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BILL OF COMPLAINT.

(Filed Jun. 6, 1944.)

IN CHANCERY OF NEW JERSEY.

TO THE HONORABLE LUTHER A. CAMP-
BELL, CHANCELLOR OF THE STATE OF
NEW JERSEY:

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The complainants, Woodstown National Bank and Trust Company, a corporation, of the Borough of Woodstown, County of Salem and State of New Jersey, and S. Rusling Leap, of the Borough of Woodstown, County of Salem and State of New Jersey, executors of the last will and testament of Ashbrook D. Snelbaker, deceased, late of the County of Salem and State of New Jersey, and the Woodstown National Bank and Trust Company, as aforesaid, and S. Rusling Leap, as aforesaid, trustees under the last will and testament of Ashbrook D. Snelbaker, deceased, respectfully show that;

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1. The said Ashbrook D. Snelbaker, deceased, late of the County of Salem died on or about April 4, 1944, leaving a last will and testament and codicil which were thereafter on the 18th day of April, 1944, duly admitted to probate by the Surrogate of the County of Salem and letters testamentary thereto were issued to complainants as the executors therein named. A true copy of the last will and testament and codicil are annexed hereto and made part hereof;

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2. The second paragraph of the said will is as follows:

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“I order and direct the payment of all inheritance or succession taxes, whether State or Federal, that may be assessed against my estate, or against any beneficiary hereunder, as soon as conveniently may be after my decease.”

10 3. The seventh paragraph of the said will is as follows:

“ALL THE REST, RESIDUE AND REMAINDER of my estate, real, personal or mixed, whatsoever and wheresoever situate, including all property over which I have any control or power of appointment, I give, devise and bequeath unto my EXECUTORS and TRUSTEES hereinafter named, and their successors in office, IN TRUST, NEVERTHELESS, for the following purposes—

20

“(A) I order and direct my Executors and Trustees to set aside a sufficient sum of my principal estate, the income of which will be sufficient to pay the following annuities—

“(1) To pay an annuity to my sister, A. NAOMI SNELBAKER, for and during her natural life, the sum of THREE THOUSAND (\$3,000.) Dollars.

30

“(2) To pay an annuity to my sister-in-law, ELIZABETH F. SNELBAKER, for and during her natural life, the sum of THREE THOUSAND (\$3,000.) DOLLARS.

“(3) To pay an annuity to my brother, WILLIAM B. SNELBAKER, for and during his natural life, of the sum of THREE THOUSAND (\$3,000.) DOLLARS.

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“(4) To pay an annuity to my brother, I. DAYTON SNELBAKER, for and during his natural

life, of the sum of THREE THOUSAND (\$3,000.) DOLLARS.

“(5) To pay an annuity to my dear friend, ELLA H. SUMMERILL, for and during her natural life, of the sum of THREE THOUSAND (\$3,000.) DOLLARS.

10

“(6) To pay an annuity to my housekeeper, MRS. SOPHIA H. APPELGATE, for and during her natural life, of the sum of THREE THOUSAND (\$3,000.) DOLLARS.

“Said annuities to be paid quarterly, and to be free and clear of all debts and legal process.

“Should either of any of my said brothers be survived by their wife or wives, then it is my wish, and I do direct, that the annuity heretofore allotted to my said brothers, shall be paid to and enjoyed by their respective widows during the term of their natural lives.

20

“At and after the death of any one of the above named annuitants, said income as to the one deceased shall cease to be a charge upon my estate, and the portion of the principal set aside for the purpose of producing such income shall revert and become a part of my residuary estate.

30

“Upon the death of all annuitants, the entire principal set aside as aforesaid shall revert as aforesaid.

“(B) I further order and direct my said Executors and Trustees to provide sufficient funds to erect suitable markers, of the same size, style and quality with those now on my burial lot, for the following persons, at their decease—

40

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“A. Naomi Snelbaker, Elizabeth F. Snelbaker, Ella H. Summerill, William B. Snelbaker and wife, I. Dayton Snelbaker and wife, May A. Tuttle and Charles Tuttle, Helen F. Snelbaker, Ella S. Snelbaker Loveland and Arthur Loveland, Wilson A. Snelbaker and wife and Mrs. Sophia H. Appelgate.

10

“(C) I have founded and developed Lawnside Cemetery in the Borough of Woodstown, as a lasting memorial to myself, and have provided for a Perpetual Care Fund from the proceeds of the sale of lots by Lawnside Cemetery Association.

20

“If said Perpetual Care Fund is not of sufficient amount to care for and maintain the cemetery as hereinafter set forth, I order and direct my Executors and Trustees to set aside a sufficient amount of my principal, and invest the same as hereinafter set forth, and pay from the income thereof a sum not to exceed TWENTY FIVE HUNDRED (\$2,500.) DOLLARS per year, which sum or sums added to the Perpetual Care Fund as above set forth will be sufficient for the purpose of beautifying said Cemetery by planting ornamental shrubbery and trees, and maintaining the fences, roads and other improvements, and keep the same in good condition, and keep the graves, markers and monuments in a good state of preservation.

30

“These developments and beautifications shall extend to the full acreage provided by me, and include unplotted as well as plotted land.

“When the said Cemetery shall become self supporting, the principal sum herein specified to be set aside, shall become a part of my residuary estate.

40

“(D) I have erected a dwelling house on Main Street in the Borough of Woodstown of a suitable

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size and convenient to accommodate twenty-five or more guests, and I hereby order and direct that said dwelling house be used for the purpose of establishing and maintaining a suitable HOME for the care and support of worthy white women, of unquestionable character and moral reputation, whose age is not less than fifty years, and who were born in the County of Salem, New Jersey, the name of which HOME shall be "THE ASHBROOK D. SNEL-BAKER HOME", and if it be deemed advisable, that my Executors and Trustees incorporate the same under the statute of the State of New Jersey relating to eleemosynary institutions. 10

"I order and direct that any and all of the beneficiaries hereinabove named shall have the privilege of being guests in said Home, for and during the term of their natural lives. 20

"The Home shall not be a charitable institution in the ordinary sense of the word, but shall be as its name indicates a Home where the admitted guests shall have the same courtesy and attention as if they were guests in my own home, and under no circumstances to be treated as objects of charity.

"No applicant who requires medical or hospital attention at the time of the application as a guest of the Home shall be favorably considered, but should the guest, after having entered said Home, require medical or hospital attention, the same shall be provided by the Trustees thereof. 30

"In case there shall be more guests than can be accommodated in my said Home, and there shall be sufficient funds in hand, I order and direct the Trustees thereof to enlarge said Home to accommodate additional guests.

"The Board of Managers of said Home shall be chosen by my Executors and Trustees herein, and shall consist of a member from each of the follow- 40

ing recognized religious denominations in the County of Salem—Methodist, Baptist, Presbyterian, Episcopalian and Lutheran. My Executors and Trustees shall also be members of the Board of Managers.”

- 10 4. The eighth paragraph of the said will is as follows:

“I nominate, constitute and appoint as my Executors and Trustees under this, my last Will and Testament, the WOODSTOWN NATIONAL BANK AND TRUST COMPANY, of Woodstown, and HON. S. RUSLING LEAP, of Woodstown, and do confer upon my said Executors and Trustees the following power and authority—

- 20 “(a) To sell any and all of my real estate of which I may die seized, except my residence in the Borough of Woodstown, as hereinabove set forth, at either public or private sale, for such prices and upon such terms as they may deem fit, and for such interests and estates as may be deemed wise by my said Executors and Trustees, and to make good and sufficient deeds and conveyances in the law to the purchasers thereof.

- 30 “(b) To invest and re-invest my estate in such securities as they may deem fit, and not be limited or confined to the Statute of the State of New Jersey relating to investment of Trust Funds for Trust Estate.

“(c) To borrow money, pledging any and all of my real estate by mortgage, join in the partition of real estate, and to let or demise the same.

- 40 “(d) To make alterations or improvements to any

and all of my real estate, or any buildings erected thereon, and if necessary to make new erections.

“(e) If necessary, to make purchase of real estate, or to sell, convey or mortgage the same, if in the administration of my estate it may be deemed necessary. 10

“(f) Before my Executors and Trustees shall sell, transfer, exchange or dispose of any of my securities, invest or re-invest the same; sell, mortgage or purchase real estate that may be necessary in the administration of my estate, they shall consult and confer with my brothers and sisters, or the survivors of them, and be largely governed by the judgment and advice of a majority of them in any of such transactions. 20

“(g) In addition to their duties as Executors and Trustees, they shall personally devote their attention and the necessary time, to successfully found, establish and supervise the carrying out of my desire in establishing and maintaining “THE ASH-BROOK D. SNELBAKER HOME.”

“(h) To act with the same power over the Trust property that they would possess were they the actual owners thereof, and not be limited or confined to the Statute of the State of New Jersey relative to investment of funds for trust estates.” 30

5. The first paragraph of the codicil to the said Will is as follows:

“I authorize and direct my Executors and Trustees to retain Miss Verna M. Swing to perform substantially the same duties and to have substantially the same responsibilities with respect to the affairs 40

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of my estate as she now performs and has with respect to my business affairs; it being my intention that my Executors and Trustees shall retain the said Verna M. Swing for a period of at least five years. The remuneration to be paid to the said Verna M. Swing shall not be less than two thousand dollars per year payable quarterly.”

6. Ashbrook D. Snelbaker was single, had never married and was survived by his brothers and sisters, A. Naomi Snelbaker, William B. Snelbaker, I. Dayton Snelbaker, and a niece, Helen F. Snelbaker Zeigenfus, a daughter of a deceased brother, Joel C. Snelbaker.

7. The parties surviving Ashbrook D. Snelbaker and mentioned in the will, who are interested in this determination, are Verna M. Swing, Elizabeth F. Snelbaker, Sarah Snelbaker, Mary A. Tuttle, Charles Tuttle, Ella S. Snelbaker Loveland, Arthur Loveland, Wilson A. Snelbaker, Ruth L. Snelbaker, Sophia H. Appelgate, Lawnside Cemetery Association and the brothers, sisters and niece mentioned in paragraph 6 of this complaint.

8. The Ashbrook D. Snelbaker Home is now occupied by Sophia H. Appelgate, his housekeeper, who has continued to reside there since the death of Ashbrook D. Snelbaker.

9. The personal property of the estate has been appraised at \$955,987.69 and the value of the real estate is estimated to be approximately \$70,000.00, making the total value of the estate approximately \$1,026,000.00. It is estimated that the estate, after the payment of the expenses of administration, taxes (both Federal and State) and the payment of the

legacies will approximate between \$650,000.00 and \$700,000.00.

10. The complainants as executors and trustees are prepared to carry out the terms of the said will and to pay over the income as therein directed, but are in doubt as to the following: 10

(a) Do the executors, under the will of Ashbrook D. Snelbaker, deceased, perform any duties in regard to the payment of the annuities mentioned under Paragraph 7(a) of the will?

(b) Do the executors, as such, under the will of Ashbrook D. Snelbaker, deceased, perform any duties relative to the establishment of the Ashbrook D. Snelbaker Home; such as, incorporating, selecting a Board of Managers and performing any other duties in the establishment of the home? 20

(c) If the executors have no duty to perform relative to the trust, should the home of Ashbrook D. Snelbaker be closed during the settlement of the estate by the executors.

(d) Is a valid charitable trust set up under section 7(d) of the will of Ashbrook D. Snelbaker, deceased? 30

(e) Is the property designated as his home to be deeded by the executors or trustees to a corporation to be organized as specified in the will?

(f) Do the provisions of item 7(d) direct the executors or trustees to use any of the testator's estate aside from his dwelling house on Main Street in the Borough of Woodstown for the purpose of estab- 40

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lishing and maintaining the Ashbrook D. Snelbaker Home or for any other purpose?

(g) If so, what amount should be used for the purpose?

10 (h) Shall the corpus of or only the income from such amount be used?

(i) In the expenditure of such funds as the court may direct to be so used, do the executors or trustees have the duty or power to determine what expenditures are either necessary or proper for the purpose of establishing and maintaining the Ashbrook D. Snelbaker Home, or such other purpose as the court may determine such funds are to be used for?

20 (j) If the executors or trustees do not have the duty or power to determine what expenditures are either necessary or proper and the court determines that such funds are to be used for the purpose of establishing and maintaining the Ashbrook D. Snelbaker Home, may such funds be expended by the executors and trustees for any or all of the following specific purposes?

30 (1) To pay taxes on the above-mentioned dwelling?

(2) To pay for fire, storm and liability insurance?

(3) To pay for keeping the same in repair?

(4) To pay water, gas and electric bills?

(5) To pay for keeping the grounds in a clean and presentable condition?

(6) To pay for keeping the building in a clean and presentable condition?

(7) To provide and serve guests with regular meals?

(8) To provide guests with laundry service?

(9) To provide guests with nursing service if needed?

(10) To provide clothing for guests?

(11) To provide spending money for the guests, and money for the guests to visit relatives? 10

(k) Is the income from the trust fund created to be paid to the Board of Managers of the Home, or are the various bills and items of expenses to be paid by the executors and/or trustees?

(l) If a home is duly incorporated, is it proper to put in the certificate of incorporation that people who come to the home must first deed or convey or deliver their property to the Home Corporation? 20

(m) If such a provision is put in the certificate of incorporation, does such a provision apply to the beneficiaries designated under paragraph 7(d) of the will?

(n) Does the word "beneficiaries" as used in the seventh paragraph, section D of the will include all persons mentioned in the will except the executors and trustees? 30

(o) Does the Board of Managers have the power to select who are to be the guests at the Home?

(p) May the expenditures to enlarge the Home to accommodate additional guests be made out of corpus, or must they be made from income?

Bill of Complaint

(q) Do the provisions of item 7(b) require that the executors and trustees presently set up, out of the corpus, a fund sufficient to pay for the markers therein mentioned, or may they be paid for out of the income from the residuary estate as and when such payments become necessary?

10

(r) Do the words "survivors of them" in paragraph 8(f) of the will include only the surviving brothers and sisters or do they include the lineal descendants?

(s) To what extent is the decision of the brothers and sisters, or the survivors of them, to bind the decision of the executors and trustees in the disposition of any securities or real estate desired to be disposed of by the executors and/or trustees and to what extent are they to be governed in the purchase of securities or real estate in the administration of the estate by the advice of the brothers and sisters.

20

(t) Is the money directed to be paid under the first paragraph of the codicil of the will a legacy or is it simply a direction to hire?

(u) If it is a direction to hire, can it be dispensed with at the discretion of the executors and/or trustees?

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(v) If the provision in the first paragraph of the codicil is a legacy, is the inheritance tax thereon payable from the estate under the second paragraph of the will?

(w) The deceased left 72 bonds of series "E" with a maturing value of \$50.00 each, which were to the order of Ashbrook Dickinson Snelbaker of 1

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Bill of Complaint

Dickinson Street, Block 566, Woodstown, New Jersey, payable on death to Miss Verna May Swing, beneficiary. Does the inheritance tax to be paid upon these bonds come from the estate of Ashbrook D. Snelbaker under paragraph 2 of the will?

Your complainants are without remedy in the courts of law and therefore pray that the said William B. Snelbaker, A. Naomi Snelbaker, Elizabeth F. Snelbaker, I. Dayton Snelbaker, Sophia H. Appelgate, Sarah Snelbaker, Mary A. Tuttle, Charles Tuttle, Helen F. Snelbaker Zeigenfus, Ella S. Snelbaker Loveland, Arthur Loveland, Wilson A. Snelbaker, Ruth L. Snelbaker, Lawnside Cemetery Association, and Verna M. Swing, who are the defendants to this suit may answer this bill of complaint and each of the statements therein made;

2. That this court direct the complainants as to what disposition they should make of the income or principal of the said estate and whether the executors have any duties to perform relative to the annuities mentioned in paragraph 7(a), or any duties to perform relative to the Ashbrook D. Snelbaker Home, and whether there is a valid trust set up under Section 7(d) of the will, and whether the Home should be deeded to a corporation organized as suggested in the will, and whether the trustees and executors have the power to expend for the said Home, or whether the expenditure of the money is confined to such items as the court may direct or whether the income from the said money should be turned over to the Board of Managers of the said Home and they spend the money in their discretion, and whether or not the Home can be incorporated to require applicants thereto to deed their real property and deliver their personal property to the Home

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Corporation before entering, and whether such a provision would apply to the beneficiaries mentioned under paragraph 7(d) of the said will and what class of beneficiaries under paragraph 7(d) of the said will are entitled to become guests of the Home, and whether the guests of the Home are to be selected by the Board of Managers, and whether the enlargement of the Home to accommodate additional guests is to be made from the corpus or the income, and whether the provisions of 7(b) require that a principal sum be set up now for the markers therein mentioned or whether it may be taken as required from the residuary estate from income or principal, and whether the words "survivor of them" mean only the surviving brothers and sisters or the lineal descendants, and whether the first paragraph of the codicil to the will presents a sum which is taxable under the inheritance tax law and if so whether it is to be paid by the terms of the will by the executors and whether there is a tax payable from the estate on the bonds given to Verna M. Swing as beneficiary under the second paragraph of the will, and whether if there should not be sufficient money to set up the home, the legacies under a, b and c of paragraph 7 of the will abate to furnish sufficient money to establish the Home immediately.

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3. That a writ of subpoena may issue commanding the said defendants to answer this bill of complaint and abide by such decree as this court may make in said premises.

And your petitioners will ever pray, etc.

WADDINGTON & TILTON,

By E. C. WADDINGTON,

GEORGE B. MARSHALL,

Solicitors of the Complainants.

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*Bill of Complaint—Will and Codicil
of Ashbrook D. Snelbaker*

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IN THE NAME OF GOD, AMEN.

I, ASHBROOK D. SNELBAKER, of the Borough of Woodstown, in the County of Salem and State of New Jersey, being of sound and disposing mind, memory and understanding, hereby revoking any and all former wills by me made, do make, publish and declare the following to be my last will and testament, that is to say— 10

FIRST: I order and direct the payment of all of my just debts and funeral expenses as soon as may be convenient after my decease.

SECOND: I order and direct the payment of all inheritance or succession taxes, whether State or Federal, that may be assessed against my estate, or against any beneficiary hereunder, as soon as conveniently may be after my decease. 20

THIRD: I give and bequeath unto my trusted friend, VERNA M. SWING, without any restriction, in remuneration of her faithful services rendered to me during my lifetime, two thousand (2000) shares of the General Foods Corporation, said stock now being held in the Woodstown Bank and Trust Company; and, it is my suggestion that the stockholders and directors of the Cemetery Company select her as Superintendent of the Cemetery Company so long as she may live, or is able to perform the duties thereof. 30

FOURTH: I give and bequeath unto my Nieces, MARY A. TUTTLE, HELEN F. SNELBAKER, ELLA S. SNELBAKER LOVELAND, and to My 40

*Bill of Complaint—Will and Codicil
of Ashbrook D. Snelbaker*

Nephew, WILSON A. SNELBAKER, the sum of TEN THOUSAND (\$10,000.) DOLLARS EACH.

10 FIFTH: I give and bequeath unto my friend, WILLIAM C. DeGROFFT, the sum of ONE THOUSAND (\$1,000.) DOLLARS.

SIXTH: I give and bequeath unto the TRUSTEES OF THE ASBURY METHODIST EPISCOPAL CHURCH, of Woodstown, the sum of One thousand (\$1,000.) Dollars.

20 SEVENTH: ALL THE REST, RESIDUE AND REMAINDER OF my estate, real, personal or mixed, whatsoever and wheresoever situate, including all property over which I have any control or power of appointment, I give, devise and bequeath unto my EXECUTORS AND TRUSTEES hereinafter named, and their successors in office, IN TRUST, NEVERTHELESS, for the following purposes—

30 (A) I order and direct my Executors and Trustees to set aside a sufficient sum of my principal estate, the income of which will be sufficient to pay the following annuities—

(1) To pay an annuity to my sister, A. NAOMI SNELBAKER, for and during her natural life, the sum of THREE THOUSAND (\$3,000.) DOLLARS.

(2) To pay an annuity to my sister-in-law, ELIZABETH F. SNELBAKER, for and during her natural life, the sum of THREE THOUSAND (\$3,000.) DOLLARS.

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of Ashbrook D. Snelbaker*

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(3) To pay an annuity to my brother, WILLIAM B. SNELBAKER, for and during his natural life, of the sum of THREE THOUSAND (\$3,000.00) DOLLARS.

(4) To pay an annuity to my brother, I. DAYTON SNELBAKER, for and during his natural life, of the sum of THREE THOUSAND (\$3,000.) DOLLARS. 10

(5) To pay an annuity to my dear friend, ELLA H. SUMMERILL, for and during her natural life, of the sum of THREE THOUSAND (\$3,000.) DOLLARS.

(6) To pay an annuity to my housekeeper, MRS. SOPHIA H. APPELGATE, for and during her natural life, of the sum of THREE THOUSAND (\$3,000.) DOLLARS. 20

Said annuities to be paid quarterly, and to be free and clear of all debts and legal process.

Should either of any of my said brothers be survived by their wife or wives, then it is my wish, and I so direct, that the annuity heretofore allotted to my said brothers, shall be paid to and enjoyed by their respective widows during the term of their natural lives. 30

At and after the death of any one of the above named annuitants, said income as to the one deceased shall cease to be a charge upon my estate, and the portion of the principal set aside for the purpose of producing such income shall revert and become a part of my residuary estate.

Upon the death of all annuitants, the entire principal set aside as aforesaid shall revert as aforesaid. 40

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of Ashbrook D. Snelbaker*

(B) I further order and direct my said Executors and Trustees to provide sufficient funds to erect suitable markers, of the same size, style and quality with those now on my burial lot, for the following persons, at their decease—

- 10 A. Naomi Snelbaker, Elizabeth F. Snelbaker, Ella H. Summerill, William B. Snelbaker and wife, I. Dayton Snelbaker and wife, Mary A. Tuttle and Charles Tuttle, Helen F. Snelbaker, Ella S. Snelbaker Loveland and Arthur Loveland, Wilson A. Snelbaker and wife and Mrs. Sophia H. Appelgate.

(C) I have founded and developed Lawnside Cemetery in the Borough of Woodstown, as a lasting memorial to myself, and have provided for a
20 Perpetual Care Fund from the proceeds of the sale of lots by Lawnside Cemetery Association.

- If said Perpetual Care Fund is not of sufficient amount to care for and maintain the cemetery as hereinafter set forth, I order and direct my Executors and Trustees to set aside a sufficient amount of my principal, and invest the same as hereinafter set forth, and pay from the income thereof a sum not to exceed TWENTY FIVE HUNDRED (\$2,500.)
30 DOLLARS per year, which sum or sums added to the Perpetual Care Fund as above set forth will be sufficient for the purpose of beautifying said Cemetery by planting ornamental shrubbery and trees, and maintaining the fences, roads and other improvements, and keep the same in good condition, and keep the graves, markers and monuments in a good state of preservation.

These developments and beautifications shall extend to the full acreage provided by me, and include unplotted as well as plotted land.

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of Ashbrook D. Snelbaker*

When the said Cemetery shall become self supporting, the principal sum herein specified to be set aside, shall become a part of my residuary estate.

(d) I have erected a dwelling house on Main Street in the Borough of Woodstown of a suitable size and convenient to accommodate twenty-five or more guests, and I hereby order and direct that said dwelling house be used for the purpose of establishing and maintaining a suitable HOME for the care and support of worthy white women, of unquestionable character and moral reputation, whose age is not less than fifty years, and who were born in the County of Salem, New Jersey, the name of which Home shall be "THE ASHBROOK D. SNELBAKER HOME", and if it be deemed advisable, that my Executors and Trustees incorporate the same under the Statute of the State of New Jersey relating to eleemosynary institutions.

I order and direct that any and all of the beneficiaries hereinabove named shall have the privilege of being guests in said Home, for and during the term of their natural lives.

The Home shall not be a charitable institution in the ordinary sense of the word, but shall be as its name indicates a Home where the admitted guests shall have the same courtesy and attention as if they were guests in my own home, and under no circumstances to be treated as objects of charity.

No applicant who requires medical or hospital attention at the time of the application as a guest of the Home shall be favorably considered, but should the guest, after having entered said Home, require medical or hospital attention, the same shall be provided by the Trustees thereof.

In case there shall be more guests than can be

*Bill of Complaint—Will and Codicil
of Ashbrook D. Snelbaker*

accommodated in my said Home, and there shall be sufficient funds in hand, I order and direct the Trustees thereof to enlarge said Home to accommodate additional guests.

10 The Board of Managers of said Home shall be chosen by my Executors and Trustees herein, and shall consist of a member from each of the following recognized religious denominations in the County of Salem,—Methodist, Baptist, Presbyterian, Episcopalian and Lutheran. My Executors and Trustees shall also be members of the Board of Managers.

20 EIGHTH: I nominate, constitute and appoint as my Executors and Trustees under this, my last Will and Testament, the WOODSTOWN NATIONAL BANK AND TRUST COMPANY, of Woodstown, and HON. S. RUSLING LEAP, of Woodstown, and do confer upon my said Executors and Trustees the following power and authority—

30 (a) To sell any and all of my real estate of which I may die seized, except my residence in the Borough of Woodstown, as hereinafter set forth, at either public or private sale, for such prices and upon such terms as they may deem fit, and for such interests and estates as may be deemed wise by my said Executors and Trustees, and to make good and sufficient deeds and conveyances in the law to the purchasers thereof.

40 (b) To invest and re-invest my estate in such securities as they may deem fit, and not be limited or confined to the Statute of the State of New Jersey relating to investment of Trust Funds for Trust Estate.

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of Ashbrook D. Snelbaker*

(c) To borrow money, pledging any and all of my real estate by mortgage, join in the partition of real estate, and to let or demise the same.

(d) To make alterations or improvements to any and all of my real estate, or any buildings erected thereon, and if necessary to make new erections. 10

(e) If necessary, to make purchase of real estate, or to sell, convey or mortgage the same, if in the administration of my estate it may be deemed necessary.

(f) Before my Executors and Trustees shall sell, transfer, exchange or dispose of any of my securities, invest or re-invest the same; sell, mortgage or purchase real estate that may be necessary in the administration of my estate, they shall consult and confer with my brothers and sisters, or the survivors of them, and be largely governed by the judgment and advice of a majority of them in any such transactions. 20

(g) In addition to their duties as Executors and Trustees, they shall personally devote their attention and the necessary time, to successfully found, establish and supervise the carrying out of my desire in establishing and maintaining "THE ASHBROOK D. SNELBAKER HOME". 30

(h) To act with the same power over the Trust Property that they would possess were they the actual owners thereof, and not be limited or confined to the Statute of the State of New Jersey relative to investment of funds for trust estates.

*Bill of Complaint—Will and Codicil
of Ashbrook D. Snelbcker*

IN WITNESS WHEREOF, I have hereunto set my hand and seal this twenty-sixth day of April, Nineteen hundred and thirty eight.

ASHBROOK D. SNELBAKER (Seal)

10 SIGNED, SEALED, PUBLISHED AND DECLARED by the above named ASHBROOK D. SNELBAKER, as and for his last WILL and TESTAMENT, in the presence of us who were both present at the same time, and at his request subscribed our names as witnesses hereto, in the presence of the testator and of each other.

CLARA E. C. VEALE,
JOSEPH H. POWELL.

20 I, ASHBROOK D. SNELBAKER of the Borough of Woodstown, County of Salem and State of New Jersey, do make, publish and declare this codicil to my last will and testament, which last will and testament is dated the 26th day of April, 1938.

FIRST:

30 I authorize and direct my Executors and Trustees to retain Miss Verna M. Swing, to perform substantially the same duties and to have substantially the same responsibilities with respect to the affairs of my estate as she now performs and has with respect to my business affairs; it being my intention that my Executors and Trustees shall retain the said Verna M. Swing for a period of at least five years. The remuneration to be paid to the said Verna M. Swing shall not be less than two thousand dollars per year payable quarterly.

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*Bill of Complaint—Will and Codicil
of Ashbrook D. Snelbaker*

SECOND:

In all other respects I hereby confirm my said
Last Will and Testament.

10

IN WITNESS WHEREOF, I have hereunto set
my hand and seal this Tenth day of May, in the
year of Our Lord one thousand nine hundred and
forty-three.

ASHBROOK D. SNELBAKER (Seal)

Signed, sealed, published and declared by the said
Ashbrook D. Snelbaker, as and for a codicil to his
last will and testament, which last will and testament
is dated the 26th day of April, 1938, in the presence
of us who were present at the same time and at his
request subscribed our names hereto as witnesses in
the presence of the testator and of each other.

20

LE ROY W. LODER,
EDNA M. DILKS.

Endorsed:

“FILED JUN. 6, 1944.

EDW. L. WHELAN,

Clerk.” 30

40

ANSWER OF DEFENDANT, SOPHIA H.
APPELGATE.

(Filed Jun. 29, 1944.)

10

IN CHANCERY OF NEW JERSEY.
148/104.

Between

20

WOODSTOWN NATIONAL BANK
AND TRUST COMPANY and
S. RUSLING LEAP, Exec-
utors and Trustees,
Complainants,
and
WILLIAM B. SNELBAKER, ET
ALS.,
Defendants.

On Bill, etc.
Answer.

30

The answer of defendant SOPHIA H. APPEL-
GATE.

This defendant answering the bill of complaint,
says that:

1. Defendant Sophia H. Appelgate admits the
averments of the bill of complaint filed herein and
submits this defendant's rights to the judgment of
the Court.

2. This defendant contends:

40

(a) That the correct construction of subsection (A) of the Seventh Article (the residuary section) of decedent's will is that the annuities therein set forth be paid as therein ordered, from the date of decedent's death; and

(b) That the construction of subsection (d) of said Seventh article (the residuary section) of decedent's will be, in whole or in part, that the dwelling house mentioned therein be maintained from the date of decedent's death at the expense of decedent's estate, and that this defendant shall have the right to occupy the same (without cost or expense to this defendant) during the remainder of defendant's natural life, in common with the other annuitants named in said will. 10

STANGER AND HOWELL, 20
Solicitors of Defendant, Sophia
H. Appelgate.
FRANCIS A. STANGER, JR.,
Of Counsel.

Endorsed:

"FILED JUN. 29, 1944.

EDW. L. WHELAN,
Clerk".

30

40

Answer of Defendants, William B. Snelbaker, A. Naomi Snelbaker and I. Dayton Snelbaker.

10 ANSWER OF DEFENDANTS, WILLIAM B. SNELBAKER, A. NAOMI SNELBAKER AND I. DAYTON SNELBAKER.

(Filed Jun. 30, 1944.)

IN CHANCERY OF NEW JERSEY.

| | | |
|----|---|---|
| | Between | |
| 20 | WOODSTOWN NATIONAL BANK AND TRUST COMPANY and S. RUSLING LEAP, Exec- utors and Trustees, Complainants, and WILLIAM B. SNELBAKER, ET ALS., Defendants. | On Bill, etc. Answer of Defen- dants, William B. Snelbaker, A. Na- omi Snelbaker and I. Dayton Snelbaker. |

30

The defendants, William B. Snelbaker, of the City of Woodbury, in the County of Gloucester; A. Naomi Snelbaker, of the Borough of Woodstown, in the County of Salem; and I Dayton Snelbaker, of the Borough of Brigantine, in the County of Atlantic, all of the State of New Jersey, answering the bill of complaint filed in this cause, say that:

40

1. They admit paragraph 1.

Answer of Defendants, William B. Snelbaker, A. Naomi Snelbaker and I. Dayton Snelbaker

2. They admit paragraph 2.
 3. They admit paragraph 3.
 4. They admit paragraph 4. 10
 5. They admit paragraph 5.
 6. They admit paragraph 6.
 7. They admit paragraph 7.
 8. They admit paragraph 8.
 9. They have no knowledge or information thereof sufficient to form a belief as to the allegations contained in paragraph 9. 20
 10. They join with the executors and trustees in their request that the will be interpreted and the duties of said executors and trustees defined.
- These defendants further allege:
- (a) That the will of the said Ashbrook D. Snelbaker is so indefinite and vague and fails to disclose what funds should be used in the establishment of the home that such provision of the will relative to the establishment of a home fails and that the said Ashbrook D. Snelbaker died intestate with relation to the residue of his estate, and that following the death of the life annuitants, the residue of his estate should be paid over to his heirs at law under the intestate laws of the State of New Jersey, and that, therefore, the answer to Paragraph D of the Tenth 30 40

Answer of Defendants, William B. Snelbaker, A. Naomi Snelbaker and I. Dayton Snelbaker

Paragraph of the bill of complaint should be "No"; and that this Court should decree that no charitable bequest was set up under the terms of said last will and testament.

10

(b) That inasmuch as the will does not provide whether corpus or income shall be used for the establishment of said home that the terms, therefore, are vague and indefinite and not effective.

20

(c) That under subdivisions T and U in Paragraph 10 that the direction providing for the hiring of Verna M. Swing is inoperative as a direction upon the executors and trustees and in their discretion they may dispense with her services if same seems for the best interests of the estate.

30

(d) That under Paragraph 6 of said last will and testament, Subdivision C, the testator apparently undertook, in dealing with the cemetery which he founded, to provide for its operation by his executors and trustees without stating the length of time same should be operated; or, if it was operated at a loss greater than the sum of Twenty-Five Hundred Dollars per year, from what funds said loss should be paid. These answering defendants allege that said provision is invalid and inoperative and that this Court should decree that the executors and trustees have no rights or duties in connection therewith excepting to convert said cemetery into cash, to be distributed in accordance with law.

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(e) Paragraph "Seventh, Subdivision a-6 of said will, in part reads as follows:

"Should either of any of my said brothers be

*Answer of Defendants, William B. Snel-
baker, A. Naomi Snelbaker and
I. Dayton Snelbaker*

survived by their wife or wives, then it is my wish, and I so direct, that the annuity heretofore allotted to my said brothers, shall be paid to and enjoyed by their respective widows during the term of their natural lives." These answering defendants allege that this provision might be interpreted to mean that if said brothers did not survive testator, their wives should take this allotment or it might be interpreted that said provisions were for the benefit of the brothers' wives in the event that the brothers survived testator and died thereafter. These answering defendants pray that this provision be interpreted by the Court and the executors and trustees be instructed relative to this provision of said will.

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20

These answering defendants join with the executors and trustees in their prayer that the will be interpreted and the executors and trustees be advised as to their duties under said last will and testament.

These answering defendants further pray that the Court may further interpret and advise the executors and trustees relative to the questions raised in this answer in addition to those raised in the bill of complaint.

30

JAMES B. AVIS,
Solicitor for the Defendants,
William B. Snelbaker, A.
Naomi Snelbaker and I.
Dayton Snelbaker.

Endorsed:

"FILED JUN. 30, 1944.

EDW. L. WHELAN,
Clerk".

40

ANSWER OF DEFENDANT, VERNA M.
SWING.

(Filed Jul. 6, 1944.)

10

IN CHANCERY OF NEW JERSEY.
148/104.

Between

WOODSTOWN NATIONAL BANK
AND TRUST COMPANY and
S. RUSLING LEAP, Exec-
utors and Trustees,
Complainants,
and
WILLIAM B. SNELBAKER, ET
ALS.,
Defendants.

On Bill, etc.
Answer.

30 The answer of the defendant, Verna M. Swing, to
the Bill of Complaint of complainants.

This defendant, Verna M. Swing, answering the
bill of complaint says that:

1. Paragraph 1 is admitted.
2. Paragraph 2 is admitted.
3. Paragraph 3 is admitted.
- 40 4. Paragraph 4 is admitted.

5. Paragraph 5 is admitted.

6. This defendant has been informed and believes that the matters set forth in paragraph 6 are true and therefore admits the same.

7. Paragraph 7 is admitted.

10

8. Paragraph 8 is admitted.

9. The defendant admits that the personal property of the estate has been appraised at \$955,987.69 and the value of the real estate is estimated to be approximately \$70,000.00, making a total value of the estate of approximately \$1,026,000.00. The defendant has no knowledge or information thereof sufficient to form a belief as to the remainder of this paragraph and leaves the complainants to their proof.

20

10. Paragraph 10 is admitted.

This defendant joins with the complainants in the prayer that the Court direct the complainants in the various matters and things set out in the bill as to which the complainants are in doubt and unable to determine, and particularly that the Court determine whether the money directed to be paid under the first paragraph of the Codicil of the will is a legacy or is it simply a direction to hire, and if a direction to hire, whether it can be dispensed with at the discretion of the executors and trustees, and if the provisions of the first paragraph of the Codicil is a legacy, whether the inheritance taxes thereon are payable from the estate under the second paragraph of the will; and also whether the seventy-two bonds of Series E with maturity value of \$50.00 each

30

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Answer of Defendant, Verna M. Swing

which were made payable to the order of Ashbrook
Dickinson Snelbaker of 1 Dickinson Street, Block
566, Woodstown, New Jersey, payable on death to
Miss Verna M. Swing, beneficiary, are subject to
inheritance taxes and if so whether the inheritance
taxes are to be paid upon these bonds from the
10 estate of Ashbrook D. Snelbaker under paragraph
two of the will.

J. BRODIE McGEAR,

Solicitor for and of Counsel with
Defendant, Verna M. Swing.

Endorsed:

“FILED JUL. 6, 1944.

EDW. L. WHELAN,
Clerk”.

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AMENDED ANSWER OF VERNA M. SWING.

(Filed Aug. 21, 1944.)

IN CHANCERY OF NEW JERSEY.

10

148/104.

Between

WOODSTOWN NATIONAL BANK
AND TRUST COMPANY and
S. RUSLING LEAP, Exec-
utors and Trustees,

Complainants,

and

WILLIAM B. SNELBAKER, ET
ALS.,

Defendants.

On Bill, etc.
Amended Answer. 20

The Answer of the defendant, Verna M. Swing, to
the Bill of Complaint of Complainants.

This defendant, Verna M. Swing, answering the
bill of complaint says that: 30

1. Paragraph 1 is admitted.
2. Paragraph 2 is admitted.
3. Paragraph 3 is admitted.
4. Paragraph 4 is admitted.

5. Paragraph 5 is admitted.

6. This defendant has been informed and believes that the matters set forth in paragraph 6 are true and therefore admits the same.

10 7. Paragraph 7 is admitted.

8. Paragraph 8 is admitted.

9. The defendant admits that the personal property of the estate has been appraised at \$955,987.69 and the value of the real estate is estimated to be approximately \$70,000.00 making a total value of the estate of approximately \$1,026,000.00. The defendant has no knowledge or information thereof sufficient to form a belief as to the remainder of this paragraph and leaves the complainants to their proof.

20 10. Paragraph 10 is admitted.

This defendant joins with the complainants in the prayer that the Court direct the complainants in the various matters and things set out in the bill as to which the complainants are in doubt and unable to determine, and particularly that the Court determine whether the defendant Verna M. Swing is entitled to the dividends on the two thousand shares of stock of General Foods Corporation bequeathed to her as set out in Paragraph 3 of the last will and testament of Ashbrook D. Snelbaker, deceased from the death of the said Ashbrook D. Snelbaker, deceased; and particularly that the Court determine whether the money directed to be paid under the first paragraph of the Codicil of the will is a legacy or is it simply a direction to hire, and if a direction

to hire, whether it can be dispensed with at the discretion of the executors and trustees, and if the provisions of the first paragraph of the Codicil is a legacy, whether the inheritance taxes thereon are payable from the estate under the second paragraph of the will; and also whether the seventy-two bonds of Series E with maturity value of \$50.00 each which were made payable to the order of Ashbrook Dickinson Snelbaker of 1 Dickinson Street, Block 566, Woodstown, New Jersey, payable on death to Miss Verna M. Swing, beneficiary, are subject to inheritance taxes and if so whether the inheritance taxes are to be paid upon these bonds from the estate of Ashbrook D. Snelbaker under paragraph two of the will. 10

J. BRODIE McGEAR,
Solicitor for and of Counsel with 20
Defendant, Verna M. Swing.

Endorsed:

“FILED AUG. 21, 1944.

I. GRANT SCOTT,
Clerk”.

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ANSWER OF DEFENDANT, LAWNSIDE CEM-
ETERY ASSOCIATION, A CORPORATION.

10

(Filed July 19, 1944.)

IN CHANCERY OF NEW JERSEY.

Between

| | | | |
|----|---|---|---|
| 20 | WOODSTOWN NATIONAL BANK AND TRUST COMPANY and S. RUSLING LEAP, Exec- utors and Trustees, Complainants, and LAWNSIDE CEMETERY ASSO- CIATION, a corporation, Defendant. | } | On Bill, etc. Answer of Defen- dant, Lawnside Cemetery Associ- ation, a Corpora- tion. |
|----|---|---|---|

30

The Defendant, Lawnside Cemetery Association, a corporation organized under the Laws of the State of New Jersey and doing business in the Borough of Woodstown, County of Salem and State of New Jersey, answering the bill of complaint filed in this cause, says that:

1. Paragraph 1 is admitted.
2. Paragraph 2 is admitted.
3. Paragraph 3 is admitted.
4. Paragraph 4 is admitted.
- 40 5. Paragraph 5 is admitted.

*Answer of Defendant, Lawnside Cemetery
Association, a Corporation*

6. Paragraph 6 is admitted.

7. Paragraph 7 is admitted.

8. Paragraph 8 is admitted.

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9. The corporation has no knowledge or information thereof sufficient to form a belief as to the allegations contained in paragraph 9.

10. The defendant further alleges that Section 6 of Paragraph C of the Last Will and Testament of the said Ashbrook D. Snelbaker states that the Executors and Trustees of his Will shall set aside a sufficient amount of his principal and invest the same and pay from the income thereof a sum not to exceed twenty-five hundred (\$2500.00) dollars per year for the purpose of beautifying and maintaining the Lawnside Cemetery. The defendant requests that the Will be interpreted and the question answered as to whether the twenty-five hundred (\$2500.00) Dollars mentioned in the said Will and directed to be paid over to the Lawnside Cemetery shall be added to the Perpetual Care Fund, or, shall the Trustees, under the Last Will and Testament of Ashbrook D. Snelbaker, supervise the payment of the said twenty-five hundred (\$2500.00) dollars for the purpose of beautifying and maintaining the said Cemetery.

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BURTON D. ZEHNER,
Solicitor for the Defendant
Lawnside Cemetery Association, a Corporation.

Endorsed:

“FILED JUL. 19, 1944.

I. GRANT SCOTT, 40
Clerk”.

DECREE PRO CONFESSO.

(Filed Aug. 28, 1944.)

10 IN CHANCERY OF NEW JERSEY.
148/104.

Between

| | | | |
|----|---|---|--|
| 20 | WOODSTOWN NATIONAL BANK AND TRUST COMPANY and S. RUSLING LEAP, Exec- utors and Trustees, Complainants, and WILLIAM B. SNELBAKER, ET ALS., Defendants. | } | On Bill, etc. Decree Pro Confesso. |
|----|---|---|--|

30 This matter being opened to the court by Wad-
dington & Tilton and George B. Marshall, solicitors
of the complainants, and it appearing that process
of subpoenas, calling upon the defendants to answer
the complainants' bill of complaint, have been duly
issued and returned served upon the defendants,
William B. Snelbaker, I. Dayton Snelbaker, Sarah
Snelbaker, Arthur Loveland, Ella S. Snelbaker
Loveland, Charles Tuttle, Mary A. Tuttle, Ruth L.
Snelbaker, Wilson A. Snelbaker, Lawnside Cemetery
Association, Verna M. Swing, Helen F. Snelbaker
Zeigenfus, Elizabeth F. Snelbaker, Sophia H. Ap-
40 pelgate and A. Naomi Snelbaker; and the said de-

Decree Pro Confesso

endants, Sarah Snelbaker, Arthur Loveland, Ella S. Snelbaker Loveland, Charles Tuttle, Mary A. Tuttle, Ruth L. Snelbaker, Wilson A. Snelbaker, Helen F. Snelbaker Zeigenfus and Elizabeth F. Snelbaker have not filed any answer to the said bill of complaint within the time required by law, but have wholly failed and neglected so to do; 10

It is thereupon on this 28th day of August, 1944 upon the motion of Waddington & Tilton and George B. Marshall, solicitors of the complainants, ORDERED that the said complainants' bill of complaint be and the same is hereby taken as confessed against the said defendants, Sarah Snelbaker, Arthur Loveland, Ella S. Snelbaker Loveland, Charles Tuttle, Mary A. Tuttle, Ruth L. Snelbaker, Wilson A. Snelbaker, Helen F. Snelbaker Zeigenfus and Elizabeth F. Snelbaker to the end that such decree may be made against them as the court shall deem equitable and just. 20

LUTHER A. CAMPBELL,
C.

Endorsed:

"FILED AUG. 28, 1944.

I. GRANT SCOTT,
Clerk".

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AFFIDAVIT OF NON-MILITARY SERVICE.

(Filed Aug. 28, 1944.)

10 IN CHANCERY OF NEW JERSEY.
148/104.

Between

| | | | |
|----|---|---|---|
| 20 | WOODSTOWN NATIONAL BANK AND TRUST COMPANY and S. RUSLING LEAP, Exec- utors and Trustees, Complainants, and WILLIAM B. SNELBAKER, ET ALS., Defendants. | } | On Bill, etc. Affidavit of Non- Military Service. |
|----|---|---|---|

State of New Jersey }
 County of Camden } ss.

30 S. RUSLING LEAP, of full age, being duly sworn according to law on his oath deposes and says:

I am acquainted with the defendants Sarah Snelbaker, Arthur Loveland, Ella S. Snelbaker Loveland, Ruth L. Snelbaker, Wilson A. Snelbaker, Helen F. Snelbaker Zeigenfus and Elizabeth F. Snelbaker.

40 The said Sarah Snelbaker resides in Brigantine, New Jersey, is approximately 65 years of age and is a housewife and is not in the military service.

Affidavit of Non-military Service

41

The said Arthur Loveland resides at 72 Cottage Avenue, Bridgeton, New Jersey, is approximately 35 years of age, is married and is a mechanic and is not in the military service.

The said Ella S. Snelbaker Loveland is the wife of the said Arthur Loveland and resides with him at 72 Cottage Avenue, Bridgeton, New Jersey. She is approximately 35 years of age and is a housewife and is not in military service. 10

The said Ruth L. Snelbaker resides at 23 N. Girard Street, Woodbury, New Jersey, and is the wife of the said Wilson A. Snelbaker. She is approximately 40 years of age, is a house wife and is not in the military service.

The said Wilson A. Snelbaker is the husband of the said Ruth L. Snelbaker and resides with her at 23 N. Girard Street, Woodbury, New Jersey. He is approximately 40 years of age and is a monument dealer and is not in the military service. 20

The said Helen F. Snelbaker Zeigenfus resides on Bowen Avenue, Woodstown, New Jersey, is approximately 37 years of age and is a physiotherapist and is not in the military service.

The said Elizabeth F. Snelbaker resides on Bowen Avenue, Woodstown, New Jersey, is approximately 70 years of age and is retired and is not in the military service. 30

S. RUSLING LEAP.

Sworn and subscribed to before me this 4th day of August, 1944.

BERTHA C. HACK,
Notary Public of New Jersey.

My Commission expires Dec. 15, 1947.

40

*Non-military Affidavit, in re: Defendants,
Charles Tuttle and Mary A. Tuttle*

NON-MILITARY AFFIDAVIT, IN RE: DEFEN-
DANTS, CHARLES TUTTLE AND MARY A.
TUTTLE.

10

IN CHANCERY OF NEW JERSEY.

148/104.

Between

| | | | |
|----|---|---|--|
| 20 | WOODSTOWN NATIONAL BANK AND TRUST COMPANY and S. RUSLING LEAP, Exec- utors and Trustees, Complainants, and WILLIAM B. SNELBAKER, ET ALS., Defendants. | } | On Bill, etc. Non-Military Affi- davit, In re: De- fendants, Charles Tuttle and Mary A. Tuttle. |
|----|---|---|--|

30 State of New Jersey }
 Gloucester County } ss.

George B. Marshall, of full age, being duly sworn according to law, upon his oath deposes and says:

I am personally acquainted with Charles Tuttle and Mary A. Tuttle, defendants in the above entitled cause. Neither one of these parties are engaged in the Military or Naval Services of the United States Government, and in fact, are not employed in any manner or form with any branch of the Govern-
 40 ment.

*Non-military Affidavit, in re: Defendants,
Charles Tuttle and Mary A. Tuttle*

The defendant, Charles A. Tuttle, is a foreman employed at the Cramp Shipbuilding Company. The defendant, Mary A. Tuttle, is a housewife, but is presently very ill and not expected to recover. Both of said defendants reside at 68 North American Street, Woodbury, New Jersey. The defendant, Charles A. Tuttle, is fifty-four years of age, and Mary A. Tuttle is fifty-two years of age. 10

This affidavit is made for the purpose of showing that neither of said defendants are engaged in any manner with any branch of the United States Government.

GEORGE B. MARSHALL.

Sworn and subscribed to before me this 25th day of August, A. D. 1944. 20

NETTIE F. MARSHALL.

(Seal)

Notary Public of N. J.

My Commission Expires Nov. 1, 1945.

Endorsed:

“FILED AUG. 28, 1944.

I. GRANT SCOTT,
Clerk”.

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40

ORDER OF REFERENCE.

(Filed Sep. 6, 1944.)

10 IN CHANCERY OF NEW JERSEY.
148/104.

| | | |
|----|--------------------------|-----------------|
| | Between | |
| | WOODSTOWN NATIONAL BANK | } On Bill, etc. |
| | AND TRUST COMPANY and | |
| | S. RUSLING LEAP, Exec- | |
| | utors and Trustees, | |
| 20 | Complainants, | } Order of |
| | and | |
| | WILLIAM B. SNELBAKER, ET | |
| | ALS., | } Reference. |
| | Defendants. | |

30 This matter being opened to the court by Waddington & Tilton and George B. Marshall, Solicitors of the Complainants, and it appearing that James B. Avis, Solicitor of the defendants, William B. Snelbaker, A. Naomi Snelbaker and I. Dayton Snelbaker; J. Brodie McGear, solicitor of the defendant, Verna M. Swing; Stanger and Howell, solicitors of the defendant, Sophia H. Appelgate; and Burton D. Zehner, solicitor of the defendant, Lawnside Cemetery Association, have consented hereto;

40 It is on this 6th day of September, 1944 on motion of Waddington & Tilton and George B. Marshall, solicitors of the complainants, ORDERED that the

above entitled cause be referred to Hon. W. Frank Sooy, one of the Vice-Chancellors of this court to hear the same for the Chancellor and to report thereon to him and to advise what order or decree should be made therein.

LUTHER A. CAMPBELL,

C. 10

We hereby consent to the entry of the foregoing decree.

JAMES B. AVIS,

Solicitor of the Defendants,
William B. Snelbaker, A.
Naomi Snelbaker and I.
Dayton Snelbaker.

J. BRODIE McGEAR,

Solicitor for the Defendant, 20
Verna M. Swing.

STANGER AND HOWELL,

Solicitors of Defendant,
Sophia H. Appelgate.

BURTON D. ZEHNER,

Solicitor of Defendant,
Lawnside Cemetery Asso-
ciation.

Endorsed:

“FILED SEP. 6, 1944.

30

I. GRANT SCOTT,

Clerk”.

ORDER OF DESIGNATION.

(Filed Sept. 26, 1944.)

10 IN CHANCERY OF NEW JERSEY.
148/104.

| | | |
|----|--------------------------|---|
| | Between | |
| | WOODSTOWN NATIONAL BANK | } On Bill, etc. Order of Designation. |
| | AND TRUST COMPANY and | |
| | S. RUSLING LEAP, Exec- | |
| | utors and Trustees, | |
| 20 | Complainants, | |
| | and | |
| | WILLIAM B. SNELBAKER, ET | |
| | ALS., | |
| | Defendants. | |

30 This matter being opened to the court by Wad-
dington & Tilton and George B. Marshall, solicitors
of the complainants, and it appearing that James B.
Avis, solicitor of the defendants, William B. Snel-
baker, A. Naomi Snelbaker and I. Dayton Snelbaker;
J. Brodie McGear, solicitor of the defendant, Verna
M. Swing; Stanger and Howell, solicitors of the de-
fendant, Sophia H. Appelgate; and Burton D. Zeh-
ner, solicitor of the defendant, Lawnside Cemetery
Association, have consented hereto and that a decree
pro confesso has been taken against the other de-
fendants;

40 It is on this 26th day of September, 1944 OR-

Order of Designation

DERED that the 2nd day of November, 1944 at the hour of ten o'clock in the forenoon, Eastern War Time, at the Chancery Chambers in the City of Atlantic City be designated as the time and place for hearing the above entitled cause.

W. F. SOOY,
V. C. 10

We hereby consent to the above order of designation.

JAMES B. AVIS,
Solicitor of the Defendants,
William B. Snelbaker, A.
Naomi Snelbaker and I.
Dayton Snelbaker.

Endorsed:

"FILED SEPT. 26, 1944. 20

W. F. SOOY,
V. C."

30

40

Notice of Hearing

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been referred, on the Second day of November, nineteen hundred and forty-four at the hour of ten o'clock in the forenoon, Eastern War Time, at the Chancery Chambers in the City of Atlantic City, the time and place designated by the order of the said Vice Chancellor.

GEORGE B. MARSHALL, 10
WADDINGTON & TILTON,
Solicitors of the Complainants.

Endorsed:

“FILED OCT. 9, 1944.

W. F. SOOY,
V. C.”

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30

40

STIPULATION.

(Filed Nov. 2, 1944.)

10 IN CHANCERY OF NEW JERSEY.
 148/104.

| | | |
|----|--------------------------|-------------------------------------|
| | Between | |
| | WOODSTOWN NATIONAL BANK | } On Bill, etc. Stipulation. |
| | AND TRUST COMPANY and | |
| | S. RUSLING LEAP, Exec- | |
| | utors and Trustees, | |
| 20 | Complainants, | |
| | and | |
| | WILLIAM B. SNELBAKER, ET | |
| | ALS., | |
| | Defendants. | |

30 It is stipulated and agreed between the several parties to the above entitled cause that the facts hereinafter set forth are true and correct.

1. That a copy of the will and codicil attached to the bill of complaint is a true copy of the will of Ashbrook D. Snelbaker and was duly admitted to probate in the Surrogate's office of the County of Salem on the 18th day of April, 1944, and is recorded in Book No. 8, page 199.

40 2. That the Woodstown National Bank and Trust Company and S. Rusling Leap qualified as executors under the said will on the 18th day of April, 1944.

3. That the Woodstown National Bank and Trust Company and S. Rusling Leap did on the 12th day of June, 1944 qualify as trustees under the last will and testament of Ashbrook D. Snelbaker, deceased.

4. That Ashbrook D. Snelbaker was survived by his brothers, William B. Snelbaker and I. Dayton Snelbaker; his sister, A. Naomi Snelbaker; and Helen F. Snelbaker Zeigenfus, a daughter of Joel Snelbaker, a deceased brother. 10

5. That Sophia H. Appelgate, one of the beneficiaries under the will, is residing in the residence of Ashbrook D. Snelbaker, designated in the will to become the Home.

6. That the Asbury Methodist Episcopal Church of Woodstown is a corporation organized under the act in regard to churches. 20

7. The Lawnside Cemetery Association is a corporation organized under the act in regard to cemeteries.

8. That Ashbrook D. Snelbaker, at the time of his death, was possessed of 20,500 shares of General Foods stock. 30

9. That 500 shares of stock, at the time of his death were located at the Woodstown National Bank and Trust Company, having been pledged as collateral on a note of the W. W. Wilks Company which Ashbrook D. Snelbaker had endorsed. The said note had been paid, but the stock had not been picked up by Ashbrook D. Snelbaker.

10. That 7200 shares of the stock were pledged with E. W. Clarke Company, brokers in Philadel- 40

Stipulation

phia, with other stock, for a loan totaling in excess of \$36,000.00.

10 11. The balance of the General Foods stock was in the safe deposit box of Ashbrook D. Snelbaker at the Swedesboro Trust Company, Swedesboro, N. J.

12. The estate was appraised by the State of New Jersey Inheritance Tax Department at \$1,074,293.49. The debts and expenses allowed by the Inheritance Tax Department were \$101,525.59. The tax assessed by the State of New Jersey was \$74,896.04.

20 It is further understood and agreed that the stipulation herein entered into will not interfere with any of the complainants of defendants offering such testimony as he may desire in regard to any of the points raised by the complaint or answers.

WADDINGTON & TILTON,
GEORGE B. MARSHALL,
Solicitors of the Complainants.
JAMES B. AVIS,

Solicitor of the Defendants,
William B. Snelbaker, A.
Naomi Snelbaker and I.
Dayton Snelbaker.

30 J. BRODIE McGEAR,
Solicitor for Defendant, Verna
M. Swing.

STANGER AND HOWELL,
Solicitors of Defendant, So-
phia H. Appelgate.

BURTON D. ZEHNER,
Solicitor of Defendant, Lawn-
side Cemetery Association.

40 Endorsed:

"FILED NOV. 2, 1944.

W. F. SOOY,
V. C."

TESTIMONY.

IN CHANCERY OF NEW JERSEY.

148/104.

10

Between

WOODSTOWN NATIONAL BANK
AND TRUST COMPANY, ET
ALS.,

Complainants,

and

WILLIAM B. SNELBAKER, ET
ALS.,

Defendants.

On Bill, etc.
Final Hearing.

20

Atlantic City, N. J., November 2, 1944.

TESTIMONY

Before HON. W. F. SOOY, Vice Chancellor.

30

APPEARANCES:

For Complainants, Messrs. Waddington & Tilton
and George B. Marshall, Esq.

For Defendants, Wm. B. Snelbaker, I. Dayton
Snelbaker, and A. Naomi Snelbaker, James
B. Avis, Esq.

40

For Defendant, Sophia H. Applegate, Stanger & Howell, Esqs.

For Defendant, Lawnside Cemetery Assn., Burton D. Zehner, Esq.

For Defendant, Verna M. Swing, I. Brodie McGear, Esq., and Leroy W. Loder, Esq.

10

Stipulation filed and read.

WALTER CLARENCE MOORE, Sworn.

DIRECT EXAMINATION.

20

BY MR. WADDINGTON:

Q. Mr. Moore, where do you live?

A. At Merchantville, New Jersey.

Q. What is your business?

A. I am a tax consultant and accountant.

Q. Did you know A. D. Snelbaker in his life time?

A. Yes, sir.

Q. Were you doing accounting work for him at that time?

30

A. Yes, sir.

Q. After his death did you make up a report on the Lawnside Cemetery Association for the executors?

A. We did. The work was actually done by Mr. Rogers but under our firm name.

Q. Mr. Rogers is sick this morning?

A. Yes.

Q. This report was sent out under your signature?

40

A. That is right.

Walter Clarence Moore—Direct

Q. Will you refer to that report and tell the court what was the amount of the perpetual care fund in the Lawnside Cemetery Association?

A. \$4862.37.

Q. Will you likewise tell the court how much the Lawnside Cemetery Association had gone in arrears over the period of its operation? 10

A. Actual association loss for the period from 1936 to 1943 inclusive was \$25,222.59. The company associated with the association had a profit during that period of \$9953.77, leaving a consolidated net loss of \$15,268.82. That includes a depreciation of \$6184.48, leaving a net loss, actual loss in dollars of \$9084.34 for the period, sustained loss \$15,268.82, or about approximately \$2,000. a year.

Q. Now have you computed the amount of lots that were sold a year, on the average, during the existence of the company? 20

A. Unfortunately I haven't that detail. I tried on the train down to arrive at the approximate sale of lots and that appears to be about \$2,000. gross.

THE COURT: You mean of the lots in the entire cemetery?

A. Yes, annually. 30

THE COURT: Annually?

A. Annually, yes.

Q. About \$2,000. a year?

A. Yes, that is not exact, you understand; it is approximate.

THE COURT: Out of the sale of lots what percentage was retained for the perpetual care? 40

A. 50% I believe.

Q. Just check yourself on that. His question was what was retained for perpetual care?

A. Oh, 5%. 50% went to the company for the ground.

10 Q. What indebtedness did the cemetery association have at the time of Mr. Snelbaker's death?

A. Current liabilities of \$65,927.17. Perpetual care fund of \$4862.37.

Q. Now the \$65,927.17 was made up by obligations to whom or to what?

20 A. Well, withholding taxes of \$84.11; social security taxes \$42.56; commissions payable to F. H. Clark of \$375.58; Lawnside Cemetery Company \$48,626.76; A. D. Snelbaker advances \$14,956.30 and interest of \$1841.86, making a total due Mr. Snelbaker of \$16,798.16.

Q. Do you know whether or not the \$48,626.76 due to the Lawnside Cemetery Company was the total amount of money that was due from the sale of lots to that company from the beginning?

A. That is as I understand it, yes, sir.

MR. AVIS: No questions.

MR. STANGER: No questions.

30

BY MR. WADDINGTON:

Q. In the matter of the sale of lots how was the money divided between the cemetery association and cemetery company?

A. I believe that was 50%.

Q. From the 50% which went to the cemetery association there was taken the 5% of the total sale of the lots?

40

A. I believe that is true. Technically I am not sure.

THE COURT: I don't understand this association and company?

MR. WADDINGTON: Your Honor please, the company was a developing company which had the duty of laying out the ground, putting in the roads and things of that kind and the association was an association organized under the cemetery act of the state of New Jersey and consisted of lot holders and people who purchased lots. 10

THE COURT: And they had a contract between them? 20

MR. WADDINGTON: And they had a contract between them in regard to development and operation. May it please the Court, I think, with the stipulation and with that evidence, we have substantially everything before you on which the questions are asked.

I have one other item to offer, two items. One is the certificate of incorporation of the Ashbrook D. Snelbaker Home, or a certified copy of it from the Department of State, which I desire to offer in evidence. 30

(Certified copy admitted and marked Exhibit C-1.)

I also offer in evidence the proposed constitution and by laws of the Ashbrook D. Snelbaker Home.

(Constitution admitted and marked Exhibit C-2.) 40

THE COURT: What are you going to do, ask the court to pass on the by laws?

10 MR. WADDINGTON: I am going to ask the court if they don't come within the terms of the will to say so.

THE COURT: I don't believe you are going to get the court to do it. If you do you would have the court assuming the duties of the trustees. It is entirely up to them as to what kind of certificate of incorporation they shall have and what kind of by laws that they shall have.

20 MR. WADDINGTON: I think the result of our brief is that this goes in the matter and it is not necessary for your Honor to approve them, but I thought it would be advisable for your Honor to pass on them and if there were some sections in there that your Honor thought didn't comply with the terms of the will you would say so.

THE COURT: I rather think you have got to assume that responsibility. However, it won't hurt to have them in.

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COMPLAINANTS REST.

40 MR. AVIS: I would like to inquire whether or not it would be proper for the complainants to show who compose the Lawnside Cemetery Company? Mr. Snelbaker in his will sort of treated it as if it was his and I assume he must have been the main stockholder, but I don't know of any proof in the case of that kind.

Mrs. Sophie H. Applegate—Direct

MR. WADDINGTON: Well, it can be easily fixed whatever your Honor desires in regard to that. The Lawnside Cemetery Company Mr. Snelbaker was the principal stockholder, I think owning approximately 90 or 95% of the stock. The Lawnside Cemetery Association he was a lot holder same as about 2,000. other lot holders. 10

THE COURT: That was an association not for pecuniary profit?

MR. WADDINGTON: That is right, incorporated under the cemetery act.

THE COURT: Now has any defendant anything he wants to offer? 20

MRS. SOPHIE H. APPLGATE, Sworn.

DIRECT EXAMINATION.

BY MR. STANGER:

Q. Mrs. Applegate, you are a defendant in this case, are you not? 30

A. Yes.

Q. And you were acquainted with Mr. Snelbaker?

A. I was.

Q. You were employed by him, Mrs. Applegate?

A. Yes, I was.

Q. In what capacity?

A. As hostess and housekeeper.

Q. How long had you been so employed by him?

A. Nine years December 17, 1943.

Q. Now, Mrs. Applegate, you are one of the persons named in the will and referred to as the "hereinabove named persons" you are named in the will previous to the provision of 7 D which applies to the establishment of the home?

A. I was.

10 Q. Did you ever have any conversation with Mr. Snelbaker relative to the opening of the home?

MR. AVIS: I object to that.

THE COURT: I don't see how you can introduce conversation with the testator under the circumstances of this case.

20 MR. STANGER: I cannot point out any ambiguity I was just wondering whether the testimony would not be relevant under the explaining of the circumstances, this lady having been the managing housekeeper, whatever she has just described, and hostess, and the fact that she is the one whom he gave the privilege of residing in the home, to show that it was his desire.

30 THE COURT: It seems to me the terms of the will are clear in that he wants the home created and operated and that he wants the people named in the will as beneficiaries to be occupants of the home, if they so desire. Now then beyond that I can't see any purpose at all in this testimony, if it were admissible, but it don't seem to me to be admissible because there is nothing ambiguous in the will.

MR. STANGER: All right. I will withdraw the witness.

Miss Verna M. Swing—Direct

DIRECT EXAMINATION.

BY MR. AVIS:

Q. Were you born in Salem County?

A. No. I was not.

Q. Where were you born?

10

A. In Atlantic County.

Q. That is all.

MISS VERNA M. SWING, Sworn.

DIRECT EXAMINATION.

BY MR. LODER:

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Q. Miss Swing, you are one of the defendants in this cause, are you?

A. Yes.

Q. Are you the Verna M. Swing to whom Mr. Snelbaker, in the third paragraph of the will bequeathed 2,000 shares of General Food Corporation?

A. I am, yes, sir.

Q. How long had you been in Mr. Snelbaker's employ?

30

A. Ten years the second day of April.

Q. In what capacity?

A. Private secretary.

Q. On the twenty sixth day of April, 1938, which is the date of this will, do you know how many shares of General Food Corporation stock Mr. Snelbaker owned?

A. 20,500.

Q. Do you know where he kept them?

40

A. In the Woodstown National Bank and Trust Company in his lock box.

Q. Do you know how many shares of General Food Corporation stock Mr. Snelbaker owned at the time of his death?

A. 20,500.

10 Q. During all that period of time from April 1938 up until the time of his death you were his private secretary?

A. That is right.

Q. And were familiar with his financial transactions?

A. Yes, sir.

Q. Do you know whether he either bought or sold any of the General Food Corporation stock during that period of time?

20 A. He hadn't bought any or sold any.

Q. Do you know where the stock was at the time of his death?

A. It was in the Swedesboro Trust Company box at that time.

Q. Do you know when it was moved from the Woodstown Bank to the Swedesboro Bank?

A. I don't know just the date but it was the time he gave up his box in the Woodstown National Bank and Trust Company and that was probably three or
30 four years ago.

Q. He became a director in the Swedesboro institution?

A. He had been for a number of years.

Q. Since Mr. Snelbaker's death have you continued in the employ of the executors?

A. Yes, sir.

Q. Are employed there now?

A. That is right.

40 (No cross-examination.)

WALTER C. MOORE, Recalled.

DIRECT EXAMINATION.

BY MR. LODER:

Q. Mr. Moore, you have already testified that you were a tax consultant and were the tax consultant accountant for Mr. Snelbaker in his lifetime?

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A. That is right.

Q. I show you a letter on the stationery of Moore and Company dated August 14, 1944 and ask you whether that was written by you or with your authority?

A. That is right.

Q. You wrote it, I take it you wrote it after you made the examination of the books?

20

A. Yes, after they had been examined.

Q. Can you tell me from the examination of the books and records of Mr. Snelbaker during the time you were his tax consultant how many shares of the General Food Corporation stock he owned as of May 31, 1937?

A. I couldn't answer that specifically without all of the reports as to whether there were any changes or not. Whatever I have written there I presume was taken, I am sure was taken from the records.

30

Q. You state it was don't you?

A. Yes, that is true.

Q. You knew whether that was correct at the time you put it down?

A. That is right.

Q. Using that to refresh your memory, can you state how many shares of stock was held in his name or owned on whatever date you state?

A. As of May 31, 1937, according to the books

40

Mr. Snelbaker owned 20,500 shares of General Food stock and the same number as of May 31, 1938.

CROSS-EXAMINATION.

BY MR. WADDINGTON:

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Q. Mr. Moore, before you leave, one question I forgot to ask you. Have you calculated the approximate amount of Federal Inheritance Tax on this estate?

A. Yes, sir, I have. Do you want me to get the figures?

Q. Yes, if you will.

A. Approximately \$204,672.56.

20

Q. Have you calculated the amount that will remain in the estate for the benefit of the home after the moneys are paid on the debts, the legacies are paid and the amounts set up in accordance with the will for the annuities and for the Lawnside Cemetery Association?

A. That would be approximately \$143,999.30, subject to, of course, an examination by the department.

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Q. The amount set up for the annuities was set up in accordance with the 4% figure required by the Federal Government?

A. That is true.

THE COURT: Does that \$143,999. comprehend the payment of executors' fees, counsel fees and all that kind of thing?

A. I believe that is included in the other item.

40

MR. WADDINGTON: Yes. This \$101,000. which was taken out for expenses covers the estimated counsel fees and executors fees.

Q. Mr. Moore would you give the court the breakdown of the items which you have figured to reach that \$143,999?

THE COURT: I suppose all I want is an approximation now anyhow. I am not after exact figures. I take for granted he has taken into consideration everything and the remainder for the home will be \$143,999? 10

A. That is true.

THE COURT: Now, any other testimony?

MR. STANGER: May I inquire of the court, saving time, I proposed with Mrs. Applegate to show her arrangement by which she engaged her services with Mr. Snelbaker, which we are confronted with now after his death that he had made at the time of her hiring, had made certain representations orally as to her home to be in this particular place after his death; would your Honor's ruling go far enough to preclude that testimony? 20

THE COURT: Yes.

TESTIMONY CLOSED. 30

CONCLUSIONS.

IN CHANCERY OF NEW JERSEY.

148/104.

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Between

WOODSTOWN NATIONAL BANK
AND TRUST COMPANY and
S. RUSLING LEAP, Exec-
utors and Trustees,

Complainants,

and

20

WILLIAM B. SNELBAKER, ET
ALS.,

Defendants.

On Bill, etc.
Conclusions.
(To be Reported.)

1. Testator directed his trustees to set aside from his residuary estate a fund sufficient to "pay from the income thereof a sum not to exceed Twenty-five Hundred (\$2,500.00) Dollars per year" for the purpose of assisting a Cemetery Association in "beautifying said cemetery by planting ornamental shrubbery and trees, and maintaining the fences, roads and other improvements * * * and keep the graves, markers and monuments in a good state of preservation." HELD, that said trust is valid.

2. Prior to testator's death he had erected a large dwelling house in Woodstown, New Jersey, capable, as he said, of accommodating twenty-five or more guests. He devised this dwelling, together with the

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rest, residue and remainder of his estate, to his trustees "for the purpose of establishing and maintaining a suitable Home for the care and support of worthy white women, of unquestionable character and moral reputation, whose age is not less than fifty years, and who were born in the County of Salem." HELD, that he created a valid charitable trust. 10

Messrs. Waddington & Tilton and Mr. George B. Marshall, solicitors for Complainants.

Mr. James B. Avis, solicitor for Defendants William B. Snelbaker, I. Dayton Snelbaker and A. Naomi Snelbaker.

Mr. J. Brodie McGeer (Mr. LeRoy W. Loder, of counsel) solicitor for Defendant Verna M. Swing. 20

Messrs. Stanger & Howell, solicitors for Defendant Sophia H. Applegate.

Mr. Burton D. Zehner, solicitor for Defendant Lawnside Cemetery Association.

SOOY, V. C. 30

The executors and trustees under the will of Ashbrook D. Snelbaker, late of Salem County, New Jersey, seek instructions as to their duties as such. The defendants are the beneficiaries named in the will, all of whom join in complainants' request. William B. Snelbaker, I. Dayton Snelbaker and A. Naomi Snelbaker, the brothers and a sister of decedent, attack the validity of two trusts attempted to be set up in the will, (a) Lawnside Cemetery trust and (b) Snelbaker Home trust. 40

The will as to these two trusts provides, briefly, as follows:

10 “All the rest, residue and remainder of my estate, real, personal or mixed, whatsoever and wheresoever situate * * * I give, devise and bequeath unto my executors and trustees hereinafter named, and their successors in office, in trust, nevertheless, for the following purposes.”

He then sets up six annuities of \$3000. a year and in paragraph 6C of the will he provides as follows:

20 “(C) I have founded and developed Lawnside Cemetery in the Borough of Woodstown, as a lasting memorial to myself, and have provided for the Perpetual Care Fund from the proceeds of the sale of lots by Lawnside Cemetery Association.

30 “If said Perpetual Care Fund is not of sufficient amount to care for and maintain the cemetery as hereinafter set forth, I order and direct my Executors and Trustees to set aside a sufficient amount of my principal, and invest the same as hereinafter set forth, and pay from the income thereof a sum not to exceed Twenty Five Hundred (\$2,500.) Dollars per year, which sum or sums added to the Perpetual Care Fund as above set forth will be sufficient for the purpose of beautifying said Cemetery by planting ornamental shrubbery and trees, and maintaining the fences, roads and other improvements, and keep the same in good condition, and keep the graves, markers and monuments in a good state of preservation.

40 “These developments and beautifications shall extend to the full acreage provided by me, and include unplotted as well as plotted land.

“When the said Cemetery shall become self

Conclusions

supporting, the principal sum herein specified to be set aside, shall become a part of my residuary estate.”

With reference to the Snelbaker Home, the provisions of paragraph 6D of the will are as follows:

“(D) I have erected a dwelling house on Main Street in the Borough of Woodstown of a suitable size and convenient to accommodate twenty-five or more guests, and I hereby order and direct that said dwelling house be used for the purpose of establishing and maintaining a suitable HOME for the care and support of worthy white women, of unquestionable character and moral reputation, whose age is not less than fifty years, and who were born in the County of Salem, New Jersey, the name of which HOME shall be ‘THE ASHBROOK D. SNELBAKER HOME,’ and if it be deemed advisable, that my Executors and Trustees incorporate the same under the statute of the State of New Jersey relating to eleemosynary institutions. 10 20

“I order and direct that any and all of the beneficiaries hereinabove named shall have the privilege of being guests in said Home, for and during the term of their natural lives. 30

“The Home shall not be a charitable institution in the ordinary sense of the word, but shall be as its name indicates a Home where the admitted guests shall have the same courtesy and attention as if they were guests in my own home, and under no circumstances to be treated as objects of charity.

“No applicant who requires medical or hospital attention at the time of the application as a guest of the Home shall be favorably con- 40

sidered, but should the guest, after having entered said Home, require medical or hospital attention, the same shall be provided by the Trustees thereof.

10 “In case there shall be more guests than can be accommodated in my said Home, and there shall be sufficient funds in hand, I order and direct the Trustees thereof to enlarge said Home to accommodate additional guests.

20 “The Board of Managers of said Home shall be chosen by my Executors and Trustees herein, and shall consist of a member from each of the following recognized religious denominations in the County of Salem—Methodist, Baptist, Presbyterian, Episcopalian and Lutheran. My Executors and Trustees shall also be members of the Board of Managers.”

The defendants Snelbaker say that both of these trusts are invalid, the cemetery trust because it creates a private trust and violates the rule against perpetuities, and that what testator really attempted was to “provide for the carrying on of his business as a memorial to himself.”

30 As to the Snelbaker Home trust, the invalidity is declared to be that testator has failed to express in his will “objects which would constitute a charitable trust” and has violated the perpetuity rule, and that the purpose of the Trust and the method of conducting it are vague and indefinite to the extent of invalidity, and that there is nothing in the will by which the Court may direct which portion of the estate should be used for the purpose of the trust, i.e., whether income or principal.

40 At the outset, in determining whether or not the provisions of the will creating these trusts are valid, certain fixed principles should be kept in mind; that

Conclusions

the courts start out with an attitude in favor of the attempt to create a charitable trust, rather than with a hostile attitude toward that attempt, and that were the rule otherwise, an attempt to create a charitable trust would often fail to survive; that the intention of the donor is of great importance in determining the character of the trust; and that it is immaterial whether the gift is called charitable in the will itself, the real question being the affect and result of the trust. The question is not what the testator desired to accomplish by the trust, but what in the opinion of the Court will be the result of the trust upon the community and society in general. The Court should and generally does direct its attention merely to the question whether the net result of the trust in operation will be to advance the religious, educational, eleemosynary, governmental, or other charitable interests of the community and thus to produce the social advantage required for the charitable trust. Charity is necessarily altruistic, and involves the idea of aid or benefit to others; but, given the latter, the motive impelling it is immaterial. If the intention be charity, the Court will execute it, however vaguely the donor may have indicated his purpose. Vagueness is to be found in almost every charitable trust. Courts of equity uphold gifts for a charitable purpose if there is a trustee with power to designate the particular persons to be benefited thereby, even though the will is vague as to the designated cestui que or, in other words, that a gift to a charitable use will not fail of effect because the donor has not pointed out the particular beneficiaries to whom his bounty is to go, provided he has endowed some person with express or implied power to select such beneficiaries. The power to dispense the fund carries with it the implication of power to select. While money or

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money's worth may go to certain individuals under a charitable trust, it does not go for the purpose of mere enrichment, but rather to produce a desirable social effect. The effect and result of the trust is that which is stressed in determining its validity. A court of equity, in construing a charitable trust, should lend its aid in attaining that end rather than let it fail because of doubt as to the means described by the testator.

A gift partly charitable and partly not must fall; the natural presumption is that a testator intends to dispose of his entire estate and does not intend to die intestate as to any part thereof, with the result that the law prefers a construction which will prevent partial intestacy, and this is particularly so when considering a residuary provision in a will.

The foregoing principles have been frequently affirmed by our courts and the authors of books on trusts, to the extent that citation of authorities therefor would seem to be unnecessary. See generally *Hilliard v. Parker*, 76 N. J. Eq. 447, 74 Atl. Rep. 447; *Johnson v. Bowen*, 85 N. J. Eq. 76, 95 Atl. Rep. 370; *Bruce v. Bruce*, 90 N. J. Eq. 573, 107 Atl. Rep. 434; *Noice v. Schnell*, 101 N. J. Eq. 252, 137 Atl. Rep. 582; *Sheen v. Sheen*, 126 N. J. Eq. 132, 8 A. 2d 136; *Brooks v. Golf*, 127 N. J. Eq. 115, 10 A. 2d 466 and 2 *Bogert on Trusts*.

The four classes of definite charities outlined in the early decisions as being included within the charitable trusts are by no means exclusive. The courts hold open the door to admit as charitable any gift which produces extensive public benefit, even though it cannot strictly be classed as eleemosynary, educational, religious or governmental. 2 *Bogert on Trusts*, Sec. 379, p. 1209.

LAWNSIDE CEMETERY TRUST.

In paragraph 7, subdivision C., testator calls attention to the fact that he has founded and developed Lawnside Cemetery "as a lasting memorial to myself, and have provided for a Perpetual Care Fund from the proceeds of the sale of lots by Lawnside Cemetery Association." He then says, "If said Perpetual Care Fund is not of sufficient amount to care for and maintain the cemetery as hereinafter set forth, I order and direct my Executors and Trustees to set aside a sufficient amount of my principal, and invest the same as hereinafter set forth, and pay from the income thereof a sum not to exceed Twenty Five Hundred (\$2,500.) Dollars per year, which sum or sums added to the Perpetual Care Fund as above set forth will be sufficient for the purpose of beautifying said Cemetery by planting ornamental shrubbery and trees, and maintaining the fences, roads and other improvements, and keep the same in good condition, and keep the graves, markets and monuments in a good state of preservation. * * * When the said Cemetery shall become self supporting, the principal sum herein specified to be set aside, shall become a part of my residuary estate."

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The Snelbaker defendants call attention to the fact that testator does not refer to the perpetual care fund trust as a charitable one, but his declaration is not essential to the validity of the trust. The question is, notwithstanding this omission, does the Court find it to be a charitable trust?

R. S. 8:2-30 provides that it shall be lawful for a person, by his last will and testament, to create a trust fund in perpetuity or for a lesser time where the income of the fund is to be used for the care or

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embellishment of any cemetery lot or grave thereof, etc.

10 It is argued that what testator sought to do was to provide for the carrying on of his cemetery business perpetually, i.e., that he had been in the business of developing the cemetery, selling lots, etc., and that he sought to perpetuate that business and created a private trust, in violation of the rule against perpetuities. In support of this it is argued that testator said he had developed the Lawnside Cemetery as "a lasting memorial to myself" and that in his will he directed that the stockholders of the cemetery employ Miss Swing, his secretary, as superintendent of the cemetery.

20 It has been repeatedly held that the motive of the settlor is immaterial, but that the effect and result of the trust should be conclusive, and that the mere fact that the settlor has, by the creation of the trust, attempted to perpetuate his name is not to be considered, and as said in 2 *Bogert on Trusts*, section 364, page 1110, "the settlor may have founded the trust solely to satisfy his family pride, for self-glorification, etc." but that the ultimate question still is whether the net result of the trust in operation will be charitable.

30 It is not true that testator directs the employment of Miss Swing by the stockholders of the Cemetery Association, but testator says "it is my suggestion" that she be employed.

It is next objected that the time for the contribution of the \$2500.00 a year is indefinite and that, therefore, the trust must fail.

40 The direction is that the income of the trust fund, not to exceed \$2500.00 a year, be turned over by the trustees to the perpetual care fund of the cemetery association until that fund created and to be added to by the cemetery association "will be suffi-

Conclusions

cient for the purpose set forth in the will," i.e., maintaining, etc., the cemetery. It is true that at the present time it cannot be ascertained when the perpetual care fund will be sufficient without the addition of the \$2500.00 a year, but the trustees will know or be advised of the condition of the perpetual care fund and when the time does arrive that that fund created by the cemetery association is sufficient for the purposes mentioned in testator's will, the trustees will, as directed by testator, return the corpus of the trust fund to the residuary estate. The testimony shows that the present amount of that perpetual care fund is \$5000.00 and that it may not be expended excepting by consent of the lot-holders. R. S. 8:2-36. 10

The holding is that the perpetual care fund trust is valid and it seems clear that it was the intention of testator that the \$2500.00 to be paid each year is to be added to the income from the perpetual care fund and the combined fund be used in the upkeep and maintenance of the cemetery; and not that \$2500.00 a year should be added to the perpetual care fund and the interest arising therefrom be expended each year. See *Stockton v. Newark*, 42 N. J. Eq. 531, 9 Atl. Rep. 203; *Bliss v. Linden Cemetery Assn.*, 81 N. J. Eq. 394, 87 Atl. Rep. 224. 20

Is the Snelbaker Home trust valid? 30

First, what was testator's intention as expressed in his will?

He calls attention to the fact that he had erected a dwelling house "of a suitable size and convenient to accommodate twenty-five or more guests." He then orders and directs "that said dwelling house be used for the purpose of establishing and maintaining a suitable HOME for the care and support of *worthy* white women, of unquestionable character and moral reputation, whose age is not less than 40

fifty years, and who were born in the County of Salem, New Jersey." In addition to these "worthy white women" who are to be admitted to the Home he provides "that any and all of the beneficiaries hereinabove named shall have the privilege of being guests in said Home, for and during the term of their natural lives." This would include all beneficiaries named in the preceding paragraphs of the will.

That testator considered this dwelling which he desired to become a memorial home as being a suitable property for that purpose and to be used for no other purpose is evidenced by his reserving this "Home" from the power of sale which he gave to his executors and trustees as to other real estate. In addition to this, he provided that his executors and trustees should have power to make alterations and improvements on any of his real estate and, if necessary, to make new erections, and also to purchase any necessary real estate, and further provided that in addition to their duties as executors and trustees "they shall personally devote their attention and the necessary time to successfully found, establish and supervise and carrying out of my desire in establishing and maintaining 'The Ashbrook D. Snelbaker Home.'"

But even though it be apparent from the foregoing that testator desired to establish such a Home, did he legally accomplish that purpose? As said before, the question is not what the testator desired to accomplish by the trust but what, in the opinion of the Court, will be the result of the trust upon the community and society in general? What would be the net result of such a trust as testator described? Would its operation advance the eleemosynary interest of the community, remembering that the word "eleemosynary" is synonymous with "charitable"

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and that charity involves the idea of benefit to others? It appears that the trust, if put into operation, would result in the establishment of a "Home" for the "care and support of worthy white women * * * of not less than fifty years and who were born in the County of Salem," who must be in health, i.e., not requiring medical or hospital attention on admission, but having entered, would be so entitled. Who are "worthy"? The word is elastic. Its meaning must be construed in accordance with the text in which the word is used. The situation which testator had in view was a Home for white women over fifty years of age, born in Salem County, who the trustees might deem worthy of residence there. As said in *Kronshage v. Varrell*, 97 N. W. 928, the word "worthy" may, perhaps more exactly, does—mean virtuous, or in good standing, but its restriction to such significance would be absurd when used in a will enjoining the trustees of the fund to select subjects worthy of assistance.

One definition of "worthy" as given by *Webster's New International Dictionary* is "having worth or excellence, possessing merit; valuable, deserving of honor, or the like." Another is of high station; of high social position; and yet another is "deserved, merited," and it seems evident that it was the latter meaning which testator ascribed to that word. Worthy of what? And the answer is, a home in which they may dwell and have their wants provided for, as well as medical care in case of illness, in other words, the beneficiary would be someone fitting the description given by the testator, deserving of this care and attention. It seems quite evident that one to be deserving of such a home and such provisions for his health and comfort must come within that class of women who, by reason of

their financial condition, homelessness, age, or some other misfortune, are unable to properly provide these things for themselves. True it is that one, to be worthy, might have some means to supply themselves some of the things offered at the home. They need not be destitute, but be deserving, and the trustees must weigh the condition of health, wealth and position in life to determine whether they are worthy. The result would be, if the trustees comply with testator's bequest, for the general social benefit of all women born in Salem County, over fifty years of age, etc., and this result would be charitable, and if the Court so seem it, the trust should be sustained. See *Kitchen vs. Pitney*, 94 N. J. Eq. 485, 119 Atl. Rep. 675, and *Fidelity Union Trust Co. v. Reeves*, 96 N. J. Eq. 490, 125 Atl. Rep. 582.

True it is that the testator provided that the beneficiaries named in the will should be admitted to the Home for the period of their natural lives. These beneficiaries may not presently be worthy in the sense above indicated, i.e., they are amply provided for either by annuities or gifts from testator's estate; but testator was dealing with a charitable institution of perpetual duration. For a time after his death his beneficiaries named in the will might enter the Home and enjoy its privileges, etc., along with the "worthy white women" mentioned in the will, but the essential and eventual exclusive use is for the "worthy white women," etc.

Those who are entitled to enter the Home as beneficiaries under the will are expressly confined by testator to "any and all beneficiaries hereinbefore named." This would include each beneficiary "named" in the will prior to paragraph 7D, in which testator provided for the Home establishment. These so named are: Verna M. Swing, Mary A.

Conclusions

Tuttle, Helen F. Snelbaker Zeigenfus, Ella S. Snelbaker Loveland, Wilson A. Snelbaker, A. Naomi Snelbaker, Elizabeth F. Snelbaker, William B. Snelbaker, I. Dayton Snelbaker, Sophia H. Applegate, Charles Tuttle and Arthur Loveland, all of whom were living at the time of testator's death.

It is quite evident that testator did not intend that the trustees of the Asbury M. E. Church or the corporate membership of Lawnside Cemetery be included, nor did he intend that "respective widows or wives" of testator's brothers, in item 7A be entitled to admission to the Home. He did not name them in the will as beneficiaries; he characterized them as "wife" and "widow". They were not "named." He designated them but he did not "name" them. 10

The inclusion of wives and widows of deceased children for whom annuities had been provided, as set forth in the will might defeat the charitable trust and be held to create a private trust void as against perpetuities, while if a private trust was created for the beneficiaries "named" they are all in being and both the private trust and the charitable trust would stand. It was, of course, not the intention of testator to die intestate as to the Home property under consideration, and to decree a failure of the trust would bring about that result. 20 30

It must be remembered that in determining the validity of charitable trusts, if two modes of construction are fairly open, one of which would turn a gift into an illegal trust, while by following the other it would be valid and operative, the latter must be preferred. If there are two meanings of a word, one of which will effectuate and the other will defeat the testator's object, the Court is bound to select that meaning of the word which will carry out the intention and object of the testator. 40

What part of the estate is to be used for the Home?

It is argued that testator has failed to designate what part of his estate shall be devoted to the Home, as well as to clearly set forth whether the trustees shall use income, principal or both.

10 A reading of the entire will discloses that testator provided that all of his debts should be paid, including Federal, State and "inheritance or succession" taxes; he gave to Miss Swing 2000 shares of General Foods stock; gave \$10,000. each to 3 nieces and 1 nephew; \$1000. to a friend and \$1000. to a church, and then provided:

20 "All the rest, residue and remainder of my estate, real, personal or mixed, whatsoever and where-soever situate, including all property over which I have any control or power of appointment, I give, devise and bequeath unto my executors and trustees hereinafter named, and their successors in office, in trust * * * (a) to set aside a sufficient sum of my principal estate, the income of which will be sufficient to pay" those annuities therein specifically set up: (b) to provide sufficient funds to erect markers for certain named persons; (c) to Lawnside Cemetery a fund of \$2500. per year until that Association shall become financially able to maintain and beautify the cemetery, etc.; (d) to establish the Snelbaker Home.

30 As to the annuities provided for in (a), testator provided that on the death of the last annuitant all of the annuity corpus should go to residue, and as to the corpus of the Lawnside Cemetery trust fund, he provided that when that Association should become financially able to carry on the work for which the trust fund was created, this corpus should go to residue.

40 From the foregoing (a) to (d) inclusive, we see

Conclusions

that testator devoted all the residue of his estate to the four purposes above mentioned, and as to the annuities and cemetery funds, he directed that after the corpus had served its purpose it should go to residue, so that it would seem that there may be no question that testator intended that his entire residuary estate, as dealt with in the residuary clause, should go to the Snelbaker Home at the end of the annuity period and when the cemetery should be possessed of sufficient funds to carry on. He therefore gave to his trustees this residue for the purpose of the Home, so that the income from the fund could be used for the purposes of the Home, with directions to the trustees that in case there should be more guests than the Home could comfortably provide for that they, in their discretion, if there "shall be sufficient funds in hand" should enlarge the Home to accommodate additional guests.

It is true that testator, in providing for the Home, directed that the dwelling house on Main Street be used for the purpose of establishing and maintaining the Home, and that he did not, in words, say that the Home should be maintained and operated through the use of his residuary estate, but that he so intended there can be no doubt from a reading of the entire will. He said that he desired the Home to be *established and maintained* for the care and support of worthy white women, and while he did not say that he desired the Home to have perpetual existence, it is evident that he so intended when he suggested the formation of a non-profit eleemosynary corporation. He further provided that the guests of the Home were to be treated "as if they were guests in my own home," thereby indicating his intention that the guests should not only be housed, but fed. He further provided for the medical and hospital care of his guests, and unques-

tionably the trustees are empowered to use the entire residuary estate for the accomplishment of this purpose, and to the same extent as if the will had directly authorized them so to do. In no other way could the ultimate intent of the testator be carried out with regard to the Home. Testator did not limit
10 his trustees in the manner in which his entire residuary estate should be used for the Home purposes. He knew, of course, that in the establishment of the Home in the first instance his trustees would probably have to resort to corpus for alterations, furnishings, equipment, etc. What he evidently intended was that his trustees exercise their best judgment so that the Home would serve its social purposes in perpetuity. This raises the question as to whether or not, should the trustees determine to enlarge the
20 Home, they may use for that purpose corpus as well as income. This question deals with something that is not presently before the trustees for decision and it is not necessary to be answered at this time. But it may be well to note, as said by *Bogert on Trusts*, section 559, page 1787, that advice will not be given nor will the Court discuss problems that may never arise or difficulties which are to confront the trustees at a remote date. However, it is evident that the trustees in the exercise of their discretion as to
30 enlargement of the Home, would be derelict in resorting to corpus and thus depleting income and thereby possibly preventing the perpetual existence of the Home, which testator established in perpetuity.

The purpose was to use the available home to accommodate as many as it could comfortably house and for that purpose to use all the residue of testator's estate to the extent it would suffice. If a fund accumulated in the hands of the trustees from surplus over operating and maintenance of the Home
40

Conclusions

to the extent to warrant additions, and a worthy lot of applicants for admission existed, then to add to the Home, and not otherwise.

The result is that the Home trust is upheld as valid.

The foregoing disposes of the controversial problems which the parties have presented for decision. 10
The remaining questions are discussed in a supplement hereto.

A decree may be presented on notice, at which time the question of counsel fees may be discussed.

Determined: December 1, 1944.

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SUPPLEMENTAL CONCLUSIONS.

IN CHANCERY OF NEW JERSEY.

148/104.

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Between

WOODSTOWN NATIONAL BANK
AND TRUST COMPANY and
S. RUSLING LEAP, Exec-
utors and Trustees,

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Complainants,

and

WILLIAM B. SNELBAKER, ET
ALS.,

Defendants.

On Bill, etc.
Supplemental
Conclusions.
(Not to be
Reported.)

30

Messrs. Waddington & Tilton and Mr. George B.
Marshall, solicitors for Complainants.

Mr. James B. Avis, solicitor for Defendants Wil-
liam B. Snelbaker, I. Dayton Snelbaker and A.
Naomi Snelbaker.

Mr. J. Brodie McGear (Mr. LeRoy W. Loder, of
counsel), solicitor for Defendant Verna M.
Swing.

Messrs. Stanger & Howell, solicitors for Defendant
Sophia H. Applegate.

40

Mr. Burton D. Zehner, solicitor for Defendant Lawn-
side Cemetery Association.

Supplemental Conclusions

SOOY, V. C.

Having disposed of the question as to the validity of the two trusts, we turn to questions asked by complainants which have not been answered.

The first two questions relate to the duties of the executors, as distinguished from the duties of the trustees, and the question is whether or not the executors have any duty in regard to the payment of the annuities mentioned in the will or with reference to the establishment of the Snelbaker Home; and the answer obviously is that the duties of the executors and trustees are separate and distinct; that the general duties of the executors are to collect the effects of the deceased, pay claims against the estate, pay estate taxes and distribute the residue to those entitled thereto. *First Camden Trust Co. v. Hiram Lodge*, 134 N. J. Eq. 303, 35 A. 2d 490, affirmed 135 N. J. Eq. 505. 10 20

It follows from the foregoing that the executors will turn over to the trustees the "rest, residue and remainder" of the estate and that the trustees will set up funds out of which to pay the annuities mentioned under paragraph 7A, and it is also quite apparent that the executors, as such, have no duties to perform relative to the establishment and management of the Snelbaker Home. 30

Although not embraced within the question under discussion, the Court agrees with complainants that under the circumstances of this case the annuitants should be paid their annuities for the year immediately following testator's death and that the principal set forth by the Chancellor is *Green v. Green*, 30 N. J. Eq. 451, affirmed 32 N. J. Eq. 768, should be complainants' guide. 40

Question C. Should the Snelbaker Home be closed during the settlement of the estate by the executors? 40

This is clearly a question for the trustees in the exercise of their judgment, based on the circumstances with which they will be confronted. The title to the residence property passed to the trustees on the death of testator and it will be observed that his will is silent as to the time when the Home shall be opened for the acceptance of guests. The Trustees should, of course, proceed expeditiously to carry out testator's instructions, but they must be in receipt of funds as a result of the settlement or partial settlement of the estate by the executors before they can function the Home. Whether the Home should be closed during the interval is a question resting solely in the judgment of the trustees. If they desire that Mrs. Applegate should continue to occupy the house as a caretaker, as it were, that is their privilege. I know of no absolute right in Mrs. Applegate to insist that as a beneficiary she is so entitled. Of course, as caretaker of the house, pending its actual operation as the Home, the trustees may use their discretion as to the term of occupancy by Mrs. Applegate, i.e., whether she is to have it rent free and whether in addition thereto she is to be compensated for her duties as caretaker.

30 Question D. has been answered.

Question E. The executors have no title to the lands in question, the fee having been devised to the trustees who, in turn, if a corporation is formed as suggested in the will, may convey the property to that corporation. It would seem clear that when testator directed in his will that "if it be deemed advisable, that my executors and trustees incorporate the same under the statute of the State of New Jersey relating to eleemosynary institutions," that

Supplemental Conclusions

he intended that if the trustees did incorporate, as suggested, that the Home have all of the advantages provided for by the statute aforesaid, and one of these advantages is tax exemption where the corporation takes title to the land. It would seem further that testator intended a conveyance by the trustees to the corporation to be formed, because he provided in his will for the enlargement of the Home under certain circumstances, and could not have intended that the title to the Home be other than in the corporation when and if these enlargements were made. The management of the Home will at all times be retained by a Board of Managers under a set-up as provided in the will, and the title will be in the corporation in perpetuity. Such a transfer of title to the corporation would not be a sale thereof, but a transfer of title without consideration and for the purpose merely of carrying out the provisions of testator's will.

The foregoing answers Question G, H and I.

Question J. With reference to this question, there is no doubt that the trustees have authority to make these payments either through themselves or by providing funds for the Board of Managers to pay them, and if title is taken in the name of the corporation the Board of Managers would appear to be the body charged with the payment.

As to sub-divisions 6 to 11, the questions relate to the management of the Home and the rules and regulations governing its management, and how it shall be conducted. Under the terms of the will the Board of Managers are vested with a wide discretion. Testator did not attempt to handicap this Board by fixed instructions. He left it to their discretion and as long as they operate so that the purpose of the Home shall be to perpetuate the charity

Supplemental Conclusions

intended by testator thereunder they are within their rights. This Court will not, in advance or at this time, direct the mode of management or operation of the Home.

10 Question K. This question has been answered by what has been heretofore said, to the effect that the Board of Managers are to pay these items of expense through monies furnished by the Trustees.

20 Question L. Testator in his will does not in any way indicate that the guests in his Home shall be other than guests. He directs that they be treated as if they were "in my own home." To require guests to first deed or convey their property to the Home corporation would appear to be contrary to the intention of testator.

Question M. The same answer as that for Question L.

Question N. The word "beneficiaries" as used in the 7th paragraph of section D is answered under another question.

30 Question O. This answer is yes.

Question P. This question will not be answered other than as hereinbefore noted because it does not deal with a matter presently to be considered by the trustees, but relates to a remote contingency.

Question Q. This is entirely a matter for the judgment of the trustees and either course suggested by the question may be pursued.

40 Question R. "Survivors of them" in paragraph 8F relates only to the survivors of the brothers and

sister mentioned in that paragraph and does not include lineal descendants.

Question S. The answer to this question is found in the will itself. It says simply that the trustees shall be largely governed by the judgment and advice of a majority of them in any such transactions. The ultimate decision clearly rests with the trustees. 10

Questions T, U and V. The provision for Miss Swing is not a legacy but a direction to hire and should not be dispensed with as long as Miss Swing is willing and able to perform the duties mentioned in this paragraph of the will. *Seeley v. Hincks*, 65 Conn. 1, 31 Atl. 533; *Hutton v. Hutton*, 41 N. J. Eq. 267, 3 Atl. 882. Under this ruling there should be no inheritance assessed. 20

Question W. The Series E Bonds referred to did not pass under testator's will and therefore if a tax is levied against them it must be paid by Miss Swing. *Franklin Washington Trust Co. v. Beltram*, 133 N. J. Eq. 11, 29 A. 2d 854. However, in the first instance the executors are liable therefor, with recovery over from Miss Swing.

Complainants contend that under *Blair v. Scribner*, 67 N. J. Eq. 583, 60 Atl. 211, and *In re Low*, 103 N. J. Eq. 435, 143 Atl. 222, the legacy of 2000 shares of General Foods stock provided for in the 3rd paragraph of the will constitute a general legacy, and counsel for Miss Swing so considers it, and the Court concurs. 30

With respect to what testator meant when he provided that should any of his brothers be survived by their wife or wives the annuity of the deceased brother should be enjoyed by his widow, the will speaks as of the date of death, at which time all 40

Notice to Fix Final Decree

brothers were living, and it is evident that the wives of these living brothers will take in the event of death of their spouse.

The decree to be advised will be in accord with the opinion to which this is a supplement, and also with this supplemental opinion.

10

Determined: December 1, 1944.

NOTICE TO FIX FINAL DECREE.

(Filed Dec. 19, 1944.)

IN CHANCERY OF NEW JERSEY.

20

148/104.

Between

WOODSTOWN NATIONAL BANK
AND TRUST COMPANY and
S. RUSLING LEAP, Exec-
utors and Trustees,
Complainants,

30

and

WILLIAM B. SNELBAKER, ET
ALS.,

Defendants.

} On Bill, etc.
} Notice to Fix
} Final Decree.

To: JAMES B. AVIS, Esquire, Solicitor of the
defendants, William B. Snelbaker, I. Dayton
Snelbaker and A. Naomi Snelbaker; J. Brodie
McGear, Esquire, Solicitor for the defendant,

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Notice to Fix Final Decree

Verna M. Swing; Stanger & Howell, Esquires, solicitors of the defendant, Sophie H. Applegate; and Burton D. Zehner, solicitor of the defendant, Lawnside Cemetery Association:

You are hereby notified that on the 26th day of December, 1944, at ten o'clock in the forenoon, I will apply to the Honorable W. Frank Sooy, Vice Chancellor, at the Chancery Chambers, Atlantic City, to fix the final decree in the above entitled matter. 10

Respectfully yours,
WADDINGTON & TILTON,
GEORGE B. MARSHALL,
Solicitors of the Complainants.

Endorsed:

20

“FILED DEC. 19, 1944.

W. F. SOOY,
V. C.”

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40

FINAL DECREE.

IN CHANCERY OF NEW JERSEY.

148/104.

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Between

WOODSTOWN NATIONAL BANK
AND TRUST COMPANY and
S. RUSLING LEAP, Exec-
utors and Trustees,
Complainants,

and

20 WILLIAM B. SNELBAKER, ET
ALS.,

Defendants.

On Bill, etc.
Final Decree.

30 This cause coming on to be heard in the presence
of E. C. Waddington, Esquire, of Waddington &
Tilton, and George B. Marshall, Esquire, solicitors
of the complainants; James B. Avis, Esquire, soli-
citor of the defendants, William B. Snelbaker, I.
Dayton Snelbaker and A. Naomi Snelbaker; J.
Brodie McGear and Leroy W. Loder, Esquire, soli-
citors for the defendant, Verna M. Swing; Stanger
& Howell, Esquires, solicitors of the defendant,
Sophie H. Appelgate; and Burton D. Zehner,
Esquire, solicitor of the defendant, Lawnside Ceme-
tery Association; and the court having examined the
40 pleadings and stipulation and having taken proof
orally in open court and heard the arguments of
counsel thereon; and it appearing therefrom that

Final Decree

the bill of complaint in this case was filed by the Woodstown National Bank and Trust Company and S. Rusling Leap, executors and trustees of the estate of Ashbrook D. Snelbaker, deceased, for the purpose of receiving instructions as to their duties and for an interpretation of certain portions of the will, and that the defendants, William B. Snelbaker, I. Dayton Snelbaker and A. Naomi Snelbaker have asked certain questions and objected to the Lawnside Cemetery Association trust and to The Ashbrook D. Snelbaker Home Trust; and the defendant, Verna M. Swing, having claimed the dividends upon the legacy of 2000 shares of General Foods from the date of death of the decedent;

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And it further appearing that the complainants made the following inquiries relative to their duties and disposition of the said estate:

20

(a) Do the executors, under the will of Ashbrook D. Snelbaker, deceased, perform any duties in regard to the payment of the annuities mentioned under Paragraph 7(a) of the will?

(b) Do the executors, as such, under the will of Ashbrook D. Snelbaker, deceased, perform any duties relative to the establishment of the Ashbrook D. Snelbaker Home; such as, incorporating, selecting a Board of Managers and performing any other duties in the establishment of the home?

30

(c) If the executors have no duty to perform relative to the trust, should the home of Ashbrook D. Snelbaker be closed during the settlement of the estate by the executors.

(d) Is a valid charitable trust set up under section 7(d) of the will of Ashbrook D. Snelbaker, deceased?

40

(e) Is the property designated as his home to be deeded by the executors or trustees to a corporation to be organized as specified in the will?

10 (f) Do the provisions of item 7(d) direct the executors or trustees to use any of the testator's estate aside from his dwelling house on Main Street in the Borough of Woodstown for the purpose of establishing and maintaining the Ashbrook D. Snelbaker Home or for any other purpose?

(g) If so, what amount should be used for the purpose?

20 (h) Shall the corpus of or only the income from such amount be used?

(i) In the expenditure of such funds as the court may direct to be so used, do the executors or trustees have the duty or power to determine what expenditures are either necessary or proper for the purpose of establishing and maintaining the Ashbrook D. Snelbaker Home, or such other purpose as the court may determine such funds are to be used for?

30 (j) If the executors or trustees do not have the duty or power to determine what expenditures are either necessary or proper and the court determines that such funds are to be used for the purpose of establishing and maintaining the Ashbrook D. Snelbaker Home, may such funds be expended by the executors and trustees for any or all of the following specific purposes:

40 (1) To pay taxes on the above-mentioned dwelling?

- (2) To pay for fire, storm and liability insurance?
- (3) To pay for keeping the same in repair?
- (4) To pay water, gas and electric bills?
- (5) To pay for keeping the grounds in a clean and presentable condition? 10
- (6) To pay for keeping the building in a clean and presentable condition?
- (7) To provide and serve guests with regular meals?
- (8) To provide guests with laundry service? 20
- (9) To provide guests with nursing service if needed?
- (10) To provide clothing for guests?
- (11) To provide spending money for the guests, and money for the guests to visit relatives?
- (k) Is the income from the trust fund created to be paid to the Board of Managers of the Home, or are the various bills and items of expenses to be paid by the executors and/or trustees? 30
- (l) If a home is duly incorporated, is it proper to put in the certificate of incorporation that people who come to the home must first deed or convey or deliver their property to the Home Corporation?
- (m) If such a provision is put in the certificate of incorporation, does such a provision apply to the 40

beneficiaries designated under paragraph 7(d) of the will?

10 (n) Does the word "beneficiaries" as used in the seventh paragraph, section D of the will include all persons mentioned in the will except the executors and trustees?

(o) Does the Board of Managers have the power to select who are to be the guests at the Home?

(p) May the expenditures to enlarge the Home to accommodate additional guests be made out of corpus, or must they be made from income?

20 (q) Do the provisions of item 7(b) require that the executors and trustees presently set up, out of the corpus, a fund sufficient to pay for the markers therein mentioned, or may they be paid for out of the income from the residuary estate as and when such payments become necessary?

(r) Do the words "survivors of them" in paragraph 8(f) of the will include only the surviving brothers and sisters or do they include the lineal descendants?

30 (s) To what extent is the decision of the brothers and sisters, or the survivors of them, to bind the decision of the executors and trustees in the disposition of any securities or real estate desired to be disposed of by the executors and/or trustees and to what extent are they to be governed in the purchase of securities or real estate in the administration of the estate by the advice of the brothers and sisters.

40

(t) Is the money directed to be paid under the first paragraph of the codicil of the will a legacy or is it simply a direction to hire?

(u) If it is a direction to hire, can it be dispensed with at the discretion of the executors and/or trustees?

10

(v) If the provision in the first paragraph of the codicil is a legacy, is the inheritance tax thereon payable from the estate under the second paragraph of the will?

(w) The deceased left 72 bonds of series "E" with a maturing value of \$50.00 each, which were to the order of Ashbrook Dickinson Snelbaker of 1 Dickinson Street, Box 566, Woodstown, New Jersey, payable on death to Miss Verna May Swing, beneficiary. Does the inheritance tax to be paid upon these bonds come from the estate of Ashbrook D. Snelbaker under Paragraph 2 of the will?

20

And it further appearing that Ashbrook D. Snelbaker left surviving him as his heirs, William B. Snelbaker, I. Dayton Snelbaker and A. Naomi Snelbaker, his brothers and sister, and Helen F. Snelbaker Zeigenfus, a daughter of a deceased brother;

30

And the court in answer to the inquiries presented being satisfied that the executors have no duty to perform as regards the payment of the annuitants or any duty to perform as regards the establishment of The Ashbrook D. Snelbaker Home but that the same is entirely the duty of the trustees and that it is a matter entirely in the discretion of the trustees as to when they open the Home and that it would be their duty to do so as soon as funds are available for that purpose and that the trust created

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for The Ashbrook D. Snelbaker Home is a good and valid, charitable trust and that the will of the decedent contemplates that the Home left by him should be deeded to the incorporated Home and that the will requires the residuary estate, subject to annuities and the cemetery trust, to be used for the benefit of the said Home and that the income from the said residuary estate, subject to the above, should be used to maintain the Home and carry out the desires of the decedent in operating the said Home and that the trustees have the power to expend income from the said fund either directly for the expenditures of the Home or through the Board of Managers, provided for the said Home and when the Home is transferred to the corporation created, then the payments should be made to the Board of Managers; that it is not proper to put into the certificate of incorporation, or the rules and regulations that the people who come to the Home must first deed or convey all of their property to the Home, and such provision does not apply to the beneficiaries under the will; and that the word "beneficiaries" as used in paragraph 7(d) of the will means all of those persons named in the will prior to said paragraph and that the board of managers of the Home have the power of selection as to who is to occupy the Home; and that the court will not answer at this time as to whether or not principal or income should be used for enlarging the Home as that is a matter which may or may not occur; and that the matter of the setting up of a fund for the markers is a matter entirely in the discretion of the trustees to be disbursed from income as and when received, or set up out of principal; and that the words "survivor of them" as used in Paragraph 8(f) mean surviving brothers and sisters and do not include lineal descendants;

Final Decree

and that the ultimate decision under paragraph 8(f) rests with the trustees, but that they can only be largely governed as specified in the will as to their transactions in receiving and disposing of real estate and securities; that the first paragraph of the codicil of the will is not a legacy and is a direction to hire and can not be dispensed with as long as Verna M. Swing is willing to act in accordance with the provisions of the will; and that the tax on the 72 bonds of series E given to Verna M. Swing is payable by Verna M. Swing and is not to be paid by the estate under the second paragraph of the will; and that the legacy of 2000 shares of General Foods under the third paragraph of the will is a general legacy and the income is not payable to Miss Verna M. Swing from the date of death; and that the will dates from the date of death of the testator; and that the wives of the surviving brothers are entitled to the annuity in case the husband predeceases the wife; that the Lawnside Cemetery Association trust is a good trust; and that the \$2500.00 to be paid is not to be added to the Perpetual Care Fund, but is to be used with the income from the Perpetual Care Fund for the maintenance and upkeep of the cemetery and is to be distributed at the discretion of the Trustees to the Lawnside Cemetery Association in accordance with the terms of the will;

It is on this 26th day of December, 1944 ORDERED, ADJUDGED AND DECREED that the Woodstown National Bank and Trust Company and S. Rusling Leap, executors under the will of Ashbrook D. Snelbaker, deceased have no duty to perform relative to the paying of annuities provided for in the will or of establishing the Ashbrook D. Snelbaker Home; that the establishment of the Ashbrook D. Snelbaker Home is a matter in the discre-

tion of the Woodstown National Bank and Trust Company and S. Rusling Leap, trustees under the will of Ashbrook D. Snelbaker, deceased, and they may and should establish the same when in possession of sufficient funds to do so; that the Ashbrook D. Snelbaker Home trust is a valid, charitable trust and that the Home should be deeded to a corporation organized by the trustees and all of the residue of the estate as it becomes available shall constitute a principal sum for the operation of the said Home and all of the income from the said principal sum shall be used in the operation and maintenance of the said Home; and that the management of the said Home and the selection of the persons to enter the said Home and the expenditures of the money after the incorporation of the said Home shall be entirely through the Board of Managers as designated by the said will; and that it is not proper to include in the rules and regulations of the said Home or in the certificate of incorporation that the guests at the home should deed and deliver their property to the Home, nor is it proper that the beneficiaries designated under the will should be so treated, but that they should be treated as guests in the Home; that the following beneficiaries are entitled to the use of the Home if they so desire; Verna M. Swing, Mary A. Tuttle, Helen F. Snelbaker Zeigenfus, Ella S. Snelbaker Loveland, Wilson A. Snelbaker, A. Naomi Snelbaker, Elizabeth F. Snelbaker, William B. Snelbaker, I. Dayton Snelbaker, Sophia H. Appelgate, Charles Tuttle and Arthur Loveland; that the court will not now answer the question as to whether or not the Home can be enlarged from income and that this is a matter to be determined in the future; that the setting up of a fund for markers or paying the same out of the income as the occasion may arise is a matter en-

Final Decree

tirely in the discretion of the trustees and they may proceed as they deem advisable; that the words "survivors of them" as used in paragraph 8(f) of the will includes only surviving brothers and sisters and does not include lineal descendants; that the ultimate decision with respect to the disposition of securities and real estate rests entirely with the executors and trustees but they should seek the advice of the brothers and sisters as specified in the will; that the provision for Verna M. Swing in the first paragraph of the codicil of the will is a direction to hire and may not be dispensed with by the executors and trustees as long as Verna M. Swing is willing and able to perform the duties mentioned in this paragraph of the codicil; that the 72 bonds of Series E in the name of Ashbrook D. Snelbaker, payable on death to Miss Verna May Swing, do not pass under the will and any inheritance tax levied thereon should be paid by Verna M. Swing and not by the executors; that the legacy of 2000 shares of General Foods left in the third paragraph of the will to Verna M. Swing is a general legacy and the income therefrom is payable to Verna M. Swing after the time of the distribution, or at least from the date of one year after the death of the decedent; that the will dates from the death of testator and that the wives of the brothers, in case of the death of the brother prior to the death of his wife, are entitled to the annuities as long as they live; that the trust under the will for the benefit of the Lawnside Cemetery Association is a good and valid trust and that the \$2500.00 payable annually thereunder is to be paid by the trustees to the Lawnside Cemetery Association in such amount as is required to keep the cemetery in the condition desired by the testator under the terms of his will; and that the said sum of \$2500.00 is not to be added to the Perpetual Care

Fund, but is to be used annually by the Lawnside Cemetery Association for the purposes specified in the said will.

10 It is further Ordered, Adjudged and Decreed that there be allowed to the Woodstown National Bank and Trust Company and S. Rusling Leap, executors and trustees under the will of Ashbrook D. Snelbaker, deceased, a counsel fee of \$; that there be allowed to the defendants, William B. Snelbaker, I. Dayton Snelbaker, and A. Naomi Snelbaker, a counsel fee of \$1000.00; that there be allowed to the defendant, Sophia H. Appelgate, a counsel fee of \$500.00; that there be allowed to the defendant, Verna M. Swing, a counsel fee of \$500.; that there be allowed to the defendant, Lawnside Cemetery Association, a counsel fee of \$500.00, together with
20 the costs of suit to be paid by the complainants, Woodstown National Bank and Trust Company and S. Rusling Leap, executors under the last will and testament of Ashbrook D. Snelbaker, deceased, out of the funds in their hands.

Respectfully advised,

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Substitution of Attorney

SUBSTITUTION OF ATTORNEY.

IN CHANCERY OF NEW JERSEY.

148/104.

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Between

WOODSTOWN NATIONAL BANK
AND TRUST COMPANY and
S. RUSLING LEAP, Exec-
utors and Trustees,
Complainants,
and

WILLIAM B. SNElBAKER, ET
ALS.,

Defendants.

On Bill, etc.
Substitution of
Attorney.

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It is hereby stipulated and agreed that Thomas
G. Hilliard, be, and he is hereby substituted as coun-
sel for the defendants, William B. Snelbaker, I. Day-
ton Snelbaker and Anna Naomi Snelbaker, in the
above entitled cause.

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JAMES B. AVIS,

Solicitor for and of Counsel with
Defendants, William B. Snel-
baker, I. Dayton Snelbaker and
Anna Naomi Snelbaker.

Dated: February 22, 1945.

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NOTICE OF APPEAL.

(Filed March 12, 1945.)

10 IN CHANCERY OF NEW JERSEY.
148/104.

| | | |
|----|--------------------------|--------------------------------------|
| | Between | |
| | WOODSTOWN NATIONAL BANK | } On Bill, etc. Notice of Appeal. |
| | AND TRUST COMPANY and | |
| | S. RUSLING LEAP, Exec- | |
| | utors and Trustees, | |
| 20 | Complainants, | |
| | and | |
| | WILLIAM B. SNELBAKER, ET | } Defendants. |
| | ALS., | |

30 The defendants, William B. Snelbaker, I. Dayton
Snelbaker, Anna Naomi Snelbaker, and Helen F.
Snelbaker Zeigenfus, hereby appeal from so much
of the final decree as declares that the Ashbrook D.
Snelbaker Home trust is a valid charitable trust,
the portion of said decree from which this appeal
is taken is set up in said decree in following words,
viz: that the establishment of the Ashbrook D.
Snelbaker Home is a matter in the discretion of
the Woodstown National Bank and Trust Company
and S. Rusling Leap, trustees under the will of Ash-
brook D. Snelbaker, deceased, and they may and
40 should establish the same when in possession of

Notice of Appeal

sufficient funds to do so; that the Ashbrook D. Snelbaker Home trust is a valid, charitable trust and that the Home should be deeded to a corporation organized by the trustees and all of the residue of the Estate as it becomes available shall constitute a principal sum for the operation of the said Home and all of the income from the said principal sum shall be used in the operation and maintenance of the said Home; and that the management of the said Home and the selection of the persons to enter the said Home and the expenditures of the money after the incorporation of the said Home shall be entirely through the Board of Managers as designated by the said will; and that it is not proper to include in the rules and regulations of the said Home or in the certificate of incorporation that the guests at the Home should deed and deliver their property to the Home, nor is it proper that the beneficiaries designated under the will should be so treated, but that they should be treated as guests in the Home; that the following beneficiaries are entitled to the use of the Home if they so desire; Verna M. Swing, Mary A. Tuttle, Helen F. Snelbaker Zeigenfus, Ella B. Snelbaker Loveland, Wilson A. Snelbaker, A. Naomi Snelbaker, Elizabeth F. Snelbaker, William B. Snelbaker, I. Dayton Snelbaker, Sophia H. Appelgate, Charles Tuttle and Arthur Loveland; that the court will not now answer the question as to whether or not the Home can be enlarged from income and that this is a matter to be determined in the future; and from so much of said final decree as declares that the trust under the will for the benefit of the Lawnside Cemetery Association is a good and valid trust and that the \$2500.00 payable annually thereunder is to be paid by the trustees to the Lawnside Cemetery Association in such amount as is required to

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Notice of Appeal

10 keep the cemetery in the condition desired by the testator under the terms of his will; and that the said sum of \$2500.00 is not to be added to the Perpetual Care Fund, but is to be used annually by the Lawnside Cemetery Association for the purposes specified in the said will, made by the Chancellor in the above entitled cause on the advice of Vice Chancellor W. Frank Sooy on the 26th day of December, 1944, to the Court of Errors and Appeals in the last resort in all causes.

Dated February 23, 1945.

20 T. G. HILLIARD,
Solicitor for and of Counsel with
said Defendants, William B.
Snelbaker, I. Dayton Snelbaker,
Anna Naomi Snelbaker and
Helen F. Snelbaker Zeigenfus.

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

30 T. G. HILLIARD,
Solicitor for and of Counsel with
said Defendants, William B.
Snelbaker, I. Dayton Snelbaker,
Anna Naomi Snelbaker, and
Helen F. Snelbaker Zeigenfus.

Service of a copy of the within Notice of Appeal is hereby acknowledged this 28th day of February, 1945.

40 WADDINGTON & TILTON,
GEORGE B. MARSHALL,
Solicitors for and of Counsel with
Complainants.

Notice of Appeal

Service of a copy of the within Notice of Appeal is hereby acknowledged this 24th day of February, 1945.

J. BRODIE McGEAR,
Solicitor for and of Counsel with
Defendant, Verna M. Swing.
STANGER & HOWELL, 10
Solicitors for and of Counsel with
Defendant, Sophia H. Appel-
gate.
BURTON D. ZEHNER,
Solicitor for Defendant, Lawn-
side Cemetery Association.

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AFFIDAVIT OF SERVICE.

IN CHANCERY OF NEW JERSEY.

148/104.

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| | Between | } | On Bill, etc. Affidavit of Service. |
| | WOODSTOWN NATIONAL BANK | | |
| | AND TRUST COMPANY and | | |
| | S. RUSLING LEAP, Exec- | | |
| | utors and Trustees, | | |
| | Complainants, | | |
| | and | | |
| 20 | WILLIAM B. SNELBAKER, ET | | |
| | ALS., | | |
| | Defendants. | | |

State of New Jersey }
County of Salem } ss.

30 Joseph Narrow, of full age, being duly sworn according to law, upon his oath deposes and says that on Friday, March 9, 1945, he did serve a copy of the Notice of Appeal in this cause on George B. Marshall, Esq., by leaving the same at his office during the usual business hours of the day, namely, 1:05 p.m.

JOSEPH NARROW.

Sworn to and subscribed before me this 9th day of March, 1945.

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(Seal) A. P. RICHMAN,
Notary Public of N. J.
My Commission Expires Feb. 11, 1946.

PETITION OF APPEAL.

(Filed March 22, 1945.)

NEW JERSEY COURT OF ERRORS AND APPEALS. 10

Between
WOODSTOWN NATIONAL BANK
AND TRUST COMPANY and
S. RUSLING LEAP, Exec-
utors and Trustees,
Complainants-Respondents,
and
WILLIAM B. SNELBAKER, ET
ALS.,
Defendants-Appellants. } On Appeal from
Chancery.
Petition of 20
Appeal.

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

The petition of William B. Snelbaker, I. Dayton Snelbaker, Anna Naomi Snelbaker and Helen F. Snelbaker Zeigenfus, defendants in the above entitled cause in Chancery, and appellants in the above entitled appeal from the final decree in said cause, respectfully show that:

Your petitioners find themselves aggrieved by the final decree made and entered in the Court of Chancery by the Honorable Luther A. Campbell, Chan-

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cellor of the State of New Jersey, on the advice of the Honorable W. Frank Sooy, one of the Vice Chancellors, on December 26, 1944, in a cause wherein Woodstown National Bank & Trust Company and S. Rusling Leap, Executors and Trustees, were complainants and your petitioners and Elizabeth F. Snelbaker, Sophia H. Applegate, Sarah Snelbaker, Mary A. Tuttle, Charles Tuttle, Ella S. Snelbaker Loveland, Arthur Loveland, Wilson A. Snelbaker, Ruth L. Snelbaker, Lawnside Cemetery Association and Verna M. Swing were defendants, in these respects, to wit: that the said decree orders, adjudges and decrees "that the Ashbrook D. Snelbaker Home trust is a valid, charitable trust and that the Home should be deeded to a corporation organized by the trustees and all of the residue of the estate as it becomes available shall constitute a principal sum for the operation of the said Home and all of the income from the said principal sum shall be used in the operation and maintenance of the said Home" and "that the trust under the will for the benefit of the Lawnside Cemetery Association is a good and valid trust and that the \$2500.00 payable annually thereunder is to be paid by the trustees to the Lawnside Cemetery Association in such amount as is required to keep the cemetery in the condition desired by the testator under the terms of his will; and that the sum of \$2500.00 is not to be added to the Perpetual Care Fund, but is to be used annually by the Lawnside Cemetery Association for the purposes specified in the said will."

2. Your petitioners appeal from so much of the said final decree of the Chancellor which decrees as aforesaid, upon the grounds that the same is erroneous in that:

(a) The Chancellor erred in finding that the Ashbrook D. Snelbaker Home trust is a valid, charitable trust.

(b) The Chancellor erred in finding that the trust under the will for the benefit of the Lawnside Cemetery Association is a good and valid trust. 10

3. The Chancellor should have found that the Ashbrook D. Snelbaker Home trust is not for a charitable use and that it violates the Rule against Perpetuities and is void.

4. The Chancellor should have found that the provisions of the will providing for the setting up of the Ashbrook D. Snelbaker Home trust are so vague, indefinite and uncertain that said trust must fail for vagueness, indefiniteness and uncertainty. 20

5. The Chancellor should have found that the trust for the benefit of the Lawnside Cemetery Association violates the Rule against Perpetuities and is void.

6. The Chancellor should have found that the trust for the benefit of the Lawnside Cemetery Association is an attempt by the testator to carry on and conduct his cemetery business after death and perpetually and therefore against public policy and void. 30

7. The Chancellor should have found that the provisions of the will setting up the trust for the benefit of the Lawnside Cemetery Association are so vague, indefinite and uncertain that said trust must fail for vagueness, indefiniteness and uncertainty. 40

Petition of Appeal

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

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T. G. HILLIARD,

Solicitor for and of Counsel with
Defendants-Appellants.

Service of a copy of the within Petition of Appeal is hereby acknowledged this 12th day of March, 1945.

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WADDINGTON & TILTON,
GEORGE B. MARSHALL,Solicitors for and of Counsel with
Complainants-Respondents.

Service of a copy of the within Petition of Appeal is hereby acknowledged this 16 day of March, 1945.

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J. BRODIE McGEAR,

Solicitor for and of Counsel with
Defendant-Respondent, Verna
M. Swing.

STANGER AND HOWELL,

Solicitors for and of Counsel with
Defendant-Respondent, Sophia
H. Applegate.

BURTON D. ZEHNER,

Solicitor for Defendant-Respon-
dent, Lawnside Cemetery Asso-
ciation.

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SUBSTITUTION OF ATTORNEY.

(Filed April 4, 1945.)

NEW JERSEY COURT OF ERRORS AND APPEALS. 10

Between
WOODSTOWN NATIONAL BANK
AND TRUST COMPANY and
S. RUSLING LEAP, Exec-
utors and Trustees,
Complainants-Respondents,
and
WILLIAM B. SNELBAKER, ET
ALS.,
Defendants-Appellants. } On Appeal from
Chancery.
Substitution of 20
Attorney.

It is hereby stipulated and agreed that John M. Summerill, Jr., be and he is hereby substituted as solicitor for the defendant Lawnside Cemetery Association, in the above entitled cause. 30

Dated: March 29, 1945.

We hereby consent to the above stipulation.
BURTON D. ZEHNER,
JOHN M. SUMMERILL, JR.

NOTICE OF ARGUMENT.

(Filed April 6, 1945.)

10 NEW JERSEY COURT OF ERRORS AND
APPEALS.

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| | Between | |
| | WOODSTOWN NATIONAL BANK AND TRUST COMPANY and S. RUSLING LEAP, Exec- utors and Trustees, | } |
| 20 | Complainants-Respondents, and | |
| | WILLIAM B. SNELBAKER, ET ALS., | |
| | Defendants-Appellants. | |
| | | On Appeal from Chancery. Notice of Hearing. |

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30 To Waddington and Tilton, Esqs., and George B.
Marshall, Esq., solicitors for complainants-re-
spondents; J. Brodie McGear, Esq., solicitor for
defendant-respondent, Verna M. Swing; Stan-
ger and Howell, Esqs., solicitors for defendant-
respondent, Sophia H. Appelgate; John M.
Summerill, Esq., solicitor for defendant-respon-
dent, Lawnside Cemetery Association:

40 TAKE NOTICE that the argument of the appeal
of the defendants-appellants in the above entitled
cause will be brought on at the next term of the
Court of Errors and Appeals to be held at the State

Notice of Argument

House, at Trenton, on May 15, 1945, at the hour of 11 o'clock in the forenoon or as soon thereafter as counsel can be heard.

Dated: March 20, 1945.

T. G. HILLIARD, 10
Solicitor for and of Counsel with
Defendants-Appellants.

Service of a copy of the within Notice of Hearing is hereby acknowledged this 21st day of March, 1945.

WADDINGTON & TILTON,
GEORGE B. MARSHALL,
Solicitors for and of Counsel with
Complainants-Respondents. 20

Service of a copy of the within Notice of Hearing is hereby acknowledged this 31st day of March, 1945.

J. BRODIE McGEAR,
Solicitor for and of Counsel with
Defendant-Respondent, Verna
M. Swing.
STANGER AND HOWELL,
Solicitors for and of Counsel with
Defendant-Respondent, Sophia 30
H. Appelgate.

JOHN M. SUMMERILL, JR.,
Solicitor for and of Counsel with
Defendant-Respondent, Lawn-
side Cemetery Association.

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**NEW JERSEY COURT OF ERRORS
AND APPEALS.**

Between
WOODSTOWN NATIONAL BANK & TRUST COMPANY,
and S. RUSLING LEAP, Executors and Trustees,
Complainants-Respondents,
and
WILLIAM B. SNElBAKER, et als.,
Defendants-Appellants.

ON APPEAL FROM CHANCERY.

BRIEF OF DEFENDANTS-APPELLANTS.

This is an appeal from a decision of the Court of Chancery in a cause heard before Vice Chancellor Sooy, whose opinion in said cause appears in 136 New Jersey Equity, page 62, 40 Atlantic Reporter, second series, page 222.

The facts in said case as found by the Vice Chancellor are as follows: The executors and trustees under the will of Ashbrook D. Snelbaker, late of Salem County, New Jersey, seek instructions as to their duties as such. The defendants are the beneficiaries named in the will, all of whom join in complainants' request. William B. Snelbaker, I. Dayton Snelbaker and A. Naomi Snelbaker, the brothers and a sister of decedent, attack the validity of two trusts at-

Brief of Defendants-Appellants

tempted to be set up in the will, (a) Lawnside Cemetery trust and (b) Snelbaker Home trust.

The will as to these two trusts provides, briefly, as follows:

“All the rest, residue and remainder of my estate, real, personal or mixed, whatsoever and wheresoever situate I give, devise and bequeath unto my executors and trustees hereinafter named, and their successors in office, in trust nevertheless, for the following purposes.”

He then sets up six annuities of \$3,000. a year, and in paragraph 6C of the will he provides as follows:

“(C) I have founded and developed Lawnside Cemetery in the Borough of Woodstown, as a lasting memorial to myself, and have provided for the Perpetual Care Fund from the proceeds of the sale of lots by Lawnside Cemetery Association.

“If said Perpetual Care Fund is not of sufficient amount to care for and maintain the cemetery as hereinafter set forth, I order and direct my Executors and Trustees to set aside a sufficient amount of my principal, and invest the same as hereinafter set forth, and pay from the income thereof a sum not to exceed Twenty Five Hundred (\$2,500.00) Dollars per year, which sum or sums added to the Perpetual Care Fund as above set forth will be sufficient for the purpose of beautifying said Cemetery by planting ornamental shrubbery and trees, and maintaining the fences, roads and other improvements, and keep the same in good condition, and keep the graves, markers, and monuments in a good state of preservation.

“These developments and beautifications

Brief of Defendants-Appellants

shall extend to the full acreage provided by me, and include unplotted as well as plotted land.

“When the said Cemetery shall become self supporting, the principal sum herein specified to be set aside, shall become a part of my residuary estate.”

With reference to the Snelbaker Home, the provisions, of paragraph 6D of the will are as follows:

“(D) I have erected a dwelling house on Main Street, in the Borough of Woodstown of a suitable size and convenient to accommodate twenty-five or more guests, and I hereby order and direct that said dwelling house be used for the purpose of establishing and maintaining a suitable HOME for the care and support of worthy white women, of unquestionable character and moral reputation, whose age is not less than fifty years, and who were born in the County of Salem, New Jersey, the name of which HOME shall be ‘THE ASHBROOK D. SNELBAKER HOME,’ and if it be deemed advisable, that my Executors and Trustees incorporate the same under the statute of the State of New Jersey relating to eleemosynary institutions.

“I order and direct that any and all of the beneficiaries hereinabove named shall have the privilege of being guests in said Home, for and during the term of their natural lives.

“The Home shall not be a charitable institution in the ordinary sense of the word, but shall be as its name indicates a Home where the admitted guests shall have the same courtesy and attention as if they were guests in my own home, and under no circumstances to be treated as objects of charity.

Brief of Defendants-Appellants

“No applicant who requires medical or hospital attention at the time of the application as a guest of the Home shall be favorably considered, but should the guest, after having entered said Home, require medical or hospital attention, the same shall be provided by the Trustees thereof.

“In case there shall be more guests than can be accommodated in my said Home, and there shall be sufficient funds in hand, I order and direct the Trustees thereof to enlarge said Home to accommodate additional guests.

“The Board of Managers of said Home shall be chosen by my Executors and Trustees herein, and shall consist of a member of each of the following recognized religious denominations in the County of Salem—Methodist, Baptist, Presbyterian, Episcopalian and Lutheran. My Executors and Trustees shall also be members of the Board of Manager.”

The defendants Snelbaker say that both of these trusts are invalid, the cemetery trust because it creates a private trust and violates the rule against perpetuities, and that what testator really attempted was to “provide for the carrying on of his business as a memorial to himself.”

As to the Snelbaker Home Trust, the invalidity is declared to be that testator has failed to express in his will “objects which would constitute a charitable trust,” and has violated the perpetuity rule, and that the purpose of the Trust and the method of conducting it are vague and indefinite to the extent of invalidity, and that there is nothing in the will by which the Court may direct which portion of the estate should be used for the purpose of the trust, i.e., whether income or principal. (State of Case, page

Brief of Defendants-Appellants

67, lines 30 to 40; page 68, page 69 and page 70, lines 1 to 37.)

The Court below sustained the validity of both of said trusts and it is from these findings that appellants herein appeal.

The defendants-appellants, William B. Snelbaker, I. Dayton Snelbaker and Anna Naomi Snelbaker filed an Answer in the Court below and questioned the validity of said trusts. The other defendant-appellant, Helen F. Snelbaker Zeigenfus did not file any Answer in the proceeding in the Court below and permitted a decree pro confesso to be taken as to her.

Appellants contend that the Court below erred in sustaining the validity of said two trusts and contend that the Court below should have found that the Ashbrook D. Snelbaker Home Trust is not for a charitable use and that it violates the Rule against Perpetuities and is void; and further that said trust must fail for vagueness, indefiniteness and uncertainty. (State of Case, page 111, lines 11 to 21.)

Appellants further contend that the trust for the Lawnside Cemetery Association violates the Rule against Perpetuities and is void, that it is an attempt by testator to carry on his cemetery business after death and perpetually and is therefore void; and further that it must fail for vagueness, indefiniteness and uncertainty. (State of Case, page 111, lines 22 to 40.)

SNELBAKER HOME TRUST.

Defining charitable trusts, the Court in the case of *MacKenzie vs. Trustees of Presbytery of Jersey City*, 67 New Jersey Equity Reports, page 652, says,

“A charity, in its legal sense, may be more fully defined as a gift to be applied, consistently

Brief of Defendants-Appellants

with existing laws for the benefit of an indefinite number of persons, either by bringing their minds or hearts under the influence of education or religion, by relieving their bodies from disease, suffering or constraint; by assisting them to establish themselves in life; or by erecting or maintaining public buildings or works, or otherwise lessening the burdens of government. It is immaterial whether the purpose is called charitable in the gift itself, if it be so described as to show that it is charitable in its nature.”

In the case of *Noice vs. Schnell*, 101 New Jersey Equity, page 252; 136 Atlantic Reporter, page 582, the Court in defining a public charity, said,

“The definition of a public charity given by Horace Binney in his argument before the United States Supreme Court in the Girard Will Case and adopted by the Court (*Vidal vs. Girard*, 43 U. S. 127; 11 L. Ed. 205), is one of the most striking. It is as follows:

‘Whatsoever is given for the love of God or for the love of your neighbor in the catholic and universal sense—given from these motives and to these ends—free from the stain or taint of every consideration that is personal, private or selfish.’ ”

In *Morristown Trust Co. vs. Morristown*, 82 New Jersey Equity Reports, page 521, the Court, after repeating the definition of a public charity, taken from the *MacKenzie vs. Trustees of Presbytery of Jersey City* case, goes on to say,

“This definition was approved by our Court of Errors and Appeals in *MacKenzie vs. Trustees*, 67 N. J. Eq. (1 Robb) 652. Lord Macnagh-

Brief of Defendants-Appellants

ten, in *Commissioners of Income Tax v. Pemsel* (1891), A. C. 531; 61 L. J. Q. B. 290, defines trusts for charitable purposes as follows:

- (1) Trusts for the relief of poverty.
- (2) Trusts for the advancement of education.
- (3) Trusts for the advancement of religion.
- (4) Trusts for other purposes beneficial to the community not falling under any of the preceding heads and not being for the purpose merely of sport or hospitality."

It is respectfully submitted that the Snelbaker Home Trust does not fall within any of the above definitions but that it is merely for the purpose of hospitality.

It is only by attributing to the word "worthy" not its ordinary, usual or generally accepted meaning, but one that is extraordinary, unusual and not the generally accepted meaning of the word, not, in any way justified by the context in which it is used or by the contents of the will, that the Court below was able to conclude that the Snelbaker Home Trust constituted a charitable trust.

The Court below, in its opinion, in construing the said word "worthy" goes on to say,

"As said in *Kronhage v. Varrell*, 120 Wis. 161, 97 N. W. 928, the word 'worthy' may, perhaps more exactly, does, mean virtuous, or in good standing, but its restriction to such significance would be absurd when used in a will enjoining the trustees of the fund to select subjects worthy of assistance."

But it is respectfully submitted that there exists a great distinction in the use of the word "worthy"

in the Kronshage case and in the case at bar. A reading of that case will readily disclose that the court gave an unusual meaning to the word "worthy" by reason of the context in which it was used and which rendered it obvious that said unusual meaning was intended by testator.

It is submitted, however, that there is nothing in the context of the Snelbaker will which calls for the giving of an unusual meaning to said word, and in fact, as will be later pointed out, that testator must have meant to use said word, in its usual or ordinary meaning.

A reading of the Kronshage case will immediately disclose that the word "worthy" was used in the sense of "entitled to," "deserved" or "merited," while in the Snelbaker will said word is used as a word of description and must be construed in its usual meaning of "virtuous" or "of good standing."

In the said case of *Kronshage vs. Varrell*, the court was called upon to decide whether a charitable trust was created by testator who used the following language:

"Having in mind the many catastrophes resulting from the actions of the elements and the great suffering, distress, famine and want caused by the destruction of life and property by storms, floods, fires and other accidental and natural causes, and having a desire to do what I can to relieve the same, I therefore give and bequeath to Th. Kronshage, Emil D. Spiegelberg, and Will H. Pittman, in trust, all the rest, residue and remainder of my estate being cash, and direct that the same shall be invested by them as a trust fund, in such securities as they shall in their best judgment consider safe and remunerative, and that my said trustees shall

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annually expend the whole, or such part of the interest, revenues, and profits arising from the investment of such trust fund for the charitable purpose of relieving the wants, distress and suffering arising from such causes, and for the purpose of aiding and assisting to such extent as lies within their power and as they may deem advisable the victims of such accidents and catastrophes. I place no restriction upon my said trustees as to the locality where they shall expend such moneys or give such aid, but I hereby enjoin them to select subjects worthy of assistance, and that they use their best judgment and prudence in so handling and disbursing the money hereby confided to their management and control, so that the same may be of the greatest possible benefit to suffering humanity.”

Syllabus (1) of said case is as follows: Testator recited that, having in mind the many catastrophes resulting from the action of the elements, and the great suffering, etc., caused by the destruction of life and property by storms, floods, fires, and other accidental and natural causes, etc., he devised the remainder of his estate to trustees to invest and pay the income for the charitable purpose of relieving the wants, distress, and suffering arising from such causes, and for the purpose of aiding such persons as the trustees deemed advisable who were victims of such actions and catastrophes, and enjoining the trustees to select subjects worthy of assistance, and to use the fund for the greatest possible benefit to suffering humanity. Held, that the beneficiaries of such trust were limited to a class of persons suffering distress from the causes enumerated, and it was therefore not void as a charity to the public

generally, without a definite designation of beneficiaries.

Syllabus (2) is as follows: The beneficiaries entitled under such charity were such only as were fairly entitled to relief by reason of loss sustained by the causes enumerated, and hence the charity was not objectionable on the ground that a disbursement of the income might be made by the trustees in their discretion to individuals, subjected merely to some measure of property loss through some of the defined causes, who were not in pecuniary need, and not subjects of public charity.

In the opinion, the Court goes on to say, "We cannot ignore his declaration that he is moved to make the bequest by the desire to relieve to some extent against the "many catastrophes resulting from the actions of the elements and the great suffering, distress, famine and want caused by the destruction of life and property by storms, floods, fires, and other accidental and natural causes." Nor can we pass as meaningless his command that the revenues of the trust fund be expended "for the charitable purpose of relieving the wants, distress, and suffering arising from such causes," and assisting "the victims of such accidents and catastrophes." Can it be doubted that the testator intended by the word "such" to limit the relief to sufferers from some causes, accidents, or catastrophes, as distinguished from others not within his mental category? We think not.

And further on, the Court goes on to say, "Another objection urged against this bequest is that the uses are not all charitable and public, but that disbursement of the income may be made by the trustees, in their discretion, to individuals subjected merely to some measure of property loss from some of the defined causes, who are not in pecuniary need, and not subjects of public charity; and that thus the

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entire bounty of the testator may be diverted to mere private beneficence and liberality, having no necessary element of public charity to arouse the power of a court of equity. If such be the authority vested in the trustees, the objection is weighty, and might well defeat the trust, even in those jurisdictions which acknowledge not only the broadest of judicial powers, but the prerogative *cy-pres* power as well. *Morice vs. Bishop of Durham*, 9 Ves. Jr. 399; *Id.*, with note, 5 Eng. Rul. Cas. 575; *Rudor's Char. Tr.* (3d. Eng. Ed.) page 36; *Kent vs. Durhan*, 142 Mass. 216, 7 N. E. 730, 56 Am. Rep. 667. Of course, insurance against mere losses is not necessarily charity. Here again, however, becomes significant the duty of courts to extend the most liberal construction reasonable to the words of a donor in order to find and sustain a valid charitable gift. Well within the limits of such reasonable construction we think is found declared the testator's intent that his bounty be distributed to the furnishing of aid and relief of such character and to so broad a class of so indefinite individuals that the general public are benefited by and interested in its due execution. The motive of the testator is declared to be to relieve "suffering, distress, famine and want" arising from certain causes. He enjoins upon his trustees that they select "subjects worthy of assistance" so that the money be of benefit to "suffering" humanity. This injunction is obviously restrictive of the discretion otherwise vested in these trustees. We are satisfied that the testator meant by such restriction to confine his bounty to those subjects fairly entitled to relief in effectuating his general motive and purpose already declared; not necessarily to paupers, for the wealthy man, in common with the indigent, may, as the result of some of the suggested casualties, be in peril of starvation or of perishing from cold unless aid be

promptly rendered, and may be equally a member of a class worthy of public and charitable relief during the emergency when money is useless in absence of opportunity to purchase the needed supplies. The word "worthy" adopted by the testator, is fairly expressive of this view. It is elastic in its meaning, according to the context in which used. It may—perhaps, more exactly, does—mean virtuous, or of good standing, but its restriction to such significance would be absurd in the present connection; would strain through a distorting filter this testator's bounty, in view of the situations which he evidently contemplated as likely to surround its distribution. Charity is defined by Lord Camden as a "gift to a general public use which extends to the poor as well as the rich." *Jones vs. Williams*, Amb. 651; *Perin vs. Carey*, 24 How. 465, 16 L. Ed. 701. "The immediate persons benefited may be of a particular class, and yet if the use is public in the sense that it promotes the general welfare in some way, it has the essentials of a charity." *Harrington vs. Pier*, page 521, 105 Wis., page 375, 82 N. W., 50 L. R. A. 307, 76 Am. St. Rep. 924. We are convinced that the testator intended, and by reasonable construction of his words has declared, that this fund be applied and confined to such a use."

A reading of said case clearly discloses, as the Court therein pointed out, that restricting the significance of said word to its usual meaning, namely, virtuous, or of good standing, would be absurd in the connection in which it was there used."

However, in the case at bar, by virtue of the same reasoning it becomes obvious that the word worthy must be interpreted in its usual meaning. First, because there is nothing in the will to suggest that testator meant said word to mean other than what is its usual meaning and, in the absence of that, words

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must be interpreted in their usual or generally accepted meaning.

Granted that as stated in the foregoing definition of the word "worthy" its usual meaning is virtuous or of good standing, is it not obvious that the testator in the case at bar used said word in its usual or generally accepted meaning, and if so read, in place of "worthy white women, of unquestionable character and moral reputation," we would have, "virtuous white women of unquestionable character and moral reputation."

In fact, it is apparent that the testator was here engaged in limiting his bounty to women with certain moral qualifications, this as shown, by the following words not in controversy, "of unquestionable character and moral reputation." And it is respectfully urged that having used the word "worthy" in connection with these other words and in the same breath, that it was obviously meant to mean "virtuous."

As stated before, words, must be defined in their usual or generally accepted meaning. It is only when the word or words being defined, in conjunction with the rest of the language used, show that to give them their ordinary meaning would lead to absurdity, that an unusual meaning may be given to them. But, in the case at bar, no absurdity would result. See *Bacot vs. Wetmore*, 17 New Jersey Equity, page 250, where the Court on page 252, says, "Where the words are clear, the safest course, in the language of Lord Eldon, is to abide by the words; unless upon the whole will, there is something amounting almost to demonstration, that the plain meaning of the words is not the meaning of the testator. *Crooke vs. DeVandes*, 9 Vesey 205." And in fact, to give to the word "worthy" in the case at bar, any meaning other than

its usual one would result in re-writing the will of the testator.

In addition to the above, it is respectfully submitted that the rest of the language used by testator clearly indicates that he used said word "worthy" in its usually accepted meaning. For the testator proceeds to designate that the objects of his bounty be women "whose age is not less than fifty years," and that they "shall have the privilege of being guests in said Home," and "The Home shall not be a charitable institution in the ordinary sense of the word, but shall be as its name indicate a Home where the admitted guests shall have the same courtesy, and attention as if they were guests in my own home, and under no circumstances to be treated as objects of charity," and "No applicant who requires medical or hospital attention at the time of the application as a guest of the Home shall be favorably considered." Likewise the beneficiaries named in his will, and who have been adequately provided for by annuities for their lifetime by testator, are designated as persons entitled to admission to the Home.

In determining the character of the gift the language of the entire will, or at least that portion of it relating to the particular trust, is to be considered.

Thus the Court in the case of *Hydes' Executor vs. Hydes*, 64 New Jersey Equity Reports, page 6, on page 8 says,

"It is the undoubted law of this state that such a testamentary disposition of property as that now under consideration cannot be sustained except upon the theory that it constitutes a gift to a charitable use. Whether it is a gift of that character or not is to be determined by the language used by testator to express his intention in the particular clause in question, read

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with any other portions of the will tending to throw light upon and indicate the meaning of the words used. *Thompson's Executors v. Norris*, 4 C. E. Gr. 308; S. C., 5 C. E. Gr. 489; *De Camp v. Dobbins*, 2 Stew. Eq. 56; S. C., 4 Stew. Eq. 672;''

And in the case of *First Methodist Church of Vine-land vs. Pennock*, 130 New Jersey Equity Reports, page 452, 22 Atlantic Reporter, 2nd Series, page 889, the Court said,

“The province of this court is to construe wills and not make them, and all of the provisions of the will must be taken together so that it may stand in its entirety, if possible; wills must be construed in strict conformity with the testator's intent as gathered from the four corners of the will; it is what the testator said rather than what he meant to say; the predominant idea of testator, if apparent, is heeded against doubtful provisions which might defeat that intention.”

It is respectfully submitted that nowhere in paragraph 7, Subdivision D, this being the paragraph of the will setting up the Snelbaker Home Trust, is there any provision or language requiring a guest of the home to be poor or needy. In fact, the testator has expressly excluded any person needing medical or hospital care and has likewise expressly included his beneficiaries all of whom have been adequately provided for for the remainder of their lives.

In *Hyde's Executors vs. Hyde*, 64 New Jersey Equity Reports, page 6, the testator devised and bequeathed to his executors the residue of the estate, among other things, “to give and distribute one

hundred thousand dollars thereof, within five years from the date of his death for such religious, charitable or educational or other purposes as they may deem advisable, provided nevertheless that no portion thereof shall be given to or distributed among his wife or children, individually or collectively.”

The Court held the gift void, saying on page 9,

“But the serious difficulty in this case arises from the other contention on the part of complainants, viz., that the clause in question confers a power upon the executors unlimited to charitable uses, by making use of the words ‘or other’ to express some of the purposes permitted.

“These words cannot be construed as intended to be read, ‘other such’ or ‘other like’ or ‘other of the same kind,’ for such a construction would make them mere surplusage and deprive the clause of meaning. If so construed, the words simply repeat the idea ‘charitable’ previously expressed, for there are other charitable purposes than those, which are educational or religious, such as the care of the poor, the sick, &c. But those purposes are naturally included in the expression ‘charitable purpose.’ Therefore when the testator adds the word ‘or other,’ the clause, looked at by itself, clearly expresses the intent to permit the trustees to devote the fund, if they choose to do so, to purposes other than those which are educational or religious or charitable. This view requires a declaration that the gift is void.”

And on page 11 of said case, the Court says,

“If testator’s purpose may be considered to have been to devote the \$100,000 to charitable

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uses he has not used apt language to express such purpose.”

In the case of *Morristown Trust Company vs. Morristown*, 82 New Jersey Equity Reports, page 521, the Court held that a bequest for the erection of a base for a flagstaff in a park on consent of the authorities of the town in memory of testator's father, must fail because is not within any of the definitions of charitable uses.

In the case of *Livesey vs. Jones*, 55 New Jersey Equity, page 204, the testator gave the residue of his estate to his friend and humanity's friend, the Rev. H. W. B., “to use and expend the same for the promotion of the religious, moral and social welfare of the people in any locality, whenever and wherever he may think most needful and necessary.”

The court refused to sustain this trust and goes on to say,

“Now, in the first place, it seems to be plain that the words, ‘religious, moral and social’ are not used conjunctively in such manner that every object to which the bequest may be applied must conduce at one and the same time to the advancement of religion and morality and to the social welfare of the people. To so hold would be to make the charity a religious one, contrary to the plain intention of the testator. It would be, moreover, in direct conflict with the decision in *William v. Kershaw*, 5 Cl. & F. 111, where the devise was to ‘such benevolent, charitable and religious purposes as the executors should in their discretion think most advantageous and beneficial,’ and where it was held that this language authorized the application of the bequest to other than strictly charitable purposes. This

case I regard as authoritative, because Chief Justice Beasley, in *Norris v. Thomson*, 5 C. E. Gr. 523, said that it rested on a proper foundation, and reiterated his opinion in *DeCamp v. Dobbins*, 4 Stew. Eq. 695, in the following vigorous language: 'Nor can I go with that process of reasoning that concludes that when the word "benevolent" is conjoined to the word "charitable" the two words become identical in meaning, as that implies that one of the terms is to be dispensed with or that the lesser term swallows up the larger. In such a naked case as I have supposed, for the court to strike out the broader of the descriptive terms may indeed uphold, now and then, a testamentary limitation, but at the same time, one of the most important canons that the law has established for the construction of written instruments is impaired.' "

Skinner vs. Holmes, 133 New Jersey Equity, page 593, 33 Atlantic, Second series, page 819, holds that in general a conveyance to a religious society implies a trust.

In *Hilliard v. Parker*, 76 New Jersey Equity, page 447, one of the provisions of the will was as follows:

"I do order that the sum of two thousand dollars now in the hands of and owed to me by Reuben Woolman shall remain in his hands as long as he will keep it and the net interest arising therefrom shall be annually expended by my executor in the purchase of fuel for the most needy women of the Borough of Woodstown, to be selected by my surviving executor as he shall judge of their needs; provided the same shall not extend to women living with their husbands, and shall be a perpetual fund forever."

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The court there held,

“I am convinced that the trust created by this bequest is a valid one. The trust is clearly a charitable trust, and as such there can be no objection to its creation in perpetuity. *Goodell v. Union Association*, 29 N. J. Eq. (2 Stew.) 32, 34; *Trustees v. Wilkinson*, 36 N. J. Eq. (9 Stew.) 141; *S. C.*, 38 N. J. Eq. (11 Stew.) 514; *Green v. Blackwell*, 35 Atl. Rep. 375. I think it must also be said to be settled in this state that a trust of this nature is not void for uncertainty. In *Goodell v. Union Association*, supra, the trust was that the income ‘be applied to alleviating the wants and sufferings of the deserving poor of the town of Mount Holly,’ and the trust was sustained. In *Hesketh v. Murphy*, 35 N. J. Eq. (8 Stew.) 23, the trust was to employ certain income ‘for the relief of the most deserving poor of the city of Paterson aforesaid forever, without regard to color or sex; but no person who is known to be intemperate, lazy, immoral or undeserving to receive any benefit from said fund.’ This gift was held to be a valid charity as against the objections that it was too indefinite and that it failed to provide a power of selection of its objects. This decision was affirmed in 36 N. J. Eq. (9 Stew.) 304.”

Goodell vs. The Union Association of the Children's Home, 29 N. J. Equity Report, page 33. In this case the gift was to “Trinity Church Sunday School in Mounty Holly, one thousand dollars to be safely invested, the interest to be applied to making Christmas presents to the scholars of said school.” The court held that this is not a legal charity, and is void, also, for uncertainty, in not designating the

kind of gifts, and because such distribution is indiscriminate as to persons and devoid of all purpose.

Trustees of Union Methodist Episcopal Church of South Camden v. Wilkinson, 36 E. 141 Aff. 38 E. 814.

Syl. (3) That a legacy to two churches of \$5000. to each church, charged on testatrix's lands "the interest to be strictly applied and distributed to the poor members of said churches forever, and nothing else," is a valid, charitable gift.

On page 145:

"It is urged, however, that the gift, being confined to the poor of the churches, is not of so extensive a character, either in number of objects to be benefited or territorial limits, as is required (it is insisted) for a valid charity. This argument is based on an erroneous idea of the requisites of such a charity. In *Magill vs. Brown*, Bright 347, a gift for the poor members of the Friends Society was sustained. In *Straus vs. Goldsmith*, 8 Sim. 614, one for ten worthy men to purchase meat and wine for the service of two nights of the Passover, was held good; and in *Witman vs. Lex*, 17 S. & R. 88, a gift of money to be laid out in bread annually, for ten years, for the poor of the Lutheran congregation of which the donor was a member, 'was adjudged to be a valid charity.' So, also, of a gift to twenty aged widows and spinsters of the parish. *Thompson vs. Corby*, 27 Beav. 649; and a gift to poor relations. *Brunsdon vs. Woolredge*, Amble 507. So, too, of a gift to a Masonic lodge; the court saying that a leading object of the society was supporting the poor members, their widows and orphans, and adding that the object was essentially perpetual. *King vs. Parker*, 9 Cush. 71. It need not be said that one of the

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objects of a Christian church is to relieve the physical wants of the poor, and that the poor of the particular society are special objects of such charity to its members.

New Jersey Title Guaranty & Trust Co. vs. Smith,
90 E. 386, 101 A. 404.

Syllabus (6) A gift of \$15,000 upon trust to erect and maintain a building in Forked River to be used for the benefit of the inhabitants thereof is a charitable gift.

On page 390:

“This involves a bequest of \$15,000, upon trust, to erect and maintain a building in Forked River, to be used for the benefit of the inhabitants thereof; and falls within the general definition of a charity as ‘a gift to be applied consistent with existing laws for the benefit of an indefinite number of persons either by bringing their minds or hearts under the influence of education or religion; by relieving their bodies from disease, suffering or constraint; by assisting them to establish themselves in life; or by erecting and maintaining public buildings or works, or otherwise lessening the burdens of government. It is immaterial whether the purpose is called charitable in the gift itself or if it be so described as to show that it is charitable in its nature.’”

MacKenzie vs. Trustees, 67 E. 652 (at page 655).

Kitchen vs. Pitney, 94 New Jersey Equity Rep.,
page 485:

“They are to use such rest, residue and remainder of my estate for the purpose of estab-

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lishing and maintaining, as hereinafter directed a home for aged and respectable white bachelors and widowers, who may have, through misfortune, lost the means which they once had for their own support, and have become wholly or partially unable to support themselves.

“The main object of such proposed corporation shall be to provide for the proper and suitable maintenance and support of such respectable and aged white bachelors and widowers, not less than sixty years of age, and bona fide, residents of New Jersey for ten years preceding admission, as may have, through misfortune, lost the means which they once had for their own support and become wholly or partially unable to maintain themselves, and as may be admitted to said home under the charter and by-laws and under the rules and regulations which may be made for the government of said home by said corporation when formed.”

On page 487 :

“1. The contestants contend that one who is partially able to support himself is not, in a legal sense, an object of charity, and that, because the trust under consideration is for the benefit of bachelors and widowers who are partially, as well as wholly, unable to support themselves, the trust is not exclusively for charitable uses, and it must therefore fail. If the fund in the discretion of the trustees under the will, or of the board of trustees who are to manage the home under its incorporation, can be used for purposes not strictly charitable or partly for purposes charitable and partly for purposes not strictly charitable, the trust created is invalid.

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Norris vs. Thomson's Executors, 19 E. 307; Aff. 20 E. 489; Hyde's Executors vs. Hyde, 64 E. 6, 53 A. 593; Hegeman's Executors vs. Roome, 70 E. 562, 62 A. 393; Van Syckel vs. Johnson, 80 E. 117, 70 A. 657; Thomas vs. Scheible, 91 E. 451, 111 A. 519.

On page 489. The contestants also contend that the will is too vague, uncertain and indefinite as to the class of persons intended to be benefited. The testator said that to obtain admission to the home an applicant must be a respectable white bachelor or widower, at least sixty years of age, and a resident of this state at least ten years prior to admission, who, through misfortune, has lost the means he once had for his support, and has become wholly or partially unable to support or maintain himself. If from this description of the men who he desired should be the object of his bounty his intent can be ascertained so that his trustees may employ the trust according to such intent with reasonable certainty, it is sufficient. The general principle is that courts of equity uphold gifts to a charitable purpose if there is a trustee with power to designate the particular persons to be benefited thereby. *DeCamp vs. Dobbins*, 29 E. 39, Aff. 31 E. 671; *Hesketh vs. Murphy*, supra; *Hyde's Executors vs. Hyde*, supra; *King vs. Rockwell*, 93 E. 46.

Smith vs. Smith, 54 N. J. E. 1. Testator's will attempted to create a trust by these words, "I desire that my entire estate with its accumulations shall be used in establishing and conducting a school for apprentices and young mechanics on plans to be hereafter described by me, or in case of my death before perfecting said plans, the school above named is to be conducted on plans which I have from time to time described to most of the Board of Trustees herein

named and who shall approve of final practical plans in keeping therewith." The Court said, page 9:

"In favor of a charity clearly indicated, the Court will so interpret general terms of description in the will creating it as to render the plain purpose capable of enforcement; but where the will fails to indicate what the purpose is the Court will not disregard a statute to supply that which the will omits."

The Court held that no charitable trust had been established.

Van Syckel vs. Johnson, 80 N. J. E. 117. In this case testator gave \$6,000.00 to his executors in trust, to be invested and the interest to be applied in keeping in good repair and condition that part of the graveyard attached to a certain church where his family were buried, also the rest of the graveyard; and if the church should fail to make up the salary of the pastor, the balance of the interest or so much as necessary should go toward the salary. The Court held that the contribution toward the pastor's salary was charitable while the other provision was not, and the gift being indivisible, no charitable trust was created and would fail.

This case is authority for the proposition that if part of the bequest is not for charitable purposes, the entire trust must fail.

Brezinski vs. Bremes, 109 N. J. E. 206. In this case, testator's will directed the sale of a house for charitable purposes without setting out definitely the manner in which the said charitable purposes could be carried out. The Court said:

"A gift for such purpose in order to be valid must be sufficiently definite to permit the testator's intention to be carried out."

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Livesey vs. Jones, 55 N. J. E. 204. Testator's will gave the residue of his estate to his friend and humanity's friend, Rev. H. W. B. "to use and expend the same for the promotion of the religious, moral and social welfare of the people in any locality, whenever and wherever he may think most needful and necessary. The Court held that the gift included objects not charitable and must fail for indefiniteness.

It is respectfully urged that the Snelbaker Home Trust, attempted to be created by paragraph 7 (d) of the will must fail because the testator has failed to express in his will objects which would constitute a charitable trust and has violated the Rule against Perpetuities, and further because the purpose of the trust and the method of conducting it are vague and indefinite to the extent of invalidity, and because there is nothing in the will by which the Court may direct which portion of the estate should be used for the purpose of the trust, i.e., whether income or principal.

LAWNSIDE CEMETERY TRUST.

R. S. 8:2-30 provides as follows:

"Any person, by his last will and testament or otherwise, may create a trust fund to be held in perpetuity or for a lesser time where the income of which is to be used for the care or embellishment of any cemetery or grave, plot or lot, the graves therein, the tombstones or monuments thereon, or of any mausoleum; provided, however, that where any last will and testament purports to create a trust fund for any of the above enumerated purposes, the Court of Chancery of New Jersey may, upon or prior to the settlement of such an account, hear and deter-

mine the question whether, in view of the size of the estate and other pertinent circumstances, the testamentary provision aforesaid is reasonable, and should the court find that the amount of the trust fund so provided is excessive, it may fix in lieu thereof a reasonable sum, which said reasonable sum shall not exceed the maximum amount of such trust fund; and provided, further, that the person or corporation designated to hold such a trust fund shall consent to the hearing and determination as herein provided. As amended L. 1939, c. 319, sec. 1."

This act was approved on August 8, 1939 and is Chapter 319 of the Statute Laws of 1939. Its title is "An Act concerning the holding in perpetuity of trust funds where the income is to be used for the care of cemetery or burial lots and any improvement thereon, and amending section 8:20-30 of the Revised Statutes."

Prior to the above stated amendment of 1939, this act appeared as Chapter 284 of the Statute Laws of 1920. Its title, in said enactment, was "An Act permitting the holding in perpetuity of trust funds where the income is to be used for the care of cemetery or burial lots and the erections therein."

This Act was introduced by Senator Charles Coogan, Senate 56. The statement with which the bill was introduced is: Most testators desire to create a small trust fund, the income from which to be perpetually used for the care of a cemetery lot. If such cemetery lot is in an unincorporated cemetery or a cemetery in a sister state, such bequest offends the rule against perpetuities and is void. Citing *Detweiler vs. Hartman*, 37 N. J. E. 347.

The said Act of 1920 provided:

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“Be it enacted by the Senate and General Assembly of the State of New Jersey:

“1. It shall be unlawful for any person, by his last will and testament or otherwise, to create a trust fund to be held in perpetuity or for a lesser time where the income of which is to be used for the care or embellishment of any cemetery lot or grave lot, the graves therein, the tombstones or monuments thereon, or of any mausoleum.”

It is respectfully urged that R. S. 8:2-30 provides only for cemetery plots or lots, the graves therein, the tombstones or monuments thereon, or of any mausoleum. The words “cemetery or grave” preceding the words “plot or lot, the graves therein, the tombstones or monuments thereon or of any mausoleum,” in said enactment are used only to describe the kind of plots or lots, etc.

This contention is clearly borne out by the title of the Act and is further borne out by the earlier Act of 1920 from which it is derived.

So also is this contention borne out by the fact that no comma or other punctuation is used after the word “cemetery,” for if it were intended to include “cemeteries,” it would have been set forth as, “cemetery, or grave plot or lot, the graves therein, etc.”

It is therefore respectfully submitted that this Act cannot help to sustain the Lawnside Cemetery trust wherein testator provided:

“(C) I have founded and developed Lawnside Cemetery in the Borough of Woodstown, as a lasting memorial to myself, and have provided for a Perpetual Care Fund from the proceeds of the sale of lots by Lawnside Cemetery Association.

If said Perpetual Care Fund is not of suffi-

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cient amount to care for and maintain the cemetery as hereinafter set forth, I order and direct my Executors and Trustees to set aside a sufficient amount of my principal, and invest the same as hereinafter set forth, and pay from the income thereof a sum not to exceed TWENTY FIVE HUNDRED (\$2,500.) DOLLARS per year, which sum or sums added to the Perpetual Care Fund as above set forth will be sufficient for the purpose of beautifying said Cemetery by planting ornamental shrubbery and trees, and maintaining the fences, roads and other improvements, and keep the same in good condition, and keep the graves, markers and monuments in a good state of preservation.

These developments and beautifications shall extend to the full acreage provided by me, and include unplotted as well as plotted land.

When the said Cemetery shall become self supporting, the principal sum herein specified to be set aside, shall become a part of my residuary estate." (State of Case, page 18, lines 17 to 40, and page 19, lines 1 to 3.)

Obviously the Lawnside Cemetery trust does not provide for the care or embellishment of cemetery plots or lots, graves, tombstones, monuments or any mausoleum, but deals with the care and maintenance of the cemetery, the beautifying of the cemetery by planting ornamental shrubbery and trees, and maintaining the fences, roads and other improvements, and keeping the same in good condition, and keeping the graves, markers and monuments in a good state of preservation.

It is obvious that testator did not have in mind the objects toward or in relation to which the Act of

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1939 is directed, viz: "The care of cemetery or burial lots and any improvements thereon."

The language used in the will is, in this regard, so clear, viz: "will be sufficient for the purpose of beautifying said cemetery by planting ornamental shrubbery and trees, and maintaining the fences, roads and other improvements, etc." It should be noted also that testator, in making this bequest goes further, viz: "These developments and beautifications shall extend to the full acreage provided by me, and include unplotted as well as plotted land." (State of Case, page 18, lines 38 to 40), and finally, the testator's declaration of the reasons that moved him in the making of the gift, is, it is urged, entitled to consideration, viz: "I have founded and developed Lawnside Cemetery in the Borough of Woodstown, as a lasting memorial to myself, and have provided for a Perpetual Care Fund from the proceeds of the sale of lots by Lawnside Cemetery Association." (State of Case, page 18, lines 17 to 21.) This language can hardly be said to be appropriate to care of a cemetery or grave plot or lot, since it clearly states that the testator's intention is that the bequest shall be used in perpetuating his memorial to himself, the cemetery known as Lawnside Cemetery, and if the testator has not made his intention sufficiently clear in the portion of his will just set out, in the next paragraph he provides, "If said Perpetual Care Fund is not of sufficient amount to care for and maintain the cemetery as hereinafter set forth, I order and direct my Executors and Trustees to set aside a sufficient amount of my principal, and invest the same as hereinafter set forth, and pay from the income thereof a sum not to exceed TWENTY FIVE HUNDRED (\$2,500.) DOLLARS per year, which sum or sums added to the Perpetual Care Fund as above set forth will be sufficient for the purpose of

beautifying said Cemetery by planting ornamental shrubbery and trees, and maintaining the fences, roads and other improvements, and keep the same in good condition, and keep the graves, markers and monuments in a good state of preservation." (State of Case, page 18, lines 17 to 37.)

The only portion of said trust which might be said to be included within the provisions of R. S. 8:2-30, is that part thereof that provides "and keep the graves, markers and monuments in a good state of preservation."

But it is obvious that this trust was created primarily for the other purposes first set forth, namely, caring for and maintaining the cemetery, beautifying it, etc., and it is respectfully submitted that the primary purpose of the trust being violative of the Rule against Perpetuities, the entire trust must fail for that reason.

It is urged that the facts in the case at bar are to be distinguished from cases where a testator leaves funds for the care of his family lot.

Such a case is, *First National Bank of Ocean City v. Rice*, 101 New Jersey Equity, page 520, in which the Court said,

"The provisions of 'An Act permitting the holding in perpetuity of trust funds where the income is to be used for the care of cemetery or burial lots and the erections therein,' being Chapter 284 of the laws of 1920, page 510."

The Court in this case further said,

"Where a trust is for the purpose of supporting several independent gifts, whether concurrent or consecutive, unless it is impossible so to do, the several gifts are to be separated and those preserved which do not violate the rule.

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McGill v. Trust Company of New Jersey, 94 N. J. Eq. 657; Hewitt v. Green, 77 N. J. Eq. 345.”

Morristown Trust Company v. Morristown, 82 New Jersey Equity, page 521. In this case, testator appropriated \$5,000. for the erection of a bronze and granite base for the flag staff in the Morristown Park; the same to bear an inscription that it was erected in memory of testator's father. Vice Chancellor Howell in construing this will, on page 522, said,

“This bequest must fail because it does not come within any of the definitions of charitable uses, nor is it in any sense a devotion, of the money therein mentioned, to charitable purposes. It is a mere private trust, and is violative of the rule against perpetuities.”

It seems obvious that even if that portion of the Lawnside Cemetery trust that deals with keeping the “graves, markers and monuments in a good state of preservation,” were held to come within the provisions of the Act of 1939, that it is impossible to separate said gifts, since it is all one bequest, and therefore the whole must fail.

A trust partly for purposes charitable and partly for purposes not strictly charitable, is invalid. *Kitchen v. Pitney*, 94 New Jersey Equity Reports, page 485; *Hyde's Executors v. Hyde*, 64 New Jersey Equity Reports, page 6; *Van Sychel v. Johnson*, 80 New Jersey Equity Reports, page 117.

The provisions of R. S. 8:2-33 have no application to the trust under consideration for this enactment deals only with bequests to a cemetery association incorporated under Sections 8:1-1 to 8:1-5 of the Revised Statutes. *Hilliard v. Parker*, 76 New Jersey

Equity Reports, page 447; *in re Corle*, 61 New Jersey Equity Reports, page 409.

It is deemed pertinent, however, to point out the difference in language used by the legislature in this enactment which provides for the use of the funds for the improvement or embellishment of the cemetery as contrasted with the provisions of R. S. 8:2-30, which, it is contended, does not include a cemetery or the grounds. Thus, R. S. 8:2-33 reads, "Any cemetery association incorporated under sections 8:1-1 to 8:1-5 of this title or under any special act, may take and hold any property, real or personal, bequeathed or given upon trust, to apply the income thereof under the direction of the trustees or managers of the association for the improvement or embellishment of its cemetery, or the erection or preservation of any buildings, structures, fences or walks erected or to be erected upon the lands of the association, or upon the plots or lots of any of the proprietors, or for the repair, preservation, erection or renewal of any tomb, monument, gravestone, fence, railing or other erection in or around any cemetery plot or lot, or for planting or cultivating trees, shrubs, flowers or plants in or around any such plot or lot, or for improving or embellishing such cemetery or any of the plots or lots therein in any other manner or form consistent with the design and purposes of the association, according to the terms of the grant, devise or bequest." It is suggested that had testator made his bequest for the benefit of his Lawnside Cemetery directly to the cemetery association, this gift might have been protected and the trust sustained by virtue of R. S. 8:2-33. Failing, however, to take advantage of the statutory provision designed for the purpose, it is respectfully submitted that the cemetery trust, so called, cannot be sustained. It is void because

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it is not a charitable trust nor is it saved by either of the statutes in connection with cemeteries or grave lot maintenance, violates the Rule against Perpetuities and must be declared to be invalid.

It is further urged that the testimony discloses that the Lawnside Cemetery Association was operated in conjunction with another corporation known as the Lawnside Cemetery Company and that the decedent, Snelbaker, was the principal stockholder owning approximately 90 or 95 per cent of the stock of the Lawnside Cemetery Company. Further that said Association and Company had a contract between themselves. (State of Case, page 57, lines 10 to 26, and page 59, lines 1 to 10.)

It is respectfully urged that the Lawnside Cemetery Company is not a non-profit corporation, nor is it incorporated under the cemetery act of the State of New Jersey. In the absence of proof to the contrary, and none appears in the record, it must be assumed that the Lawnside Cemetery Company is operated for a profit, and proof discloses that the decedent owned between 90 and 95 per cent of the stock therein; consequently, said company was a private company operated for the benefit of the decedent. If the same scheme is to be followed, then obviously the testator by this means was undertaking to continue his business after death and perpetually, and it is respectfully urged that this is against public policy and the trust must therefore be declared to be void.

Testator further provided that the stockholders and directors of the Cemetery Company appoint Verna M. Swing as superintendent of the Cemetery Company so long as she may live, or is able to perform the duties thereof (State of Case, page 15, lines 32 to 36), and by the codicil to his will provided that the said Verna M. Swing be retained by his

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executors and trustees to perform substantially the same responsibilities with respect to the affairs of my estate as she now performs and has with respect to my business affairs ; it being my intention that my executors and trustees shall retain the said Verna M. Swing for a period of at least five years, and provides further that her remuneration shall not be less than two thousand dollars per year payable quarterly. (State of Case, page 22, lines 29 to 40.)

It is respectfully urged that this demonstrates that testator was attempting to carry on his cemetery business as a memorial to himself ; further, that the executors and trustees would be putting themselves in a position where they would be personally responsible for any losses of the Cemetery Association exceeding twenty-five hundred (\$2,500.00) dollars per year.

It is respectfully urged that the Lawnside Cemetery Trust violates the rule against perpetuities, that it is an attempt by the testator to carry on his cemetery business after death and therefore against public policy and void, and that the same must fail for vagueness, indefiniteness and uncertainty.

Respectfully submitted,

T. G. HILLIARD,
*Solicitor for and of Counsel
with Defendants-Appellants.*

JOSEPH NARROW,
Of Counsel.

To be argued by:
JOSEPH NARROW.

NEW JERSEY COURT OF ERRORS
AND APPEALS.

Between
WOODSTOWN NATIONAL BANK AND TRUST COMPANY
and S. RUSLING LEAP, Executors and Trustees,
Complainants-Respondents,
and
WILLIAM B. SNElBAKER, et als.,
Defendants-Appellants.

ON APPEAL FROM CHANCERY.

**BRIEF OF DEFENDANT-RESPONDENT, LAWN-
SIDE CEMETERY ASSOCIATION.**

The appellants herein as one part of their case attack the validity of that portion of Ashbrook D. Snelbaker's will in which a trust was created for the benefit of the Lawnside Cemetery Association.

The provisions of the will of Ashbrook D. Snelbaker pertaining to the Lawnside Cemetery Association are as follows:

“(C) I have founded and developed Lawnside Cemetery in the Borough of Woodstown, as a lasting memorial to myself, and have provided for a Perpetual Care Fund from the proceeds of the sale of lots by Lawnside Cemetery Association.

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Cemetery Association*

If said Perpetual Care Fund is not of sufficient amount to care for and maintain the cemetery as hereinafter set forth, I order and direct my Executors and Trustees to set aside a sufficient amount of my principal, and invest the same as hereinafter set forth, and pay from the income thereof a sum not to exceed TWENTY FIVE HUNDRED (\$2,500.) DOLLARS per year, which sum or sums added to the Perpetual Care Fund as above set forth will be sufficient for the purpose of beautifying said Cemetery by planting ornamental shrubbery and trees, and maintaining the fences, roads and other improvements, and keep the same in good condition, and keep the graves, markers and monuments in a good state of preservation.

These developments and beautifications shall extend to the full acreage provided by me, and include unplotted as well as plotted land.

When the said Cemetery shall become self supporting, the principal sum herein specified to be set aside, shall become a part of my residuary estate."

The appellants attack this trust on the grounds first, that it violates the rule against perpetuities; second, that it is an attempt by the testator to carry on his cemetery business after his death and is void as to public policy; third, it must fail for vagueness and indefiniteness and uncertainty.

To properly answer appellants first ground for setting aside this trust, that it violates the rule against perpetuities, we must first determine whether or not the Lawnside Cemetery is a charitable use, keeping in mind that the Lawnside Cemetery Association was incorporated under the Cem-

*Brief of Defendant-Respondent, Lawnside
Cemetery Association*

etery Act (R. S. 8:1-1 to 8:1-5), being an association not for pecuniary profit.

In the case of *Stockton v. Newark*, 42 N.J.E. 531 at the bottom of page 541, the Chancellor said:

“When land is given in trust for a burial place, it obviously can by no means be said that the trust is at an end when the last body which can be buried in it has been deposited. The expectation in the burial of the dead is that they are to remain permanently, and the unauthorized disturbance of their remains is regarded with abhorrence as a desecration, and is criminal. A trust for a burial place devotes the ground to the perpetual repose of the remains of the dead. It dedicates it to uses of the most sacred character. The burying ground is God’s acre.”

On appeal in the same case *Newark v. Stockton*, 44 N.J.E. 179 at the top of page 183, Chief Justice Beasley said,

“The ex-Chancellor, who decided the case in equity, expressed the view that the premises in question are devoted to a charitable use, and in this theory this court entirely concurs.”

In the case of *Bliss v. Linden Cemetery Association*, 81 N.J.E. 394 on page 396, Vice-Chancellor Howell said,

“Notwithstanding the great contrariety of opinion held by the courts of the various states, it seems to be well settled in New Jersey that a trust for the establishment and maintenance of a cemetery or public burying grounds is a charitable use within the meaning of that term as it is commonly used.”

*Brief of Defendant-Respondent, Lawnside
Cemetery Association*

In the case of *Atlas Fence Company v. West Ridgelawn Cemetery, et al.*, 110 N.J.E. 580, the Court of Errors and Appeals in holding that the West Ridgelawn Cemetery Corporation is a charitable trust at the bottom of page 591 said,

“We cannot perceive any substantial difference in the use, between a public buying ground conveyed for burial purposes to a municipality, and a burying ground owned and operated by a cemetery corporation under our statute.”

It having been determined by the above cases that a public cemetery organized under our statute is a charitable use, the gift by the testator herein to the trustees for the benefit of the Lawnside Cemetery Association is a gift for the benefit of a charitable use and does not violate the rule against perpetuities as this rule does not apply where a devise is solely for a charitable use. *Young Men's Christian Association of Matawan v. Appleby*, 97 N.J.E. 95, affirmed 98 N.J.E. 704, also *Trustees of First Presbyterian Church of Town of Salem v. Wheeler*, 106 N.J.E. 8.

To answer appellants second and third grounds for setting aside this trust, that it is an attempt by the testator to carry on his cemetery business after his death and is void as to public policy; and that it must fail for vagueness and indefiniteness and uncertainty, it is necessary to keep in mind that the testator was merely a lot holder in the association together with about 2,000 other lot holders (S. C., p. 59, l. 8), and that it had shown a loss of approximately \$2,000.00 a year since its inception (S. C., p. 55, l. 18).

It seems clear that the trust set up by the testator herein for the benefit of the Lawnside Cemetery As-

*Brief of Defendant-Respondent, Lawnside
Cemetery Association*

sociation was in effect the making of an adequate provision for the benefit of the Lawnside Cemetery by a gift to trustees for a charitable use and as between the purpose to which the property is to be applied and the motive of the settler, the latter is immaterial in determining the charitable nature of the trust. *Noice v. Schnell*, 101 N.J.E. 252.

The essential idea of a charitable trust is that the benefit of the trust is to be for the whole public or some large class of the public as distinguished from private persons. The fact that the beneficiaries must be indefinite distinguishes the charitable trust sharply from the private trust. *Johnson v. Bowen*, 85 N.J.E. 76.

It is, therefore, respectfully submitted that the Lawnside Cemetery Trust does not violate the rule against perpetuities, that it is not an attempt by the testator to carry on his cemetery business after death and therefore against public policy and void, and that the same does not fail for vagueness, indefiniteness and uncertainty, but that the trust is valid and operative and the Court should decree the trust good, valid and in effect and that the \$2,500.00 to be paid each year is to be added to the income from the Perpetual Care Fund and the combined fund to be used in the upkeep and maintenance of the Lawnside Cemetery.

Respectfully submitted,

JOHN M. SUMMERILL, JR.,
*Solicitor for and of Counsel
with Defendant-Respondent,
Lawnside Cemetery Asso-
ciation.*

To be argued by:

JOHN M. SUMMERILL, JR.

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**NEW JERSEY COURT OF ERRORS
AND APPEALS.**

Between
WOODSTOWN NATIONAL BANK AND TRUST
COMPANY and S. RUSLING LEAP, Executors
and Trustees,

Complainants-Respondents,
and
WILLIAM B. SNELBAKER, et als.,
Defendants-Appellants.

ON APPEAL FROM COURT OF CHANCERY.

**BRIEF OF DEFENDANT-RESPONDENT
SOPHIA H. APPELGATE**

STATEMENT OF ADDITIONAL FACTS.

In addition to the facts of this case as found by the Vice Chancellor and set forth in Defendants-Appellants' Brief, the following facts are presented:

In Item "Eighth" of the will, wherein the executors and trustees are appointed, testator gives them the power and authority, among other things:

"(a) To sell any and all of my real estate of which I may die seized, except my residence in the Borough of Woodstown, as hereinafter set forth. . ."

"(d) To make alterations or improvements to

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any and all of my real estate, or any buildings erected thereon, and if necessary to make new erections.”

“(e) If necessary, to make purchase of real estate. . .”

“(g) In addition to their duties as Executors and Trustees, they shall personally devote their attention and the necessary time, to successfully found, establish and supervise the carrying out of my desire in establishing and maintaining ‘THE ASHBROOK D. SNELBAKER HOME’.” (State of Case, page 20, line 18, to page 21, line 33).

SPECIFICATION OF POINTS

1. The Chancellor did not err in finding that the Ashbrook D. Snelbaker Home trust is a valid, charitable trust.

2. The Chancellor correctly found that the Ashbrook D. Snelbaker Home trust is for a charitable use and that it does not violate the rule against perpetuities, and is not void.

3. The Chancellor correctly found that the provisions of the will setting up the Ashbrook D. Snelbaker Home trust are not vague, indefinite or uncertain and that the trust should not fail for vagueness, indefiniteness or uncertainty.

4. The Chancellor did not err in finding the trust for the benefit of Lawnside Cemetery Association is a good and valid trust, and that the provisions setting up the trust are not vague, indefinite and uncertain.

Point 4 will not be argued in this brief, as it will be presented to the Court by other counsel. However, the point is not abandoned.

Points 1, 2 and 3 will be argued together.

ARGUMENT

There are various definitions of charitable trusts and numerous rules of construction applicable to provisions establishing charitable trusts.

Definitions

The Court of Errors and Appeals in *Noice vs. Schnell, et al.*, 101 N.J.Eq. 252, sets forth with approval certain definitions of a charity, charitable trusts and charitable use:

“A charity, in its legal sense, may be more fully defined as a gift, to be applied, consistently with existing laws, for the benefit of an indefinite number of persons, either by bringing their minds or hearts under the influence of education or religion, by relieving their bodies from disease, suffering, or constraint, by assisting them to establish themselves in life, or by erecting or maintaining public buildings or works or otherwise lessening the burdens of government. It is immaterial whether the purpose is called charitable in the gift itself, if it be so described as to show that it is charitable in its nature.”

“Charitable trusts include all gifts in trust for religious and educational purposes in their ever-varying diversity; all gifts for the relief and comfort of the poor, the sick and the afflicted; and all gifts for the public convenience, benefit, utility, or ornament, in whatever manner the donors desire to have them applied.”

“A gift to the general public use which extends to the poor as well as to the rich.”

“A charitable use, where neither law nor public policy forbids, may be applied to almost anything that tends to promote the well-doing and well-being of social man.”

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Section 379 of 2 Bogert on Trusts, page 1209, states:

"The four classes of definite charities outlined in the early decisions as being included within the charitable trusts are by no means exclusive. The courts hold open the door to admit as charitable any gift which produces extensive public benefit, even though it cannot strictly be classed as eleemosynary, educational, religious or governmental."

In *Kitchen vs. Pitney*, 94 N.J.Eq. 493, the *per curiam* opinion of this Court approves Vice Chancellor Fielder's opinion in the Court below, in which it is stated:

"It is not necessary to the validity of the trust that the testator's charitable intent should be confined to those so absolutely destitute that the almshouse is their only public place of refuge. If a man is partially unable to support himself, he must have need of some assistance. Men who are partially unable to support themselves may be objects of charity, as well as those who are wholly destitute and entirely dependent upon others . . . the cases recognize that there are degrees of poverty and individual necessity. . ."

Rules of Construction

Vice Chancellor Church, in *Douglass et al. vs. Board of Foreign Missions &c.*, 110 N.J.Eq. 331, cites with approval the following rules for construing wills:

"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."

"Now the law prefers a construction which will prevent a partial intestacy."

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“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.”

“It is only when a reasonable construction and the discovery of the intent of the testator are utterly hopeless, that all effect should be denied to a will.”

Reversed on other grounds. See 112 N.J.Eq. 361.

In *Sheen et al. vs. Sheen et al.*, 126 N.J.Eq. 132 the following rules were laid down or cited with approval:

“The Court starts out with an attitude in favor of the attempt to create a charitable trust rather than a hostile attitude toward the gift.

“It is probably true that if the Court were to construe an attempt to create charitable trusts in other than a friendly manner, few would survive, but fortunately, the rules of construction are otherwise, with the result that the benefits attempted to be secured by charitable trusts have been assured rather than defeated.

“. . . A Court’s attitude in the consideration of a bequest intended for a charitable purpose should be in favor of the charity rather than against it. The Court should take a friendly not a hostile, attitude, toward the gift. It should be the aim of the Court to execute the testator’s intent by sustaining the trust, rather than to overthrow it, if it can be sustained without violating well recognized and established principles of the law. . .

“It has been held in this State that the intention of the donor is of great importance in determining the character of the trust, *DeCamp vs. Dobbins*, 29 N.J.Eq. 36, at page 47, and it is also the law that it is immaterial whether the

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gift is called charitable in the will itself, *MacKenzie vs. Trustees of Presbytery of Jersey City*, 67 N.J.Eq. 652, at page 665. . . the real question being the effect and result of the trust. 2 *Bogert, Trusts and Trustees*, ss 364, p. 1110, says: "that most Courts consider only the effect of a particular trust in deciding whether it is charitable or not. The question is not what the testator desired to accomplish by the trust, but what in the opinion of the Court will be the result of the trust upon the community and society in general' . . ."

On page 11 of Defendants-Appellants' Brief we find the following quotation from *Kronhage vs. Varrell*, 120 Wis. 161, 97 N. W. 928:

" . . . Here again, however, becomes significant the duty of Courts to extend the most liberal construction reasonable to the words of a donor in order to find and sustain a valid charitable gift. . ."

Tested by the above definitions and considered in the light of the rules of construction applicable thereto, it is plainly evident that a valid charitable trust was created.

Mr. Snelbaker made his will on April 26, 1938 (State of Case page 22 line 24) and confirmed it in all respects (adding only one new provision) by codicil dated May 10, 1943 (State of Case page 23, lines 13-14). He made several legacies and then in the "Seventh" item of his will he gives, devises and bequeaths all the rest, residue and remainder of his estate, real, personal or mixed, whatsoever and wheresoever situate, including all property over which he had any control or power of appointment. (State of Case, page 16, lines 17-21). Here arises the natural and reasonable presumption that he did not intend to die intestate as to any part of his property. The questions presented on this appeal require the

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construction of a residuary clause, and an interpretation preventing an intestacy as to any part of decedent's property becomes the duty of the Court, if possible.

It is not difficult to discover his intention. The defendants-appellants contend that the Snelbaker will trust does not fall within any of the definitions set forth by Lord Macnaghten in *Commissioners of Income Tax vs. Pemsel* (1891), A. C. 531; 61 L.J.Q.B. 290 and that the trust is merely for the purpose of hospitality. (Defendants-Appellants' Brief pages 6-7). The terms of the trust, particularly the provision that should the guests of the home require medical or hospital attention the same shall be provided by the trustees thereof (State of Case, page 19, lines 36-39) show the fallacy of defendants-appellants' argument.

Appellants in their brief devote several pages to a discussion of testator's use of the word "worthy" contending that the use of that adjective in establishing the qualification of the objects of testator's bounty renders the provision invalid as a legal charity.

"Worthy" means "deserving, meriting." 40 Cyc. 2865.

In *Peter E. Leddy Post No. 19 of American Legion et al. vs. Roberts et al.*, 99 N.J.Eq. 217, Vice Chancellor Bentley in applying the doctrine of *cy pres* to a charitable trust used these words:

" . . . Bayonne will exist for a long time to come, and real service can be rendered to its worthy veterans in the future, when they will far more require assistance than while now in the heyday of their manhood."

If assistance is to be rendered to worthy veterans from the charitable trust then before the Court, it must be that our Court of Chancery recognizes "worthy" as meaning "deserving, meriting."

Appellants cite *Kronhage vs. Varrell, supra*, to sustain their position that "worthy" as used in the *Snelbaker will* means "virtuous." (Defendants-Appellants' Brief p. 13). Vice Chancellor Sooy in the instant matter used an excerpt from that case to sustain a directly opposite position. He says in his conclusions:

"As said in *Kronhage vs. Varrell, 97 N.W. 928*, the word 'worthy' may, perhaps more exactly, does—mean virtuous, or in good standing, but its restriction to such significance would be absurd when used in a will enjoining the trustees of the fund to select subjects worthy of assistance." (State of Case, page 77, lines 18-24).

That testator did not use "worthy" to mean only virtuous, as contended by appellant (page 13 of Defendants-Appellants' Brief) is clearly shown by the words of his will. After specifying worthy white women the testator proceeds to say of unquestionable character and moral reputation. (State of Case, page 19, lines 15-16). If the testator meant "worthy" to mean only virtuous then why did he repeat himself in stating that the woman should be of unquestionable character and of moral reputation? In view of the use of these phrases testator must have meant "worthy" to mean something other than virtuous.

In a case cited by appellant, *Kronhage vs. Varrell, supra*, the Court in dealing with the word "worthy" says:

". . . We are satisfied that the testator meant by such restriction to confine his bounty to those subjects fairly entitled to relief in effectuating his general motive and purpose already declared; not necessarily to paupers, for the wealthy man, in common with the indigent, may, as the result of some of the suggested casualties, be in peril

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of starvation or of perishing from cold unless aid be promptly rendered, and may be equally a member of a class worthy of public and charitable relief during the emergency when money is useless in absence of opportunity to purchase the needed supplies. The word 'worthy' adopted by the testator, is fairly expressive of this view."

We deny that the Court below gave any strained or unusual meaning to the word "worthy."

Appellants in their brief do not attack the provisions in the will establishing the Ashbrook D. Snelbaker Home trust in any other respect, unless it be in their general specification that the Court should have found that it violates the Rule against Perpetuities and is void or on page 24 of Defendants-Appellants' Brief where it is stated in connection with *VanSyckel vs. Johnson*, 80 N.J.Eq. 117 that "this case is authority for the proposition that if part of the bequest is not for charitable purposes the entire trust must fail."

However, we respectfully contend that the provision that "beneficiaries hereinabove named shall have the privilege of being guests in said Home, for and during the term of their natural lives," (State of Case, page 19, lines 24-27) does not affect the validity of the charitable trust established. This provision does not offend the rule against perpetuities. The named beneficiaries are living. There is no intermingling of charitable uses and uses void for being against that rule.

And more important still, in order to render invalid a trust for charitable uses on the ground that there is a mixing of charitable uses with objects not charitable, there must be a discretion or right of election on the part of trustees which enables them to defeat the charitable objects.

An early case, *Norris vs. Thompson's Executors*, 19 N.J.Eq. 307, frequently cited in our Courts, determined that a devise "among such benevolent, re-

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ligious, or charitable institutions as she may think proper" was invalid because of the inclusion of benevolent objects. The Court, at page 312, says:

"Then the question in this case is, whether the power of appointment given in this will 'to give or devise the same among such benevolent, religious or charitable institutions as she may think proper,' is so vague and indefinite as to be void. As the power is to give to any of the three, if one of them is too vague, the power clearly is void. . ."

This case was affirmed in 19 N.J.Eq. 575 and 20 N.J.Eq. 489.

In Vice Chancellor Fielder's opinion in the Court of Chancery in *Kitchen vs. Pitney*, he holds:

". . . If the fund, in the discretion of the Trustees under the will, or of the board of trustees who are to manage the home under its incorporation, can be used for purposes not strictly charitable, or partly for purpose charitable and partly for purposes not strictly charitable the trust created is invalid." Citing *Norris vs. Thompson's Ex'rs.* 19 N.J.Eq. 307, affirmed 20 N.J.Eq. 489; *Hyde's Ex'rs. vs. Hyde*, 64 N.J. Eq. 6, 53 Atl. 593; *Hegeman's Ex'rs. vs. Roome*, 70 N.J.Eq. 562, 62 Atl. 392; *Van Syckel vs. Johnson*, 80 N.J.Eq. 117, 70 Atl. 657; *Thomas vs. Scheible*, 91 N.J.Eq. 451, 111 Atl. 519.

This case was affirmed by our Court of Errors and Appeals *per curiam* in 94 N.J.Eq. 493.

In *Smith vs. Pond*, 90 N.J.Eq. 445, Vice Chancellor Backes held:

"If the trust be to uses charitable or to uses not charitable, in the discretion of the trustee,

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promiscuously and unapportioned, it will fail for want of certainty."

Case reversed by Court of Errors and Appeals in 92 N.J.Eq. 211 but on other grounds.

A reading of the Snelbaker will reveals that the trustees under the will or the Board of Managers of the Home have no discretion which would enable them to defeat the charitable objects specified by the testator. The trust is definitely established.

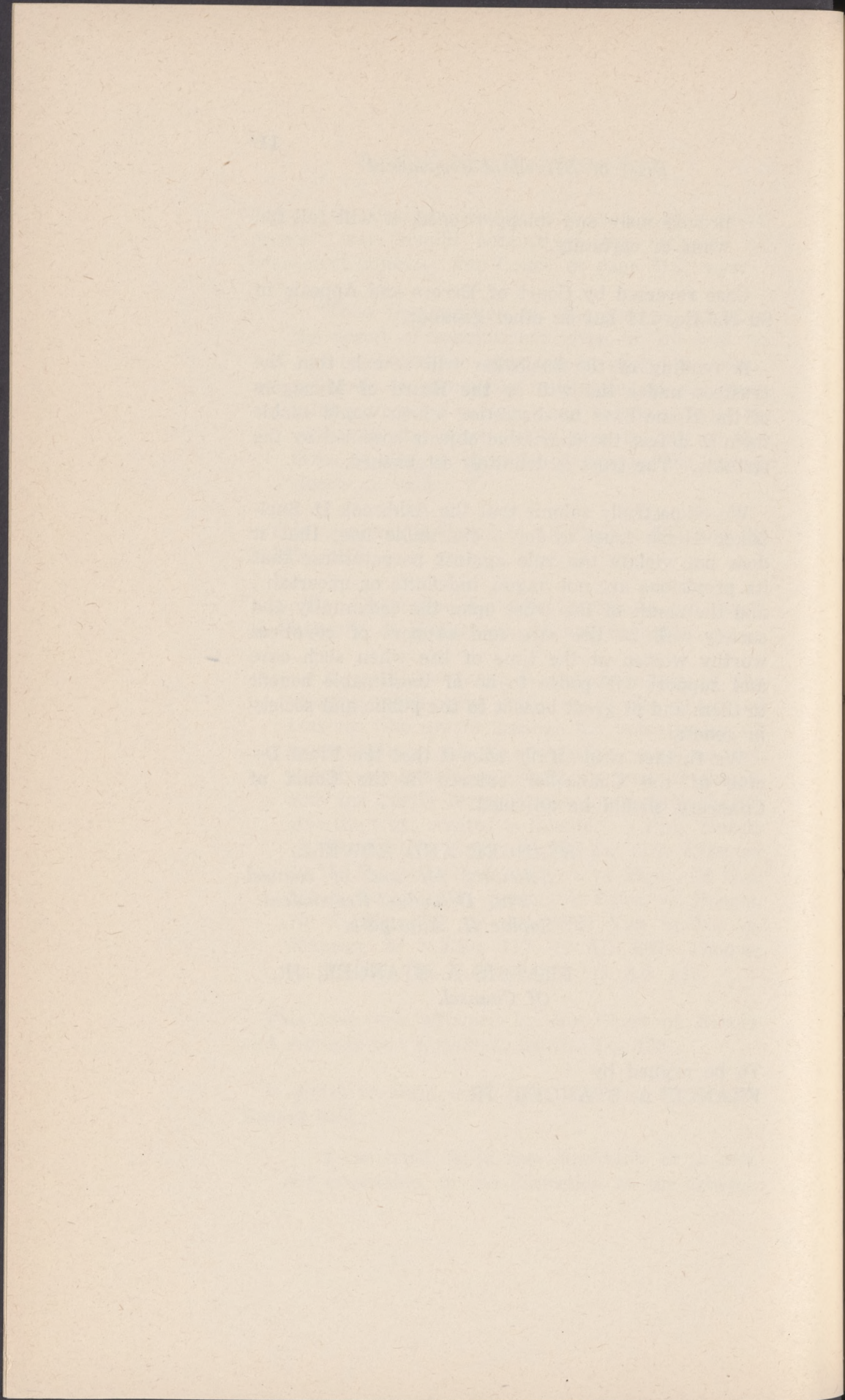
We respectfully submit that the Ashbrook D. Snelbaker Home trust is for a charitable use; that it does not violate the rule against perpetuities; that its provisions are not vague, indefinite or uncertain; and the result of the trust upon the community and society will be the care and support of countless worthy women at the time of life when such care and support will prove to be of inestimable benefit to them and of great benefit to the public and society in general.

We further respectfully submit that the Final Decree of the Chancellor entered in the Court of Chancery should be affirmed.

STANGER AND HOWELL,
*Solicitors for and of counsel
with Defendant-Respondent,
Sophie H. Appelgate.*

FRANCIS A. STANGER, JR.,
Of Counsel.

To be argued by
FRANCIS A. STANGER, JR.



**NEW JERSEY COURT OF ERRORS AND
APPEALS.**

Between

WOODSTOWN NATIONAL BANK AND TRUST COMPANY
and S. RUSLING LEAP, Executors and Trustees,
Complainants-Respondents,

and

WILLIAM B. SNELBAKER, et als.,
Defendants-Appellants.

ON APPEAL FROM THE COURT OF CHANCERY.

**BRIEF OF DEFENDANT-RESPONDENT,
VERNA M. SWING.**

STATEMENT OF THE CASE.

This is an appeal from a decree of the Chancellor advised by Vice Chancellor Sooy whose opinion appears in 136 N. J. Eq. 62 and in the State of the Case on pages 66-83.

The bill was filed by the complainants, executors and trustees under the will of Ashbrook D. Snelbaker, for instructions as to their duties as such.

This appeal seeks to review the decree of the Chancellor insofar as it construes paragraphs 7C and 7D of the will. These paragraphs are set out

*Brief of Defendant-Respondent,
Verna M. Swing*

in full on pages 2 and 3 of Appellants' Brief and pages 68-70 of the State of the Case.

The respondent, Verna M. Swing, under the paragraphs of the will involved in this appeal and as construed by the Chancellor is interested because of that provision of paragraph 3 (S. C. 15, lines 32-35) which read: "It is my suggestion that the stockholders and directors of the Cemetery Company select her as superintendent of the Cemetery Company as long as she may live or is able to perform the duties thereof," and also under the codicil to the will (S. C. 22, lines 29-40) which read:

"I authorize and direct my Executors and Trustees to retain Miss Verna M. Swing to perform substantially the same duties and to have substantially the same responsibilities with respect to the affairs of my estate as she now performs and has with respect to my business affairs; it being my intention that my Executors and Trustees shall retain the said Verna M. Swing for a period of at least five years. The remuneration to be paid to the said Verna M. Swing shall not be less than two thousand dollars per year quarterly."

She is also one of the beneficiaries named in 6D (S. C. 19, lines 24-27) and has the privilege of being a guest in "The Ashbrook D. Snelbaker Home" (S. C. 78, line 40).

The Chancellor determined that:

1. "The Lawnside Cemetery Trust is a valid trust." (S. C. 73-75.)
2. "The Snelbaker Home Trust is a valid Trust." (S. C. 75-83.)

*Brief of Defendant-Respondent,
Verna M. Swing*

BRIEF OF ARGUMENT.

I.

The Lawnside Cemetery Trust is a valid trust.

The Vice Chancellor deals with this question on pages 73 to 75 of the State of the Case.

The Lawnside Cemetery Association is a corporation organized under the act regarding cemeteries. This is stipulated by all parties in interest. (Stipulation 7, S. C. page 51, lines 23-25.)

The statute (8:2-36) provides for the establishment of a special fund and the income used for any purpose for which the funds of the association may lawfully be used.

The testator by paragraph 7C of his will (S. C. 18, lines 17-40) provides for payments into this fund. This trust is permitted by Revised Statutes 8:2-30 which provides as follows:

“Any person, by his last will and testament or otherwise, may create a trust fund to be held in perpetuity or for a lesser time where the income of which is to be used for the care or embellishment of any cemetery or grave, plot or lot, the graves therein, the tombstones or monuments thereon, or of any mausoleum, provided, however, that where any last will and testament purports to create a trust fund for any of the above enumerated purposes, the Court of Chancery of New Jersey may, upon or prior to the settlement of such an account, hear and determine the question whether, in view of the size

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Verna M. Swing*

of the estate and other pertinent circumstances, the testamentary provision aforesaid is reasonable, and should the court find that the amount of the trust fund so provided is excessive, it may fix in lieu thereof a reasonable sum, which said reasonable sum shall not exceed the maximum amount of such trust fund; and provided, further, that the person or corporation designated to hold such a trust fund shall consent to the hearing and determination as herein provided. As amended L. 1939, c. 319 par. 1."

In Appellants' Brief it is urged that this statute does not apply to the instant case and that its language is confined to cemetery lots or cemetery plots and the graves therein, the tombstones or monuments thereon and quotes the statute of 1920 which uses the words "where the income of which is to be used for the care or embellishment of any *cemetery lot or grave lot, etc.*" P. L. 1920, page 510. (Appellants' brief, pages 26 and 27.)

The statute as amended in 1939 (Rev. S. 8:2-30) uses the following language "Where the income of which is to be used for the care or embellishment of any cemetery or grave, plot or lot, the graves therein, the tombstones or monuments thereon."

Prior to the amendment it might have been argued that the statute was applicable only to a cemetery lot or grave lot and could not be extended to permit the trust to be established for the care and embellishment or a cemetery but the language of the statute as amended is broader and uses the words "cemetery or grave, plot or lot".

In the original statute there is no limitation on the amount of the trust fund as there would probably be no necessity therefor where the fund is for

*Brief of Defendant-Respondent,
Verna M. Swing*

the care or embellishment of a cemetery lot or grave lot, but with the broader language extending the statute to cover a cemetery or grave, plot or lot, the amount of the fund is subject to review by the Court of Chancery.

II.

The Snelbaker Home Trust is valid.

The testator provided in paragraph 7D of his will (S. C. 19, lines 9-23):

“I have erected a dwelling house on Main Street in the Borough of Woodstown of a suitable size and convenient to accommodate twenty-five or more guests, and I hereby order and direct that said dwelling house be used for the purpose of establishing and maintaining a suitable Home for the care and support of worthy white women, of unquestionable character and moral reputation, whose age is not less than fifty years, and who were born in the county of Salem, New Jersey, the name of which Home shall be “The Ashbrook D. Snelbaker Home.”

If the trust is a charitable trust it is valid.

The Vice Chancellor held that it was a charitable trust.

In *Noice vs. Schnell*, et al., 101 N. J. Eq. 252, 52 A.L.R. 965 this court said:

“There are some general rules as to the consideration of this class of gifts to which it may be well to direct attention. The first is that a court’s attitude in the consideration of a be-

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Verna M. Swing*

quest intended for a charitable purpose should be in favor of the charity rather than against it. The court should take a friendly, not a hostile attitude toward the gift. It should be the aim of the court to execute the testator's intent by sustaining the trust, rather than to overthrow it, if it can be sustained without violating well recognized and established principles of law."

In the same case the court further said, quoting Chief Justice Beasley, *Hesheth vs. Murphy*, 36 N. J. Eq. 304:

"And it is to be remembered that it is the acknowledged doctrine that in all constructions, courts are bound to lean in favor of charity rather than against it."

In Appellants' Brief, pages 6 and 7, it is set forth the four classes of definite charities outlined in the early decisions. As stated in the opinion of the Vice Chancellor (S. C. 72, lines 30-38): "The four classes of definite charities outlined in the early decisions as being included within the charitable trusts are by no means inclusive. The courts hold open the door to admit as charitable any gift which produces extensive public benefit, even though it cannot strictly be classed as eleemosynary, educational, religious or governmental. 2 Bogert on Trusts, Sec. 379, p. 1209."

In the case of *Kitchen vs. Pitney*, 94 N. J. Eq. 485, it was held that it is not necessary to the validity of the trust that the testator's charitable intent should be confined to those so absolutely destitute that the almshouse is their only public place of refuge. Persons who are partially unable to support themselves may be objects of charity as well

as those who are wholly destitute. There may be degrees of poverty and individual necessity.

The testator used the language "worthy white women." In what sense did he use the word "worthy" in his will?

In Words and Phrases 45 2nd Ed., p. 545, it is stated:

"The word 'worthy' is elastic in its meaning, according to the context in which it is used. It may—perhaps, more exactly, does—mean virtuous, or of good standing, but its restriction to such significance would be absurd when used in a will enjoining the trustees of a fund to select subjects worthy of assistance; would strain through a distorting filter this testator's bounty, in view of the situations which he evidently contemplated as likely to surround its distribution." *Kronshage vs. Varrell*, 97 N. W. 928, 930, 120 Wis. 161.

In 40 Cyc., p. 2865, "worthy" is defined as "deserving, meriting".

In a will bequeathing property for the benefit of "worthy, deserving poor, of a certain town it is held that the term was not indeterminate and uncertain but one which the selectmen might well determine." *Beardsley vs. Selectmen of Bridgeport*, 53 Conn. 489.

The Vice Chancellor held that the language of the will means "worthy of a home in which they may dwell and have their wants provided for and that it was evident from the language of the will that its applicants must come within the class of women who by reason of their financial condition, homelessness, age or some other misfortune are unable to properly provide these things for themselves.

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Verna M. Swing*

It is respectfully submitted that the case is not unlike that of *Kitchen vs. Pitney*, 94 N. J. Eq. 485.

In Appellants' Brief, page 14, it is urged that certain beneficiaries named in the will of the testator who have been adequately provided for by annuities or gifts are designated as persons entitled to admittance to the home and that for this reason the trust cannot be deemed a charitable trust. As pointed out by the Vice Chancellor those who are entitled to the home as beneficiaries under the will are expressly confined by the testator to "any and all beneficiaries hereinabove named." This would include each beneficiary named in the will prior to 7d in which testator provided for the home's establishment. These so named are Verna M. Swing, Mary A. Tuttle, Helen F. Snelbaker Zeigenfus, Ella S. Snelbaker Loveland, Wilson A. Snelbaker, A. Naomi Snelbaker, Elizabeth F. Snelbaker, William B. Snelbaker, I. Dayton Snelbaker, Sophia H. Appelgate, Charles Tuttle and Arthur Loveland, and all of them were living at the time of the testator's death. The wives and widows of deceased beneficiaries were not named. The testator designated them but he did not name them.

As the Vice Chancellor has pointed out, if a private trust was created for the beneficiaries named they are all in being and both the private trust and the charitable trust would stand.

It is respectfully submitted that the court should give to the word "worthy" that meaning which would uphold rather than defeat the trust.

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

J. BRODIE McGEAR,
*Solicitor for and of Counsel
with Respondent, Verna
M. Swing.*
LEROY W. LODER,
Of Counsel.

**NEW JERSEY COURT OF ERRORS
AND APPEALS.**

Between

WOODSTOWN NATIONAL BANK & TRUST COMPANY, and
S. RUSLING LEAP, Executors and Trustees,
Complainants-Respondents,

and

WILLIAM B. SNELBAKER, et als.,
Defendants-Appellants.

ON APPEAL FROM CHANCERY.

BRIEF OF COMPLAINANTS-RESPONDENTS.

The appellants herein, being the heirs-at-law and next-of-kin of Ashbrook D. Snelbaker, deceased, attack the validity of those portions of the latter's will in which trusts are created for the benefit of Lawnside Cemetery Association and for the establishment and maintenance of The Ashbrook D. Snelbaker Home.

The pertinent provisions of the will are as follows:

“SEVENTH: ALL THE REST, RESIDUE AND REMAINDER OF my estate, real, personal or mixed, whatsoever and wheresoever situate, including all property over which I have

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any control or power of appointment, I give, devise and bequeath unto my EXECUTORS AND TRUSTEES hereinafter named, and their successors in office, IN TRUST, NEVERTHELESS, for the following purposes — * * *

“(C) I have founded and developed Lawnside Cemetery in the Borough of Woodstown, as a lasting memorial to myself, and have provided for a Perpetual Care Fund from the proceeds of the sale of lots by Lawnside Cemetery Association.

“If said Perpetual Care Fund is not of sufficient amount to care for and maintain the cemetery as hereinafter set forth, I order and direct my Executors and Trustees to set aside a sufficient amount of my principal, and invest the same as hereinafter set forth, and pay from the income thereof a sum not to exceed TWENTY FIVE HUNDRED (\$2500.) DOLLARS per year, which sum or sums added to the Perpetual Care Fund as above set forth will be sufficient for the purpose of beautifying said Cemetery by planting ornamental shrubbery and trees, and maintaining the fences, roads and other improvements, and keep the same in good condition, and keep the graves, markers and monuments in a good state of preservation.

“These developments and beautifications shall extend to the full acreage provided by me, and include unplotted as well as plotted land.

“When the said Cemetery shall become self supporting, the principal sum herein specified to be set aside, shall become a part of my residuary estate.

“(d) I have erected a dwelling house on Main Street in the Borough of Woodstown of a suitable size and convenient to accommodate twenty-

Brief of Complainants-Respondents

five or more guests, and I hereby order and direct that said dwelling house be used for the purpose of establishing and maintaining a suitable HOME for the care and support of worthy white women, of unquestionable character and moral reputation, whose age is not less than fifty years, and who were born in the County of Salem, New Jersey, the name of which Home shall be 'THE ASHBROOK D. SNELBAKER HOME,' and if it be deemed advisable, that my Executors and Trustees incorporate the same under the Statute of the State of New Jersey relating to eleemosynary institutions.

"I order and direct that any and all of the beneficiaries hereinabove named shall have the privilege of being guests in said Home, for and during the term of their natural lives.

"The Home shall not be a charitable institution in the ordinary sense of the word, but shall be as its name indicates a Home where the admitted guests shall have the same courtesy and attention as if they were guests in my own home, and under no circumstances to be treated as objects of charity.

"No applicant who requires medical or hospital attention at the time of the application as a guest of the Home shall be favorably considered, but should the guest, after having entered said Home, require medical or hospital attention, the same shall be provided by the Trustees thereof.

"In case there shall be more guests than can be accommodated in my said Home, and there shall be sufficient funds in hand, I order and direct the Trustees thereof to enlarge said Home to accommodate additional guests.

"The Board of Managers of said Home shall be chosen by my Executors and Trustees herein,

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and shall consist of a member from each of the following recognized religious denominations in the County of Salem,—Methodist, Baptist, Presbyterian, Episcopalian and Lutheran. My Executors and Trustees shall also be members of the Board of Managers.

“EIGHTH: I nominate, constitute and appoint as my Executors and Trustees under this, my last Will and Testament, the WOODSTOWN NATIONAL BANK AND TRUST COMPANY, of Woodstown, and HON. S. RUSLING LEAP, of Woodstown, and do confer upon my said Executors and Trustees the following power and authority — * * *

“(g) In addition to their duties as Executors and Trustees, they shall personally devote their attention and the necessary time, to successfully found, establish and supervise the carrying out of my desire in establishing and maintaining ‘THE ASHBROOK D. SNELBAKER HOME.’ ”

SNELBAKER HOME TRUST.

In support of their contention that this trust is not for a charitable use, appellants first argue that the objects of the trust, which are “worthy white women, of unquestionable character and moral reputation, whose age is not less than fifty years, and who were born in the County of Salem, New Jersey” (S. C., p. 19, ll. 15-18) are objects which are not charitable in the legal sense. This argument poses the specific question of what meaning is to be attributed to the word “worthy.”

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A trust intended for the relief of the poor, the sick, the homeless, the aged, or other persons in similar unfortunate circumstances is valid as for a charitable use. *Kitchen vs. Pitney*, 94 N.J.E. 485, 487.

Several meanings are attributed to the word "worthy" in Webster's New International Dictionary. One meaning which is therein given is "having worth or excellence; possessing merit; valuable; deserving of honor, praise or the like; estimable." Another meaning given therein is "meriting; deserving; fit, suitable (to); * * *."

"And it is to be remembered that it is the acknowledged doctrine that in all matters of construction courts are bound to lean in favor of charity rather than against it." *Hesketh v. Murphy*, 36 N.J. 304, 309. See also, *Noice v. Schnell*, 101 N.J.E. 252, 256-7.

"Legacies or devises to the uses of charity are entitled to peculiar favor and are regarded as privileged testaments, and will not be declared void if they can by any possibility, consistent with law, be considered as good. Courts of equity go to the length of their judicial power in sustaining such trusts. They are construed so as to give them effect, if possible, and to carry out the general intention of the donor when clearly manifested, even if the particular form and manner pointed out by him cannot be followed. Courts consider the whole instrument in the light of all the circumstances in determining the intention of the donor.

"If two modes of construction are fairly open, one of which would turn a gift into an illegal trust, while by following the other it would be valid and operative, the latter mode must be preferred * * *. If there be two meanings of a

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word, one of which will effectuate and the other will defeat the testator's object, the court is bound to select that meaning of the word which will carry out the intention and objects of the testator." 10 *Am. Jur. Charities.*, pp. 657-9, Sect. 102. Cf. *Noice vs. Schnell*, 101 N.J.E. 252; *Kronshage vs. Varrell* (Wis.), 97 N. W. 928.

In *Attorney-General vs. Comber*, 2 Sim. & Stu. 93 (cited in *DeCamp vs. Dobbins*, 29 N.J.E. 36, 48), a gift to the widows and orphans of a parish was declared by Sir John Leach, V. C., to be intended for the poor of those two classes of the parish. In *Sherman vs. Congregational Home Missionary Society*, 176 Mass. 349; 57 N. E. 702, the Supreme Judicial Court of Massachusetts held that a gift for the establishment of a "rest home for worthy working girls" constituted a valid public charity. In *In re Daly's Estate*, 208 Pa. 58; 57 Atl. 180, the Supreme Court of Pennsylvania likewise held that a trust for the "founding, establishment, and maintenance of a home or homes for industrious girls and women, without respect to age or sect" was a valid charitable gift, and in *Gidley vs. Lovenberg*, 35 Tex. Civ. App. 203; 79 S. W. 831, the word "unfortunate" as applied to widows and orphans was held to have been used by the testator in the sense of "poor" or "indigent."

In *Restatement of the Law of Trusts*, Sec. 369, pp. 1143-4, it is said:

"A trust may be valid as a trust for the relief of poverty although by the terms of the trust it is not stated in specific terms that the beneficiaries must be poor. Thus, a trust for the benefit of 'widows and orphans' is ordinarily interpreted as meaning 'poor widows and orphans.' Similarly, a trust for the benefit of the 'oldest

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respectable inhabitants' of a place may be construed as including only such of them as are **poor**.

“A trust to aid persons who are in need is a charitable trust although the persons to be aided are not absolutely destitute. Thus, a trust to assist persons who have an income which does not afford the necessities of life without such assistance is charitable. So also, a trust to establish a home for such persons is charitable.” Cf. *Kitchen vs. Pitney*, 94 N.J.E. 485.

We believe that the word “worthy” was here used by the testator as having the latter of the foregoing meanings attributed to it in Webster's New International Dictionary; namely, “meriting; deserving; fit; suitable (to); * * *.” We believe that the testator clearly indicates his purpose to provide care and support for those persons of the designated class who merit or deserve such care and support and it seems obvious that anyone who is fully capable of caring for and supporting himself neither merits nor deserves such care and support at the hands of others, but that only those who, through poverty, sickness, homelessness, age or similar unfortunate circumstances, are unable to care for and support themselves merit or deserve the same.

But we believe the testator has clearly indicated that his purpose was to benefit only those women of the designated class who are properly the objects of charity by his extreme concern, announced in the third paragraph of item Seventh (D), that the Home shall not be considered a charitable institution in the ordinary sense of the word and that the guests therein shall not be treated as objects of charity, for clearly if the Home is not a charitable institution and the guests therein are not objects of charity there

would have been no necessity whatever for any concern on the part of the testator lest they be so considered or treated.

Appellants' next argument, starting at the middle of page 14 of their brief, is that the testator's direction (S. C., p. 19, ll. 24-27) that any and all of the beneficiaries named in his will shall have the privilege of being guests in the Home for and during the terms of their natural lives renders the gift partly charitable and partly not, whereby it must fail. This requires a critical examination of the reasons for and the precise application of this rule.

A study of the cases in which this rule has been invoked, notably *Thomson's Executors vs. Norris*, 20 N.J.E. 489; *Hyde's Executors vs. Hyde*, 64 N.J.E. 6 and *Van Syckel vs. Johnson*, 80 N.J.E. 117, discloses that in those cases one or the other of the following facts existed: (1) the non-charitable gift, as well as the charitable gift, was in perpetuity; (2) the beneficiaries of the non-charitable gift, as well as those of the charitable gift, were uncertain. These two characteristics, namely, the perpetuity of the gift and the uncertainty of the beneficiaries, are the peculiar characteristics of a charitable trust. 3 *Pomeroy's Equity Jurisprudence*, 4th ed., pp. 2264-2265, sect. 1018; 14 *C. J. S.* 416, sect. 1f. But such characteristics are, of course, fatal to the validity of a private trust and the trusts considered in those cases consisted of an intermixture of valid charitable purposes and invalid and unenforceable non-charitable purposes, by reason of which the whole trust was unenforceable and therefore void.

We believe the rule to be accurately stated in 10 *Am. Jur. Charities*, pp. 595-6, sect. 16 as follows:

“While the general rule undoubtedly is that in order that a gift shall possess such certainty

Brief of Complainants-Respondents

as will give it validity, the language must require that the fund shall be expended for charity and for nothing else, nevertheless the fact that the donor of a charitable gift charges the fund so given with the payment of certain definite amounts for purposes not in themselves charitable does not effect the validity of the charitable use, but merely operates to reduce the amount available for charitable purposes. But where a gift is made so as to intermingle an unenforceable private trust with a valid charitable trust, the charitable trust cannot be enforced." See also, *Buchanan vs. Kennard*, 234 Mo. 117, 136 S. W. 415, 37 L. R. A. (N. S.) 993, 1023.*

If, therefore, the identity of the persons who, under this clause in the will, have the privilege of being guests in the Home is certain and if, as to them, a perpetuity is not created, then this provision creates a valid, enforceable private trust, which, in its legal aspects, in nowise differs from the trust set up in item Seventh (A) of the will for the purpose of paying the annuities therein provided for, and precisely in the same manner as the trust for the annuities, charges the residuary estate with the payment of the amount necessary for this purpose, having no effect upon the validity of the charitable trust but merely reducing the amount available for the purposes thereof. This being so, the private or non-charitable gift in no way embarrasses or interferes with the charitable gift, for it seems clear that the reason for the rule is a practical one; namely, the power of the Court of Chancery to enforce the trust, and where, as here, there is a valid charitable purpose and a valid and enforceable non-charitable purpose the court can effectually enforce both.

We turn then to a consideration of whether the

*In re Wright's Estate, 284 Pa. 334, 131 Atl. Rep. 188.

beneficiaries under this clause of the will are certain and whether these non-charitable gifts offend the rule against perpetuities. The clause reads as follows: "I order and direct that any and all of the beneficiaries hereinabove named shall have the privilege of being guests in said Home, for and during the term of their natural lives."

In the first place, we believe that this gift is necessarily restricted to the natural persons thereinabove named and excludes the trustees of the Asbury Methodist Episcopal Church, of Woodstown, and Lawnside Cemetery Association, since both of these bodies are corporate entities having perpetual existence (S. C., p. 51, ll. 20-26) and are therefore incapable of being guests in the Home for and during the term of their natural lives. We further believe that the phrase "beneficiaries hereinabove named" restricts the guests to those persons referred to by name and excludes those persons referred to in item Seventh (A) (6), not by name, but merely as the "respective widows" of testator's brothers (S. C., p. 17, l. 31), and those persons referred to in item Seventh (B) as "wife" (S. C., p. 18, ll. 11, 12 and 15). We particularly believe that this construction should prevail, for it is legally possible that the inclusion of such widows and wives might extend the term of this gift beyond a life or lives in being and twenty-one years thereafter, which might be the case if one of testator's brothers or his nephew, Wilson A. Snelbaker, subsequently married a woman born after testator's death. While we think the use of the word "named" instead of some such word as "mentioned" or "designated" clearly and naturally leads to this construction, should there be any doubt in the Court's mind with regard to this, the word should, if necessary to uphold the charitable trust, be so construed in accordance with the rule set out in 10 *Am. Jur.*

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Charities, p. 659, heretofore referred to, to the effect that "If there are two meanings of a word, one of which will effectuate and the other will defeat the testator's object, the court is bound to select that meaning of the word which will carry out the intention and object of the testator."

We believe, therefore, that the beneficiaries referred to in this clause of the will are certain and consist of Verna M. Swing, Mary A. Tuttle, Helen F. Snelbaker (now Zeigenfus), Ella S. Snelbaker Loveland, Wilson A. Snelbaker, A. Naomi Snelbaker, Elizabeth F. Snelbaker, William B. Snelbaker, I. Dayton Snelbaker, Sophia H. Appelgate, Charles Tuttle, and Arthur Loveland (William C. DeGrofft and Ella H. Summerill having predeceased the testator).

These persons were all living at the time of testator's death and the gift for their benefit being limited "for and during the term of their natural lives" does not offend the rule against perpetuities.

We therefore believe that the trust for the establishment and maintenance of the Ashbrook D. Snelbaker Home is a trust having valid charitable objects and that its enforcement is in no way embarrassed or impeded by the fact that the testator directed that the beneficiaries theretofore named in his will should have the privilege of being guests in the Home for and during the term of their natural lives.

All of appellants' arguments respecting the validity of the Snelbaker Home Trust appear to be directed to the point that it is not for a charitable use and therefore violates the rule against perpetuities, which is the ground of appeal contained in paragraph 3 of the petition of appeal (S. C. p. 111, ll. 12-15). We are unable to find any arguments whatever in support of the grounds of appeal set out in

Brief of Complainants-Respondents

paragraph 4 of the petition of appeal (S. C. p. 111, ll. 17-21) which reads as follows:

“4. The Chancellor should have found that the provisions of the will providing for the setting up of the Ashbrook D. Snelbaker Home trust are so vague, indefinite and uncertain that said trust must fail for vagueness, indefiniteness and uncertainty.”

Precisely which provisions of the will are meant by the reference to those for the “setting up” of the trust is not clear to us and we are not enlightened on the subject since we can find no arguments in appellants’ brief directed to this point. We believe, therefore, that under the well-recognized practice of this Court this ground of appeal, not having been argued, must be taken to be abandoned.

However, in the concluding paragraph of their brief directed to the validity of this trust (Brief, p. 25, ll. 12-23), after urging that this trust must fail “because the testator has failed to express in his will objects which would constitute a charitable trust and has violated the Rule against Perpetuities,” which point the appellants argued in their brief, they further urge that the trust must likewise fail “because the purpose of the trust and the method of conducting it are vague and indefinite to the extent of invalidity, and because there is nothing in the will by which the Court may direct which portion of the estate should be used for the purpose of the trust, i.e., whether income or principal.” While, as in the grounds of appeal last above mentioned, we can find no arguments in appellants’ brief to support these latter reasons and therefore believe that they cannot in any event be considered, nevertheless, we desire to comment briefly upon them.

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The will states the purpose of this trust to be that "of establishing and maintaining a suitable Home for the care and support of worthy white women, of unquestionable character and moral reputation, whose age is not less than fifty years and who were born in the County of Salem, New Jersey" (S. C. p. 19, ll. 13-18). We submit that there is no vagueness or uncertainty in this purpose and that it is as certain as, if not more certain than, the purposes stated in many other charitable trusts which have been upheld by this Court, as, for example, those under consideration in *Hesketh vs. Murphy*, 36 N.J.E. 304, and *Noice vs. Schnell*, 101 N.J.E. 252.

As to the matter of indefiniteness in the terms of the will respecting the method of conducting the Home, such indefiniteness is the rule rather than the exception in instruments creating charitable trusts and in no way militates against the validity of such a trust, for the details of its administration may safely be left to the trustees under the guidance of a court of equity. 5 R.C.L. 343, Sect. 75; *Noice vs. Schnell*, 101 N.J.E. 252, 265.

As to the question of whether income or principal should be used for the purpose of this trust, this likewise seems to us to be, in the absence of any direction with regard thereto in the instrument creating the trust, a matter of administration, to be determined in any given instance by the trustees under the guidance of the court. The absence of any such directions in the instrument creating the trust is not a circumstance adversely affecting the validity of such a trust and this Court has repeatedly upheld the validity of charitable trusts where in the instruments creating them there have been no directions whatever as to whether income or principal was to be used for the purposes thereof. *Noice vs.*

Schnell, 101 N.J.E. 252; *Jones vs. Watford*, 62 N.J.E. 339, aff'd. 64 N.J.E. 785; *George vs. Braddock*, 45 N.J.E. 757.

LAWNSIDE CEMETERY TRUST.

It is provided in the last paragraph 7(C) of the will (S. C. p. 18) (this brief page 2) as follows:

“When the said Cemetery shall become self supporting, the principal sum herein specified to be set aside, shall become a part of my residuary estate.”

It will be noticed by this paragraph of Section (C) that at the end of the trust, the fund shall revert and become a part of the residuary estate. Therefore if the court should determine that the Snelbaker Home Trust is a good and valid trust, the attack on the Lawnside Cemetery Trust by the Snelbaker appellants must fall because they could not have any interest in and to the fund of the Lawnside Cemetery Association trust.* On the other hand if the Snelbaker Home trust should fall, then it becomes material as to whether or not the Lawnside Cemetery trust is good.

The appellants attack the trust on the grounds first that it violates the rule against perpetuities; second that it is an attempt by the testator to carry on his cemetery business after his death and is void as to public policy; third it must fail for vagueness and indefiniteness and uncertainty.

The Lawnside Cemetery Association was incorporated under the Cemetery Act (R. S. 8:1-1 to 8:1-5) being an association not for pecuniary profit

*Smart vs. Durham, 77 N. H. 56, 86 Atl. Rep. 821.

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but purely an association of lot holders, managed and operated by lot holders. The Lawnside Cemetery Company, a developing company of which the decedent, Ashbrook D. Snelbaker, was the principal stockholder, developed and financed the cemetery and it was financed in accordance with the Cemetery Act (R. S. 8:2-1 to 8:2-19). It had not been a successful operation as shown by the testimony (S. C. p. 55) and had gone in the red approximately \$2,000.00 a year. Mr. Snelbaker knew this fact and expected to be buried there and he desired to have the Lawnside Cemetery Association maintained in proper condition and shape until it should become self-supporting under its Perpetual Care Fund. There is no question but what the gift made under paragraph 7(C) of his will above referred to was for the benefit of the whole cemetery and not for any particular part thereof. It was not a gift for the benefit of the Lawnside Cemetery Company which was a developing company and which counsel for appellants (p. 33 of his brief) indicates that he wanted to control by having Verna M. Swing made superintendent. He knew that she could be superintendent of the Cemetery Company if he so requested in his will but he likewise knew that he had no control over the Cemetery Association which was an association of lot holders and he did not undertake to make her superintendent of the Association and it is this association to which his gift is made. As far as the Lawnside Cemetery Association is concerned, Mr. Snelbaker was a lot holder, together with approximately 2000 other lot holders (S. C. p. 59, ll. 1-10). His gift therefore is not one to assist his business. His gift is one for the general public who have purchased lots and will purchase lots in this cemetery.

To determine whether or not this cemetery trust

is a valid trust, we must first consider whether or not the cemetery is a charitable use. In the case of *Bliss v. Linden Cemetery Association*, 81 N.J.E. 394, the Vice Chancellor on page 396 makes this statement:

“It may be well before going into the facts to examine some of the questions of law which must necessarily be appealed to. Notwithstanding the great contrariety of opinion held by the courts of the various states, it seems to be well settled in New Jersey that a trust for the establishment and maintenance of a cemetery or public burying grounds is a charitable use within the meaning of that term as it is commonly used. It was so held by Chancellor Runyon in *Stockton vs. Newark*, 42 N. J. Eq. (15 Stew.) 531, and by Chief Justice Beasley in the same case on appeal, *Newark vs. Stockton*, 44 N. J. Eq. (17 Stew.) 179. The question there was what relation a plot of land called ‘The Old Burying Ground’ was in with reference to the city of Newark, which held the legal title thereto. The chief justice said: ‘The city holds the fee of the land as a public burying place, the same being a charitable use.’ In the case in hand the corporation created under the general law of the state took title to the fee-simple of the lands in question with a *habendum*, ‘to the party of the second part (the corporation) for the purpose of a cemetery;’ the situation does not vary from that unanimously announced in *Newark vs. Stockton*. Following this is the opinion of Vice-Chancellor Stevens in *Corin v. Glenwood Cemetery*, 69 Atl. Rep. 1083, holding to a similar conclusion.”

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A reading of the foregoing cases cited by the Vice Chancellor in the case of *Bliss vs. Linden Cemetery Association* clearly shows that the Court of Chancery and the Court of Errors and Appeals have held that the maintenance and establishment of a cemetery is a charitable use.

A recent decision by the Court of Errors and Appeals is the case of *Atlas Fence Company vs. West Ridgelawn Cemetery*, 110 N.J.E. 580, the opinion of the Court of Errors and Appeals having been written by Justice Parker, and on page 591 he makes this statement:

“That a public cemetery organized under our statute (*Comp. Stat.*, p. 372) is a charitable use we think is clear. It is true that this court, in *Attorney-General v. Linden Cemetery Association*, 85 N. J. Eq. 501, 507, reserved its opinion on the point, which the late Vice-Chancellor Howell, in the same case, had expressly decided (*Bliss vs. Linden Cemetery Association*, 81 N. J. Eq. 394, 396), and the late Vice-Chancellor Stevens had twice suggested. *Corin v. Glenwood Cemetery*, 69 Atl. Rep. 1083 (not officially reported); *East Ridgelawn Cemetery Co. v. Frank*, 77 N. J. Eq. 36. In the ‘*Old Burying Ground*’ Case, *Stockton vs. Mayor, &c., of Newark*, 42 N.J.E. 531, Chancellor Runyon held that there was a charitable trust; and on appeal, this court, while reversing the decree, took occasion to express its entire concurrence in that view. 44 N.J.E. 178, 183. We cannot perceive any substantial difference in the use, between a public burying ground conveyed for burial purposes to a municipality, and a burying ground owned and operated by a cemetery corporation under our statute. In the *East*

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Ridgelawn case, 77 N. J. Eq. 39, the vice-chancellor points out the provisions of the statute committing the management of a cemetery to trustees elected by the lot owners; exempting the lands from taxation and assessment; making lots generally inalienable after an interment therein; conferring limited powers of eminent domain; authorizing the holding of property real and personal, upon trust to apply the income to the improvement and embellishment of the grounds; and the investment of proceeds of sale of lots for the same purpose; and directing by law the application of all proceeds of sale of lots to paying for the property, putting and keeping it in order, improving and 'embellishing' it, and for 'incidental expenses.'

* * * ”

Therefore if the establishment and maintenance of a cemetery is a charitable use as specified in the case of *Bliss vs. Linden Cemetery Association*, above cited, and if a public cemetery organized under our statute is a charitable use as stated in the case of *Atlas Fence Company vs. West Ridgelawn Cemetery*, above cited, a gift to trustees for the benefit of the cemetery is a gift for the benefit of a charitable use and as such should be sustained under the common law the same as any other gift to a trustee for the benefit of a charitable use as a hospital, library, college, etc.

It is argued by the appellants that the statute in New Jersey, authorizing a gift to a cemetery association and to be held by it and the income used for the association (R. S. 8:2-33) and that a gift to be held in trust for the benefit of an individual lot under the 1920 Act, as cited by him do not cover this particular class of gifts to a trustee for the benefit of

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the association. Clearly without arguing whether or not the gift comes under either of the acts in question, it was not necessary for the legislature to legislate a trust like this into existence as a cemetery had been recognized as a charitable use under the common law and under the law of this State.

Some doubt seems to have been thrown upon this theory of the common law's support of a cemetery as a charitable use by some Chancery cases; to wit, *In re Corle*, 61 N.J.E. 409; *Hilliard vs. Parker*, 76 N.J.E. 447; and *Morristown Trust Company vs. Morristown*, 82 N.J.E. 521; *Hartson vs. Elden*, 50 N. J. Eq. 522, *Van Sychel vs. Johnson*, 80 N. J. Eq. 117, and seem to indicate that a cemetery is not a charitable use. It will be noticed in reading these cases that each of them had a private trust in perpetuity tied in with a trust for the benefit of the whole cemetery and therefore must fall on the ground that they could not be separated. The legislature, feeling that an injustice was done to the public by reason of the court's holding that such a private trust for the benefit of the cemetery lot could not be sustained, passed an act of 1920, referred to in the brief of the appellants at the top of page 27 and which clearly shows that it is for the care or embellishment of the cemetery lot. After the passage of that act, the Court of Chancery in the case of the *First National Bank of Ocean City vs. Rice*, 101 N.J.E. 530, holds that a gift of \$500.00 for the care of the cemetery lot and any surplus over the amount required for the lot should be used for the general up-keep of the cemetery was a valid gift. If the trust for the benefit of the cemetery lot under the act was good and the surplus over for the whole cemetery was void under our common law, then the court erred in upholding this trust. However, apparently the legislature felt that there was some

disagreement in the Court of Chancery relative to these kinds of trusts which were for the benefit of the whole cemetery and for the purpose of clearing the matter definitely amended the act in 1937, being Revised Statute 8:2-30, and then further amended the act in 1939, which is the act mentioned in the appellants' brief on page 25. The act as passed in 1937 is the same as that passed in 1939 except the proviso. A study of the act as passed in 1920 and as amended in 1937 and carried into 1939 shows quite a change. If the argument of the appellants be true, why was the wording of the act changed? There was no necessity therefor. It is said the title of the two acts are the same or substantially so. Certainly the titles of the acts apply to cemetery lots while in the 1920 act, the enacting part of the act relates only to a cemetery lot and apparently confines it to that; while in the 1937, the act refers to cemetery or grave, plot or lot. If the title to the act states cemetery lots, is it confined to one lot, two lots, five lots or all the lots in the cemetery? As we look over the act as passed in 1939, it seems quite possible that the legislature had in mind the development of the cemetery business in which it had in 1920 permitted the embellishment and care of a cemetery lot and in 1937 it included the word "plot" which is not synonymous with the word "lot" in cemetery thought, but is more nearly confined to a section of a cemetery as many of the large public cemeteries were then devoting a portion of their cemetery to lodges or other organizations for the burial of their members in that section or plot, meaning several lots and therefore when they say for the care or embellishment of any cemetery or grave, plot or lot they mean exactly as stated in the act that it can be for the care and embellishment of any cemetery or for any grave or for any plot or

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for any lot. The graves therein, the tombstones and monuments thereon refer equally to the cemetery, the plot or the lot. Phrase "of any mausoleum", may well refer to any lot or plot because the mausoleum often times covers a lot for an individual family, but a mausoleum operated by the cemetery association may well cover a large number of lots.

It is therefore respectfully submitted that the Lawnside Cemetery trust created under Section 7(C) of the will is a valid trust first because it is a charitable use and under the common law a gift for a charitable use is sustained. Second the act R. S. 8:2-30 supports the trust. As was said in the Pennsylvania case of *In re Smith's Estate*, (Pa.) 37 Atl. Rep., page 114,

"Gifts for the erection of monuments and construction of vaults or tombs in cemetery lots, and inclosing the same, and providing for their future care and adornment, together with other similar mortuary gifts, having ever been recognized, and the wishes of the donor or testator carried out by the courts. And, to remove all doubt upon the subject, the legislature, by the act of May 26, 1891 (P. L. 119), expressly declared that no disposition of property hereafter made for the maintenance or care of any cemetery, churchyard, etc., or monument or other erections on or about the same, shall fail by reason of such disposition having been made in perpetuity, but shall be held to be made for a charitable use."

To the same effect is the case of *In re Close's Estate*, 103 Atl. Rep. 822.

It is respectfully submitted that the two trusts should be sustained.

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As regards the appeal of Helen F. Snelbaker Zeigenfus, it should be dismissed on the ground that a decree pro confesso was taken against her and it still stands unopened.

Respectfully submitted,

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To be argued by:

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