of the City of Newark in this State, deceased, and

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all the rights, powers, privileges and duties incident to such appointment; that a copy of the order of this court appointing your orator as such trustee is appended to this bill of complaint as Exhibit A and hereby made a part hereof.

10 That after being so appointed, your orator duly qualified as such trustee by giving bond pursuant to the order of his appointment, and took upon himself the burden of administering the trusts under said will.

5. That there was pending, at the time of your orator's appointment as Trustee as aforesaid, a cause in this court wherein Samuel W. Plume was complainant and Staats S. Morris and others were defendants, to which cause your orator was, after his said appointment, made a defendant, and thereafter and on or about the eighteenth day of January, eighteen hundred and ninety-two, final decree was made therein,
 20 copy of which final decree is annexed to this bill of complaint as Exhibit B and hereby made a part hereof, by which decree it was among other things, ordered, adjudged and decreed that the monies and other estate in the hands of the said Staats S. Morris at the date of the filing of the bill in said cause, and the monies and estate in the hands of Oscar Keen, trustee, at the date of said decree, were that portion of the residue of the estate of Susan Plume deceased, the income of which was, by the will of the said Susan
 30 Plume, directed to be paid to Samuel W. Plume during his lifetime; that by the said decree the accounts of the executors of the said Staats S. Morris as trustee under said will were allowed and confirmed and certain payments for commissions and counsel fees authorized and directed, and your orator was thereby directed to pay to the said Samuel W. Plume or his solicitors, the balance of the income remaining after making the payments required by said decree, and to continue to hold the corpus of said trust estate
 40 upon the trusts in said will mentioned, and to pay

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the net annual income arising therefrom to the said Samuel W. Plume during his lifetime, deducting from said income his commissions thereon at the rate of five per cent.; that your orator was further directed by said decree to continue to sell the unproductive real estate then in his hands belonging to the said trust estate as rapidly as the best interests of the said trust estate would permit, and to invest the proceeds and apply the income thereof as in said will directed. 10

6. That your orator complied with the directions of the said decree, making the payments thereby directed, and after such payments had been made, there remained in his hands a balance of principal estate to the amount of twenty-four thousand and twenty and 48/100 dollars, that your orator thereafter from time to time sold the lands of the said trust estate as directed by said decree and as required, converted all of said lands into cash; that your orator has, in compliance with the terms of said decree, from time to time paid over the income of the said trust estate, and has continued to hold the principal thereof, and hereby tenders himself ready to account to this honorable court in this proceeding in which he is advised such an account may be properly taken, or in any other proceeding which this court may consider more appropriate, of all his dealings with said trust estate both as to matters of principal and income, and your orator has attached to this his bill of complaint as Schedule C, and hereby makes a part hereof, a full and complete account of the receipts and disbursements of your orator as trustee under said will of Susan Plume, deceased, from the date of his appointment to the present time. 20 30

7. That the said Samuel W. Plume, who was under the terms of the said will of Susan Plume, deceased, and under the directions of the decree in the cause hereinabove referred to, entitled to the income of the entire principal fund in the hands of your orator as 40

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trustee as aforesaid, departed this life on the second day of November, nineteen hundred and nine, resident in the City of New Orleans in the State of Louisiana; that the monies in the hands of your orator as trustee as aforesaid should on the death of the said Samuel W. Plume be distributed to the persons entitled thereto, either under the will of the said Susan Plume, if by said will such distribution be directed, and if not, then to such persons as may by law be entitled thereto; that various claims have been presented to your orator as trustee as aforesaid for distributive share in the funds in your orator's hands as trustee as aforesaid; that John I. Plume, grandson of the said Susan Plume, attained the age of twenty-one years and there was paid to him the said sum of four thousand dollars as directed by the said seventeenth clause of said will of said Susan Plume, deceased; that apparently the only gift over after the termination of the life estate of the said Samuel W. Plume was in the event that the said John I. Plume should not live to attain the age of twenty-one years, and that if this be the proper construction of said clause of said will, then the said Susan Plume may have died intestate as to the final distribution of the monies now in the hands of your orator as trustee as aforesaid; that by reason of the failure of the said will to make any disposition of the principal of said trust fund after the death of said Samuel W. Plume, the life tenant named in said clause, the said John I. Plume as executor and sole heir at law and legatee of the said Samuel W. Plume, deceased, may claim to be entitled to the whole of the principal fund now in the hands of your orator as trustee as aforesaid; that Archer Gifford Plume, a son of the said Susan Plume, and the only present survivor of the three children named in the said clause of said will, under the conditions therein set forth to take the principal of the said trust fund, claims, as your orator has been

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advised, to be entitled to hold said fund even to the exclusion of the personal representatives and heirs at law of his two sisters named with him in the same clause; that persons claiming through the said Mary Josephine Lockwood named in said clause have also notified your orator that they have rights to participate in the distribution of said principal of said trust fund; that your orator is unable himself to determine the rights of the several claimants and cannot safely make distribution of the monies in his hands nor decide to whom the same should be distributed and paid, without the construction of the said will of the said Susan Plume, deceased, by this honorable court. 10

8. That the said Susan Plume at the date of her death on the nineteenth day of January, eighteen hundred and sixty-four, was a widow and left her surviving as heirs at law and next of kin, the following:

John V. Plume, a son. 20

Mary Josephine Lockwood, a daughter.

Samuel W. Plume, a son.

A. Gifford Plume, a son.

Sarah Virginia Plume, a daughter.

Kate C. Plume, a granddaughter, child of

George W. Plume, a deceased son.

That the said John V. Plume died some four years ago at Oakland in the State of California, but whether with or without will, your orator has been unable to determine; that the said John V. Plume many years ago entered into a contract of matrimony with one Marion E. Hugguenen, but your orator is informed that at the time of the said marriage, the said Marion E. Hugguenen, had a husband from whom she had never been divorced, still living, and that for that reason the marriage to the said John V. Plume was without validity; that she had departed this life; that the said John V. Plume had a daughter by said marriage, Marion E. Plume, whose legitimacy depends upon the validity of the marriage of her mother, the 30 40

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said Marion E. Hugguenen to the said John V. Plume; and that the said Marion H. Plume, daughter of the said John V. Plume, first intermarried with one Dudley Stone, and after his decease again intermarried with some one whose name your orator has been unable to ascertain, but your orator is informed that the second husband of the said Marion H. Plume predeceased her, and that she departed this life about ten
 10 years ago, leaving no children, and intestate; that your orator has been informed that the said John V. Plume had a son by adoption known as Edward C. Plume and that said Edward C. Plume is still living and now resides in the City of Chicago, Illinois.

That the said Mary Josephine Lockwood died resident in the said County of Essex, on or about the nineteenth day of December, eighteen hundred and eighty, leaving a last will and testament bearing date the twentieth day of August, eighteen hundred and
 20 seventy-eight, which was duly probated before the Surrogate of the County of Essex on or about the twenty-seventh day of January, eighteen hundred and eighty-one, and recorded in Book X of Wills for Essex County, page 282; that in and by said last will and testament the said Mary J. Lockwood did give, devise and bequeath all the rest, residue and remainder of her estate to her children, Susan W. Lockwood, John F. Lockwood and Harry D. Lockwood, each one-fourth part thereof, and the remaining one-fourth part to her
 30 grandchildren, George C. Lockwood and Alice Lockwood, children of her son, George P. Lockwood; that Gershom Lockwood, William Clark and Albert P. Condit, executors named in said will, have all since departed this life, the said Gershom Lockwood having been the husband of the said testatrix, having died on or about the eighteenth day of December, eighteen hundred and ninety-three; that Susan W. Lockwood, one of the children of the said Mary J. Lockwood, intermarried with one Edward Heiser and now resides
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in the City of Newark, in this state; that John P. Lockwood, intermarried with one Isabelle Fletcher, who subsequently procured a divorce from him; that the said John P. Lockwood by his said marriage with the said Isabelle Fletcher had one son, Andrew Fletcher Lockwood, who now resides in the City of Hoboken in this state; that the said John P. Lockwood departed this life, resident of the City of New York, intestate in the month of December, eighteen hundred and ninety-seven; that Harry D. Lockwood resides in the Borough of Brooklyn in the city and state of New York; that Alice Lockwood, granddaughter of the said Mary J. Lockwood, intermarried with one Ernest Olmstead and now resides at Des Moines in the State of Iowa, and that George G. Lockwood, grandson of the said Mary J. Lockwood, now resides in the State of Rhode Island.

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That Samuel W. Plume intermarried with Harriet Peacock who predeceased him; and that said Samuel W. Plume, as hereinabove stated died on or about the second day of November, nineteen hundred and nine, resident of the City of New Orleans in the State of Louisiana, a widower, and leaving one son, John I. Plume, also a resident of said City of New Orleans; that the said Samuel W. Plume left a last will which was, on or about the fifteenth day of November, nineteen hundred and nine, by decree of the Civil District Court for the Parish of Orleans, declared to be the last will and testament of the said Samuel W. Plume, and ordered to be deposited and recorded in the office of the Clerk of the Civil District Court for the Parish of Orleans, and execution directed according to law, and on the same day, judgment was entered in said Civil District Court that John I. Plume was recognized as the child and sole and only heir of the said Samuel W. Plume, and as the universal legatee under said will, and as the sole and only heir of his father Samuel W. Plume.

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That A. Gifford Plume, son of the said Susan Plume, has never married, and resides in the City of Newark, in said County of Essex.

That Sarah Virginia Plume, daughter of the said Susan Plume, shortly after her mother's death entered into a contract of matrimony with one Charles Tugman; that said Charles Tugman was an Englishman and at the time of his marriage to the said Sarah Virginia Plume, your orator is informed that he had a wife living in England, and that for that reason his marriage to Sarah Virginia Plume was without validity; that the said Sarah Virginia Plume died May eleventh, eighteen hundred and sixty-six, intestate and without children, leaving her surviving the said Charles Tugman; that the said Charles Tugman departed this life about three years ago, but whether testate or intestate, your orator has been unable to learn.

That Kate C. Plume, granddaughter of the said testatrix, intermarried with one Henry B. Underhill, and now resides with her said husband in the City of San Francisco in the State of California.

In tender consideration whereof and to the end that the said A. Gifford Plume, Susan W. Heiser, Andrew Fletcher Lockwood, Harry D. Lockwood, Alice Lockwood Olmstead, George C. Lockwood, John I. Plume, individually and as executor of the last will and testament of Samuel W. Plume, deceased, Kate C. Underhill and Edward C. Plume, may, but without oath (answer or answers under oath being hereby waived) full, true and perfect answer make to all and singular the matters aforesaid, as fully and particularly as if the same were here again repeated and they thereunto particularly interrogated; and that the said last will and testament of the said Susan Plume, deceased, may be construed by this honorable court, and the persons to whom the monies now remaining in the hands of your orator should be distributed, may be ascertained and declared, and directions given to your orator as to the payment and distribution of said monies; and that

Bill of Complaint.

your orator may have such other and further relief as the nature and circumstances of the case require, and shall be agreeable to equity and good conscience.

May it please your honor, the premises considered, to grant unto your orator the state's writ or writs of subpoena, issuing out of and under the seal of this honorable court, to be directed to the said A. Gifford Plume, Susan W. Heiser, Andrew Fletcher Lockwood, Harry D. Lockwood, Alice Lockwood Olmstead, George C. Lockwood, John I. Plume, individually and as executor of the last will and testament of Samuel W. Plume, deceased, Kate C. Underhill and Edward C. Plume, commanding them and each of them, by a certain day and under certain penalty therein to be expressed, to be and appear before your honor in this honorable court, then and there to answer all and singular the said premises, and to stand to, abide by and perform such decree therein as your honor shall seem meet, and as shall be agreeable to equity and good conscience.

And your orator as in duty bound, will ever pray,
etc.

PITNEY, HARDIN & SKINNER,
Solicitors for and of Counsel with Complainant.

Exhibit A.

EXHIBIT A.

IN CHANCERY OF NEW JERSEY.

10 In the matter of the application
of SUSAN W. HEISER and
HARRY D. LOCKWOOD for the
appointment of a trustee un-
der the last will of SUSAN
PLUME, dec'd, in the room of
STAATS S. MORRIS, dec'd.

On Petition.

ORDER APPOINTING TRUSTEE.

20 SUSAN W. HEISER and HARRY D. LOCKWOOD, hav-
ing presented their duly verified petition alleging the
death of Staats S. Morris, the former trustee under
the will of Susan Plume, deceased; that the trusts cre-
ated in and by said will are still unexecuted; that the
petitioners and Archer Gifford Plume, Marion Plume
Stone, Kate Underhill, John I. Plume, Samuel W.
Plume, John P. Lockwood, Gershom Lockwood, Alice
Lockwood and George C. Lockwood, infants; Adele
30 Gould, and Gershom Lockwood, Albert P. Condit, and
William Clark, executors of and trustees under the
last will of Mary J. Lockwood, deceased, are the per-
sons interested in or who claim to have some estate or
interest in the said trust; and praying that this court
do appoint some fit and suitable person as trustee un-
der the last will of Susan Plume, deceased, in the
room and stead of said Staats S. Morris, deceased,
to administer the trusts created in and by said last
will; and it further appearing that the notice of this
40 application required by the rules and practice of this
court has been duly served upon all the above named

Exhibit A.

persons, and that a trustee should be appointed in accordance with the prayer of said petition; and that Oscar Keen, Esquire, of the City of Newark, in this State, is a fit and proper person to be appointed trustee in the room and stead of Staats S. Morris, deceased, to execute the trusts declared in said last will of Susan Plume, deceased, with all the rights, powers, duties and privileges incident to such appointment; and no cause appearing or being shown to the contrary, it is, on this thirtieth day of January, one thousand eight hundred and eighty-nine, on motion of Herbert Boggs, Esquire, of counsel with said petitioners, and in the presence of Joseph D. Gallagher, Esquire, of counsel with Samuel W. Plume and John I. Plume and of Thomas Anderson, Esquire, of counsel for Adele Gould and the infants Alice Lockwood and George C. Lockwood and of Archer Gifford Plume appearing in person, ordered that Oscar Keen, Esquire, be and he hereby is appointed trustee in the room and stead of Staats S. Morris, deceased, to execute the trusts mentioned and declared in and by the last will and testament of Susan Plume, late of the City of Newark in this State, deceased, with all the rights, powers, duties and privileges incident to such appointment.

And it is further ORDERED, that the said Oscar Keen before entering upon his duties of his office, do give bond to the Chancellor of the State of New Jersey, in the sum of fifty thousand dollars, with one sufficient surety, for the due performance and faithful execution of the trust reposed in him, such bond to be approved by Roderick Byington, Esquire, one of the special masters of this court.

And it is further ORDERED, that upon the execution and filing of such bond by said trustee the legal title to all of the property, real and personal, of the said trust do immediately vest in the said Oscar Keen as trustee and that the legal representatives of the said

Exhibit A.

Staats S. Morris, deceased, deliver and convey to him all of the property of the said trust that may have come into their possession or control, and that the heir at law of the said Staats S. Morris, deceased, do forthwith convey to said Oscar Keen, trustee as aforesaid, by good and sufficient deed of conveyance the real estate and lands held by the said Morris as trustee under the said will of Susan Plume, deceased.

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And it is further ORDERED, that the costs of these proceedings to be taxed be paid out of the *corpus* and income of the trust property, three-fourths thereof to be paid out of the *corpus* and one-fourth out of the income.

And it is further ORDERED, that the parties interested have leave to apply for further directions if occasion shall require.

ALEX. T. MCGILL,

C.

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Respectfully advised,

A. V. VAN FLEET,

V. C.

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Exhibit B.

"EXHIBIT B."

IN CHANCERY OF NEW JERSEY.

Between

SAMUEL W. PLUME,

*Complainant,**and*STAATS S. MORRIS, *et als.,**Defendants.**On Bill, &c.*

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FINAL DECREE.

This matter being opened to the court by Harry E. Richards, of counsel with the complainant, in the presence of Messrs. Whitehead & Condit, of counsel with Gershom Lockwood, William Clark and Albert P. Condit, executors and trustees, John W. Taylor, of counsel with Oscar Keen, trustee, and Stevens and Ward, of counsel with Archer Gifford Plume, defendants.

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And it appearing to the court that by her last will and testament duly proved, Susan Plume, now deceased, provided among other things as follows:

All the rest and residue of my estate, both real and personal, not hereinafter disposed of and of which I shall die seized and possessed, I do dispose of as follows, viz:

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I give, bequeath and devise to my son Archer Gifford Plume the equal undivided five-sixteenth parts thereof, to have and to hold the same unto him, his heirs and assigns forever.

I give, bequeath and devise unto my daughter Mary Josephine, wife of Gershom Lockwood, the equal undivided five-sixteenth parts thereof, to have and to

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Exhibit B.

hold the same unto her, her heirs and assigns forever, and as to the remaining equal undivided six-sixteenth parts thereof I give, bequeath and devise the same unto the said Isaac Van Wagenen and Charles L. C. Gifford, and the survivor of them, to have and to hold the same upon and for the trusts, intents and purposes hereinafter mentioned and expressed of and concerning the same, that is to say, in trust that they and the survivor of them shall collect, take and receive the rents, issues and profits of said equal undivided six-sixteenths parts of the said rest and residue of my estate, and pay the same in equal yearly payments as follows, namely: one-third part of the said rents, issues and profits to my daughter Sarah Virginia, for her sole use and benefit during her natural life, and out of the remaining two-thirds parts thereof to pay towards the support and education of my grandson John I. Plume, son of my son Samuel W. Plume, a sum equivalent to the interest at six per cent. on two thousand dollars, and the remainder of said two-thirds of said rents, issues and profits to pay to my said son Samuel W., but if my said son Samuel W. should die before his said son John I. shall have attained the age of twenty-one years, leaving his said son him surviving, then to pay out of the said two-thirds of said rents, issues and profits towards the support and education of my said grandson in lieu of the sum hereinbefore directed to be paid a sum equivalent to the interest at six per cent. on four thousand dollars, the same to be paid him until he shall attain the age of twenty-one years, in equal half-yearly payments, and the remainder of said two-thirds of said rents, issues and profits, pay to my children Mary Josephine Lockwood, Sarah Virginia, and Archer Gifford Plume, in equal proportions, share and share alike.

And I do hereby authorize and empower the said Isaac Van Wagenen and Charles L. C. Gifford, and

Exhibit B.

the survivor of them, if at any time they or the survivor of them shall think it advisable so to do, to sell and convey, at such time or times, and at either public or private sale, and for such price or prices, as they or the survivor of them shall deem proper, in fee simple, or for any less estate, the whole or any part of the said equal undivided six-sixteenths parts of the said remainder of my estate, in this article of my last will given them in trust, and to make and execute good and sufficient conveyances in the law for the same, and the proceeds of such sale or sales safely and securely to invest and keep invested on Bond and Mortgage upon Real Estate in the City of Newark, which shall be free from all prior incumbrances, and worth at least double the amount invested thereon, except in cases where a mortgage may become necessary to secure in part the payment of purchase money, of any of the Real Estate, which may be sold by virtue of the power granted in this article of my last will and testament, and the interest arising from such investments, to pay in half yearly payments to my said daughter Sarah Virginia, my grandson John I. Plume, and my said son Samuel W. Plume, in the same manner and proportion in all and every respect as in this article of my last will is directed concerning the payments of the rents, issues and profits of said equal undivided sixteenths parts of the said residue of my estate so as aforesaid given in trust.

And I do further order and direct that, if my said daughter Sarah Virginia shall at the time of her death leave a child or children her surviving, that the said one-third part of the said rents, issues and profits of the said equal undivided six-sixteenths parts of my said estate, so held in trust as aforesaid, or if the same shall have been sold, then the one-third part of the interest arising from the proceeds of the sale thereof shall be paid towards the support and education of such child or children in equal proportions, until such

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Exhibit B.

child, or if more than one, the youngest of such children, shall attain the age of twenty-one years; and upon such child attaining said age, then the equal undivided one-third part of said equal undivided six-sixteenths parts of the said residue of my estate so given and held in trust as aforesaid, or the third part of the proceeds of said six-sixteenths parts of the same shall have been sold, shall be conveyed or paid
10 by said Isaac Van Wagenen and Charles L. C. Gifford, or the survivor of them to such child or children to be held by or divided between them share and share alike; but if my said daughter shall not leave any child or children her surviving, then the said one-third, or, if the same shall have been sold, the proceeds thereof, shall be conveyed or paid to my children Mary Josephine Lockwood, Samuel W. and Archer Gifford Plume, the same to be held or equally divided
20 between them share and share alike, and I do further order and direct that upon my said grandson John Plume attaining the age of twenty-one years, the said Isaac Van Wagenen and Charles L. C. Gifford or the survivor of them, shall pay to him out of the remaining two-thirds of said equal undivided six-sixteenths parts of said residue of my estate, so held by them, in trust, the sum of four thousand dollars, but if my said grandson shall not live to that age, then to pay the whole income arising from said two-thirds of said equal undivided six-sixteenths parts of said residue
30 of my estate to my said son Samuel W., and upon his death the said two-thirds, or, if the same shall have been sold, the proceeds thereof, to convey or pay to my three children Mary Josephine Lockwood, Sarah Virginia, and Archer Gifford Plume, the same to be held or equally divided between them share and share alike.

And it further appearing that the trustees in said will named declined to act as such and that Staats S. Morris was duly appointed as trustee under said will,
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Exhibit B.

in their place, and stead, and assumed the burthen of the administration of the trusts in said will contained.

And it further appearing that the trusts in said will named so far as they relate to and affect that portion of the residue in which Sarah Virginia Plume was interested are completed the said Sarah Virginia Plume having died and her share having been distributed, and that the four thousand dollars directed to be paid to John I. Plume has been paid, and that the only moneys left in the hands of the said Staats S. Morris at the date of the filing of the bill in this cause were that portion of the residue the income of which was by the said will directed to be paid to Samuel W. Plume during his lifetime. 10

And it further appearing that the said Staats S. Morris exhibited an account in this matter, by which it appeared that certain payments made by him as such trustee had been by him erroneously charged against the income of the said estate whereas they should have been charged against the *corpus* thereof. 20

And it further appearing that after exhibiting said account the said Staats S. Morris departed this life having first made his last will and testament in and by which he appointed Annie Revere Morris, Elsdon A. Morris and Charles L. Weeks as his executors, who duly qualified.

And that by an order of this court made on the thirtieth day of January, 1889, Oscar Keen was duly appointed trustee under the will of Susan Plume, deceased, in the place and stead of said Staats S. Morris, deceased. 30

And that by an order of this court made on the twelfth day of January, 1889, this cause was ordered to stand revived against the said executors of Staats S. Morris and said Oscar Keen.

And it further appearing, that the said executors of said Staats S. Morris have exhibited an amended 40

Exhibit B.

account in this matter by which the errors existing in the first account are corrected, and by which it appears that they received as executors of said Staats S. Morris in cash, bonds and mortgages or other security of principal of said trust estate, the sum of twenty-four thousand nine hundred and sixty dollars and twenty-eight cents, and of income the sum of three thousand seven hundred and six dollars and fifty-five cents, making in all the sum of twenty-eight thousand six hundred and sixty-six dollars and eighty-three cents, which sums they have transferred and paid over to said Oscar Keen, trustee, and that certain real estate belonging to said trust estate has been duly conveyed to said trustee, who now holds all of that portion of the residue of the estate of Susan Plume, deceased, the income of which is directed to be paid to said Samuel W. Plume for life.

And it further appearing that the said Oscar Keen, trustee, since entering upon his duties as such trustee has disposed of considerable unproductive real estate and is disposing of the remainder thereof as rapidly as the best interests of the trust estate will permit, so that no reason exists for considering that portion of the complainants bill which prays for an immediate sale of the real estate.

And it further appearing, that the said Staats S. Morris became in his life entitled to certain commissions upon the estate so held by him in trust, and that his executors are now entitled to said commissions as a part of his estate.

And all the answering defendants consenting to this decree, it is thereupon on this eighteenth day of January, eighteen hundred and ninety-two, by Alexander T. McGill, Chancellor of the State of New Jersey ordered, adjudged and decreed and the said Chancellor doth by virtue of the power and authority of this court, order, adjudge and decree,

1. That the moneys and other estate in the hands of the said Staats S. Morris at the date of the filing

Exhibit B.

of the bill in this cause and the moneys and estate now in the hands of Oscar Keen, trustee, are that portion of the residue of the estate of Susan Plume, deceased, the income of which was by the will of said Susan Plume directed to be paid to Samuel W. Plume during his lifetime.

2. That the amended account exhibited by the executors of said Staats S. Morris is in all respects correct and just and the same be allowed and confirmed. 10

3. That the said Oscar Keen, trustee as aforesaid, pay to the said Annie Kevere Morris, Elsdon A. Morris and Charles L. Weeks, executors of said Staats S. Morris, deceased, or to their solicitor out of the corpus of said trust estate the sum of two and one-half per centum on the corpus of said trust estate now in his hands, less any amount already received by said Morris in his lifetime as commissions on said corpus, in full payment of the commissions of said Staats S. Morris, trustee, upon said corpus; and out of the income of the said trust estate now in his hands the sum of five per centum in full payment of his commissions upon the income of the said estate which he received in his lifetime together with their taxed costs and that he pay to the complainant or his solicitors his taxed costs in this cause, together with a counsel fee of five hundred dollars, and to the defendant, Oscar Keen, trustee, or his solicitor, his taxed costs in this cause and a counsel fee of three hundred dollars, in addition to the sums heretofore paid him, and to the defendants, Gershom Lockwood, William Clark and Albert P. Condit, executors or their solicitors their taxed costs in this cause, together with a counsel fee of fifty dollars and to the defendant, Archer Gifford Plume, or his solicitor his taxed costs in this cause, said costs and counsel fees to be paid equally from the corpus and income of said estate, and that he pay to the said Samuel W. Plume, or his solicitors, the 20 30 40

Exhibit B.

balance of the income of the said estate remaining in his hands after said payments of commissions, costs and counsel fees, and that he continue to hold the corpus of said trust estate upon the trusts in said will mentioned and pay the net annual income arising therefrom to the said Samuel W. Plume during his lifetime; deducting from said income his commissions thereon at the rate of five per cent.

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4. That the said Oscar Keen, trustee, continue to sell the unproductive real estate now in his hands belonging to said trust estate as rapidly as the best interests of said trust estate will permit, and to invest the proceeds and apply the income thereof as in said will directed.

5. That said parties or either of them be at liberty to apply to this court for further directions if occasion shall require.

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ALEX T. MCGILL,

C.

Respectfully advised,

A. V. VAN FLEET,

V. C.

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I have examined the claim made by John W. Taylor, for services, rendered by him to me and to my predecessor in the trust, in this suit, and approve as reasonable and fair an allowance to him of three hundred dollars (\$300) in addition to the two hundred dollars already paid to him.

January 18, 1892.

OSCAR KEEN,

Trustee, &c.

A true copy.

ALLAN McDERMITT,

Clerk.

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Schedule C. omitted by consent.

Answer of A. Gifford Plume.

Answer of A. Gifford Plume.

Filed August 8, 1910.

IN CHANCERY OF NEW JERSEY.

Between

OSCAR KEEN, Trustee, etc.,

Complainant,

and

A GIFFORD PLUME, *et al.*,

Defendants.

On Bill, Etc.

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The Answer of A. Gifford Plume, to the Bill of Complaint of Oscar Keen, Trustee under the will of Susan Plume, deceased, complainant.

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This defendant to so much of said bill of complaint as he is advised is material for him to make answer unto, answering says that he admits that Susan Plume, late of the County of Essex, and the State of New Jersey, departed this life at or about the time in the first paragraph of said bill of complaint stated, resident in said County of Essex, leaving a last will and testament, as in said paragraph referred to, and probated and recorded as therein described, the seventeenth paragraph whereof read somewhat as is quoted in the second paragraph of said bill, but for greater certainty this defendant begs leave to refer not only to the second paragraph of said bill but to a certified copy of the whole of said will, in order that the court may, before construing said paragraph and concluding as to the rights of this defendant in so much of the residue of said estate as has not yet been disposed of, have the entire paper before it.

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He believes it to be true that the trustees in the seventeenth paragraph of said will named, declined

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Answer of A. Gifford Plume.

to act as such, and that one Staats S. Morris was duly appointed trustee under said will in their place and stead, who then duly took upon himself the burden of administering the trusts therein contained; that said Sarah Virginia Plume departed this life at or about the time in the third paragraph of said bill named, and that the trusts in said clause, so far as they relate to and affect that portion of the residue in which the said Sarah Virginia was interested, were long ago completed; that the said four thousand dollars by said clause directed to be paid to the said John I. Plume were long ago paid him, and that the only moneys left in the hands of the said Staats S. Morris, as trustee, were that portion of the residue of said estate, the income of which was by the said clause of said will directed to be paid to said Samuel W. Plume during his lifetime.

He admits that the said Staats S. Morris departed this life at or about the time in the fourth paragraph of said bill named, and that upon the petition of Susan W. Heiser and Harry D. Lockwood, the complainant, on or about the thirtieth of January, eighteen hundred and eighty-nine, was appointed trustee in the place and stead of the said Staats S. Morris, deceased, to execute the trusts still remaining unexecuted and mentioned and declared in and by the said last will and testament, and that the complainant, after having been so appointed, duly qualified by giving the required bond, and took upon himself the burden, and has ever since executed the trusts under said will. This defendant is unable to admit the allegations of the fifth paragraph of said bill, although he believes that they are in the main correctly set forth, but for greater certainty he calls upon the complainant to prove the same.

This defendant, for want of reliable information, except as he is advised by said bill, is ignorant of the exact facts in connection with the allegations of the sixth paragraph of said bill, and he calls for proof

Answer of A. Gifford Plume.

thereof, although he believes that the complainant has in all respects honorably and honestly performed the duties of his said office.

He admits that the said Samuel W. Plume, on or about the second day of November, nineteen hundred and nine, departed this life, and that it then and there became the duty of the complainant to distribute the moneys in his hands. This defendant is ignorant of what claims have been presented by or on behalf of other persons to the complainant as trustee, for distributive share in the funds in the complainant's hands as trustee. He shows, however, that as survivor of his sisters, Mary Josephine Lockwood and Sarah Virginia Plume, named in the seventeenth paragraph of said will, this defendant is entitled to such distributive share, and that no one of the claimants in said bill of complaint mentioned and set forth, other than this defendant, has any interest or right thereto, and that a proper construction of said seventeenth clause of said will requires a decree in this cause in accordance with this claim. 10 20

This defendant is ignorant of the matters and things set up in the eighth paragraph of said bill, further than the fact that he is a son of said Susan Plume; that he never married, and that he resides in said City of Newark, in the County of Essex, and that he calls upon the complainant to make such proof with regard to said allegations and the family history of the descendants of the said Susan Plume as he may be advised is material for the proper determination of this cause. 30

All which matters and things this defendant is ready to aver, maintain and prove, as this honorable court may direct, and he prays to be hence dismissed with his costs and charges in this behalf most wrongfully sustained.

MCCARTER & ENGLISH,
Solicitors for and of Counsel
with Defendant, A. Gifford Plume. 40

Answer of John I. Plume.

Answer of John I. Plume.

Filed June 30, 1910.

IN CHANCERY OF NEW JERSEY.

10	<i>Between</i> OSCAR KEEN, Trustee, etc., <i>Complainant,</i> <i>and</i> A. GIFFORD PLUME, <i>et al.</i> , <i>Defendants.</i>	}	<i>On Bill, etc.</i>
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20 The answer of John I. Plume, individually and as executor of the last will and testament of Samuel W. Plume, deceased, to the bill of complaint of Oscar Keen, trustee, appointed to execute the trusts mentioned and declared in and by the last will and testament of Susan Plume, deceased.

John I. Plume, individually and as executor of the last will and testament of Samuel W. Plume, deceased, answering the bill of complaint of Oscar Keen, trustee, etc., in the above entitled cause, for answer says:

30 1. This defendant admits that said Susan Plume died and that her will was duly probated, and set out in the first paragraph of said bill of complaint.

2. This defendant admits that the seventeenth paragraph of said will of Susan Plume was substantially in words and language as set out in said bill of complaint; but this defendant alleges that in many small particulars the words, language and punctuation of said last will and testament of Susan Plume
 40 is not precisely as set out in said bill of complaint.

Answer of John I. Plume.

And this defendant alleges that the disposition in said will of the six-sixteenths parts of the residue of the estate of Susan Plume given in said seventeenth paragraph of said will was in words, language and punctuation as follows:

And as to the remaining equal undivided six-sixteenths parts thereof—I give bequeath and devise the same unto the said Isaac Van Wagenen, and Charles L. C. Gifford and the survivor of them, to have and to hold the same upon and for the trusts, intents and purposes hereinafter mentioned and expressed of and concerning the same; that is to say. In trust, that they and the survivor of them, shall collect, take and receive, the rents issues and profits of said equal undivided six-sixteenths parts of said rest and residue of my estate, and pay the same in equal half yearly payments as follows.—Namely, one-third part of said rents issues and profits to my daughter Sarah Virginia, for her sole use and benefit during her natural life. And out of the remaining two-thirds parts thereof to pay towards the support and education of my grandson John I. Plume, son of my son Samuel W. Plume, a sum equivalent to the interest at six per cent on Two thousand dollars, and the remainder of said two-thirds of said rents, issues and profits to pay to my son Samuel W.

But if my said son Samuel W. should die, before his said son John I. shall have attained the age of twenty-one years, leaving his said son him surviving, then to pay out of said two-thirds of said rents issues and profits, towards the support and education of my said grandson, in lieu of the said sum hereinbefore directed to be paid, a sum equivalent to the interest at six per cent. on Four thousand dollars, the same to be paid him until he shall attain the age of twenty-one years, in equal half yearly payments, and the remainder of said

Answer of John I. Plume.

two-thirds of said rents issues and profits, pay to my children Mary Josephine Lockwood, Sarah Virginia and Archer Gifford Plume in equal proportions, share and share alike. * * *

10 And this defendant further alleges that said seventeenth paragraph of said will after giving said trustees power to sell and invest said share and after making provision for the disposition on the death of said Sarah Virginia of the one-third of said six sixteenths parts given to Sarah Virginia, said paragraph did further provide in words, language and punctuation as follows:

20 And, I do further order and direct, that upon my said grandson John I. Plume attaining the age of twenty-one years, the said Isaac Van Wagenen, and Charles L. C. Gifford or the survivor of them shall pay to him out of the remaining two-thirds of said equal undivided six-sixteenths parts of said residue of my estate, so by them held in trust, the sum of Four thousand dollars, but if my said grandson, shall not live to that age, then to pay the whole income arising from said two-thirds of said equal undivided six-sixteenths parts of said residue of my estate, to my said son Samuel W., and upon his death, the said two-thirds, or if the same shall have been sold, the proceeds thereof, to convey to, or pay to my three children Mary Josephine Lockwood, Sarah Virginia and Archer Gifford Plume, the same to be held, or equally divided between them share and share alike—

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And this defendant for greater certainty begs leave to refer to said last will and testament now on file in the office of the Registrar of the Prerogative Court of the State of New Jersey.

3. This defendant admits that the trustees named in said paragraph of said will declined to act, and that Staats S. Morris was appointed trustee in their place and stead, and that Sarah Virginia Plume died

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Answer of John I. Plume.

and the trusts relating to that portion of the residue in which she was interested were completed and that the sum of four thousand dollars was paid to this defendant, John I. Plume; and that the only moneys left in the hands of the said trustees were that portion of the residue, the income of which was directed to be paid to said Samuel W. Plume, as set out in the third paragraph of said bill of complaint.

4. This defendant admits that said Staats S. Morris died and that the complainant was appointed trustee in his stead and qualified as such, as set out in the fourth paragraph of said bill of complaint.

5. This defendant admits that a cause was pending in this court and a final decree made therein and that by said decree the accounts of said Staats S. Morris were allowed and confirmed and the complainant was directed to conduct the estate, as set out in the fifth paragraph of said bill of complaint; but this defendant alleges that he was not made a party defendant in said cause and was not bound by said final decree made therein, and that said decree did not affect any right, title or interest which this defendant had individually in or under said will of said Susan Plume, deceased.

6. This defendant admits that there remained a balance in the hands of the complainant and that said complainant has made sale of lands of said trust estate and paid over the income of said trust and held principal thereof, all as set out in the sixth paragraph of said bill of complaint; and this defendant consents to the account of said complainant as attached to said bill of complaint and made a part thereof as Schedule C.

7. This defendant admits that said Samuel W. Plume died and that the moneys in the hands of said complainant should be paid out and distributed to the person lawfully entitled thereto, and that this defend-

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Answer of John I. Plume.

ant attained the age of twenty-one years and there was paid to him said sum of four thousand dollars, all as set out in the seventh paragraph of said bill of complaint. And this defendant admits that various claims have been presented for distributive shares of the funds in the hands of said complainant as said trustee, as set out in said paragraph of said bill of complaint; but this defendant denies the correctness of the construction attempted to be placed on said will in said paragraph of said bill of complaint, and this defendant alleges that on a true construction of said will the entire funds in the hands of said complainant should be paid to this defendant.

8. This defendant admits that Susan Plume at the time of her death was a widow and left her surviving as heirs-at-law the persons mentioned in the eighth paragraph of said bill of complaint. And this defendant alleges that John V. Plume died intestate a resident of the State of California, about twenty years ago, leaving no lawful issue but this defendant denies that said John V. Plume lawfully adopted the defendant, Edward C. Plume, as set out in said eighth paragraph of said bill of complaint.

9. This defendant admits that Mary Josephine Lockwood died a resident of the County of Essex, leaving a last will and testament making disposition of her estate; and that John P. Lockwood, one of the devisees of said Mary Josephine Lockwood, died intestate, leaving Andrew Fletcher Lockwood as his sole heir-at-law, all as set out in the eighth paragraph of said bill of complaint.

10. This defendant admits that said Samuel W. Plume died on the second day of November, nineteen hundred and nine, a resident of the City of New Orleans, in the State of Louisiana, a widower, leaving this defendant, John I. Plume, as his sole issue; and this defendant admits that the said Samuel W. Plume

Answer of John I. Plume.

left a last will and testament on which judgment was entered confirming said last will and testament, all as set out in said eighth paragraph of said bill of complaint. And this defendant alleges that he is the only child and only heir-at-law and next of kin of said Samuel W. Plume and that under said last will and testament this defendant is entitled to the entire right, title and interest of said Samuel W. Plume under the will of said Susan Plume. 10

11. This defendant admits that the said A. Gifford Plume is unmarried, and that said Sarah Virginia Plume died intestate without issue; and this defendant alleges that said Sarah Virginia Plume was never lawfully married, as set out in said eighth paragraph of said bill of complaint.

12. This defendant admits that said Kate C. Plume was married and resides as set out in said eighth paragraph of said bill of complaint. 20

13. This defendant consents that the said last will and testament of Samuel W. Plume, deceased, be construed by this honorable court, and that the person to whom the moneys now remaining in the hands of said complainant should be distributed be ascertained and declared, and that directions be given to said complainant as to the payment and distribution of said moneys.

Wherefore this defendant prays that said complainant be directed to pay to this defendant all moneys remaining in the hands of said complainant under said trust, and that this defendant be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained. 30

GUILD & MARTIN,

Solicitors for and of Counsel with John I. Plume, individually and as Executor of Samuel W. Plume, deceased, defendant.

Answer of Henry Young, Jr., Adm'r.

Answer of Henry Young Jr., Adm'r, &c.

Filed January 19, 1911.

IN CHANCERY OF NEW JERSEY.

10	<i>Between</i> OSCAR KEEN as trustee, <i>Complainant,</i> <i>and</i> A. GIFFORD PLUME and others, <i>Defendants.</i>	}	<i>On Bill, &c.</i>
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20 The answer of Henry Young, Jr., as administrator of the estate of John V. Plume, deceased, to the bill of complaint of Oscar Keen, as trustee, under the will of Susan Plume, deceased :

30 (1) This defendant is informed and believes to be true the allegations set forth in paragraph (1) of said bill, with respect to the death of Susan Plume, and the probate of her will; but as to the substance and form of the said will, and of paragraph seventeen thereof, this defendant prays to refer thereto when the same, or a certified copy thereof, shall be produced.

(2) This defendant is further informed that complainant, as trustee under said will, has in his hands a certain fund, and that said fund should be distributed among those entitled thereto, and this defendant submits that as to such distribution the said Susan Plume died intestate.

40 (3) This defendant is further informed that said Susan Plume left as one of her heirs-at-law and next of kin, John V. Plume; that said John V. Plume has since died intestate; and this defendant says that on

Answer of Henry Young, Jr., Adm'r.

the eighteenth day of July, nineteen hundred and ten, the Surrogate of Essex County, New Jersey, granted administration on the estate of said John V. Plume, deceased, to this defendant, and that this defendant duly qualified as administrator of said estate, and has taken upon himself the burden of administration thereon.

(4) This defendant further answering says that 10
he is ignorant of the other matters and things set forth in said bill of complaint, except as he is informed by said bill, and he leaves complainant to make such proof thereof as he may deem advisable.

And this defendant is advised that he is entitled to one equal fifth part of said fund in complainant's hands as aforesaid, and he prays that a decree may be made establishing this defendant's right to the same, and awarding to him his costs and charges in 20
this behalf by him sustained.

YOUNG & BIGELOW,

Solicitors for Defendant.

Henry Young, Jr., Administrator, &c.

Answer of Edward C. Plume.

Filed January 19, 1911.

IN CHANCERY OF NEW JERSEY.

10	<i>Between</i> OSCAR KEEN as trustee, &c., <i>Complainant,</i> <i>and</i> A. GIFFORD PLUME and others, <i>Defendants.</i>	} <i>On Bill, &c.</i>
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20 The answer of Edward C. Plume, one of the defendants to the bill of complaint of Oscar Keen as trustee under the will of Susan Plume, deceased.

(1) This defendant answering admits that the allegations with respect to the death of Susan Plume and the probate of her will, are true; but as to the substance and form of the said will, and of paragraph seventeenth thereof, this defendant prays to refer thereto when the same, or a certified copy thereof, shall be produced.

30 (2) This defendant admits that the allegations contained in paragraphs three, four, five and six of said bill are true.

40 (3) Defendant further answering says that he admits the allegation contained in the seventh paragraph of said bill as to the death of Samuel W. Plume, and as to the coming of age of John I. Plume, and the payment to him of four thousand dollars, and that the moneys in the hands of complainant should be distributed to the persons entitled thereto, but defendant has no knowledge or information as to the claims that have been presented to complainant for the distribu-

tive shares in the fund in complainant's hands, except that this defendant says that the said Susan Plume died intestate as to the final distribution of the moneys now in the hands of complainant, and that the defendant, Henry Young, Jr., as administrator of the estate of John V. Plume, deceased, is entitled to one equal fifth part thereof, and this defendant prays that a decree may be made accordingly.

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(4) This defendant admits the allegation contained in paragraph eight of said bill with respect to the heirs-at-law and next of kin of said Susan Plume; and this defendant further says that John V. Plume died at Oakland, in the State of California, on the twenty-sixth day of April, eighteen hundred and eighty-four, and not as stated in said bill; that said John V. Plume died intestate; that on the eighteenth day of July, nineteen hundred and ten, the Surrogate of Essex County, New Jersey, granted administration on the estate of said John V. Plume, deceased, to the defendant, Henry Young, Jr., and that said defendant duly qualified as administrator of said estate and has taken upon himself the burden of administration thereon; that said John V. Plume many years ago, entered into a contract of matrimony with one Marion Alethia Huguenin, and defendant denies that at the time of the said marriage the said Marion Alethia Huguenin had a husband from whom she had never been divorced, still living. This defendant further says that the said John V. Plume left him surviving as his only heir-at-law and next of kin, his widow, the said Marion Alethia Huguenin Plume, a daughter, Marion H. Plume, and his son, this defendant. That the said Marion Alethia Huguenin Plume, widow of John V. Plume, died on the seventh day of February, eighteen hundred and ninety-one, intestate; that the said Marion H. Plume, daughter of said John V. Plume, first intermarried with one John H. Stone and not Dudley Stone, as named in

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Answer of Edward C. Plume.

10 said bill, and after his decease again intermarried with one George Wallace. This defendant admits that said second husband of the said Marion H. Plume predeceased Marion H. Plume. This defendant further says that the said Marion H. Plume died on the twenty-ninth day of November, nineteen hundred, in the City of San Francisco, in the State of California, intestate, leaving as her only heir-at-law and next of kin, her brother, this defendant. And this defendant further says that he is the true son of John V. Plume, and not a son by adoption.

20 (5) This defendant further answering says that he believes the allegations contained in paragraph eight of said bill of complaint with respect to Mary Josephine Lockwood, her children and grand-children, and with respect to Samuel W. Plume and John I. Plume, his son; with respect to A. Gifford Plume and with respect to Sarah Virginia Plume, are true; but leaves complainant to make such proof of the same as he may deem advisable.

30 (6) This defendant further says that by the death of said Sarah Virginia Plume, intestate, the defendant Henry Young, Jr., as administrator of John V. Plume, deceased, has acquired a one-fifth interest in any share of said fund in complainant's hands to which said Sarah Virginia Plume would be entitled if she were now living. And defendant admits that Kate C. Plume, granddaughter of the said testatrix, intermarried with one Henry B. Underhill, and now resides with her husband in the City of San Francisco in the State of California.

This defendant submits himself to the jurisdiction of this court and prays that his rights may be protected, and that the costs and charges in this behalf sustained may be awarded to him.

40 YOUNG & BIGELOW,
Solicitors for Defendant,
Edward C. Plume.

Answer of Harry D. Lockwood, et al.

Answer of Harry D. Lockwood, et al.

Filed December 1, 1910.

IN CHANCERY OF NEW JERSEY.

Between

OSCAR KEEN, Trustee under the
will of Susan Plume, deceased,

Complainant, } *On Bill, etc.*

and

A. GIFFORD PLUME, *et al.*,

Defendants.

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The answer of Harry Duryee Lockwood, Susan W. Heiser, Alice Lockwood Olmstead, George G. Lockwood and Andrew Fletcher Lockwood, defendants to the bill of complaint of Oscar Keen, trustee, appointed to execute the trusts mentioned and declared in and by the last will and testament of Susan Plume, deceased.

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These defendants answering the bill of complaint of the complainant in the above entitled cause, for answer say:

1. These defendants admit that Susan Plume, late of the County of Essex, in the State of New Jersey, departed this life on or about the nineteenth day of January, eighteen hundred and sixty-four, resident of the said County of Essex, leaving a last will and testament bearing date the twelfth day of December, eighteen hundred and sixty-two, and duly probated before the Surrogate of the County of Essex, on or about the twenty-fifth day of March, eighteen hundred and sixty-four, and recorded in the office of the Surrogate of the said County of Essex, in Book N of Wills for said

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Answer of Harry D. Lockwood, et al.

County, on page 384, as in paragraph numbered 1 of the said bill of complaint set forth.

10 2. These defendants admit that paragraph seven-
teenth of the said last will and testament of the said
Susan Plume, deceased, is substantially as set out in
paragraph numbered 2 of the complainant's bill of
complaint but as to the exact form of the said para-
graph these defendants beg leave to refer to the origi-
nal will on file in the office of the Secretary of State
of the State of New Jersey, or a duly authenticated
copy thereof to be produced by the said complainant,
for greater certainty as to the form and contents
thereof.

20 3. These defendants admit that the trustees in
said paragraph of said will named declined to act as
such and that one Staats S. Morris was duly appointed
trustee under said will in their place and stead, and
duly took upon himself the burden of administration
of the trusts therein contained; that Sarah Virginia
Plume, named in said clause, departed this life in or
about the year eighteen hundred and sixty-seven, and
that the trusts in said clause, so far as they relate to
and affect that portion of the residue in which the said
Sarah Virginia Plume is interested, were long ago com-
pleted and her share distributed, that the four thous-
and dollars directed to be paid to John I. Plume by
said clause was long ago paid, and that the only
30 moneys left in the hands of said Staats S. Morris as
trustee were that portion of the residue, the income of
which was, by the clause of the said will, directed to
be paid to Samuel W. Plume, during his life time, as
in paragraph numbered 3 of the said bill of complaint
set forth.

40 4. These defendants admit that the said Staats S.
Morris departed this life on or about the twenty-sixth
day of October, eighteen hundred and eighty-eight, and
that thereafter, by an order made on the petition of
these defendants, Susan W. Heiser and Harry D.

Lockwood for the appointment of a trustee under the last will and testament of Susan Plume, deceased, in the room and stead of the said Staats S. Morris, deceased, the complaint was, on or about the thirtieth day of January, eighteen hundred an eighty-nine, appointed trustee in the room and stead of the said Staats S. Morris, to execute the trusts mentioned and declared in and by the last will and testament of Susan Plume, deceased, and all the rights, powers, privileges and duties incident to such appointment. These defendants believe that the copy of the order appointing the complainant as such trustee, appended to the bill of complaint as Exhibit A, is a true copy of such order, but leave the complainant to make such proof thereof as he may be able and be advised to do and these defendants admit that after being so appointed the complainant duly qualified as such trustee by giving bond pursuant to the order of his appointment, and took upon himself the burden of administering the trusts under the said will.

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5. These defendants admit that at the time of the appointment of the complainant as trustee as aforesaid, the cause more particularly mentioned in paragraph numbered 5 of the bill of complaint was pending in this court, and are informed and believe that the complainant was, after his said appointment, made a defendant to said cause and that thereafter and on or about the eighteenth day of January, eighteen hundred and ninety-two, a final decree was made therein, and these defendants believe that the copy of the said final decree annexed to the bill of complaint as Exhibit B, is a true copy thereof, but as to contents and effect of the said decree these defendants pray leave to refer to the same or a duly authenticated copy thereof when the same shall be produced and proved by the complainant herein.

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6. These defendants admit that the complainant has complied with the directions of the said decree,

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making the payments thereby directed, and that after such payments had been made there remained in his hands a balance of principal estate to the amount of twenty-four thousand and twenty dollars and forty-eight cents (\$24,020.48) and that the complainant thereafter, from time to time, sold the lands of the said trust estate as directed by said decree and as re-
10 quired converted all of said lands into cash; that the complainant has, in compliance with the terms of the said decree from time to time paid over the income of the said trust estate and has continued to hold the principal thereof and is ready to account to this court in this proceeding both as to the matters of principal and income as the court may direct.

7. These complainants admit that Samuel W. Plume, in the said bill of complaint mentioned, departed this life on or about the second day of Novem-
20 ber, nineteen hundred and nine, resident of the City of New Orleans in the State of Louisiana, and that the moneys in the hands of the complainant as trustee as aforesaid should, on the death of the said Samuel W. Plume, be distributed to the persons entitled there- to either under the will of the said Susan Plume, if by said will such distribution be directed, and, if not, to such persons as may by law be entitled thereto; and these defendants admit that various claims have been presented to said complainant as trustee as aforesaid
30 for distributive shares in the said fund. And these defendants further answering admit that John I. Plume, grandson of the said Susan Plume, has attained the age of twenty-one years and that there has been paid to him the sum of four thousand dollars (\$4,000) as directed by the said seventeenth clause of the said will of said Susan Plume, deceased; and these defendants submit and respectfully insist that under and pursuant to said terms of said clause and the said
40 will they, as devisees and legatees under the last will and testament of Mary Josephine Lockwood, deceased,

as hereinafter more particularly set forth, are entitled to the equal undivided one-half part of the said fund so as aforesaid in the hands of the complainant, or, that if that be not the proper construction of the said clause of the said will, the said Susan Plume died intestate so far as said fund is concerned and that these defendants, as legatees and devisees as aforesaid, are entitled to an equal undivided one-fourth part of the fund, and that any other or contrary construction of the said will of the said Susan Plume, deceased, or any other claims inconsistent with the claims of these defendants as aforesaid, are not valid in law or equity.

8. These defendants admit that the said Susan Plume, at the date of her death on or about the nineteenth day of January, eighteen hundred and sixty-four, was a widow and left her surviving as heirs-at-law and next of kin, John V. Plume, a son; Mary Josephine Lockwood, a daughter; Samuel W. Plume, a son; A. Gifford Plume, a son; Sarah Virginia Plume, a daughter; and Kate C. Plume, a granddaughter, child of George W. Plume, a deceased son; that the said Mary Josephine Lockwood died resident in the said County of Essex, on or about the nineteenth day of December, eighteen hundred and eighty, leaving a last will and testament bearing date the twentieth day of August, eighteen hundred and seventy-eight, which was duly probated before the Surrogate of the County of Essex on or about the twenty-seventh day of January, eighteen hundred and eighty-one, and recorded in Book X of Wills for Essex County, page 282; that in and by said last will and testament the said Mary J. Lockwood did give, devise and bequeath all the rest, residue and remainder of her estate to her children, Susan W. Lockwood, John P. Lockwood and Harry D. Lockwood, each one-fourth part thereof and the remaining one-fourth part thereof to her grandchildren, George G. Lockwood and Alice Lockwood, children of her son, George P. Lockwood; that Gersham Lockwood, William Clark and Albert P. Con-

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Answer of Harry D. Lockwood, et al.

dict, the executors named in said will, have all since departed this life—the said Gersham Lockwood who was the husband of the said testatrix, having died on or about the eighteenth day of December, eighteen hundred and ninety-three; that Susan W. Lockwood, one of the children of Mary J. Lockwood and one of these defendants, intermarried with one Edward Heiser, who died before the filing of the said bill of complaint, and now resides in the City of Newark in this State; that John P. Lockwood intermarried with one Isabelle Fletcher, who subsequently procured a divorce from him; that the said John P. Lockwood by his said marriage with the said Isabelle Fletcher, had one son, Andrew Fletcher Lockwood, one of these defendants, who now resides in the City of New York; that the said John P. Lockwood departed this life resident in the State of New York intestate, in the month of December, eighteen hundred and ninety-seven; that Harry D. Lockwood, one of these defendants, resides in the Borough of Brooklyn, in the City and State of New York; that Alice Lockwood, granddaughter of the said Mary J. Lockwood, one of these defendants, intermarried with one Ernest Olmsted, and now resides at Des Moines, in the State of Iowa, and that George G. Lockwood, grandson of the said Mary J. Lockwood and one of these defendants, now resides in the State of Rhode Island, all as in and by paragraph numbered 8 of the bill of complaint set forth.

9. These defendants further answering say that the said Sarah Virginia Plume, daughter of the said testatrix, Susan Plume, died on or about the eleventh day of May, eighteen hundred and sixty-six, intestate, and without any lawful husband or child or children her surviving, and these defendants submit and respectfully insist that by reason thereof they have acquired an equal undivided one-half interest in the share of the fund in the hands of the complainant as

Answer of Harry D. Lockwood, et al.

aforesaid, under and pursuant to the directions contained in the seventeenth paragraph of the said will of the said Susan Plume, deceased.

10. These defendants further answering say that the said John V. Plume, the son of the said testatrix, died some four years ago at Oakland in the State of California, and these defendants are informed and believe, and therefore charge it to be true, that the said John V. Plume died intestate, without leaving him surviving any lawful widow, or child or children, or without having legally adopted the said Edward C. Plume in the said bill of complaint more particularly mentioned, or any other child or children, and that by reason thereof and of the death of the said Sarah Virginia Plume, and without leaving her surviving any lawful husband or child or children, as aforesaid, these defendants are entitled to an equal undivided one-fourth part of the said fund in the hands of the said complainant as aforesaid, if it shall be determined that the said Susan Plume died intestate as to that portion of her said estate. 10 20

These defendants further answering say that they have no knowledge of the other matters and things in the said paragraph numbered 8 of the said bill of complaint more particularly set forth, other than as hereinbefore set forth, and neither admit nor deny the same, but leave the complainant to make such proof thereof as he may be able and be advised to do.

And these defendants join in the prayer of the said complainant that the will of the said Susan Plume, deceased, may be construed in the respects aforesaid, and pray that a decree may be made establishing the rights of these defendants to the equal undivided one-half part or the equal undivided one-fourth part of the said fund as the case may be, and awarding to them their costs and charges in this behalf by them sustained. 30

LINDABURY, DEPUE & FAULKS,

Solicitors for and of Counsel
with said Defendants. 40

Replication.

Replication.

Filed January 21, 1911.

IN CHANCERY OF NEW JERSEY.

10	<i>Between</i> OSCAR KEEN, trustee, &c., <i>Complainant,</i> <i>and</i> A. GIFFORD PLUME and others, <i>Defendants.</i>	}	<i>On Bill, &c.</i>
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20 The replication of the complainant to the answers of A. GIFFORD PLUME, SUSAN W. HEISER, ANDREW FLETCHER LOCKWOOD, HARRY D. LOCKWOOD, ALICE LOCKWOOD OLMSTEAD, GEORGE C. LOCKWOOD, JOHN I. PLUME individually and as executor of the last will and testament of Samuel W. Plume, deceased, EDWARD C. PLUME and HENRY YOUNG, JR., administrator of John V. Plume, deceased.

The complainant joins issue on the answers of the above named defendants.

PITNEY, HARDIN & SKINNER,
Solicitors for Complainant.

30 We consent to filing the above replication as of time.

McCARTER & ENGLISH,
Solicitors for A. Gifford Plume.

LINDABURY, DEPUE & FAULKS,
Solicitors for Susan W. Heiser and Others.

GUILD & MARTIN,
Solicitors for John I. Plume.

YOUNG & BIGELOW,
*Solicitors for Edward C. Plume
and Henry Young, Jr.*

Answer of Littleton Kirkpatrick, Adm'r.

Answer of Littleton Kirkpatrick, Ad'm, &c

Filed October 27, 1911.

IN CHANCERY OF NEW JERSEY.

Between

OSCAR KEEN, as trustee, &c.,

Complainant,

and

A. GIFFORD PLUME and others,

Defendants.

On Bill, &c.

10

The answer of Littleton Kirkpatrick, as administrator of the estate of Marion P. Wallace, deceased, to the bill of complaint of Oscar Keen, as trustee, under the will of Susan Plume, deceased.

20

(1) This defendant is informed and believes to be true the allegations set forth in paragraph one of said bill with respect to the death of Susan Plume and the probate of her will, but as to the substance and form of the said will, and of paragraph seventeen thereof, this defendant prays to refer thereto whether the same or a certified copy thereof shall be produced.

(2) This defendant is further informed that complainant as trustee under said will, has in his hands a certain fund, and that said fund should be distributed among those entitled thereto, and this defendant submits that as to such distribution the said Susan Plume died intestate.

30

(3) This defendant is further informed that said Susan Plume left as one of her heirs-at-law and next of kin John V. Plume; that said John V. Plume died intestate, and leaving as his only heirs-at-law the defendant, Edward C. Plume, and said Marion P.

40

Answer of Littleton Kirkpatrick, Adm'r.

Wallace; that said Marion P. Wallace has since died intestate, and this defendant says that on the twenty-seventh day of October, nineteen hundred and eleven, the Surrogate of Essex County, New Jersey, granted administration on the estate of said Marion P. Wallace, deceased, to this defendant, and that this defendant duly qualified as administrator of said estate and has taken upon himself the burden of administration thereon.

(4) This defendant further says that he is informed that the whole of the funds now in complainant's hands, is the proceeds of the sale of real estate owned by said Susan Plume at the time of her death; that a large part of said real estate remained unsold at the time of the death of John V. Plume, whereupon his interest therein descended to his said heirs-at-law; that all of said real estate was sold and converted into personalty before the death of said Marion P. Wallace, and this defendant says that he is entitled to such part of said fund in complainant's hands as aforesaid, as represents the interest in real estate which said Marion P. Wallace, deceased, so inherited from said John V. Plume, deceased; and this defendant prays that a decree may be made accordingly.

(5) This defendant further answering says that he is ignorant of the other matters and things set forth in said bill of complaint, except as he is informed by said bill, and he leaves complainant to make such proof thereof as he may deem advisable.

This defendant submits himself to the jurisdiction of this court, and prays that his rights may be protected, and that his costs and charges in this behalf sustained may be awarded to him.

YOUNG & BIGELOW,

*Solicitors for Defendant,
Littleton Kirkpatrick, Administrator, &c.*

Answer of Jay Ten Eyck, Adm'r.

Answer of Jay Ten Eyck, Admr., Etc.

Filed by consent December 2, 1911.

IN CHANCERY OF NEW JERSEY.

<i>Between</i> OSCAR KEEN, Trustee, etc. <i>Complainant,</i> <i>and</i> A. GIFFORD PLUME, and others, <i>Defendants.</i>	<i>On Bill, etc.</i> <i>Answer of</i> <i>Jay Ten Eyck,</i> <i>Administrator,</i> <i>ad. pros. of</i> <i>Susan Vir-</i> <i>ginia (Plume</i> <i>Tugman,</i> <i>deceased.</i> 10
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The answer of Jay Ten Eyck, administrator ad
prosequendum of Susan Virginia (Plume) Tugman,
defendant to the bill of complaint of Oscar Keen,
trustee under the will of Susan Plume, deceased.

20

This defendant, answering the bill of complaint in
the above entitled cause for answer, says:

1. This defendant is informed and believes to be
true, the facts set forth in paragraph one, of said bill
respecting the death of Susan Plume, and the pro-
bate of her will, and also that her will is correctly
stated and set forth in paragraph two of said bill.

30

2. This defendant is informed and believes that the
complainant was appointed trustee to complete the
trusts established by said will, and now has in his
hands certain funds as stated in said bill, which are
now payable to such persons as are entitled thereto,
either as legatees or devisees thereof under said will,
or in case it shall be determined by this court that by
reason of the fact that John I. Plume did not die

40

under the age of twenty-one years, said Susan Plume died intestate as to that portion of her estate, represented by said funds, then the same are payable to the heirs at law or next of kin of said Susan Plume, or their representatives.

10 3. And this defendant says that in case this court shall determine that upon a proper construction of her will, said Susan Plume did not die intestate as to said portion of her estate, but that the same was bequeathed or devised by her, after the death of Samuel W. Plume, to her three children, Mary J. Lockwood, Susan Virginia Plume and Archer Gifford Plume, then, and in such case, the tile to said portion of her estate vested in the three last named persons immediately upon the death of said testatrix as tenants in common and not as joint tenants, subject to the discretionary power of sale given to her trustee under
20 said will; and that in such case, the estate of said Susan Virginia (Plume) Tugman is now entitled to an equal undivided one-third part of said funds; and that if this court shall determine that the same should be considered, for purposes of distribution, as personalty, in which character said funds are now held by said trustee, then this defendant, as her administrator, is entitled to be paid such share.

30 4. And this defendant further says, that if it shall be determined by the court that upon proper construction of the will of said Susan Plume the said testatrix died intestate as to said portion of her estate, by reason of the fact that said John I. Plume did not die before attaining the age of twenty-one years, then, and in such case, the said Susan Virginia (Plume) Tugman, became seized and entitled as one of the heirs at law or next of kin of said Susan Plume, to an undivided interest in said portion of said estate, equal in
40 amount with the interests of the other children and heirs at law, or next of kin of said Susan Plume, or

their representatives; and that if this court shall determine that said interest or share of said Susan Virginia (Plume) Tugman, should now be considered for purposes of distribution or personalty, this defendant, as her administrator, is entitled to be paid such share.

5. This defendant has no knowledge as to what persons were the heirs and next of kin of said Susan Plume at the time of her decease, or what persons now represent such of them as may now be deceased, and leaves the complainant to make proof thereof. 10

And this defendant prays that the complainant may be ordered to pay to this defendant such portion of said funds now in the hands of the complainant, as the court may determine upon a proper construction of the will of said Susan Plume, deceased, and upon consideration of the proofs offered that this defendant is entitled to, and that he may be paid his costs of suit in this behalf incurred. 20

JAY TEN EYCK,

Admins. *ad pros.* of Susan V. (Plume) Tugman, dec'd,
Solicitor *pro se.*

Decree Pro Confesso.

Decree Pro Confesso.

Filed December 28, 1910.

IN CHANCERY OF NEW JERSEY.

	<i>Between</i>	}	<i>On Bill, etc.</i>
	OSCAR KEEN, as trustee, &c.,		
	<i>Complainant,</i>		
10	<i>and</i>		
	A. GIFFORD PLUME and others,		
	<i>Defendants.</i>		

This cause being opened to the court by Pitney, Hardin & Skinner, solicitors for the complainant, and it appearing that process of subpoena for the defendants to appear and answer has been duly issued and return not found as to Kate C. Underhill, defendant, and that due notice of the order of this court, made
 20 on the nineteenth day of April last past, directing the defendants, Kate C. Underhill and others to appear, plead, answer or demur on or before the twentieth day of June then next, has been duly published and also mailed to the said defendant, Kate C. Underhill, in the manner and as in the said order directed and prescribed; and that the said defendant, Kate C. Underhill has not appeared and pleaded, answered or demurred to the said bill within the time limited by law and the said order, or at any other time, but
 30 that she wholly failed and neglected so to do:

It is thereupon on this twenty-eighth day of December, nineteen hundred and ten, on motion of Pitney, Hardin & Skinner, solicitors for the said complainant, ORDERED and DECREED that the complainant's bill be and the same hereby is taken as confessed against the said defendant, Kate C. Underhill, to the end that such decree may be made against her as the Chancellor shall think equitable and just.

MAHLON PITNEY,

C.

Frank Transue, direct.

June 27, 1911.

IN CHANCERY OF NEW JERSEY.

Between

OSCAR KEEN, Trustee, &c.,

Complainant,

and

A. GIFFORD PLUME, and others,

Defendants.

10

Transcript of shorthand notes of testimony taken in above entitled cause, on June 27, 1911, at Chancery Chambers, Newark, N. J., before Hon. James E. Howell, Vice-Chancellor.

APPEARANCES.

20

Messrs. Pitney, Hardin & Skinner, for complainant.

Messrs. Guild & Martin, for defendant, John I. Plume.

Messrs. Lindabury, Depue & Faulks, for Harry Duryea Lockwood, Susan W. Heiser, Alice Lockwood Olmsted, George G. Lockwood and Andrew Fletcher Lockwood.

Messrs. McCarter & English, for defendant A. Gifford Plume.

30

Messrs. Young & Bigelow, for Henry Young, Jr., administrator of estate of John V. Plume, deceased, and Edward C. Plume.

FRANK TRANSUE, sworn.

Direct examination by Mr. Hardin.

Q Are you connected with the office of Secretary of State of New Jersey?

A Yes, I am.

40

Frank Transue, direct.

Q And that is the office in which original wills are locked?

A Yes, sir.

Q Have you produced from the office of the Secretary of State the original will of Susan Plume?

A I have; yes.

10 *Mr. Hardin.* I would offer that original will with the proofs attached. I suppose it cannot be marked, and we can marked certified copy.

Certified copy marked Exhibit C. 1.

Mr. Hardin. I offer a true copy of the final decree in the cause in Chancery of New Jersey, in which Samuel W. Plume is complainant, and Staats S. Morris and others, defendants, being the decree referred to in the bill of complaint and which affects the fund as it came to the present trustee.

20 Marked Exhibit C. 2.

I offer certified copy of the order appointing the present trustee.

Marked Exhibit C. 3.

30 I have here three deeds which are quit claim deeds tending to confirm the title of the former trustee and the present trustee. I do not myself think they are of much importance, but I have been asked to offer them; deed from Archer Gifford Plume, Mary Josephine Lockwood and Gershon Lockwood to Staats S. Morris, trustee for John I. Plume and Samuel W. Plume, dated June 18, 1879, and recorded in the Register's office of Essex County in book L. 20 of deeds, page 56. A quit claim deed from A. Gifford Plume to Staats S. Morris, trustee of Samuel W. Plume, dated March 3, 1885, recorded in the Register's office of the County of Essex in Book P. 22 of Deeds, page 318. Quit claim deed and bargain and sale deed from Elsdon A. Morris, eldest son of Staats S. Morris, deceased, and Harriet his wife, to Oscar

40

Harry D. Lockwood, direct.

Keen, trustee, under the will of Susan Plume, deceased, dated March 29, 1889, and recorded in the office of the Register of Essex County in book U. 24 of deeds, page 219. The recital at the end of the deed stating as follows: "The four tracts above described are real estate of which Staats S. Morris died seized, as trustee, under the will of Susan Plume, deceased, and this conveyance is made in pursuance of an order of the Court of Chancery appointing the said Oscar Keen, trustee, and directing the heir at law of the said Staats S. Morris, deceased, to convey to said trustee the real estate belonging to said Plume estate, vesting in the said Staats S. Morris at the time of his death." 10

Marked Exhibits C. 4, C. 5, and C. 6.

I offer certified copy of the will of Mary Josephine Lockwood, that will being dated August 20, 1878. 20

Marked Exhibit C. 7.

I offer an exemplified copy of the will of Samuel W. Plume.

Marked Exhibit C. 8.

And a certificate of the Surrogate of Essex County of the appointment of Henry Young, Jr., as administrator of John V. Plume, deceased.

Marked Exhibit C. 9.

30

HARRY D. LOCKWOOD, sworn.

Direct examination by Mr. Hardin.

Q Where do you reside?

A In the Borough of Manhattan; I have recently moved from Brooklyn; you have it, in reading your papers here a few moments ago; you had it Harry D. Lockwood, of Brooklyn. I have recently moved back to Manhattan; my residence is on Riverside Drive.

40

Harry D. Lockwood, direct.

Q How old are you?

A 52.

Q Were you related to Susan Plume?

A Grandson, sir.

Q What was your mother's name?

A Mary Josephine.

Q And she married?

A Married Gershom Lockwood, my father.

10 Q Are you familiar with the family genealogy?

A Well, I should have to refer to the old Bible, sir, to answer any questions.

Q You have the family bible in your possession?

A Yes, they have been in my possession for a number of years.

Q I show you a book, endorsed "Holy Bible" with "I. Plume, Newark," on the outside. Have you seen that book before?

A I have.

20 Q What is it?

A It is an old Bible that was in the possession, as far as I know, of my mother for many years. At her death it came in the possession of my sister.

Q Who was your sister?

A Susan Winter Lockwood, married name Mrs. Heiser, Edward S. Heiser.

Q She is in court?

A She is in the room, sir; and I should say that these Bibles have been in my possession—

30 Q Speak of this one, please, at present.

A All right; this one, probably fourteen years, thereabouts; I cannot say exactly.

Q Does that Bible contain a record of the births and deaths and marriages in the family of Susan Plume?

A Yes.

Q Will you turn to it, please? Will you tell us when Susan Plume was born?

40 A On the 12th day of June, 1791.

Harry D. Lockwood, direct.

Q What was her maiden name, does that appear there?

A Susan Winter.

Q Whom did she marry?

A John I. Plume.

Q When was John I. Plume born?

A According to these records, on the 16th day of March, 1786.

Q And when did he die?

10

A He died on March 4, 1854.

Q Is the date of the wedding there?

A Married ninth of September, 1813.

Q When did Susan Plume die?

A January 17; I don't see the date here, but I can tell you, January 17, I can tell you about the date approximately, because it was somewhere around 1862, because I know I was a very small child; I can't say that is positively the date, the year, but it is somewhere in that neighborhood. 20

Q '65 there, isn't it?

A Well, '65, I didn't know exactly, but I know I was a very small child.

Q It even gives the hour, doesn't it?

A Yes, I can see that, and it was in my father's home where she died.

Q You personally remember her?

A Well, indistinctly, yes, but I was a very small child when she died, very small, little bit of a tot. 30

Q Who was the oldest child of Susan and John Plume?

A It is here John Fisher, their first son.

Q When was he born?

A 31st of July, 1814.

Q Does it appear there when he married, or whether he married?

A It does not say, sir; it does not say here.

Q Is there any other entry on that or any other page about it? 40

Harry D. Lockwood, direct.

A Yes; here it is; John Fisher Plume married Marion something or other Alethia Hugenin, February 8, 1849.

Q And does it appear whether they had children?

A John V. Plume, issue; first, Joseph Winter Plume, born 1849, died July, 1850; second, Marion Hugenin, born 1851, November 26; third, Tululah Georgia, born July 2, 1853, and died July 4, 1853.

Q Is there any entry of the death of Marion Hugenin?

A Not that I know of, sir.

Q And is that all you find in that family Bible, with reference to John Fisher Plume?

A Yes.

Q Now, who was the next child of Susan Plume and John I. Plume?

A Ann Maria Plume.

Q Whom did she marry?

A William Donaldson Kinney.

Q When?

A August 20, 1851.

Q When was Annie Maria born?

A Ann Maria was born 6th of March, 1816.

Q And when did she die?

A Died New York, July 24, 1856.

Q Do you find any entry in the Bible of issue of Mrs. Kinney?

A No, sir.

Q Who was the next child of Susan W. Plume and John I. Plume?

A Joseph Winter Plume.

Q When was he born?

A Born November 26, 1817.

Q And when did he die?

A Died December 16, 1840.

Q Does the records show where?

A Yes; at Fort Smith, Arkansas.

Q Does the record show that he was married?

Harry D. Lockwood, direct.

A No, sir.

Q Who was the next child of Susan W. Plume and John I. Plume?

A Barent Bleecker Plume, born December 9, 1819.

Q And died?

A On the 29th of July, 1820.

Q Who was the next child of Susan W. and John I.?

10

A William Bleecker Plume, born July 29, 1821.

Q When did he die?

A On the 13th of August, 1847.

Q The record shows where, doesn't it?

A Yes; down in New Orleans.

Q Was he married, so far as the record shows?

A No, sir.

Q Who was the next child of Susan W. and John I.?

A Mary Josephine Plume.

20

Q That was your mother?

A That was my mother.

Q When was she born?

A December 15, 1823.

Q And whom did she marry?

A Gershom Lockwood.

Q Does the record show when he was born?

A No, sir; my father was born March 3, 1819.

Q Now, when were your father and mother married?

30

A On February 26, 1846.

Q When did your father die?

A My father died December 11, 1893.

Q And when did your mother die?

A My mother died December 19, 1880.

Q We will leave the Lockwood family for the present and go on with the other children of Susan W. and John I. Who was the next child of Susan W. Plume and John I. Plume?

A George Washington Plume, born January 25, 1826, died August 26, 1827. 40

Harry D. Lockwood, direct.

Q Who was the next child of Susan W. and John I. Plume?

A George Winter Plume, born February 19, 1828, died March 2, 1857.

Q Was he married?

A Yes, sir.

Q Whom did he marry?

10 A He married Kate Clement.

Q When?

A On March 3, 1853, in California.

Q And was there issue of that marriage?

A Yes, sir.

Q What was the name of the child?

A Kate Clement.

Q And Kate, when was she born?

A December 27, 1853.

Q Is she still living?

20 A She is.

Q And is the wife of?

A Of Henry B. Underhill.

Q And lives in?

A California, San Francisco.

Q Who is the next child of Susan W. Plume and John I. Plume?

A Samuel Winter Plume.

Q When was he born?

30 A Born April 15, 1830.

Q His death does not appear in this record?

A No, sir, I haven't put it in.

Q Do you know when he died?

A Well, I should say it was a year ago last November.

Q November 2, 1909?

A Yes.

Q Was he married?

A Yes, as far as I know.

40 Q You have got your record there before you?

Harry D. Lockwood, direct.

A Samuel Winter Plume married Harriet Peacock.

Q When?

A March 3, 1855.

Q And does the record show whether there was issue of that marriage?

A One son, John I. Plume, born January 11, 1856.

Q And he is still living?

A He is still alive. 10

Q Who is the next child of Susan W. Plume and John I. Plume?

A Archer Gifford Plume.

Q When was he born?

A Born 23 of May, 1832.

Q Does the record show whether he was married or not?

A No, sir.

Q It does not show whether he was married?

A No, sir. 20

Q Who was the next child of Susan W. and John I. Plume?

A Sarah Virginia Plume.

Q When was she born?

A 15th day of December, 1834.

Q And is she living or dead?

A She is dead.

Q When did she die?

A May 11, 1866.

Q Was she married? 30

A Yes.

Q To whom?

A Mr. Charles H. Tugman.

Q Do you know whether Tugman is still living?

A I understand he is dead.

Q Did you know him personally?

A Well, I believe I saw him when I was little bit of a child about as high as this desk.

Q You haven't met him in recent years? 40

Harry D. Lockwood, direct.

A No, I didn't know he was alive until a short while ago I heard he was dead; married on February 11, 1864.

Q That completes the record of the Plume family, as shown in that family bible?

A That particulr branch of the family, yes.

10 *Mr. Hardin.* I offer that family bible in evidence.

The Court. Let it be received, but not marked.

Q Now, have you also the Lockwood family bible?

A Yes.

Q Does that contain records of your father's and mother's family?

A Yes.

Q Will you turn to it please? When does that record begin?

A By the marriage of Gershom Lockwood and
20 Mary Josephine Plume, on February 26, 1846.

Q Give us the oldest child of that marriage please?

A The oldest child was Joseph Plume Lockwood.

Q When was he born?

A Born March 31, 1847.

Q And when did he die?

A Died on October 28, 1864.

Q Was he married?

A No, sir.

Q Who was the next child of Mary Josephine
30 Plume and Gershom Lockwood?

A George Plume Lockwood.

Q When was he born?

A On December 8, 1849.

Q And when did he die?

A George died on the 1st of March, 1883.

Q Was he married?

A He was.

Q To whom?

A Adelaide VonKulen Kampfe.

40 Q Is she living or dead?

Harry D. Lockwood, direct.

A Dead.

Q Do you know when she died?

A Somewhere around about twelve or fourteen years ago; yes, she died March 23, 1898.

Q Were there children of that marriage?

A Two living.

Q And who are they?

A Alice, her married name is Olmsted.

10

Q Alice Lockwood?

A Alice Lockwood.

Q When was she born?

A. Mary Alice Lockwood, born January 23, 1871.

Q And when was she married?

A She was married June 23, 1898.

Q To whom?

A Ernest Sargeant Olmsted.

Q And both Mr. and Mrs. Olmsted are still living?

A Yes.

20

Q Now, who was the other living child of the marriage of George Plume Lockwood and Adelaide von Kulen Kampfe?

A George Gershon Lockwood.

Q When was he born?

A On April 30, 1872.

Q Is he still living?

A He is.

Q And do you know whether he is married or unmarried?

30

A Single.

Q Are there any children besides the two you have named of the marriage of George Plume Lockwood and Adelaide von Kulen Kampfe?

A Little infant, Mary Josephine.

Q And when was she born?

A On January 17, 1874.

Q And when did she die?

A Died November 19, 1874.

40

Harry D. Lockwood, direct.

Q Who was the next child of your father and mother?

A John Plume Lockwood.

Q When was he born?

A Born May 19, 1852.

Q Is he living or dead?

A Dead.

Q When did he die?

10 A December 15, 1897.

Q And was he married?

A He was married, but divorced.

Q Whom did he marry?

A Isabella Fletcher.

Q Is the date there?

A Yes, February 11, 1879; Mary Isabella Fletcher is her full name.

Q You spoke about a divorce; is there reference to the divorce on this record?

20 A Yes, here it is; divorced on the 30th of December, 1887.

Q By Judge—

A Judge Donohue, Supreme Court, New York City.

Q Are there children of that marriage?

A One living.

Q And what is her name?

A Young man, Andrew Fletcher Lockwood.

Q When was he born?

30 A He was born on the—it looks like July 1st, 1881.

Q You are acquainted with him?

A Yes, I am.

Q Is he married?

A No, sir.

Q Where does he live?

40 A His residence now is at Princeton, New Jersey; you have it down Hoboken, some of you gentlemen read it off Hoboken; that is where he formerly was, his place of business.

Harry D. Lockwood, direct.

Q You spoke of one living child of the marriage of John Plume Lockwood and Mary Isabella Fletcher, were there other children?

A They had a little daughter, Mary Josephine, born on the 28th of November, 1880, died November 30, 1881.

Q Who was the next child of Mary Josephine Plume and Gershom Lockwood?

A Susan Winter Lockwood.

10

Q When was she born?

A Susan Winter was born on May 2, 1855.

Q Still living?

A She is.

Q Where does she live?

A She is a resident of Newark, New Jersey.

Q Is she married?

A Widow.

Q Was she married?

A Yes.

20

Q To whom was she married?

A She was married to Edward S. Heiser.

Q When?

A On the 15th of January, 1883.

Q And when did Mr. Heiser die?

A Died 15th of March, 1883.

Q And who was the remaining child of Mary Josephine Plume and Gershom Lockwood?

A Harry D. Lockwood.

Q Being yourself?

30

A Yes.

Q When were you born?

A January 13, 1858.

Q And are you married?

A I am; widower.

Q Whom did you marry?

A Jennie Louise Moller.

Q When?

A November 23, 1893.

40

Harry D. Lockwood, cross.

Q And when did she die?

A She died on the 8th day of November, 1903.

Mr. Hardin. I offer that bible in evidence also.

The Court. It will be admitted, but not marked.

10 *Cross examination by Mr. Bigelow.*

Q Will you turn to the Plume bible, to the record of John V. Plume; whose handwriting is that in, do you know?

A Mostly my mother's.

Q Do you know where she got this bible?

A I do not.

Mr. English. I would like to reserve on the record objection to this effect, that we do not concede the accuracy of the record in the bible.

20

The Court. That is a question you meet with evidence.

Mr. English. I understand that, but I do not want to sit by and let it go in without objection; we question the accuracy of the bible that John F. Plume was lawfully married to Hugenin.

Q (*By Mr. Hardin.*) Does that record show where your brother Joseph Plume Lockwood died?

A Yes, I believe so.

30 Q Will you look and see, please?

A I can tell you from my memory; he died in the Government Hospital in Philadelphia.

Q Was he in the army?

A Yes.

Q And his home was in Newark?

A No, sir.

Q Where was his home?

A Our home was No. 90 MacDougall street, New York City.

40 Q At that time?

Susan W. Heiser, direct.

A Yes, where I was born, that was where my grandmother died. I will tell you whether that is recorded here. It only says in Philadelphia here, but it was in the Government Hospital in Philadelphia; he died from disease contracted in the army.

Q And where did your brother, John Plume Lockwood, die?

A In the Hahenman Hospital, New York City. 10

Q Where was he resident at the time of his death?

A New York City.

SUSAN WINTER HEISER, sworn.

Direct examination by Mr. Hardin.

Q You are a daughter of Mary Josephine Plume and Gershom Lockwood?

A I am.

Q You were born May 2, 1855?

A I was. 20

Q Have you had at any time these two family bibles that have been offered in evidence, the Plume bible and Lockwood bible in your possession?

A Yes, sir.

Q How long did you have them?

A I had them from 1880 until about 1895.

Q And when you got them in 1880 from whom did you get them?

A I inherited them from my mother.

Q Were you familiar with them before your mother's death, had you seen them before that? 30

A I had seen them, yes, but I had not looked over them carefully.

Q But you knew they were family bibles?

A Yes.

Q You knew about the Plume bible, before your mother's death?

A I did.

Q Now you saw that part of these bibles in the later nineties; to whom did you give them? 40

Susan W. Heiser, direct.

A I gave them to my brother, Harry D. Lockwood.

Q The gentleman who was just on the stand?

A Yes.

Q Are you at all familiar with the handwriting in these bibles?

A I am.

10 Q Referring now to the Plume bible, taking the records of births, being the first page of the record here, are you able to tell us in whose handwriting the most of these entries are?

A I think that was my grandmother's, but I wouldn't be sure; I have seen some letters of hers, old letters; that was my mother's.

Q You saw them?

A This one (indicating) was my mother's, Sarah Virginia, S. Virginia.

20 Q And from your acquaintance with your grandmother's you think the entries above "S. Virginia" all the way to the top of the page is in your grandmother's handwriting?

A Yes.

Q That is Susan Plume?

A Yes, that is, I think, there.

Q "S. Virginia" is in your—

A That was my mother's.

Q And below, the records of marriages?

A My mother's, Mary Josephine Plume.

30 Q Those entries are in your mother's handwriting?

A Yes, sir.

Q And the entries showing the children on the next page of the different branches of the family?

A That word "girl" there was my mother's; these I can't tell you; that was my mother's (indicating).

Q "Girl" being reference to the third child of John V. Plume?

A Yes.

40 Q Below children of Mary Josephine Lockwood the handwriting is?

Harry D. Lockwood, direct.

A That is my mother's, Mary Josephine.

Q And how about in reference to the children of George W. Plume?

A That was my mother's.

Q And Samuel W. Plume?

A I don't know.

Q Your brother told us of the marriage of John Plume Lockwood to Mary Isabella Fletcher, and stated that she was divorced on December 30, 1887; do you know whether Mary Isabella Fletcher Lockwood is still living or not? 10

A She died January 15, 1910.

Q Do you know whether she re-married after the divorce?

A She did, married Mr. Pollock.

Q And he is living?

A He is dead; he died before she.

20

HARRY D. LOCKWOOD, re-called.

Direct examination by Mr. Depue.

Q Do you know, Mr. Lockwood, whether your brother, John Plume Lockwood left a will when he died?

A No, sir, he did not.

Q Do you know whether your brother, Joseph Plume Lockwood, left a will?

A He did not.

30

Q How old was he when he died?

A Who?

Q Joseph Plume Lockwood?

A Approximately, I think, about nineteen years of age when Joseph died.

Mr. Hardin. That is the family history so far as the complainant is able to give it, and develops all the branches of the family so far as we have been able to trace them.

40

Edward C. Plume, direct.

The Court. Any testimony on the part of any of the defendants? You say, Mr. Hardin, it is as far as you can trace it; is it complete or not?

10 *Mr. Hardin.* It is complete, with the exception—yes, it is complete, because the bible records stop. There is an allegation in the bill of complaint with reference to Mr. Bigelow's client which was made on the strength of a letter that we received from Mr. Underhill, the husband of the granddaughter of the testatrix.

The Court. That is in relation to the adoption of a son?

Mr. Hardin. Yes; that did not amount to anything, and is denied by the answer. I did not think it worth while to prove it as long as it was denied.

20 EDWARD C. PLUME, sworn.

Direct examination by Mr. Bigelow.

Q You are defendant in this case, are you not?

A I am.

Q Where do you live?

A In Chicago, Illinois.

Q When were you born?

A August 12, 1871.

Q Where?

A Jacksonville, Florida.

30 Q And where were you at the time of your earliest recollection?

A The first thing that I remember was we were at the Centennial Exposition in Philadelphia in 1876.

Q Who was with you then?

A My father, John D. Plume, and my mother, my sister and a French nurse.

Q What was your sister's name?

A Marion Hugenin Plume.

40 Q Were you living in Philadelphia at that time, or just stopping there to see the exposition?

Edward C. Plume, direct.

A Just went there to the exposition.

Q Where was your home then?

A San Francisco, California.

Q Did you go from the exposition back to San Francisco?

A Directly, as far as I know.

Q And did you father have a house there in San Francisco?

A No, we lived in apartments in the Grand Hotel. 10

Q And who lived there in your apartment?

A My father, John D. Plume, and my mother, my sister and my nurse.

Q And yourself?

A Well, my nurse had a separate apartment, as I remember it, and myself, yes.

Q How long did you continue to live in this way, you and your family?

A Up until the time my sister got married in 1879. 20

Q What change then took place?

A She and her husband took separate apartments in the same hotel.

Q And the rest of you continued to live in your apartment as before?

A As before, yes.

Q How long did your sister and her husband continue to live together in that way?

A Until his death in 1882.

Q What did your sister then do?

A She came back to live with us. 30

Q How long did you all continue to live together after this?

A Well, my sister married again; we lived together up to the time my sister married George Wallace, and then she and her husband came to the East here, visited Uncle Giff. here in Newark, she did, and then she came back to San Francisco.

Q Was that in your father's lifetime?

A No, my father was then dead. 40

Edward C. Plume, direct.

Q Your father died before this happened?

A Yes.

Q When did he die?

A He died April 26, 1884.

Q Where?

A At Tubbs Hotel, Oakland, California.

10 Q Did you live all this time in the Grand hotel, or did you move from one hotel to another occasionally?

A We moved from the Grand hotel, as I remember it, to the Galido hotel, in Oakland, and then from there we moved to Tubbs hotel, and shortly after the death of my father we moved back to the Galido, my mother and my sister and myself.

Q What was your mother's maiden name?

A Marion Alethia Hugenin.

20 Q During this period of which you have spoken, from 1876 until the death of your father in 1884, did your father and mother live together?

A Always.

Q In what way?

A As man and wife.

Q By what name was your mother commonly known?

A As Mrs. Plume.

Q How did you address her?

30 A Mama.

Q How did you address Mr. Plume?

A As papa.

Q How did they address you?

A "My darling Eddie" and "son."

Q By what name did Mr. Plume speak to you of his wife?

A "Mama," and "Your mother."

Q By what name did she speak to you of Mr. Plume?

40 A "Your father."

Edvard C. Plume, direct.

Q You have spoken of living in apartments; what do you mean by that?

A We had a suite consisting of several bedrooms, a parlor and a private dining room.

Q Did you have your meals in your suite or down in the dining room?

A Mostly in the private dining room; the waiter's name was Murphy.

Q How was your father's rooms furnished?

10

A Mostly with our own furniture.

Q Were there any pictures on the walls?

A Yes, quite a few.

Q Do you recall any of them?

A Very distinctly.

Q Mention some?

A There was a picture of my father's father with an old-fashioned ruffled bosomed shirt, it was a painting, an oil painting; there was also another one of my mother as a young girl, and there was one of my mother in her wedding dress; there was one of my father as a young man; there was one of a dead brother of mine that was painted apparently after death, the child was lying with eyes closed as if asleep; there was also a painting of my sister, with a sort of a fancy painting, I believe it was painted in Europe, she had a bunch of grapes in her hand.

20

Q Did Mr. and Mrs. Plume ever receive guests in their apartments?

30

A A great many; they were very extensive entertainers always.

Q You have mentioned your sister's first marriage, whom did she marry?

A John Henley Stone.

Q Where did this wedding take place?

A At Grace Church, San Francisco.

Q Were you there?

A I was.

Q Where did you sit?

40

Edward C. Plume, direct.

A I sat in the first pew to the left, on the bride's side of the church.

Q Who sat with you in that pew, if anyone?

A My mother and father.

Q Who gave the bride away?

A My father.

10 Q Was that wedding largely attended?

A The papers stated it was the largest wedding at that time that had ever been held in San Francisco. General Grant was one of the guests.

Q Was he present at that time?

A He was.

Q Are you acquainted with the defendant, Gifford Plume?

A I am, yes, sir, very well.

Q Where have you met him?

20 A At his home, and at his office.

Q How have you been in the habit of addressing him?

A Always as "Uncle Giff."

Q Did he ever before the bringing of this suit deny the relationship of uncle and nephew, so implied?

A He certainly did not; he introduced me to a great many people here in Newark as the son of his brother John. One person I recollect very distinctly is a Mrs. Gifford, in whose house he lived, and to a gentleman, I forget his name, he has a defect in one eye, however.

30 Q Did he ever call your attention to any pictures in his house?

A He did. I had talked of the picture of my grandfather that we had, and he stated that he also had a picture.

40 *Mr. Depue.* As far as my client is concerned we object to this testimony as binding upon us; I suppose it may be competent against A. Gifford Plume; it is not competent against us.

Edward C. Plume, direct.

The Court. It certainly is competent on the issues raised by the answer of this witness; there cannot be any doubt about that.

Mr. Depue. The ground of my objection is that it is not competent as against us.

The Court. I will let it in.

Mr. Depue. May that objection apply to all the testimony of this character?

10

The Court. Yes.

Q Were you acquainted with the late Samuel W. Plume of New Orleans?

A I was.

Q Where did you meet him?

A At his home in New Orleans.

Q How were you in the habit of addressing him?

A As "Uncle Samuel."

Q Did he ever deny the relationship so implied?

A Most certainly not.

20

Q When did your mother, Mrs. John V. Plume, die?

A She died February 7, 1891.

Q Where?

A In San Francisco, California.

Q When did your sister Marion die?

A She died November 29, 1900.

Q Did she survive her second husband?

A She did.

Q Did she ever have a child?

30

A No.

Q Was your father survived by any children besides yourself and your sister Marion?

A None.

Q Or by any grand children of the deceased children?

A No.

Q Are you acquainted with the handwriting of your father, John V. Plume?

A Yes.

40

Edward C. Plume, direct.

Q I show you a letter dated February 5, 1884, and ask you in whose hand writing that is?

A That is in the handwriting of my father.

Q Is that his signature?

A It is.

Q How did you get that letter?

A It was mailed to me from San Francisco.

10 Q You received it through the mail?

A Yes, sir.

Letter offered in evidence and marked Exhibit

D. 1.

Q I show you a letter dated February 2, 1884, and ask you whose writing and whose signature that is?

A My father's.

Letter offered in evidence and marked Exhibit

D. 2.

20 Q I show you a letter dated February 9, 1884, and ask you whose handwriting that is?

A My father's.

Marked A for identification.

Q I show you a letter dated January 28, 1884, and ask you whose handwriting and signature that is?

A My father's.

Marked B for identification.

Q I show you a letter dated February 1, 1884, and ask you who wrote that letter?

30 A My father.

Marked C for identification.

Q I show you a letter dated February 3, 1884, and ask you whose handwriting and signature that is?

A My father's.

Marked D. for identification.

Q I show you a letter dated February 11, 1884, and ask you whose handwriting and signature that is?

A Also my father's.

40 Marked E. for identification.

Edward C. Plume, direct.

Q I show you a letter dated February 3, 1884, and ask you what handwriting and whose signature is on that?

A My father's.

Marked F. for identification.

Q I show you a letter addressed to "My darling son," dated January 29, 1884, and covering two sheets of paper, and ask you whose handwriting and whose signature is attached to that letter? 10

A My mother's.

Q Mrs. John V. Plume?

A Yes.

Marked G. for identification.

Q I show you a letter dated January 25, 1884, and ask you in whose handwriting that is?

A My mother's.

Q I see no signature, other than "Your loving mother M. A. P." Whose initials are those? 20

A My mother's initials, Marion Alethia Plume.

Q And they are in her handwriting?

A They are.

Marked H. for identification.

Q I notice in some of these letters "Tatty" referred to; who is Tatty?

A That was a pet name I had for my sister.

Q Marion?

A Marion.

Q I show you a letter dated February 3, 1884, and ask you in whose handwriting that is? 30

A That is also my mother's writing.

Q Will you look at this sheet and see whether it is part of the same letter to which I last referred?

A It is.

Marked I and 1-2 for identification.

Q I show you what seems to be a letter consisting of two sheets, one torn, and only dated "Tuesday, 7 P. M.;" I ask you whose writing that is? 40

Edward C. Plume, direct.

A That is my mother's.

Marked J and J. 2 for identification.

Q Are you acquainted with the handwriting of the late Samuel W. Plume, of New Orleans?

A Very well.

Q I show you a letter dated January 27, 1908, addressed to Philip F. Larnier, and ask you whose signature is attached to that?

A My uncle's, Samuel W. Plume's.

Marked K. for identification.

Q On the reverse side of that sheet there is some writing; is that in his handwriting?

A No; it is not.

Q I show you a letter dated January 27, addressed to "Dear Edward" and ask you whose signature that is?

A Samuel W. Plume's, my uncle.

Marked L. for identification.

Q I show you a letter dated January 28, 1908, and ask you whose handwriting and whose signature that is?

A That is also my uncle's, Samuel W. Plume.

Marked M. for identification.

Q I show you a letter dated January 29, 1908, and ask you whose handwriting and whose signature is on that.

A My uncle's, Samuel W. Plume.

Marked N. for identification.

Q I show you a letter dated February 3, 1908, and ask you whose handwriting and whose signature is thereto affixed?

A That is also my uncle's.

Marked O. for identification.

Q I show you letter dated February 6, 1908, and ask you whose handwriting and signature that is?

A My uncle's, Samuel W. Plume.

Marked P. for identification.

Edward C. Plume, direct.

Q I note this letter refers to "Giff." in it; "Tell Giff. I got his letter." Who is "Giff?"

A That is my uncle, A. Gifford Plume, who lives in Newark.

Q Have you a son by that name?

A Yes; my son is named after Uncle Giff; his first name is Gifford; I guess that is who it refers to there.

Q I read here "Mailed you yesterday pictures for Giff., letter to you and application to sons of A. R." 10
Is this the paper referred to?

A That is the original application that Uncle Samuel started to make out and sent to me to complete.

Q I call your attention to the writing on this application in ink and ask you whose handwriting that is?

A That was my Uncle Samuel's; his signature is at the bottom of the paper.

Q Of the second sheet?

A On the second page of the paper; he proposed 20
me for membership in the Sons of the American Revolution, and I was accepted.

Marked Q. for identification.

Q I show you letter dated February 19, 1908, and ask whose writing and signature that is?

A My Uncle Samuel's.

Marked R. for identification.

Q I show you letter dated January 24, 1908.

A Also the same. 30

Marked S. for identification.

Q I show you letter dated April, the rest of the date being torn off, and ask you whose writing and signature that is?

A Uncle Samuel's.

Marked T. for identification.

Q I show you letter dated May 8, 1908.

A That is also Uncle Samuel's writing.

Marked U for identification. 40

Edward C. Plume, direct.

Q And letter dated November 18, 1908?

A The same.

Marked V. for identification.

Q I show you letter dated February 21, 1908, and ask you whose handwriting that is?

A My Uncle Samuel's.

Marked W. for identification.

10 Q I show you letter dated February 21, 1908, and ask you whose writing and signature that is?

A That is my uncle's; he also refers to that Bible that was exhibited here a while ago.

Marked X. for identification.

Q I show you letter dated April 12, 1908; is that your Uncle Samuel's writing and signature?

A It is.

Marked Y. for identification.

20 Q I show you letter dated February 29, 1908?

A That is also my Uncle Samuel's writing.

Marked Z. for identification.

Q Are you acquainted with the handwriting of your sister Marion?

A I am.

Q (*By the Court.*) Your father and your mother and your Uncle Samuel are all dead?

A All dead; yes, sir.

Q (*By the Court.*) And your sister?

30 A My sister also.

Q I show you a paper with the heading "Last will and testament" and ask you in whose handwriting that is written and whose is the signature attached?

A That is my sister's handwriting and signature.

Q Where did you get that paper?

A From her.

Marked 1 for identification.

40 Q Are you acquainted with the handwriting of the defendant Gifford Plume?

Edward C. Plume, direct.

A Very well.

Q I show you a letter dated December 7, 1909, and ask you whose writing and signature that is?

A That is my Uncle A. Gifford Plume.

Marked 2 for identification.

Q I show you a letter dated December 12, 1908, and signed "Your affectionate Uncle Gifford;" whose signature is that?

A My uncle, Gifford Plume, Archer Gifford Plume; he always goes by the name of "Giff."

Q Is that his handwriting?

A Yes, sir.

Marked 3 for identification.

Q I show you a memorandum dated Saturday and signed "Your Uncle Giff.;" whose writing is that?

A That is my uncle, Archer Gifford Plume's writing, and his signature.

Q Do you recall how you got that paper?

A I do; I went to his office and got there a little later than I expected to; I was detained in New York, and he left that note pinned to the door of his office inviting me to go to his home, which I did.

Marked 4 for identification.

Q I show you letter dated February 25, 1908, and ask you whose writing and signature that is?

A That is also my Uncle Gifford's.

Marked 5 for identification.

Q I show you letter dated June 25, 1908; is that Gifford Plume's writing and signature?

A It is.

Marked 6 for identification.

Q I show you letter dated January 21, 1908.

A That is also his writing.

Marked 7 for identification.

Q I show you letter dated November 16, 1909, and ask you whose writing and signature that is?

Edward C. Plume, direct.

A It is the writing of my uncle, Archer Gifford Plume.

Marked 8 for identification.

Q I show you letter dated January 11, 1909?

A That is also his writing.

Marked 8a for identification.

10 Q Mr. Plume, how did you receive all these letters?

A Through the mails, except that one note that was pinned to Uncle Giff.'s door, as I stated.

Q I show you a book marked "Floral Album;" on one of the pages is some French, and written under it "Your loving sister Marion H. Stone;" I ask you whose handwriting that is?

A My sister Marion's.

Q Whose book is this?

A It is mine.

20 Q Was it yours at the time that was written in it?

A It was.

Q Did your sister know it was your book, your album, when she wrote in it?

A She did.

Marked 9 for identification.

30 Q I show you a book with the word "Autograph" on the cover and call your attention to one of the pages on which is written, "To my son, autographs of friends selected; in this book by you collected; let the name above all others, by you cherished, be your mother's. Marion A. Plume; Oakland, June 30, '88." Whose writing is that?

A My mother's.

Q In the same book I call your attention to a page on which is written: "To Eddie. In the book of Eternal Life may your name, my son, be written; and when this life is o'er may we be again united in the golden gate of Heaven. Mother. San Francisco, July 31, '88." Whose writing is that?

40 A It is my mother's.

Edward C. Plume, direct.

Q Mrs. Plume?

A Mrs. Plume.

Q Whose book is this?

A It is mine.

Q Was it yours at the time these writings were made in it?

A It was.

Q And did your mother know that you then owned it? 10

A She did.

Marked 10 for identification.

Q I show you a photograph of a man leaning on one elbow and ask you whose photograph that is?

A It is the photograph of my father John V. Plume.

Marked 11 for identification.

Mr. Bigelow. Your Honor, I offer each one of these letters which have been marked for identification, and also the application blank for membership in the Sons of American Revolution, which has been marked, the two autograph albums which have been marked, the photograph of John V. Plume, and the paper written in the form of a will of Marion, the daughter of John V. Plume. 20

The Court. Is there any doubt, Mr. Depue, but what these documents are proper evidence on the issue made between the bill and answer? Are they relevant to the issue of legitimacy? They appear to be recognitions of the witness as the legitimate son of Mr. John V. Plume and Miss Hugenin and a recognition by other members of the family of his relationship. Now, on the question of pedigree, legitimacy, are they not admissible? 30

Mr. Depue. They are objected to on the ground that it is immaterial *res inter alias acto* and not evidence binding the defendants whom I repre- 40

Edward C. Plume, direct.

sent, as they were no parties to the documents produced.

Mr. Guild. I desire to enter the same objection for the defendant represented by me.

Mr. English. May I make the same objection on the record?

10 *The Court.* Yes; and I will overrule the objections.

Mr. Bigelow. I offer original bill of complaint produced by the clerk to the sergeant at arms of this court in the case of *Lockwood vs. Plume*; I offer that in evidence.

The Court. Is there any objection?

Mr. Guild. I desire to object on behalf of the defendant John I. Plume for the reason that he was not made a party to that suit.

20 *The Court.* Mr. Bigelow, I do not see how it could bind him.

Mr. Bigelow. It is a declaration by a deceased person on the matter of pedigree of a member of her family, and the fact that it is put in the form of a bill of complaint I should not think would take away its force.

The Court. Is there any other objection?

30 *Mr. Depue.* We object on the ground that it does not bind us at all. Of course, the object, I assume, of making that allegation there was to bring in every person who might from chance have an interest in the subject matter of that particular litigation.

Mr. English. I make the same objection.

The Court. I will overrule the objection and admit the paper as evidence on the issue of legitimacy or illegitimacy, on that issue; it may go further, but it goes to that extent I am sure. Let it be admitted but not marked.

40 *Mr. Bigelow.* I offer certified copies of the death records of John V. Plume and Marion H. Stone, just to fix the dates.

Edward C. Plume, direct.

The Court. Who certifies them? Where were the originals?

Mr. Bigelow. California.

The Court. Are they exemplified under the act of Congress?

Mr. Bigelow. Yes, sir. I notice they set forth the age of the people, and I want to show that as well.

RECESS.

10

Q I show you a postal card and ask you in whose handwriting and whose signature that is?

A It is in the handwriting of my mother.

Mr. Bigelow. I offer this postal card in evidence.

The Court. Let it be admitted upon the same terms.

Mr. Bigelow. Just before recess, your Honor, I offered these two records of death. Mr. Depue, I believe, has been looking them over during lunch. 20

Marked Exhibit D. 4.

Mr. Depue. As far as the certificate of death of John V. Plume is concerned I have no objections to its being admitted for whatever value the court may put upon it. So far as the death of Marion H. Stone is concerned we object to it on the ground that the certificate contains other matters than the fact of death, and upon the further grounds that there is no statutory authority so far as we know for the admission in evidence of a certificate of this sort; it is a copy of the death record certified by the mortuary clerk and the health officer of something somewhere, with a certificate by some judge, and certificate by the deputy clerk. I don't know that there is any objection to the form of the certificate, but the two fundamental objections are, first, that the papers 30 40

Edward C. Plume, direct.

contains other facts than the date of the death, and consequently that there is no statutory warrant for the admission of a certified copy or exemplified copy of that paper in evidence, I take it, except in cases of the records of a court of record there must be a statutory warrant for the admission of a certified or exemplified copy of a paper.

10

The Court. There is a provision for admitting records of public offices of foreign states in evidence wherever they are relevant and competent and material, upon a certain style of certificate—I don't remember what the certificate is.

Mr. English. We would like to make the same objection on behalf of the defendant Archer Gifford Plume.

Mr. Guild. And the same objection on behalf of the defendant John I. Plume.

20

Certified record of the death of John V. Plume offered in evidence and marked Exhibit D. 5.

Examined by Mr. Guild.

Q What was the date of your sister Marion's first marriage?

A If I was not mistaken she was married in 1879.

Q That is the wedding ceremony which you say President Grant attended?

A Yes.

30

Q What was the date of your mother's death?

A My mother died in 1891, February 7th.

Q What was her age at that time?

A My mother's age at her death, sixty; she was born in 1831.

Q What did you give as your age?

A My age, I was born August 12, 1871.

Q Where did you get that information?

A Where did I get it?

Q Yes.

40

A From my mother.

Edward C. Plume, cross.

Q When did she tell you?

A When did she tell me? Before she died.

Q How long?

A I have heard it mentioned a great many times; it is also on family records at home; there is a genealogical book that I have in our library.

Mr. Guild. I will ask that that much of the witness's testimony that refers to the genealogical records be stricken out. I asked nothing about that, and it is not evidence. 10

The Court. That is not evidence.

Q Will you give us the date of the birth of your sister Marion?

A My sister Marion, she was born in, I don't recollect the month or the day at all; she was forty years old when she died and she died in 1900.

Q And where did she die?

A She died in San Francisco, California. 20

Q You give your sister's age at her death as forty; how do you know that was her age?

A Simply from what she told me and from what my mother had told me previously.

Q When you speak of your mother you speak of, you refer to the wife of?

A John V. Plume, Mrs. John V. Plume, or Mrs. Marion Alethia Plume.

Cross examination by Mr. English. 30

Q You had other correspondence with Archer Gifford Plume in which you received letters other than those which you put in evidence, did you not?

A One or two, possibly, yes.

Q I show you letter dated December 27, 1910, signed "A. Gifford Plume"; do you recognize that as the handwriting?

A I do.

Q And that as his letter, that letter addressed to you? 40

Edward C. Plume, cross.

A I do; I wrote a reply to it and sent it to my attorney.

Q This is the letter you received?

A Yes, sir; that is the letter I received.

Letter marked 11 for identification.

Q Previous to the receipt of this letter had you ever heard from anybody of the information which
10 is set forth in it?

A I had not.

Q Never had any conversation to that effect with Mr. Archer Gifford Plume?

A I should say not.

Q Nor with anybody else?

A Never; it is absolutely in direct contradiction—

The Court. Don't volunteer anything.

Q Did you ever hear before this letter that John
20 V. Plume had been disinherited by his father and mother?

A I did not; that is not so.

Q I didn't ask you that. I asked you if you ever heard of it?

A I never did.

Q And you never heard of any of the facts in here until you got this letter?

A Never.

Q Where did you go to school?

A I went to school mostly in Oakland, California.
30

Q How old were you when you left and went to school in Oakland, California, between what years?

A I started, the first school that I recollect going to was Madam Ziska's kintergarden in San Francisco; that was after our return from the Philadelphia exposition.

Q I don't care about that. I am concerned with Oakland. When did you go to school in Oakland, between what ages on your part?

40 A I can't tell you the exact dates.

Edward C. Plume, cross.

Q No, but about how old were you when you first went to school there, and how old were you when you quit?

A I went to school there from the time that we moved to Oakland from San Francisco when I was rather a small boy until my mother died.

Q How old were you when your mother died?

A My mother died in 1891 and I was born in 1871.

Q During the time that you were a boy in school in Oakland were you ever taunted by your boy companions as to your parentage? 10

A I should say not.

Q Absolutely not, eh?

A No, sir.

Q Did you ever hear of a person named Edward Ingraham?

A I did not.

Q Never heard of him?

A No. 20

Q Did you ever hear as a matter of family history that Mrs. John V. Plume and her daughter Marion went to Florida, came East and then went to Florida about the time you were born?

A I did not.

Q Never heard of that?

A No.

Q You have produced and put in evidence a number of letters from Samuel W. Plume; they are all dated, I think, during the year 1908, were they not? 30

A I can't say what the dates were.

Q Well, the record will show. Have you in your possession letters from him written previous to the dates of those you did not put in evidence?

A I could not tell you that.

Q Did you look to see?

A I did not; I did not look at the dates of any of the letters. I simply picked the letters out promiscuously. 40

Edward C. Plume, cross.

Q Did you produce here all the letters which Samuel W. Plume had ever written you?

A All that I have except some postal cards and some that were written possibly just before his death.

Q Did you keep all the letters which he wrote you?

A Did I keep them all?

Q Yes.

10 A Why, I think I did, yes.

Q Are you sure you never got any letters antedating those you put in evidence?

A I couldn't say as to that, I told you that.

Q You are familiar with the handwriting of Samuel W. Plume, are you not?

A I certainly am.

Q Do you identify that as a letter written in his handwriting (showing witness letter)?

A That is his writing, yes.

20 Q That letter is not addressed to you, is it?

A I didn't look to see.

Q Well, it isn't.

Letter identified by the witness as having been written by Samuel W. Plume and addressed to the defendant, Archer Gifford Plume, and dated January 31, 1907, marked 12 for identification.

Q Look at another letter dated November 22, 1907, and see if that is in the handwriting of Samuel W. Plume?

30 A It is.

Letter marked 13 for identification.

Q Do you identify the third letter which I show you as being in the handwriting of Samuel W. Plume?

A That is his writing.

Mr. Guild. It is dated August 13, 1905, and addressed to the defendant Archer Gifford Plume. Marked 14 for identification.

Q Do you remember when Samuel W. Plume died?

40 A I do; I reached New Orleans the day after his death.

Edward C. Plume, cross.

Q You started in to contest his will, did you not?

A I did.

Q Was the case settled or was it decided against you or what was the termination of it?

A I dropped it because my Uncle Gifford asked me to?

Q You dropped the suit, did you?

A I dropped the suit, yes.

Q Did you drop it on the advice of Mr. Archer Gifford Plume as contained in his letter to you of December 22, 1910, which you have already identified?

A Not on account of any advice, no, he didn't give me any advice.

10

Cross examination by Mr. Depue.

Q Were your parents residing in Jacksonville at the time you were born?

A Were they residing there? I couldn't say.

Q Or were they only there temporarily?

20

A They owned an orange grove on the outskirts of Jacksonville.

Q And wasn't it their habit to go there every year?

A I don't know.

Q You don't know about that as a matter of general history?

A No.

Q As far as you know they never were residents of Jacksonville?

A I don't know anything about it.

30

Q Do you know where your father and mother were married?

A Do I know where they were married?

Q Yes.

A They were married in San Francisco, I believe; I am not sure as to that, either; either San Francisco or New York, a long ways apart.

Q Do you know when they were married?

A No, I do not.

Q What?

40

Edward C. Plume, cross.

A I could not say.

Q You have not obtained a copy of their marriage certificate?

A I have not obtained such?

Q Yes.

A I never had any occasion to.

Q Have you made any effort to find out when and where they were married?

10 A I have made no effort, no, sir.

Q Or to obtain a copy of their marriage certificate?

A No.

Q At the time you went to the Centennial in 1876 where were your parents residing? I mean, what was their home?

A Our home was San Francisco.

Q And do you know for how long a time they had been residents of San Francisco?

20 A My father landed in San Francisco June 4, 1849.

Q And was he a resident there from that time on?

A He lived there part of the time and part of the time in New York.

Q Was he living in New York as an occasional trip or was it his permanent residence for the time being?

A His permanent residence I guess you would call San Francisco.

30 Q When he went to New York where did he stay, do you know?

A I haven't any idea.

Q Did he have a house there or did he board?

A He had a place at Peekskill.

Q Had he any other place in the East here?

A I don't know.

Q As far as you know he had none other?

A I don't know anything about it.

40 Q And I think you stated your father was a resident of San Francisco up to the time of his death?

Edvard C. Plume, cross.

A He was.

Q You count Oakland as part of San Francisco?

A We really lived in Oakland; my father died in Oakland, but his place of business was in San Francisco.

Q But his place of residence was in San Francisco.

A At Tubb's hotel, yes, sir.

Q Did he live at any other place than Oakland and Tubb's hotel? 10

A He lived at Galindo hotel.

Q That is also in Oakland?

A That is also in Oakland.

Q Can you fix the dates of the residence in those different hotels?

A No, except that we lived, we lived at the Galindo hotel until shortly before my father's death and then we moved to Tubb's hotel.

Q And your father died at Tubb's hotel? 20

A He died at Tubb's hotel, yes.

Q Did he live at Tubb's hotel before he went to the Galindo?

A The Galindo, it is.

Q He went from one home back to the other, did he, when you did?

A I only recollect we moved the once; we went back to the Galindo to live sometime after my father's death.

Q But you don't know where your father lived; you say your father was a resident of San Francisco since 1849? 30

A My father landed in San Francisco June 4, 1849.

Q But he didn't reside there?

A That was not his home; he resided there until about 1880, I should say; I think it was about that time we moved to Oakland.

Q In San Francisco itself?

A Yes, we lived at the Grand hotel in San Francisco. 40

Edward C. Plume, cross.

Q And then moved to Oakland as you have described?

A Then moved to Oakland, yes.

Q When was your sister married the second time?

A I should say about 1887; as to the date I am not sure.

Q After your father's death?

10 A After my father's death, oh, yes.

Q (By the Court.) The second husband was named Stone?

A The second husband was named Wallace, George Wallace.

Q Is he living or dead?

A He is dead.

Q And when did he die?

A In Oakland.

Q When, not where, but when did he die?

20 A Why, about a year after the marriage; I haven't the dates fixed in my mind.

Q He died before your sister?

A Oh, yes.

Q Were there any children of that marriage?

A No.

Q Were there any children of her first marriage?

A No; from the conversations I have overheard my sister was not so that she could carry a child.

30 Q I notice that the letters produced from your father and mother they all are dated in January or February, 1884?

A Yes.

Q How do you account for that?

A Because I was in Los Angeles at that time.

Q What were you doing in Los Angeles?

A I was with my sister.

Q Living with your sister there?

40 A I was with my sister; we went down there on a trip; we were gone about six weeks and I was in the hands of my tutor; my mother was very ill prior to to that time.

Edward C. Plume, cross.

Q Those are the only letters that you received, ever received from your father and mother?

A Are those the only letter or the only ones I have?

Q Did you ever correspond with any members of the Plume family or the Lockwood family except Samuel W. and Mr. Archer Gifford Plume?

A With my cousin Kate Underhill in San Francisco.

Q Have you any letters from her? 10

A Have I any?

Q Yes.

A I don't think I ever kept any.

Q How often did you come East?

A How often did I come East?

Q Yes; you came to the Philadelphia Centennial; how often did you come to Newark, I will put it that way?

A Why, I have been coming about, on an average of about twice a year for quite a few years. 20

Q To Newark?

A Well, I usually either came to Newark or got in communication with Uncle Giff, when I came here.

Q When you were East did you get into communication with any one except Uncle Giff?

A Not of my relatives; I didn't know any of them.

Cross examination by Mr. English.

Q I call your attention to a notation at the bottom of the letter which Mr. Archer Gifford Plume wrote you dated December 27, 1910, which says, "I enclose copy of letter from my brother Samuel dated November 27, 1907, original in my possession." Do you remember receiving that copy? 30

A I don't know what this letter referred to.

Q That is the letter which your counsel produced at my request.

A Which is the letter that counsel produced?

Q This letter which you are reading.

A Oh, no, it isn't. 40

Edward C. Plume, re-direct.

Q I beg your pardon! He handed it to me right here in court.

A Is this the same one you showed me?

Q That is the same one I showed you when I began my cross examination. Now, my question is whether you remember receiving the copy of the letter of Samuel which is referred to in the letter of Gifford Plume to you?

10

A I don't think there was any copy of any letter attached to it.

Cross examination by Mr. Guild.

Q You have produced here a paper writing which you said was your sister Marion's will in her own handwriting; this then is the original paper?

A Yes, sir.

Q And can you explain why it was not probated?

20

A There wasn't anything to probate; there was no estate; all her money was gone at that time.

Q Is that the only reason why it was not put on record?

A Yes; there wasn't any reason to put a document through that was not any good at that time that I can see.

Q When you say it was not any good, because she had no property, no estate?

A She had none.

30

Q Were not letters of administration taken out on her estate?

A She didn't have any estate.

Q That is not an answer to my question?

A Well, there were no letters taken out, no.

Redirect examination by Mr. Bigelow.

Q Mr. Plume, one of the counsel asked you if you had heard that your father had been disinherited. What was the financial condition of your father between 1860 and 1865?

40

Mr. English. He wasn't born then.

Archer Gifford Plume, direct.

Q As a matter of family history.

The Court. No; that won't do as a matter of family history. The inquiry was, as I recollect it, whether the witness's father and mother had not disinherited him.

Mr. English. No, not the witness's; the alleged father of the witness, John V. Plume, whether he hadn't been disinherited by his father. 10

The Court. I do not understand that. I am not sure that that is competent evidence. I thought the question was whether this man had been disinherited or not.

ARCHER GIFFORD PLUME, sworn.

Direct examination by Mr. English.

Mr. English. In substantiation of the case made in our answer I would simply like to refer on the record as a part of our case to the original will which was produced and offered in evidence by counsel for the complainant, and also I would like to offer in evidence the record in the Court of Chancery in the suit of Samuel W. Plume *vs.* *Morriss et al.*, in which the final decree is annexed to the decree and already been offered in evidence; I would simply like to have the whole record in. 20

Mr. Bigelow. For what purpose is this offer made? 30

Mr. English. I offer this as a part of my case. I propose to contend on this record that this will has already been construed by this court, and I put this in as an aid to the court in construing this same will, it having already been before the Court of Chancery and as I say construed by the decree which was made. I want the record to go in.

Mr. Bigelow. I have no objection. 40

Archer Gifford Plume, direct.

The Court. That will be admitted in evidence but not marked.

Mr. English. Your honor, in reference to the rebuttal of the case made by Edward C. Plume I think that is all I need on our case as a matter of construction.

10 Q I show you the letter which you addressed to Edward C. Plume on December 27, 1910, and which has already been identified by him, do you recognize that as your letter?

A Yes.

Q I notice at the bottom of that letter it states "I enclose copy of letter from my brother Samuel dated November 22, 1907, original in my possession." Did you with that letter send the copy?

A Yes.

20 *Mr. English.* I offer in evidence this letter.

Mr. Bigelow. I object. This is a letter written by this defendant himself long after this suit started, I don't see for what purpose it is admissible. He certainly cannot make his own evidence by writing letters about his idea of this case.

The Court. I understand, Mr. English, the rule to be that declarations of this character must have been made before the litigation arose.

30 *Mr. English.* I think that is true as far as the bearing on the litigation, but this was written for another purpose.

The Court. You are introducing it for the purpose of putting it in evidence of this litigation. There is a very broad distinction made before or after the moving of the litigation.

Mr. English. Does your Honor overrule it on that ground?

40 *The Court.* I do not see how it can be admitted in the face of that.

Archer Gifford Plume, direct.

Q Now, I call your attention to letter dated January 31, 1907, which has been identified by the defendant Edward C. Plume as in the handwriting of Samuel W. Plume and which is addressed to you. Did you receive that letter from your brother Samuel?

A I did, sir.

Mr. English. Your Honor, this letter relates to and is in rebuttal of evidence contained in the earlier letters of Samuel W. Plume. Although it was not addressed to the defendant Edward, it seems to me it is material or has bearing on this general issue, and for that reason I offer it in evidence.

10

The Court. Declarations of this character in order to be admissible must not only have been made before the suit was brought, but before the controversy arose.

Mr. English. That is true of this letter.

20

Mr. Bigelow. This letter, your Honor, I suppose is offered as a declaration with regard to pedigree, and that it seems to me would be the only way in which it could be admissible, but it is not a declaration in regard to pedigree; if it is anything it is an argument relating to the defendant Edward C. Plume, an expression of ignorance of the writer of the letter. I would make further objection that it does not mention who it is about there.

Mr. English. That is very obvious.

30

The Court. How do you satisfy the other objection, that the declaration must have been made before the *lis mota*, before the controversy was open?

Mr. English. The controversy did not open until the bill was filed, I suppose.

The Court. The term *lis mota* don't mean filing of the bill; it means the beginning of the controversy. Hasn't Mr. English got to show that the

40

Archer Gifford Plume, direct.

letter was written before this controversy arose? I will admit the letter subject to the objection, and I will deal with it when I come to consider the case.

Mr. English. I offer in evidence the letter of January 31, 1907, already marked for identification as Exhibit No. 12.

10 Q Do you identify the letter of November 22, 1907, which is marked D. 13 for identification, as written by your brother Samuel to you?

A Yes, sir.

Q Can you say whether that is the letter, a copy of which you sent to Edward C. Plume in the letter which was not admitted in evidence? The question is is this original of the letter which you referred to in that letter of yours of November 22, 1907?

A Yes.

20 *Mr. English.* Now, I will offer in evidence the letter already marked for identification as No. 13.

The Court. That is referred to in a letter which Mr. Bigelow offered, isn't it?

Mr. English. No, it is referred to in a letter which I offered which you overruled.

Same objection to these two as the former ones.

30 Q Do you identify the third letter which is marked for identification No. 14, and which is dated August 13, 1905, as having been written you by your brother Samuel?

A Yes, sir.

Said letter offered in evidence.

Same objection.

Marked Exhibit D. 14.

Q When was your brother John V. born?

A 1814.

Q When were you born?

A 1832.

40 Q So that he was some years older than you?

Archer Gifford Plume, direct.

A Yes, sir.

Q Do you remember when he left home and subsequently returned with a supposed wife?

A He left here in 1849.

Q When did he come back?

A I can't recollect that. He came back here—oh, he came back here inside of probably eighteen months.

Q Did he come back purporting to be married?

A Well, I don't know; he brought a woman to the house when he first came.

Q When was that that he came and brought a woman to the house?

A 1848.

Q Were you living home at the time?

A I was.

Q Where were you living?

A Washington street.

Q With your parents?

A Yes, sir.

Q Susan Plume, the testatrix here?

A Yes.

Q Was your father living?

A Yes.

Q Were you present at any interview between your father, John V. and the woman?

A My brother John V., and this woman and my father and mother and myself were all in the room together.

Q What occurred?

Mr. Bigelow. I object to any conversation with John V. Plumé, deceased, who is represented in this suit by Henry Young, Jr., as administrator.

Question admitted.

Q Before I ask you to go into that matter, who was the woman which was brought to your father's house by John V. Plume?

A Mrs. Marion Bonner.

Q Do you know her maiden name?

A Her maiden name was Hugenin.

Q Marion Alethia Hugenin referred to?

A Yes.

Q Tell us what occurred at this interview between your father, mother, John V., the woman and yourself?

10 A John V. left here in—came on here in 1848, the latter part, and he brought this woman, and then he went from here to San Francisco in 1849, and after he had gone my parents heard who and what this woman was, and they had considerable conversation with this Marion, but I didn't hear that but when John came back here—

Q Oh, he came back from California?

A He came back from California to get this woman, and then my parents spoke to him and told him what they heard and what they knew.

20 Q That was the interview at which you were present?

A Yes.

Q What was said?

A My father and mother were both—my father was the spokesman and accused John of bringing this woman into his house, and they had—

Q What did he say, what was the accusation against the woman?

A Simply an immoral character brought under my parents' roof.

30 Q (*By the Court.*) Just what did your father say about it?

A I couldn't tell you that; I know there was a good deal of conversation there, and it finally wound up by my brother John cursing my father, and praying that his curses would follow him to his grave. This woman left her husband in New Orleans and—

Q (*By the Court.*) Are you testifying about something you know of your own knowledge?

40 A I know it simply from my brother Samuel, he investigated it, and this Bonner had—

Archer Gifford Plume, direct.

Mr. Bigelow. I understood he was being asked for the conversation which took place.

The Court. I think he got beyond that.

Q Before we get to that—

Mr. Bigelow. Then I would ask that that be stricken out about this woman leaving her husband in New Orleans, because it is not responsive to the question.

The Court. It is not anything that this witness knows about of his own knowledge; it was told to him by his brother, and it is the kind of declaration that is not within the rule. I do not think that statement is competent.

Q Before we go to that put your mind now on this conversation when your father and mother and all hands were there?

A I was pretty young myself then, and I was of course very much worked up.

Q Did your brother John say anything to indicate that he knew that this woman had left a husband or children or anything of the kind?

The Court. Oh, no; what did he say? You are leading the witness.

Q All right. Put your mind back on this conversation and tell us everything that you can remember that your brother John said?

A I can't remember much of anything.

Q What can you remember that he said?

A I cannot remember anything.

Q Cannot remember anything he said at all?

A No, sir.

Q You just spoke about his cursing your father.

Q (*By the Court.*) Tell it as nearly as you can.

A I was very young, and of course I was very much excited. I would not charge my memory with any of that only I know it affected my parents very much; that is all I can tell you about it; and it eventually was the cause of my father's death, worry over that curse.

Archer Gifford Plume, direct.

Q Now you say that your brother John cursed your father; what did he say in reply to that?

A My father said, "John—"

The Court. Mr. English, that evidence came out without being provoked by a question, and I ask you whether you think it is evidential. Mr. Plume volunteered it, and I ask you whether you think that is competent evidence.

10

Mr. English. It is all a part of this general conversation which took place at this time.

The Court. What I want are the declarations which were made at that time, which should be confined explicitly to the question of pedigree. Any declarations made by Mr. John V. Plume at that time would be evidence here and now. I tried to get from Mr. Plume what it was his brother said at the time.

20 A I can't seem to recall that, but I know that my brother John—

Mr. Bieglow. I object to what he knew.

Q You have already stated that your father objected, to your brother, to this woman as an immoral woman?

A Yes.

Q What did he say?

30 A Why, I can't tell you, only that he blamed my brother John for bringing such a woman under his roof.

Q (*By the Court.*) What did your father say to John; what did he say to John to indicate that he thought she was an immoral woman?

40 A I don't know exactly what could be said, I can't recall, I can't recall his words; it is a good many years ago, to start with, and I was very young, but I know that my parents found out, as I say, after he went off to California and left this woman at the house, and when he came back again this disturbance occurred.

Archer Gifford Plume, direct.

Q When he first brought her there he introduced her as his wife?

A He brought her there as his wife; we didn't know it; my father and mother both, by members of the family, were told who and what she was.

Q (*By the Court.*) Were told by whom?

A By relatives and friends of the family that knew of her history in New Orleans.

Q When John came back from California did they in this conversation tell John who and what she was? 10

A My father must have accused him of it, I can't tell you that, but my father must have accused him of it, and that is what caused the trouble.

Q What did your father accuse John of?

A Bringing this immoral woman under his roof.

Q Did he go further and point out in what the immorality consisted of?

A It wasn't his wife. 20

Q Oh, he said that?

A Yes.

Q That she wasn't his wife?

A Yes, she wasn't his wife.

Q Did he give any reason to John why he said she wasn't his wife?

A I don't know, I can't recollect now; I suppose my parents—

Q (*By the Court.*) Don't suppose; tell us what was said and done? 30

A Well, I don't know, the result was, sir, that he left my father's house with this woman and went back to California.

Q You say that he accused John of having brought this immoral woman under his roof, that she wasn't his wife?

A Yes.

Q What reason did he give to John for telling him or accusing him of having brought a woman who was not his wife? 40

A From the information which they had obtained.

Q Did he tell John what that information was?

A I presume he did.

Q Do you remember what he said ?

A No, I do not.

Q Did your father, in conversation with you, ever tell you what he had learned about this woman?

10 A No; I was too young; I wasn't consulted with those matters at that time.

Q Have you any knowledge of the daughter of that union of John V. and this woman, young Marion they called her; did you know of young Marion?

A I knew of her, yes, sir.

Q (*By the Court.*) Ever see her?

A Yes.

Q Ever meet her?

A Yes.

20 Q You have met her?

A Oh, yes.

Q Do you remember this woman that John V. your brother brought to the house at the time of the conversation?

A Yes.

Q How old a woman was she, as near as you can tell, at that time?

30 *Mr. Bigelow.* I object; it seems to me that is a matter requiring great degree of expertness, to tell a woman's age from observing her once, and this witness I don't think is qualified.

Admitted.

A That woman was probably, well she was from twelve to fifteen years older than I was.

Q (*By Mr. Guild.*) Older than you are now?

A Than I was at that time, sir.

Q That was in 1849, this conversation?

A In 1848. I was born in—

40 Q No. You said John came back with a woman in 1848, and then went out to California in 1849?

Archer Gifford Plume, direct.

A He brought the woman from New Orleans in 1848, and then went to California, and he was in California about eighteen months, and then came back here and took that woman. I suppose my father must have written, but he took that woman and went back to California.

Q Then he came from California about eighteen months after; now eighteen months from 1849, that would make it 1851? 10

A Yes.

Q You were born in 1832?

A Yes.

Q You were about nineteen years old?

A I was sixteen years old.

Q How old do you figure out this woman was at the time you were sixteen?

A Twelve to fifteen years older than I; she must have been born twelve to fifteen years previous to 1832. 20

Q In the neighborhood of thirty-one, two or three?

A Older than that; she was an old, wrinkled woman.

Q Do you remember her appearance?

A Oh, certainly.

Q How much wrinkled was she?

A Pretty deep furrows.

Q Have grey hair?

A Yes, sir.

Q How did she appear to you, how did her age appear to you? 30

A Appeared to me to be about fifteen years at least older than I.

Q Without relation to your age, how old would you say she was looking at her at that time, as you remember?

A Thirty-one or thirty-two years of age.

Q That was in 1851?

A No, that was in 1848, when she first came to the house.

Q You are speaking of her at that time?

A Yes.

Q You think she was about thirty-one in 1848?

A Yes.

Q You don't mean she was wrinkled and grey then, but later on?

A No, she was wrinkled then, when she first came to my father's house.

10 Q In 1848?

A Yes.

Q I think you said you knew this young Marion, as you call her?

A Yes.

Q Where did you see her?

A I met her in New York.

Q How old was she at the time you first met her?

A That I couldn't say, sir.

20 Q Can you place the year when you first met her?

A No, sir.

Q (*By the Court.*) Who was with her when you met her in New York?

A She was with her parents.

Q A young woman or middle aged?

A Marion was a child. My brother John sold out his business in California, came North and bought a farm up at Peekskill and he lived there, and of course then I saw a great deal of her, but up to that time I hadn't seen her.

30 Q (*By the Court.*) She was living with your brother and this woman that you speak of?

A Yes, sir, at Peekskill.

Q How long did they live there together?

A I think John lived there probably about three years.

Q Then he went out to California?

A Yes.

40 Q (*By the Court.*) Did young Marion go back to California with them?

Archer Gifford Plume, direct.

A Yes.

Q Do you remember when young Marion came on East again, after her father moved on to California?

A No, sir, I never saw her.

Q Have you any knowledge of her having gone to Florida?

A I am told by one of the nephews, one of the Lockwood boys, that the mother and she were in New York on their way to Florida.

10

Q What was the occasion of their going to Florida?

Mr. Bigelow. I object. The Lockwood boys are living at this time and can testify.

The Court. How is that material?

Mr. English. Well, it wasn't objected to.

The Court. Well, that is not a good excuse for putting in immaterial matter. I doubt if this witness knows enough of his own knowledge to answer your question on that point.

20

Q Do you know whether John V. had a farm at Florida?

A No, sir, I never knew it. The first I ever heard about it, I understood that—

The Court. No. Wait.

Q You had considerable correspondence with Samuel about this boy Edward, this defendant Edward, did you not?

A Samuel had a good deal with me.

30

Q It would appear from letters which were offered in evidence on behalf of the defendant Edward that he and your brother Samuel were on very friendly terms in 1908?

A They were, after I wrote to my brother Samuel.

Q Previous to that did you receive letters from your brother Samuel which were written in a different key, so to speak?

A Yes, sir.

40

Archer Gifford Plume, direct.

Mr. Bigelow. I object to that. The letters speak for themselves.

Mr. English. I will read them.

Q You have already identified the letter of August 13, 1905, and which has been offered in evidence?

A Yes.

10 *The Court.* Read the whole letter into the record.

Mr. English. Yes, I will.

Q He addressed you as "Giff."

A Yes, sir.

20 Q "August 13th, '05. Dear Giff: Yours of the 4th instant duly received. There are some parts of your letter I don't understand. You say Joe Plume's uncle Frank died, etc., He had no uncle except Jim Frank who married the doctor's Irish servant, and who the doctor gave \$1,000—then banished and disinherited him. You say John's boy called on you. John V. Plume never had a son, only two children, Marion and the infant in our tomb. If he had a son he would now be over fifty years. The boy you saw must be young Marion's son by that man she was living with, bear this in mind, for when I die he will come in for a portion of the estate. At the time, 1853, I left S. F. John's wife had no son, and besides was too old to have a child. When he lived at Peekskill I lived with him in 1856, and he had no son. This goes to prove this boy a fraud, or he is Marion's child. Look in a Chicago Directory if his name is in it. Marion lived in New York with a man, and he took her and mother to California. John followed after that. What a just retribution for cursing his father. Died, as it were, an outcast, and she in the poor house. I gave her a letter from Panama that was a settler for her. I have just got done fixing my recent purchase up town, and it looks fine, got good tenants.

30 40 This fever here is the devil; it no doubt was brought here from Puerto Cortez; we have a nice Board of

Archer Gifford Plume, direct.

Health, fit subjects for states prison. Several have had the fever before, and others born and brought up here. I laugh at them when they say you only have the fever once, while I have had it three times and each time bad. Yellow fever wants no theory, but sound common sense practice and quick work for it is a quick malady. Write soon. Your Aff. Brother Samuel." Do you know who the boy he refers to here was? 10

A Edward.

Q One of the defendants here?

A Yes, sir.

Q He says: "The boy you saw must be young Marion's son." Who was the young Marion he refers to?

A The daughter.

Q The daughter of this union with Marion Hu-
guenin? 20

A Yes, Marion Bonner.

Q He speaks of some man in New York that Marion lived with; do you know anything about that?

A No, sir.

Q Don't know that of your own knowledge?

A No, sir.

Q Then he speaks of the just retribution for cursing your father; is that the proceeding you referred to earlier in your testimony?

A Yes, sir. 30

Q Now I read another letter dated January 31, 1907, which has already been marked in evidence as Exhibit D 12. This begins "Dear Giff. Yours of 20th of Certificate at hand. Thought you were sick with the Grippe. I have just got over it by taking care of myself. I have just got letters from Julia saying you called on her the Sunday before, they were down in South Carolina. He has not written me a word since I run him out of the house, and I don't want to hear from him. Giff, he is Hattie Peacock all over, 40

Archer Gifford Plume, direct.

10 a dirty dog. I don't want him to get one cent of what I may leave. All I want you to do is to put me by the side of our parents, and have erected in the Second Presbyterian Church in Newark a Memorial Tablet to their memory. The rest you can do as you please with it, but don't recognize that bastard of John's daughter. Why you should know that is not John's son. Marion was too old at that time to have a child. Did he tell you how old he was, and where he was born, or where he was living or working in Chicago. I would like to get into communication with him. In talking to John, be careful what you say to him; he is sharp and treacherous as a snake, and she is as sharp. They are trying to play sweet with you. Write soon and let me know the news. Sorry to see William Plume is dead, the best boy of the lot. Your Aff. Brother." He is talking here about Julia; who is Julia, do you know?

A John's wife.

Q John was his son?

A No John is Samuel's son.

Q And Julia was his daughter in law?

A Yes.

Q When he is talking about "Don't want him to get one cent," he is referring to his son John?

A Yes, sir.

30 Q He says here, he speaks of that bastard of John's daughter, who is he referring to there?

A Marion,—young Marion.

Q Who does he refer to as the bastard?

A Young Marion,—oh, that might have meant this boy.

Q The defendant Edward Plume in this case?

A Yes, sir.

Q He says: "you should know that Marion was too old." What Marion is referred to there?

40 A The mother, the one that he calls mother.

Archer Gifford Plume, cross.

Q His supposed wife Marion Hugenin?

A Yes.

Q Now I will read the last letter dated November 22, 1907, in evidence as Exhibit No. 13. "Dear Giff. I have not heard from you in so long, I thought I would write to find out if you were still in the land of the living. Giff I wish you would let me know immediately the first news of that fellow who claims to be John's son, how old he is, etc., in fact all you know of him. What year was it young Marion went to California with that man from New York. We have had rain, thunder and lightning for the last two days, the weather is mild though and the canals are full of water. It is so dark I can't see to write. Bank notes here are worth two per-cent. per month, but I would rather keep my money in a safe place at five per cent. a year.

10

Nothing doing in a business way, no property selling, and no buyers, but I collect my rents all right, so far.

20

Now, don't fail to give me all the information you can about that boy you can, but I am certain he is not John's son. Write soon. Your Aff. Brother."

Cross examination by Mr. Bigelow.

Q Is your memory clear?

The Court. As to what?

Q Is your memory failing, in general?

A No, sir, no more than one would at my age.

30

Q How old are you?

A I am in my eightieth year sir.

Q Do you remember clearly things which happened, of which you have testified which happened in 1848?

A Yes, sir.

Q And 1851?

A Yes, sir, as far as this is concerned, yes.

Q Where did you live then?

40

A Corner of Washington and New and Bleecker street and Halsey street, a solid block there.

Q Was that your parent's homestead?

A Yes; I lived with them as long as they lived.

Q No. 60 Washington street, was that,

A No;—we lived up there, my father bought the property corner of Central avenue.

10 Q When did you move to 60 Washington street?

A Tell me when the deed to this Washington street property was and I can tell you.

Q Do you think it was in your mother's life time?

A Oh, of course it was; in my father's life time, too.

Q It was in your father's life time?

A Yes.

Q When did your father die?

A 1854.

20 Q And it was some time before that?

A Yes, sir, of course.

Q Do you know who lived there before you moved there?

A Yes, David D. Andres.

Q He was no relation of yours?

A Oh, no.

Q How long was the lady you speak of as Mrs. Bonner a resident at your parent's house?

A She was with us, I think about fifteen months.

30 Q She came here about 1848?

A She came there in 1848.

Q That would mean that she left some time in 1849?

A No, she left there early in 1850 I think and went to California, when my brother John came for her.

Q During the time she was there was a child born by her?

A No, sir.

40 Q Was there a son of hers, Joseph W. Plume?

Archer Gifford Plume, cross.

A He was born in San Francisco.

Q But he died at your mother's home, didn't he?

A Not by a long shot.

The Court. About whom are you inquiring now?

A The first child of John's.

The Court. Of John and Mrs. Bonner?

Mr. Bigelow. Yes, the first child of Mr. and ⁽¹⁾ 10

Mrs. John V. Plume.

The Court. Then there were three children born of that marriage?

Mr. Bigelow. Four.

A No, there wasn't four; two is all there were.

Q If this child had died at your parents home in 1850 you would have known it, would you not?

A Most assuredly.

Q There is nothing you could be mistaken about? ⁽²⁾ 20

A Nothing, sir. The child was embalmed in San Francisco and was sent here, and I had it put in the vault.

Q You are sure of that?

A Yes, sir; quite sure of it; and it was one year and seven months old when it was put in the vault.

Q (*By the Court.*) Have you any means of fixing the date of that event?

A Yes, sir; simply by the record at the cemetery.

Q (*By the Court.*) When was it, do you know? 30

A I just stated that, sir.

Q When did you say this child died—July 18, 1850?

A This child died on the 18th day of July, 1850, and it was one year and seven months old, sir, on the record.

Q I wish you to look at this certified record of the death of Joseph W. Plume, son of John V. and M. A. Plume, at Newark, 60 Washington street, July, 1850.

A No, sir; never died there. 40

Q You don't want to change your testimony in any respect, after looking at this?

A No, sir; it never died there. The remains of that boy came on here from San Francisco. Oh, I better take that back. Now I won't be so positive about that. It came on here from San Francisco, I know that, and I attended to it and I had it put in our family vault.

10 Q Are you sure about it or are you not?

A What do you mean?

Q Well, I thought you said you were not so sure about it?

A Well, I stopped here when I came to see the age. That boy must have been born here in 1848; he must have been born here.

Q I am asking you whether you are sure that he didn't die here?

20 A Oh, I am sure he didn't die here, because I attended to the remains and had them interred in the cemetery.

Q That is nothing you could be mistaken about?

A Nothing I could be mistaken about, because the records at the cemetery show it.

Q You were living at home July 18, 1850?

A 1848 and 1850.

Q You were living at home there?

A Yes.

30 *Mr. Bigelow.* I ask that this record be marked in evidence.

Marked Exhibit D. 15.

Q You have spoken of Mrs. Bonner?

A Yes, sir.

Q Do you know what her husband's first name was?

A Robert.

Q Robert?

A Yes.

40 Q Are you sure it wasn't Ransom?

A No, sir; and he had a brother and his brother was a commercial traveler in New York, and I knew him; I didn't know Robert.

Q You are sure his name was not Seymour R. Bonner?

A Yes, I am.

Q Do you remember my coming to your office last summer when Mr. Gifford was present, and your telling me that you could not remember his name, but that he had a brother whom you used to meet traveling? 10

A Yes, sir. I don't know as I told you I couldn't remember his name; I may not have recalled the name at the time; I might not have been able to recall his name at the time; that would very frequently occur with a Christian name.

Q It happens that to-day you recall his name?

A I recall his name now; I might not have known it at the time you asked me, I might not have recalled the name; there was no necessity of my familiarizing myself with his Christian name. 20

Q Would you be very much surprised if it was Richard instead of Robert, or is it a thing you are absolutely sure of, like the A B C's?

A Yes, sir; I would be surprised.

Q How long did this lady stay at your house did you say?

A She was there I think about eighteen months.

Q She was introduced there in 1848? 30

A 1848.

Q By your brother John?

A Brought there by my brother John; yes.

Q He brought her there as his wife, I believe you said?

A Yes, sir.

Q And she was treated as his wife by you and your family?

A Because we were ignorant. 40

Q And then he went to California, is that right?

A She went to California after my parents found out who she was.

Q Didn't you say he went to California and then came back and took her back with him?

A Certainly did, yes; but while he was gone in California my parents found out who she was.

10 Q After he brought her there in 1848 he went to California?

A Yes, alone.

Q And left her at your house?

A Yes, sir.

Q Then he came back; and during all that time she remained at your house, that is, your parents' house?

A Yes.

20 Q And you don't think that took more than fifteen months?

A Fifteen to eighteen months I think was all she was there.

Q Didn't you say that this conversation which you have mentioned, at which your father and mother and your brother John and his wife and you were present took place in 1851?

30 A No, I didn't say that. Well, yes; I suppose it was then. I can't explain those years; I can't get down to those years; I have no data where I can state years positively, but it must have been about 1851.

Q If that did take place in 1851, and your brother's wife first came to the house in 1848, then she was there about three years?

A Eighteen months I said; I said she was there about eighteen months, I think, she lived with us.

Q (*By the Court.*) You don't understand the question. He says she came there in 1848 and lived there until 1851, so she must have been there nearly three years.

Archer Gifford Plume, cross.

A No, because she came the latter part of 1848, and went away early in 1851, because I know that in 1848, late in the fall of 1848, I went in business in New York; I was a school boy when she came there.

Q Do you know where she lived before she came there?

A Lived in New Orleans; I didn't know; I have been there time and again and never took the trouble to investigate her at all.

Q When your brother had this farm at Peekskill she lived with him there?

A Yes.

Q And you went to visit him there?

A I was up there I think once or maybe twice.

Q Any others of your family go?

A I don't know that they did, sir; it was said that Samuel went, but I didn't recall that.

Q Did you see Mrs. Plume up there, Mrs. John V. Plume?

A Yes.

Q (*By the Court.*) You mean now the woman who is referred to as the Bonner woman?

A Yes, Mrs. John V.

Q And she was living there as his wife?

A Yes.

Q And that was the common reputation of their friends and neighbors and relatives at that time, is that correct?

A No, I don't know that it was so, I don't know that it was, because my parents never recognized her after this, after her reputation became known.

Q She was addressed though by people as Mrs. Plume?

A Of course.

Q And introduced by your brother as his wife?

A Yes; that is not an uncommon occurrence.

Q Your brother Samuel was a man of rather hasty disposition, wasn't he?

Harry D. Lockwood, direct.

A Oh, he was quick.

Q And he would sometimes draw rather hasty conclusions?

A Who?

Q Samuel?

A Yes, he was very impulsive.

Q When he called a person names it didn't mean very much, did it?

10 A I don't know.

Q Let me show you a letter—

Mr. Depue. I would ask that this cross examination be suspended for the present in order that I may put Mr. Lockwood on the stand, whose testimony will be brief, and then it will not be necessary for him to come back here again to-morrow.

HARRY D. LOCKWOOD, recalled.

20 *Direct examination by Mr. Depue.*

Q Mr. Lockwood, did you ever know John V. Plume in his lifetime?

A No, sir.

Q Never met him at all?

A Never.

Q Ever hear anything about him?

30 A Well, only as a child would hear sometimes among the members of the family, as a young child among the members of the family, and they are generally rather discreet in saying anything before young children.

Q Did you hear anything about his being married?

A No.

Q Did you hear anything about his ever having had a son, Edward C. Plume?

40 A Never; I never heard anything about my Uncle John except having the one child Marion; I don't count the little infant that lies up in our family vault, that is the one my uncle, Mr. Gifford Plume, was speaking about being sent from California.

Harry D. Lockwood, direct.

Q The only child besides the little one, that you ever heard of was Marion?

A That is the only one I ever heard of.

Q You never met Mrs. Bonner?

A Never have seen them at all, never seen any of that family; they all left here before I was born.

Q Had you ever seen Mr. Edward C. Plume, one of the defendants in this case?

A He was pointed out to me the first time here in this room this morning, never had seen him before. 10

Q Never had any communication with him?

A No, sir.

Q Ever hear of his existence until after this suit was commenced?

A Yes, sir.

Q When?

A I heard of his existence about two years ago. My cousin came in my office one day in New York, that is, a son of the late Mr. Samuel Plume, and asked me if I had heard of our new cousin; why, I said, no. 20

Mr. Bigelow. I object. It appears that this is a conversation with the defendant John I. Plume, who is living. If there are any declarations that John I. Plume should make he should be here himself to make them.

The Court. I think you are a little out of bounds with that, Mr. Depue.

Mr. Depue. Mr. Plume is not in this jurisdiction. 30

Mr. Bigelow. He has filed an answer.

The Court. You are asking for statements made by a living man who is one of the parties in this suit.

Mr. Depue. The real point of the question was that this was the first time the witness ever heard of any one claiming to be a son of John V. Plume.

The Court. He can say that, and that is entirely proper, but he was going on to tell other things. 40

Archer Gifford Plume, cross.

Q That is so, isn't it?

A Yes. I might say it was not told to me as information, the question was asked if I ever heard of it, and I said no.

Cross examination by Mr. Bigelow.

Q Did you ever hear in your younger days of Mrs. John V. Plume?

10 A Why, only in a way, as I say, a small child would hear among members of the family talking about Mr. and Mrs. Plume.

Q Did you ever hear—

A They left here before I was born.

Q Did you ever hear in those days of anybody referred to as Mrs. Bonner?

A No, sir; I wouldn't be apt to, because I was too young.

20 ARCHER GIFFORD PLUME, recalled.

Cross examination by Mr. Bigelow.

Q Did you ever hear of the Cincinnati Society?

A Yes.

Q Do you know what the rule of membership in that society is?

A Not very familiar with it. My father was a member of it.

Q You have known of it a good many years?

A Surely.

30 Q Was your brother John a member of it?

A John inherited it; yes, sir.

Q What do you mean by inherited it?

A In the Cincinnati Society you cannot buy a membership, it comes down to the oldest child.

Q The original member had to be an officer in the Washington army, or something of that sort?

A Yes.

The Court. What is the relevancy of these questions?

40

Mr. Bigelow. It will appear in a minute.

Archer Gifford Plume, direct.

Q How long have you understood that this was the rule of membership, that it only comes by inheritance to the oldest son?

A I understood it for quite a number of years.

Q How long did you say you had known that rule, how long had you had that idea of the rule of membership?

A I have known it for forty or fifty years.

Q Is it your idea that adopted sons or illegitimate sons are included within that rule as eligible? 10

The Court. I think you are going too far. If there is a society called the Society of Cincinnati and if it has constitution and by-laws the whole thing is susceptible of proof by people who know. It does not appear that Mr. Plume is a member of it, or that he has any definite knowledge about it, beyond the knowledge that he may have picked up in the newspapers or the kind of knowledge we all pick up on the street about such matters. 20

Mr. Bigelow. I don't care what the real rule of membership in the Cincinnati Society is, but this witness has an idea that membership is hereditary, and he made application for membership for Edward C. Plume and wrote him a great many letters about it.

The Court. Well, that is entirely proper; you can show that.

Q (*Question repeated.*) A No, sir.

Q Your brother Samuel was apt to slander his relations, was he not? 30

A Not without cause.

The Court. I think you are wandering pretty far now.

Mr. Bigelow. Well, here are some letters from Samuel Plume making certain statements, and I just want to show that he was apt to make that kind of a statement without cause, and I was going to read to the defendant a statement about

Archer Gifford Plume, cross.

this defendant, Gifford Plume, of some sort, which this defendant could easily deny.

The Court. I think that is too remote. Stick to the line that you were on. You were going to prove that Mr. Plume tried to assist Edward C. Plume to become a member of this society of Cincinnati, and if there is any evidence of that sort I would like to hear it.

10

Mr. Bigelow. I believe that appears from the evidence already admitted.

Examined by Mr. Guild.

Q Mr. Plume; was your mother on friendly terms with all her children prior to her death?

A All excepting John, I think he was about the only one; she never got over his acts.

Q What was her disposition towards her grandson, John I.?

20

A She left him—

Q No, not what she did; I want to know what her personal feelings toward him was?

Mr. Bigelow. I don't see how that is competent.

The Court. John I. is your client?

Mr. Guild. Yes.

Admitted.

Q I want to know whether she was well disposed toward her grandson, John I. Plume?

30

A The will shows that she was.

Q (*By the Court.*) You know she was?

A Of course; she gave him part of the estate.

Examined by Mr. Depue.

Q Why do you refer to this lady as Mrs. Bonner?

A Because on investigation we found out that this Mrs. Bonner married this Robert Bonner, and she had two grown children by him, sir.

Mr. Bigelow. I object. It doesn't appear where this knowledge came from.

40

Archer Gifford Plume, cross.

The Court. It must appear that he either does know or does not know of his own knowledge.

A I got it from my brother Samuel who lived in New Orleans and knew all about them.

Q When did you first learn about this matrimonial mix-up of John V?

A A good many years ago, sir, a great many years ago.

10

Q From who?

A Well, from the family.

Q What members of the family?

A Well, I knew that my brother John had been forbidden the house.

Q Now, you are referring to the conversation that you spoke of?

A Yes.

Q I am asking you whether after that time you heard anything about Mrs. Bonner or Mrs. John V. Plume from any of the members of the family?

20

A I heard about it from my brother Samuel.

Q Any of the others?

A No, there was no one else in New Orleans.

Q Tell us what you heard from your brother Samuel?

A Brother Samuel simply wrote to me that this woman—

Q (*By the Court.*) Where is the letter?

A I don't know where it is; there are several letters that I had of his and some how or other they disappeared.

30

Q Have you made a search for them?

A I have. My nephew came into my office—I had all these filed away, and my nephew came in there and cleaned out my desk to make room for himself, and some of those letters he evidently destroyed, didn't think they were of any value.

Q You searched for them and could not find them?

A I searched for them and couldn't find them.

40

Archer Gifford Plume, cross.

Q Tell us what you learned from brother Samuel about this situation?

A My brother Samuel learned that this man Bonner was chasing my brother John around New Orleans with a shot gun.

Objected to.

The Court. No, that won't do. Strike it out.

10

A And that he had two quite sizable children.

Q Did you hear how old they were?

A No, I didn't know that; he said quite sizable children.

Q And children of Mr. and Mrs. Bonner?

A Yes, sir.

Q Do you know whether Mr. Bonner is living or dead?

A Oh, he must be dead now, he would be too old to be living now.

20

Q Do you know when he died?

A No, I have no idea; I never went into his history or pedigree to look after him, but I casually met his brother when I was traveling, just before the war; that is the only one I knew of them.

Q Did you hear whether or not Mrs. Bonner was married at the time she took up with your brother John?

Objected to.

30

A She had two children by Bonner.

Objected to.

Q From your brother Samuel, I mean?

A Yes, sir.

Q Did you hear from your brother Samuel whether or not—

40

Mr. Bigelow. I may be mistaken, but as I understand the rule, declarations with regard to pedigree are of no weight at all unless they are made by a blood relation of the person whose pedigree is being spoken of, or somebody related by

Archer Gifford Plume, cross.

marriage. Now these are statements by Samuel Plume regarding a woman whom he distinctly denies he was any relation to.

The Court. But whom you say was actually married to John V. Plume.

Mr. Bigelow. Yes, we say that, but they deny it.

The Court. I will take the evidence.

Q Did you hear whether or not Mrs. Bonner was married at the time she took up with your brother John? 10

A Oh, yes, I heard that.

Q Did you learn from your brother Samuel where Mr. Bonner was living at the time Mrs. Bonner took up with your brother John V?

A No, sir.

Q Or how long Mr. Bonner lived after that time?

A No, sir, I know nothing about it.

Q Didn't you learn from anyone anything about young Marion going West with some man? 20

A No, sir, no more than what my brother wrote me.

Q That is all, in his letter, that is all you learned about that?

A I knew nothing about it at all, I didn't know it.

Q Except that.

By Mr. Bigelow.

Q When did Samuel W. Plume tell you all this?

A Why he has written it to me from time to time, as I told the Judge. 30

Q This is the result of letters you have received?

A Yes, sir, that he has written to me.

Adjourned until tomorrow, at ten o'clock.

June 28, 1911.

	<i>Between</i>	}
	OSCAR KEEN, trustee, &c.,	
	<i>Complainant,</i>	
10	<i>and</i>	
	A. GIFFORD PLUME and others,	}
	<i>Defendants.</i>	

Continuation of examination pursuant to adjournment at the place and in the presence of the parties as before, on June 28, 1911.

A. GIFFORD PLUME, re-called.

20 *Direct examination by Mr. English.*

Q Mr. Plume, it appears from letters which were introduced in evidence yesterday by Edward Plume on his behalf that you used to address him as nephew, and signed yourself "your affectionate uncle," or words to that effect. What was your object in doing that?

Mr. Bigelow. I object.

The Court. What difference does it make what his object was?

30 *Mr. English.* They have been introduced for the purpose of giving basis for an inference. Why can't I contradict that inference by calling the man who wrote the letters and explaining what his real purpose was?

The Court. Mr. Plume wrote a letter and said "My Dear Nephew"; the nephew gets that letter and he sees how he is addressed; a man's motive is something that you cannot cross examine the witness on. Upon what ground do you think

40 you can get this in?

Archer Gifford Plume, direct.

Mr. English. My thought is this, your honor. These letters have been introduced to form a basis for an argument that the members of the family in general and Mr. Plume in particular regarded this defendant as nephew, produced letter signed "dear nephew"; the basis of that letter is to form basis for an argument of an inference, and I want to call the man who wrote that letter to state what his true motive was, what he had in mind and what inference is to be drawn from the language of the letter. 10

The Court. I think not; I think I shall have to exclude that testimony.

Q Then let me ask you another question or two; possibly we can come back to it, with your honor's permission. Do you remember when your brother Samuel died?

A Yes, sir. 20

Q That was in 1909 I think the evidence shows?

A November.

Q Did you have any correspondence with Edward at that time, shortly after your brother's death?

A No, I don't think I did, sir, any more than my advice to him, yes.

Q Did you have some correspondence with him?

A Yes.

Q I think it already appears that he started in to contest Samuel W. Plume's will? 30

A Yes, sir.

Q And you had some correspondence with him about that?

A Yes.

Q I have a letter here which has been produced by the other side, at my request, dated December 4, 1909; is that your letter?

A Yes, sir.

Q That was written by the defendant Edward?

A Yes. 40

Archer Gifford Plume, direct.

Q What was the occasion of your writing that letter to him?

A I wrote to him merely to save himself and his family from this notoriety in which he has eventually forced onto me.

Q Had he requested any aid of you in his pending will case?

10 *The Court.* Don't lead the witness.

Q Shall I scratch that out?

The Court. Yes

Q Had this letter been preceded by other correspondence between you and him?

A Not as far as this was concerned; this was the first one after he undertook to contest my brother's Samuel's will.

20 Q Did he write you about the fact that he was to contest it?

A My brother John wrote me he had contested the will; on the strength of that I wrote this letter to him.

Q After you heard from your brother John?

A Yes.

Q You sat down and wrote this letter to Edward?

A Yes.

Letter offered in evidence.

30 *Mr. Bigelow.* I object to this letter. This controversy now being tried arose out of the controversy of Samuel Plume, the will being clear as to what shall be done until his death. Immediately upon his death this contest arose; this letter is written after that date.

The Court. What is the date of the letter?

Mr. English. December 4, 1909; that is long before this bill was filed.

40 *The Court.* Was it long before the controversy arose? *Mota* don't mean filing of the bill; it means the controversy between the parties.

Archer Gifford Plume, cross.

The broad question of legitimacy or illegitimacy, and to what extent that has been a subject matter of conversation in the family, conversation and correspondence in the family. The witness Edward Plume testified yesterday that he went to New Orleans for the purpose of contesting the validity of his uncle's will; that he withdrew from the contest because of advice given to him by his uncle, the present witness.

10

Mr. English. No; I asked him if it was not at his uncle's advice; he said no, at his uncle's request; he was quite strenuous about that.

The Court. This letter was a letter that was written by the present witness to Mr. Edward Plume and relates to that matter. I think I will have to admit the letter.

Marked D 1, June 28.

The Court. The questions that arise out of the offers of evidence in this case are puzzling to a very great extent, for the reason that we are wandering off into an exception to the general rule, I mean the exception which allows hearsay evidence to be given in certain cases on the question of pedigree, and the line is not always clear. I am going to take this testimony, and if I find on examination that I have wrongfully admitted it I will do the best I can to throw it out.

20

(Letter read).

30

The Court. I don't think you need object to that, Mr. Bigelow.

Cross examination by Mr. Bigelow.

Q Yesterday afternoon when speaking of the letters you had received from your brother Samuel you said they had been kept in a desk but that your nephew had cleaned out the desk and you had not been able to find the letters since. Did you refer to the defendant Edward C. Plume then?

40

Archer Gifford Plume, cross.

The Court. Who was the nephew that you referred to?

Mr. English. Having cleaned out your desk.

A Letters from my brother Samuel.

Q Then it is not this Edward C. Plume that you refer to?

A I don't understand the question.

10 Q (*By the Court.*) You said yesterday that you had a lot of letters in your desk?

A Yes.

Q (*By the Court.*) And that a nephew of yours came into the office and cleaned up the desk?

A Oh, that was Mr. Gifford; that was Mr. Gifford that came in there and cleaned up the desk.

Q (*By the Court.*) What Gifford?

A George.

20 *Examined by Mr. Depue.*

Q Did you ever regard Edward as your nephew?

A No, sir.

Mr. Bigelow. I object.

The Court. That is objectionable. That calls upon what passed through the mind of the witness which may never have had any expression anywhere.

30 *Mr. Depue.* May I not cross examine him upon these letters? That is what I have in mind of doing.

The Court. You see the trouble about your cross examination is that you are on the same side; you are ranged on the same side as is the gentleman who offered the evidence. I don't think I ought to give you the right to cross examine. I think Mr. Bigelow has a right to cross examine this witness.

Archer Gifford Plume, cross.

Examined by Mr. Depue.

Q Mr. Plume, why did you address Edward C. Plume in these letters produced as your nephew and sign yourself as his uncle?

Mr. Bigelow. I object.

The Court. I don't think we ought to go into that, Mr. Depue; that is probing a man's mind also.

Mr. Martin. Before this witness goes off I would like to say just a word in connection possibly not of either of the exact questions you overruled, but on the question of the propriety of asking this witness something about the occasion that gave rise to his addressing the defendant Edward Plume as his nephew. Now the defendant Edward Plume offers a letter, several letters from this witness, apparently showing an admission by this witness of the relationship. It seems to me that that letter insofar as it is admissible as against this witness and equally against our client has force and effect as an admission against interest. Now if a party to a suit offers in evidence something as an admission against interest of the party who wrote it, it seems to me it is entirely proper to ask the writer of that document to explain it, to explain what it means. Now his answer might be,—I don't know definitely what his answer would be to the question,—his answer might be that he did not write that, I mean in a hypothetical case, the witness might give his explanation that that was not his letter. 10 20 30

The Court. That would be admissible undoubtedly.

Mr. Martin. A witness might also say "I addressed this defendant Edward in that manner because his parents requested me to, they desired him not to be embarrassed by knowing his 40

parentage;" he might explain the letters by saying that at the time the letters were written he had an honest belief that this man was his nephew, and later discovered something to the contrary. He might explain the letters by saying that when he addressed him as his nephew he knew that it was an euphemism, but out of his own kindness of heart, not supposing there would be ever any such litigation as this, he wanted to be as friendly as possible. It seems to me that because any one of those answers might be given by the witness and would be proper, it seems to me some question of that nature ought to be allowed. It may be when the answer is made it will be of the nature which will not be substantial evidence; but the rest of us that are interested in this case cannot know until he makes his answer what the answer will be, and it seems to me some explanation on the part of this witness is entirely proper.

The Court. The difficulty about it is very obvious. To allow that to be done would be to allow a witness to make a statement and then explain it all away, in other words, shift his whole ground.

Mr. Martin. I think a witness can do that; it is recognized in any ordinary litigation when any paper is offered as an admission against interest that the party who wrote it may explain it all away if he wants to. Whether his explanation will be believed as against the force of the written document is a different matter; but it seems to me that the witness has a right to explain it away if he can.

The Court. There is another difficulty about this matter, as I recollect it. See if I have got these dates right. These letters that were received by Edward Plume from the present wit-

Archer Gifford Plume, cross.

ness were written in 1908 and 1909, and they were the letters in which he called Mr. Edward Plume his nephew and signed his name as uncle. Now it is proposed to have the witness tell why he addressed him as nephew. I think it already appears that the facts which are now being set up against Edward were known to this witness prior to the writing of those letters; prior to a certain date he knew a certain fact, this witness prior to a certain date knew of a certain fact or had been informed of a certain fact, or, whether it was a fact or not, he had information given to him. After that he is called upon to explain, to withdraw the statement and give the reason why. I don't think it is allowable at all; I think that he will have to stand on the ground that he has made. I have been extremely liberal in the admission of testimony in this case for the very reason that I spoke of a little while ago; it has been very puzzling to determine just where the line is sometimes between what is admissible hearsay evidence and what is not admissible hearsay evidence.

Mr. Martin. I would like to have the record put in such shape that we can properly review the ruling.

The Court. I think you will find the record is in that shape now. You don't have to take exceptions, you know.

Examined by Mr. Martin.

Q Will you explain the terms used by you in that letter?

Mr. Bigelow. I object to that.

The Court. That don't quite raise your question yet. What you want to state is why he addressed Mr. Edward Plume as his nephew and signed his own name to the letter as uncle.

Susan W. Heiser, direct.

Q I will put the question that way. Mr. Plume, why in that letter did you address the defendant Edward C. Plume as nephew and sign the letter as uncle?

Mr. Bigelow. Objected to.

The Court. Now, that is objected to, and the objection is sustained.

10

SUSAN WINTER HEISER, sworn.

Direct examination by Mr. Depue.

Q Mrs. Heiser, do you know when Susan Plume, your grandmother, died? Have you any recollection of the date at this moment?

A January, 1864.

Q I show you the Plume family bible, the first that was produced yesterday, and refer to the second item, "Susan Winter, his wife," referring to John I.
20 Plume, "died January 17, 1864, at 5:10, A. M."

A Yes.

Q That is the fact, is it? That is the way the record reads?

A That is the way the record reads, yes, sir.

Mr. Depue. I call attention to that because when Mr. Lockwood was testifying yesterday, your honor will observe the 4 in 1864, you see the 4 is above the 5 of the 5:10, A. M.

30 *The Court.* My spectacles do not show that to me; I can't see it. It isn't at all material, is it?

Mr. Depue. I don't know as it is material, except we wanted to get the thing right, that was all.

Q I show you, Mrs. Heiser, the so-called Lockwood bible, the second that was produced yesterday, and call your attention to the last entry on the page of births. You have a child?

A Yes.

40

Q A son?

Susan W. Heiser, direct.

A Yes; Edward Lockwood Heiser.

Q And born?

A December 6, 1883.

Q That is the last entry on the page of births?

A Yes.

Q That was not read yesterday, and I simply refer to that so as to get in all the record. He is still living?

A He is.

Q Did you ever know your uncle, John V. Plume? 10

A I have no recollection of seeing him.

Q You have heard about him, however?

A Very often, yes.

Q And did you ever hear anything about his having been married?

A I have.

Q From whom did you hear about that?

A From my father, Gershom Lockwood.

Q And did you ever hear anything about it from your mother? 20

A Those things were never spoken of by my mother in my presence.

Q Will you tell us what you heard from your father on that subject?

A I heard that he had married a lady from the South who was a Creole, but that he had lived with her previous to their marriage, and that she had deserted her husband and two children in the South for my uncle, John V. Plume, and they had gone to California to live. 30

Q When did you first hear that from your father?

A After my mother's death in 1880.

Q And did you hear him refer to it more than a single time?

A Yes; he spoke of it on several different occasions. When we were speaking, talking of the family, he repeated it.

Q And in the presence of anyone besides yourself?

Susan W. Heiser, direct.

A No, I don't remember; my brother Harry might have been with me at the time because we were all three living together, but I cannot say positively.

Q Did you hear anything from your father about the date of this so-called marriage?

A No, I did not, only that Uncle John went to California in 1849.

10 Q And was it said whether or not the marriage so-called, took place prior or after that time?

A He did not say, simply said that they were married.

Q Did you ever hear of their having any children?

A Yes, they had a boy, I understood him to say, who died in California, and Uncle John had him sent here in grandfather's vault.

Q That was an infant?

20 A Yes, and then Marion Plume, a daughter, who was older than I.

Q Did you ever see her?

A I think I have, but I cannot remember; it may be that I have heard so much about them.

Q From whom did you hear about them?

A My father.

Q What did you hear about them from your father?

30 A Why, that they had this daughter and she had married; he told me she had married a Mr. Stone, and Mr. Stone had died, and then married again, but I never heard the name of her second husband.

Q Did you ever see Edward C. Plume until you saw him in the court room yesterday?

A No, never.

Q When did you first hear that he claimed to be a son of John V. Plume?

40 A I went into Uncle Gifford's office in Clinton street here before Uncle Samuel's death in 1909, and Uncle Gifford I think it was that morning had received by mail a photograph from Mr. Edward C. Plume of a little boy.

Susan W. Heiser, cross.

The Court. You are now calling for a declaration of a witness who is living.

Mr. Depue. I think I am not entitled to do that, and I had not intended to do anything more than fix the date of this first information.

Q Before that time had you ever heard of the existence of Edward C. Plume?

A No.

10

Q Or that he claimed to be a son of John V. Plume?

A No.

Q Had you ever had any correspondence with him?

A No.

Q Or heard him mentioned in any way by any of the family?

A No.

Q Or anyone else?

A No.

20

Q It was testified to yesterday, I think, by your brother, Mrs. Heiser, that Susan Virginia Plume married Charles H. Tugman. Do you know whether or not Mr. Tugman is living or dead?

A I read in the *New York Times* an account of his death, I think within five years, in fact I am very sure it is within that time.

Q Were there any children do you know of that marriage?

A No.

30

Cross examination by Mr. Bigelow.

Q Mrs. Heiser, you said your mother never spoke of her brother, John V. Plume?

A My mother spoke of John V. Plume but never entered into the history of his marriage.

Q Did she see much of John V. Plume after he went to California?

A Well, I can only answer in this way, I imagine not, because he lived in California, and as I under-

40

Susan W. Heiser, cross.

stood he was in Europe a good deal, so I can't say how much she saw of him or how little.

Q Well, did your father, Mr. Gershom Lockwood, as far as you know, see much, if anything, of John V. Plume?

A I cannot say how frequently he seen him because I know he did see him because he had told me Uncle John had been in his store often to see him, but
10 I don't know how frequently they met.

Q Do you know at what time that was before he went to California?

A If I remember correctly, as young men my father and Uncle John were friends; this statement is as nearly as I can remember, my father said they were friends, and Uncle John introduced my father to my mother, and that after he came from California, this was some years afterwards, that he used to go into
20 the store to see my father; he may have been at our house and I was not old enough to remember anything about it.

Q During the period at which your father told you about your Uncle John and his wife do you know whether he was in correspondence with your Uncle John?

A I think not; that was after the year of 1880.

Q You spoke of Mr. Gifford Plume showing you a picture in his office some two or three years ago?

A No, no, it was, I think it was 1909, it might
30 have been 1908, I think it was 1909.

Q What did he say at that time?

The Court. What?

Q I asked what Gifford Plume said at that time?

A That that was a picture—

The Court. If you take an answer to that question it may open the door to the other side to take the testimony of Mrs. Gifford Plume.

Mr. Depue. I will withdraw that question.

Edward C. Plume, direct.

EDWARD C. PLUME, re-called.

Direct examination by Mr. Bigelow.

Q Mr. Plume, I show you the paper which was introduced in evidence yesterday and which is entitled "Last will and testament" and signed by your sister, and call your attention to the phrase which says "I wish divided between my niece, Marion H. Slade of Columbus, Georgia, and some to my sister, Leonora D. Mims, and also to my niece, Effie Louise Collins." Who were those ladies? 10

A Mrs. Slade and Mrs. Mims are my half sisters; they were my mother's children by her first marriage, and Mrs. Collins, Effie Louise Collins, was the daughter of Mrs. Mims.

Q What was Mrs. Plume's first husband's name?

A Seymour R. Bonner.

Q Do you know where your mother and her first husband lived? 20

Mr. Depue. Just one moment. Of course, this cannot be primary evidence.

The Court. No; it is entirely new matter.

Mr. Depue. I did not have that so much in mind, but I mean these facts are not facts that can be within the direct knowledge of the witness.

The Court. He has a right to tell the facts that he does know.

Mr. Depue. Yes, but where his mother and her first husband lived I should think would not be a fact within his own knowledge. 30

Q (*By the Court.*) What do you know about that within your own knowledge?

A My mother has told me she lived in South Carolina and also Georgia?

Q (*By the Court.*) You have answered the question. Your mother told you, that is how you know about it.

A I don't know anything except hearsay. 40

Edward C. Plume, direct.

Q (Question read.)

The Court. No, I don't think that is a portion of the subject of pedigree.

Mr. Bigelow. I offer an exemplified copy of the decree of divorce in the case of Seymour R. Bonner and Marion A. Bonner, dated 1846.

The Court. By what court?

10 *Mr. Bigelow.* Superior Court of Muscogee County, Georgia.

Mr. Depue. Your honor please, I object to the admission of this paper in evidence, first, because it does not seem to me to comply with the requirements of the act of Congress as I recall it, and that there is no certificate of the clerk to the signature of the judge who certifies to the clerk's.

20 *The Court.* I may be obliged to reject it on that ground, but I will give this man an opportunity to make it good, get a good certificate. On so important a question as this he ought not to be shut out because somebody made a mistake in the form of the mere certificate.

30 *Mr. Depue.* I recognize the propriety of that, but the objection is made in the interest of the next objection, which is that this does not contain the record of the proceeding; it is a certificate of two verdicts, or a verdict of two juries, one in 1845 and the other in 1846, and a decree of divorce which is not signed; the proceedings are not there, the evidence is not there, the other proceedings are not there, and I think we are entitled in a matter of this importance to have the whole record.

The Court. Mr. Bigelow, what do you say to the sufficiency, not of the certificate, but of the sufficiency of the record that is produced?

40 *Mr. Bigelow.* This is a record of a case that was heard sixty-five years ago in Columbus,

Edward C. Plume, direct.

Georgia, and some fifteen years after that General Sherman and his troops marched through that district and burned pretty nearly everything in sight; the minute book apparently escaped. I don't think it would be possible to get any other papers in that case. I can have the clerk make another search, but I think it will be fruitless. And as to the decree not being signed, the clerk wrote me that it seemed to have been the custom at that date to enter the decree in the minutes and not have it signed, that they were not signed. The pleadings in a case are generally a part of the decree, I understand, and I should think they might be necessary if it was a suit on that decree; but this is not a suit on the decree and does not, your honor, at this late day it would not require as to whether the pleadings showed jurisdiction of the court and all those matters for which they are usually brought in. These papers before you show that a decree of divorce from the bonds of matrimony was entered.

The Court. I do not think that can be admitted as a record of a divorce suit, but I will give you opportunity to make it good.

Mr. Bigelow. If I can show by depositions in Georgia or not that the remainder of the record is lost—

The Court. I cannot tell what may happen, but I will give you every opportunity to make that record good if it is possible to make it good.

Mr. Bigelow. I offer death certificate of Joseph W. Plume which has been marked for identification D. 15. This is the son, as it appears from the record, of John V. and M. A. Plume, and that was the child that was buried in the family burying ground. Mr. Gifford Plume testified that this child died—this shows that he died in Newark at the family homestead.

Marked Exhibit D. 15.

Edward C. Plume, cross.

Mr. English. I think we ought to object to the form of the certificate; I don't know whether it is proper or not; I don't know whether a paper executed in this way is evidence under the statute; it wouldn't be evidence if the statute didn't make it so.

10 *The Court.* I will admit that; I think that is near enough within the 28th and 29th section of the Evidence Act.

Cross examination by Mr. English.

Q You referred to two of the sisters who are mentioned in the will of Marion Plume, Marion the second I think she has been referred to; they were the children of your mother by her first husband?

A They were.

Q Mr. Bonner?

A Yes.

20 Q They were children born when they were living together as man and wife?

A They were.

Q Previous to 1846?

A Yes, sir.

Q Beg pardon?

A As far as I know; I don't know when they were born, I wasn't there.

Q Do you claim they were born after 1846?

30 A I don't know anything about it, when they were born.

Q When did you say your mother was divorced?

A When do I say she was divorced?

Q From her first husband?

A I only know from that record that was offered in evidence.

Q Those half sisters of yours were considerably older than you, were they not?

40 A I was not born until 1871, so I guess they must have been.

Edwârd C. Plume, cross.

Q Well, do you remember them as considerably older than you were?

A Why, yes.

Q Are they still living?

A I don't think so.

Q You don't think so?

A No.

Q Do you know how long ago they died?

A I do not. 10

Examined by Mr. Martin.

Q This Marion H. Slade that is mentioned in this will is you said your half-sister?

A What is that? No Marion H. Slade mentioned there that I know of.

Q (Showing witness paper.)

A That is a daughter of my half-sister, Mrs. Slade.

Q That is a daughter of your half-sister?

A Yes, was a daughter; she is dead, I believe. 20

Q Now, she is mentioned here as being of Columbus, Georgia; when did you last hear of her? Did you ever see her, this Marion H. Slade?

A I saw her once, if I remember correctly, in San Francisco, she visited us there.

Q How long ago was that?

A I should say about fifteen years or sixteen.

Q Fifteen or sixteen?

A Yes.

Q The will was dated twenty years ago? 30

A It was longer than that then. Well, it was just before I was married, and I was married in 1893; somewhere around 1891 I should say.

Q When did you say your sister died?

A My what?

Q Your sister who made this will?

A My sister died in 1891, or in 1900; my mother died in 1891; my sister died November. 26, 1900.

Q Where did you get this will?

A From my sister; she handed it to me personally. 40

Edward C. Plume, cross.

Q How long before her death?

A I don't recollect.

Q When was the last time you heard of this Marion H. Slade?

A When was the last time I heard of her?

Q Yes, as living?

10 A Oh, I don't know how long ago it was; it was probably ten years; she wrote and asked me where Marion was; it is more than ten years; it was prior to Marion's death.

Q Where was she then living?

A I don't recollect, couldn't tell you; I haven't had any communication from her since, and did not answer the letter.

Q What is this name (indicating)?

A Leonora D. Mims.

20 Q She is described as living at 26 Jefferson avenue, Brooklyn. When did you last see her?

A A great many years ago, when I was a very small boy.

Q When did you last hear of her?

A I don't know; I haven't heard from her in a great many years, I don't think since my mother died. Yes, I did, too; I heard from her, I notified her of my mother's death, and she wrote me two or three letters right after my mother died, then I dropped correspondence, I didn't keep it up.

30 Q And where was she then living?

A In Brooklyn, New York.

Q At the same address?

A I couldn't say as to the address.

Q Did you send her notice of your sister's death?

A No; I didn't know of my sister's death until long after she died.

Q The next name is "My niece Effie Louise Collins." When did you last see her?

A It was a great many years ago; I couldn't say.

40 Q When did you last hear of her?

Edward C. Plume, cross.

A I guess when that will was made.

Q Did you make any effort to see that the desire of your sister as expressed in this paper was carried out?

A I answered that question yesterday; there wasn't anything to carry out; there was no estate.

Examined by Mr. English.

Q Where did your mother when she was married 10
to Mr. Bonner live with her husband Mr. Bonner, in New Orleans, did you say?

A She never lived in New Orleans, no, sir.

Mr. Bigelow. I object.

Q Where did she live?

Mr. Bigelow. I object.

The Court. These very same questions were ruled upon a little while ago. The question was ruled out once on the ground that this witness 20
could have no personal knowledge of the matter inquired about.

30

40

February 2, 1912.

IN CHANCERY OF NEW JERSEY.

10	<i>Between</i> OSCAR KEEN, Trustee, etc., <i>Complainant,</i> <i>and</i> A. GIFFORD PLUME, <i>et als,</i> <i>Defendants,</i>
----	---

I, Jesse R. Salmon, special commissioner appointed
 by the court to take depositions of witnesses in the
 above entitled cause by an order a certified copy
 whereof is hereunto annexed, do hereby certify that in
 20 purusance of the notice of taking depositions hereto
 also annexed, I did attend at the residence of James
 J. Slade, St. Elmo, Columbus, Georgia, on the second
 day of February, nineteen hundred and twelve, at the
 hour of eleven o'clock A. M., and did then and there,
 in the presence of John O. Bigelow, Esq., and J. H.
 Thayer Martin, Esq., take the evidence *de bene esse*
 of Mrs. Leila B. Slade, a witness produced before me
 for that purpose.

And I do further certify that before proceeding
 30 to take the said depositions I took the oath required
 by law, which oath is also hereto annexed, the same
 having been taken before Hon. James E. Howell, an
 officer lawfully authorized to administer oaths or af-
 firmations in the State of New Jersey.

And I do further certify that before taking the
 deposition of said witness I administered to such
 witness an oath that the evidence which she should
 then and there give should be the truth, the whole
 truth and nothing but the truth; and that I reduced
 40 the said deposition to writing from my stenographic

Deposition of Leila B. Slade.

notes, and that I thereupon retained possession of the said deposition to be by me delivered personally to the court or the clerk thereof.

I hereby certify that the solicitors of the several parties stipulated in my presence that the said deposition should be taken by me and that they severally waived the signature of said witness.

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MRS. LEILA B. SLADE, being duly sworn according to law deposes and says:

Examined by Mr. Martin.

Q Mrs. Slade, you are the daughter of Marion A. Huguenin and Seymour Ransom Bonner?

A Yes.

Q Where was your mother Marion A. Bonner born?

A She was born in South Carolina, at Beaufort, 20 South Carolina, also not far from Charleston.

Q And what were her parents names?

A Her father was named William Huguenin and her mother was Miss Sarah Cropp.

Q What was the date of your mother's birth?

A She was born, I think it was the 13th of April,— I have got the bible here, I will hand that over to you if you prefer it,—1819, in April, she was born in April, 1819.

Q And when was she married?

A She was married in 1836, 13th day of January; 30 it is all down right in the bible here in the room.

Q And you have or you had a full sister?

A Yes.

Q What was her name?

A Leonora Huguenin Bonner.

Q And whom did she marry?

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A Charles B. Mims, of Columbus, Georgia.

40

Deposition of Leila B. Slade.

Q Is she living?

A No; she has been dead a good many years, eight or ten years.

Q Who were her children?

A Well, she had two children, and she lost one or two, and she has one daughter now living in New York.

10 Q What is her name?

A Her name is Effie Collins; I have not seen her for twenty years; I don't just keep up with my kin folks; I have too large a family to keep up with; I have got them from New York down to the City of Mexico, and I cannot just keep up with them all, my own family.

Q You spoke of a family bible?

A Would you like to see it?

Q We would.

20 A I would like for you to see it. It is the family bible, my father's; it has his first wife in, and his second wife; it used to be a Masonic bible; it had red cover on it and Masonic emblems, but it has been knocked around so much it has lost its cover.

Q These were children—

A By the second wife. My father was married in 1836 and he was divorced in 1845, then he married again in 1846, but my mother did not marry for several years afterward; she remained with her
30 *Page 5 of Transcript.*

mother until she got her maiden name back, then she married.

Q This page in this bible contains the family record of the birth of your father and the birth of your mother and the birth of their four children?

A Yes; the first child died before any of the others were born; then my brother was killed during the war, and my sister died a few years ago, several years
40 ago.

Mr. Martin. I will read these entries into the record of the case:

"Seymour Ransom Bonner was born in Hancock County, Georgia, on the second day of March, 1809. Marion Alethia Huguenin was born in St. Lukes Parish, Beaufort District, South Carolina, on the 13th day of April, 1819. William Huguenin, son of Seymour R. and Marion A. Bonner, was born in Columbus, Georgia, on the 23rd day of October, 1836, at half-past seven o'clock P. M. Seymour Ransom, son of Seymour R. and Marion A. Bonner, was born in Wynnton, Georgia, on the 15th day of April, 1839, at half-past ten o'clock P. M. Leonora Huguenin, daughter of Seymour R. and Marion A. Bonner, was born in Wynnton, Georgia, on the 30th day of June, 1840, at half-past eight o'clock P. M. Leilla Birchett, daughter of Sey-

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mour R. and Marion A. Bonner, was born in Columbus, Georgia, on the 12th day of December, 1841, at half-past eleven o'clock P. M." And on the preceding page, being the reverse side of the same sheet, is entered in the register under the head of marriage "Seymour Ransom Bonner and Marion Alethia Huguenin were married in Columbus, Georgia, on the 13th of January, 1836."

Mr. Martin. I offer this page of entries of births and marriages in evidence. 30

Mr. Bigelow. I will admit that the entries in the bible were correctly read into the record by Mr. Martin, and that the record so read is the Bonner family record taken from the Bonner family bible.

Q Mrs. Slade, the entries which we have just read are in your father's handwriting in the bible?

A Yes.

40

Deposition of Leila B. Slade.

Examined by Mr. Bigelow.

Q Mrs. Slade, do you remember ever seeing your mother?

10 A Yes, I remember seeing her once; I have an indistinct recollection, but I didn't know whether it was recollection or not; she was separated from me when I was three or four years old, and I never heard her name mentioned for years and years, and I used to wonder whether I had a mother; I just had an in-
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distinct recollection of having some one around, but that was no recollection, it wouldn't hardly be recollection. I was at the Convent when I was fourteen years of age, my sister and myself was there at the convent at Georgetown, District of Columbia, and my mother called to see us then, the only time that I have ever seen her, when I was fourteen years of age.

Q That was—

20 A That was about 1856.

Q Did you ever receive any letters from your mother?

A Yes, I received letters from my mother; I recollect that she wrote to us of my father's death, when my father first died in 1856, speaking about having been separated from us all that time, and how she had always thought of us, and one thing and another that way.

30 Q Do you recall a letter written by her about the time the civil war started?

A Yes, but the letters were not continuous; we did not keep up a regular correspondence, but I would get a letter from her occasionally, and I remember when the civil war first started Mr. Slade raised a company,—we were living in Louisiana at the time, we just moved out there in 1860, and 1861 the war started, and Mr. Slade, he didn't raise the company, the company was raised in the neighborhood and he was elected captain of the company and he carried the

40 *Page 8 of Transcript.*

Deposition of Leila B. Slade.

company down to the camp and presented it, went to New Orleans and turned it over to the governor, who was Governor Moore, but he thought he had troops enough and did not receive it. Soon after that I suppose I wrote to my mother about it, because I remember her letter in answer saying that Mr. and Mrs. Moore—he was afterwards governor of Louisiana—that she was living with them or visiting them at the time of her marriage to Colonel Plume, Colonel John V. Plume. 10

Q I understand that your mother wrote you in this letter that she was staying with Mr. and Mrs. Moore?

A When she was married.

Q When she was married to Colonel Plume?

A To Colonel Plume.

Q I want to show you a letter and ask you whose writing that is?

A That is my mother's writing. 20

Q Is that written to you or to your sister?

A I think this is the one that was written to sister, and I think if you read over you will find it was written to my sister, and she asked my sister to send it to me to read; she had been sick and she wrote us both letters, I recollect, and said send it to me; and this letter was November 10, this must have been, it didn't say the year, but it was a few months before she died; I think right along here it says; that was

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written from San Francisco I think in 1891, I think it is; you can see from the envelope whatever it is,—1891,—no, it was 1890; she died in February, 1891, that was it; she wrote me, this must be my letter, she wrote me on Christmas day before; yes, that was written by my mother to my sister in Brooklyn, and requested to be sent to me to read.

Letter dated San Francisco, November 10, no year, addressed "My Dear Daughter," offered in 40

Deposition of Leila B. Slade.

evidence and marked Exhibit D. 1 and D. 1-2, February 2, 1912. Two-page letter.

Q Mrs. Slade, you spoke of another letter written to you?

A That is it (handing Mr. Bigelow letter).

10 Letter dated Sunday, Dec. 28, 1890, addressed "My Dear Daughter," offered in evidence and marked Exhibit D. 2 and D. 2-2, February 2, 1912 (two pages).

Q This letter is also written by your mother?

A Yes.

Q Have you in your possession now any other letters that were written by her?

20 A Yes; I have got several; I do not think they pertain to this case at all though; there isn't anything in them; I have looked over all the letters; these letters have been laid aside for twenty years; I didn't know they were in the house even; the girls looked them up after Mr. John I. Plume's visit here, if he could find
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out anything at all, because after my mother died intercourse stopped between her family and mine.

Q These other letters have nothing of interest in this case?

A No, of no interest in this case at all, I don't think.

Q Now I notice "Eddy" referred to?

30 A That was what she always called Edward; she always called him Eddy.

Q That is Edward C. Plume, the defendant?

A Edward C. Plume.

Q In any letter that you ever received from your mother in which Edward was spoken of, was he spoken of in any way except as her son?

40 A Never. Marion was a daughter and Edward a son; those were the only two children she had that lived; I think she lost two or three children; two children.

Deposition of Leila B. Slade.

Q When did you first see Edward C. Plume?

A I never saw him until he came here to see me, not so long ago; I have seen, had his picture; his mother sent me his picture as a boy.

Q He came to see you about in December, or some time this winter?

A I think about November, I am not certain, November or December—no, it was December, for it was just a short time before Christmas.

10

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Q (*By Mr. Martin.*) Last December?

A This last December, yes; that is the only time I have ever seen him; I never saw Marion but once.

Q Have you ever written to Edward Plume or received letters from him?

A I have in the last few months; I never did know where he was; Mr. John I. Plume was the only one I ever learned anything from about the family; I didn't know Marion was dead, not until he told me.

20

Q That was more recent than last June?

A Yes. I thought that Edward was living in San Francisco, and his sister also, but Mr. Plume, who had been to San Francisco recently and learned either from Mrs. Underhill—I think her name is Kate Plume, it was, that Marion died I think about ten or eleven years ago, and that Edward had moved to Chicago, and Mr. Plume gave us his address on account, I asked him his address, that he read a will that Marion had made and in that will she had left my mother's picture, a large painting, to my daughter Marion, her namesake—and she asked him his address—would you like to know? and he gave me the address, and Marion wrote to him right away, my daughter, while I was in Atlanta—I left a day or two after Mr. Plume was here, the day after.

30

Q Did you ever hear from your relatives whether or not your mother and father were divorced?

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Deposition of Leila B. Slade.

A Oh, yes, I knew all about that; I didn't know it at the time, but I was told about it after I was grown.

Q What were you told?

A My mother's name was never mentioned to me as a child.

Q You were told they were divorced?

A I was told about the divorce.

10 Q I want it to appear on the record that you did hear that they were divorced; is that the fact?

A Why, of course; you can get that anywhere; you can get that recorded that they were divorced.

Q And did you hear that your mother afterwards married John B. Plume?

A Yes, I heard, my relatives told me they were married in New Orleans, and my mother corroborated that fact when she wrote me about having been married from Governor Moore's house.

20

Examined by Mr. Martin.

Q You have identified two letters written by your mother to you or your sister?

A Yes.

Q Just before her death?

A Yes, just a few months before her death.

Q Referring to Edward C. Plume?

A Yes, referring to him in a very pleasant way—

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30

Mr. Bigelow has the letters—and we sent them to Edward Plume so that he could use them if he wanted to in his testimony.

Q How long before those letters were sent had you first heard of Edward Plume?

A Oh, I had heard of him years and years and years, that was twenty years before, those letters came twenty years before, but I had heard of him I don't know how long, thirty or forty years, I don't know how old he is exactly.

40

Deposition of Leila B. Slade.

Q From whom did you first hear of him?

A Heard of him from his mother's letters; I have never heard anybody mention him, I have never heard anybody in my life mention Edward Plume's name until John I. Plume came here, and I had actually almost forgotten the Plume family, because I of course felt a delicacy about the Plumes, not knowing anything about them or being mixed up with them, the names were never mentioned between me and any of my relatives and friends; it was always a very delicate subject, and when Mr. Plume came here to my door was the first time I had heard the name mentioned, the only Plume I had ever seen, and when he came in he asked, he said he was looking for one Marion H. Slade; it seems that Edward had mentioned her, or rather Marion had in the letter that Edward had of Marion's, and I said "yes, she lives here, I am her mother;" then he introduced himself and his wife, and

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he came in and said, he tried to find out something about my mother, when she was married, &c., and I got the family Bible and showed him, I had nothing to conceal; and then he was the one that told me about Marion being dead and Edward having moved from San Francisco, told me he was married and had a son nearly grown, and told me everything about the family, even went into his own history, and told me all about his father having been divorced from his mother when he was four years old, and about the property, how Edward had come down and got acquainted with Mr. Plume; he told me, he says, "Would you like to know how they ever got acquainted with Edward?" I said "yes." "Well," he said, "there was a railroad wreck and Edward was among the persons wrecked, and the Plumes saw his name among the persons who were wrecked," and I don't know whether Gifford Plume or Samuel Plume, I didn't know the names until John I. told me, "wrote and found out who he was

Deposition of Leila B. Slade.

and asked him to come and see him," I think it was Mr. Samuel Plume, "down in New Orleans; when he went down there Mr. Samuel Plume was so taken with him and liked him so much, and he recognized him immediately as his nephew, and made his will and left his property to him and wanted him to come when he died and go with the party to Newark and see that he was buried, and everything of that sort; said he had disowned his son because he was nothing but a
10 *Page 15 of Transcript*
rounder in New York City." It was a speech I had never heard of before. Mr. John I. told me all this himself.

Q Last October?

A Just two or three months ago. I never knew anything about the Plume family until Mr. John I. came here and told me all about it. And then Edward it seems got into communication in some way
20 with Mr. John I. and effected a reconciliation between the two, the father and the son; I think Mr. Samuel Plume fixed his will so that he divided the property, but I am not certain exactly how that will was, but I heard after Mr. Plume's death in New Orleans that Edward was not told about the death, was not allowed to know anything about it, but that Mr. John I. left New Orleans in a big hurry to have his father buried. Edward arrived pretty soon on the spot and Mrs.
30 John I. met him at the door and was not civil to him at all, she said that herself; she did not acknowledge at first that she had ever seen him. I was very much interested because I wanted to know something about Edward, I had seen his picture as a boy and had not heard of him in so long, and she says "I know of him"; she did not allow that she knew him at all, but a little afterwards in talking about that she said that she was present; Mr. John I. had already left New Orleans with his father's body, and when Edward appeared on the scene she did not treat him
40 *Page 16 of Transcript.*

Deposition of Leila B. Slade.

civilly, but he recognized her that she was a lady and went in, and he found out then that the will had been changed and only John I. was left in possession of the property.

Q Did you learn this from John I. Plume or from Edward?

A Well, I learned of most of it from John I., and when Edward came down to see me afterwards I repeated it, and he said it was the truth; and they were very jealous of Edward, Mrs. Plume, Mrs. John I. Plume and Mr. John I. Plume were both very jealous of Edward because Mr. Samuel Plume had made a great deal of him and given him a good many presents, among which was a thousand dollars to help him locate a house, I think, or something of the kind; she spoke up and said "it was more than he ever did for us, he didn't even give us a bridal present." They just told everything. It was a matter of curiosity to my daughters; they came in and just laughed, at Mrs. Plume especially. Mrs. Plume had to prompt Mr. Plume as a general thing, his memory did not seem to be very good; he would state facts and say things and she would prompt him; and he wanted to ask me things, and after a while he would say "You say so and so"? I said "No, sir, I didn't say so and so"; he would say facts and things that I had told him so and so, and I said "No, you have made a mistake, I didn't say anything of the kind."

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Q Now, did you and your sister, Mrs. Mims, ever discuss Edward C. Plume?

A How do you mean?

Q Well, I mean did you ever discuss the question of his parentage?

A We didn't know anything about it except what mother wrote us at all, we never had any one to tell us anything and didn't know anything about him.

Deposition of Leila B. Slade.

Q Did your sister Mrs. Mims ever show you any letters from your mother referring to Edward?

A Never, never a line; this is the only letter that I recollect that she ever sent me at all from her mother.

Q Did Mrs. Mims ever tell you of a letter from her mother?

10 A No, she never did tell me of anything of the sort. Mr. Plume suggested things about that when he was here, and I didn't say anything about it, I didn't know, and as soon as he left the house we immediately commenced to look up to see what the facts were in the case, for it had been such a long time since I had
20 heard from my mother, anything of the sort, and never had heard a word from any one, as I say, the Plume name was never mentioned by a friend or relative, except when I was first grown up my father commissioned one of his sisters to tell us about the divorce and all; he never had mentioned it to us; he never mentioned her name to us. When she came to
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see us that time at the convent she had on two gold bracelets, she took them off her arms and put one on sister's and one on mine; I was fourteen and sister fifteen; and I suppose some of the nuns knew it, because they had a certain way of sitting behind a curtain to find out what was going on; after we reached home, the morning after we reached home father came
30 up to our room before we were dressed and says "I want those gold bracelets that your mother gave you there at the convent," and without opening our mouths we got them; we never questioned anything or said anything, we handed them over to him, and there was nothing ever said. As I say, he commissioned one of his sisters to tell us about it, and he never mentioned the subject to us.

Q How old was Edward when you first heard of him?
40

Deposition of Leila B. Slade.

A Well, I declare, I don't know; as I say, our correspondence was not continuous, and now and then I remember mother writing to us about Edward being there at the Grand hotel, there is where they boarded, at San Francisco, and spoke of him as Eddy and son, and I hadn't heard from her for a good many years. As Mr. Plume made suggestions and supposes, "I suppose such as that," &c., I didn't say anything at all, I didn't know.

Q Did you ever, or did your sister ever write asking your mother who Edward was?

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A Not that I know of; if she did she did not tell me. I will tell you, the truth is the Plume family bothered us very little; they lived entirely out of our life; I say I never even mentioned my mother's name, although she had friends here in town; I had a delicacy about it, I didn't know the facts of the case of the divorce, and I didn't want to run up against anything that was unpleasant. It was only a few years ago that I spoke to an old aunt of mine who was about eighty years old and I knew that she knew all the facts, and I had gotten old enough then not to feel embarrassed on the subject, just a few years ago, and I went over to see her, knew she couldn't live very long, in Montgomery, I said "Aunt Mary, I want to know who was to blame about that divorce between my father and mother." She says "They were both to blame," she says "They were both hot-tempered, and were young, and neither one of them would listen to reason." And then I had a conversation, or rather a letter from a cousin of mine who is older than myself, not long ago, since this thing happened, as I say, within the last few months.

Q When did you first hear of this case?

A Which case, this that is on here now?

Q Yes?

Deposition of Leila B. Slade.

A Heard it from Mr. John I. Plume; I didn't know there was anything at all going on; I told you
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10 what I heard it from first, but I didn't take any notice of it, it did not impress me, I didn't know what it was; there was one of the lawyers came by here, one of the lawyers, a friend of ours that lives right next door, used to go to school here with Mr. Slade, a particular friend, he wanted to know, he said he was questioned by a lawyer from Newark, I don't know which side it was, but he wanted to know something about the divorce; that was the first time that my mother's name was ever mentioned by anybody since the time I was born almost. My daughter Marion, my mother's namesake, happened to meet Mr. Frank Girard, and wanted to know about the divorce and marriage of my mother, and I told Marion about
20 it, what year it happened, I told her I didn't know what year the divorce happened, I didn't then, but I have learned it since, that it happened about such and such a time; and I never heard any more about it until I think it was Mr. Bigelow that I got some questions from, I think it was that firm, I didn't know that either, that it was him until Mr. John I. Plume came through, and when he came through and asked me these questions I said "I have already written those things, I answered the lawyer's questions not long
30 ago, to the best of my ability"; I said "I didn't know some things, and I just put on what I thought, and I don't know anything about it especially"; and then
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I says "I can refresh my memory," and had the bible looked up,—and I knew though about the dates of my mother's birth and recollect it was something that was coincident; she and my father were married, one was seventeen and the other twenty-seven, just the same as Mr. Slade and myself, the same ages and the
40 same dates, and it was done without premeditation,

Deposition of Leila B. Slade.

just happened so; I didn't know it until I looked in the family bible and saw it, so I recollect it from that.

Q How long ago was it you wrote to Mr. Bigelow?

A A few months ago; I don't exactly know what month it was; I reckon he knows better than I do, because, as I say, really the thing didn't strike me especially; I didn't know what was going on; I just really got the letter and sat down and to the best of my ability I answered it off, and didn't know much, I didn't look it up, didn't take no interest in it especially, didn't know what it was for, really didn't know, just some questions, and sat down and answered by the next mail. I have told you all I know. It is in that family bible; that is all I know. If I would tell you anything else it would be supposition; I had got no knowledge of anything else; it would all be supposition. And I wrote to a gentleman, firm of Skinner,
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and told them if they wanted my testimony it would be very expensive to get it, I would send it right there to them, all they would get would be just that; I knew nothing else; that was my mother's age when she was married, and that she had two children, she had written about and claimed was hers, Marion and Edward, and I didn't know then whether they were living or dead, nothing about them at that time; I didn't know a thing. Mr. John I. Plume talked with me and told me everything about the family; I didn't know anything about that until he came here and told me about it.

30

Q Your letter to Mr. Bigelow was before last June?

A Yes, I think it was in the spring some time; the reason I think so, I don't think my daughters were present at the time, and they had gone out to Mexico to make a short visit, two or three months, because they don't recollect anything about it, and as I say I didn't take any special interest in it, for I didn't know

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Deposition of Leila B. Slade.

anything about it. I answered the questions to the best of my ability, although a few questions I couldn't answer, I didn't know.

Q Do you remember what you did write to Mr. Bigelow?

10 A I remember I put what was in the bible there, the ages, and about the number of children my mother had, I think; I told him I thought she had lost two or three, I couldn't tell; I knew I had heard of her losing
some Plume children. As I tell you, I really don't know anything about it; if I would tell you it would not be the truth because I have got no knowledge on the subject.

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Q But do you remember what you stated in the letter to Mr. Bigelow?

20 A No, I say I don't remember; I didn't know what the questions were and I just said I supposed it was so and so, and so and so, and I don't remember now what it was, except I put on it only things I knew,—the age of my mother at the time she was married; he wanted to know when she was divorced, I think, and I couldn't tell him when she was divorced, I just learned such as that; as I say, Mr. John I. Plume coming here and crowding Edward Plume like he has, made me look around to see if there were any facts that I could furnish that would help him, because I
30 don't believe in trying to take a person's name from him; they might take the property, and I reckon Edward would gladly give up his property, I mean if it belongs to him. Mr. John I. said John B. was disowned, and did not come in for any property, and I don't see why the will cannot be just construed that way and give to those who are so anxious for it and let the others alone to what they have got. I know if it was me, if I was a man I would try and save a respectable young man and not try and hound him down and
40 take his name from him just for the sake of two or

Deposition of Leila B. Slade.

three thousand dollars; I would turn that thing around and construe that will in such a way as to give the property to the persons that were willing to do
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such as that, and let the others go without property, and keep their name, especially when they can't prove that it don't belong to them.

Q Did you mention Edward Plume in your letter to Mr. Bigelow?

10

A I don't know; I reckon if Mr. Bigelow if he found the letter could tell; I think I mentioned Edward and Marion both; I think he asked about the children; as I told you, I didn't pay much attention to it. I remember sitting right down at the desk and answering the questions to the best of my ability and sending it right off, and I didn't know it was Mr. Bigelow until lately, I didn't know who it was, and I didn't know which side wanted it; I didn't know that they were fighting about any property. Maybe I would have been a little more particular if I had, maybe I wouldn't have been so free and easy if I had known it; I might have tried to take care of myself, because in taking care of Edward I am taking care of myself and my own children.

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Oscar Keen, direct.

IN CHANCERY OF NEW JERSEY.

May 22, 1912.

10	<i>Between</i> OSCAR KEEN, trustee, &c., <i>and</i> A. GIFFORD PLUME, and others, <i>Complainant,</i> <i>Defendants.</i>
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Transcript of shorthand notes of testimony taken in the above entitled cause, on May 22, 1912, at Chancery Chambers, Newark, New Jersey, before Hon. James E. Howell, Vice-Chancellor.

20 Appearances as before.

OSCAR KEEN, sworn.

Direct examination by Mr. Bigelow.

Q You are the trustee complainant in this cause?

A I am.

Q When you became trustee I understand that you received some money or securities from the former trustee, and also came in control of some real estate?

30 A I did, all of which appears by my account annexed to the bill of complaint filed in this cause.

Q And all of that real estate I understand has been sold?

40 A I have in my hand a search which shows what real estate has been sold by me since I was trustee; the last real estate sold by me was sold to Henry B. Doremus on the 12th of March, 1896 for \$4,095, and some property in the city of Newark, on the easterly line of Mt. Prospect avenue, sixty two feet south of Third avenue, lot sixty-three feet front by one hundred and fifty feet deep.

Susan W. Heiser, direct.

Q As far as you know you haven't any real estate left now in your possession, have you?

A I believe I have no real estate; all that and all property I have sold appears fully set forth in the account annexed to the bill of complaint.

Examined by Mr. Martin.

Q The property or fund that is brought into court by you as trustee is the proceeds of the sale of real estate at various times by you and your predecessors in the trust? 10

A I don't know about my predecessors in the trust; whatever funds I have are funds derived from the moneys handed over to me when I was appointed trustee and moneys derived from the sale of land which have subsequently been invested in bond and mortgage, as required by the terms of the will.

SUSAN WINTER HEISER, recalled. 20

Direct examination by Mr. Hardin.

Q You knew Sarah Virginia Plume, did you?

A I did.

Q What relation was she to you?

A She was my aunt, my mother's youngest sister.

Q And she married whom?

A Charles Tugman.

Q Do you know whether there was any issue of that marriage?

A There were no children. 30

At this point Mr. Martin and Mr. English read to the court the testimony of Mrs. Leila B. Slade, taken before the commissioner on the second of February, 1912, at the residence of James J. Slade, St. Elmo, Columbus, Georgia, beginning on page 3 of the transcript of the evidence, down to the seventh line from the top of page 9 of said transcript.

Mr. Bigelow. I offer the letter in evidence. 40

Colloquy in re Deposition of Mrs. Slade.

The Court. This is a letter written to the witness by the witness's mother, and it relates to a matter of pedigree?

Mr. Martin. Witness's sister.

The Court. The letter was written to the sister, and then afterwards exhibited to the witness?

Mr. English. That is it.

10 *The Court.* And it relates to a matter of pedigree?

Mr. Martin. I don't know; we were not allowed to look it over at the time it was marked for identification.

The Court. Does it appear, Mr. Bigelow, whether the party who wrote the letter is living or dead?

Mr. Bigelow. It appears she is dead.

20 *Mr. English.* I don't think we can successfully object to that; I think it is proper pedigree; I would like to object if I could, but I don't think we can.

Letter marked Exhibit D. A.

Counsel then continued to read from line 8 on said page down to line 16.

Mr. Bigelow. I offer the letter in evidence.

The Court. Does it appear whether the writer of that letter is living or dead?

30 *Mr. Bigelow.* It is written by the same person as the last.

Letter marked Exhibit D. B.

Mr. Martin. The only objection we have to make to this is that the letter don't appear to be complete; it consists of two sheets, and the second sheet is marked 3, and it don't seem to connect. The first sheet ends with a period and the next sheet begins with what seems to be a small "a."

The Court. How does it read?

40 *Mr. Martin.* There is no connection between the two.

Offer withdrawn.

Counsel continued to read from line 17, page 9 of said transcript, down to page 11: "Q Did you ever hear from your relatives whether or not your mother and father were divorced?"

Mr. Martin. That I think is objectionable.

The Court. This is a mere introductory question. The answer to the question would not do you any harm at all, no matter how objectionable the declarations might be if they were admitted. 10

Counsel then read on page 12: "A Oh, yes, I knew all about that; I didn't know it at the time, but I was told about it after I was grown. Q What were you told?"

Mr. Martin. That seems to me to be objectionable.

The Court. That is getting at the meat of it. The question now is, I suppose, whether these parties were ever divorced. Of course you could not prove by hearsay that they were divorced by any court; you might prove it as a matter of fact that the parties did not live together, and show the physical and actual circumstances under which they lived, but even that wouldn't go far enough to do you much good, unless you could prove by the records of some courts that there was a decree of divorce between them. Now if the record has been destroyed you can prove that fact; then possibly you might have laid a foundation for introducing secondary evidence of the divorce. 20 30

Mr. Martin. That has not been proved as yet.

The Court. But until that shall have been done I don't see how I am going to admit parol evidence of a fact which primarily must be proved by the record.

Mr. Bigelow. I will withdraw the question then, as we have the documentary proof. 40

Colloquy in re Deposition of Mrs. Slade.

Mr. English. Then that goes out, and the next question will also go out I assume.

The Court. "What were you told?" that is out.

Mr. English. The next question is "Q You were told they were divorced?"

The Court. That is out.

10 *Mr. English.* "Q I want it to appear on the record that you did hear that they were divorced; is that the fact?"

The Court. That will go out.

"Q And did you hear that your mother afterwards married John V. Plume?"

Mr. English. I think that ought to be objected to; I object to that.

20 *The Court.* The fact of her marriage to John V. Plume is an independent fact, and I would look upon that as an introductory question.

Counsel continued reading from page 12, line 11, down to page 13, line 9: "Q From whom did you first hear of him? A Heard of him from his mother's letters."

Mr. Bigelow. I move to strike out the balance of this answer; it covers a couple of pages and has nothing to do with the case.

The Court. The question was "Q How long before those letters were sent had you first heard of Edward Plume?"

30 *Mr. Martin.* We are willing to consent that that be struck out.

The Court. There is no objection to the motion to strike out then?

Mr. Martin. The other counsel are looking it over.

Mr. English. I don't see any materiality in this; I will consent to it being struck out.

40 *Mr. Bigelow.* I object to the question on page 15 and move that that and the answer be stricken out.

The Court. Now on page 16 "Q Did you learn this from John I. Plume or from Edward?"

Mr. Bigelow. I am going to object to that too.

The Court. That would seem to be the same kind of a story.

Counsel continued to read from the top of page 17 down to "Q Did Mrs. Mims ever tell you of a letter from her mother?"

10

Mr. Bigelow. I object to that.

The Court. That is all right.

Counsel then read the answer as follows: "A No, she never did tell me of anything of the sort."

The Court. Now the rest of it is not responsive, and it should be struck out from the word "Mr."

Mr. Bigelow. I think that some of that is material in this case; it shows what opportunities for knowledge she had; I think she said she only saw her mother once in her life.

20

The Court. The question is "Did Mrs. Mims ever tell you of a letter from her mother?" The answer is "No," and the rest of it is gratuitous and irresponsible.

Counsel then read the question on page 18, line 15, and the answer following:

Mr. Martin. I suppose that Mr. Plume made suggestions—that is hardly responsive.

30

The Court. It is very far from being anything.

Mr. Martin. Will that be struck out, those two lines?

The Court. That cannot do any harm, Mr. Martin to anybody.

Counsel then read the following question on page 18: "Q Did you ever, or did your sister ever write asking your mother who Edward was?" and the answer on page 19. "A Not that I know of; if she did she did not tell me. I will

40

Colloquy in re Deposition of Mrs. Slade.

tell you, the truth is the Plume family bothered us very little."

Mr. Martin. I think from there on—

The Court. That is explanatory.

Mr. Martin. I have no objection.

The Court. If there is no objection to it let it go in.

10 Counsel read the answer on page 19, down to line 14: "She says, 'They were both to blame.'"

The Court. That certainly is not responsive and it is not competent.

Mr. Bigelow. It doesn't do any harm to anybody.

The Court. If nobody objects I can't object I suppose.

Counsel read the balance of said answer on page 19, and also the following question: "Q When did you first hear of this case?"

20 *Mr. Bigelow.* I object.

The Court. She is now detailing what her mother said; we are getting into the case what is practically hearsay, but which is admitted necessarily from the very nature of the case; you must use evidence of this sort in cases of pedigree, but you cannot get in the declaration of a person, I mean the simply unsworn declaration of a person unless that declaration is proved to have been made before the controversy arose.
30 This woman who is now testifying has been telling what her mother said to her by letter, and I think that information should have come to this woman possibly before she knew that there was a litigation.

Mr. Bigelow. But the informant died twenty-one years ago.

The Court. But the person swearing is still alive. I think I will take that testimony.

40

Counsel read: "A Which case, this that is on here now? Q Yes. A Heard it from Mr. John I. Plume; I didn't know there was anything at all going on."

Mr. Bigelow. I object.

Mr. Martin. This is very material because it shows that the counsel for the defendant, Edward Plume, the claimant, had communicated with this witness before the last hearing; this shows that his counsel communicated with this woman before the case was heard here last June a year ago. 10

The Court. That would be competent then on the ground that it was put for the purpose of testing the witness's fairness and sincerity, honesty. I will admit it.

Mr. Bigelow. But, your honor, this is not my witness; this is Mr. Martin's witness.

Mr. Martin. This witness says she had communication— 20

The Court. I think the evidence is admissible.

Counsel then continued to read said answer on page 20, down to line 15: "I didn't then, but I have learned it since."

The Court. That part of it is entirely incompetent to prove a divorce; it cannot be used, for that purpose; I will hear it, but I will say to counsel on the question of divorce, or no divorce that cannot affect my mind at all. The only way to prove a divorce is to prove it by the record of the court. 30

Counsel continued to read said answer down to the end on page 21, and the following question: "Q How long ago was it you wrote to Mr. Bigelow?"

Mr. Bigelow. I object to that; I don't see that it is material when she wrote to me, if she did.

The Court. I think the question is competent; it is a test of the witness's memory or test of her sincerity; it is proper on that basis. 40

Colloquy in re Deposition of Mrs. Slade.

Counsel continued to read the answer to the last question down to the end of same on page 22, and the following question: "Q Your letter to Mr. Bigelow was before last June?"

Mr. Bigelow. I object.

The Court. I will admit it.

10 Counsel then read the answer to the last question, and the following question: "Q Do you remember what you did write to Mr. Bigelow?"

Mr. Bigelow. I object to that, among other grounds, that the letter should speak for itself.

The Court. Well now, Mr. Martin, do you think you can prove her writing in that way?

Mr. Martin. I have subpoenaed Mr. Bigelow to produce the letter.

20 *The Court.* You will have to produce the letter if such a letter exists. "Do you remember what you did write to Mr. Bigelow?" Oh, no, you can't get in evidence that way.

Mr. English. Then the next question will go out, too?

The Court. Yes. "But do you remember what you stated in the letter to Mr. Bigelow?" She might say yes, but the pinch will come when you put the next question.

Mr. Bigelow. I think to ask a witness a question like that—

30 *The Court.* Oh, no, I will cut out that whole answer, it is either incompetent or else not responsive.

Mr. Bigelow. And I object to the next question.

The Court. The last one. "Q Did you mention Edward Plume in your letter to Mr. Bigelow?" That is the same thing.

Dr. Walter S. Washington, direct.

DOCTOR WALTER S. WASHINGTON, sworn.

Direct examination by Mr. English.

Mr. English. Do you want to concede that Doctor Washington is a medical expert?

Mr. Bigelow. We will concede it.

Q You are a physician in Newark, and it is conceded you are an expert. It appears from the evidence that Marion Alethia Huguenin, who is claimed to have been the wife of John V. Plume, was born April 13, 1819; it further appears from the testimony of Edward C. Plume that he was born on August 12, 1871, which would make his alleged mother fifty-two years and one day less than four months old at the time he claims to have been born. Will you give the court your opinion as a medical man on the probability of a woman fifty-two years of age having a child? 10

Mr. Bigelow. I object. 20

The Court. That is entirely proper. The question has been ruled upon many, many times.

Q Answer the question, doctor.

A It is possible, but very improbable.

Q When you say very improbable, can you give any percentage of improbability?

A Well, I don't know that I can; from my personal experience, which has been thirty-five years, I never have known of a case in my reading, I have never learned of a case in my search for things of that kind, I never have learned of but one case that was fifty-two years or over and bore a child. 30

Q So as I understand you, there is one isolated case of such a character?

A No, that is not a record, that is personal experience. I never have seen any or known of any myself, never learned of any; the only case that I speak of is in the practice of another physician who had a very extended experience. 40

Dr. Walter S. Washington, cross.

Q And he in his experience only heard of one isolated case?

Mr. Bigelow. I object.

The Court. You cannot introduce the testimony of the other witnesses that way.

Cross examination by Mr. Bigelow.

10 Q Doctor, what is the usual age after which a woman is not likely to have a child?

A The age given is from forty-five to fifty.

Q That is the average age?

A I should say that that is the average age; that is what we look on as the average age; of course there may be exceptions to that rule, as any other rule—forty-five to fifty.

Q I suppose it is possible that some women could not have children after they were thirty-five?

20 A Yes; I know of one case in which the change of life, as we speak of it, came at twenty-seven; I have known another thirty-five; I have known different ones from forty to forty-five, but the very large percentage of cases are from forty-five to fifty.

Q But there is nothing magical, if I can say so, in those ages forty-five and fifty?

A No, they are not absolutely fixed, you know, they are subject to exceptions, of course.

Q And it is by no means an impossibility that a woman might have a child after she was sixty-five?

30 A No, I don't think it is, if she was unwell during that time.

Q If she was what?

A If she was unwell regularly during that period up to that time.

Q Does a woman have to be unwell in order to have a child?

A Yes, she has to.

Q No matter what her age is?

40 A Yes, certainly; she will have to be unwell in some way at some time.

Dr. Walter S. Washington, cross.

Q In spite of your personal experience, doctor, is it not perfectly possible that there may be hundreds of women right here in Newark who have had children after they were fifty, or fifty-two or fifty-three?

A I don't think so; I don't think it possible for hundreds of women here or anywhere else to have had something of which I personally would not have had some knowledge during my experience, which is quite a long one.

Q Doctor, while it may be very rare for women actually to have children after they reach that age, fifty-two, is it not true that many women who could have children, of that age, as far as their own physical condition goes, but who don't have them?

A I don't know that; I don't know that; I could only say if a woman has not passed the child-bearing period, that is the period in which she is unwell regularly once a month, she may have a child; but I should say that the average that I have given you, which does not exceed fifty, covers a very large percentage of cases.

Q Doctor, does not menstruation sometimes cease for a period and then commence again later in life?

A Well, it depends on what you mean by period; I would like to have something a little bit more definite than that. Not for a year or two, I never heard that.

Q Not for a year?

A I have known women to be irregular, or that might skip one month occasionally, that happens, skip one month, but I never have known, except in very isolated case in which a woman never bore children and never was unwell maybe more than once or twice a year; I have known a case of that kind, but aside from that, a woman who began to be unwell regularly in early life, fourteen or fifteen, is unwell regularly afterwards, except, as I say, she might skip one month at some time during her life, or maybe two or three

Dr. Walter S. Washington, re-direct.

times, but not for a year or six months and then re-continue the same as she had been before—never have known of that and never have heard of it.

Q Have you ever seen a woman who was unwell regularly after she reached the age of fifty?

A No, never have known one, not in my experience.

10 *Re-direct examination by Mr. English.*

Q How many years do you say your experience cover as a practicing physician?

A Thirty-five years.

Q And right here in Newark?

A Twenty-five in Newark and ten years prior to coming here.

Q And you have a large practice, without trespassing upon your modesty?

A Well, I am kind of busy.

20 Q You have been County Physician too, have you not, doctor?

A I was.

Examined by Mr. Martin.

Q From your experience can you tell whether the time or age for change of life in women of the south is earlier or later than that of a woman of the north?

Mr. Bigelow. I object, as it does not appear that the doctor has ever had any experience in the south.

30

Mr. English. You concede him to be an expert on medical questions?

The Court. It is claimed that the mother of this young man was a southern woman, I suppose?

Mr. English. It says so, she was born in South Carolina.

The Court. I will take the answer.

A As a rule women in the southern climates here
40 and in the Latin climates of Europe develop earlier

Dr. George J. Holmes, direct.

and cease to menstruate earlier than those of northern climates.

Q (*By Mr. Bigelow.*) What would you call a southern climate?

A Call the south here, the southern states.

DR. GEORGE J. HOLMES, sworn.

Direct examination by Mr. Bigelow.

10

Q Doctor, where do you live?

A 17 Elizabeth avenue, city.

Q What is your profession?

A Physician and surgeon.

Q Do you practice at the address you gave?

A I do.

Q Are you a graduate of any institution of medical learning?

A College of Physicians and Surgeons of New York City. 20

Q That is part of Columbia University?

A Part of Columbia University.

The Court. Do you require proof of his qualifications?

Mr. English. I don't know the gentleman. I would be very glad to.

The Court. I know him very well. I will certify to his qualifications.

30

Mr. English. That is satisfactory to me.

Q Have you had ever any special experience with regard to women and women's diseases?

A Yes.

Q What was that?

A The first five years of my practice I had charge of both wards of St. Michael's Hospital, and was Dr. Ill's assistant there, and did all the examining and treatment, assisted at the operations, until I got busy and had to give it up.

40

Dr. George J. Holmes, direct.

Q There has been evidence in this case that Mrs. John V. Plume was born April 13, 1819, and that she had a son on August 12, 1871, at which time she was fifty-two years three months and twenty-nine days old. Is there anything from the standpoint of a medical man in these facts which make it impossible that this child born August 12, 1871, should be her child?

A Nothing.

10 Q Is it possible for a woman not flowing to become impregnated with male germs?

A Yes, that happens quite frequently; it quite frequently happens when a woman is nursing one baby, and is not flowing, she will get in the family way and will have to cease nursing the first child; that is quite a common thing.

Q And if a woman is flowing it is always possible for her to have a child?

20 A No; there are many things that might prevent her having a child; she might be rendered sterile from many causes even though she flowed regular.

Q But as a general thing if a woman is flowing regularly is it probable that she will have a child?

A Assuming that she is normal, and flowing regular, she would be capable of becoming impregnated if the man were fertile himself.

Q Is it possible for a woman to flow up to sixty years of age?

A Yes.

30 Q Do women differ as to the period of menstruation?

A Very much.

Q What do you mean by that, doctor?

40 A Why, I think all women differ as to the actual time at which they stop menstruating; that is, I mean to say that all women don't stop at the age of forty-five years, one day, five minutes; therefore they all differ at the time they stop, and that difference extends over a wide area; it may be as early as twenty-seven or thirty, or as late in life as eighty or ninety.

Dr. George J. Holmes, direct.

Q To what authority, doctor, if any, do you refer for this statement?

A You have one authority there, which is a written authority, Playfair's Midwifery.

Q Is that a standard work?

A Yes, not as recent possibly as some others that have come out, but it is a standard work nevertheless. Medical books are constantly coming out, of course.

10

Q Can you refer to any part of this work in that connection to what you have said?

Mr. Hardin. Is that proper, to quote a book?

The Court. Not if it is objected to.

Mr. Hardin. I hardly know whether to object or not. I represent the trustees here, and I am not really interested in this controversy between the people entitled to this fund, but it seems to me the question better be tried as nearly as possible according to legal rule.

20

Q (*By the Court.*) You can refer to such an authority?

A I can?

Q (*By the Court.*) Yes.

A I can refer to it, yes.

Q Will you do so?

Mr. Hardin. I object.

The Court. You cannot introduce scientific books in evidence, Mr. Bigelow; the effect of that would be to introduce into the case an unsworn statement by a man we don't know anything about. The witness may say that the authorities coincide with his own views, but you cannot introduce the authorities.

30

Q Do you know of any case in Newark, or this neighborhood, where women have had children after the age of fifty-two years?

A Yes, sir.

40

Dr. George J. Holmes, cross.

Cross examination by Mr. Martin.

Q How many such cases?

A Of course I wasn't tabulating these cases for the purpose of coming here when I did it, but I recall one case that came into St. Michael's Hospital, and I know of another case beside that.

10 Q And in the two cases which you refer to how was the age of the mother authenticated?

A The age of the mother in the St. Michael's case was given by the woman herself; she was sent in by an outside physician for a diagnosis of tumor, and on examination I found that the tumor was really a pregnancy, and she couldn't believe that because she hadn't been unwell for a long period; and it proved afterwards—I delivered her myself—that she was pregnant, gave birth to a live child. She was over the age of fifty.

20 Q How was the other case authenticated?

A The other case is a case in which a woman gave birth to her child when her previous last child was of age.

Q Is that all the authentication of the mother's age that you know of?

A I haven't any other record of her age.

Q This second one you speak of might have had her first child when she was sixteen or younger, might she not?

30 A But she was not; she was sixty, in her sixties.

Q How do you know that?

A Why, I only know it, she makes that statement of her age, that is all, that is the only means I have of determining that, you know.

Q Did you answer the question itself? Was it not possible this woman might have borne her first child when she was only sixteen or younger.

A Her first child?

40 Q Yes?

Dr. George J. Holmes, cross.

A I wasn't referring to her first child at all; I spoke of her previous last child; she had more than two children.

Q Well, a woman may bear a child at the age of sixteen, or younger, may she not?

A Oh, yes, even younger, even before they are menstruating.

Q And in your answers to counsel on direct examination you stated that this bearing of children at an age over fifty was possible. In your experience is it probable that a woman would bear a child when she is over fifty? 10

A Why, it is probable, but not as probable as the opposite, that she might cease her child bearing period before that. If you want to strike an average, that is one thing, but that average only refers to a mass of cases; it does not mean that there are no exceptions on their side; there are plenty of exceptions. 20

Examined by Mr. English.

Q Doctor, you don't want to give the court the impression that you think it probable or usual thing for a woman to have a child at fifty, do you?

A No, I do not.

Q It is very unusual thing?

A It is the unusual thing, but not improbable.

Q It is the unusual thing?

A It is unusual as compared with the average case. 30

Q And if you were as a medical man called to attend a woman fifty-two years old in a pregnancy case you would think that a very unusual experience?

A I would consider it unusual age for her to have children.

Q Unusual enough for you to probably bring to the attention of your fellow doctors as an interesting medical fact?

A I wouldn't feel like getting up before a party of physicians and reporting the case as a wonder. 40

Dr. George J. Holmes, cross.

Q You might remark to some brother physician the unusualness of the situation?

A I might do that, and it might not occur to me to do it.

Q As I understand your direct testimony, you were dealing with the possibility and not the ordinary or usual probability?

10 A I was asked whether it was a possibility; that was the very first question I was asked.

Q I understand you said it was possible?

A Yes.

Q But you don't want to give the court the impression it is a probable or usual thing?

A I don't want to give the impression it is usual thing at all.

Q It is very improbable, isn't it?

20 A I won't say that, no; I won't say that it is very improbable.

Q Is it probable?

A It is probable.

Q What percentage of women over fifty-two have children?

A I should say it would be a small percentage.

Q Very small, isn't it?

A I haven't any figures to base my opinion on.

30 Q You said a little while ago it is possible for a woman not menstruating to have a child, and you mentioned that she might be nursing a first baby, and, before she began her new menstruating, became pregnant again?

A Yes.

Q You didn't mean to say that a woman who not under those circumstances, who for some reason other than pregnancy had stopped menstruating could begin six months after, did you?

40 A I certainly did. There was a case I said where a woman had not been menstruating, had enlargement of the abdomen, was sent in the hospital for

Dr. George J. Holmes, cross.

abscess or tumor, and was proved to be pregnant, couldn't believe it herself until she began to get the other menstruation.

Q She ceased menstruating because of some other disease, and not from natural causes, didn't she?

A Not that I know of; I wouldn't have any cause to say that.

Q You wouldn't have any cause to say that? 10

A She was at the age when menopause, as it is commonly spoken of, or change of life frequently takes place, and it was assumed by one physician she was passing change of life and was having a tumor.

Q Do you know for how long a period that possibly continued?

A I know it extended over, well, nearly two years.

Q That again is a very improbable and exceptional case? 20

A It is not a usual thing at all. I don't want to be misunderstood. What I want to do is to make an explanation of why there seems to be a difference between Dr. Washington's testimony and mine, and I think it hinges on one thing,—whether you want me to mention it or not.

Q What is the one thing it hinges on?

A I think you and Dr. Washington are assuming that a woman cannot have a child without flowing, which is not a fact, and all the works you want to consult on authority will show you that that is a possibility; although it isn't probable, it is a possibility; women have become in the family way without even having menstruated. Of course, I cannot substantiate that, because I cannot bring the record. 30

Q Doctor, did you ever know a woman to continue to menstruate up to the age of ninety?

A No, sir, I made that statement, and my authority for that is that book.

Q That is rather a fanciful situation, isn't it? 40

Dr. George J. Holmes, cross.

A That would be the most unusual condition, and yet in the paper here the other day we see—

Q Don't let us bring in newspaper stories; it is bad enough to have it in medical books. That would mean, if that were true, that a woman of ninety could bear a child, wouldn't it?

A Not necessarily at all.

10 Q Not necessarily, but it would be possible, on that theory?

A I would say that if she were at the age of ninety, and menstruated, even though she menstruated that she likely would not become pregnant.

Examined by Mr. Martin.

Q The case that you spoke of, doctor, was a case where the woman did have some affection of her organs, wasn't it?

20 A No; it was a mistaken idea on the part of the physician referring her to the hospital that she had a tumor; she didn't have any tumor; she was pregnant.

Q Did she have any infection?

A She had no infection, she had no inflammatory condition; of course she wouldn't be pregnant if she had any serious trouble—it would cause sterility.

Q How old did she say she was?

A This woman told me she was of the age of fifty; of course I only got her statement for that.

30 Q (*By Mr. English.*) That is under fifty-two.

A Under fifty-two.

Q (*By Mr. English.*) Every year or month counts after that age, doesn't it?

A Oh, if you are splitting hairs, yes. That is the best of my recollection.

Examined by Mr. English.

Q How old was the other woman you spoke of? You spoke of two.

40 A This is the first one I spoke of.

Dr. George J. Holmes, re-direct.

Q Fifty?

A Yes.

Q That is your own experience?

A Yes.

Q So you never had any experience fifty-two years old?

A I don't know as there was any to the exact age; no.

Q You spoke of some other one, second case in your experience or some one else's experience?

10

A The other case was in the experience of Dr. A. B. Russell, of East Orange.

Q You don't know anything about the age of that woman except by hearsay?

A What he tells me.

Q Did he tell you her age?

A He did.

20

Re-direct examination by Mr. Bigelow..

Q Are there any causes which tend to make it unusual for a woman over fifty-two to have a child, other than her physical capacity?

A I don't believe I got the question.

Q (Question read.)

A Of course there are many things that enter in the possibility of a woman conceiving, many things. I don't know as I get what you are driving at when you say "physical."

30

Q Is it more dangerous?

A You mean her age, or what do you mean? I don't know what you mean.

Q Is it more dangerous for a woman to have a child at the age of fifty-two than when she is say thirty?

Mr. Martin. How is that relevant?

Q (*By Mr. English.*) How many child birth cases have you had in your experience?

40

John O. Bigelow, direct.

A I don't know; I haven't kept track of them; mine has been a general practice.

Q (*By Mr. English.*) A good many?

A I think for ten years' experience, yes.

JOHN O. BIGELOW, sworn.

Direct examination by Mr. Martin.

10 Q Mr. Bigelow, you are one of the solicitors for Edward C. Plume, one of the defendants in this cause?

A I am.

Q Did you prior to June 27 of last year receive a letter from Mrs. Leila B. Slade?

The Court. Yes or no.

A I think that is a privileged matter, part of my transactions for this client.

20 *The Court.* When the question reaches to that extent then I shall uphold your privilege.

Mr. Bigelow. Your honor, I think the mere fact of whether I have ever seen the woman or not, and my investigations in this case—

The Court. That is not this question.

Q (*Question read.*)

A I am unfamiliar with Mrs. Slade's handwriting and don't know whether I ever did or not.

Q Did you receive a letter purporting to be sent you by Mrs. Slade?

30 *Mr. Bigelow.* I object to "purporting;" what does that mean?

The Court. Don't fence about it: I will see that you are fully protected. I think you ought to answer this question.

A Your honor, I don't want to admit a letter which I have some doubt whether it is written by Mrs. Slade or not; I think it was probably written by her husband.

40 Q (*By the Court.*) Did you have a letter signed with her name?

John O. Bigelow, direct.

A I had a letter signed "James," I think it is "James B. Slade," with "Mrs." put in parenthesis in front of it.

Q And is that the letter which the witness Mrs. Slade referred to in her deposition?

A I have no way of knowing. I object to that.

The Court. What is the object of this, Mr. Martin? 10

Mr. Martin. The object is this, if your honor please. The defendant Edward Plume testified when he was on the stand that he believed Mrs. Slade had been dead about ten years, and I want to show that prior to that time his counsel, the witness' counsel, had been in written communication with her and knew of her residence, and therefore to discredit the testimony of Edward Plume. 20

The Court. The witness has already stated now that he received a letter in a handwriting which he does not know, signed Mrs. J. B. Slade. Suppose you had that in, what good would it do you? Suppose you had it in, what would it prove? Suppose the letter itself were in—I don't mean its contents now—but what would it have a tendency to prove?

Mr. Martin. It would have a tendency to prove that the witness, Edward Plume, when he testified that he had not heard from her and that he believed she was dead, was misleading the court as well as misleading the other counsel in the case. 30

The Court. The fact that Mr. Bigelow received a letter signed Mrs. J. B. Slade, no matter what its contents were, would not disprove the statement of Mr. Plume that he had not heard of her before she was dead, would it? Your letter don't reach far enough. 40

John O. Bigelow, direct.

Mr. Martin. It would tend to discredit, however, the witness; I think, if nothing else, it would show that the counsel of the witness was willing that the court and the other party should be misled.

10 *The Court.* I don't think that kind of testimony is admissible, yet if you can prove that the defendant's solicitors actually received a letter signed by Mrs. Slade and prove the identity of the handwriting, and the identity of the woman then you might be getting somewhere, but unless you go to that extreme limit I don't see how you are going to get the letter in, or, if you do, how it is going to do you any good.

20 *Mr. Martin.* We have already the testimony of this woman that she wrote a letter to him; that testimony was read this morning. Now this witness is subpoenaed to produce that letter. I don't think that the letter is a privileged communication, and the question I am asking is a preliminary question, requesting the witness to produce the letter and make an attempt to identify it.

The Court. I am not inclined to allow you to go into the secrets of the solicitor's office for that purpose.

Q Prior to the receipt of the letter which you mentioned, had you written to Mrs. Slade?

30 *The Court.* I don't think that question ought to be answered.

Q When did you first hear of Mrs. Slade?

The Court. You may answer that. You mean when did he first hear about her, not from her, but about her.

Q Yes.

40 A I first saw her name, the first time I heard of her was in that will of Marion Wallace, which was introduced in evidence here.

John O. Bigelow, direct.

Q And after you saw that will did you make any effort to locate Mrs. Slade or to get into communication with her?

The Court. I think you may answer that.

A I did about, I think it was a year later, about.

Q And when was it you endeavored to get in communication with her?

A It was in the spring of—last spring a year ago. 10

Q And prior to June of last year?

A Yes.

Q And through that investigation you were informed that Mrs. Slade—you were informed of Mrs. Slade's place of residence?

A Yes.

Q And did you then write a letter to Mrs. Slade on behalf of the defendant, Edward Plume, or by his direction?

Mr. Bigelow. I object to that; I don't think it is material, and I think it is also a violation of my privilege. 20

The Court. I don't think that reaches quite so far as that, Mr. Bigelow. I think what you did on that information, so far as it is pertinent to the points now in issue, is competent evidence. This does not call for any communication between you and your client, or between you and anybody else. The question is whether you attempted to communicate with this Mrs. Slade. 30

A Yes, I did.

Q And the letter which you spoke of as having received, signed as you have described it, was received by you shortly after you wrote to her, is that so?

A I assume so, yes; I don't remember the dates.

Q Have you that letter with you?

A The letter that I received through the mail shortly after writing?

Q Yes. 40

John O. Bigelow, direct.

A Yes.

Mr. Martin. I call upon the witness to produce that letter.

The Court. I don't think he is bound to produce it. He has stated that the letter that he has received was received from Mrs. J. B. Slade. That don't prove that she wrote the letter.

10 *Mr. Martin.* There is in the case already testimony that she wrote a letter, or that she sent a letter to the witness.

The Court. Prove that letter then, the letter that she sent, that is the thing you have got to prove.

Mr. Martin. We cannot prove it until we get it.

20 *The Court.* So far there don't appear to be any such letter. He says he has in his possession a letter signed by Mrs. J. B. Slade. He don't know whether it is in her handwriting or not.

Mr. Martin. On what ground, may I ask, can the witness refuse to produce a letter which he was subpoenaed to produce.

The Court. I thought I had stated the ground. It does not appear that he got any letter from this woman at all yet.

Mr. Martin. It appears that he has a letter signed in her name.

30 *The Court.* Signed in her husband's name with "Mrs." in front of it. That don't prove anything.

Mr. Martin. The witness has already admitted that he wrote to her and he got a reply through the mail in the ordinary course.

Q Did you not admit to Mrs. Heiser that you had received a communication from Mrs. Slade?

40 *The Court.* I can't admit that; that is cross examination of the witness.

Mr. Martin. This is an adverse witness.

John I. Plume, direct.

The Court. I know, but you are on very delicate ground; you have to produce the strictest possible kind of proof.

Q Have you made any effort to produce the person mentioned in the testimony of Edward Plume as Effie Louise Collins?

The Court. I should suppose if that was objected to it would be very incompetent. What right have you got to go into counsel's office and find out what preparation he has made to try a case? You have no right at all. 10

Mr. Martin. I will withdraw that. It seems to me that I have proved that this witness has received a letter from a witness that Leila Slade testified she sent to him.

The Court. I think I have declared several times that there is no proof of that. You and I disagree on that point. I think Mr. Bigelow very properly resents any inquiries into his actions as counsel in this cause, even though it don't reach the privileged communications; even though the inquiry does not reach the privileged communications no lawyer wants his conduct inquired into, his conduct and preparation of a case for final hearing inquired into, and I do not propose to allow it to be done any more than it has to be done in accordance with the strictest rules of evidence. 20

30

JOHN I. PLUME, sworn.

Direct examination by Mr. Martin.

Q Mr. Plume, you are the son of Samuel W. Plume?

A I am.

Q And your father died when?

A November 2, 1909.

Q And your father lived at the time of his death where? 40

John I. Plume, direct.

A In New Orleans.

Q When did you first hear of the defendant Edward C. Plume?

A In the fall of 1907.

Q From whom?

A From Uncle Giff., in his office.

Q (*By the Court.*) Do you mean A. Gifford Plume?

A A. Gifford Plume, yes, sir.

Q One of the other defendants in this case?

A Yes, sir.

Q Did your father ever speak to you of the defendant Edward Plume?

A Quite a number of times in the spring of 1908 and fall of 1909, at which time he died.

Q When is the first time your father ever spoke to you of this defendant?

20 A In the spring of 1908 while we were visiting him there in New Orleans, during the Mardi Gras.

Q (*By the Court.*) In the spring of 1908?

A Yes.

Q When did you say you first heard of him?

A I heard of him from Uncle Giff., in the fall of 1907.

Q State what your father said to you about Edward Plume?

Mr. Bigelow. I object.

30 *The Court.* If that statement that was made happened to be in your favor then you wouldn't object, I suppose; you don't know whether it is in your favor or not.

A In the spring of 1908 my father told me that he had—my father said that he had had correspondence with Edward C. Plume, who claimed to be a son of his brother John. My father in reply to these letters stated that he did not think, he knew he was not a son
40 of his brother John, that Marion would have been too

John I. Plume, direct.

old a woman to have borne a child at the time he claimed he was born.

Q Did he say anything else to you about pedigree of Edward?

A During the conversation he said this boy visited New Orleans about a month or so ago, which would have been around January; this conversation that I had with my father in which he told me this was in the latter part of February or the beginning of March in 1908; he said "this boy visited New Orleans on a business trip, and he called on me, he appeared to be a very nice boy, and" he said, "I received him kindly and then—" 10

Mr. Bigelow. I object to all this about the visit of Edward C. Plume and what Mr. Samuel Plume may have thought of him.

Q (*By the Court.*) What was said by your father in relation to the kinship between him and Edward C. Plume, that is what we want to get at? 20

A Well, in the correspondence that my father had with this Edward in the latter part of 1907 where this Edward claimed to be a son—

Mr. Bigelow. The correspondence is in and I think, speaks for itself.

The Court. He is just referring to it incidentally.

A Yes, sir, he, my father, said that "I questioned his being a son of my brother John." 30

Q (*By the Court.*) He said this to you?

A My father said this to me, that he questioned the relationship that this boy claimed to Uncle John, and this boy to attempt to prove the truth of his statements had mailed to my father letters written by Uncle John and his wife Marion in which this boy was addressed as "My dear son," and "Dear Ed." and signed "Your affectionate father and mother." My father said to me "Anybody reading those letters 40

John I. Plume, direct.

could see they were written by some old man in his dotage," he says, "and John, in writing those letters, was instigated by that conniving, scheming wife of his."

Mr. Bigelow. I object.

The Court. I don't think the characterization of the letters amounts to very much.

10

Mr. Martin. I am willing that should be struck out.

The Court. Yes, strike that out. Confine yourself to what was said about the pedigree of this boy, this man.

A Well, in the year 1874 my father, after returning south, called at the store of my uncle—

Mr. Bigelow. Pardon me. This was something that was said by Mr. Samuel Plume?

20

A This is something that was said by Mr. Samuel Plume. My father said to me, "I stopped in to see Plume Lockwood in the year 1874." "Plume told me that—"

Mr. Bigelow. I object. Who is Plume Lockwood?

A Plume Lockwood is a brother of Harry Lockwood, one of the defendants, and he died somewhere in 1897.

30

Q (*By the Court.*) Before you go further with that, Mr. Plume, let us ask you how this question, how this question happened to be a vital question at that time?

A I don't consider, hardly think it was a vital question at that time.

Q (*By the Court.*) Why was it talked about?

40

A Because Marion—young Marion's name had been brought up,—this Plume Lockwood had told my father that the reputation of Marion was not any too good in San Francisco and prior to 1874 she passed through New York with her mother and some man, on the way south.

John I. Plume, direct.

Q (*By the Court.*) Then it was a little family scandal that brought it up?

A Possibly. Plume Lockwood further told my father—

The Court. I don't know whether we can take statements of Plume Lockwood. Who was he, what relation was he to the Plumes?

A He was a nephew of uncle Giff. Plume.

10

Q (*By the Court.*) Son of whom?

A Son of Gershom Lockwood by Mary Josephine Lockwood or Mary Josephine Plume, if you will.

Mr. Bigelow. This is hearsay in the second or third degree.

The Court. I think Mr. Plume, you will have to confine yourself to what your father told you, and not what your father told you that somebody told him. I don't know whether that is right or not. I don't think that is right. Statements by blood relatives, declarations made by blood relatives who are dead are admissible on both sides of the question. How far does that let in that further degree of hearsay testimony, as, for instance, it is perfectly proper for this witness to say what his father told him on this question of pedigree, provided his father is dead. I suppose what the father told this witness as to what the grandfather said, who is likewise dead, would be competent on the question of pedigree, either for or against the claim. Now you come to, I suppose, what might have been said by Mrs. Lockwood, she being dead, would be competent, because she was a Plume. Now you come to a statement of what her son said; is he living or dead, Plume Lockwood?

20

30

A He died in about 1897.

The Court. I think I will take the testimony and I will have to deal with it when I come to con-

40

John I. Plume, direct.

sider the case. The point is too obscure for me to decide right out of hand. You may answer.

Q Did your father tell you when he first heard of Edward?

10 A Why, it was in the latter part of 1907; he said that he had read of a railroad accident somewhere North, in Michigan, I believe it was, and among the injured was the name of E. C. Plume; he then wrote to the young man inquiring who he was; in reply he, this Edward, stated that he was a son of John V. Plume and Marion A. Plume.

The Court. Is that competent? Let it be objected to by Mr. Bigelow and I will take it and deal with it when I come to deal with the case. Go on.

20 A And it was then when the correspondence started, and it was only the next spring when this Edward visited New Orleans and called on my father.

Q And your father told you that Edward had just been to see him?

A Yes.

Q And then your father discussed Edward with you?

A He did.

Q And what did your father say to you as to Edward's parentage.

30 A Well, my father said to me this "Edward, who claims to be a son of my brother John, called on me about a month or six weeks ago," and I said, "What do you think of him?" "Why," he said, "Johnny, he is no more John's son than I am;" then I said, "Who is he?" "Why" he said, "he is the illegitimate son of young Marion, by that man Plume Lockwood told me in 1874 passed through New York on the way south."

40 Q Did your father say anything further to you as to the pedigree of Edward?

John I. Plume, direct.

A Well, he said that through Uncle Giff. he had heard some things, whether I would be privileged to testify or not.

The Court. That is one of the open questions in my mind, whether this witness may testify to what his father said Mr. A. Gifford Plume told him, his father.

Mr. Bigelow. I should think that would go out, because Mr. A. Gifford Plume is living. 10

The Court. It should go out on that ground, it is true. I think a statement that was made by Mr. A. Gifford Plume to this witness's father must be testified to by Mr. Plume because he is still living.

Q Did your father say anything further to you about Edward Plume, his parentage?

A Well, I asked them "If you know that this Edward is not Uncle John's son, why have you recognized him, and allowed him to recognize you?" 20

Mr. Bigelow. I object.

The Court. This is a question that was put to the father; he is going to tell what the father told about it.

Mr. Bigelow. I was going to object to what reason the father gave for what he may have written.

The Court. That cuts no figure. Go on, make your statement. 30

A He said that at the time that he wrote to this Edward, Edward had written to him in the fall of 1907, that he took these letters, this letter was enclosed to him, and sent him to Uncle Giff.; he said his intention at that time was to write to Edward and tell him who he was. Now I have to bring in a statement of Uncle Giff's to follow that out, if I am allowed to do so. 40

John I. Plume, direct.

The Court. No. In pursuance of that statement made by Mr. Gifford Plume then what did you do?

A My father said that he decided that instead of writing to the young man his opinion about him and who he was and what he was, he thought it would be much more charitable if he treated the young man
10 leniently and not attempt to injure his career or the name of his family, and for that reason he allowed him to recognize him and continued his correspondence with the boy until the spring of 1909, when he stopped writing.

Mr. Bigelow. I would like to move to strike out that part of the answer to the last question which related to the explanation of Samuel Plume of why he wrote those letters and what he meant by them. The letters are in evidence and
20 his reasons are not declarations as to pedigree and I don't see how they are admissible.

The Court. I would say, Mr. Bigelow, they are admissible for the purpose of showing the man's state of mind at the time he wrote those letters.

Q Did I understand you to say that your father told you he received a communication from Gifford Plume?

A Yes.

30 Q Did he say whether that was in writing or not?

The Court. Yes or no?

Q Did he say whether that was a letter or not?

A It was a letter.

Q Did you after your father's death examine his papers?

A I did.

Q I show you a letter bearing date Newark, December 30, 1907, and an envelope postmarked the
40 same date and ask you whether you found that in your father's effects after his death?

John I. Plume, direct.

A I did.

Q In whose handwriting is that letter and paper?

A In uncle A. Gifford Plume's.

Letter dated Newark, December 30, 1907, offered in evidence.

Mr. Bigelow. I object. I don't see for what purpose a letter by Gifford Plume is evidence in this case.

The Court. I will take the letter subject to Mr. Bigelow's objection. 10

Marked Exhibit D-B.

Q Mr. Plume, when you found that letter and envelope marked Exhibit D-B was the letter folded within the envelope?

A It was, sir.

(Letter read).

Q Did your father ever speak of having received any letters from John V. Plume or his wife or family? 20

A Well, none from uncle John; he said he had received a letter while he was on the Isthmus of Panama, begging for money.

Q Did he say which Marion?

A Old Marion, and in that letter—

Q You can't state what is in the letter?

A This was in 1887 while he was on the Isthmus, as I have said.

The Court. He has answered the question.

Q Did your father state whether he answered the letter? 30

A Yes, he answered it in a very unfriendly tone.

The Court. Oh, no, strike that out.

Q What did your father say, did he say he answered the letter?

A He answered the letter.

Q Did he say anything to you respecting the contents of that letter?

A He did. 40

John I. Plume, direct.

Q I show you a paper marked "Panama, April 25, 1887," and ask you in whose hand writing is that?

A That is in my father's, Samuel W. Plume.

Q Did you ever see this paper before your father's death?

A He showed it to me once before his death and told me—

10 *The Court.* No; you have answered the question.

A I saw it once before his death.

Q Did he say anything about the paper to identify it when he showed it to you?

A In showing it to me he placed it in his tin box where he said I would find it after his death, in case I had any use for it.

Q Did he say to you what it was? Just answer yes or no?

20 A Yes.

Q What did he state this paper was?

A He said that was his reply to old Marion's letter that he received while he was on the Isthmus.

Q His reply or a copy?

A Copy of his reply.

Q I will ask one further question before offering this. Have you looked in your father's papers to see whether you could find the letter from Marion which you have referred to?

30 A My father returned the letter to her.

Q (*By the Court.*) No, no. The question is whether you have looked?

A I have looked.

Q Did your father say anything to you when he showed you this paper, as to what he had done with the letter to Marion?

A He said he had returned it.

40 *The Court.* Statement made by the father that he had returned the letter is not evidence. That

John I. Plume, direct.

is not a question of pedigree, that is something else.

Mr. Martin. I offer this letter.

The Court. It is objected to.

Mr. Bigelow. Yes.

Mr. Martin. It tends to prove that the older Marion, the alleged mother of Edward, in 1887, when he was said to be seventeen years old, in writing to Samuel Plume, the person who wrote this memorandum, in reply to her, mentioned and asked for assistance for one child of the older Marion, and did not refer in any way to Edward, and therefore as indicating that in 1887, or as tending to indicate that in 1887 this mother did not attempt to hold out to the members of the family Edward as a child of hers or as any connection,—as tending to show that while she might have led Edward to believe he was her son she made no attempt to present him as a son or relative to his father's family, his alleged father's family.

Mr. Bigelow. I object to this letter because it is not a declaration as to pedigree; it seems to me merely a lot of scandal as to Mrs. John V. Plume. The only statement in it which could be said to have anything to do with the pedigree, as far as I noticed, is this, this letter from Samuel to Mrs. Plume, "You say you know I will assist my brother's child. I don't believe she is my brother's child, judging from what George told me in San Francisco in 1850," and counsel tries to deduct from that that in her letter to him she must merely have mentioned somebody's child and thereby, by implication, excluding Edward as a child. It seems to me that that is remarkably far fetched.

The Court. You see, Mr. Martin, suppose that letter was in evidence—I am inclined to admit it.

John I. Plume, cross.

Q (By Mr. Hardin.) Who is George?

A George W. Plume, brother of my father and uncle Gifford's.

The Court. When you get the letter in evidence will you know whether the reference is to the son or to the daughter?

10 *Mr. Bigelow.* Yes, your honor, it says "she," daughter. There is nothing to dispute the inference that Mrs. Plume asked for aid for her daughter or for her daughter Marion.

The Court. I think it may be evidential but I don't see how it can be very weighty.

Marked Exhibit D-C.

Q Were you present in New Orleans at any time or any meeting between your father and his brother Gifford Plume?

20 A Yes, in the spring of 1909, uncle Giff. visited us down there during the Mardi Gras.

Q Now you recall whether your father at that time said anything to you or in your presence about the parentage of Edward?

A He did.

Q You must not testify to anything that Gifford said but simply what your father said.

A My father repeated then to me what he had previously told me about this Edward being the illegitimate son of young Marion.

30 *Cross examination by Mr. Bigelow.*

The Court. I would like to know, Mr. Bigelow, from this witness, very fully the occasion of his controversy over the legitimacy of this man; how did it come to be stirred and what was the point about it at the time. You get that out.

Q Where were you living at the time of this conversation?

40 A With my father. Do you mean conversation with my father?

John I. Plume, cross.

Q Yes.

The Court. Where were you living at that time?

A I was visiting in New Orleans at that time and living here in New York.

Q When was that?

A That was in the spring of 1908.

Q And all the declarations of your father that you have mentioned were made during that visit?

10

A No, sir, on three separate visits, in 1908, in the spring of 1909 and in the fall of 1909.

Q What you have told us of your father's statements is composed of what he said partly on one of those occasions and partly on the other and partly on the third?

A About, yes.

Q Were you on good terms with your father about that time?

20

A At that time I was.

Q How long have you been on good terms with him?

A Possibly a year at that time.

Q How long did you continue on good terms with him?

A Up to the time of his death.

Q And did you ever hear him discuss making a will?

A I did.

30

Q Did he tell you that he was going to leave a large part of his property to the defendant Edward?

Mr. Martin. It seems to me that this is hardly material.

The Court. I think it is very material and very proper. Proceed.

A He did not tell me that he was going to do so, no.

Q Did he say anything about it?

40

John I. Plume, cross.

10 A Yes; just prior to leaving New Orleans in May, 1908-1909, my father came downstairs with me and said to me "Johnny, I am very sorry for the way I have acted toward you and the way I have recognized this boy, Edward," he said, "I at one time was foolish enough to make my will out dividing the property between you and him, with the understanding that he was to accompany you with my body to Newark, New Jersey, to have my remains interred in our family vault;" he said, "I consider I have been doing you a great injustice," and he said,—

Q When did this conversation take place?

A This occurred in May, 1909, I said.

Q He didn't mention making a will before that, around 1908, when you had these conversations?

A No, in 1908 he made no mention of having made a will.

20 Q Or about to make one?

A None.

Q Do you recall what brought up the subject of Edward Plume when you first talked to him about it, with your father about it?

A Why, this railroad accident that occurred somewhere in the North that my father in the list of injured had seen the name of E. C. Plume mentioned.

30 Q That was shortly before your conversation, shortly before the spring of 1908 that this railroad accident occurred?

A That railroad accident occurred, I should judge from what he said, in the fall of 1907, somewhere in November, October.

Q And you and he were discussing the railroad accident?

A We were not; he simply, in 1908, told me how he had heard of this Edward Plume, and his writing to him to find out who he was and what he was.

40 Q You came from New York to visit your father, as I understand?

John I. Plume, direct.

A I went from New York to New Orleans to visit my father, yes.

Q And started off discussing Edward Plume?

A What is that, a question?

Q Yes, that is the fact, isn't it?

A That is not a fact.

Q Well, what is the fact? How did you start to discuss Edward Plume?

10

A Why, after being there for a short time my father brought up the conversation.

Q Isn't it the fact that you were trying to get your father to change the will so that it would not be in favor of Edward Plume but in your favor?

A It was actually not a fact.

A. GIFFORD PLUME, re-called.

Direct examination by Mr. Martin.

Q Mr. Plume, do you know whether about 1854 or 1855, that is, about the time of your brother Samuel's marriage, do you know whether any suits had been commenced or threatened to be commenced against him?

20

A I don't know what time it was, but there was a suit brought against him, yes, sir.

Q It was about the time of his marriage?

A Yes, just before his marriage.

Q You don't recall when his marriage was?

A I was best man, but I can't go back to that.

30

JOHN I. PLUME, re-called.

Direct examination by Mr. Martin.

Q I will ask you what was the date of your father's marriage?

A March 3, 1855.

Mr. Martin. I would like to offer a certified copy of the will of John I. Plume, father of Samuel W. Plume.

Marked Exhibit D-D.

40

Susan W. Heiser, direct.

A. GIFFORD PLUME, re-called.

Q Your father died before your mother?

A Yes; my father died in 1854.

Examined on behalf of the complainant.

Direct examination by Mr. Hardin.

Q Mr. Plume, are you married?

10 A No, sir.

Q Have you ever been?

A No, sir.

SUSAN W. HEISER, recalled.

Q Did Mr. Bigelow ever tell you he had been in communication with Mrs. Slade?

A He did.

Q When was that?

A Two years ago.

20 Q Did he tell you he had received letters from her?

A He did.

Q I don't suppose you went into the contents of those letters?

Mr. Bigelow. I object.

Q Did Mr. Bigelow ask you to verify any of the statements that were made to him by Mrs. Slade?

A He showed me no letters.

30 Q Did he tell you anything he had learned from Mrs. Slade?

A He said Mrs. Slade was the daughter by the first marriage of John I. Plume, and he had been communicating with her with reference to Edward C. Plume's just claim.

Q Is that all?

40 A Of my late grandmother's will; then he asked me if there hadn't been frequent quarrels in the family, that there was always dissension; I told him that I knew nothing about it.

Susan W. Heiser, direct.

Mr. Bigelow. I offer the letters of administration of the estate of Marion P. Wallace, deceased. Marked Exhibit D-E.

I offer exemplified copy of the records in the proceeding of *Bonner vs. Bonner*, in the Superior Court of Muscogee County.

Marked Exhibit D-F.

Mr. Martin. As far as our client is concerned 10
we have no objection to that offer, except we want to call your honor's attention to the fact that when an incomplete part of this record was offered a year ago they stated, and it appears in the case that that was all there was of the record that could be found, and now it appears from this exemplified copy they have got it complete.

The Court. That is a matter of argument.

Mr. Bigelow. I offer a copy of an act for the relief of Marion A. Huguenin, lately the wife 20
of Seymour R. Bonner, approved December 30, 1847, and attested under the great seal of the State of Georgia.

Marked Exhibit D-G.

Testimony closed.

Adjourned for argument on June 18, 1912.

Exhibits.

EXHIBIT C. 1.

NOTE:—Words set in italics are underlined in the original documents.

10 *IN THE NAME OF GOD; AMEN. I Susan Plume,*
of the city of Newark, in the County of Essex and the
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 man-
ner and form following, that is to say——

First I do order and direct, that all my just debts
and funeral expenses be paid and satisfied out of my
estate, as soon after my decease as conveniently can
be.——

20 *Second* I give and bequeath unto my daughter
Mary Josephine, wife of Gershom Lockwood, my
Piano-forte, Silver tea set, and my Jet Breast Pin,
containing my late husband's hair——

Third I give and devise unto my son Archer Gif-
ford Plume, his heirs and assigns, my house and lot
situate on State Street in the city of Newark, being a
part of the real estate devised to me by my late hus-
band——

Fourth I give and bequeath my pearl set to my
daughter Sarah Virginia——

30 *Fifth* I give and bequeath to my grand-daughter
Susan Winter Lockwood the minature likeness of my
Grand-mother Ruth Prince——

Sixth I give and bequeath unto my son John V
Plume my Silver Pitcher and waiter and my eight
day clock, all of which he now has in his possession,
Also the portrait of himself belonging to me, if he
shall desire to have it——

40 *Seventh* I give and bequeath to my said son
Archer Gifford Plume, one dozen silver breakfast

Exhibit C. 1.

forks, and the portraits of his late father and myself—

Eighth I give and bequeath unto my Grand-daughter Marrion H, daughter of my son John V Plume, my Gold watch and chain, also the sum of twenty dollars with which I desire that she may procure, or have furnished for her, such gold ornament as she may select, to contain my own, and late husband's hair— 10

Ninth I give and bequeath unto my grand-daughter Kate daughter of my late son, George W Plume, the sum of Twenty dollars, with which, I desire some gold ornament may be procured, to contain my own and late husbands hair—

Tenth I give and bequeath unto my sister Elizabeth Winter, the Mahogany night chair, the Mahogany Sewing chair and Marseilles counterpane, formerly belonging to my mother— 20

Eleventh I give and bequeath unto my son Archer Gifford Plume, and to my daughters Mary Josephine Lockwood, and Sarah Virginia, all my plate, linen, pictures books, wearing apparel, and household and kitchen furniture, not herein otherwise disposed of, the same to be equally divided between them share and share alike—

Twelfth I give and bequeath to the Trustees of the second Presbyterian Church, in the City of Newark, the sum of one hundred dollars, for the use of said church— 30

Thirteenth I give and bequeath unto the Protestant Foster Home Society at Newark, the sum of one hundred dollars—

Fourteenth I give and bequeath unto my daughter Mary Josephine Lockwood, the sum of six hundred dollars, being the half of the sum of twelve hundred dollars belonging to me and now in the hands of John G Winter Esqr of Georgia, the said sum of six 40

Exhibit C. 1.

hundred dollars to be paid to my said daughter as soon as the said sum of Twelve hundred dollars shall have been received from said John, G. Winter—*And as to the remaining half* of said Twelve hundred dollars, I do give and bequeath the same, unto my executors hereinafter named and the survivors and survivor of them, for and upon the espical trust following, that is to say, *In trust* the same to invest on Bond and mortgage upon real estate in the City of Newark worth at least double the amount invested, and the interest arising therefrom, to pay in equal half yearly payments to my daughter Sarah Virginia, and upon the marriage of my said daughter (if she shall marry) to pay her the said principal sum so invested for her sole and separate use, But if my said daughter should not marry, then upon her death, to pay the said principal sum so invested to the children of my said daughter Mary Josephine Lockwood, to be divided between them share and share alike———

Fifteenth I give and bequeath unto my executors hereinafter named, and to the survivors and survivor of them the sum of Two thousand dollars, upon the espical trust hereinafter mentioned of and concerning the same, viz, *In trust*, the same safely and securely to invest, and keep invested and the interest or income arising therefrom to pay towards the support and education of my Grand-daughter Kate, daughter of my late son George W Plume, until such time as she shall marry, or attain the age of Twenty one years, and upon her marriage, or attaining said age, whichever event shall first happen, to pay her the said sum of Two thousand dollars so held in trust. *But* if my said granddaughter, should not marry or attain said age, then I order and direct that the said sum so held in Trust, shall be paid to my four children Mary Josephine Lockwood. Sarah Virginia Samuel W Plume, and Archer Gifford Plume, the same to be equally di-

Exhibit C. 1.

vided between them, share and share alike———

Sixteenth I give and devise unto my daughter Mary Josephine Lockwood, and to her heirs forever, the equal undivided one half part of the real estate devised to me by my late husband, situate on Washington Street in the City of Newark embracing my homestead and the lot adjoining, to have and to hold the said equal undivided one half part, to her sole use and benefit as though she were a single woman,——— 10

And as to the remaining equal undivided one half part of said real estate I give and devise the same unto Isaac Van Wagenen, one of my executors hereinafter named, and to Charles L. C. Gifford of the City of Newark, and the survivor of them, upon and for the trusts intents and purposes hereinafter mentioned and expressed of and concerning the same, that is to say, upon the trust that they, and the survivor of them collect and receive, the rents issues and profits thereof, and from time to time pay the same to my daughter Sarah Virginia. And I do hereby authorize and empower said Isaac Van Wagenen and Charles L. C. Gifford and the survivor of them, if they shall at any time deem it advisable,—to sell and convey said remaining equal undivided one half part of said homestead and Lot adjoining, so given them and the survivor of them in trust, at either public or private sale, and for such price as they or the survivor of them shall deem proper, in fee simple, or for any less estate And the proceeds of such sale to invest upon Bond and mortgage upon real estate in said City of Newark, free from all prior incumbrance, and worth at least double the amount so invested, and the interest arising therefrom to pay in equal half yearly payments to my said daughter Sarah Virginia for and during the term of her natural life, And at her death, to convey said real estate so held in trust to the child or children of my said daughter—(if any she should 20 30 40

Exhibit C 1.

10 have) if said real estate so held in Trust shall not have been sold, *But* if the same shall have been sold, then to pay the purchase money received for the same, and so directed as aforesaid to be invested, to said child or children, to be divided between them share and share alike. But if my said daughter shall not have any child her surviving, then, if said equal undivided one half part shall not have been sold, the same to convey to the children of my daughter Mary Josephine Lockwood wife of Gershom Lockwood; but if the same shall have been sold, then the purchase money received for the same, and so directed to be invested as aforesaid, shall be paid to the children of my said daughter Mary Josephine Lockwood, to be divided between them share and share alike.

20 *Seventeenth.* All the rest and residue of my estate both real and personal., not hereinbefore disposed of, and of which I shall die seized and possessed I do dispose of as follows. viz.

I give bequeath and devise to my son Archer Gifford Plume, the equal undivided *five sixteenths* parts thereof. to have and to hold the same, unto him his heirs and assigns forever

30 I give bequeath and devise unto my daughter Mary Josephine wife of Gershom Lockwood, the equal undivided *five sixteenths* parts thereof, to have and to hold the same unto her, her heirs and assigns forever, *And as to the remaining equal undivided six sixteenths* parts thereof—I give bequeath and devise the same unto the said Isaac Van Wagenen, and Charles L C Gifford and the survivor of them, to have and to hold the same upon and for the trusts, intents and purposes hereinafter mentioned and expressed of and concerning the same; that is to say. In trust, that they and the survivor of them, shall collect, take and receive, the rents issues and profits of said equal undivided six sixteenths parts, of said rest and residue
40 of my estate, and pay the same in equal half yearly

Exhibit C. 1.

payments as follows.—namely—. *One third* part of said rents issues and profits to my daughter Sarah Virginia. for her sole use and benefit during her natural life,. And out of the remaining two thirds parts thereof to pay towards the support and education of my grandson John I Plume, son of my son Samuel W Plume, a sum equivalent to the interest at six per cent on Two thousand dollars, and the remainder of said two thirds of said rents, issues and profits to pay to my said son Samuel W. _____

10

But if my said son Samuel W should die, before his said son John I, shall have attained the age of twenty one years, leaving his said son him surviving, then to pay out of said two thirds of said rents issues and profits, towards the support and education of my said grandson, in lieu of the sum hereinbefore directed to be paid, a sum equivalent to the interest at six per cent. on Four thousand dollars, the same to be paid him until he shall attain the age of twenty one years, in equal half yearly payments, and the remainder of said two thirds of said rents issues and profits, pay to my children Mary Josephine Lockwood, Sarah Virginia and Archer Gifford Plume in equal proportions, share and share alike _____

20

And I do hereby authorize and empower, the said Isaac Van Wagenen, and Charles L. C. Gifford and the survivor of them, if at any time they or the survivor of them shall think it advisable so to do, to sell and convey at such time or times, and at either public or private sale, and for such price and prices as they or the survivor of them shall deem proper in fee simple or for any less estate, the whole or any part of the said equal undivided six sixteenths parts of the said remainder of my estate, in this article of my last will, given them in trust, and to make and execute good and sufficient conveyances in the law, for the same, And the proceeds of such sale or sales safely and securely to invest, and keep invested on Bond and mort-

30

40

Exhibit C. 1.

10 gage upon real estate in the City of Newark, which
 shall be free from all prior incumbrance, and worth
 at least double the amount invested thereon, except
 in cases where a mortgage may become necessary to
 secure in part the payment of purchase money, of any
 of the real estate which may be sold by virtue of the
 power granted in this article of my last will and tes-
 20 tament, and the interest arising from such invest-
 ments to pay in half yearly payments to my said
 daughter Sarah Virginia, my grandson John I
 Plume and my said son Samuel W Plume, in the
 same manner and proportion, in all and every respect,
 as in this article of my last will is directed. concern-
 ing the payment of the rents issues and profits of
 said equal undivided six sixteenths parts of the said
 residue of my estate, so as aforesaid given in Trust.
 And I do further order and direct, that if my said
 30 daughter Sarah Virginia shall at the time of her
 death leave a child, or children her surviving, that
 the said one third part of the said rents issues and
 profits of the said equal undivided six sixteenths parts
 of my said estate, so held in trust as aforesaid, or if
 the same shall have been sold then the one third part
 of the interest arising from the proceeds of the sale
 thereof, shall be paid towards the support and educa-
 tion of such child or children, in equal proportions,
 until such child, or if more than one, the youngest of
 such children, shall attain the age of Twenty one
 40 years, And upon such child attaining said age, then
 the equal undivided one third part of said equal
 undivided six sixteenths parts of the said residue of
 my estate, so given and held in trust as aforesaid, or
 the third part of the proceeds of said six sixteenths
 parts, if the same shall have been sold, shall be con-
 veyed, or paid, by said Isaac Van Wagenen and
 Charles L. C. Gifford, or the survivor of them, to such
 child or children, to be held, by, or divided between
 them, share and share alike *But if my said daughter*

Exhibit C. 1.

shall not leave a child or children her surviving, then the said one third, or if the same shall have been sold, the proceeds thereof, shall be conveyed, or paid, to my children Mary Josephine Lockwood, Samuel W. and Archer Gifford Plume, the same to be held, or equally divided between them, share and share alike. *And*, I do further order and direct, that upon my said grandson John I. Plume attaining the age of twenty one years, the said Isaac Van Wagenen, and Charles L. C Gifford or the survivor of them shall pay to him out of the remaining two thirds of said equal undivided six sixteenth parts of said residue of my estate, so by them held in trust, the sum of Four thousand dollars, but if my said grandson, shall not live to that age, then to pay the whole income arising from said two thirds of said equal undivided six sixteenths parts of said residue of my estate, to my said son Samuel W, and upon his death, the said two thirds, or if the same shall have been sold, the proceeds thereof, to convey to, or pay to my three children Mary Josephine Lockwood, Sarah Virginia and Archer Gifford Plume,—the same to be held, or equally divided between them share and share alike—

Lastly I do nominate constitute and appoint my friend Isaac Van Wagenen, my son Archer Gifford Plume. and my sister Elizabeth Winter and the survivors and survivor of them executors and executor of this my last will, hereby revoking all former will or wills by me made, and declaring this, as and for my last will and testament

Exhibit C. 1.

—————*In Witness Whereof* I the said Susan Plume have hereunto set my hand and seal this twelfth day of December in the year of our Lord Eighteen hundred and sixty two.

SUSAN PLUME (L. S.)

10 Signed Sealed published
and declared by the said
Susan Plume. as and for
her last will and testa-
ment in the presence of
us, who at her request SUSAN PLUME (LS)
and in her presence and
in the presence of each
other have hereto sub-
scribed our names as
witnesses

20

THOS C STEVENSON

E N. MILLER.

Endorsed

"Filed and Proved, March 25, 1864.

Recorded in Book N of Wills for Essex County
on Pages 384."

30

40

Exhibit C. 8.

NEW JERSEY PREROGATIVE COURT.

I, S. D. DICKINSON, Register of the Prerogative Court of the State of New Jersey, do hereby Certify, that the foregoing is a true copy of the last Will and Testament of SUSAN PLUME, Deceased, as the same is taken from and compared with the original now remaining on file and of record in my office. 10

WITNESS my hand and the Seal of the Prerogative Court, at Trenton, this Twenty-first day of June, A. D. 1910.

S. D. DICKINSON,
Register.

(SEAL.)

EXHIBIT C.

20

(Plume family Bible, admitted in evidence, but not marked. As the material parts appear in the testimony, the Bible is here omitted, with the memorandum that the date of the most recent entry therein is May 11, 1866.)

EXHIBIT C-8.

Copy duly exemplified of record in office of Clerk of Civil District Court for the Parish of Orleans, in the State of Louisiana, "In the matter of the succession of Samuel W. Plume". 30

Judgment rendered November 15, 1909, that the olographic will of the said Samuel W. Plume, dated Sept. 23, 1908, be and is hereby probated and ordered executed and that John I. Plume be hereby recognized as the child and sole and only heir of the said Samuel W. Plume * * * * * and that John I. Plume be and is 40

Exhibit D. 1.

hereby recognized as the universal legatee under said will and as the son and only heir of his father, Samuel W. Plume.

Will appoints son sole executor. Directs all real estate consisting of premises in New Orleans to be sold and the proceeds to be given to his son, John I. Plume, and directs son to collect of Oscar Keen, Trustee, balance due from estate of testator's mother (Susan Plume).

EXHIBIT D 1.

San Francisco, Feby 5-1884

My dear Eddie

Papa wrote you again yesterday, by that and my daily letters you will observe Papa has not forgotten you although you are at Los Angles 500 miles away from us. When you are an obedient little Man Papa always loves you and is ever mindful of your welfare and happiness, but when not it always renders me very unhappy & miserable consequently am compelled to scold you which is always very painful more so indeed than it can be possibly to you, therefore I sincerely hope you will never again give me cause.

It is still raining here, rained very hard last night—I see by the Papers you have had unusual storms at Los Angeles. I regret this as it has rendered your stay there more unpleasant than it would otherwise have been for the climate there is usually very delightful & warm—

Mama sends much love and is improving every day now that she is taking good care of herself.

Kitty & Fanny are perfectly happy and playful.
With much love

Your Aff Papa

John V. Plume

Write every day and dont fail

Exhibit D. 2.

EXHIBIT D 2.

Oakland, Cal. Feby. 2d 1884

My dear Eddie:

Mama recd this morning your very interesting letter written two days since which very much pleased and delighted her, indeed she is much disappointed if she fails receiving a letter every morning, they reach our room soon after breakfast— So be sure and write every day as I requested you to do in my letter yesterday, write either Ma or myself, when you write Papa always address to my office. 10

My health continues very poor, dont think I will ever feel entirely well again. Mama is much improved rarely coughs now, but for fear of a relapse confines herself closely to her room never goes in the passages to expose herself to the constant draughts— If this course had been pursued before she would have been well long since, thus avoided doctors and their exorbitant bills to be paid—Kitty is now in the grounds enjoying herself when she gets ready will hastily run to our door to be admitted then to lounge on the sofa & chairs. Fanny is now in the room near Mama as saucy as ever barking & growling at every one who enters. 20

"Steve" will to day move into our room the large Book Case now in No. 11 which will hold our Books at same ornamental & protect them from the constant dust arriving from the Fire place. 30

Mama sends as usual a great deal of love and many kisses to her sweet little good boy whom she so much loves.

Write as soon as you receive this tell me all the news. Good by from

Your Afft Papa

John V. Plume

Enclose I send you (4) four stamps."

40

Exhibit Ident. A.

IDENT. A.

Saturday

Oakland, Cal. Feby. 9th, 1884

My dear Eddie

10 We have had no communication by mail from Los
 Angeles for two days consequently have no letters
 from either of you. kowing the uncertainty of my
 letters reaching you with any degree of promptness I
 did not write you yesterday neither did mama for the
 same reason, but will do so as soon as she receives
 letter from you or untill the mails are restored to
 their former regularity.

20 Mama is not feeling very well to-day but will be
 better to-morrow? Kitty & Fanny are as usual in the
 room and perfectly happy when Kitty goes in the yard
 she only remains a few moments then returns to the
 door—whining to get in—I am in haste for the mail.

Mama sends much love.

Ever your Aff Papa

John V. Plume."

30

40

Exhibit Ident. B.

IDENT. B

Monday

San Francisco, Jany. 28th, 1884.

My dear Eddie:—

Mama received your affectionate interesting letter and was delighted to hear you were enjoying yourself so much but I very much fear you are neglecting your studies its so very important you should apply yourself closely as you are rapidly now approaching manhoods estate when you must be prepared to engage in some kind of business as a means of affording you a respectable support and a good position in the world and by all means save every cent of money which you become possessed of and let it accumulate so that you may have something by and by to commence the world with, recollect that Papa & Mama must soon leave you we are both getting old, then you may have no one to look after and take care of you. 10 20

We are still quietly living as when you left. Kitty & Fanny enjoying themselves lolling about in the room. Fanny barking at every one who enters. Kitty looking in amasement at her antics. George is still at the Hotel, no new boarders since you left. Mama is decidedly better seldom coughs now and sends a great deal of love.

I went over to Mr. Phelans last night as usual.

Did Gov Downey call on you.

Write often 30

Your Aff Papa

John V. Plume.

Be sure and be a good obedient little so that every one will love and admire you and give a good account to me."

Exhibit Ident. C.

IDENT. C.

San Francisco Feby. 1st, 1884.

My dear Eddie

10 Papa has written you this is the third letter and have not replied to one of them. Now I want you to write me a long letter every day giving all the news what you are doing and all you have seen. This will not only improve your writing but add greatly to a decided improvement in your your already good composition—recollect now write every day and dont allow yourself to neglect it for any other amusement.

Mama is setting by my side in our Parlor by the Fire and ask to say to you that that Mrs. Vancaroute was in our room this P. M. and asked her why you did not answer Gege's letter he wrote you.

20 The children are all well in the house and enquire when you will return. Kitty & Fanny are in the room as usual playing. Fanny as usual in Mamas lap where she remains most of her time when not in the yard. Kitty is now quite satisfied to remain in the room most of the time. The kittens we understand are well taken care of at their new home but can be brought back if they are wanted but they have a good home.

Mama send as usual much love.

Your Aff Papa

30

John V. Plume."

Exhibit Ident. D.

IDENT. D.

Wednesday

San Francisco Feby. 6th, 1884.

My dear Eddie

I have written you every day for several days past which I trust have all come to hand.

I see by the Paper this morning no mails have been recd at Los Angeles for several days not since last Saturday so you will receive most of my letters all at once. This will occupy your time in reading for quite a little while. Then I hope you seated yourself immediately down and wrote a long letter in answer telling us all the news what you are doing to pass your time &c. 10

I hope you occupy a portion at least of your leisure moments in studying your lessons which is far more important for your future welfare and happiness. 20

I am very sorry you have so much unpleasant weather as I see daily recorded in Telegraphic dispatches in the Papers. we too here have had constant rains for one week past now however its clear and pleasant with a prospect of continuance.

We are all in our usual health Kitty & Fanny quite happy Kitty when I left was begging at the door to get out in the yard.

Now my dear Eddie by

Your AfftPapa 30

John V. Plume."

Exhibit Ident. E.

IDENT. E.

Monday

San Francisco Feb. 11, 1884.

My dear Eddie

10 No letter again from you to day and you have not
 replied to a single letter of mine as I earnestly re-
 requested you to do. I sent you also some stamps so
 there can be no reasonable excuse on that score.
 Mama is also anxious to hear from one or both of you
 every day and feels very much disappointed if none
 reaches her. So recollect I want and particular-
 ly request you write daily and when you are out of
 stamps will send you another supply. I will not
 write again untill I hear from you then will instantly
 reply. I want particularly you should improve in
 your writing and composition and this is the only
 20 means of accomplishing the object I have in view be-
 sides hearing from to gratify Mama.

We are getting along as usual my health is not im-
 proving much I still am quite an invalid can eat but
 little no appetite—Can remain but a short time at my
 office each day. Kitty & Fanny are as happy and
 contented as two queens Fanny is now on my bed &
 Mama asleep. I am writing this in our Parlor. The
 mail reaches here now in morning instead of P. M.
 as before—changed last Friday departs 4 P. M.

30 Good bye my dear Eddie

Your Afft Papa

John V. Plume

Exhibit Ident. F.

IDENT. F.

Sunday

Oakland, Cal Feby 3r 1884

My dear Eddie

Papa wrote you again yesterday which in due course of mail should reach you on tomorrow morning In it I enclosed (4) four Postage Stamps which you requested Mama to send you—

10

We had last night another very heavy storm of rain to day its cloudy & dreary, no rain however. Kitty & Fanny are in the room lounging around as usual. Kitty went out in the yard this A. M. remained only a short time returned to our door & begged to be let in again—the Kittens are well taken care of their new home as I am informed & have no doubt. Mama is by my side at the table writing to Nora answering a letter she just received from her at Brooklyn.

My health continues very poor very little if any improvement doubt if I ever again enjoy good health. the medicine I am taking dont appear to benefit me perceptibly. I shall however as usual go over to Mr. Phelans this P. M. if weather permits. We have no boarders in the Hotel who were not here when you left and I know of none who are soon expected—The Dunn children are still as noisy and unruly as ever so also the School Teachers child who is uncommonly a bad girl. Mama is already entirely recovered rarely coughs sends a great deal of love she says to her darling little man.

20

30

Maggie always enquires after you when she comes to room she just left it.

Have not a word of information in regard to Judge Bigelow no one of my acquaintances have heard from him.

Dont forget my request to write every day & study your lessons.

Your Afft Papa

John V. Plume

40

Exhibit Ident. G.

IDENT. G.

Oakland. Cal. Jan. 29th, 1884

My darling Son,

I expected a letter from you this morning, but was doomed to disappointment—Now it is 11 oclock I may receive one this afternoon—I want you to write me every other day, your last, was well written, & so
10 much of interest in it; Papa wrote you yesterday.

Did you take the drive around town that you anticipated? You must be sure & go & see an *Orange* grove—do you put your napkin on, at your meals? I hope so—for only *very* common people eat without—they have no such things—Trust your *table manners* will improve. Under Tatty's supervision alone; I have strong hopes. Do you remember to *lift* you cap *always*, when speaking to any one, or *passing ladies*—
20 have you taken a *bath*. Have you written to Mr. Dunn?

Does Tatty play on the Piano? tell her to take her musick out, & practice everything is very quiet here—the weather is rainy, & consequently, I am kept a prisoner in our rooms—but rain was so much needed, & I am thankful.

“Gegee” & Baby are quite well. Gege's Father told me, that, G—was going to write you a letter—Kitty has washed herself white again, except a *fur cape* around her neck, that she cannot reach, & it does look
30 so funny, that is dove colored children all well—Tuesday 7 P. M. No letter at 4, so I will expect one in the morning—it has been raining in torrents all the afternoon—My little precious boy—you must direct your own letters take pains, & you can do so elegantly—the one you directed to Papa, with the card in, was done remarkably well—Are you keeping a journal? I am so delighted that you are enjoying yourself so much. what is the name of your friend from N. Y.,
40 you must be very *careful* and never get rude with him

Exhibit Ident. G.

—& then he will always think highly of you. do not be familiar with the servants. and now my pet with love to Darling Tatty & kisses & good night & pleasant dreams for each of you I am your devoted Mother
M. A. Plume.

I have just written this piece of poetry for you—

My heart strings, round thee cling,

Close as thy life, dear child;

I soon must hear thee sing,

Or I shall go quite wild:

Eddie, forget me not;

Oh! let thy prayers ascend,

Each night beside thy cot,

to Heaven, my name you'll send.

10

You must try & write me some verse in return. I'll send you some stamps in next letter. Mrs. Van Chur-ete (is that spelt rightly) & says she is expecting a letter from you for Gege she wrote his letter for him to you, she read your letter to me says it is wonderful smart—so says Dr. Burdsell, Mrs. Kellogg and others I am very proud of them—all send love to you & Tat—I wrote to Nora this afternoon. How pleasant it is for you to have formed such a nice acquaintance as Mr. Coultee you must invite him to call on you up here if he comes to S. F. I should be most happy to meet any one who is so civil to you my pet boy—

20

Papa wrote you again to-day, he is gushing it, as the english say, is he not but I know it pleases you & it is very kind of him—How do you like the Major, on a better acquaintance?—&how does Tat? I was very much pleased with him, the little I saw him here. I wish dear Eddie, that you would commit to memory *one verse each day*—in the Bible, while you are away—let Tat find in St. John's, the Chap beginning "Let not your hearts be troubled" she learned, & several other chapters in the same way—everybody says you make such fine capital letters & Papa thought the direction of my letter could not be your writing too

30

40

Exhibit Ident. H.

good, continue to excell with kisses & love for dear Tat, & same for sweet self—I am always your loving Mother M. A. Plume.

Mrs. Cot Wheeler has had stolen out of her room here, her gold necklace cost \$75.

IDENT. H.

10

7 oclock P. M.

Oakland, Cal., Jan. 25th, 1884.

My darling Son,

Your dear letter of the 24th was rec'd this afternoon at 4 oclock also Tatty's—oh I was so disappointed t this morning when I found there was no letter for me, I thought of course something had happened to one of you—this letter was much better written than your first, you must try your best every time
20 to do better than the last—I am delighted that you are so well pleased you must keep your sister cheered up—tell her nothing will happen to Kitty, if great care will prevent—she eat her *big* dinner tonight, & now is asleep in the chair—& has her fish for breakfast—& her cold meat for lunch, Thomas, waits on her—the milk stands in the saucer all the time so she is attended to like a queen—I have a new box for them, & they all fare alike but Boy and Nan are too greedy—Kit, is the sweetest by far—poor Fanny's nose is out
30 of joint—Papa is fond of Kitty, feeds her every meal—Sally Gomer, came to see us yesterday, amased to find Tatty gone—Mrs. Kellogg also came over—how did you enjoy your ride my man? & how do you like the Major? be *very careful* what you say before him—tell Tatty I have the Cat-nip—her rooms were whitened today—as she is down she had better man-age to stay awhile, Riverside is a most beautiful place I have heard one of you must write me every other day—dont write the same day, Tatty I think will give
40 you the stamp when you need it my darling, & if I

Exhibit Ident. I.

send them you may lose them again, what a pity you lost your pocket book—you must be careful—do you read & study your Geography & sums, do love do—& clean your shoes—I will write Tatty on Sunday—do not go in any dangerous places—It rained to day—love to Sister & kiss for, each of you; my pet boy good night—your loving Mother M. A. P.

Tell Tatty to write more news—you wrote more than she did—Give this to Tatty. 10

IDENT. I.

Oakland- Cal- Feb. 3, 1884.

My darling precious Son;

I was rejoiced when I received your letter of the 31st. it was so interesting, and I had been expecting and hoping for one to arrive. 20

I am so sorry dear Tatty has been so sick, too bad, away from home. Did you take good care of her?—Who went with you to your meals?—She of course took cold no fire in her room and I expect the house very cold; if she remains much longer had she not better move where she can procure a fire place.

Papa, wrote and sent you four (4) stamps yesterday—you must write him at once if you have not already done so. Kitty, is very fond of him, yesterday he went out and called her, and she directly poked her *head* out of a hole, and came out and followed him in, just as she used to with Tatty—today when he was dressing to go to Mr. Phelans she followed him into his room, sat up on the bureau and watched him—she is sitting in the chair now asleep—she is much tamer since her two bad boys left—they are very happy, have a fine home, and Mr. Meville says she children pet them to death—as soon as it is clear I am going to see them.— 30

Exhibit Ident. I -2.

Be very careful my darling, if you have sore throat to tell Tatty, and get potash and gargle or claret wine, she can get California wine down there for 25 cts. a bottle, at the wine place like this one onllst—I sincerely hope the rain is over in Las Angeles, for it is so confining for *you two little* people—Do not get your feet wet—it ruins your shoes you know to get them muddy—Do you notice how much longer the days are since the *21st Dec.* (that is the shortest day in the year) they have been gaining *one minute*, morning and night—each day—so how much longer are they now? tell me—

Will write one of you Tuesday night again writing to one is writing to both is it not darling. Tell Tatty I've sent Nora to hunt up *Matilda* again forgotten where she lives. Poor old Till.

20

IDENT I -2-

tomorrow I am going to put away the things—I was so exhausted on Saturday that I had to come to bed and an hour after you left, but I feel quite well tonight—I did not get up until 10 this morning & I was on the bed two hours this afternoon—so dont you think I ought to feel rested—you must try & take a bath—tell Tatty, if she employs a Chinese washerman, to make her own terms—they will take $\frac{1}{4}$ what they ask—or any kind will take half—you must take great pains with your letters to me both in composition and writing. I miss your little feet pattering in & out very much my precious, but I am happy to think, you will enjoy yourself.

Tell Tatty, if she drives herself be sure that the horse is very gentell—& do not you go near the railroad depot. How far is it from the hotel—I am very tired & must stop to go to bed early. It is of vital importance—good-night my two pets—Fanny, Kitty, Boy and Nan, all join me in love & kisses for you both

40

Exhibit Ident. J.

—write me long letters both of you, write one day & finish the next or even the third day making a kind of journal that will be a good way to keep your journal
—Tell Tat to keep her trunk locked & count her things I found the key, it was on the bunch—again
Good-night & pleasant dreams ever your loving
Mother M. A. Plume

10

EXHIBIT D -4-

Postmarked Oakland, Cal., Sep. 27, '84.

Tubbs Hotel,

Friday night Sept. 26.

Darling Eddie,

I am not well enough to come and see you—ask Mr. McPherin upon reception of this, to let you come & spend the day with me; you ought to get here by 11 & Tatty says you can stay until 5—I am not sick—but exhausted from going over to S. F. two days this week.

20

Your loving Mother

M. A. Plume.

IDENT J.

Oakland, Cal.

30

My darling little Son,

How much I miss you and dear “Tatty” only think you are (500) five hundred miles away. I thought of you every hour yesterday as you journeyed farther & farther from me, it is wonderful what an annihilater of space steam cars are. did you think of Mama, tell me all about your trip—Papa, said this noon I ought to have asked Tatty to telegraph on arrival—you must be very careful darling of your dear self & do not go near horses for the Mexican horses down

40

Exhibit Ident. J -2-

there are very savage & treacherous—be sure
 and clean your teeth night & morning & im-
 mediately after break fast go to the W. C. let
 nothing prevent & keep an account of your stockings
 & get "Tatty" to write your name in your books
 & be careful not to take them out of the room & loose
 them be a good dear boy—say your prayers & com-
 mence to keep a *journal* so I can know all you do—
 10 Papa has gone to Mr. Phelans—he is good to me & so
 good to the *Kittys* old Kitty is his favorite he feeds
 her & last night she woke me up three times jumping
 from the bed to the Bureau, to drink my milk—they
 are all asleep it is 9 oclock Kitty goes out & in just as
 if she always lived in these rooms—did not want to go
 out to-day until after her lunch, & just before dinner
 in she marched—I do not think I will be able to keep
 Boy & Nan, I will go & see their proposed home, &
 20 then I will decide—Thomas brings in their meals &
 says he misses you & Tatty, says Tatty did not *shake*
hands for good-bye—I have seen Mr. Lawls about the
 rooms "all right" he says &

IDENT J. -2-

Tuesday 7 P. M.

darling boy—

Did you receive my letter, written Sunday night,
 30 this morn yours, was a very sweet one to me, for you
 appeared so anxious to know if I was well, Mamma,
 will not forget you darling, no never, never; I am so
 glad to hear you are good & happy—I feel very well, &
 cheerful I put all of Tatty's things away—and the car-
 pets are taken up already, will you *do all I ask* you to
 in my last; you must take more pains with your writ-
 ing it is so bad I could scarcely read it & I was
ashamed for people to see the direction—do try & im-
 prove, write slowly and divide your sentences better,
 40 & look after *you stop*—my darling Son must take

Exhibit Ident. K.

more care, why you wrote so much better a year ago—
now good night my dearest—lovingly

Mamma.

IDENT. K

New Orleans Jan. 27-08

Philip F. Larner Esq.

10

Dr Sir

My nephew desires to join the sons of the American Revolution therefore will you please send me two blank applications at your earliest convenience also please let me know the costs and all dues & cost of Gold Badge.

Yours Very truly

S. W. Plume
Compatriot."

20

Washington, D. C.

72-S-st N. W.

Jan. 31, 1908.

Mr. S. W. Plume,

New Orleans, La.

Dear Sir and Compatriot—

Enclosed herewith as per your request are two application blanks for membership in the D. C. Society, Sons of the American Revolution. The initiation fee is \$5. and the annual dues \$3. per year. The cost of insignia or badge varies according to size and material. They are manufactured and sold by J. E. Caldwell & Co., Philadelphia, Pa., who will give you all information as to price, etc., if written to.

30

I have the honor to be.

Very respectfully yours,

Albert D. Spangler,
Registrar, D. C. Society, S.A.R."

40

Exhibit Ident. L—M.

IDENT. L.

Jan. 27/08

Dear Edward

10 I ship you per American Express tomorrow the Rug and my farther & Mothers pictures inside is a *valuable* package for your Boy. I have directed it to your house, you will not find a Rug like it in *every* house I assure you. I hope you arrived all safe and sound. Remember us bothe to your wife & little family.

That Rug is made of Camels hair you know how valuable that is when ladies fine shawls are made of it but care must be taken of it in summer for *moths*.

With regard and best wishes to you all.

I am yours

S. W. Plume"

20

IDENT. M

Jan. 28/08

Dear Edward

30 I send you by Amer. Express to your House the two Pictures of Ma & Pa, also the Turkish Rug and a bag of Spanish Yams the same as you had at my table. You must take them out of the bag and spread them out so as to keep dry to prevent rotting, as they will rot very quick if not kept dry in a dry place. Hope you will like them. After they have boiled put them in the oven of the stove and bake them which will bring out the sugar.

Love to all

P. S All Express

Charges Paid

Your Aff Uncle

S. W. Plume

40

Exhibit Ident. N—O.

IDENT. N

New Orleans Jan. 29/08

Dear Edward

Yours from the train on I. C. R. R. to hand yesterday.

The Ring beat us in the *State* election yesterday by ballot box stuffing. The Express would not take the Pictures yesterday on account of the way I packed them I overlooke in packing and got the glasses so they would break, so we unpacked and fixed them all right last night, tell Giff to unpack as soon as they get to the House & he will find in it a letter with money for him. They will go tonight, so they will land in Chicago with this letter, Dont tell him there is money in the letter but fine souvenier cards. Hope you got home all safe, expect you kept your wife up most of the night telling her all the news. 10

Love to all 20

Yours Aff Uncle.

S. W. Plume

IDENT. O

New Orleans, La Feb 3-08

Dear Edward

Yours of 31st January to hand, also the Ring and Photo for which I am delighted and thankful a thousand times, they came by carries this A. M. I am waiting for news from the Boy to see what he says about Cards and money, hope he got them O K I am going to have my Picture taken this morning. We have had very cold for two day and I have a long drive before me to collect rents. Love to all and same to you from 30

Your Aff Uncle

S. W. Plume

Johns pictures are good ones" 40

Exhibit Ident. P.

IDENT. P

New Orleans Feb. 6/08

Dear Edward

Yours of the 6th instant is just to hand and am glad to know you like the things I sent you.

- 10 The Rug is a valuable thing it has never been anywhere only on my Piano until the infernal *Cat* tore a small place in it playing with it, since then it been on the bed. Be careful those potatoes dont *freeze*, if the do they will be good for nothing, and before they are finished let me know and I will send you more.. Tell Giff I got his letter and am glad he is getting to be a *capatalist*, to be a good boy and God will send him more. I recd all you sent with thanks. Mailed you yesterday Pictures for Giff letter to you & application to Sons of A. R..
- 20 We have had very cold here the last week the coldest in 10 years, but no ice, my Roses were just commencing to come out. Kind remembrance to all

Your Aff Uncle

S. W. Plume.

30

40

Exhibit Ident. Q.

IDENT. Q.

NOTE: The words printed in plain type are the printed form of application. The words printed in *italics* are written in *ink*, and the words printed in **black letter** are written in **pencil**.

National Number..... State Number.....

Applications are to be made in duplicate and sent to the Secretary of the State Society, who will forward one copy, when approved, to the Registrar General of the National Society. 10

THE DISTRICT OF COLUMBIA SOCIETY
OF THE
SONS OF THE AMERICAN REVOLUTION

APPLICATION FOR MEMBERSHIP

—OF—

Edward C. Plume

Descendant of
Isaac Plume & Ann Van Wagenen 20
Joseph Winter & Mary Prince

Application examined and approved

.....I.....

State Registrar.

Accepted by the State Board of Management

.....I..... 30

State Secretary.

DATES

Application filed with State Secretary.....I....
Notification of election
Fees paid
Duplicate sent to Registrar General..... 40
Approved and registered by Registrar General.....

Do not encroach on this margin which is needed for binding.

Exhibit Ident. Q.

Certificate of Membership delivered.....
 Badge delivered
 ResignedTransferred
 Deceased

APPLICATION FOR MEMBERSHIP.

10 National Number..... State Number.....
 Issued by authority of the National Board of Trustees.

.....I....

TO THE BOARD OF MANAGERS OF
 THE DISTRICT OF COLUMBIA SOCIETY

—OF THE—

SONS OF THE AMERICAN REVOLUTION

20 I,.....being of the age of
 twenty-one years and upwards, to wit, of the age of.....
 hereby apply for membership in this Society by right of
 lineal descent in the following line from *Isaac Plume* who
 was born in *Newark New Jersey* on the.....day of
17....and died in.....on the *First*
 day of *October 1734* and who assisted in establishing American
 Independence.

I was born in.....County of.....
 State of *Florida* on the.....day of.....I....

I am the son of.....*John Fischer Plume*)1.....and
*Marion Alethia Huguenin*) his wife, and
 30 grandson of.....*John I. Plume*)2.....and
*Susan Winter*).....his wife, and
 great-grandson of.....*Isaac Plume* x.....and
*Ann Van Wagenen*.....his wife, and
 great-grandson of.....*Joseph Winter*)3.....and
*Mary Prince*.....) his wife, and
 great-great-grandson of..... and
*Ruth Prince*....., his wife, and
 great-great-great-grandson ofand
 40his wife

Do not encroach on this margin which is needed for binding.

Exhibit Ident. Q.

and he, the said *Edward C Plume* is the ancestor who assisted in establishing American Independence, while acting in the capacity of *Minute Men in the New Jersey Militia*.

Nominated and recommended by the undersigned members of the Society:

Samuel Winter Plume New Orleans La

..... 6989 10

Signature of applicant, (Name in full)

Residence,

Occupation,

ANCESTOR'S SERVICE.

20

"SECTION I. Any man shall be eligible to membership in the Society who, being of the age of twenty-one years or over, and a citizen of good repute in the community, is the lineal descendant of an ancestor who was at all times unfailing in his loyalty to, and rendered active service in, the cause of American Independence, either as an officer, soldier, seaman, marine, militiaman, or minute man, in the armed forces of the Continental Congress, or of any one of the several Colonies or States, or as a signer of the Declaration of Independence; or as a member of a Committee of Safety or Correspondence; or as a member of any Continental, Provincial, or Colonial Congress or Legislature; or as a recognized patriot who performed actual service by overt acts of resistance to the authority of Great Britain."—*Constitution of Nation Society S. A. R., Article III, Section 1, adopted June 3, 1907.*

30

When the applicant derives eligibility of membership by descent from more than one ancestor, and it is desired to take advantage thereof, the history of each of said ancestor's services and the intermediate generations of the pedigree may all be written upon these pages; but it is desired that the history of each ancestor shall be written upon a separate blank when possible.

40

Do not encroach on this margin which is needed for binding.

Exhibit Ident. Q.

State fully such documentary or traditional authority as you found the following record upon, and also the residence of ancestors, with dates of birth and death, if known.

My ancestor's services in assisting in the establishment of American Independence during the War of the Revolution were as follows:

My Great Grand Father on my fathers side belonged to the minute Men of Essex County New Jersey

10 *My Great Grand Father on my grand mothers side Joseph Winter was Aid de Camp to Washington on the evacuation of New York City Ensign New York Militia, Secretary of New York committee of safety.*

My great grand father Joseph Winter served as Ensign Capt Benjamin Carpenter's New York Militia, Revolutionary War; was Aid de Camp to General Washington at the evacuating of New York 1776; Secretary New York Committee of Safety, was born and died in New York

My ancestors on this side were Knickerbocker's who settled New York and Long Island about 1624

20

The following are references to the authorities for the above statements:

S. A. R. papers of Samuel W. Plume, D. C. No. 489. National No. 6989. S. A. R. National Register of 1902 page 272 and D. C. Register of 1896 page No. 146

(Signature of applicant).....

(Name in full) (Also to be signed at bottom of second page.)

30

[The following form of acknowledgment is required.]

STATE OF..... }
COUNTY OF } ss.

Personally appeared

signer of the above and foregoing application and statement, and made oath that the statements therein contained are true to the best of his knowledge and belief before me.

Official Signature,

40

[L. S.]

Do not encroach on this margin which is needed for binding.

Exhibit Ident. R—S.

IDENT. R

New Orleans, Feb. 19/08

Dear Edward

Yours of 17th to hand I see you are having the
nice weather we have here, as cold as the devil, but we
 have no snow, I hope you got *that* Picture without be-
 ing *broken*, if so make them replace it. It is a nice
 frame & I took pains in picking it out. It is very cold 10
 to day and I had a long drive to get some Brown Leg-
 horn Hens, they are the very best of layers. I have
 eggs the whole month while everyone I know can't
 get an egg. Get a box Brans Pulmonic Wafers for
 colds they are the best in the world, they cured me of
 the Grip three times. Are all your Yams gone if so I
 will send more when the weather gets milder. My
 two little puppies are getting on fine.

With love to all and best wishes to you

Your Aff Uncle

20

S W Plume—

P. S. What did Gifford think of the two niggers and
 the bales of cotton."

IDENT. S

New Orleans, Feb. 24/08

Dear Edward

Yours of 22 with cylender to hand & tomorrow will
 try it at the store. 30

Well I have got to day the genealogy of the Winter
 part of the family excepting the dates, which my
 cousin has written to her mother for in Augusta, Ga.,
 also full list of children Robert Prince married Mary
 Burjes. Their Son Samuel Prince married Ruth
 Carmen *their* daughter Mary Prince married Joseph
 Winter in 1778, August 11th. The above dates early
 in the 16 century. They were the early settlers of 40

Exhibit Ident. T.

Manhattan Island and thereabout a century before the English came over, though my Grand Mother Ann Van Wagenen were with her ancestors among the early settlers, but located about Albany and live in that City, but had large grants of land some 1200 acres which my father sold a short time before he died. Further information I will give you as I get it and through memory.

10

Tell Gifford I will send him my Photo.

We have had bitter weather for here and hope it is over.

With my regards and best wishes for the family.

I am Your Uncle.

S. W. Plume

My son and his wife are here for Mardi Gras.

20

IDENT. T

New Orleans. April

Dear Edward

All of yours & Giffords Postals came to hand with thanks and duly appreciated, tell Gifford, the dear boy I dont think he will be able to show me the *sheep* this year but they are fine. Did you make application in the State or Washington Society S of A Revolution and how did you get along.

30

We had a hurrican through the south yesterday. it split up one of my trees in front of the house but plaid the devil through the country within 200 miles of here, destroyed the City of Amite 60 miles above here on the I. C. R. R. I have been very busy lately with my houses and had no time to write.

Love to all from us both

Your Aff Uncle

S. W. Plume

40

Exhibit Ident. U—V.

IDENT. U

New Orleans, May 8/08

Dear Edward

All of yours came duly to hand but have so busy have not had time to answer any

I am glad to know you have gone through all right with the Sons of the A. R. They keep me pretty busy with one thing and another with all put together does not amount to anything only time consumed in my long life to the grave. 10

I have made my Will and in it is stipulated that you and my son are *immediately* after my death are to convey my body to Newark and deposit it in our family vault and brick it up, if that is not done, then my bequest to you and my son is to become nul and void and all I leave goes to the 2d Presbyterian Church in Newark. I wish to lie beside my dear father and Mother. 20

I have had a little trouble with the board of health in one of my houses but I will beat them.

Give our love to all and with kind remembrance to you.

Yours Affectionaltely

S. W. Plume"

IDENT V.

30

Nov 18/08

S. W. Plume,

1226 North Broad St

New Orleans, La

Dear Edward

Yours of 16th to hand and in reply will say I am no better but quite weak. I am glad to know that Gifford is all right again and to school. 40

Exhibit Ident. W.

I am glad to know you have closed the deal for the house, and hope you had a lawyer to advise you and to draw up *everything* for you in black and white. You know these real estate speculators are very tricky without any principal. You should have got a Deed, then given a mortgage with stipulations in it as to payments &c I hope however you are all right and secure and will have no trouble.

10 If my brother was not as mean as Cat pis he could easily help you as I wrote him some time ago, but he is all for that bastard of his. That womans husband was an intamet friend of his, an old schoolmate and playmates from childhood, and named after his father who was an intimate friend and companion of my father for years.

If the house you have bought is in a good locality and comparatively new I will enhance in value as soon as this panic is over.

20 Chicago is a great city and in ten years will equal New York

They tell me at your place that business is better than at the old place on Canal Street. I dont suppose they pay as much rent

With love to all we both send our love

Your affectionately

S. W. Plume.

30

IDENT. W

New Orleans. "Feb. 4/08

Dear Edward

I enclose you the application for admission to the Society of the Sons of the Am Revolution. I have commenced one so you can fill out the other as I cannot collect my ideas suffiently to fill out the ballance as you will see, I have already made mistakes—I had my Photo taken yesterday, it will be sent on to New
40 York to be enlarged and they say will be back next

Exhibit Ident. X.

week, as soon as it comes will ship it to you by express. Feb. 5 I went this A. M. to see the photo, it is a good one and the large one will be all ready next Tuesday & will ship on Wednesday. In the application to the S of the AM Revolution fill in your middle name. Kindly remember us to your family and with best wishes to you

Your Aff Uncle

S. W. Plume

10

IDENT. X

New Orleans Feb. 21/08

Dear Edward

Yours and Giffords of the 19th to hand. In regard to the husband of Ruth Prince I am completely at sea as my niece Susie Lockwood pawned and sold everything she could get hold of. She wrote me 5 years ago she could get the old Bible for \$25. I sent my son the money then she said she could not get the Bible but would get me a *copy* for \$25.—by copying it herself. I wrote my son to send me back the money, as I thought *her* and *her* mother had plundered enough of my mothers estate. My cousin here is going to give me a list of the Winter family and I will send you a copy. I had a copy of my mothers will and it is a strange thing, I ridiculed the Lawyer who made it, told him he should make one more will then lay down and *die*, which he did a short time after. My portion of the Estate must be divided among the heirs. Giff claims it goes to him, but he is wrong as you will see however the Will as drawn makes no provision for the disposition of my portion which is worth something like \$60,000, that is by the income I am getting at 4/0—We have had some of your Chicago cold here for three days, but is more moderate now and hope it is all over, as I am no lover of cold.

40

Exhibit Ident. Y.

I am surprised to know the other picture frames were broken and the Express should be made to mend them. Hope this one will be all right. I gave the photographer \$1.00 to box it.

Glad the boy likes the niggers and the bales of Cotton.

Love to all and with my best wishes.

10

Your Aff Uncle

S. W. Plume'

IDENT Y

S. W. Plume

1226 North Broad St

New Orleans, La.

April 12/08

20 Dear Edward

Your present reached me this A M at 10 oclock and I assure you I appreciate it *more* than if it cost \$1000—because I know you could not afford the latter and could afford the former also it shows the good will and kindly feeling toward me.

30

I have made my Will and it I have only included you and my son, who are to immediately after my death to take my body to Newark and place it in our family tomb in Mount Pleasant Cemetery. I will leave plenty of money to defray all expenses and more. All my property, monies &c is divided equally between you I will send you a copy soon as possible My brother has never remembered me for once and I do not intend to remember *him* to leave to his bastard and concubine.

With our love to all and best wishes to you

I am Your Affectionate Uncle

S. W. Plume

40

Exhibit Ident. Z.

IDENT Z

S. W. Plume,
1226 North Broad St.
New Orleans, La.

Feb 29/08

Dear Edward

Yours with the Will and records to hand. I took 10
the records to the office but they were so indistinct
we could hardly hear them. My son and his wife are
here and they were with me at the time. I have not
written lately because have been under the weather
and this morning called the Doctor who said it was
nothing. I am going to make my Will next week
and will make a provision for you, also as one of my
Executors and after my death combine yourself with
my son and the others against my *brother* who in- 20
tends to take posetion of the estate now possessed by
me. By the whole of you combining and employing
one Lawyer the expense will be less by a great deal.
It is just and right that you should all get your just
dues. Giff intends to leave what he has to Mrs Gif-
fords two boys his *concubines*. I will send your boy
Gifford all the papers of the Mardigraw parades which
will tickle him to death. Anyone who has not seen
it cannot imagine what it is. My cousin Mrs. Robert-
son has written to her mother for all the names of 30
the Winter family Grandmothers children as soon
as I get it I will send you a copy
With love and best wishes to all

Your Affectionately

S. W. Plume

Exhibit Ident. 1—2.

IDENT. 1.

Last Will and Testament.

I hereby will and bequeath my real estate to my brother Edward C. Plume—situated and to his heirs after his decease—situated in several Eastern States—My personal property—jewelry—&c—wearing apparel—I wish divided between my niece Marion H. Slade, of Columbus, Georgia—and some to my sister Leonora H. Mims, living at 26 Jefferson Ave—Brooklyn, N. Y. also to my niece Effie Louise Collins—residing at 26 Jefferson Ave., Brooklyn, L. I. N. Y. One Portrait of Mamma to my niece in Columbus, Georgia—Marion H. Slade—Some of my handsome dresses also to my nieces above mentioned—My cousin Kate C. Underhill—residing at 1926 Pine St. in this city—I bequeath some pictures and ornaments—To C. B. Harris and one set of Shakespeare—illustrated—My Brother Edward C. Plume to see that my will is carried out according to my wishes—he knowing where my things are—

Marion H. Stone Wallace—

S. F.

Aug. 17th—1891—

IDENT 2

30

Newark, N. J., Dec, 7th, 09.

Dear Edward—

Yours of the 4th & 5th to hand and contents noted. I telegraphed you today not to stop suit on my account because you evidently misunderstood my letter of the 4th—thought I had some personal interest in the matter. My only interest is that I shall be left entirely out of it. I decline any notoreity and bickering and do feel that at my time of life I should be worried and annoyed by something that does not

40

Exhibit Ident. 3.

concern me—I have not taken any sides in this matter nor formed any opinion nor do I care to—All I want is to be left entirely out of it as to the merits of your case. I know nothing—but mentioned my letters & deed to show that he was of an erratic temperament and changeable mind and that his writings are not to be relied upon too implicitly as proof at Law.

My attitude is that as I am not concerned. I be left out of the matter entirely. I want peace of mind and do not care to disturb that peace by advising or counsel favoritizem.

Yours—

Uncle Giff.

IDENT 3

Newark, N. J. Dec. 12, 08.

Dear Edward.

I have recd the Photos all right & am much pleased. particularly with your wifes you certainly made a good selection for she is a fine looking Lady.

I have delayed writing. as I have expected to accomplish something for you. but have been put off from time to time by the secty I have made application for you to membership to the Cincinnatti Society but have run up against a lot of red tape but think I will be able eventually to land you but *you must not* say one word about it to your Uncle Samuel (remember not one word under any circumstances) to him. I was in hopes to have sent you your certificate long ago & at same time acknowledge receipt of the Photos you must excuse my seeming neglect in answering—I am at best a poor correspondent & my business occupies considerable of my time. With best wishes & much love to all I am

Your aff.

Uncle Gifford

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Exhibit Ident. 4—5.

IDENT 4

Saturday.

Edward—

Come up to my house & take dinner with me—we dine at 6 oclock sharp.

I live at 238 1/2 Belleville Ave. take Broad St. car & get out at 3d Ave.

10

Your Uncle

Giff.

IDENT 5

Newark Feby 25th 08.

Dear Edward—

I recd the Photos—they are fine suppose they are copies good—the one of my brother John—when he has his hat on I dont fancy much. it look to much like a sport but the other is fine I am much obliged for all of them—

20

I am glad you had an opportunity to visit N. O.—and called on your Uncle Samuel. hope you were pleased with your visit—he is a rough sort—but has a big heart—he does not mince matters—speaks right out & calls a spade a spade.

30

I would like to go down & see him—but am afraid to undertake the journey—particularly this kind of weather. He expressed a wish to come on to see me, but is afraid to undertake the journey at his age—sleeping in cars & changing beds at our age is dangerous—& there is too much pneumonia around we have got to be careful.

I suppose you are looking for the auto races—the N. Y. Times gives us daily accounts—the papers are much saught after Please remember me kindly to your wife & Son & with much love to all I am

Your aff. Uncle,

40

Gifford.

Exhibit Ident. 6.

-IDENT 6

Newark, N. J. June 25th, 08.

Dear Edward—

Yours of the 9th & 2d to hand also the invitation to attend the Commencement Exercises at Giffords school from him—I to day acknowledge receipt of same & thank him for it I addressed him at 5609 Drexal Ave. 10

Well I suppose things have quited down in a measure in Chicago now that the boomarang is over—you must have had quite a gang there & Teddy elated over his success in having his *mee too* nominated I only hope the Democrats will name some good man (*not Bryan*) then we will knock them out.

We have had several very hot days—but cool nights for sleeping—to day thermometer registers 80 not bad & nice nice breeze. 20

I shall be very glad to receive Gifford picture & hope you will pass a good examination. In regard to the Cincinnati Society my father joined the N. Jersey organization but never meet with them—always met with the N. Y. branch I think he was transferred to them—still I will try to get on track of something definite.

With love to all I am

Your aff. Uncle,

Gifford. 30

Exhibit Ident. 7.

IDENT 7

22 Clinton St.,

Newark, N. J. Jan'y 21st 08.

Dear Edward—

10 The disc's and modafier, came duly to hand—all O: K. for which please accept my thanks—the selections are all fine Mrs. Gifford her sons as well as myself have enjoyed them very much.

20 In regard to the Cincinnati Society—it is something which cannot be bought it is subject to *inheritance only* it decends from the members to his oldest son—if he dies without leaving a son it then goes to his brother & so on down—now your father inherited it & was elected to membership but where I don't know but he has an eligant badg made but what became of it I don't know—now it decends to you & if your son lives to him & so on down—If I only knew what state your Father was commissioned it would be quite easy for you to prove your claim My Father was a member of the N. J. branch—I dont recall any members now. I shall not be able to learn anything before July next. When they met at which time I may be able to learn something & will at once let you know Samuel not knowing—John had left a son imagined he inherited it & it would go to his Son, that may have been one of the causes for his attacking you—I have delayed writing thinking I might get some points for you on the subject—don't say anything to Samuel for it may embiter him. Again thanking you for the Disc's and love to your wife & Son with best wishes to all I am

30

Your aff. Uncle

Gifford.

Exhibit Ident. 8.

IDENT 8

Newark Nov. 16th, 09.

Dear Edward.

Yours of the 8th to hand I am unable to explain the treatment you claim to have experienced but my brother Samuel was a very impulsive person & did some very queer things at times, on one occasion he wrote me if anything happened to him—he wanted me to come directly to N. O. & take charge of his remains & bring them to Newark & place them in our Vault which would have been impossible for the laws of N. O. are very stringent on this matter if the remains are not entered within a specified time—they cannot be removed untill one year and a day after death. This is an old yellow fever law, which has not been repealed. Samuel died at 2.40 Tuesday morning & John notified me of the fact—had the remains prepared & started North with them that night which was proper. I met them here on their arrival at noon Thursday & the funeral was Friday morning at 10. & he was able to return to N. O. that night which was quite necessary as his father left every thing to him. he had to get back to look after matters you see it would take time for me to get there & his Son on the spot to see everything—it would have been a useless expense of money & time to have gone there simply to have accompanied his remains North. those requests were made at a time when he was angry at his son. But that had blown over, as you will see when he left every thing to his son.

Why I have a deed in my possession conveying everything to me. I wrote him a long letter declining to accept it & reconveyed the property back to him for I knew it would mean a quarrel—bad blood & a law suit and would compel me to go to N. O. & I would be to old for the undertaking & at the end if successful the Lawyers would have all—of course I

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Exhibit Ident. 8.

10 dont know what Samuel may have said to his family
 to have caused them to decline to see you but I do
 know he was very bitter at times—I at one time was
 was accused by him of stealing some worthless Bonds
 belonging to him—& he wrote me a most insulting
 letter and for years I never recognized him & the last
 time he was in Newark & John with him—John called
 at my office & walked to the depot with him. Samuel
 was in the car & asked me to go in & see him. I re-
 fused & told him the cause & he informed me then &
 there they had the Bonds. That he called on me with
 an order from Samuel & got them—I could not recol-
 lect it—& he told his father of the fact but Samuel
 never apologized to me nor did I forgive him or write
 him. About a year after he wrote me & I had to an-
 20 swer the letter—but our letters were few and far be-
 tween I could not forget it for he well knew—I was
 way above any dishonest deed—those Bonds were not
 worth the paper they were printed on. he had induced
 me to buy a lot of them—besides he owed me a lot of
 money which I had loaned & paid for him which was
 never returned to this day.

As I said before I am unable to give you the cause
 of their action—when I see them I may learn some-
 thing until I hear—cannot say—

With regards to wife son & yourself I am

Your aff. Uncle

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Gifford—

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Exhibit Ident. 8a—9.

IDENT 8a

Newark, Jany 11/09.

Dear Edward

Yours & Giffords letters to hand this morning I am glad he liked the book. Mrs. Gifford selected it for me & had it mailed at Wannamakers I enclosed the card for me. I am feeling pretty well for my years. will be 77 May next. I am going down to Samuel Gifford on Wednesday to spend the night I have not been there in six months he lives at Red Bank which is one hour from here. 10

We have had a few cold days here so far—but think we will have our share before the winter passes according to the old adage we are to have 13 tracking snows the winter & we have 4 so far that looks fine for us as we have no use for snows. as they only make bad walking. I have not heard anything from the Cincinnati Society yet. With much love to all I am 20

Your affectionate Uncle,

Gifford.

IDENT 9

"Floral Album,"

A mon cher petit frere

Tout le monde, vous amiez quand vous etes bon.

Your loving sister, 30

Marion H. Stone.

Exhibit Ident. 10.

IDENT 10

"Autographs,"

To my Son

Autographs of friends selected,
 In this book by you collected,
 Let the name above all others
 By you cherished, be your mother's.

10

Marion A. Plume.

Oakland, June 30th, 1888.

To Eddie,

In the book of Eternal Life,
 May your name, My Son, be written,
 & when this life is o'er, may we be again
 United, in the "Golden Gate" of Heaven.

Mother.

20 San Francisco, July 31st, 1888.

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Exhibit D. 4.

EXHIBIT D-A.

San Francisco—Nov 10

My dear Daughter,

I am a poor correspondent these times, my health is so poor, & another reason is your letters have lain in the Oakland P. O. until last week ever since I last wrote you. Daught has been at Death's door for so long a time with gastric fever—she is not yet able to leave her room—sits up some days, & now since last Thursday has been in her bed—about six weeks ago, I was taken down with a congestive chill, & they thought I would die under it, she was so frightened that she got up, & helped rub me, & was on her feet two days & nights & being *unwell* at the time, it acted terribly & brought on prostration of the nerves, & her old trouble with her womb. I had raging fever after the chill, & the Dr. worked hard to keep off the second, & succeeded—but I have not recovered my strength, & have grown very, *very* thin, have no appetite, live on milk, raw eggs, & “Murdock's liquid food” —Eddie takes the greatest care of me, & spends all of his earnings for something he thinks might tempt me to eat—brings oysters, & they are 50c a dozen, Eastern oysters & the Cal. are not good, small & copperish—oh he is a dear good son to me, & when I am gone if he is ever near you, be good to him, & you & sister write to him, & make him love you. I never saw a boy with such a generous, noble heart. He thinks evil of no one, makes excuses for everybody's faults, he brings me something every day, fruit of some kind, sherry wine he keeps me supplied with & goes without what he needs. I have had another letter from Sarah Berk & she wrote me that “Mell Thomas” was dead. Dr. Thomas' mother—she & I were first cousins, she was the youngest daughter of Uncle John Hugenin, & when I was a child they moved from S. C. to Savannah, Ga., we always called him “Uncle Jackey,” he was the

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Exhibit D. 4.

Father also of Cousin Eugenia who resembled me so closely that in N. Y. & Washington she was often spoken to for me, & cousin Edward H.'s father—I told you of his wife's Mulatta maid, running away from them at Macon, Ga., with a commercial N. Y. traveller & passed for white & as his wife—we, Mr. Plume and I met them at Catskill Mountains, & she paid me a great deal of attention, had her carriage & horses, took me to ride, & said she knew from my strong resemblance what family I belonged to—said she knew them intimately, used to live right by them, & used to play every day with "Mell." I thought strangely of it—one day a party took a long walk from the Hotel to the Creek & the *heat revealed* the *crinky* hair on the temples: & then we looked at the finger nails, & the whole thing dawned upon us—she was advertised in all the Ga. papers but no traces of her could be learned. Cousin Edward died towards the close of the War, also his wife—oh how Mr. Plume used to tease me about her taking me to drive, he used to give her name a french accent "Madame Converse". I think it was the last year of the war, for I remember I expected to write to Cousin E & tell of my meeting with Julia, & it was a great disappointment when I learned they had all gone & my favorite Cousin Julius too, of Beauport S. C., St. Luke's Parish, my birthplace. That is where our family graveyard is, it is a beautiful spot, handsomely improved, they still bury in it—both of Cousin G's sons, who have died in the last few years lie there—Leonora wrote me when she went down with poor Abram's remains (her husband) that my Father's tomb was in the best state of preservation of any, I wonder at that, so many of much more recent date, & built entirely of stone & marble—Cousin Julius' two wives has elaborate monuments. My father's was according to the best style of those days, of *brick*, rounded over, & at the head, standing from the ground a marble slab,

Exhibit D. 4.

about a foot above the brick, which had the inscription on it, the brick about 3 or 4 ft. high. I have not seen yours or Leila's letter, I was away a few days with a friend visiting to see if the change would brace me up, and Daught rec'd the letters, two from you & one from Sister, then they were put up *safely* by the Nurse for me, so safely that I have not unearthed them yet, so I concluded to write today at all events, I expect when this is mailed to find them right away; it is generally so. So Nora has a baby, a little girl, Marion said she read them hurriedly, someone came in, she intending to read them over. Give my love to Sister & let her have this to read—how is Effie & her beau getting on, & when do they expect to be married? Is Charlie still a temperance man, I trust so, God bless him, & you all, how I would like to see you. I wish I had the money to send for you & Lile to stay the winter with me, I am too weak of even dreaming to come to you, I am a living skeleton. Do you know of anything that could bring me up a little. If I had you to cook for me, Daught says, I could eat your biscuit & everything you make is delicious, & your house is in order from top to bottom—southern raised, she thinks it is wonderful. Is Mr. Sutton at home? Give my love, & H & D & E—to all yourselves & Sister's family, a poor letter, daughter, but better than none. Is Matilda's brother alive?

Your loving Mother, M. A. P.

Exhibit D. 15.

IDENT D 15

EXHIBIT D. 15.

CITY OF NEWARK.

Essex County, State of New Jersey

[SEAL]

10

United States of America

I, JAMES F. CONNELLY, City Clerk, of the City of Newark, Essex County, State of New Jersey, do hereby certify that the following is a true and correct transcript from the Record of Deaths in my office:

Date of Death	Name of Deceased	Sex of Deceased	Married or Single
July 18, 1850	Joseph W. Plume	Male	Single

20

Age	Occupation	Place of Death	Place of Birth
10 months		60 Washington St.	U. S.

Names of Parents	Cause of Death
John V. and M. A. Plume	Inft. Lungs.

Medical Attendant

30

In witness whereof, I have hereunto set my hand and affixed the seal of said city this 26th day of May A. D. 1911.

JAS. F. CONNELLY,
City Clerk.

(SEAL)

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Exhibit D. F.

EXHIBIT D. F.

GEORGIA,

MUSCOGEE COUNTY.

To the Honorable the Superior Court of said County. The petition of Seymore R. Bonner respectfully shows that heretofore, to wit: on the the thirteenth day of January, A. D. eighteen hundred and thirty-six at Columbus, to wit, in said County, your petitioner inter-married with one Marion A. Hugence now Marion A. Bonner then and now of said County, and from the time aforesaid until the the sixteenth day of July in the year Eighteen hundred and forty four your petitioner and the said Marion cohabited enjoying conjugal peace and happiness and that during all that time your petitioner demeaned himself towards the said Marion A. as a husband, performing and discharging all the duties imposed upon him by affection and his martial vows thereby seeking and endeavoring to secure the domestic peace of his said wife, himself and his children. But your petitioner shows that the said Marion A. in violation of her duties and obligation to your petitioner and in the destruction of his individual peace and happiness, did afterwards, to wit; on the twelfth day of November in the year Eighteen Hundred and forty-two in the County of Meriwether in said State commit the crime of Adultery with one John V. Plume. And your petitioner further shows, that afterwards, towit on the twelfth day of July in the year Eighteen hundred and forty-four in said County of Muscogee the said Marion A. did in violation of her conjugal duties commit one other crime of Adultery with him the said John V. Plume. Wherefore your petitioner prays that citations and process may issue requiring the said Marion A. to be and appear at the next Superior Court

Exhibit D. F.

to be held & in for the County first aforesaid, then
and there to answer your petitioner in this his peti-
tioner for total a divorce.

JONES & BENNING
JOHNSON & WILLIAMS,
Attorneys for Petitioner.

- 10 A Schedule of property possessed by the parties
- 1 11 Negro Slaves
 - 2 Carriage & Horses
 - 3 4 or 5000 thousand dollars worth of land in
Georgia and Alabama numbers not known.
 - 4 3 or 4000 dollars of Town property description
unknown
 - 5 Household & Kitchen Furniture.
 - 6 Liabilities large enough to consume the whole
- 20 if sold for Cash at present.

STATE OF GEORGIA,
MUSCOGEE COUNTY.

30 Personally appeared before me Michael N. Clark,
a justice of the peace, for said County, Seymore R.
Bonner who being duly sworn, deposeth and saith
that the above Schedule is a correct statement of the
property possessed by said parties to the best of his
knowledge and belief.

SEYMORE R. BONNER.

Sworn to and subscribed before me
this 5th August, 1844.

MICHAEL N. CLARK, *J. P.*

Exhibit D. F.

Georgia, Muscogee County:

To the Sheriff of said County—Greeting:

SEYMORE R. BONNER

vs.

MARION A. BONNER.

*Libel for
Divorce.*

10

The defendant is hereby required personally or by Attorney to be and appear at the next Superior Court to be held in and for said County on the fourth Monday of November next then and there to answer the plaintiffs demand in an action of Libel for Divorce as in default thereof the Court will proceed as to justice shall appertain. Witness the Honorable Joseph Sturges Judge of said Court this 5th day of August, A. D. 1844.

B. BEASLEY, *Clk.*

20

I have served M. A. Bonner personally with a copy of this writ & process this 5th August, 1844.

T. A. BRANNAN, *Shff.*

We, the Jury find that sufficient proofs have been referred to our consideration, to authorize a total divorce, that is to say, a divorce a vinculo matrimonii upon legal principles between the parties in this case. 2nd June, 1845.

30

WM. P. YOUNGE *F. M.*

We the jury find that sufficient proofs have been referred to our consideration to authorize a total divorce that is to say a divorce a vinculo matrimonii upon legal principles between the parties in this case. '8 Jany 1846.

L. S. CALHOUN, *Foreman.*

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Exhibit D. F.

SEYMORE R. BONNER

vs.

MARION A. BONNER.

*Libel for
Divorce.*

10 The said libellant as appears by the records of this Court having obtained the concurrent verdict of two Special Juries authorizing a divorce in Terms of the Law in such cases made and provided that is to say, a divorce a vinculo matrimonii between said parties. It is therefore considered and adjudged by the Court that said Plaintiff be totally divorced from said defendant and that the bonds of marriage heretofore existing between said parties be dissolved in Terms of the Statute in such cases made and provided.

20 STATE OF GEORGIA,

MUSCOGEE COUNTY:

Clerk's Office Superior Court.

30 I, Van Marcus, Clerk of the Superior Court of Muscogee County, said Court being a Court of Record in and for said County, the records of which I have the custody and control, do hereby certify that the foregoing is a true and correct copy of all the Proceedings in the case of Seymore R. Bonner *vs.* Marion A. Bonner, Libel for Divorce, as the same appears of record in said office, and that said decree was entered on the minutes of this Court under date of Jany. 8, 1846.

Given under my hand with the seal of said Court affixed, this October 11th, 1911.

(SEAL)

VAN MARCUS,
*Clerk, Superior Court,
Muscogee County, Georgia.*

Exhibit D. F.

STATE OF GEORGIA,
MUSCOGEE COUNTY.

I, S. P. GILBERT, Judge of the Superior Court of Muscogee County, holden in and for said County in the State of Georgia aforesaid, do hereby certify that the attestation of Van Marcus to the foregoing certificate, is the attestation of the Clerk of said Court; that the seal affixed thereto is the official seal thereof, and that said attestation is in due form of law. 10

Given under my hand at Columbus, this 11th day of October, nineteen hundred and eleven.

S. P. GILBERT,
Judge of the Superior Court of Muscogee County.

STATE OF GEORGIA, } ss: 20
COUNTY OF MUSCOGEE,

Clerk's Office of Superior Court.

I, Van Marcus, Clerk of the Superior Court of Muscogee County, do hereby certify that the Hon. S. P. Gilbert whose name is subscribed in the preceding certificate, is, and was at the date of the execution of said certificate, Judge of said Superior Court, duly commissioned and sworn, and that the signature of said Judge to said certificate is genuine.

IN WITNESS WHEREOF, I have hereunto set my hand, and affixed the seal of said Court, this 13th day of October, Nineteen hundred and eleven. 30

VAN MARCUS,
Clerk of the Superior Court,
Muscogee County, Georgia.

(SEAL.)

Exhibit D. B.

EXHIBIT D.-B.

Newark, Dec. 30th, 1907.

Dear Samuel,

10 I recd yours, enclosing the letter from Edward. I
 am sorry you wrote to him in the manner you did.
 Sam I have seen him and found him to be a perfect
 gentleman, bright, upright and a pusher. Sam what is
 20 to be gained. Suppose he is an illigitamate. What
 can we do. John allowed him to use name—and
 his wife Marion caused our dear parents many heart
 aches. She worked upon John to such an extent that
 he cursed Pa to his face and in my presence in the old
 Ward house. Ma was present and we were all in
 tears. She was a thóroughly bad woman in every
 way—and what can you expect of her offspring—
 reared under influence. I think we better let the boy
 alone. Nothing can be gained in hounding him. We
 30 are getting old and I feel it is better to make *friends*
 not *enemies*. We have only a few more years to live.
 I want to leave all I can behind me who will think
 kindly of me. Sam for my sake as well as your own
 dont persecute the boy. Dont make his life miserable
 —he has some of our. He is not to be blamed for
 what his mother did. Our dear parents suffered
 everything for John. Dont do anything more. Let
 the matter drop. I think you will find he will come
 out alright if his spirits are not broken. Let ig-
 30 norance be bliss with him.

I have been suffering for a week with an attack of
 Lumbago. Am now feeling a little better. I send to-
 day all enclosures back to Chicago to day. With a
 happy New Year, I am

Your aff Brother,

Gifford.

Exhibit D. C.

EXHIBIT D-B.

Envelope.

Return Card.	Post Marked	
"A. GIFFORD PLUME	"Newark, N. J.	
INSURANCE.	Dec. 30	
22 Clinton St., Newark, N. J."	4-PM.	
	1907."	10
Address.		
"Samuel W. Plume, Esq.,		
1226 North Broad St.,		
New Orleans,		
La."		

EXHIBIT D.-C.

20

Track Department of the Panama R. R. Co.

Panama April 25th 1887

Marion

Yours of March 30th is just to hand and I am so much surprised that I hardly know what to say—You say that it is many years since you have seen me, or even heard from me, This does not seem strange; as you and yours have isolated yourselves from, and treated the family, "who were far your superiors," with contempt for years, and now, when you and yours are in poverty, you are asking that family to assist you—Have you forgotten that when my Father and Mother allowed you to stay in their House at Newark in 1850, "for their sons sake," you made it a perfect hell. Have you forgotten that you biased the mind, and prejudiced that son against his parents—Have you forgotten that through you and your influence that son cursed his Father, *which caused his death*, as he thought more of John than any one of

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Exhibit D. C.

his children—Have you forgotten that you also prejudiced Johns mind against his Sisters & the whole family—My dear Mothers death, is also attributed to you—and lastly your own poor Mothers death was attributed to you—Also your Husband's Mr. Bonner.

10 With all this stain upon you, which is still fresh in the memory of the living, you ask us in your poverty for *aid*—Lockwood told me when I was in New York in January that your daughter sent a messenger boy to his store for \$50.—which to say the least, is a great piece of impudence, when you know how your husband treated Lockwood, and more, he sold the Vault, containing the remains of his father and mother to Gifford with the understanding there was not a Lockwood to go in it—Did you think that when you sat down and wrote that letter to me, that you could blarney me, as you have done John, if so, you are
20 sadly mistaken—As a little advise to the wise is well, I would advise you to appeal to your children in Georgia whom you abandoned, for aid, and if they will not assist you no one will.

You say you know I will assist my brothers child—I do not believe she is my brothers child, judging from what George told me in San Francisco in 1850—It is many long years that I have waited patiently for this opportunity of telling you what I know about you, and expres my feelings towards you, asuring you that I have never had any love, nor regard for you.
30 In conclusion I will say, that may God Almighty meet out to you a just retribution for the infamous life you have led, and the injury you have done my old parents—I do not wish any more letters from you or yours & this will close all correspondence.

Yours &c.

S. W. Plume.

P.S. I met one of your sons in Georgia in 1870 who denounced you in the most bitter terms & I cided
40 with him, he knew your character better than I did,—

Exhibit D. D.

I also met men from near Pocotaligo S. C. who knew you & spoke lightly of you,—I have often been told you gave *your* old Mother much trouble—and now may the Almighty repay you.

S. W. Plume.

EXHIBIT D.-D.

10

In the name of God Amen, I, John J. Plume of the City of Newark in the County of Essex and State of New Jersey, being of sound and disposing mind and memory do make and proclaim this my list Will and testament. After paying the Funeral expenses and some small debts which I owe, I give and bequeath to my beloved wife Susan all the following my Real and personal estate (should she survive me) viz First the House and Lot known as No. 42 Washington Street my present Homestead (on which there is now a mortgage of Fifteen Hundred dollars given to the Newark Mutual Benefit Life Insurance Company) with all the Furniture Plate and moveables therein. Also the House and Lot known as No. 1 State Street in the North Ward of the City of Newark (on which there is also a mortgage for between two and three hundred dollars) Also my lands and premises at Mount Pleasant in the seventh ward of the City aforesaid next south of and adjoining the Foster Home containing about Twenty acres. Also the one third of Forty two Lots held in common with Aaron B. Ward and Thomas D. James next south adjoining the property of Adrian Schaff on the next side of the old road leading to Bloomfield. Also Eight Lots in the Township of Rahway, a part of the Lots unsold that were deeded to me by John Rutherford. Also all those Lots in East Newark called the Preston Tract on the south side of the New Jersey Rail Road as contained in a deed from John I. Plume and two deeds from L.

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Exhibit D. D.

Jaquens, Sheriff of the County of Hudson, which said deeds are recorded in the Clerk's office of Hudson County. Also a small Lot in the Township of Caldwell (at Bones Mill) conveyed to me by D. L. Dobbins. Also my right in thirty five acres of Land contained in the map of the Preston Tract in East Newark now in suit in the hands of A. Gifford, Esqr., being lands purchased for which were given in the name of Jacob Haff but paid for by me as by an article in the hands of Mr. Gifford my counsel will more fully explain.—

Also a mortgage and Bond for Four hundred dollars of Christopher Stimus on Lots corner of Quarry and High Streets, and two Mortgages and Bonds of Peter McCoskee and John McCoskee on Lots in East Newark (Preston Tract) dated in 1836, which said lands and premises together with the personal property my said wife, should she survive me may sell and dispose of as she in her wisdom shall think best, and the proceeds thereof (after paying the Mortgages aforesaid, apply to her own use and support); but in case my said wife should *not* survive me, then it is my will and I direct that the furniture and plate being equally divided with my three daughters Anna Maria—Mary Josephine and Sarah Virginia by putting the same in three lots or divisions and drawing for the same.

The balance or remainder of my property be equally divided share and share alike between my sons George W. Plume, Samuel W. Plume, Archer Gifford Plume, and my three daughters Anna Maria, wife of William Donaldson Kinney, Mary Josephine Lockwood, wife of Gershom Lockwood, for their sole and separate use and my daughter Sarah Virginia Plume for her sole and separate use, excepting the house in Washington Street which I give and devise to my two daughters Mary J. and Sarah Virginia and the House and Lot in State Street I give and devise to my son Archer Gif-

Exhibit D. D.

ford, and in case of either dieing without issue their share to be equally divided between the survivors. All the rest and residue to be equally divided share and share alike between my children hereinbefore mentioned and lastly I appoint my wife Susan my Executrix and my son Archer Gifford Plume my Executor of this my will.

In testimony whereof I hereunto set my hand and seal and publish and declare this to be my last will and testament in the presence of the witnesses named below, this _____ January in the year of our Lord one thousand eight hundred and fifty two.

John J. Plume (L S)

Signed sealed published and declared by the said John J. Plume as and for his last Will and testament in the presence of us who at his request and in his presence and in the presence of each other have subscribed our names as witnesses thereof this 15th July 1852.

C. L. C. Gifford
Wm. P. Miller
Richd Francisco

This is a codicil to be added to the foregoing last will and testament of me John J. Plume of the City of Newark, New Jersey which said Will bears date the blank day of January One thousand eight hundred and fifty two.

First I do hereby ratify and confirm my said Will in all respects save so far as any part thereof shall be revoked or altered by this present codicil. And having since the execution of my aforesaid last Will and testament purchased a lot of land situate in Washington Street in the City of Newark and adjoining my present residence, which said lot of land is consequently not disposed of by said Will, I do hereby give and devise the said lot of land to my dear wife

Exhibit D. D.

10 Susan to sell or dispose of the same as she may deem best. I do hereby also give and devise unto my daughter Mary three lots of the land owned by me situated in the Township of Rahway Essex County New Jersey to be held by her in trust for her three sons Joseph George and John and to be disposed of by her at such time and in such manner as she shall deem most for the interest of her said sons. I give and bequeath unto my son John Fisher Plume my gold watch and chain and to my son Archer Gifford Plume my gold headed cane.

In witness whereof to this present writing which I hereby declare to be a codicil to my last will and testament and which I direct to be added thereto and to be taken a part thereof I have set my hand and seal this twenty sixth day of February in the year of our Lord one thousand eight hundred and fifty four.

20

John J. Plume (S S)

Signed, sealed published and declared by the said John J. Plume as and for a codicil to his last will and testament and to be taken as a part thereof, in the presence of us whose names are hereunder subscribed as witnesses to the signing sealing and publishing the same and who did so subscribe their names at the request and in the presence of the said John J. Plume and in the presence of each other.

30

E. T. Hillyer
Thos T. Woodruff

40

Exhibit D. D.

I William K. McDonald surrogate of the County of Essex do certify the annexed to be a true copy of the last will and testament and codicil annexed of John J. Plume late of the County of Essex deceased, and that Susan Plume and Archer Gifford Plume the Executors therein named, proved the same before me, and are duly authorized to take upon themselves the administration of the estate of the Testator agreeable to the said will and codicil.

10

(Seal) Witness my hand and seal of office, the twenty first day of March, in the year of our Lord one thousand eight hundred and fifty four.

Wm K. McDonald
Surrogate

STATE OF NEW JERSEY.

ESSEX COUNTY SURROGATE'S OFFICE.

20

I, ISAAC SHOENTHAL, Surrogate of the County of Essex, and Clerk of the Surrogate's Court of said County, do certify the annexed to be a true copy of the record of the Last Will and Testament, and codicil thereto of JOHN J. PLUME, Deceased, together with a true copy of the record of the Letters Testamentary thereon issued as the same appear of record in this office.

WITNESS MY HAND AND SEAL OF OFFICE, 30
this twenty-first day of May, in the year of our Lord one thousand nine hundred and twelve.

(SEAL) Isaac Shoenthal.
Surrogate and Clerk.

40

Exhibit D. G.

EXHIBIT D. G.

AN ACT for the relief of Marion A. Huginon, lately the wife of Seymore R. Bonner.

SECTION 1. Be it enacted by the Senate and House of Representatives in General Assembly met, and it is enacted by the authority of the same, That the said Marion A. Huginon be and she is hereby released from all disabilities imposed upon her by the judgment of the Superior Court of Muscogee County, in a suit for a divorce, at the instance of Seymore R. Bonner, against the said Marion A. Bonner, so far as she is by said judgment rendered incapable of marrying; and that the said Marion A. is hereby made fully able and capable of entering into the marriage contract, any law to the contrary notwithstanding; and that the said Marion A. Bonner be restored to her former maiden name of Marion A. Huginon.

CHARLES J. JENKINS,

Speaker of the House of Representatives.

ANDREW J. MILLER,

President of the Senate.

Approved, December 30, 1847.

GEORGE W. TOWNS,

Governor.

Exhibit D. G.

STATE OF GEORGIA.

(SEAL)

Office of Secretary of State.

I, Philip Cook, Secretary of State of the State of Georgia, do hereby certify, That the one (1) page of type-written matter hereto attached, contains a true and correct copy of "An Act for the relief of Marion A. Huginon, late the wife of Seymore R. Bonner, approved December 30, 1847, as the original of same appears of file in this office. 10

In Testimony Whereof, I have hereunto set my hand and affixed the Seal of my Office, at the Capitol, in the City of Atlanta, this 1st day of January, in the year of our Lord One Thousand Nine Hundred and Twelve and of the Independence of the United States of America the One Hundred and Thirty-sixth.

(SEAL)

PHILIP COOK,
Secretary of State. 20

30

40

Exhibit D. 1.

EXHIBIT D. 1—June 28.

A. Gifford Plume
A. Plume Gifford
Real Estate
Fire Insurance
790 and 792 Broad Street
10 Newark, N. J.

Newark, N. J., Dec. 4th, 1909.

Dear Edward,

20 I have been informed by John you have commenced proceeding to secure an interest in his Father's estate. I would advise you to at once discontinue same. You have no grounds on which you can recover. Letters from him wont amount to any thing. I have similar letters written to me, telling me he will leave every thing to me, and moreover, I have in my possession a deed of recent date conveying every piece of property which he owned to me & accompanying which is a letter in which he says he gives me the property in lieu of monies he owes me. Of course John will call on me as a witness & I can be of no earthly benefit to you. On the contrary every thing would be against you. You are putting yourself to useless expense & me to great annoyance. You cannot gain anything for my letters will upset any thing you may produce.

30 I hope you will see the futility of your cause & will discontinue the litigation at once.

Yours—

Gifford.

*Stipulation.***Stipulation.**

IN CHANCERY OF NEW JERSEY.

Between

OSCAR KEEN, as trustee, &c.,

*Complainant,**and*

A. GIFFORD PLUME and others,

*Defendants.**On Bill, &c.*

10

It is hereby stipulated that in printing the state of the case in the above entitled cause, pursuant to the directions of the order of the Court of May twenty-fifth, nineteen hundred and twelve, Exhibit C. annexed to the bill of complaint, consisting of the complainant's account, be omitted; and also that the following exhibits introduced at the hearing, be omitted:

20

C. 2 Final decree in Sam'l W. Plume *v.* Staats S. Morris.

C. 3 Order appointing Oscar Keen, trustee.

C. 4 Deed, A. G. Plume, et al., to S. S. Morris, L. 20, 56.

C. 5 Deed, A. G. Plume, to S. S. Morris, P. 22, 318. 30

C. 6 Deed, E. A. Morris to Oscar Keen, U. 24, 219.

C. 7 Will of Mary Josephine Lockwood.

C. 8 Will of Sam'l W. Plume.

C. 9 Letters of administration of Henry Young, Jr.

C. Plume family Bible.

C. Lockwood family Bible.

Ident. 11 Photograph of John V. Plume.

40

Stipulation.

- D.- Bill of Complaint in Lockwood *v.* Plume.
 D. 5 Record of death of John V. Plume.
 D.- Record of Plume *v.* Morris.
 D. 1 June 28, letter A. G. Plume to E. C. Plume,
 Dec. 4, '09.
 Letters of administration of Littleton
 Kirkpatrick.

10 It is further stipulated that the following memorandum be printed in the record. (Plume family Bible admitted in evidence, but not marked. As the material parts appear in the testimony, the Bible is here omitted, with the memorandum that the date of the most recent entry therein is May 11, 1866.)

It is further understood that nothing herein shall operate to withdraw any of the said exhibits from the record of the case.

- 20 PITNEY, HARDIN & SKINNER,
Complainant's Solicitors.
 McCARTER & ENGLISH,
Solicitors for Defendant,
A. Gifford Plume.
 YOUNG & BIGELOW,
Solicitors for Defendants,
E. C. Plume, et al.
 GUILD & MARTIN,
 30 *Solicitors for Defendant,*
John I. Plume.
 LINDABURY, DEPUE & FAULKS,
Solicitors for Defendants,
Susan W. Heiser, et al.
 JAY TEN EYCK,
Solicitor for Defendant,
Jay Ten Eyck, Adm., &c.

A. Gifford Plume, direct.

NEW JERSEY
COURT OF ERRORS AND APPEALS

October 17, 1912.

Between

OSCAR KEEN, Trustee, &c.,
Complainant,
and
A. GIFFORD PLUME, and others,
Defendants.

10

Transcript of the shorthand notes of testimony
taken in the above entitled cause on October 17,
1912, at Chancery Chambers, Newark, N. J., be-
fore Hon. James E. Howell, Vice Chancellor. 20

Appearances:

Pitney Hardin & Skinner for complainant.
McCarter & English for A. Gifford Plume.
Guild & Martin for defendant John I. Plume.
Young & Bigelow for defendant Henry Young,
Jr., Administrator, &c., and others.

Lindabury, Depue & Faulks for defendants
Harry Duryea Lockwood and others. 30

Mr. Hugh B. Reed, representing Jay Ten
Eycke, adm'r *ad pros.*

A. GIFFORD PLUME, re-called:

Direct-examination by Mr. English:

Mr. Bigelow: I offer certified copy of the
account of the executor of Susan Plume.

Marked Exhibit D-1, October 16, 1912.

Q. What was the property which your mother
left at the time of her death, what did it con-
sist of? 40

A. Gifford Plume, direct.

A. It consisted of a house on Washington Street, a house on State Street, and a bond and mortgage, I think it was against John G. Winter, or judgment or claim against John G. Winter.

Q. House on Washington Street, house on State Street, and bond and mortgage?

A. Yes.

10 Q. Was there much land attached to each of those houses?

A. Yes, State Street there was a house and one lot, and Washington Street was two lots.

Q. Now there was a farm in the family somewhere, where did that come in?

A. That was just simply a farm.

Q. Who owned that?

A. The estate owned it, sir.

Q. Whose estate?

20 A. My mother's estate.

Q. Then she owned that at the time of her death?

A. Yes.

Q. Where was that located?

A. Up on Belleville Avenue, running through to Mount Prospect.

Q. And what was the extent of that?

A. Twenty-two acres.

30 Q. Then she owned at the time of her death the two houses you referred to?

A. Yes, sir.

Q. And the farm, twenty-two acres?

A. Yes.

Q. Now, anything else?

A. No, sir.

Q. Did she have any personal property?

A. Personal effects, which were all given to her children.

Q. What?

40 A. Furniture and things of that kind.

A. Gifford Plume, direct.

Q. Of any considerable value or not?

A. Not a great deal; they were to be divided up between the three of the children, the household furniture.

Q. I believe you were the executor named in her will, or one of them?

A. No, I am not the executor named in the will. Isaac Van Wagonen and Charles Gifford were the 10 executors, and they did not serve; I qualified then as executor.

Q. And you surrendered your final account, as the paper offered in evidence today shows, in 1871, so that you managed the estate from the time of her death down to 1871, is that correct?

A. Until 1873, March 1, 1873, I divided up the bonds and mortgages I had.

Q. Then you managed your mother's estate from her death down to that time, is that right? 20

A. Yes, managed it from the time of my father's death in 1854.

Q. Now when was it your sister Virginia died?

A. My mother died in 1864 and Virginia died in 1866, two years after my mother.

Q. At the time of Virginia's death had either of these two houses or any of the farm been sold?

A. Those two houses were under the will, the Washington Street property was given to my two sisters, Mrs. Lockwood and Virginia; I don't know 30 what became of that, that property was sold; I know nothing about that, that was under the will. The State Street house was given to me under the will, that I sold.

Q. That left nothing but the farm?

A. Nothing but the farm.

Q. At the time of Virginia's death had the farm or any part of it been sold?

A. No, sir.

A. Gifford Plume, direct.

Q. When was it that any part of the farm was first sold?

A. They have got the date right there, probably. On March 2, 1868, I sold two lots to a man by the name of Cook on Third Avenue.

Q. That was the first of the farm that was ever sold?

10 A. That was the first, in 1868.

Q. And that was two years after Virginia's death?

A. Two years after her death, yes.

Q. And from that time on, that is to say from 1868 on, you sold this farm in parcels from time to time?

A. Yes, sir.

Q. Until it was all finally disposed of?

A. Yes. The next sale I made was in January,
20 1869.

Q. And when did you make the last sale, if you know?

A. The last sale must have been made in 1873, after it was divided.

Q. About the time you divided it up?

A. Divided up the securities, yes.

By the Court: Q. Those securities, Mr. Plume—

A. Were bonds and mortgages.

By the Court: Q. Were bonds and mortgages,
30 and where did the money come from that was invested in the bonds and mortgages?

A. The property was sold, you know, by cash and by bonds and mortgages.

By the Court: Q. The sale of the farm?

A. The sale of the farm.

Q. They were purchase money mortgages?

A. They were purchase money mortgages.

Q. Representing the part purchased of the sale
40 of this real estate?

Miscellaneous Orders.

A. Yes; the cash I received in excess of that was used to keep the estate out of debt.

EXAMINED by Reed:

Q. You filed an inventory, did you not, you filed an inventory of your mother's estate, did you not? A. I don't know whether I did or not.

Q. I notice in your account you charge yourself with amount of inventory \$3,149.13; do you know what that consisted of? 10

A. No, I can't tell you; I will see whether I can find it on my book here. \$3,946.84, isn't it?

Q. \$3,149.13 they have here?

A. My books show \$3,946.84, that was the claim against my mother.

Q. I was talking about the amount of her personal property?

A. I have given all the property she had. 20

Q. Beg pardon?

A. I gave all the personal property she had.

Mr. Bigelow: I offer the inventory of the executor of the estate of Susan Plume.

The Court: It will be marked when produced.

Miscellaneous Orders

30

(Filed, Jan'y. 7, 1911)

By order in the cause, Henry Young, Jr., Administrator of the estate of John V. Plume, was admitted as party defendant.

Exhibit D-2, October 17, 1912.

(Filed, Oct. 7, 1911)

By order, etc., Littleton Kirkpatrick, Admr. of the estate of Marion P. Wallace (born Marion H. Plume), was admitted as party defendant.

10

(Filed, Nov. 20, 1911)

By order, etc., Jay Ten Eyck was appointed Admr. *ad prosequendum* of Sarah Virginia (Plume) Tugman, and made party defendant in the cause.

20

(Filed, Mar. 19, 1913)

By order, etc., the complainant Trustee having died, the cause was revived in the name of his executors, who filed May 6, 1913, a supplemental report and account, dated March 9, 1913, a summary of which is printed *infra*.

30

Exhibit D-2, October 17, 1912

SUSAN PLUME

A true and perfect inventory of all and singular, the goods and chattels rights and credits of Susan Plume late of the City of Newark, County of Essex and State of New Jersey, deceased made this 3rd day of June 1871 by A. Gilford Plume Executor & Charles L. C. Gifford & Isaac Van Wagenen two
40 disinterested freeholders.

Exhibit D-1, October 17, 1912.

Purse and apparel beg to May, Virginia & Gifford	\$60.50	
Household Goods “ “ “ “	71.57	
31 Silver spoons “ “ “ “	234.00	
3 Breast Pins “ “ “ “	10.00	
2 Spectacles “ “ “ “	8.00	
2 Salt Spoons “ “ “ “	2.00	
1 Mustard Spoon “ “ “ “	1.00	
2 Cake Baskets “ “ “ “	6.00	
1 Portrait I. V. P. “ Jno. V. P.	20.00	10
12 Silver Forks “ A. G. P.	62.56	
2 Portraits I. J. P. S. W. P. “ A. G. P.	40.00	
1 Gold Watch “ N. H. P.	20.00	
2 Silver Candlesticks 41 Oz15 beg May Virginia & Giff.....	163.50	
Bond Saml J. Gustin	1,250.00	
Note Jno. G. Winter beg to May & Virginia worthless	1,200.00	
		20
	\$3,149.13	

A. GIFFORD PLUME,
Executor.

C. L. C. GIFFORD,
ISAAC VAN WAGENEN,
Appr's.

Filed and proved June 3, 1871.

Geo. D. G. More,
Surrogate.

30

Exhibit D-1, October 17, 1912

Susan Plume, dec'd—Executor's Final Account:

The final account of A. Gifford Plume, executor of Susan Plume, dec'd, as well of and for the estate that hath come to his hands to be administered as for his payments and disbursements of the same.

This Accountant charges himself:

40

Exhibit D-1, October 17, 1912.

To amount of inventory and appraisement . . . \$ 3,149.13
 “ “ received for Rents & Real Estate
 sold by heirs to pay debts and legacies and in-
 terest on same reckoned to June 5/71 as per
 statement annexed 14,447.35

\$17,596.48

=====

10

“Newark, N. J., June 5, 1871.

A. Gifford Plume

To Est. Susan Plume.

1864			
	Feb.	5	By rent from farm \$ 100.00
	Nov.	3	“ “ “ “ 100.00
1865			
20	Apr.	13	“ “ “ “ 100.00
	Oct.	17	“ “ “ “ 100.00
	“	24	Int. from I. G. Winter .. 24.94
1866			
	Apr.	16	Rent from farm \$100.00
			less costs suit .. 55.44
			44.56
	Sept.	1	Rent from farm 100.00
1867			
	Feb.	11	“ “ “ 150.00
30	July	1	Proceeds of
			sale—Lots
			11, 12, 13 &
			20= 4,915.00
			Less expenses 90.91
			4,824.09
1868			
	Apr.	1	Rent 230.00
	June	13	Proceeds of
			sale—Lots
40			4, 5 & 18= 4,319.57

Exhibit D-1, October 17, 1912.

		Less expenses	67.55	
				4,252.02
1871				
June	5	Int. 3 years 7		
		mos. 19 das.	2,551.80	
		Int. on \$1,250		
		from Jany.		
		17, to date		10
		being inter-		
		est on Gus-		
		tin mort-		
		gage,		
		4 mo. days		
		7, 4, 18	159.17	
				3,210.97
1868				
Mar.	2	By cash sale		
		of lot to E.		20
		L. Cook ..	1,000.00	
		Less expense .	14.25	
				985.75
				225.02
				\$14,447.35
				=====
		This Accountant prays allowance		
		For delivered to Sarah V. Plume		30
		1/3 of household furniture &c.		
		bequeathed her, inventories at	185.52	
		“ delivered to Mary J. Lock-		
		wood 1/3 of same	185.52	
		“ delivered to himself retained		
		1/3 of same	185.52	
		“ silver forks and portraits be-		
		queathed to ex. Invt.	102.56	
		“ delivered to John V. Plume—		

Exhibit D-1, October 17, 1912.

		Inv't.	20.00
		" delivered gold watch for Mar- ion H. Plume	20.00
		" Note of John G. Winters be- queathed to Mary and Vir- ginia not collected—delivered to Mary	1,200.00
10		" Amt. due Ex'r for money ad- vanced Testatrix in her life time	185.00
		" Paid Bond & Mortgage given by Testatrix in her life,time to this Accountant	1,750.00
		" Paid due Bill of Testatrix to Ex'r	580.16
		" Bill paid by Ex'r for Testatrix in her life time	182.95
20	Jany. 15	" Paid Ball Black & Co.'s bill ..	12.00
		" " Mary J. Lockwood's bill	10.00
	20	" " City Taxes for 1863	174.07
	Mar.	" " Wm. Silas Whitehead, Surrogate	45.01
	Apr. 19	" " Elizabeth Winter's Bill Exp's on Probate of Will	50.00
	Mar. 24	" " Thomas C. Stephenson Bill (Witness fee)	2.00
		" " C. Parker, on Caveat to Will	100.00
30		" " C. S. C. Gifford, Caveat to Will	40.00
		" " Executor's Traveling ex- penses on attending on Caveat, proving will	234.00
	Mar. 9	" " James Adair, Undertaker	182.90
	June 3	" " E. H. Campbell "	43.50
		" " Sundry funeral expenses	12.31
40	Sept. 16	" " Newark Daily Advertiser	4.50

Exhibit D-1, October 17, 1912.

Mar. 15	"	"	Camp & Osborn Bill	27.52	
July 21	"	"	William Allen's "	2.08	
Apr. 28	"	"	Int. on Mortgage to Newark Savings Inst. ..	87.50	
Aug. 30	"	"	Int. on Mortgage to Newark Savings Inst. ..	87.50	
Nov. 1	"	"	Int. on Mortgage to Newark Savings Inst. .	87.50	10
" 1	"	"	" Dean & Reeves Bill	44.67	
10	"	"	Marion H. Plume—Leg- acy	20.00	
Mar. 17/65	"	"	Sarah A. Ross—Cash loaned Tes'x	1,000.00	
	"	"	D. W. Crane's Bill	22.10	
	"	"	Mrs. Lucetta Plume's Bill cash rent	25.00	
Jany. 1/65	"	"	Dr. S. B. Barlow's Bill	64.50	
	"	"	Int. to Newark Savings Inst.	87.50	20
				\$7,023.79	
July 26/66	"	"	Int. to Newark Savings Inst.	87.50	
Aug. 22/66	"	"	Int. to Newark Savings Inst.	87.50	
June 13/68	"	"	Legacy to Foster Home, less U. S. Tax	100.00	30
	"	"	Legacy to 2d Pres. Church, less U. S. Tax .	100.00	
	"	"	Newark Savings Inst. Bond & Mtg. & Int.	2,606.28	
	"	"	Taxes for same	40.38	
	"	"	Wm. H. Websters, Sur- rogate's Bill	13.35	
	"	"	Advertising settlement & Surrogate on Invty. ...	8.75	40

Exhibit D, Unnumbered.

	“	“	Court & Surrogate on this a/c & Boarding ...	31.80
Jany. 20/84	“	“	Water Tax	3.50
	“	“	Kate C. Plume, Legacy .	20.00
	“	“	Legacy in trust to the Ex'r for Kate C. Plume	2,000.00
10	“	“	Int. on advances made by ex'r, pay debts of the estate	4,625.00
	“	“	Commissions on \$17,- 596.48	533.93
				\$17,282.10
			He is charged	\$17,596.48
			He is allowed	17,282.10
20			Bal in hands of Exr. ...	314.38

The court allow this account as audited and stated by
Surrogate, Sept. 12, 1871.

WILLIAM B. GUILD.
JESSE WILLIAMS.

30

Exhibit D, Unnumbered

*Record in the Court of Chancery in the suit of
Plume vs. Morris*

The above record was offered in evidence as
stated on page 97 *supra*, and was admitted but not
marked, as stated on page 98. The final decree
40 in that cause is printed on pages 17 to 24 *supra*.

Exhibit D, Unnumbered.

The record shows the partition in the Court of Chancery in 1878 and 1879 of the residuary real estate, and an abbreviated statement of the revised account of Morris, Trustee, showing the items of receipt making up the fund in litigation in this suit, follows; the remainder of this record being omitted from the printed book by consent.

10

Dated Feb. 18, 1889. Filed Jan. 19, 1892.

Account of Staats S. Morris, Trustee under the Will of Susan Plume, dec'd.

This acct. charges himself on acct. of the Principal of the Estate as follows:

1873	Received from A. G. Plume		
Mar. 1	Francis K. Howell's B & Mtge (Sale Mar. 1872.)	\$. 6,650.00	20
	Catherine David B & Mtge (Sale Sep. 1871)	750.00	
	Wm R. Andrews B & Mtge (Sale Ap. 1871)	1,200.00	
	Winfield S. Carter B & Mtge (Sale Nov. 1872.)	3,500.00	
	Sarah A. Morgan B & Mtge (Sale June 1872.)	1,800.00	
		\$13,900.00	30
1883			
Oct. 9	From A B Mockridge, 2 lots on 3rd Ave.	2,300.00	
1884			
Mar. 22	" A Kirkpatrick M C C	198.56	
		\$16,398.56	
Nov. 14	" T B Peddie 50 feet Summer Ave	1,800.00	
1885			40

Abridgment of Schedule C, Attached to Bill of Complaint.

	Jan. 5	“	Thos Cooper N E Cor Sum-	
			mer Ave and V. Wagenen ..	1,000.00
	26	“	M S Frederick's lots on V	
			Wagenen St.	1,200.00
	Mar. 2	“	Mrs. Speedling 231 Garside St.	750.00
	Oct. 20	“	M D Hall 6 lots on Garside St.	3,600.00
10	1887			
	Jan. 19	“	John Rowbottom 55 ft S E	
			Cor Sum. Ave. & V Wagenen	2,200.00
	May 23	“	Jesse Bramhall 118 Third Ave	810.00
		“	Wm Crabb 120 “ “	800.00
	1888			
	Mar. 1	“	Sarah E Sinclair 225 & 229	
			Garside St.	1,450.00
		“	John Sinclair 227 Garside St.	650.00
20				\$30,658.56

Allowances out of principal.

	Miscellaneous pay-	
	ments	\$1,698.28
Sept. 14, 1877	Paid legacy to J. J.	
	Plume	4,000.00
	Balance	\$24,960.28

30

Abridgment of Schedule C, Attached to Bill of Complaint

The account of Oscar Keen, Trustee under the last will and testament of Susan Plume, deceased, etc.

Principal Estate

	1889	
40	Feby. 18	Principal estate received from ex-

*Abridgment of Schedule C, Attached to Bill of
Complaint.*

Executors of S. S. Morris, deceased,
former Trustee, Sundry bonds and
mortgages\$21,650.00
Deposit book 37,400 Dime Savings
Bank 2,000.00
Cash National Newark Banking Co. 1,310.28

10
\$24,960.28

1889

Apr. 10 Exr. A. Brittain, purchase of land.\$ 790.00

1890

July 2 Milton A. Smith, " " " 1,400.00

Aug. 6 Wm. F. Coulter, " " " 4,900.00

1894

June 8 John Francherdieu, " " " 1,200.00

1896

Mch. 13 Henry B. Doremus, " " " 4,095.00 20

\$37,345.28

Allowances out of principal:

March 1, 1889 to Nov. 6, 1909\$ 1,803.09

Nov. 7, 1909, bal. of principal\$35,542.19

Income charges:

30

Feby. 18, 1889 to Nov. 6,

1909\$41,799.89

Income allowances .. 34,337.63

Balance income . \$ 7,462.63

Less Commissions

due Trustee \$ 1,892.85

Balance income over Trustees'

Commissions \$5,569.78 40

Abridgment of Supplemental Account Filed May 6, 1913.

Abridgment of Supplemental Account Filed May 6, 1913

10 The report and account of JOHN R. HARDIN and BENJAMIN WILLIAMSON KEEN, Executors of the Estate of OSCAR KEEN, deceased, showing in detail all transactions of the late Oscar Keen, Trustee under the Will of Susan Plume, deceased, and of the said Executors of said Oscar Keen, in connection with the said Plume Estate, from the date of the account annexed to the bill of complaint marked "Schedule C" to March 9, 1913.

PRINCIPAL

20 These accountants charge themselves as follows:

Bal. Principal on hand Nov. 7, 1909, as shown by account annexed to bill of complaint\$35,542.19

INCOME

30 These accountants charge themselves with receipts on account of Income, as follows:

Bal. of income on hand Nov. 7, 1909, as shown by account annexed to bill of complaint 5,569.78
Income Nov. 8, 1909, to March 6, 1913 6,370.90
=====

SUMMARY

40 Total Principal on hand Mar. 9, 1913. . \$35,542.19
Total Income rec'd to Mar. 9,

*Abridgment of Supplemental Account Filed May
6, 1913.*

1913	\$11,940.68	
Total Disbursements to Mar. 9, 1913	6,912.97	
Bal. Income on hand Mar. 9, 1913	5,027.71	
		10
Total Estate on hand Mar. 9, 1913	\$40,569.90	

Less Commissions earned on income,
but not deducted, as follows:

Mar. 9, 1913—5% of \$6,370.90.	\$318.54	
Less payment Jan. 26/12 <i>supra</i> on acct. commissions on Income	175.00	20
	\$143.54	143.54

Bal. on hand after deductions of
total commissions on Income\$40,426.36
=====

The total estate of \$40,569.90 is now
invested as follows:

		30
Mar. 9/13	Cash on deposit National Newark Banking Co. ..\$	29.34
" " "	Cash on deposit Fidelity Trust Company	2,940.56
	Mortgages as per annexed schedule	37,600.00
		\$40,569.90 40

Exhibit C-7.

Exhibit C-7

IN THE NAME OF GOD, AMEN

I, Mary Josephine Lockwood wife of Gershom Lockwood of the City of Newark in the County of Essex and State of New Jersey, being of
10 sound and disposing mind and memory, do make and publish this instrument of writing as and for my last will and testament.

FIRST: I give and bequeath to my daughter Susan W. Lockwood all my personal property of every kind and description to be hers absolutely—
Certain articles of personal property I wish to be presented as gifts and mementoes after my de-
cease to such persons as I shall designate by a memorandum in writing, and I have entire con-
20 fidence that my daughter will respect my wishes in that regard and make disposition of such articles in the manner I shall indicate.—I also give and devise to my said daughter Susan and to her heirs and assigns my homestead premises where I now reside, situate on the easterly side of Mt. Prospect Avenue in the said City of Newark, and known as No. 277 Mt. Prospect Avenue; the lot having a front of about one hundred feet on said Avenue and extending easterly to Garside Street.

30 SECONDLY: All the rest, residue and remainder of my real estate wheresoever situate I give and devise as follows, that is to say, to my children Susan W. Lockwood; John P. Lockwood and Harry D. Lockwood each one fourth part thereof and the remaining one fourth part thereof to my grandchildren George G. Lockwood and Alice Lockwood, children of my son George P. Lockwood and to their heirs and assigns. The share
40 devised to the children of my son George however to be subject to the following conditions and re-

Exhibit C-7.

strictions, *viz.*: I direct my Executors hereinafter
 named to take charge of such share and to pay the
 rents, issues and profits thereof in equal portions
 to my said Grandchildren Alice and George until
 the said Alice shall attain the age of twenty five
 years and the said George shall attain the age of
 thirty years, when they are respectively to re-
 ceive possession and control of their respective
 shares of my estate; that is to say, the said Alice 10
 on attaining the age of twenty five years and
 said George on attaining the age of thirty
 years; with full power however to my said
 Executors to *withold* any portion of the in-
 come of said share, and to apply the same,
 if they should deem it necessary and proper
 so to do, to the support and maintenance
 of their father, until my said grandchildren shall
 have respectively attained the ages above men- 20
 tioned. It is my wish that my husband should
 retain his life right in the share of the residue of
 my real estate devised to my said daughter Susan,
 and to relinquish his right as tenant by the curtesy
 in the remainder of my estate as he has indicated
 a desire to do; leaving this matter however en-
 tirely to the discretion of my husband having full
 confidence that he will take such action in regard
 thereto as will be most conducive to the best in-
 terests of our children.

LASTLY: I constitute name and appoint my hus- 30
 band Gershom Lockwood; William Clark and Al-
 bert P. Condit and the survivors and survivor of
 them Executors of this my last will and testament,
 and hereby authorize and empower them and the
 survivors and survivor of them to sell all or any
 portion of my real estate, except the Homestead,
 devised to my daughter, and to hold and divide the
 proceeds of such sales in the manner I have here- 40

Abridgment of Exhibit C-4.

inbefore provided, that is to say to pay over one fourth part thereof to each of my children Susan, John and Harry and to retain the remaining one fourth part and to pay and apply the same *and* and the interest and income arising therefrom as hereinabove directed.

I— witness whereof I have hereunto set my
 10 hand and seal on this twentieth day of August in the year eighteen hundred and seventy-eight.

MARY J. LOCKWOOD (L. S.)

Signed, Sealed published and declared by the Testatrix as her last will and testament in our presence who at her request, in her presence and the presence of each other have hereto subscribed our names as witnesses. The word "however" having been first interlined on third page and the
 20 letter "P" erased and "G" interlined on 2nd Page.

ELIDA B. M. WILKINSON.
 ANNE THORNTON.

Abridgment of Exhibit C-4

THIS INDENTURE, made the eighteenth day of
 30 June in the year of our Lord One Thousand Eight Hundred and Seventy nine BETWEEN ARCHER GIFFORD PLUME, MARY JOSEPHINE LOCKWOOD and GERSHOM LOCKWOOD, of the City of Newark in the County of Essex and State of New Jersey, of the First Part: AND STAATS S. MORRIS, Trustee for John J. Plume and Samuel W. Plume, of the City of Newark, in the County of Essex and State of New Jersey, of the Second part:

40 WITNESSETH, That the said party of the first part, in consideration of the sum of One Dollar to

Abridgment of Exhibit C-4.

them duly paid before the delivery hereof, have remised, released and forever quit claimed, and by these presents do remise, release and forever quit-claim to the said party of the second part and to his Heirs and Assigns, ALL those tracts or parcels of land and premises, hereinafter particularly described, situate, lying and being in the City of Newark in the County of Essex and State 10
of New Jersey.

THE FIRST TRACT BEGINNING at the Southeasterly corner of Third Avenue and Mount Prospect Avenue and from thence running along Mount Prospect Avenue Southerly one hundred and twenty five feet thence Easterly at right angles with the same two hundred and fifty feet to Garside Street thence along the same Northerly one hundred and fifty nine feet to Third Avenue aforesaid and thence along the same Westerly two hundred and 20
fifty two feet three and one half inches to the place of Beginning. Being known as Lot No. 2 on the Map of the partition of the real estate of Susan Plume deceased.

* * * * *

The foregoing Eight tracts of land being the same premises allotted and set off to Staats S. Morris, Trustee for John J. Plume and Samuel W. Plume by the Commissioners appointed to make partition of the lands of Susan Plume de- 30
ceased,

with the appurtenances and all the estate, right, title and interest, of the said party of the first part therein, TO HAVE AND TO HOLD, the above mentioned and described premises, with the appurtenances, unto the said party of the second part, his heirs and assigns for ever.

Opinion.

IN WITNESS WHEREOF, the said party of the first part have hereunto set their hands and seals the day and year first above written.

A. GIFFORD PLUME (L. S.)

MARY J. LOCKWOOD (L. S.)

G. LOCKWOOD (L. S.)

Signed, Sealed and Delivered

10 in the presence of
Albert P. Condit.

(Acknowledgment in the usual form.)

(Endorsed)

Received in the Register's Office of the County of Essex N. J. on the 24th day of July A. D., 1879 at o'clock in the noon, and Recorded in Book L 20 of Deeds for said County, on pages 56, 57, 58.

HENRY C. SODEN, Reg.

Opinion

(Filed, July 11, 1912)

IN CHANCERY OF NEW JERSEY

30

Between

OSCAR KEEN, Trustee, etc.,
Complainant,
and

A. GIFFORD PLUME and others,
Defendants.

On final hearing on bill, answer, replication and
40 proofs.

Opinion.

Messrs, Pitney, Hardin & Skinner for complainant.

Mr. J. H. Thayer Martin for defendant John I. Plume.

Mr. J. Edward Ashmead for Harry D. Lockwood and others.

Mr. Conover English for A. Gifford Plume.

Messrs. Young & Bigelow for Henry Young, Jr. 10
administrator, and Edward C. Plume.

Submitted July 1, 1912.

Decided July 11, 1912.

MEMORANDUM

HOWELL, V. C.:

The controversy in this cause involves the construction of the will of Susan Plume who died in 1864. The last life tenant died in 1909, and the fund in the hands of the complainant as trustee are now ready for distribution. There are several claimants for it, and the Trustee seeks the aid of the Court in the premises. 20

The difficulty arises under the 17th paragraph of the will which disposed of the residue of the estate. By that paragraph the testatrix gave 5/16th of the residue to her son Archer Gifford Plume and 5/16th thereof to his daughter Mary Josephine Lockwood; the remaining 6/16ths she gave to trustees upon certain trusts therein declared. She then divided this trust fund into three parts. One part (one-third) thereof has been disposed of, so that we have only to deal with two-thirds of the 6/16th or one fourth of the residue of her estate. The portion of the will which is in dispute reads as follows: "And I do further order and direct that upon my said grandson John 30 40

Opinion.

I. Plume attaining the age of twenty-one years the said Isaac Van Wagenen and Charles L. C. Gifford (the trustees) or the survivor of them, shall pay to him out of the remaining two-thirds of said equal undivided 6/16ths parts of said residue of my estate so by them held in trust the sum of \$4,000, but if my said grandson shall not live to
 10 that age, then to pay the whole income arising from said two-thirds of said equal undivided 6/16th parts of said residue of my estate to my said son Samuel W., and upon his death the said two-thirds, or if the same shall have been sold, the proceeds thereof, to convey to or pay to my three children Mary Josephine Lockwood, Sarah Virginia and Archer Virginia Plume, the same to be held or equally divided between them share and share alike."

20 Archer Gifford Plume, the son, and John I. Plume, the grandson of the testatrix, are still living. Sarah Virginia Tugman died in 1866 intestate and without issue. Samuel W. Plume, the son of the testatrix, died in 1909.

The claimants to the fund are as follows: Archer Gifford Plume claims the whole fund upon the ground that the clause of the will above quoted created a contingent remainder, the contingency being that only the survivor of the three children
 30 of the testatrix succeeds to the fund.

John I. Plume claims the whole fund on the ground of an implied gift. John I. Plume as personal representative of his father Samuel W. Plume claims the entire fund upon the ground of an implied gift. The personal representative of John V. Plume claims that the testatrix died intestate as to the fund in question and prays that he may be included in the distribution. Edward C. Plume, the son of the said John V. Plume,
 40 makes a similar claim. The representatives of

Opinion.

the estates of Sarah Virginia Tugman and Mary Josephine Lockwood claim that the said clause created a remainder which vested upon the death of the testatrix, and that the fund should be divided into three parts, giving to Archer Gifford Plume, the representatives of Mary Josephine Lockwood and the representative of Sarah Virginia Tugman each one-third. If the above quoted clause created a remainder in Archer Gifford Plume, Mary Josephine Lockwood and Sarah Virginia Tugman, which vested upon the death of the testatrix, then their contention is correct and the fund will be disposed of accordingly and it will be unnecessary to examine into the claims of any of the other defendants. 10

In my opinion the testatrix created a vested remainder, the vesting of which happened upon her death. As a preliminary matter it may be stated that in doubtful cases every intendment of the law is in favor of the vesting of estates, for the reason that it must be presumed that a person who goes through the formality of making a will intends to dispose of his whole estate unless the contrary clearly appears. This canon of construction is so well known as to need no citation of authorities, but we are not compelled to appeal to it in the case at bar for the reason that there can be no doubt upon the words of the will, but that the testatrix did create the estate above indicated. 20 30

Chancellor Kent says "An estate is vested when there is an immediate right of present enjoyment or a present fixed right of future enjoyment. It gives a legal or equitable seisin. The definition of a vested remainder in the New York Revised Statutes appears to be accurately and fully expressed. It is 'when there is a person in being 40

Opinion.

who would have an immediate right to the possession of the lands, upon the ceasing of the intermediate or precedent, estate.' " 4 Com., 202.

- Mr. Washburne quotes the foregoing view of Chancellor Kent with approval and adds "The present capacity of taking effect in possession, if the possession were now to become vacant, and not the certainty that the possession will become vacant before the estate limited in remainder determines, universally distinguishes a vested remainder from one that is contingent. By capacity, as thus applied, is not meant simply that there is a person *in esse* interested in the estate, who has a natural capacity to take and hold the estate, but that there is further no intervening circumstance, in the nature of a precedent condition, which has to happen before such person can take.
- 10 As for instance, if the limitation be to A for life, the remainder to B, B has a capacity to take this at any moment when A may die." 2 Wash. R. P., 504. These views are universal at common law and have been followed and adopted in this State in a long line of cases, to only a few of which reference will be made.

- In *Greene vs. Howell*, 1 Vr., 325, Mr. Justice Vredenburg stated the rule as follows: "When the absolute property in a fund is bequeathed in fractional interests in succession at periods which must arrive, the interest of the first and subsequent takers will vest together." The point was reviewed in the Court of Errors and Appeals in the case of *Howell vs. Greene*, 2 Vr., 570, in an opinion by Chancellor Greene, from which this extract is made: "It is a well settled rule of construction that a gift of a legacy 'at' or 'when' or 'after' a given event
- 30 occurs vests only upon the happening of the event
- 40

Opinion.

* * * where the time is annexed, not to the payment merely, but to the gift itself, the legacy does not vest until the period arrives. *Gifford vs. Thorne*, 1 Stock., 705. On the other hand it is an equally well settled rule of construction that where an absolute property in a fund is bequeathed in fractional interests in succession at periods which must arrive, the interests of the first and subsequent takers will vest together.” 10

The use of the phrase “after her decease” in that case corresponds very closely to the use of the phrase “and upon his death” in the present case, which is much relied upon by counsel on behalf of *Arthur Gifford Plume* as the true criterion of a contingent remainder. An earlier case in our common law reports is *Moore vs. Rake*, 2 Dutch., 574, in the opinion in which Mr. Justice Vredenburg says “an estate is vested when there is an immediate fixed right of present or future enjoyment; the law favors the vesting of remainders and does it at the first opportunity. It is the present capacity of taking effect in possession if the possession were to become vacant that distinguishes a vested from a contingent remainder. It is the uncertainty of the right which renders the remainder contingent, not the uncertainty of the actual enjoyment. A remainder limited upon an estate tail is held to be vested, although it is uncertain if the possession will ever take place.” 20 30

In this court following the Court of Errors and Appeals in the two cases above cited the same rule has been expressed many times and by many equity judges. In *Havens vs. Seashore Land Company* Vice Chancellor Van Fleet quotes the statement of Mr. Justice Vredenburg above cited from *Moore vs. Rake*, giving it the sanction of his approval, as does Vice Chancellor Pitney in his opinion in *Kinthead vs. Ryan*, 19 Dick, 454. The 40

Opinion.

- portion of the opinion of the Vice Chancellor which dealt with this question was affirmed on appeal, 20 Dick., 726. In *Vorhees vs. Singer*, 3 Buch., 532, Vice Chancellor Leaning defined a vested remainder as follows: "The distinction between a vested and contingent remainder, in a case like the present one, is well defined. The former is one
- 10 that is so limited to a person in being and ascertained that it is capable of taking effect in possession or enjoyment on a certain determination of the particular estate without requiring the concurrence of any collateral contingency. The uncertainty as to the remainderman ever enjoying the estate, which is limited to him by way of remainder, will not render such remainder a contingent one, providing he has, by such limitation, a present absolute right to have the estate the instant
- 20 the prior estate shall determine, but the absence of such absolute right renders the estate a contingent remainder."

- I know of no rule of law that is better settled. Applying it to the case in hand, it is very clear that Mr. Plume, Mrs. Lockwood and Mrs. Tugman at the date of the death of the testatrix had a present fixed right of future enjoyment in the said fund, and that if the intermediate particular estate were removed they would have a present
- 30 ent fixed right of present enjoyment. This distinguishes the case from cases involving contingent remainders. Here the limitation depends upon death, which is certain, and not upon the happening of any uncertain event. The result is that the one-fourth of the estate of the testatrix now in the hands of the trustee must be divided into three equal parts, one of which
- 40 personal representatives of Mrs. Lockwood, and

Further Memorandum.

the third to the personal representative of Mrs. Tugman. Having thus disposed of the fund, it is unnecessary to consider the claims of the other defendants.

Further Memorandum

10

(Filed, Jan. 20, 1913)

IN CHANCERY OF NEW JERSEY

Between

OSCAR KEEN, Trustee, etc.,	}	20
Complainant,		
and		
ARCHER GIFFORD PLUME and others,		
Defendants.		

Mr. John R. Hardin for complainant.

Mr. J. H. Thayer Martin for the defendant John I. Plume.

Mr. J. Edward Ashmead for Harry D. Lockwood and others.

30

Mr. Conover English for A. Gifford Plume.

Mr. John Bigelow for Henry Young, Jr., administrator, and E. C. Plume.

Mr. Hugh B. Reed for Jay Ten Eyck, administrator.

HOWELL, V. C.:

When the memorandum was filed in this case on July 11, 1912, no mention was made of the question 40

Further Memorandum.

whether there had been an equitable conversion of the estate of Mrs. Plume from realty into personalty. In fact, it seems to have been assumed that the conversion had taken place and that the whole estate now in the hands of the trustee should be regarded as personal property. Since then a very full and complete argument has been had on that point, and I have reached the conclusion that the conversion had taken place and that the whole estate now in the hands of the trustee should be considered and treated as personalty. The only question now is when did the conversion take place.

It might well be asserted that the conversion took place at the death of the testatrix, for the obvious reason that she treated all her property as a single fund to be converted into cash and invested as a single fund for the benefit of certain legatees with a devise over of the proceeds of the sale if the same should have been made, thus raising a case which would compel the Court to hold that the conversion took place upon her death for the purposes of the will and for the purposes of distribution; but it is not necessary to decide the case on that point. There is another plain reason why the property must now be held to be personalty.

Treating the power of sale as a mere authorization and power to the trustees to make sale of the premises in their discretion, it must be held that whatever right the devisees took in the estate was subject to the power of sale. *Wurts vs. Page*, 4 C. E. Cr., 364; *Condict vs. Condict*, 3 Puch., 301. There has been no attempt on the part of any of the devisees or legatees to defeat the power of sale by an election to take the land instead of the money, and hence the power of sale continued as

Further Memorandum.

a valid power which might be exercised and which was exercised by the trustees in their discretion. The cogent fact is that a conversion has actually been made and the property actually transmitted from realty to personalty without objection; the change took place with regard to each separate parcel of land at the time when the power to sell was exercised and the actual transmutation of the property took place. This rule is found in our own State in *Wurts vs. Page*, *supra*, in *Cook vs. Cook*, 5 C. E. Cr., 375; *Kouvalinka vs. Ceibel*, 13 Stew., 443, and *McKiernan vs. McKiernan*, 74 Atl., 289. The English rule is the same. I quote from Mr. Justice Farwell's work on Powers, page 548: "A power of sale as distinguished from a trust for sale does not operate as a conversion of property. The direction to sell must be imperative in order to operate as a conversion. *Fletcher vs. Ashburner* 1 Bro. C. C., 497, but if it be exercised the property will be converted according to law unless there be a trust declared of the proceeds sufficient to reconvert it. *Walter vs. Maunde*, 19 Ves., 424; *DeBeauvoir vs. DeBeauvoir*, 3 H. L. C., 525; *Greenway vs. Greenway*, 29 L. J. Ch., 601; 2 De G. F. & J., 128; *Sugden on Powers*, 856."

It is the physical change of land to money, effected by a valid testamentary power to perform an act which was evidently in the contemplation of the testatrix, which establishes the rule upon the foundation of reason. The estate will therefore devolve under the provisions of the will as personalty.

*Final Decree***Final Decree***(Filed, May 19, 1913)*

IN CHANCERY OF NEW JERSEY

10	Between	}
	OSCAR KEEN, Trustee, etc.,	
	Complainant,	
	and	
	ARCHER GIFFORD PLUME and others,	
	Defendants.	

20 This cause coming on to be heard in the pres-
 ence of Pitney, Hardin & Skinner, of counsel with
 the Complainant, McCarter & English, of counsel
 with the Defendant A. Gifford Plume, Guild &
 Martin of counsel with the Defendant John I.
 Plume, Young & Bigelow, of counsel with the De-
 fendants, Edward C. Plume, Henry Young, Jr.,
 Administrator of the Estate of John V. Plume, de-
 ceased, and Littleton Kirkpatrick, Administrator
 of the Estate of Marion P. Wallace, deceased,
 Lindabury, Depue & Faulks, of counsel with the
 30 Defendants Susan W. Heiser, Andrew Fletcher
 Lockwood, Harry D. Lockwood, Alice Lockwood
 Olmstead and George G. Lockwood, and Hugh B.
 Reed, of counsel with the Defendant Jay TenEyck,
 Administrator *ad pros.* of Sarah Virginia Plume
 Tugman, deceased, and the pleadings and proofs
 having been read and the arguments of the re-
 spective counsel having been heard and consid-
 40 ered, and the Court having duly considered the
 said pleadings, proofs and arguments, and it ap-

Final Decree

pearing to the satisfaction of the Court that the funds in the hands of John R. Hardin and Benjamin Williamson Keen, executors of the Estate of Oscar Keen, deceased, who have been inserted as complainants in this suit, amounting to Forty thousand five hundred sixty-nine dollars and ninety cents (\$40,569.90) as shown by the supplemental account heretofore filed by said executor 10
are now ready for distribution, and it further appearing that there has been a conversion of the Estate from realty to personalty and that the whole Estate now in the hands of the executors of said Trustee should be considered and treated as personalty,

It Is, on this Seventeenth day of May, One thousand nine hundred and thirteen, by Edward R. Walker, Chancellor of the State of New Jersey, ORDERED, ADJUDGED and DECREED that the moneys 20
and other estate in the hands of Oscar Keen, Trustee, at the date of the filing of the bill in this cause, and the moneys and other estate now in the hands of John R. Hardin and Benjamin Williamson Keen, executors of the Estate of the late Oscar Keen, amounting to Forty thousand five hundred sixty-nine dollars and ninety cents (\$40,569.90) and any accretion to such fund by way of interest collected on the principal since the date of said supplemental account are the portions of the residue 30
of the Estate of Susan Plume, deceased, mentioned in the Seventeenth Paragraph of her will as the two-thirds of six-sixteenths parts of said estate, remaining after the payment of the legacy of Four thousand dollars (\$4,000) to John I. Plume, and that the account of the late Oscar Keen annexed to the bill of complaint in this cause and the supplemental account exhibited by the ex- 40

Final Decree

ecutors of the said Oscar Keen are in all respects correct and just, and the same are allowed and confirmed.

- AND that the said John R. Hardin and Benjamin Williamson Keen, executors as aforesaid, pay to themselves, as executors of the estate of Oscar Keen twelve hundred and nineteen dollars
 10 and seventy-six cents out of the corpus of said trust estate now in their hands, in full payment of the commissions of said Oscar Keen, Trustee, as commissions on said corpus, and that they pay to themselves, as Executors aforesaid, the sum of One hundred forty-three dollars and fifty-four cents (\$143.50) in full for commissions on income collected by the said Oscar Keen, Trustee, in his lifetime, and by the said executors since the death
 20 of the said Trustee, and that they pay to the complainants, or their solicitors, their taxed costs in this cause, together with a counsel fee of five hundred dollars, and to the defendant A. Gifford Plume, or his solicitors, his taxed costs, together with a counsel fee of five hundred dollars, and to the defendant John I. Plume, or his solicitors, his taxed costs, together with a counsel fee of five hundred dollars, and to the defendants Edward C. Plume, Henry Young, Jr., administrator as aforesaid, and Littleton Kirkpatrick, administrator as
 30 aforesaid, or to their solicitors, their taxed costs, together with a counsel fee of five hundred dollars, and the further sum of two hundred and thirty-five dollars for their disbursements, and to the defendants Susan W. Heiser, Andrew Fletcher Lockwood, Harry D. Lockwood, Alice Lockwood Olmstead and George G. Lockwood, or their solicitors, their costs to be taxed, together with a counsel fee of five hundred dollars, and to the defendant Jay TenEyck, administrator *pros.* as aforesaid,
 40 or to his solicitor, his costs to be taxed, together

Notice of Appeal of Edward C. Plume and Others.

with a counsel fee of five hundred dollars and that they pay over the balance of said Estate as follows:

One-third part thereof to A. Gifford Plume;

One-third part thereof to Susan W. Heiser;

One-third part thereof to the administrator of Sarah Virginia Plume Tugman, deceased, when one shall be lawfully appointed and qualified, and if no such administrator be appointed and qualified within thirty days from the date of this decree, the said complainants are hereby ordered and decreed to pay the said one-third into this Court, there to remain until this Court shall otherwise order. 10

Respectfully advised,
E. R. WALKER,
C.

J. E. Howell, 20
V. C.

**Notice of Appeal of Edward C. Plume
and Others**

(Filed, May 26, 1913)

IN CHANCERY OF NEW JERSEY

Between	}	On Bill etc.	30
OSCAR KEEN, Trustee, etc.,			
Complainant,			
and			
ARCHER GIFFORD PLUME and others,			
Defendants.			

The defendants Edward C. Plume, Henry Young, Jr., administrator of the estate of John V. 40

Notice of Appeal of Edward C. Plume and Others.

Plume, deceased, and Littleton Kirkpatrick, administrator of the estate of Marion P. Wallace, deceased, hereby appeal from so much of the final decree made in this Court in the above stated cause as orders that John R. Hardin and Benjamin Williamson Keen, executors of the estate of Oscar Keen, deceased, who have been inserted as
10 complainants in this suit, do pay over the balance of the estate of Susan Plume, deceased, as follows: one-third part thereof to A. Gifford Plume; one-third part thereof to Susan W. Heiser; one-third part thereof to the administrator of Sarah Virginia Plume Tugman, deceased, when one shall be lawfully appointed and qualified, and if no such administrator be appointed within thirty days from the date of said
20 decree, the said complainants are thereby ordered and decreed to pay the said one-third into this Court, there to remain until this Court shall otherwise order; to the Court of Errors and Appeals in the last resort in all causes.

Dated, May 24, 1913.

YOUNG & BIGELOW,
Solicitors for and of counsel with
Defendants, Edward C. Plume,
Henry Young, Jr., Administrator, and
Littleton Kirkpatrick, Administrator.

Notice of Appeal of John I. Plume.

Notice of Appeal of John I. Plume

(Filed, May 26, 1913)

IN CHANCERY OF NEW JERSEY

Between

OSCAR KEEN, Trustee, &c.,
Complainant,
and
A. GIFFORD PLUME and others,
Defendants.

10

The defendant John I. Plume, individually, and as executor of the last will and testament of Samuel W. Plume, deceased, hereby appeals to the Court of Errors and Appeals, in the last resort in all causes, from so much of the final decree made in this Court in the above entitled cause, and filed May nineteenth, nineteen hundred and thirteen, as finds that the whole estate now in the hands of the executors of Oscar Keen, said trustee, should be considered and treated as personalty, and from so much of the said final decree as after providing for the payment by said executors of the allowances of commissions, costs and counsel fees, therein mentioned, decree that they pay over the balance of said estate as follows:

One-third part thereof to A. Gifford Plume;

One-third part thereof to Susan W. Heiser;

One-third part thereof to the Administrator of Sarah Virginia Plume Tugman, deceased, when one shall be lawfully appointed and qualified, and if no such administrator be appointed and qualified within thirty days from the date of this de-

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Notice of Appeal of Defendant Archer Gifford Plume.

ere, the said complainants are hereby ordered and decreed to pay the said one-third into this Court, there to remain until this Court shall otherwise order.

Dated, May 26, 1913.

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GUILD & MARTIN,
Solicitors for and of counsel,
With defendant John I. Plume,
Individually and as executor.

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

J. H. THAYER MARTIN,
Counsel.

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Notice of Appeal of Defendant Archer Gifford Plume

(Filed, June 4, 1913)

IN CHANCERY OF NEW JERSEY

30

Between

OSCAR KEEN, Trustee, etc.,

Complainant,

and

A. GIFFORD PLUME, *et al.*,

Defendants.

On Bill, etc.

The defendant Archer Gifford Plume hereby ap-
40 peals to the Court of Errors and Appeals in the

Notice of Appeal of Defendant Archer Gifford Plume.

last resort in all causes, from so much of the final decree made in the above entitled cause on the Seventeenth day of May, 1913, as decrees that John R. Hardin and Benjamin Williamson Keen, executors of the Estate of the late Oscar Keen, after paying the allowances of commissions, costs and counsel fees in said decree mentioned, pay 10 over the balance of said estate as follows:

One-third part thereof to A. Gifford Plume.

One-third part thereof to Susan W. Heiser.

One-third part thereof to the administrator of Sarah Virginia Plume Tugman, deceased, when one shall be lawfully appointed and qualified, and if no such administrator be appointed and qualify within thirty days of the date of this decree, the said complainants are hereby ordered and decreed to pay the said one-third into this Court, 20 there to remain until this Court shall otherwise order.

Dated, June 4, 1913.

McCARTER & ENGLISH,
Solicitors for and of counsel with
Defendant, Archer Gifford Plume.

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

CONOVER ENGLISH, 30
Of counsel with defendant,
Archer Gifford Plume.

Notice of Appeal of Defendants Harry D. Lockwood, Andrew Fletcher Lockwood, George G. Lockwood and Alice Lockwood Olmstead.

**Notice of Appeal of Defendants
Harry D. Lockwood, Andrew
Fletcher Lockwood, George
G. Lockwood and Alice
Lockwood Olmstead**

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(Filed, August 7, 1913)

IN CHANCERY OF NEW JERSEY

Between

OSCAR KEEN, Trustee, etc.,

Complainant,

and

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ARCHER GIFFORD PLUME *et al.*,

Defendants.

} On Bill etc.

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The defendants Harry D. Lockwood, Andrew Fletcher Lockwood, George G. Lockwood and Alice Lockwood Olmstead, hereby appeal to the Court of Errors and Appeals in the last resort in all causes, from so much of the final decree made in this Court in the above entitled cause, on the seventeenth day of May, nineteen hundred and thirteen, as finds that the whole estate now in the hands of the executors of the said Oscar Keen, trustee, should be considered and treated as personalty; and from so much of the said final decree as decrees that John R. Hardin and Benjamin Williamson Keen, executors of the Estate of Oscar Keen, deceased, after paying the allowances of

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commissions, costs and counsel fees in said de-

Notice of Appeal of Defendants Harry D. Lockwood, Andrew Fletcher Lockwood, George G. Lockwood and Alice Lockwood Olmstead.

erree mentioned, pay over the balance of said estate as follows :

One-third part thereof to A. Gifford Plume.

One-third part thereof to Susan W. Heiser.

One-third part thereof to the administrator of Sarah Virginia Plume Tugman, deceased, when one shall be lawfully appointed and qualified, and if no such administrator be appointed and qualified within thirty days from the date of this decree, the said complainants are hereby ordered and decreed to pay the said one-third into this Court, there to remain until this Court shall otherwise order. 10

Dated, August 5, 1913.

BARRETT & BARRETT,

Solicitors for and of counsel with 20

Defendants, Harry D. Lockwood, Andrew

Fletcher Lockwood, George G. Lockwood

and Alice Lockwood Olmstead.

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

RANDOLPH C. BARRETT,

Of counsel with Defendants

Harry D. Lockwood, Andrew Fletcher,

Lockwood, George G. Lockwood, 30

And Alice Lockwood Olmstead.

Petition of Appeal.

Petition of Appeal

(Filed, June 6, 1913)

NEW JERSEY COURT OF ERRORS AND AP-
PEALS

10	Between	
	OSCAR KEEN, Trustee, etc.,	} On Bill, etc. On appeal fendant Archer Gifford Plume.
	Complainant-Respondent,	
	and	
	ARCHER GIFFORD PLUME <i>et al.</i> ,	
	Defendants-Appellants.	

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

The petition of Archer Gifford Plume, the ap-
pellant in the above stated cause, respectfully
shows that your petitioner finds himself aggrieved
by a final decree made in the Court of Chancery
by His Honor Edwin Robert Walker, Chancellor
of New Jersey, bearing date the Seventeenth day
of May, Nineteen hundred and thirteen, wherein
the said Oscar Keen, Trustee, etc., was complain-
ant, and the said Archer Gifford Plume and
30 others were defendants, in this respect, to wit, that
the said decree states that the whole estate now in
the hands of the executors of said Trustee should
be treated and considered as personalty, and ad-
judges that John R. Hardin and Benjamin Wil-
liamson Keen, executors of the Estate of the late
Oscar Keen, after paying the allowances of com-

Petition of Appeal.

missions, costs and counsel fees in said decree mentioned, pay over the balance of said estate as follows:

One-third part thereof to A. Gifford Plume.

One-third part thereof to Susan W. Heiser.

One-third part thereof to the administrator of Sarah Virginia Plume Tugman, deceased, when one shall be lawfully appointed and qualified, and if no such administrator be appointed and qualify within thirty days of the date of this decree, the said complainants are hereby ordered and decreed to pay the said one-third into this Court, there to remain until this Court shall otherwise order. 10

And your petitioner humbly appeals from that part of the decree of the Chancellor which states and decrees as aforesaid, upon the ground that the same is erroneous, for that the whole estate now in the hands of the executors of the said Trustee should not be considered as personalty, and the balance of the whole of said estate, after payment of the allowance for commissions, costs and counsel fees, should have been decreed to be paid over to this appellant. 20

Your petitioner therefore prays that the said decree of the said Chancellor may be in the particulars aforesaid reversed, set aside, and for nothing holden, and that your petitioner may have such relief in the premises as to this Honorable Court shall seem meet. 30

McCARTER & ENGLISH,

Solicitors of Appellant Archer Gifford Plume.

Conover English,

Of counsel with said Appellant.

*Petition of Appeal of John I. Plume, Individually
and as Executor Appellant.*

**Petition of Appeal of John I. Plume,
Individually and as Executor
Appellant**

(Filed, June 13, 1913)

**10 NEW JERSEY COURT OF ERRORS AND AP-
PEALS**

Between

OSCAR KEEN, Trustee, etc.,

Complainant,

and

A. GIFFORD PLUME and others,

Defendants.

On Bill, etc.

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

30 The petition of John I. Plume, individually and
as executor, the appellant in the above stated
cause, respectfully shows that your petitioner finds
himself aggrieved by a final decree made in the
Court of Chancery of New Jersey, by his Honor,
Edwin R. Walker, Chancellor, bearing date the
seventeenth day of May, nineteen hundred and
thirteen, and filed May nineteenth, nineteen hun-
dred and thirteen, in a cause entitled as above,
wherein the said Oscar Keen, Trustee, in his life-
time and his executors on his death, were com-
plainants, and the said A. Gifford Plume, Susan
W. Heiser, Jay Ten Eyck, administrator *ad prose-*
quedum of Sarah Virginia Plume Tugman, de-

*Petition of Appeal of John I. Plume, Individually
and as Executor Appellant.*

ceased and your petitioner individually and as executor of Samuel W. Plume, deceased and others, were defendants, in this respect to wit:

That the said decree finds "that the whole estate now in the hands of the executors of said Trustee, should be considered and treated as personality."

And also that the said decree orders, adjudges, and after providing for the payment by said executors of the allowances of commissions, costs and counsel fees therein mentioned, decrees "that they pay over the balance of said estate as follows:" 10

One-third part thereof to A. Gifford Plume.

One-third part thereof to Susan W. Heiser.

One-third part thereof to the administrator of Sarah Virginia Plume Tugman, deceased, when one shall be lawfully appointed and qualified, and if no such administrator be appointed and qualified within thirty days from the date of this decree, the said complaints are hereby ordered and decreed to pay the said one-third into this Court, there to remain until this Court shall otherwise order. 20

And your petitioner humbly appeals from that part of the said decree of the Chancellor as finds and decrees as aforesaid, upon the ground that the same is erroneous, for that the same should not have directed the payment of the balance of said estate as therein and above stated, but that said decree should have found that the said estate should be considered and treated as real estate until the respective times when the several portions thereof were in fact converted into personality, and after providing for the payment by said executors of said allowances therein and herein-before mentioned, should have ordered, directed 30 40

Petition on Appeal of Edward C. Plume and Others.

and decreed that they pay over the whole balance of said estate to this appellant, your petitioner, John I. Plume.

10 Your petitioner therefore prays that the said decree of the said Chancellor may be in the particulars aforesaid, reversed, set aside and for nothing holden; and that your petitioner may have such relief in the premises as to this Court shall seem meet.

GUILD & MARTIN,
Solicitors for and of counsel with
John I. Plume, Individually and as
Executor, Appellant.

**Petition on Appeal of Edward C.
Plume and Others**

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(Filed, June 17, 1913)

**NEW JERSEY COURT OF ERRORS AND AP-
PEALS**

Between

30	OSCAR KEEN, Trustee, &c., Complainant-Respondent, and ARCHER GIFFORD PLUME and oth- ers, Defendants-Respondents, and EDWARD C. PLUME and others, Defendants-Appellants.	}	On appeal.
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*To the Honorable, the Court of Errors and Ap-
peals, the last resort in all causes:*

40 The petition of Edward C. Plume, Henry
Young, Jr., administrator of the estate of John V.

Petition on Appeal of Edward C. Plume and Others.

Plume, deceased, and Littleton Kirkpatrick, administrator of the estate of Marian P. Wallace, deceased, appellants in the above stated cause, respectfully shows that your 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, bearing date the seventeenth day of May, nineteen hundred and thirteen, wherein Oscar Keen, deceased, trustee, etc., was complainant, and Archer Gifford Plume, and your petitioners and others were defendants—in this respect, to wit, that the said decree adjudges and orders among other things, that John R. Hardin and Benjamin Williamson Keen, executors of the estate of Oscar Keen, deceased, complainants, do pay over the balance of the estate of Susan Plume, deceased as follows: 10 20

One-third part thereof to Archer Gifford Plume, one-third part thereof to Susan W. Heiser, one-third part thereof to the administrator of Sarah Virginia Plume Tugman, deceased, when one shall be lawfully appointed and qualified, and if no such administrator be appointed and qualified within thirty days from the date of said decree, the said complainants were thereby ordered and decreed to pay the said one-third into the Court of Chancery, there to remain until said Court shall otherwise order. 30

And your petitioners humbly appeal from that part of the decree of the Chancellor which adjudges and decrees as aforesaid, upon the ground that the same is erroneous, for that the said decree should have adjudged and ordered the said

Petition on Appeal of Edward C. Plume and Others.

complainants to pay one-fifth of the balance of said estate to your petitioners, and for that the said decree should not have adjudged and ordered that the complainants do pay to the administrator of Sarah Virginia Plume Tugman, deceased any part of said estate, but should have ordered that
10 whatever interest in said estate belonged to the said Sarah Virginia Plume Tugman in her lifetime, and which survived her death, should be paid to the heirs at law of said Sarah Virginia Plume Tugman, deceased.

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

YOUNG & BIGELOW,
Solicitors for and of Counsel
With the Appellants.

Petition of Appeal of Harry D. Lockwood and Others.

Petition of Appeal of Harry D. Lockwood and Others

(Filed, August 19, 1913)

NEW JERSEY COURT OF ERRORS AND APPEALS

10

Between

OSCAR KEEN, Trustee, &c.,
Complainant-Respondent,
and

ARCHER GIFFORD PLUME and others,
Defendants-Respondents,
and

HARRY D. LOCKWOOD and others,
Appellants-Respondents.

On Bill, etc.

On Appeal.

20

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

The petition of Harry D. Lockwood, Andre^N Fletcher Lockwood, George G. Lockwood and Alice Lockwood Olmstead, the appellants in the above stated cause, respectfully shows that your petitioners find themselves aggrieved by a final decree made in the Court of Chancery by his Honor Edwin Robert Walker, Chancellor of New Jersey, bearing date the seventeenth day of May, nineteen hundred and thirteen wherein the said Oscar Keen, trustee, etc., was complainant, and Archer Gifford Plume and your petitioners and others, were defendants, in this respect, to wit; that the said decree states that the whole estate 40

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Petition of Appeal of Harry D. Lockwood and Others.

now in the hands of the executors of said trustee should be treated and considered as personalty, and decrees that John R. Hardin and Benjamin Williamson Keen, executors of the estate of Oscar Keen, deceased, after paying the allowances of commissions, costs and counsel fees in said decree

10 mentioned pay over the balance of said estate as follows:

One-third part thereof to A. Gifford Plume.

One-third part thereof to Susan W. Heiser.

One-third part thereof to the administrator of Sarah Virginia Plume Tugman, deceased, when one shall be lawfully appointed and qualified, and if no such administrator be appointed and qualified within thirty days from the date of this decree the said complainants are hereby ordered and de-

20 creed to pay the said one-third into this Court, there to remain until this Court shall otherwise order.

And your petitioners humbly appeal from that part of the said decree of the Chancellor which states and decrees as aforesaid, upon the ground that the same is erroneous, for that said decree should have stated that the said estate in the hands of said executors of the said trustee should be considered and treated as real estate, and

30 should have decreed that the balance of the whole of said estate, after payment of the allowances for commissions, costs and counsel fees, be paid over as follows:

One-third part thereof to A. Gifford Plume.

One-twelfth part thereof to Susan W. Heiser.

One-twelfth part thereof to Harry D. Lockwood.

One-twelfth part thereof to Andrew Fletcher Lockwood.

One-twenty-fourth part thereof to George G.

40 Lockwood.

Answer.

One-twenty-fourth part thereof to Alice Lockwood Olmstead.

One-third part thereof to the heirs at law of Sarah Virginia Plume Tugman, deceased.

Your petitioners therefore pray that the said decree of the said Chancellor may be in the particulars aforesaid, reversed, set aside and for nothing holden, and that your petitioners may have such relief in the premises as to this Hon-
orable Court shall seem meet. 10

BARRETT & BARRETT,

Solicitors for and of

Counsel with Harry D. Lockwood, Andrew Fletcher Lockwood, George G. Lockwood and Alice Lockwood Olmstead, Appellants.

Answer

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Answers to the four petitions of appeal were filed in the usual form by the defendants, Susan W. Heiser, Jay Ten Eyck, Admr., etc., and by complainant, as respondents.

The several groups of appellants answered the petitions of appeal of the other appellants, each using substantially the following form:

NEW JERSEY COURT OF ERRORS AND AP-
PEALS

30

Between

OSCAR KEEN, Trustee, etc.,
Complainant,
and
A. GIFFORD PLUME and others,
Defendants.

On appeal of
Defendant-
Appellants.
Answer of
Respondent.

The answer of the defendant
 respondent to the petition of appeal of the defend-
 ants Appellants. 40

Answer.

This respondent not acknowledging to be true any or all of the matters which in the said petition of appeal are contained, for answer thereto nevertheless says and admits, that a final decree was made and entered in the Court of Chancery, bearing date the seventeenth day of May, nineteen hundred and thirteen, in the cause for that
 10 purpose mentioned in the said petition, as is therein stated; but as to the substance and form thereof this respondent prays to refer thereto when the same shall be produced.

And this respondent is advised and believes that the said decree is erroneous, but not for the reasons set forth in the said petition of appeal, and he prays that the said decree may be reversed, set aside and for nothing holden in the particulars set forth in the separate petition of appeal filed
 20 by this respondent as appellant, and that this respondent may have such relief in the premises as to this honorable Court shall seem meet.

.....,
 Solicitors for and of Counsel
 With Respondent.

