INDEX.

In Chancery of New Jersey

Between

THE TRENTON SAVING FUND SOCIETY, a corporation,
Complainant,

and

JAMES W. WYTHMAN, *et als.*,
Defendants.

On Bill, Etc.

NOTICE OF APPEAL.

The complainant hereby appeals from the final decree made by Chancellor Edwin Robert Walker, in the above stated cause, and from the whole and every part, to the Court of Errors and Appeals in the last resort in all cases.

MINTON & ROGERS,
Sol'rs for and of Counsel With Complainant.

Dated:
April 1, 1929.

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

H. C. MINTON, JR.,
Of Counsel With Com'pt.

NEW JERSEY COURT OF ERRORS AND APPEALS.

THE TRENTON SAVING FUND SOCIETY, a corporation,
Complainant-Appellant,

vs.

JAMES W. WYTHMAN, ANNA C. WYTHMAN, ROBERT W. HOWELL, Trustee for Charles R. Howell, HARRIET B. HOWELL, CHARLES F. HOMEIER, MARIE H. HOMEIER and the ATTORNEY GENERAL of the STATE of NEW JERSEY,
Defendants-Appellees.

On Appeal From the Court of Chancery.

PETITION OF APPEAL.

TO THE HONORABLE THE COURT OF ERRORS AND APPEALS IN THE LAST RESORT IN ALL CAUSES:

The petition of The Trenton Saving Fund Society, a corporation, the appellant in the above entitled cause, respectively shows that:

1. Petitioner finds itself aggrieved by a final decree made in the Court of Chancery by his Honor Edwin Robert Walker, Chancellor of the State of New Jersey, bearing date the first day of April, in the year one thousand nine hundred and twenty-nine, in a certain cause in the said Court of Chancery wherein the said The Trenton Saving Fund Society, a corporation, was complainant and the said James W. Wythman, Anna C. Wythman,

Robert W. Howell, trustee for Charles R. Howell, Harriet B. Howell, Charles F. Homeier, Marie H. Homeier and the Attorney General of the State of New Jersey were defendants, in this respect, to wit, that the said decree ascertains and declares, adjudges and decrees * * *

> "that the Act of the New Jersey Legislature passed March 12, 1851 (Comp. Stat. p. 5860), known as the Wills Act, repealed by implication Paragraph 8 of the Act of 1844, (P. L. p. 170) and that the complainant is not entitled to a decree that the appointments in pursuance of the complainant's charter (P. L. 1844, p. 170, Paragraph 8) are valid"
>
> and "that complainant has no authorization or power to follow said provisions, and that the said appointments are invalid and ineffectual trusts for the purposes therein set out."

2. And petitioner appeals from the decree of the Chancellor which decrees as aforesaid, upon the ground that the same is erroneous, in that;

(a) It ascertained and declared, adjudged and decreed that the Act of the New Jersey Legislature passed March 12, 1851 (Comp. Stat. p. 5860) repealed by implication Par. eight of the Act of the New Jersey Legislature passed March 7, 1844 (P. L. p. 170), and in that it ascertained and declared, adjudged and decreed that the complainant is not entitled to a decree, that the appointments, in pursuance of the Act of the New Jersey Legislature of March 4, 1844 (P. L. p. 170) are valid.

Your petitioner, therefore, prays that the said decree of the said Chancellor may be wholly reversed, set aside and for nothing holden, and that petitioner may have such other relief in the premises as this Court shall deem proper.

MINTON & ROGERS,
Solicitors for Appellant,
H. COLLIN MINTON, JR.,
Of Counsel.

NEW JERSEY COURT OF ERRORS AND APPEALS.

THE TRENTON SAVING FUND SOCIETY, a corporation,
Complainant-Appellant,
vs.
JAMES W. WYTHMAN, et als.,
Defendants-Appellees.

On Appeal From the Court of Chancery.

NOTICE OF HEARING.

To the Appellees, James W. Wythman, Anna C. Wythman, Robert W. Howell, Trustee for Charles R. Howell, Harriet B. Howell, Charles F. Homeier, Marie H. Homeier and the Attorney General of the State of New Jersey:

Take Notice that the argument of the appeal 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 House, at Trenton, on May 20, 1929, at 10 o'clock in the forenoon, or as soon thereafter as counsel may be heard.

MINTON & ROGERS,
Sol'rs for and of Counsel With Appellant.

Sitting below: Walker, Chancellor.

Bill.

IN CHANCERY OF NEW JERSEY.

Between
THE TRENTON SAVING FUND SOCIETY, a corporation,
Complainant,
and
JAMES W. WYTHMAN, ANNA C. WYTHMAN, ROBERT W. HOWELL, Trustee for Charles R. Howell, HARRIET B. HOWELL, CHARLES F. HOMEIER, MARIE H. HOMEIER and the ATTORNEY GENERAL of the STATE of NEW JERSEY,
Defendants.
} On Bill, Etc.

BILL.

TO THE HONORABLE EDWIN ROBERT WALKER, CHANCELLOR OF THE STATE OF NEW JERSEY.

Complainant, The Trenton Saving Fund Society, respectfully shows that

(1) It is a body corporate of the State of New Jersey, incorporated by special act of the Legislature of New Jersey passed March 7, 1844, with principal offices in the City of Trenton, County of Mercer and State of New Jersey, with all powers and obligations as more particularly set forth in said act and in acts supplemental thereto.

(2) That the defendants, James W. Wythman, Anna C. Wythman, Robert W. Howell, Trustee for

Charles R. Howell, Harriet B. Howell, Charles F. Homeier, Marie H. Homeier and the Attorney General of the State of New Jersey, are residents of the City of Trenton, County of Mercer and State of New Jersey.

(3) That in said act of March 7, 1844, and more particularly in paragraph eight of said act, it is provided:

> "That a book shall be kept at the office of the Society, in which every depositor shall be at liberty to appoint some person or persons to whom, in the event of his or her death, the money shall be paid, if not otherwise disposed of by will, and all payments made by said Society, to such persons so appointed, shall be a full discharge to said Society; should no such appointment be made, such deposit, on the decease of the depositor, shall be paid to his or her legal representatives."

(4) That on December 17, 1912, James W. Wythman executed an appointment in which he appointed his wife, Anna C. Wythman, to receive all moneys that might be standing in his name on the books of the complainant at the time of his death if not otherwise disposed of by will, and a copy of said appointment is attached hereto and made a part hereof and marked Exhibit 1.

(5) That on July 15, 1904, Robert W. Howell, trustee for Charles R. Howell, executed an appointment in which he appointed his wife, Harriet B. Howell, to receive all moneys that might be standing in his name on the books of the complainant at the time of his death if not otherwise disposed of by will, and a copy of said appointment is attached hereto and made a part hereof and marked Exhibit 2.

(6) That on July 22, 1916, Charles F. Homeier executed an appointment in which he appointed his wife, Marie H. Homeier, to receive all moneys that might be standing in his name on the books of the complainant at the time of his death if not otherwise disposed of by will,

and a copy of said appointment is attached hereto and made a part hereof and marked Exhibit 3.

(7) That on March 12, 1851, the Legislature of New Jersey passed an act referred to as "An Act Concerning Wills," which act provided, as more specifically set forth therein, among other things, for the legal and valid manner of disposing of personal property by any person upon his decease; and said act of legislature with revisions and supplements, is now in force and has been in force since the date of its passing. There is no general or special repealer in the act above referred to passed March 12, 1851, nor in subsequent amendments or supplements thereto.

(8) The act of the Legislature of New Jersey passed March 7, 1844, with supplements thereto, and the act of the Legislature of New Jersey passed March 12, 1851, with supplements thereto, are hereby made a part hereof by reference.

(9) Complainant is advised and verily believes that there is a question as to the validity of the various appointments referred to in paragraph three, four, five and six herein as the manner of the execution of the said appointments is not in accordance with the act of March 12, 1851, with supplements, but is in accordance with the act of March 7, 1844, with supplements.

(10) Complainant, as hereinbefore stated, has some six hundred thirty-five of these appointments, including the appointments set out in this bill, made in accordance with the act of March 7, 1844, and in the event that these appointments are held invalid owing to the act of March 12, 1851, with supplements, complainant will assert its best efforts to notify all persons who have made such appointments, that such appointments are invalid and of no effect and in the event that the said appointments are held valid in consideration of the premises, complainant will continue to exercise its power as particularly set forth in paragraph eight of the act of March 7, 1844.

(11) Complainant is an interested party in each of the said appointments hereinbefore referred to and its legal relations are affected by the act of March 7, 1844, with supplements and the act of March 12, 1851 with supplements, and is desirous of having determined the question of construction of the said acts and the validity of the said appointments made by depositors in accordance with paragraph eight of the act of March 7, 1844.

(12) That the Attorney General of the State of New Jersey, Edward L. Katzenbach, is a proper party to this suit.

(13) Complainant is in the status of a trustee for the various funds for which appointments have been made and more particularly for the funds now held on deposit in the names of James W. Wythman, Robert W. Howell, trustee for Charles R. Howell and Charles F. Homeier, and is desirous of having the validity of the said trusts determined with due consideration of the act of March 7, 1844, with supplements and the act of March 12, 1851, with supplements.

(14) That there is no demand made upon complainant at the present time by any of the parties hereto, nor by any other parties, to the appointments referred to herein for the payment of any funds subject to the trusts of the said appointments, and there is no contest or suit now pending in which the validity of the said appointments is brought into question.

Petitioner is without adequate remedy in the Courts of Law and therefore prays that

(1) James W. Wythman, Anna C. Wythman, Robert W. Howell. trustee for Charles R. Howell, Harriet B. Howell, Charles F. Homeier, Marie H. Homeier and the Attorney General of the State of New Jersey, who are the defendants of this suit, may answer this Bill of Complaint and each statement made therein; or

(2) That a writ of Subpoena may issue commanding

the said defendants to answer this Bill of Complaint and to abide by such decree as this Court may make in the premises.

(3) This Honorable Court issue and declare a judgment or decree declaring

1. That appointments made in form and manner as set out in paragraph three herein and in strict accordance with the act of March 7, 1844, now held by The Trenton Saving Fund Society and the particular appointments set out in paragraphs four, five and six herein, held by The Trenton Saving Fund Society, are valid and effectual appointments in accordance with the true intent and purpose of the act of March 7, 1844, and that The Trenton Saving Fund Society is authorized and empowered to hold the funds subject to said appointments which may be standing in the name of the appointors in accordance with the act of March 7, 1844, and particularly which may be standing in the names of James W. Wythman, Robert W. Howell in trust for Charles R. Howell and Charles F. Homeier at the time of the death of the appointers hereinbefore mentioned and particularly at the time of the death of the parties named respectively, if not otherwise disposed of by will, and to take as full discharge, receipt from all such persons so appointed and from the three parties appointed as set out in paragraphs four, five and six herein, in accordance with the act of March 7, 1844, or

2. That the said appointments herein referred to so held by complainant are invalid and ineffectual and contrary to the laws of the State of New Jersey and that complainant has no authorization or power to follow the provisions of the act of March 7, 1844, paragraph eight in any manner or wise whatsoever and that said appointments so held by complainant are invalid and ineffectual trusts for the purposes set out therein.

(4) For such other relief as to your Honorable Court

may seem just and equitable and your complainant forever prays.

MINTON & ROGERS,
Solicitors for and of Counsel with Complainant.

EXHIBIT 1.

Account No. 80104 3082

In pursuance of the eighth section of the charter of The Trenton Saving Fund Society, I hereby appoint my wife, Anna C. Wythman, 451 Princeton Ave., Trenton, N. J., to receive all moneys that may be standing in my name on the books of said Society at my death, if not otherwise disposed of by will; and I direct payment of said deposit, with the interest thereof, to be made to said appointee, in compliance herewith.

Witness my hand this 17th day of December A. D., nineteen hundred and twelve.

JAMES W. WYTHMAN.

Witness present,
J. H. Ronan, Jr.

EXHIBIT 2.

Account No. 68763 1457

In pursuance of the eighth section of the charter of The Trenton Saving Fund Society, I hereby appoint my wife, Harriet B. Howell, 57 N. Stockton St., Trenton, N. J., to receive all moneys that may be standing in my name on the

books of said Society at my death, if not otherwise disposed of by will; and I direct payment of said deposit, with interest thereof, to be made to said appointee, in compliance herewith.

Witness my hand this 15th day of July A. D., nineteen hundred and four.

ROBERT W. HOWELL, in trust
for CHARLES R. HOWELL.

Witness present,
Robt. V. Whitehead.

EXHIBIT 3.

Account No. 69188 3442

In pursuance of the eighth section of the charter of The Trenton Saving Fund Society, I hereby appoint my wife, Marie H. Homeier, 431 W. Hanover St., Trenton, N. J., to receive all moneys that may be standing in my name on the books of said Society at my death, if not otherwise disposed of by will; and I direct payment of said deposit, with the interest thereof, to be made to said appointee, in compliance herewith.

Witness my hand this 22nd day of July A. D., nineteen hundred and sixteen.

CHARLES F. HOMEIER.

Witness present,
J. H. Ronan, Jr.

SUBPOENA.

(Filed October 24, 1927.)

NEW JERSEY, *to wit*, The State of New Jersey, to James W. Wythman, Anna C. Wythman, Robert W. Howell, Trustee for Charles R. Howell, Harriet B. Howell, Charles F. Homeier, Marie H. Homeier and Edward L. Katzenbach, Attorney General of the State of New Jersey.

GREETING: Whereas a bill of complaint has lately been exhibited against you in our Court of Chancery by The Trenton Saving Fund Society, a corporation, to be relieved touching the matters therein contained.

THEREFOREE, we command you, if you intend to make a defense, that you file an answer to said bill in the office of the Clerk of our said court at Trenton, on or before the expiration of twenty days from and after the 20th day of October, 1927, and in default thereof such order or decree will be made against you as the Court shall think equitable and just.

WITNESS, his Honor, Edwin Robert Walker, Chancellor of our said State, at Trenton, the 14th day of October, in the year of our Lord one thousand nine hundred and twenty-seven.

THOMAS BARBER,
Clerk.

MINTON & ROGERS,
Sol'rs.

Service of the within is hereby acknowledged this 14th day of October, 1927.

SAMUEL D. LENOX,
Sol'r. for and of Counsel with
James W. Wythman, et als.
EDWARD L. KATZENBACH,
Attorney General of the State
of New Jersey.

SUBPOENA.

(Filed March 20, 1929.)

NEW JERSEY, *to wit*, The State of New Jersey, to James W. Wythman, Anna C. Wythman, Robert W. Howell, Trustee for Charles R. Howell, Harriet B. Howell, Charles F. Homeier, Marie H. Homeier, Attorney General of the State of New Jersey.

GREETING: Whereas a bill of complaint has lately been exhibited against you in our Court of Chancery by The Trenton Saving Fund Society, to be relieved touching the matters therein contained.

THEREFORE, we command you, if you intend to make a defense, that you file an answer to said bill in the office of the Clerk of our said court at Trenton, on or before the expiration of twenty days from and after the 20th day of October, 1927, and in default thereof such order or decree will be made against you as the Court shall think equitable and just.

WITNESS, his Honor, Edwin Robert Walker, our Chancellor, at Trenton, the 14th day of October, in the

year of our Lord one thousand nine hundred and twenty-seven.

THOMAS BARBER,
Clerk.

MINTON & ROGERS,
Sol'rs.

Due and legal service of the within subpoena is hereby acknowledged as of October 18, 1927.

SAMUEL D. LENOX,
Sol'r. for Jas. W. Wythman, Anna C. Wythman, Robert W. Howell, trustee for Chas. R. Howell, Harriet B. Howell, Chas. F. Homeier and Marie H. Homeier.

IN CHANCERY OF NEW JERSEY.

Between
THE TRENTON SAVING FUND SOCIETY, a corporation,
Complainant,

and

JAMES W. WYTHMAN, ANNA C. WYTHMAN, ROBERT W. HOWELL, Trustee for Charles R. Howell, HARRIET B. HOWELL, CHARLES F. HOMEIER, MARIE H. HOMEIER and the ATTORNEY GENERAL of the STATE of NEW JERSEY,
Defendants.
} On Bill, Etc.

DECREE PRO CONFESSO
and
ORDER FOR PROOFS.

(Filed December 6, 1927.)

Upon opening the matter to the court by Minton and Rogers, Esquires, of counsel with the complainant, and it appearing that process of subpoena for the defendants to appear and answer the complainant's Bill has been duly issued and returned and service of the same acknowledged by the defendants through their counsel Samuel D. Lenox, Esquire, and by the Attorney General of the State of New Jersey, and that the said defendants have not

appeared, answered or moved to the complainant's Bill within the time limited by the rules of this court, or at any other time:

IT IS on this 1st day of December, one thousand nine hundred and twenty-seven, ORDERED, that the Bill of Complaint be taken as confessed against the defendants, James W. Wythman, Anna C. Wythman, Robert W. Howell, trustee for Charles R. Howell, Harriet B. Howell, Charles F. Homeier, Marie H. Homeier, and the Attorney General of the State of New Jersey, and IT IS FURTHER ORDERED that the complainant proceed to take depositions and other evidence to substantiate and prove the allegations in the said Bill and to bring on the hearing of the cause *ex parte*.

E. R. WALKER,
C.

Respectfully advised,
WM. J. BACKES,
A. M.

A true copy.
THOMAS BARBER,
Clerk.

IN CHANCERY OF NEW JERSEY.

Between
THE TRENTON SAVING FUND SOCIETY, a corporation,
Complainant,

and

JAMES W. WYTHMAN, ANNA C. WYTHMAN, ROBERT W. HOWELL, Trustee for Charles R. Howell, HARRIET B. HOWELL, CHARLES F. HOMEIER, MARIE H. HOMEIER and the ATTORNEY GENERAL of the STATE of NEW JERSEY,
Defendants.
} On Bill, Etc.

PROOFS

(Filed December 16, 1927.)

I, Fred B. Biles, one of the Masters of the Court of Chancery of New Jersey, do hereby respectfully certify that the following proofs were submitted to me at the office of The Trenton Saving Fund Society in the City of Trenton, at 123 East State Street, on December 12, 1927, at two P. M. in the afternoon. I was attended by Henry Collin Minton, Jr., solicitor for the complainant in the above action.

Robert V. Whitehead, of full age, being duly sworn according to law, upon his oath, deposed and said: "I am the secretary and treasurer of The Trenton Saving Fund

Society and have been such for five years last past, and prior thereto was for a great many years assistant secretary and assistant treasurer of the said The Trenton Saving Fund Society. That as such secretary and treasurer and prior thereto as such assistant secretary and assistant treasurer all the records of The Trenton Saving Fund Society are intrusted in my care and custody, and particularly the books of appointments which are referred to in the bill filed in this matter. I turn to appointment in one of the volumes of these appointments No. 3082 and present to the Master. The appointment reads as follows:

Account No. 80104 3082

In pursuance of the eighth section of the charter of The Trenton Saving Fund Society, I hereby appoint my wife, Anna C. Wythman, 451 Princeton Ave., Trenton, N. J., to receive all moneys that may be standing in my name on the books of said Society at my death, if not otherwise disposed of by will; and I direct payment of said deposit, with the interest thereof, to be made to said appointee, in compliance herewith,

Witness my hand this 17th day of December, A. D., nineteen hundred and twelve.

JAMES W. WYTHMAN.

Witness present,

J. H. Ronan, Jr.

"The signature of J. H. Ronan, Jr., as shown on the said appointment, is to my knowledge the true signature of J. H. Ronan, Jr.

"I turn to appointment No. 1457 and present to the Master. The appointment reads as follows:

Account No. 68763 1457

In pursuance of the eighth section of the charter of The Trenton Saving Fund Society, I hereby appoint my wife, Harriet B. Howell, 57 N. Stockton St., Trenton, N. J., to receive all moneys that may be standing in my name on the books of said Society at my death, if not otherwise disposed of by will; and I direct payment of said deposit, with interest thereof, to be made to said appointee, in compliance herewith.

Witness my hand this 15th day of June A. D., ninteen hundred and four.

ROBERT W. HOWELL in trust
for Charles R. Howell.

Witness present,
Robt. V. Whitehead.

"The signature of Robt. V. Whitehead, as shown on the said appointment, is to my knowledge the true signature of Robt. V. Whitehead.

"I turn to appointment No. 3442 and present to the Master. The appointment reads as follows:

Account No. 69188 3442

In Pursuance of the eighth section of the charter of The Trenton Saving Fund Society, I hereby appoint my wife, Marie H. Homeier, 431 W. Hanover St., Trenton, N. J., to receive all moneys that may be standing in my name on the books of said Society at my death, if not otherwise disposed of by will; and I direct payment of said deposit, with the interest thereof, to be made to said appointee, in compliance herewith.

Witness my hand this 22nd day of July A. D., nineteen hundred and sixteen.

CHARLES F. HOMEIER.

Witness present,
J. H. Ronan, Jr.

"The signature of J. H. Ronan, Jr., as shown on the said apointment, is to my knowledge the true signature of J. H. Ronan, Jr.

"I show the Master six hundred and thirty-two (632) appointments of the same form and character, which have been executed by our depositors pursuant to paragraph eight of our charter, with the signature of each one respectively properly witnessed, and state that the six hundred and thirty-two (632) appointments, together with the three appointments specifically set out herein, constitute all the appointments referred to in the bill filled in this cause.

"Doubt has arisen in the minds of the managers of this Society as to the validity of these appointments owing to the question of a possible conflict with the statute laws of this State, and at the present time we are accepting no more of these appointments until the question of their validity is determined.

"There are from time to time certain funds on deposit in this bank in the names respectively of the appointors referred to in the six hundred and thirty-five (635) appointments."

FRED B. BILES,
Master in Chancery.

IN CHANCERY OF NEW JERSEY.

Between
THE TRENTON SAVING FUND SOCIETY, a corporation,
Complainant,

and

JAMES W. WYTHMAN, ANNA C. WYTHMAN, ROBERT W. HOWELL, Trustee for Charles R. Howell, HARRIET B. HOWELL, CHARLES F. HOMEIER, MARIE H. HOMEIER and the ATTORNEY GENERAL of the STATE of NEW JERSEY,
Defendants.
} On Bill, Etc.

DECREE.

This cause being brought before this court by Minton & Rogers, Esqrs., solicitors of and of counsel with the complainant on final hearing, on pleadings and proofs, *ex parte*, and upon considering the proofs filed in the above matter by Fred B. Biles, Master of this Court, December 16, 1927, and it appearing that this Court has jurisdiction in the premises, and it further appearing that complainant has asked for a declaratory decree respecting its rights to proceed and act under Paragraph 8 of the Act of the New Jersey Legislature of March 7, 1844 (P. L. p. 170) whereby the said complainant was given power to keep a book in which any depositors might name some person to whom in the event of the depositor's

death, the money should be paid, if not otherwise disposed of by will, and that on payment in such manner the complainant would be discharged of all obligations therein, as is more fully set out in the bill and proofs, and after considering the arguments of counsel for the complainant.

It is on this first day of April, 1929, ascertained and declared, ADJUDGED and DECREED that the Act of the New Jersey Legislature passed March 12, 1851 (Comp. Stat. p. 5860) known as the Wills Act, repealed by implication Paragraph 8 of the Act of 1844, (P. L. p. 170) and that the complainant is not entitled to a decree that the appointments in pursuance of the complainant's charter (P. L. 1844, p. 170, Paragraph 8) are valid and as the bill prays in the alternative that if such appointments are held to be invalid and contrary to the law of this State, it is further ascertained and declared DECREED that complainant has no authorization or power to follow said provisions, and that the said appointments are invalid and ineffectual trusts for the purposes therein set out.

E. R. WALKER,,
Chancellor.

65/645

IN CHANCERY OF NEW JERSEY.

Between
THE TRENTON SAVING FUND SOCIETY, a corporation,
Complainants,
and
JAMES W. WYTHMAN, *et als.*,
Defendants.
} On Bill, Etc.

ORDER ALLOWING AMENDMENT TO PROOFS.

This matter being presented to the Court by H. Collin Minton, Jr., of Minton & Rogers, Esquires, of Counsel with the complainant in the above matter, and an application being hereby made to amend and supplement the proofs in this matter, in that the complainant did not include in its proofs before the Master the authority under its By-Laws for the transactions in this cause questioned and due proof being made to this Court of the existence of such authority in said By-Laws.

IT IS on this fifteenth day of March, 1929, ORDERED that the record of the proofs in this cause be supplemented to include a transcript of Paragraph 13, Section 35 of the By-Laws and Regulations of The Trenton Saving Fund Society, which reads as follows:

> "In the case of the death of a depositor, payment can be made only to his or her legal representatives producing the book, unless an appoint-

ment shall have been made by such depositor, in the book of the Society, of a person to receive the same, pursuant to the charter."

E. R. WALKER,
Chancellor.

IN CHANCERY OF NEW JERSEY.

Between
THE TRENTON SAVING FUND SOCIETY, a corporation,
Complainant,

and

JAMES WYTHMAN, ANNA C. WYTHMAN, ROBERT W. HOWELL, Trustee for Charles R. Howell, HARRIET B. HOWELL, CHARLES F. HOMEIER, MARIE H. HOMEIER and the ATTORNEY GENERAL of the STATE of NEW JERSEY,
Defendant.

65-645.
On Bill, &c.

OPINION.

1. A public trust is one for the benefit of the public at large, or some portion of it answering to a particular description, as a public charity; while a private trust is one wherein the beneficial interest is vested absolutely in

one or more individuals who are, or may be within a certain time, distinctly ascertained.

2. In suits involving public trusts the attorney general, representing the public, is a necessary party, and he may be complainant of his own motion or on the relation of an interested party, or he may be made a defendant; it is immaterial whether he be complainant or defendant; but, if the trust is private the attorney general is neither a necessary nor a proper party to the suit.

3. A repeal of one statute by another by implication is not favored, but where the language of a later act covers the whole subject of a former statute, its repeal by implication follows. And this applies to a portion of a prior act as well.

4. All consistent statutes, which can stand together, though enacted at different dates, relating to the same subject, called *in pari materia*, are treated prospectively, and construed together, as one act; but where an act is plain and unambiguous in its terms, the rule is fundamental that there is no room for judicial construction, since the language employed is presumed to evince the legislative intent.

5. When the expressed intention of a depositor is to bestow upon another so much of his deposit as shall remain undrawn by him at his death, such a gift is purely testamentary in character, and to hold that a mere appointment of such fund as remained at death is a valid method of disposition would be to violate the statute of wills in its operation upon personal property, so far as its mandatory provisions are concerned.

On final hearing ex *parte* on pleadings and proofs.

Messrs. Minton & *Rogers*, for complainant.

WALKER, Chancellor.

On March 7, 1844, The Trenton Saving Fund Society was incorporated by special act of the Legislature (*P. L. p.* 170) and given power in §8 of that act to keep

a book in which any depositor might name some person to whom, in the event of the depositor's death, the money should be paid, if not otherwise disposed of by will; and that on payment in such manner the Society would be discharged of all obligations.

The present wills act was passed March 12, 1851 (*Comp. Stat. p.* 5860) and provides for the legal manner of disposing of personal property by any person upon his decease. An examination of this act disclosed no general or special repealer of inconsistent legislation and it appears that there is no like general or special repealer in any subsequent amendments or supplements thereto.

The Trenton Saving Fund Society, pursuant to §8 of its charter, and pursuant, further, to §13 of its by-laws, kept a book or books in which appointments were made in form and manner, according to the act, up to the date of the filing of the bill. The Society was advised some time since that there was a question concerning the validity of these appointments owing to possible conflict of the wills act, and, therefore, it has not used the power in question granted in the charter for several years.

The parties defendant in this matter constitute those now living and named in three of the appointments. And the attorney general of New Jersey has been made a defendant, representing the public, but he has not answered. Nor need he, if the trust is a private one, for if so he is neither a necessary nor a proper party. No defendant has answered.

The purpose of this proceeding is to determine the rights of the complainant and its legal status under these appointments.

This proceeding is brought under the act concerning declaratory judgments and decrees, *P. L.* 1924, *p.* 312, whose constitutionality was upheld by our court of errors and appeals in *McGrory Stores Corp.* v. *S. M. Braunstein, Inc.*, 102 *N. J. L.* 590. And Vice Chancellor Backes in *Paterson* v. *Currier*, 98 *N. J. Eq.* 48, held

that chancery only has power to make declaratory decrees where equitable questions are involved. The appointments here constitute a trust, and this court has power to enforce it. (*Caruso* v. *Caruso*, 6 *N. J. Adv. R.* 1753, 1762) if it be valid.

A preliminary question is, Is this a public or a private trust? A public trust is one for the benefit either of the public at large or some portion of it answering to a particular description, as a public charity; while a private trust is one wherein the beneficial interest is vested absolutely in one or more individuals who are, or may be within a certain time, distinctly ascertained. *Bouv. Law Dic.* (*Rawle's 3d rev.*) *Vol. 3, p. 3330.*

In *Lanning* v. *Commrs. of Pub. Inst.*, 63 *N. J. Eq.* 1, Chancellor Magie said, at *p.* 8, that in a public trust the attorney general, representing the public, is a necessary party to the litigation, and that he may be complainant in a bill either of his own motion or on the relation of some interested party, or he may be a defendant thereto; that it is immaterial whether he be complainant or defendant. And if this trust is not public the attorney general is not properly before this court herein.

Now this trust, within the definition quoted above, is a private trust. Consequently, the attorney general is not properly here, and is entirely justified in not answering,—in fact, there is nothing for him to answer. He could have moved to strike out, now substituted for demurrer.

In *Gordon* v. *Toler*, 83 *N. J. Eq.* 25, where a depositor signed a printed form directing the bank to add her sister's name to the account, giving them joint rights therein, and to pay the deposit to either or to the survivor, Vice Chancellor Stevens said that the question arose as to whether there was a gift of what remained at her death; that the effect of the word "survivor" was considered in *Stevenson* v. *Earl* (*infra*), and it was there held that the act was not testamentary and could not be effectuated by a paper like that in controversy, because

not made in the manner prescribed by the statute of wills. The vice chancellor further remarked that *Stevenson* v. *Earl* would undoubtedly rule the controversy were it not for §27 of the act concerning savings banks (4 *Comp. Stat. p.* 4703, §27), providing that a deposit made in the name of two persons payable to either or to the survivor, may be paid to either, whether the other be living or not, the latter act being intended only to protect savings banks, and that the two statutes might stand together; but that so far as any testamentary disposition of what remained at the death of the testator, it was not operative.

Counsel for the savings institution argues that the wills act does not repeal the provisions of the charter of the Saving Fund Society (*P. L.* 1844, *p.* 170, §8); and that, because it contains no repealer, specific or general. I disagree. Without any kind of repealer a later statute repeals a former if they apply to the same subject and are inconsistent with each other.

In *Tomlin* v. *Hildreth*, 65 *N. J. L.* 438, the supreme court held that repeal by implication is not favored, but where the language of a later act covers the whole subject of a former statute, its repeal by implication follows. There the acts which were before the court for construction were one of 1874, which limited the right to institute a suit for false imprisonment to four years, and the supplement of 1896, which limited the right of action in cases for personal injuries to suits commenced within two years; and the court held that it was evident that the intent of the legislature in passing the act of 1896 was to cover all actions for injuries to persons which could arise out of the unlawful act of any person &c., and this led the court to bar the action after two years from the date the cause thereof had accrued. This doctrine applies to a portion of a prior act as well.

All consistent statutes, which can stand together, though enacted at different dates, relating to the same subject, and hence, briefly, called *in pari materia*, are

treated prospectively, and construed together, as one act. *Farrell* v. *State*, 54 *N. J. L.* 421. But where an act is plain and unambiguous in its terms, the rule is fundamental that there is no room for judicial construction, since the language employed is presumed to evince the legislative intent. *In re City of Passaic*, 94 *N. J. L.* 384.

The act of 1851 was not the first wills act in New Jersey. There was one of 1714, and Chancellor Green, as ordinary, said in *Mundy* v. *Mundy*, 15 *N. J. Eq.* 290, *at p.* 292 (1858), that there was no difference, as to the attestation and execution of a will, between the acts of 1714 and of 1851, except as to the number of witnesses. The act of 1714 (*Allinson's Laws, p.* 27, §2) declared that all wills should pass any lands and other *estates* whatsoever (which would appear to include personal property, *Den* v. *Snitcher*, 14 *N. J. L.* 53, 63); and the wills act of 1795 (*P. L. p.* 10, §12) provided that persons may dispose of personal estate by will or testament in writing, as formerly might lawfully be done.

Assuming that the charter of the complainant (*P. L.* 1844, *p.* 170), which in §8 authorized it to keep a book in which any depositor might name some person to whom, in the event of his death, the money should be paid if not otherwise disposed of by will, amended *pro tanto* the act of 1714, and other inconsistent provisions of acts concerning wills previously passed, nevertheless, did not the wills act of March 12, 1851, (*Comp. Stat. p.* 5860, §24) which provides for the manner of disposing of personal property by any person upon his decease, being passed after the act of 1844, repeal that act, so far as it permitted a testamentary disposition to be made of a deposit in the manner indicated therein? The act of 1851 says that all wills and testaments of persons dying after July 1, 1850, "shall be in writing and shall be signed by the testator * * * and such writing declared to be his last will, in the presence of two witnesses present at the same time, who shall subscribe their names thereto,

as witnesses * * *; and all wills and testaments of persons dying since the date above mentioned made in the manner herein prescribed * * * shall be sufficient to devise, pass and bequeath all estates and property, real and personal, and all rights of any kind," &c. This, it will be seen, is clearly an exclusive requirement with reference to a valid testamentary disposition of personal property, and is therefore necessarily at variance with the provisions of the act of 1844, *p.* 170, §8, which makes the method of disposing of the bank account of a depositor to take effect after his death,— if he makes such an appointment on the books of the Society,— without his complying with the requirements of the statute of wills in the disposition thereof. In the words of the Tomlin case (65 *N. J. L.* 446), "where the language of a later covers the whole subject matter of a former statute, its repeal by implication follows." And so here. The wills act covers *in toto* the provision of the former act as to testamentary disposition.

Counsel for complainant contends that there is no inconsistency between the provision in the wills act and the charter of the complainant, and that therefore both may stand together, citing *State* v. *Commrs. of Railroad Taxation*, 38 *N. J. L.* 472, *at p.* 475. There Mr. Justice Van Syckel, speaking for the court of errors and appeals said: "If the general law of 1851 had enacted that all the lands of every railroad corporation in this state, without exception, should be liable to taxation under its provision, it would have applied, necessarily, to the Morris & Essex Railroad, and the general repealer would have swept away any inconsistent provisions in its charter; a general repealer in a general tax law can not disturb the provisions of a special charter because they are wholly different; they are not inconsistent—they both may stand independent of each other. They become inconsistent when the general law, by clear expression is made to embrace and is applied to the particular corporation, and

its inconsistent provisions are then brought within reach of a general repealer."

Now, the wills act is a general law which provides that only method whereby any person may dispose of land or personal property, to take effect upon his death, and that, within the case of *State* v. *Commrs. of Railroad Taxation*, the wills act, so far as respects bequests, being entirely inconsistent with the provisions of the charter of the complainant, repeals the same so far as testamentary disposition is concerned, by clear implication, that is, legislative intent; without any general or special repealer of the provisions of any inconsistent act.

Knorr's Appeal, 80 Pa. St. 93, is cited as being on all fours and directly in point with the case at bar. In that case it appeared that a charter was granted to the Philadelphia Saving Fund Society in 1819, which made provision that a book should be kept in which every depositor should be at liberty to appoint some person or persons to whom, in the event of his death, the money should be paid, if not otherwise disposed of by will. And the wills act of that state was passed in 1833. (*Laws*, *p.* 249) and contained a general repealer of inconsistent acts. Mr. Justice Paxson delivered the opinion of the Pennsylvania supreme court and held that the act of incorporation of the Philadelphia Saving Fund Society was within the recognized powers of the legislature and an appointment in pursuance of it was valid. And on the question of the conflict between the special act incorporating the Society and the Pennsylvania statute of wills, Justice Paxson, at *p.* 96, has this to say: "It is further objected that the writing referred to was a disposition of his property by George Knorrs to take effect after his death and therefore a will, and not being in conformity with the statute of wills, is not valid. This might be so but for the Act of Assembly which expressly authorized it. Such Act being within the recognized powers of the legislature the appointment in pursuance of it is necessarily valid."

Admittedly this Pennsylvania case is on all fours with the present one; but, the decision is flatly opposed to that of our court of errors and appeals in *Stevenson* v. *Earl*, 65 *N. J. Eq.* 721, wherein Chief Justice Gummere in the opinion said, at *p.* 725: "The expressed intention of the deceased was only to bestow upon his wife so much of his deposit as should remain undrawn by him at his death. Such a gift, it seems to me, is purely testamentary in its character. If it is not, then it is a perfectly easy thing for a person to retain the absolute control and dominion over his moneys and personal securities during his life and transfer that dominion to another at his death, with total disregard of the requirements contained in the statute of wills, by the simple device of depositing such moneys and securities, under an agreement with the depositary that he shall have the right to use them or deal with them as he pleases during his life, and that at his death so much of them as may remain shall be delivered to such person as is named in the agreement, who shall then become the owner thereof, and then delivering the agreement to the beneficiary with a statement of the same purport as that made by the deceased to his wife when he gave the pass-book to her. To hold that such a method of disposing of property by the owner at his death is valid, would be to practically repeal the statute of wills in its operation upon personal property, so far as its mandatory provisions are concerned.

"Our conclusion is that the moneys remaining to the credit of Earl, at his death, in the savings fund of the Pennsylvania Railroad Company did not become the property of his wife, notwithstanding the provision in the agreement between him and the company that such moneys should be paid to her at his death, our reason for so concluding being that such agreement constituted a testamentary disposition of his property, which was invalid because not made in the manner prescribed by the statute of wills. The necessary result of this conclusion is that

such moneys passed to his executors, on his death, as part of his estate." Here the appointment was made in virtue of the rules of the company and not by virtue of a statute, but if there had been an act authorizing it, such as in this case, it must necessarily have been swept aside as inconsistent with the statute of wills.

The result reached in this case is that the wills act of 1851 repealed §8 of the act of 1844, *P. L. p.* 170, and that therefore the complainant is not entitled to a decree that the appointments in pursuance of the complainant's charter, *P. L.* 1844, *p.* 170, §8, are valid; but, as the bill prays in the alternative that if such appointments are held to be invalid and contrary to the law of this state, that it be decreed that complainant has no authorization or power to follow said provisions, and that said appointments are invalid and ineffectual trusts for the purposes therein set out, and as the act concerning declaratory judgments and decrees provides that the declaration of the court may be either affirmative or negative in form and effect, the complainant may have a decree adjudging the appointments to be invalid.

New Jersey Court of Errors and Appeals

THE TRENTON SAVING FUND SOCIETY, a corporation,
Complainant-Appellant,

vs.

JAMES W. WYTHMAN, ANNA C. WYTHMAN, ROBERT W. HOWELL, Trustee for Charles R. Howell, HARRIET B. HOWELL, CHARLES F. HOMEIER, MARIE H. HOMEIER, and the ATTORNEY GENERAL of the STATE of NEW JERSEY,
Defendants-Appellees.

On Appeal From the Court of Chancery.

BRIEF OF APPELLANT.

STATEMENT OF FACTS.

This appeal presents for review a final decree in the Court of Chancery in which the said Court has adjudged and decreed that the Act of the New Jersey Legislature passed March 12, 1851, (*comp. stat. p.* 5860), known as the wills Act, repealed by implication paragraph 8 of the Act of 1844, P. L. p. 170.

Paragraph 8 of the Act of 1844, P. L. p. 170, is a

special charter under which the appellant was incorporated and provides as follows:—

> "That a book shall be kept at the office of the Society, in which every depositor shall be at liberty to appoint some person or persons to whom, in the event of his or her death, the money shall be paid, if not otherwise disposed of by will, and all payments made by said Society, to such persons so appointed, shall be a full discharge to said Society; should no such appointment be made, such deposit, on the decease of the depositor, shall be paid to his or her legal representatives."

The present wills Act was passed March 12, 1851. There is no general or special repealer in this Act, nor in any subsequent amendments or supplements thereto.

The Trenton Saving Fund Society, pursuant to the eighth paragraph of its Charter and Section thirteen of its by-laws, has kept a book or books in which appointments were made in form and manner according to the Act. The proofs show some six hundred thirty-five of these appointments standing open.

This bill was filed under the Declaratory Judgment Act, P. L. 1924, p. 312, and the parties defendant in this matter constitute the parties, who are now living, to three of these appointments. After service made upon counsel for parties, the matter proceeded *ex parte*.

After considering the proofs and argument of appellant *ex parte*, his Honor Chancellor Walker advised the decree appealed from.

ARGUMENT.

The ground of this appeal is:—The final decree was erroneous in that it ascertained, declared, adjudged and decreed that the Act of the New Jersey Legislature, passed March 12, 1851, (Comp. Stat., p. 5860) repealed by implication paragraph eight of the Act of the

New Jersey Legislature passed March 7, 1844, P. L. p. 170, and in that it ascertained and declared, adjudged and decreed that the appellant was not entitled to a decree that the appointments, in pursuance of the Act of the New Jersey Legislature of March 7, 1844, P. L. p. 170, were valid.

I.

The Act of the New Jersey Legislature passed March 12, 1851 (Comp. Stat. 5860) did not repeal by implication paragraph eight of the Act of the New Jersey Legislature passed March 7, 1844, P. L. pg. 170, for the following reasons:

1. The question revolves itself into one of statutory construction.

Justice Van Syckel in *State et al* v. *Commissioners of Railroad Taxation*, reported in 38 N. J. Law, 472, goes into, with some length, the matter of the effect of the general, special or implied repealer. He decides in substance if the prior clause of a general law applied in express terms to a special corporation, a general repealer necessarily repeals inconsistent provisions in the special charter, but if there is an absence of such express prior reference, there must be a special repealing clause to make a general law applicable to such particular corporation. In this decision rendered in the Court of Errors and Appeals, Justice Van Syckel bases his decision largely upon the case of *State et al* v. *Minton*, 23 *N. J. Law* 529. The decision in the latter case is somewhat condensed and very well analyzed by Justice Van Syckel, and I quote from the recital in Justice Van Syckel's opinion.

> "*The well settled law in the state is that the provisions of a special charter shall not be altered or repealed, except by express words.* [The in-

terlineations are counsel's.] Therefore, although in the general tax law of 1851, the words 'all lands' were used, they were held not to include the lands of this company, because, it must be presumed, in the absence of clear expression to the contrary, that the legislature passed the general law with reference only to those to whom the general tax law before then was applicable, and not for the purpose of affecting corporations that had in their charters a specific provision for taxation. There was nothing in the general tax law of 1851, thus construed, inconsistent with the charter of the company, which could be operated upon by the general repealer.

But, if the general law of 1851 had enacted that all the lands of every railroad corporation in this state, without exception, should be liable to taxation under its provisions, it would have applied, necessarily, to the Morris and Essex Railroad, and the general repealer would have swept away any inconsistent provision in its charter.

A general repealer in a general tax law cannot disturb the provisions of a special charter, because they are wholly different; they are not inconsistent—they may both stand independent of each other. They become inconsistent when the general law, by clear expression, is made to embrace, and is applied to the particular corporation, and its inconsistent provisions are then brought within the reach of a general repealer."

This case of *State et al* v. *Commissioner* has been referred to and upheld as good substantive law in many later decisions of this State and is referred to as authority in other states of the Union.

In the case of *State, Ex Rel. O'Rourke*, v. *Dwyer*, a

dispute was occasioned by a change in the general law regarding the general interest rate under contracts by a statute passed after the approval of the special act authorizing a rate of interest of seven per centum per annum:—

> "The result will depend, therefore, on the question whether the act of 1872, which is the authority under which the commissioners are acting, was repealed by the general statute of 1878, so far as regards the rate of interest to be contracted for by the commissioners, after the act of 1878 became a law. Did the act of 1878 make usurious and illegal, contracts which conform to the provisions of the act of 1872?
>
> The act of 1872 is both special and local; the statute of 1878 is a general statute. Where a general law and a special statute come in conflict, the general law yields to the special, without regard to priority in date, and a special law will not be repealed by a general statute, unless by express words or necessary implication. *State* v. *Clarke*, 1 *Dutcher* 54; *State* v. *Branin*, 3 *Zab.* 484; *State* v. *Minton*, *Id.* 529. The statute of 1866 was substantially re-enacted by being incorporated in the revision of 1874, (Rev., p. 519,) and the act of 1878 is a re-enactment of the first section of the revision in totidem verbis, except that 'six' is substituted for 'seven,' in designating the rate of interest, and the repealer is only of so much of the first section of the revision of 1874 as is inconsistent with the new statute.
>
> The act of 1878 contains no repealer of special or local legislation, either in express words or by necessary implication; and, so far as concerns the act of 1872, which is now in question, that act is, upon established rules of construction, left in full

force, and contracts which were legal under its provisions before the act of 1878, are still lawful.

The attention of this Court is directed to the case of *State, Mayor, Etc., of New Brunswick, Prosecutors* v. *Nelson Williamson, Collector of North Brunswick*, 44 N. J. Law 165.

> "A general law, applicable to the entire state, will not modify or repeal a special act, unless by express words or necessary implication. *State, Gorum, pros., v. Mills*, 5 *Vroom* 177. But there is no rule of law which prohibits the repeal of a special act by a general one; nor is there any principle forbidding such repeal without the use of express words declarative of the legislative intent to repeal the earlier statute. The question is always one of intention, and the purpose to abrogate the particular enactment by a later general enactment is sufficiently manifested when the provisions of both cannot stand together, and *it is a cardinal doctrine in the construction of statutes that, if possible, full effect shall be given to all their parts. State, M. & E. R. R. Co., pros., v. Comm'r of R. R. Taxation*, 8 *Vroom* 228." [Interlineation are counsel's.]

Chief Justice Beasley, in the case of *Duncan P. Vale et al* v. *Easton and Amboy Railroad Company*, 44 *N. J. Law* 238, where the defendant was incorporated under a special act with a provision limiting a right of action against a corporation for one year after the accrual thereof, decided this provision was not repealed by the enactment in the revision of the Act relating to the limits of actions.

> "The contention therefore, is in substance this: That the limitation in the supplement of the defendant's charter giving but the period of one

year for the bringing of an action on the case, is inconsistent with the clause in the general act which, with respect to all actions on the case, extends such period to six years. But the fallacy in this reasoning consists in the assumption that these laws are repugnant to each other. According to the well-settled legal intendment, they do not relate to the same subject matter, and therefore cannot be inconsistent. They do not relate to the same subject matter, because the classes of cases embraced in the general law do not involve the classes of cases comprehended by the special law. This has been repeatedly decided by this court. In the case of *State* v. *Minton*, 3 *Zab.* 529, it was so adjudged, and under a state of facts not variant, so far as relates to the present purposes, from those now under consideration."

In the case of *John Farrell* v. *The State*, 54 *N. J.* Law 421, Justice Van Syckel declared the law to be that all consistent statutes, which can stand together, though enacted at different dates, relating to the same subject, and hence, briefly, called statutes in *pari materia*, are treated prospectively and construed together, as one act.

2. A case directly in point and on fours with the case at bar is the case of *Knorrs Appeal* reported in 89 Pa. State 93, which was decided by Justice Paxson sitting on the Supreme Court of Pennsylvania. The Philadelphia Saving Fund Society was granted a charter by the Legislature of Pennsylvania in 1819 and article ten, section two, of the charter, provides as follows:

> "A book shall be kept at the office in which every depositor shall be at liberty to appoint some person or persons to whom, in the event of his or her death the money shall be paid, if not otherwise disposed of by will."

The charter of the Philadelphia Saving Fund Society is so similar to the charter of The Trenton Saving Fund Society that it is a natural conclusion that The Trenton Saving Fund Society was modeled after the pattern of the Philadelphia Saving Fund Society. Knorrs Appeal came before the court on exceptions to the auditors report and was in the nature of an interpleader by the designated appointee and the administrator of the estate. George Knorrs died leaving three thousand seven hundred forty-two dollars and eighty cents ($3,742.80) on deposit and had signed in accordance with the by-laws and charter of the Society a form used by the Society and worded as follows:

> "We, who have hereunto subscribed our names, depositors with the Philadelphia Saving Fund Society, do hereby in conformity with the tenth section of the fundamental articles of the constitution of the said society and in accordance with the acts of the legislation of the Commission of Pennsylvania incorporating the same passed the 25th day of February A. D., 1819, appoint and direct that all moneys deposited by us respectively with the interests thereon which shall be to our respective credits on a balance of our account on the books of said Society at the time of our deaths, respectively shall be paid to the several and respective persons and uses as hereinafter declared and set forth opposite to our respective signatures unless otherwise disposed of by will."

Here followed the various signatures of the appointors and opposite the signature the name of the beneficiary and witness to the signature.

This form of appointments is somewhat more complicated than that used by The Trenton Saving Fund Society and much of the argument in Knorrs Appeal and

some of the opinion was taken up with a discussion of the various rights under the appointment. The matter of its conflict with the Statute of Wills of Pennsylvania was discussed but the court dismissed the argument with this statement,

> "It is further objected that the writing referred to was a disposition of his property by George Knorrs to take effect after his death and therefore a will, and not being in conformity with the Statute of Wills, is not valid. This might be so but for the Act of Assembly which expressly authorized it. Such Act being within the recognized powers of the legislature the appointment in pursuance of it is necessarily valid."

A study of the atmosphere of this case, however, discloses facts similar to the case at bar. Counsel, in preparation of this memorandum, studied the original paper book of Knorrs Appeal on file in the Lawyers' Library in Philadelphia. The Philadelphia Society was chartered in 1819. The present Statute of Wills in Pennsylvania was passed April 8, 1833, P. L. 249. The statute of Wills in Pennsylvania has a repeal clause as follows: (sec. 18.)

> "This act shall take effect from and after October first, next, and so much of any act of acts of the Assembly as is hereby altered is repealed from and after said date, except so far as may be necessary to complete any proceeding commenced before that time."

It is again suggested that our Wills Act has no general or special repealer.

The case of Knorrs Appeal has been referred to and followed in subsequent cases in the State of Pennsylvania. In *Thomeuf* v. *Knights of Birmingham*, 126 Superior

Court Reports 196, the question was again presented to the Court and the Court stated.

> "The validity of an appointment of this nature on the books of a saving fund society, when authorized by its charter, was expressly affirmed in Knorrs Appeal 89 Pa. 93."

3. The Court of Errors and Appeals in *Charles R. Stevenson* v. *Ellen V. Earl*, 65 *N. J. Equity* 721, an attempt was made by a depositor to make an appointment in form and manner like the appointments now presented to the Court. The depositor directed the company to pay to his wife, in the event of his death, all deposits which should then be standing to his credit in the fund. Chief Justice Gummere held, with a unanimous court, that such a procedure was testamentary in its character and was invalid because not made in the manner prescribed by the statute of Wills. A distinction must be made, however, between the case of *Stevenson* v. *Earl* and the case at bar. In the case of *Stevenson* v. *Earl* there was no authority in the Pennsylvania Railroad Company by charter or otherwise to keep a book of such appointments. Under the facts of *Stevenson* v. *Earl* there was no question but that the decision of this court was proper. But in the case at bar, The Trenton Saving Fund Society had the specific right and authority from the Legislature of this State to keep such book of appointments, and, by proceeding under such authority, to be discharged from all obligations to appointors and appointees. The Wills Act did not generally, specially or by implication repeal this provision of the charter in complainant.

II.

The act of 1844, *the act incorporating appellant, was an act intended to protect the corporation and, incidentally, authorizing a certain*

procedure to be followed by depositors, however primarily the emphasis in paragraph eight of this act should be laid upon the provision outlining the procedure "which shall be a full discharge to said Society."

In the case of *Samuel Gordon* v. *Ella R. Toler*, 83 *N. J. Equity* 25, a depositor signed a printed form directing the bank to add her sister's name to her account, giving joint rights therein and to pay the deposit to either or the survivor. A by-law printed in the pass book provided that no one should have the right to receive any sum without producing the pass book. Vice Chancellor Stevens in considering *Stevenson* v. *Earl*, supra, held as follows:

"It was there held by the court of errors and appeals that an act essentially testamentary could not be effectuated by a paper like that in controversy because not made in the manner prescribed by the statute of wills. This decision would undoubtedly rule the present controversy, as far as the question of gift to take effect at death is concerned, were it not for section 27 of the act concerning savings banks, enacted since it was decided. The section reads as follows:

'When a deposit has been or shall hereafter be made in the name of two persons, payable to either or the survivor, such deposit or any part thereof or interest or dividend thereon, may be paid to either of said persons, whether the other be living or not and the receipt or acquittance of the person so paid shall be a valid and sufficient release and discharge to the bank for any payment so made.'

The question is whether this section was intended to do anything more than to protect savings banks. It certainly was not designed to make that a gift, which according to the evidence was

not a gift, present or future but only a convenient way of drawing money, and it ought not to be construed as an implied repealer, pro tanto, of the wills act if the two statutes may stand together. It is manifest that they may. The survivor may hold in trust for the estate of the deceased depositor, and the bank, taking the receipt of the surviving depositor, may be discharged from liability for what it pays out. It is not to be presumed that the legislature, under an act entitled 'An Act concerning savings banks,' intended, if it could constitutionally intend, to repeal the Wills act in part and thus to dispense with those safeguards which have so long been deemed essential to protect the estate of a decedent. No such construction is necessary. *Garrick* v. *Taylor*, 4 DeG. F. & J. 159, 165."

It will be noted that in the Toler case the situation is reversed, and the Court held that section 27 of the act concerning savings banks ought not to be construed as an *implied repealer of the Wills Act as the two statutes may stand together.* The section of the act concerning savings banks provided *for a convenient way of drawing money* and was an act to protect savings banks rather than to create a method of testamentary disposition.

From a perusal of the cases, it is seen that repeal by implication is not favored in the absence of a clear intent of the legislature; but where the acts are not inconsistent and are designed to facilitate different exigencies, there will be no repealer by implication. The wills act does not cover *in toto* the provisions of the former act in that the former act included other provisions aside from those covered by the Wills Act.

III.

The Act of March 7, 1844, should be construed favorably and broadly to further purposes therein intended and due consideration should be given to the purpose of said act.

Paragraph eighteen of the Act of March 7, 1844, provides as follows:

> "That this act is hereby declared to be a public act, and that the same shall be construed in all courts and places favorably and benignly for every beneficial purpose therein intended, and that no misnomer of the said Corporation in any deed, gift, grant or demise, or other instrument of contract or conveyance, shall vitiate or defeat the same; provided, the corporation shall be sufficiently described to ascertain the intention of the parties; provided, also, that the legislature may at any time hereafter amend or repeal this act and dissolve the said Corporation, or vary or modify its powers, as to them shall seem fit and proper."

To summarize briefly the Act of 1844, paragraph eight was not repealed by the Wills Act by a general or special repealer; the Wills Act does not cover *in toto* the provisions and purposes of the Act of 1844, paragraph eight; the charter of 1844 should be construed broadly and beneficially for the purposes therein set forth.

Appellant, therefore, respectfully contends that the final decree appealed from should be reversed and set aside.

MINTON & ROGERS,
Solicitors for and of Counsel with Complainant-Appellant.