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ORDER TO SHOW CAUSE.

ATLANTIC COUNTY ORPHANS' COURT.

In the matter of the pro-	}	On Petition for Order	10
bate of the alleged will of		Confirming Compro-	
SAMUEL M. BRAUNSTEIN,		mise Settlement, &c.	
deceased.		Order to Show Cause.	

Upon reading and filing the petition of Guarantee Trust Company of Atlantic City, a corporation of the State of New Jersey, Emerson L. Richards, of the City of Atlantic City, County of Atlantic and State of New Jersey, and Harry Braunstein, of the City of Wilmington, County of New Castle and State of Delaware, wherein it appears that said Guarantee Trust Company of Atlantic City and Emerson L. Richards are administrators *pendente lite* of the estate of Samuel M. Braunstein, deceased, and said Guarantee Trust Company of Atlantic City and Harry Braunstein are named as executors in a certain paper writing dated April 11, 1928, purporting to be the last will and testament of said decedent, and wherein it further appears that caveats have been filed by certain persons against the admission to probate of any paper writing purporting to be the last will and testament of said decedent, and that a certain claim has been filed against said decedent's estate, which claim is now in litigation, and that said

Order to Show Cause

petitioners have entered into an agreement, subject to the approval of this Court, to compromise said claim and secure a discontinuance of the suit filed to enforce said claim and the withdrawal of said caveats, and that said petitioners have filed herein an inventory and appraisal of the estate of said decedent, and that said petitioners believe it to be to the best interests and advantage of the estate of the said Samuel M. Braunstein, deceased, to make such compromise settlement, and to enter into said agreement, and petition this Court to make an order approving said compromise settlement and said agreement as by law provided;

It is thereupon, on this tenth day of November, 1931, on motion of C. L. Cole, Esq., of the firm of Cole & Cole, and Harry Cassman, Esq., of the firm of Cassman & Gottlieb, proctors for petitioners, ordered that all persons interested in said estate of Samuel M. Braunstein, deceased, show cause before this Court, at the court room, seventh floor of Guarantee Trust Building, Atlantic City, New Jersey, on the 16th day of December, 1931, at 10:00 o'clock in the forenoon, or as soon thereafter as counsel can be heard, why said compromise settlement and said agreement made in pursuance thereof should not be approved in the form submitted, or in such other form as may be agreed upon in writing between said petitioners and said claimants.

It is further ordered that a copy of said petition, a draft of the proposed agreement, and a copy of this order to show cause, all certified by the surrogate of the County of Atlantic, be served personally, or by registered mail to the last known address, upon

Petition

all persons interested in said estate at least ten days before the return day hereof.

JOSEPH A. CORIO,
Judge.

10

PETITION.

ATLANTIC COUNTY ORPHANS' COURT.

In the matter of the probate of the alleged will of SAMUEL M. BRAUNSTEIN, deceased.	}	On Petition for Order Confirming Compromise Settlement, &c. Petition.	20
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To the Orphans' Court of Atlantic County:

The petition of Guarantee Trust Company of Atlantic City, a corporation of the State of New Jersey, and Emerson L. Richards, of the City of Atlantic City, County of Atlantic and State of New Jersey, and Harry Braunstein, of the City of Wilmington, 30 County of New Castle and State of Delaware, respectfully shows that:

1. Your petitioners, Guarantee Trust Company of Atlantic City and Emerson L. Richards are administrators *pendente lite* of the estate of Samuel M.

Petition

Braunstein, deceased, late of the City of Atlantic City, County of Atlantic and State of New Jersey, letters of administration having been issued to them by the Orphans' Court of Atlantic County on or about December 1, 1928.

10 2. Your petitioners, Guarantee Trust Company of Atlantic City and Harry Braunstein, are named as the executors in a certain paper writing dated April 11, 1928, purporting to be the last will and testament of said decedent.

20 3. On November 23, 1928, a caveat against the admission to probate of any paper writing purporting to be the last will and testament of said decedent was filed by one Bertha Hastings Braunstein, the widow of said decedent, and a like caveat was filed by Rose Richman, guardian for Doris Adele Braunstein, the granddaughter of said decedent.

30 4. On or about June 17, 1929, said Bertha Hastings Braunstein filed a claim against said decedent's estate with your petitioners as administrators *pendente lite* as aforesaid, and subsequently instituted suit thereon in the Court of Chancery of the State of New Jersey, and an appeal from the decree of said Court being now pending in the Court of Errors and Appeals with respect to an alleged agreement made by the decedent in his lifetime to pay to said Bertha Hastings Braunstein, during the term of her natural life, the sum of \$10,000 per annum, in equal monthly installments, commencing December 1, 1928, and also to pay the sum of \$10,000 in cash for coun-

Petition

sel fees and expenses to Joseph B. Perskie, Esq., incident to a suit for maintenance then pending in the Court of Chancery of the State of New Jersey.

5. Your petitioners have entered into an agreement to compromise the claim of said Bertha Hastings Braunstein and secure a discontinuance of said suit filed against the administrators *pendente lite* and also to secure a withdrawal of the caveats against the probate of said paper writing dated April 11, 1928, purporting to be the last will and testament of said decedent, by agreeing to and paying to said Bertha Hastings Braunstein the sum of \$400.00 a month, commencing September 1, 1929, and the sum of \$400.00 on the first of each and every month thereafter during the term of her natural life, and by paying to counsel for the proponents of said alleged will and to counsel for the contestants, such reasonable counsel fee, costs and expenses as the Court may order and by agreeing to and paying to Doris Adele Braunstein the sum of \$208.33 on the first day of September, 1929, and the sum of \$208.33 per month on the first day of each and every month thereafter during the term of her natural life, all of which is fully set forth in the written agreement dated the first day of June, 1931, made between your petitioners and said Bertha Hastings Braunstein and Rose Richman, guardian of Doris Adele Braunstein, a copy of which is hereto attached and made a part hereof.

6. Your petitioners, administrators *pendente lite* as aforesaid, have filed herein an inventory and ap-

Petition

praisement of the estate of said decedent, by which it appears that the estate has a total net value of \$1,386,123.15 as of the date of the death of said decedent. The total amount of the specific legacies bequeathed in said paper writing dated April 11, 1928, purporting to be the last will and testament of said
 10 decedent, amount to \$846,800.00.

7. Your petitioners, after careful consideration and investigation of the matters involved, and believing it to be for the best interest and advantage of the estate of the said Samuel M. Braunstein, deceased, to make a compromise settlement of the claim of said Bertha Hastings Braunstein, and secure the withdrawal of said caveats filed by Bertha Hastings Braunstein and Rose Richman, guardian
 20 for Doris Adele Braunstein, have entered into said contract, a copy of which is hereto attached, subject to the approval of this Court.

8. The following are the names and residences of the legatees and devisees named in said paper writing dated April 11, 1928, purporting to be the last will and testament of said decedent, who are interested in this proceeding:

30	NAME	RESIDENCE
	Philip Braunstein	525 East 95th St., Brooklyn, N. Y.
	Anna Lowenburg	124 West 79th St., New York City
	Harry Braunstein	1901 Boulevard, Wilmington, Del.

Petition

Samuel Braunstein	1428 East 60th St., Cleveland, O.
Celia Shaw	11516 Fair port Ave., Cleveland, O.
Henrietta Lowenburg	124 West 79th St., New York City
Harry Lowenburg	124 West 79th St., New 10 York City
Hortense Braunstein	415 East Lincoln Highway, Coatesville, Pa.
Natalie Braunstein	415 East Lincoln Highway, Coatesville, Pa.
Beatrice B. Ahronson	1204 Richmond St., Coatesville, Pa.
Anna Yubas	907 Pine Street, Philadelphia, Pa.
Dora Cohen	819 Atwood Road, Phila., 20 Pa.
Dr. Rudolph Hyman	1408 Atlantic Ave., Atlantic City
Nathan Hyman	35 S. South Carolina Ave., Atlantic City, N. J.
Bertie Silverberg	5854 Ellsworth Ave., Pittsburgh, Pa.
Freda Braunstein	1901 Boulevard, Wilmington, Del.
Edna Billingsley	15 N. Delevan Ave., Mar- 30 gate City, N. J.
Guarantee Trust Co., Trustee	Atlantic City, N. J.
Isaac Braunstein	1901 Boulevard, Wilmington, Del.
Doris Adele Braunstein	c/o Mrs. Rose G. Rich-

Petition

- man, c/o Sacks, 671
Madison Ave., New
York City.
- B'Nai B'Rith Orphanage
& Home for Friendless
Children Erie, Pa.
- 10 National Farm School,
Herbert D. Allman,
Pres. 1701 Walnut St., Philadel-
phia, Pa.
- Jewish Consumptive Re-
lief Society Denver, Colorado.
- National Home for Jew-
ish Children Denver, Colorado.
- Jewish Hospital for Con-
sumptives Denver, Colorado.
- 20 Levy Memorial Hospital Hot Springs, Arkansas
- Hebrew Sheltering Home Atlantic City, N. J.
- American Foundation for
the Blind 125 E. 46th St., New York
City
- New York Guild for Jew-
ish Blind 200 E. 72nd St., New York
City
- Children's Seashore
House for Invalid Chil-
dren 30 Atlantic City, N. J.
- Jewish Seashore Home Ventnor City, N. J.
- Adath Jeshurun Ceme-
tery Bridge & Walker St.,
Frankford, Philadel-
phia, Pa.
- The Mount Sinai Ceme-

Petition

tery Assn. of Pennsyl-
vania

1118 Real Estate Trust
Bldg., Philadelphia, Pa.

All of the foregoing are of full age except Harry Lowenburg, Jr., who is a minor and resides with his mother, Anna Lowenburg at the above-named address; Freda Braunstein and Isaac Braunstein, 10 who are minors and reside with their father, Harry Braunstein, at the above-named address; and Doris Adele Braunstein, who is a minor and resides with her mother, Rose G. Richman, at the above-named address.

That said Celia Shaw, one of the above-named parties in interest has since died and I. G. Shaw, whose address is 1382 Vandemar Road, Cleveland Heights, Ohio, is administrator of her estate, and her heirs are as follows: 20

NAME	ADDRESS
D. L. Shaw, Esq.	802 Lane Mortgage Building, Los Angeles, California.
R. R. Shaw	10714 Drexel Ave., Cleveland, O.
Mrs. Mary Mosquit	1518 N. 7th St., Philadelphia, Pa.
Mrs. Sarah Schweidt	11516 Fairport Ave., 30 Cleveland, O.
Mrs. Bessie Greenberg	11710 Phillips Ave., Cleveland, O.

Your petitioners therefore pray that this Court may make its order approving and confirming the compromise settlement made by your petitioners

Petition

with Bertha Hastings Braunstein and also the agreement made by your petitioners with Rose Richman, guardian for Doris Adele Braunstein, all of which is set forth in said agreement, a copy of which is hereto attached; and your petitioners further pray that an order may be made as provided by law requiring all persons interested in said estate to appear before this court at a certain date and place to show cause why the prayer of this petition should not be allowed.

GUARANTEE TRUST COMPANY OF
ATLANTIC CITY,
By HERMAN M. SYPHERD,
Trust Officer.
EMERSON L. RICHARDS,
HARRY BRAUNSTEIN.

20

State of New Jersey, }
County of Atlantic, } ss.

HERMAN M. SYPHERD and EMERSON L. RICHARDS, being severally duly sworn, on their respective oaths, depose and say that deponent, Herman M. Sypherd, is trust officer of Guarantee Trust Company of Atlantic City, one of the petitioners in the foregoing petition named and its agent for the purpose of making this affidavit; that deponent, Emerson L. Richards, is one of the petitioners in said petition named; that they have read said petition and the matters and things contained therein are true to the best of their knowledge and belief.

HERMAN M. SYPHERD,
EMERSON L. RICHARDS.

30

Agreement

Sworn and subscribed before me this eighth day of June, 1931.

(Seal) RUTH E. CHAPMAN,
Notary Public of New Jersey.
 My commission expires January 25, 1932.

10

State of New Jersey, }
 County of Atlantic, } ss.

HARRY BRAUNSTEIN, being duly sworn according to law, on his oath deposes and says that he is one of the petitioners in the foregoing petition named; that he has read said petition and the matters and things contained therein are true to the best of his knowledge and belief.

20

HARRY BRAUNSTEIN.

Sworn and subscribed before me this 17th day of June, 1931.

(Seal) VICTORIA MORRELL,
Notary Public of N. J.

THIS AGREEMENT made the First day of 30 June, A. D. 1931, between GUARANTEE TRUST COMPANY OF ATLANTIC CITY, a corporation of the State of New Jersey, and EMERSON L. RICHARDS, ADMINISTRATORS PENDENTE LITE OF THE ESTATE OF SAMUEL M. BRAUNSTEIN, DECEASED (hereinafter called "Admin-

Agreement

istrators"); HARRY BRAUNSTEIN and GUARANTEE TRUST COMPANY OF ATLANTIC CITY, a corporation as aforesaid, EXECUTORS named in a paper writing purporting to be the last will and testament of Samuel M. Braunstein, Deceased (hereinafter called "Executors"); BERTHA
10 HASTINGS BRAUNSTEIN (hereinafter called "Widow"); and ROSE RICHMAN, GUARDIAN FOR DORIS ADELE BRAUNSTEIN (hereinafter called "Granddaughter");

WITNESSETH, That whereas Samuel M. Braunstein died on the Fourteenth day of November, 1928, leaving a certain paper writing dated April 11, 1928, purporting to be his last will and testament; and

20 WHEREAS, said Widow and Granddaughter, on the Twenty-third day of November, 1928, filed a caveat against the admission to probate of any paper writing purporting to be the last will and testament of said decedent, and citations were subsequently issued out of the Atlantic County Orphans' Court and the proponents' proofs taken at a hearing; and

WHEREAS, said Widow has heretofore filed a claim against the Estate of Samuel M. Braunstein,
30 deceased, and has instituted suit against said Estate in the Court of Chancery of New Jersey, and appealed from the decree of said court to the New Jersey Court of Errors and Appeals, said claim and suit being upon an alleged agreement by the decedent to pay to her during the term of her natural life, the sum of Ten Thousand Dollars (\$10,000) per

Agreement

annum, in equal monthly installments commencing December 1, 1928, and also to pay the sum of Ten Thousand Dollars (\$10,000) in cash for her legal fees and expenses; and

WHEREAS, it is the desire of said Administrators and Executors to obtain a release from said Widow of her claim against the estate of said decedent and the consent of the Widow and Granddaughter to the admission to probate of said paper writing as the last will and testament of the decedent, and to secure a discontinuance of the litigation concerning said probate and a discontinuance of the suit of the Widow against the decedent's estate now pending in the New Jersey Court of Errors and Appeals; 10

NOW THEREFORE, in consideration of the agreement of the said Widow and Granddaughter to consent to the probate, on the testimony heretofore adduced, of the said paper writing dated April 11, 1928, purporting to be the last will and testament of said decedent, and to consent to the discontinuance of all litigation with respect thereto, and the further agreement of said Widow to release the estate of said decedent from any and all liability by reason of the alleged agreement, and to discontinue the suit thereon now pending in the New Jersey Court of Errors and Appeals, IT IS HEREBY CONTRACTED, COVENANTED AND AGREED by and between the parties hereto as follows: 20 30

1. That said Administrators and/or Executors as aforesaid, upon the conditions hereinafter men-

Agreement

tioned, hereby agree to pay or cause to be paid to the said Widow the sum of FOUR HUNDRED DOLLARS (\$400.00) per month, commencing the first day of September, 1929, and continuing to pay the sum of Four Hundred Dollars (\$400.00) per month to said Widow during the term of her natural life, but the Widow expressly agrees that the Administrators and/or Executors may make distribution of the estate of the decedent at any time they deem advisable provided they retain during the lifetime of the Widow a principal sum which, if invested at five per cent., will produce an income of Forty-eight Hundred Dollars (\$4800) per annum.

2. Said Administrators and/or Executors as aforesaid will pay or cause to be paid to said Granddaughter the sum of TWO HUNDRED EIGHT DOLLARS AND THIRTY THREE CENTS (\$208.33) on the first day of September, 1929, and the sum of Two Hundred Eight Dollars and Thirty-three Cents (\$208.33) on the first day of each and every month thereafter during the term of her natural life, but the Granddaughter expressly agrees that the Administrators and/or Executors may make distribution of the estate of the decedent at any time they deem advisable, provided they retain during the lifetime of the Granddaughter a principal sum which, if invested at five per cent. will produce an income of Twenty-five Hundred Dollars (\$2500) per annum

3. Said Administrators and/or Executors will pay to counsel for the proponents and contestants of said

Agreement

paper writing purporting to be the last will and testament of the decedent such reasonable counsel fee, costs and expenses as the court may order, said Administrators and Executors hereby consenting that the allowance to counsel for the contestants shall be made as if there was reasonable cause for contesting the validity of said paper writing pur- 10
porting to be the last will of said decedent, such consent, however, being solely for the purposes of this agreement and having no other force or effect whatsoever.

4. IT IS FURTHER EXPRESSLY UNDERSTOOD AND AGREED that as a condition precedent to the validity of this agreement, that it be approved by an order of the Atlantic County Orphans' Court and/or by any appellate court to which an 20
appeal may be taken by any of the parties in interest.

5. IT IS DISTINCTLY AGREED and UNDERSTOOD by and between the parties hereto that in case the Orphans' Court of Atlantic County shall either confirm or refuse to confirm this agreement, then and in either event all litigation now pending shall be unaffected, that is, all litigation now pending shall remain in status quo, until such time as the 30
right to appeal from the order of the court made in the premises shall have expired or until such appeal, if made, shall be determined.

6. IT IS DISTINCTLY UNDERSTOOD AND AGREED that the Administrators and Executors

Agreement

herein are entering into this agreement in their representative capacities only, and personally and individually assume no responsibility with regard thereto.

IN WITNESS WHEREOF the individual parties
 10 to these presents have hereunto set their hands and seals, and the corporate parties hereto have caused their common or corporate seals to be affixed and set hereto, duly attested by their proper and authorized officers thereof affixing their signatures hereto, in attestation of their due execution and delivery, the day and year first above written.

GUARANTEE TRUST COMPANY
 OF ATLANTIC CITY

(Corporate Seal)

20

By HERMAN M. SYPHERD

Vice President

ATTEST: Harry T. Sickler,

Secretary

EMERSON L. RICHARDS (SEAL)

ADMINISTRATORS PENDENTE

LITE OF THE ESTATE OF

SAMUEL M. BRAUNSTEIN,

DECD.

SIGNED, SEALED AND

30 DELIVERED IN THE

PRESENCE OF:

LILIAN R. HAGERTHEY

HARRY BRAUNSTEIN (SEAL)

Guarantee Trust Company of At-

lantic City (Corporate Seal)

ELIZABETH R. POWELL

Agreement

By HERMAN M. SYPHERD

Vice-President

ATTEST: HARRY T. SICKLER

Secretary

EXECUTORS OF THE LAST
WILL AND TESTAMENT OF
SAMUEL M. BRAUNSTEIN, 10
DECD.

BERTHA HASTINGS BRAUN-

STEIN

(SEAL)

ELIZABETH R. POWELL

ROSE RICHMAN

(SEAL)

GUARDIAN FOR DORIS ADELE
BRAUNSTEIN

JACK A. FUERST

20

STATE OF NEW JERSEY }
COUNTY OF ATLANTIC }ss.

BE IT REMEMBERED that on this First day of June, 1931, before me, the subscriber, a Notary Public of the State of New Jersey, personally appeared Harry T. Sickler, who being by me duly sworn, on his oath made due proof to my satisfaction that HERMAN M. SYPHERD is the Vice President and deponent is the Secretary of GUARANTEE TRUST COMPANY OF ATLANTIC CITY, one of the Administrators Pendente Lite of the Estate of Samuel M. Braunstein, deceased, and one of the Executors named in a paper writing purporting to be the last will and testament of Samuel M.

30

Agreement

Braunstein, deceased, named in the foregoing agreement; that deponent well knows the common seal of said corporation and that the seal affixed to said agreement is the common seal of said corporation and was so affixed thereto and said agreement was signed and delivered by said Vice President in the
 10 presence of deponent as the voluntary act and deed of said corporation, pursuant to resolution of the directors thereof and that deponent thereupon signed his name thereto as a witness thereof.

HARRY T. SICKLER

Sworn and subscribed before me
 the day and year aforesaid.

RUTH E. CHAPMAN

Notary Public of New Jersey

20

STATE OF NEW JERSEY }
 COUNTY OF ATLANTIC } ss.

BE IT REMEMBERED that on the 20th day of June, 1931, before me, the subscriber, a Notary Public of the State of New Jersey, personally appeared EMERSON L. RICHARDS, one of the Administrators Pendente Lite of the Estate of Samuel M. Braunstein, Deceased, who, I am satisfied, is the
 30 person named in and who executed the foregoing agreement, and I having first made known to him the contents thereof, he acknowledged that he signed, sealed and delivered the same as his voluntary act and deed. All of which is hereby certified.

LILIAN R. HAGERTHEY

Notary Public of N. J.

Agreement

STATE OF NEW JERSEY }
 COUNTY OF ATLANTIC }ss.

BE IT REMEMBERED that on this 1st day of June, 1931, before me, the subscriber, a Notary Public of the State of New Jersey, personally appeared HARRY BRAUNSTEIN, one of the Executors 10
 named in a paper writing purporting to be the last will and testament of Samuel M. Braunstein, deceased, who, I am satisfied, is the person named in and who executed the foregoing agreement, and I having first made known to him the contents thereof, he acknowledged that he signed, sealed and delivered the same as his voluntary act and deed. All of which is hereby certified.

ELIZABETH R. POWELL

Notary Public of N. J. 20
 (Notarial Seal)

STATE OF NEW JERSEY }
 COUNTY OF ATLANTIC }ss.

BE IT REMEMBERED that on this 22nd day of June, 1931, before me, the subscriber, a Notary Public of the State of New Jersey, personally appeared 30
 BERTHA HASTINGS BRAUNSTEIN, who, I am satisfied, is the person named in and who executed the foregoing agreement, and I having first made known to her the contents thereof, she acknowledged that she signed, sealed and delivered the same as

Agreement

her voluntary act and deed. All of which is hereby certified.

ELIZABETH R. POWELL
Notary Public of N. J.
(Notarial Seal)

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

BE IT REMEMBERED that on this 17th day of June, 1931, before me, the subscriber, a Notary Public in and for the State of New York personally appeared ROSE RICHMAN, Guardian for Doris Adele Braunstein, who, I am satisfied, is the person
20 named in and who executed the foregoing agreement, and I having first made known to her the contents thereof, she acknowledged that she signed, sealed and delivered the same as her voluntary act and deed. All of which is hereby certified.

JACK A. FUERST
Notary Public
(Notarial Seal
New York County)

Testimony

TESTIMONY.

ATLANTIC COUNTY ORPHANS' COURT.

10

In the matter of the last will and testament of SAMUEL M. BRAUNSTEIN, deceased.	}	On Petition for Probate.
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Atlantic City, N. J., December 16, 1931.

20

Before HON. JOSEPH A. CORIO, Judge.

APPEARANCES:

MESSRS. COLE & COLE and MESSRS. CASSMAN & GOTTLIEB, proctors for the petitioners, administrators pendente lite and executors named in the will.

30

HON. JOSEPH B. PERSKIE and HON. ROBERT H. McCARTER, proctors for Bertha Hastings Braunstein.

MESSRS. THOMPSON & HANSTEIN, proctors for the Jewish Seaside Home and Levy Memorial Hospital.

Discussion

MESSRS. BOURGEOIS & COULOMB and NATHANIEL HYMAN, Esq., pro se, proctors for Rudolph Hyman, Bessie Hyman Alexander, Dora Hyman Cohen, Anna Hyman Yubas, and Bertie Hyman Silverberg.

10 LOUIS E. STERN, Esq., and HON. EMERSON L. RICHARDS, proctors for Doris Adele Braunstein.

20 Mr. Cassman: In Judge Cole's absence I have been asked to present the matter to your Honor in connection with the confirmation of the agreement of compromise settlement. The practical effect of the agreement provides for a payment of four hundred dollars a month to the widow from September 1, 1929, and two hundred and eight dollars and thirty-three cents to the granddaughter from September 1, 1929, during the term of their natural lives. The consideration for the agreement is the settlement of the claim which Bertha Hastings Braunstein filed with the estate, under the terms of which the decedent had agreed to pay her during the term of her natural life the sum of ten thousand dollars a year, and to pay her attorneys in litigation in
30 respect to the maintenance suit the sum of ten thousand dollars.

I might also call your Honor's attention to the fact that there has been made in this court an order allowing the sum of ten thousand dollars for expenses of medical experts.

The aggregate of these payments which would be

Discussion

settled by this compromise agreement figured to December first is thirty thousand dollars for three annual payments from December, 1929, to the widow, ten thousand dollars counsel fee; there having been no expenditures yet under the order of this Court allowing ten thousand dollars for medical experts, that, of course, would be avoided by the settlement. 10
So that, forgetting for the moment any expenses in connection with litigation, there is a gross settlement involved which would be due from the estate if the widow won her suit for specific performance of that agreement, of fifty thousand dollars. The amount that the estate would be obliged to pay under this settlement in liquidation of that account, figured also to December 1, 1931, would be ten thousand eight hundred dollars to the widow and five thousand six hundred and twenty-five dollars to the grand- 20
daughter, making a total of sixteen thousand four hundred and twenty-five dollars, which would settle the actual amount of fifty thousand dollars due from the estate at this time.

The agreement under which Mrs. Braunstein was suing provides that she is to receive ten thousand dollars a year. The actual amount which is agreed to be paid, both to the granddaughter and the widow, under this agreement is sixty-three hundred dollars a year, so that there is an actual financial advantage 30
to the estate.

The value of the estate, as disclosed by the accounting, is one million three hundred and eighty-six thousand one hundred and twenty-three dollars and fifteen cents, and the specific legacies amount to eight hundred and forty-six thousand eight hun-

dred dollars. There can be no question, it appears to us, regarding the right of an executor or administrator to settle claims against an estate where that settlement involves an advantage, a saving to the estate, and the settlement of even a doubtful claim.

- 10 In the case of *Rogers v. Hand*, 39 New Jersey Equity, page 270, a testator had bequeathed to his housekeeper one thousand dollars absolutely, and the interest on eight thousand dollars during her lifetime. She then presented a claim, having served him for a number of years as housekeeper, for three thousand dollars for such services. The legatees objected to the payment of that claim and the Court held that, "While executors in such cases should act circumspectly and not disregard the protest of persons interested in the estate against the payment
- 20 of disputed claims, they are not bound under such a protest to refuse to pay and submit to suit if they are satisfied that resistance will be unavailing. Where they act in good faith, those who would impeach their conduct must show fraud or mistake, or that they have acted without authority or contrary to law. Executors may compromise a lawsuit, may buy the peace of the estate, and extinguish even doubtful claims against it, provided they act discreetly and in good faith."
- 30 This agreement presented to you this morning for confirmation is the result of many months of negotiation and effort to settle a claim which is pending in the Court of Errors and Appeals of this State, involving this sum that I have mentioned. It appeared at that time and appears to the administrators pendente lite now—by the way, in this petition

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which is before your Honor there were joined not only the administrators pendente lite, but the executors or the persons named as executors under the will itself. It appeared to them that this was a beneficial, a sane, and equitable and a good, fair, moral settlement. I cannot too strongly urge, and I do not think I will urge at all, therefore, the moral 10 right of these beneficiaries under this agreement to look to the estate of this decedent, who in all fairness was the person to whom they had a right to look for support. I cannot too strongly urge that claim, and I do not think I will urge it at all. I will merely confine myself to the presentation of the legal aspect of it, which is that we are making a good business settlement, that the estate will benefit, not only in avoiding expenses and long drawn out litigation, but will benefit in the administration of the estate 20 itself. The legatees will not suffer to any extent regarding the delay in that settlement. The estate itself consists of real estate largely. Under the terms of the will, the executors would have ten years to make any distribution at all. At this time there is not any great amount of cash in the estate under which legatees could be paid. From any aspect of the matter we feel that this settlement has a great deal of merit.

The only other thing I might say is that if your 30 Honor determines, if there is opposition to the settlement, that under the statute under which these proceedings were brought your Honor has a right to ask for proofs, and we rather suggest that if there be opposition, that proofs be presented of the various matters in the petition and the matters to which

I have referred. We would like an opportunity to present such proofs, if there be opposition to the petition. I do not know this morning definitely whether there is or not.

Mr. Perskie: I second the motion.

10

Mr. Stern: May it please the Court, in behalf of the infant, we concur and join in the petition on the part of the agreement, and urge upon the Court the confirmation of it.

20

In listening to Mr. Cassman it occurred to me that one thing might be called to your Honor's attention, and that is that the principal of this fund, which does not go to either the widow or the infant, but eventually is going to go back to the corpus of this estate, would go to the residuary legatees. The widow and the infant get only the income during their natural lives, so the estate in the long run does not lose anything except the income at the present time.

I do not know that there is anything I can add to what Mr. Cassman has said.

30

Mr. Coulomb: If your Honor please, on behalf of the Hyman heirs and legatees under this will, we oppose from a legal point of view the confirmation or the approval of this proposed agreement. I direct your Honor's attention in the first place to the will. The Hymans receive cash legacies of five thousand dollars each. They are entitled to a one twenty-sixth part in the residuary estate, each of them. Based upon the inventory as it now appears, at least, the

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value of their interest in the residuary estate is approximately twenty thousand dollars, so that the two amounts to which they would be entitled if the estate remains in value as it now appears to be, would be approximately twenty-five thousand dollars, or one hundred and fifty thousand dollars for the six of them.

The provisions of this agreement, so far as the merits of the agreement itself are concerned, would charge all of that, all of the funds necessary to produce the income against the residuary estate. It seems to me that they have certain vested rights under this will, and that those vested rights cannot be disturbed or removed by a proceeding such as this.

My objection, therefore, to the proceeding in the first instance is that it is contrary to the act and the amendment to the act is unconstitutional both as to the Constitution of the United States and of our own state, as depriving citizens of property without due process of law.

Coming to the question of the validity of the act under which these proceedings are had, it is the Act of 1931. In the first place I object to the use of that Act as the foundation for these proceedings, first because it does not seem to me that it applies to administrators pendente lite. In other words, the only persons who can present such a petition are those who are actually and not potential executors of an estate —

Mr. Richards: May I interrupt? An Act passed yesterday takes care of that.

Mr. Coulomb: It is very convenient to have Acts passed. They cannot, I hope, interfere with the Constitution of the United States or the constitution of our own state. That Act was passed after his proceeding was started, and it was passed after the Act under which these proceedings were started came
10 into being, and I therefore still say, notwithstanding the Act to which the Senator alludes, that that Act can have no effect whatsoever upon these proceedings.

There are no executors of the estate at the present time. There are merely executors pendente lite, and they have no authority under any Act, and if an Act has been passed attempting to give them authority, I contend that Act is without constitutional sanction and therefore there are no persons
20 before this Court who can legally present to your Honor a petition such as is here presented, for the confirmation of a claim.

I also direct your Honor's attention to the fact that the claim of Mrs. Braunstein arises out of an alleged agreement made between Mr. Samuel Braunstein in his lifetime and his solicitors or attorneys, or perhaps Mr. Braunstein alone—I am not familiar enough with the facts to know just what that may be—and the representatives of Mrs. Braunstein.
30 Under the terms of that agreement as it appears in the opinion rendered by Vice-Chancellor Ingersoll, it was to be reduced to a decree. It never had been reduced to a decree and could not be reduced to a decree because Mr. Braunstein died, I believe, the very day, or the evening of the very day upon which this contract of the terms of it were discussed. A

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decree had been entered in the Court of Chancery dismissing the bill of complaint filed to specifically enforce that contract, and that appeal is now pending in the Court of Errors and Appeals. It seems to me until that appeal is disposed of, this decree of the Court of Chancery is as binding upon the executors as any decree can be binding upon anyone, 10 and the executors—I am not speaking of the administrators pendente lite, but the executors of this estate—will be without authority as against the rights of my clients, to attempt to compromise that claim by paying anything in settlement of it.

Furthermore, it occurs to me that if we are to pass simply upon one phase of the merits of the case, that it having been provided in what might be termed the protocol or the proceedings leading up to such a contract that it would be an ordinary decree for 20 maintenance, and if my understanding of the law is correct, the obligation under that decree would cease at Mr. Braunstein's death, so it died a-borning, so to speak.

My next objection to the proposed proceedings is that, as I have said before, it casts all the burden upon the residuary legatees. Mr. Harry Braunstein, who signed this petition, who is one of the executors, has a two-thirds interest in a fund of two hundred and fifty thousand dollars specifically provided. He 30 has a one-fifth interest in the residue, and it is proposed not that he should bear any definite portion of the proposed settlement, but an executor he proposes that the entire burden of it should be cast upon the residuary estate. I think to that extent the contract as proposed to your Honor is not fair.

There is another thing to which I direct your Honor's attention with respect to this contract, and that is this: As Mr. Cassman has mentioned, this estate may not be settled and need not be settled, so far as the payment of the distributive shares to the legatees is concerned for ten years, but
10 under the terms of this contract, they must at once proceed to pay a sum amounting to forty-eight hundred dollars a year to Mrs. Braunstein and a sum amounting to twenty-five hundred dollars a year to the granddaughter covering a period of ten years before these executors, one of whom is the proponent of this contract, would be obliged to pay anything, either to the legatees or to the residuary legatees, or to have any settlement of this estate. It seems to me that that is an unfair provision in such a
20 contract as this.

There is another matter to which I direct your Honor's attention—I am discussing this matter briefly, I think—and that is that whatever may be the right, whether by legislative sanction, or by reason of the powers vested in the executor at common law to compromise a claim against the estate, it certainly does not extend and cannot extend to giving the executor permission, against the protest
30 of those interested in the estate, to pay to someone not entitled to any part of the estate, so far as the will is concerned—I wish your Honor to understand that I am not speaking at all as to the moral qualities of this agreement, but just as to its legal qualities—to pay to a person who has not been included in the estate, but set aside the will, in other words, to let in a person who would only be entitled to a portion

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of this estate either if the decedent died intestate or if he had made provision in the will. There is no suggestion here that Mr. Braunstein's grandchild has any claim by way of contract or otherwise, excepting a moral claim of a granddaughter, which is not a legal claim upon Mr. Braunstein's estate, and yet under the proposed provisions of this Act, as well as under the contract itself, these executors are asking your Honor to approve a contract against the protest of certain of the legatees which would have the effect of destroying the will, not of paying claims against the estate which would be valid whether the will was valid or not, but to destroy the will to the extent of letting in someone who is not entitled under the law to any part of the estate. 10

I have not been able to see the Act to which Senator Richards referred, which was passed yesterday, but referring to the Act which is before your Honor, the Act of 1931, it does not seem to me that, notwithstanding it is an Act concerning the Orphans' Court, that the title is broad enough to suggest even that it contains within it provisions permitting a compromise of a claim the contrary of which had been established by a decree of the Court of Chancery or the judgment of any other Court, and certainly nothing is said permitting the executors to destroy the provisions of the will by permitting someone whose only right to participate in the agreement must arise either out of a will or out of intestacy. 20 30

As I have said to your Honor before, and I wish to impress it upon you now, I do not want to be put in the light of standing here saying that there might

not be some moral justification, but I do say there is not legal justification, and if we are asked to discuss the morals of the situation, the moral right of these persons, of Mrs. Braunstein and Mr. Braunstein's granddaughter, to participate, then certainly we should be more directly consulted with respect
10 to the terms of the agreement upon which it is to be accomplished.

The Court: Assuming for the purpose of having my question answered that this agreement is confirmed, would it in any way affect the share of your clients?

Mr. Coulomb: It certainly would.

20 The Court: Would they receive less or would they receive the amount mentioned in the will?

Mr. Coulomb: They would receive less if the estate should shrink to the extent that the residuary estate should be destroyed.

The Court: That is contingent upon the fact that the securities may depreciate in value, which would affect everybody under the will.

30

Mr. Coulomb: Your Honor must remember this: Ten years is the time that the executors have. They cannot be forced to make settlement of this estate for ten years. I do not know just what Mrs. Braunstein's age is, but considering Mr. Braunstein's granddaughter, certainly the expectations are that

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they will be living past that time, so that when the time comes to settle this estate if this contract were not enforced, our clients would be entitled to have their distributive shares on five thousand dollars specific legacies and their one twenty-sixth interest each in the residuary estate; but under the terms of this contract, their right to enjoy that would be postponed until the death of either or both Mrs. Braunstein and the granddaughter. 10

The Court: Their one-sixth interest?

Mr. Coulomb: Their one-sixth interest and their one twenty-sixth interest. Along that line let me suggest another thing, if I may. If the residuary estate is sufficient to produce a fund necessary to pay these annuities, the residuary legatees would be postponed in their enjoyment of that fund or in the interest of it until after the death of both of these persons or either of them, and if it is not sufficient, if during the next ten years we should experience a similar shrinkage as has occurred in the last two or three years, then no one knows what the effect might be upon this estate if you permit this contract to go through, insofar as it affects the vested property rights of our clients. 20

30

Mr. McCarter: I appear on behalf of the widow, Mrs. Braunstein. I assume that your Honor knows generally the situation in which this estate is. The alleged testator's estate amounts, by papers that are on file in this court at the present time, as I understand it, to over a million dollars, a million and a

third. So far as the widow knows, she and her husband had been happily married and when he died suddenly she found herself totally disinherited. There was, as has been stated at that time, litigation in the Court of Chancery, the ultimate design of which was to enforce specifically a contract that
10 had been made by which she was to receive for the balance of her life ten thousand dollars a year. His death very suddenly occurring rendered the consummation of that contract unenforceable. She filed a bill to procure the enforcement of that contract and the Vice-Chancellor has held on technical grounds that she has no equity. I have read that whole proceeding with a good deal of interest and care, although I was not in it at all at the time that it progressed, and speaking with some diffidence and the
20 greatest respect for the Vice-Chancellor, I think the statement of counsel in the appeal papers that there are good grounds for appeal was very well merited, and I would look with a great deal of assurance to a reversal of that decree, should the appeal be heard.

So that so far as that phase of the case is concerned, the executors here are confronted with an arrangement about the making of which there seems to be no doubt, for the enforcement of which there are urged some technical reasons which do not have
30 a strong urge for one who considers the hardships of the situation. The question arises first, is that situation one where a contract that by the lower court has been held, for the reasons indicated, to be unenforceable, but which may be reversed, and in the reversal of which there is every natural impulse, is a settlement, an adjustment of a claim that, if

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established, would mean the annual payment of ten thousand dollars for the rest of Mrs. Braunstein's life, by a substituted agreement to pay her four hundred dollars a month, forty-eight hundred dollars a year for the balance of her life, under the circumstances one which the Court on the recommendation of the present managers of the estate should say 10
 was fairly proper? I suppose none of us would for a moment question the effect of Mr. Cassman's argument that executors at common law, without regard to any statute, or administrators at common law, without regard to any statute, have the right under certain conditions named in the case to which he alluded to compromise a claim against an estate, and if done discreetly and judiciously, all hands will recognize their common law power so to do. That is what they are there for. They are not there just 20
 to empirically say, "I am going to see the I's dotted and the T's crossed the way they are written, but I am here to see that things are settled judiciously."

But they have in this case the additional weight of the Act. I myself heard only this morning of the amendment to the Act which was passed last night, or signed last night. It seems to me to have been quite unnecessary, because the Act, as your Honor doubtless recalls, applies in its original form to executors and administrators. The word "admin- 30
 istrator" is used generically there. There are are several kinds of administrators. There are administrators de bonus non and there are administrators pendente lite, and other forms of administrators that are well known, and I take it that the word "administrator" as used in the Act, is generic and

applies to all forms of administrators. But if that is not so, the correction has been made and that is no longer involved.

In addition to the claim that Mrs. Braunstein has, to which I have alluded, is the fact that she, as well as this young grandchild, has filed a caveat against the admission of this will to probate, and such foundation has that caveat that this Court has seen fit to make an order directing the setting aside from the estate of the sum of ten thousand dollars to compensate alienists for testimony to be given on the question of testamentary capacity of this alleged testate. The prosecution of those proceedings under the caveat has fortunately been stayed pending the negotiations which led to this settlement, because they appear in danger of spending a great deal of money and wasting this estate upon a contest of that kind, in which is involved the test of a man to make this will, unique as the will is.

The petition asks the Court to sanction the settlement of the caveat proceedings as well as the claim. Mr. Coloumb, for whose words, of course, we all have unbounded respect, has suggested to your Honor that an adjustment of a claim which under certain remote circumstances might possibly injure his clients—he is not out of pocket at all by the present situation, but only may in the future result in a depreciation of his or her claim—is unconstitutional, taking his property. Executors, of course, have to pay debts, and establish their will before the rights of legatees can be presumed, and there is no constitutional right to enjoy a legacy until it be ultimately established that there is a

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will and that there are not debts that antedate or precede the legacy, and that seems to me to dispose in a nutshell with the constitutional question that counsel invokes. It begs the question. It assumes there is absolutely no question about the claim and it assumes there is absolutely no question about the validity of this will. We think there is a great deal of question about both, and the administrators, men of utmost caution, well advised, the best counsel in Atlantic City, have duly considered it and feel that for the benefit of everybody, to stop this mass of litigation, to recognize the fact that there is this moral and we say legal claim on the part of Mrs. Braunstein to a widow's share of an estate of over a million dollars, that any adjustment that would have received the recommendation of trustees such as these administrators pendente lite are, under the circumstances should not be brushed aside hurriedly by the Court, particularly when the only objection that comes to it is from some person who, the chances are ten to one, would never feel the results. 10 20

I cannot quite understand the force of Mr. Coulomb's argument to the effect that this estate may take ten years to be settled and it is unfair to settle it in advance. I never knew before that people object to getting their money in advance of the time that they may ultimately get it. 30

I assume that your Honor has read this agreement, and your Honor knows that it makes this provision for the immediate settlement of the estate, except that enough shall be laid aside by the trustees, if I may call them such, to produce an income for

the two claimants of the agreed amount, and how anybody is injured and how Mr. Coulomb's tale of woe can in the face of that situation be seriously considered, I am at a loss to understand.

There is nothing mystic about this case. Under the Act, as Mr. Cassman has suggested, your Honor
10 has the authority to confirm this settlement in whole or in part. We think it ought to be confirmed in whole. We think that an adjustment which tells the executors, "You get rid of a contest on this will by paying the contestant two hundred and twenty-eight dollars a month for her life," is an agreement that they can make, and that it is not violative of any legal principle that I am aware of, and certainly simply enables executors, in the case of a threatened contest, to make an adjustment to that extent. But
20 should your Honor feel that that for any reason is embarrassing, I cannot see why Mrs. Braunstein's claim, which is entirely in addition to and independent of her caveat, cannot be adjusted and settled. Can it be possible that an estate of this size must be held up indefinitely by the assertion of a claim and by the ruthless, unreasonable objection of some person who may never be injured, but who wants his or her or their way, and a contest be encouraged ad infinitum, which may deplete this estate of forty
30 times what the present adjustment would be? Can it be possible that a Court and executors, administrators and beneficiaries are powerless under the circumstances to have a practical solution of this problem made?

Therefore, I come down with the purpose of adding what I may say to what has been said by Mr.

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Cassman, what appears by the petition of these administrators, which has received the sanction of their advisors, to urge your Honor to come to the rescue of this estate and prevent its interminable prolongation.

Mr. Richards: If your Honor please, speaking 10
for the grandchild, I want first to point out to your Honor this clause in the will relating to the ten-year proposition merely provides that "if in the judgment of the executors it may be deemed advisable, the final settlement of my estate need not take place until ten years after my death, giving my executors the right to pay such legacies as they may think proper when funds are available for that purpose."

Your Honor knows that, rather against my protest, but because of reasons which he thought sufficient, 20
your colleague, Judge Smathers, appointed me one of the administrators pendente lite, and as such I am familiar with the estate. I am sure that in any case it must take many years before this estate can be liquidated to advantage to all those who are entitled under the will.

In answer to the proposition submitted by Mr. Coulomb, I want to say that your Honor ought not to be invited up a blind alley with this suggestion that the authority to make this proposed settlement 30
as contained in the statute is not yours, because the statute is unconstitutional. I want to call your Honor's attention to the fact that there is no such thing as a vested right by a legatee by reason of a will, because the will itself is purely a statutory method of the distribution of property, and under

the constitution of New Jersey an Act may be retro-active; if the legislature in its wisdom decides at any time either to change the method of distribution as provided in the will or to wipe out the will entirely, it may do so. If day before yesterday the legislature had seen fit to repeal the present statute
10 of wills, it would have wiped out this estate, exactly as it did in amending the statute so that administrators pendente lite were included within the class of those who might make this contract. I think personally that the word "administrators" was sufficient, but the point having been raised by Judge Riggs, and it being a matter of very simple correction of the intent of the legislature, the legislature saw fit to do so.

There never was in the English common law a
20 right to make a will. That was first of all, historically considered, a prerogative of the ecclesiastical court. As a matter of fact, for obvious reasons, a man did not have a right to make a will in England originally. Under the feudal system you can see that the right to make a will would have conflicted with that system, because the lands were lands of the King; the King gave them to his vassals in exchange for certain acts of fealty to him, and to permit the property that they were the trustees for to go
30 to others without the will of the King would have seriously conflicted with that system. The whole of the present system is founded on the ancient statute of wills in England, and it has always been a matter of statute. It is a matter of statute in New Jersey. If we repealed the statute concerning the right to make a will, as I suggested a moment ago,

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there would be no right in the law at all to make such a document or to have property devolve through that system.

So that the constitutionality or unconstitutionality of this Act is not open to dispute, because there is no right which the legislature cannot change in respect to wills. Your Honor knows the legislature does from time to time change what may be done in regard to wills. Only in this last four or five years, for instance, we have changed the right of dower. That involves necessarily a change in what can be willed. A man may have written his will. After having done that and before he could change it he may have died, possibly in some foreign country, but nevertheless the will was changed by the legislature. And so it may go.

Various states, of course, have various provisions so that you may not do certain things in a will. The legislature of New Jersey may at any moment change what may be permissible under a will. It may certainly decide, as they do in some of the western states, that a man may not disinherit his children. If there had been some such provision in the statute here, we would not be here now arguing this matter.

But the main point I wish to present to your Honor is that the legislature, with a frank disclosure of what was intended, has seen fit to permit your Honor to sanction a compromise of this will contest. The situation is that there are two contests, one contest by the widow arising out of the agreement which she had made with her husband on the eve of his death, and the second a contest by the granddaughter to

demonstrate that this was not the will of Samuel Braunstein.

10 As to the first, as so rarely happens that possibly it might be considered an event, I agree with Mr. McCarter that the Vice-Chancellor was entirely wrong in his conclusions in that case. He seems to have taken the position that the agreement was not enforceable because it was not signed. I want to submit that that was an erroneous conclusion, because the agreement did not require it to be signed. The agreement had been made. What was to be approved was the decree to be entered in the Court of Chancery. The agreement was a whole agreement. Nothing needed to be done to it. The agreement was that, subject to the approval of his counsel, this decree would be entered in the Court of Chancery. So that the contract was a completed contract, a contract to do a particular thing, and that was agreed to, and all that is now pending in the Court or Errors is the question of whether or not, having made a completed contract, we are entitled to have that contract enforced to the extent of having the Court of Chancery enter a decree in our favor. That is the whole situation, and that seems to be the point on which the learned Vice-Chancellor erred.

20
30 So far as we are concerned, our attack upon this will is based upon the lack of testamentary capacity in Samuel Braunstein to have made this will. We can show—I want to preface this by saying that I have never been in sympathy with this proposed compromise of this case. I believe that I am giving away about half a million dollars that rightfully belongs to my client by agreeing to this compromise. I have

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done so, however, because this litigation is certainly not going to reflect upon the memory of Samuel Braunstein. His granddaughter sufficiently cherishes that memory and is sufficiently decent about this whole thing to set aside what are undoubtedly her rights and take this very much smaller compromise, in order to avoid that litigation. I want to say to your Honor that we can prove that this man was suffering for many years from an incurable disease, a disease that inevitably affected his mind; that his mind was affected; that it was affected in the way that this disease always affects the mind; that the result of that affection of his mental processes was to make him incapable of remembering his granddaughter. I may say even further that when I look into this estate, when I see the many things that he did in connection with it, I can see how plainly his mind was diseased, notwithstanding the fact that it does not appear, possibly, to the man on the street.

So that if we are driven to it—and personally I would like nothing better than the opportunity to do it—we will be able to convince your Honor beyond the question of a doubt that this paper is not the will of Samuel Braunstein, and so far as these protesting legatees are concerned, they will not get one nickel out of this property.

But rather than drag Braunstein's name through this litigation in a way that cannot help but be most painful to that memory, my client is willing to accept this compromise, although I do not believe that in so doing she is doing anything but robbing herself. That is my position in the matter. There is not necessarily an agreement among all counsel in

this matter. Mr. Perskie, representing his client, has certain ideas. I suppose Mr. McCarter has. I know that so far as I am concerned, so far as my colleague, Mr. Stern, is concerned, we are acquiescing in this agreement only for the reasons I have stated, but we believe and assure your Honor that the testimony in this case, if the witnesses, who I believe would be unimpeached, are to be believed, who tell me these facts in a manner that cannot be controverted, then I say to your Honor there is no question but what your Honor would not receive this will and that it would fail of probate.

Under those circumstances, and only for the reasons that I have given you, are we willing to go on with this agreement of compromise. Personally, I have never taken any great interest in it. I had rather hoped that it would fail of compromise, but it has not, the agreement is signed and it is here, and I think your Honor under those circumstances, and if your Honor requires further evidence, further proof, then your Honor ought to take proof under the statute, but so far as we are concerned, we are presenting this matter unwillingly and willing to go along against my better judgment, but at least willing to go along with this agreement if it can be effectuated. If there is going to be another long drawn out contest, then I think we had better go to the main contest. So far as I am concerned I can see and your Honor can see that it will cost a great deal more money in the long run to contest this will than these people could possibly lose. At most, their interest can be affected only a very few hundred dollars one way or the other by reason of

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this agreement; a very small amount of money. Certainly by the time this contest is over—and the contest is sure to be one which I think we can win—win or lose, this estate would have to bear the cost of that contest. I think your Honor would be sure to come to that conclusion, and with an estate of that size, with the amount of testimony that would be produced, with the fact that expert witnesses, costly expert witnesses would be required to assist your Honor—already there is an order, I think, for ten thousand dollars outstanding for that very purpose, and that would be just the beginning—your Honor can see that so far as a contest is concerned it would be far more ruinous in the end than if a settlement is effected. 10

Mr. Perskie: I did not intend to say a word about this matter, because I thought it had been ably presented to your Honor by everybody involved, and nothing has happened which has changed my mind, other than I do not want, as far as I am concerned in this case, to have the last word that Senator Richards has presented in any wise to be misconstrued by your Honor or anyone else in so far as our side of the controversy is concerned. I think your Honor can take it for granted that whatever Senator Richards knows about the facts of this case, and his colleague, Mr. Cassman and Mr. McCarter and I know with reference to our clients, and I have I have practiced law long enough to know that almost any careful lawyer who prepares a case—and there are certainly nothing but careful lawyers involved in this case—if we were able to find certain 20 30

facts which we thought could be developed in the trial of a given cause, it is reasonable to assume that your adversary always knows about those facts, and to commence to make accusations and recriminations as a result of which you will stir up a hostile frame of mind will put everybody back where we
10 were at the very beginning. A period has passed over of two or three years in which we have tried to hurdle all these very obstacles and all these family entanglements and reach a solution which we thought would appeal both in equity and in law to everybody involved because it was so eminently the decent and fair thing to do. I want to leave that thought in your Honor's mind. Let us forget for the moment what rights we have legally about being able to set this will aside; let us just consider that we have
20 here representatives of one of the finest institutions of the city, in charge of this affair, and they say that after having investigated carefully, they want your Honor to approve of this agreement.

I only have this thought in my mind, that since there has been the slightest intimation of an objection in this cause to the proposed agreement, that in order that whatever judgment your Honor may finally conclude to make in this case, it ought not to be made merely on the petition and argument of
30 respective counsel, because your Honor knows, as I know and every other lawyer knows, that if perchance someone is affected, it is reasonable to assume that since every minor movement has been appealed from, that certainly a substantial movement in the case such as this will likewise be appealed by somebody, and the record ought to have some proof

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as distinguished from merely the petition and argument of respective counsel.

I therefore join with Senator Richards and Mr. Cassman in urging your Honor that, in view of the statement made by Mr. Coulomb in behalf of his clients in the matter, who apparently protest and protest vigorously to this proposed adjustment of this matter in the form suggested, that your Honor give us an opportunity where we would present that proof which we have outlined in these respective talks to your Honor, which would constitute a record from which you would be able to form a judgment as to whether or not in your opinion you feel it is for the best interests of everybody involved to ratify the proposed agreement. 10

Mr. Coulomb: In the opening, to which I addressed my reply, there was not anything suggested as to the fact that Mr. Braunstein did not make a valid will, and it does not seem to me in a proceeding of this kind that that question is open to discussion. Your Honor must take it as though in this case Mr. Braunstein did make a valid will. 20

The Court: Is Henrietta Lowenberg in court or represented? Anyone here representing Henrietta Lowenberg or Harry Lowenberg? Let the record show that these two object to the compromise of this matter, according to a letter from Judge Cole. Judge Cole explained his absence this morning because he was occupied actively in a litigated matter before the Vice-Chancellor. 30

Does anyone else wish to be heard in the Braun-

stein matter why this agreement should not be confirmed or should be confirmed?

How long would it take to hear the testimony and what would the testimony disclose?

10 Mr. Cassman: Well, the thing that seems pertinent to me is the fact that this settlement, as a mere matter of dollars and cents, is of tremendous advantage to the estate.

The Court: Assuming that the Court is satisfied of that fact, that it saves the estate tremendous sums of money, it stops endless litigation, and will be the means of settling this estate and bringing it to a successful climax, suppose the Court is satisfied without the taking of testimony on that proposition?

20

Mr. Cassman: Then the only question is whether under the statute—I think I would like personally an opportunity to examine it rather closely—proceedings under the statute are sufficient for record on appeal based on the petition presented to you and the argument, without any further proof. There are similar statutes in Pennsylvania, New York and Delaware, but I have not had an opportunity to examine the nature of the proof produced under them
30 and whether the petition is sufficient. They are not identical with our statute, but they are similar. It is apparently discretionary with your Honor as to whether you will take proof or not under the statute. The only object I have in mind is if the administrators feel that this settlement should be made for the advantage of the estate, they ought to pre-

Discussion

sent as complete a case as legally they can, with a view to supporting it, and whether an examination of that statute will have ——

The Court: I have no objection to taking the proof, but I want to hurry the time. I want this estate settled. There has been too much litigation 10 and too much time wasted. This matter has been pending over two years. No reason for it. You are no further advanced today than you were when the deceased died.

Mr. Cassman: I think it has been three years.

The Court: The Court wants to have this litigation brought to an end at the least possible expense and inconvenience to the persons who are interested 20 in receiving this estate, and the widow in particular should be provided for, as well as the grandchild or anyone in interest who are in need of support.

The Court is astounded that an estate of over a million dollars, the widow of the deceased must come to court on her knees, so to speak, to maintain herself, as well as the grandchildren. This Court is astounded at that state of affairs.

Mr. McCarter: May I make this suggestion to 30 counsel: That the matter be adjourned by your Honor for one month, with leave in the meantime for either side to take such testimony as they may be advised is material.

The Court: I am afraid you will not get any-

Discussion

where on that. The only thing I can do is to force all of you to come here or Mays Landing by the thirtieth of this month for the taking of testimony to satisfy this Court. This Court is satisfied that this agreement should be confirmed.

- 10 Mr. Richards: I might suggest that unless you were going to take all of the proofs in the will contest, I do not see that there is any proof necessary.

Mr. McCarter: Nor I, either.

The Court: I do not, either. That is why I asked.

- 20 Mr. Richards: I suppose the other side would stipulate that there is an appeal to the Court or Errors so far as the widow is concerned, there is a caveat filed so far as the granddaughter is concerned. There is the thing which is being compromised. I do not want to foreclose Mr. Perskie, who felt there might be some proof, but it seems to me the only proof possible would be for you to re-try the two cases.

- 30 The Court: The record discloses there are savings of tremendous sums of money by the confirmation of this agreement, and I assume, of course, that this confirmation will be taken to the Court of Errors, that this does not cease the litigation, with which, of course, this Court is not concerned.

Mr. Perskie: I merely made a suggestion. If your Honor thinks it does not have the proper merit,

Discussion

far be it from me to block it, because I am here in the interest of Mrs. Braunstein, together with Mr. McCarter and Mr. Cassman.

Mr. Coulomb: I want to have my position stated, and that is that whatever your Honor does in this case, its validity must depend upon this petition. 10
There is no proof before your Honor in this case.

The Court: This Court is of the opinion that the matter set forth in this petition asking for a confirmation of the agreement annexed to it has satisfied this Court that a confirmation of this agreement would save this estate tremendous sums of money and endless litigation, and that a confirmation of this agreement would preserve and conserve the assets of the estate; and it would place the executors 20
or the persons in active charge of the estate in a position to its early liquidation or as soon as it is advisedly able to adjudicate and settle. The Court is also of the opinion and is satisfied that the widow's claim and the compromise upon which it is based is just and fair, which I do not think the other legatees should object to, but, of course, that is their right.

The Court is also satisfied that the grandchild is entitled to the amount agreed upon, and that the 30
moneys saved will more than compensate all legatees of the estate.

In the interest of justice, this Court is satisfied that this agreement should be confirmed.

Mr. Richards: May I suggest this? Does Mr.

Coulomb wish to controvert the facts in the petition?

Mr. Coulomb: I wish to controvert one fact in the petition, that this contract itself is not fair to my mind, and I have stated the reasons.

10

Mr. Richards: As I understand it, his reasons are legal ones.

Mr. Coulomb: No, they are not. They are factual ones.

Mr. Richards: Then I think your Honor ought to hear testimony upon that point.

20

The Court: Are you ready to do it now, Mr. Coulomb?

Mr. Coulomb: I was here to meet this petition. There was no suggestion that any testimony was to be taken. The Act authorized the Court to do it, and if the Court is to do it, we ought to have some notice.

30

Mr. Richards: I think if your Honor will look at the statute, you have a right to take the testimony now.

The Court: I am willing to take it now, but I do not think the other side is ready.

Mr. Coulomb: I do not want to be misunderstood

Discussion

in this matter. When I say it is a question of fact as far as the fairness of this agreement is concerned, I say it arises on the face of the will, the amount of the estate and the provisions of this contract. That is a question of fact. It is not a question of law. It does not require any proofs, as far as you are concerned. We are not going to prove anything about 10 it. It is a question of fact for your Honor to consider whether, in view of those facts which are now before your Honor—I presume the will is part of this record, isn't it?

Mr. Cassman: The agreement covers all the points with the exception, perhaps, of the portion that would go to your clients.

Mr. Coulomb: Exactly. The proceedings in the 20 Orphans' Court, so far as they have now been determined, that is to say, there is a will, a caveat, some testimony taken on the caveat —

Mr. Cassman: As far as I can see, if we agreed to the mathematics of the thing, we would probably have the case in shape, and the mathematics ought not to be difficult to arrive at.

The Court: All the allegations in the petition are 30 matters of record. They are all in the files, either in this court or in other courts.

Mr. Richards: This contemplates the taking of testimony upon the return, which is today. If there is any question of fact involved, it is merely, as Mr.

Coulomb suggested, the fairness of this agreement. Mr. Sypherd is here and we can put him on the stand now to take this proof.

Mr. Coulomb: I haven't any proof to put in.

10

MARY C. MURPHY, SWORN.

By Mr. Cassman:

Q. Miss Murphy, what is your position in the surrogate's office?

A. Deputy surrogate.

Q. Do you have the alleged will which has been offered for probate?

20

A. Yes, sir.

Q. Will you produce it?

A. Yes, sir.

Mr. Cassman: I ask that it be marked in evidence.

The Court: She is producing also what purports to be a codicil to the will.

30

Q. Is there a codicil there?

A. A paper writing.

(The paper was marked Exhibit P1.)

Q. Do you have the caveat which has been filed?

A. Yes, there are two of them.

Herman M. Sypherd—Direct

Mr. Cassman: I offer those in evidence.

Mr. Coulomb: May they be identified as to their date?

A. The one of Bertha Hastings Braunstein is dated November 23, 1928, filed on the same day. 10

(The paper was marked Exhibit P2.)

A. One of Rose G. Richman on November 23, 1928, filed on November 24, 1928.

(Paper marked Exhibit P3.)

20

HERMAN M. SYPHERD, SWORN.

By Mr. Cassman:

Q. Mr. Sypherd, what is your position with the Guarantee Trust Company?

A. Vice-president and trust officer.

Q. Is the Guarantee Trust Company one of the administrators pendente lite under the will?

A. Yes. 30

Q. And also one of the executors named in the will?

A. Yes.

Q. On June 17, 1929, did Bertha Hastings Braunstein file a claim against the estate?

A. Yes.

Q. Do you have that claim?

A. I do.

Mr. Cassman: I offer in evidence claim of Bertha Hastings Braunstein, addressed to the Guarantee Trust Company of Atlantic City and Emerson L. Richards, administrators pendente lite of the estate of Samuel Braunstein, deceased.

(The paper was marked Exhibit P4.)

Q. What disposition was made of it as far as the administrators pendente lite were concerned?

A. They refused to pay the claim.

Q. Is the refusal attached to this copy of it?

A. A copy of it, yes.

20

Mr. Cassman: I offer that in evidence.

(The paper was marked Exhibit P5.)

The Court: How much is the claim?

Mr. Cassman: This is the claim on the agreement providing for the annual payment of ten thousand dollars and a counsel fee at the time of the filing of it, which amounted to fifteen thousand eight hundred and thirty-three dollars and thirty-three cents. At this time it amounts to a sum in excess of thirty thousand dollars.

30

Q. Am I correct in that, Mr. Sypherd?

A. I didn't catch what you said.

Herman M. Sypherd—Direct

Q. The proof of claim filed by Mrs. Braunstein seeks to recover ten thousand dollars a year from December 1, 1928. The amount that would be due her—what is the amount that would be due her at this time if that claim were allowed and paid?

A. Approximately thirty thousand dollars.

Q. Under that proof of claim is there a counsel fee to her attorneys claimed? 10

A. Yes.

Q. What is the amount of that?

A. Ten thousand dollars.

By Mr. McCarter:

Q. Have you the letters of administration?

A. No, they didn't ask for that. At least, I wasn't asked to get that. The will and the letters are all 20 here.

Q. The administration letters you have. All the young lady has is a record of them.

A. We have the original letters of administration.

Mr. Cassman: We offer in evidence the original letters of administration, issued to the Guarantee Trust Company and to Senator Richards.

(The paper was marked Exhibit P6.)

30

By Mr. Cassman:

Q. Was there an inventory and appraisal made of the estate?

A. Yes.

Q. Do you have that?

A. I have a copy of it here, yes. I have a copy of the account, but not a copy of the inventory.

Q. What is the inventory of the estate?

A. One million three hundred and eighty-six thousand one hundred twenty-three dollars and fifteen
10 cents.

Mr. Coulomb: As of what date?

A. As of the date of his death in 1928, whatever that date was. I don't have a record of it here.

By Mr. McCarter:

Q. What is the date of the inventory?

20 A. That is not shown here.

Q. Who made it?

A. It was made by John R. Siracusa and Max Grossman.

Mr. McCarter: We offer the appraisalment in evidence.

(The paper was marked Exhibit P7.)

30 By Mr. Cassman:

Q. Do you have the contract which was entered into between the administrators pendente lite —

A. No. I have the copy as incorporated in the petition, but I went downstairs to locate it and un-

Herman M. Sypherd—Direct

fortunately I couldn't find it in our files this morning.

Mr. Coulomb: I will waive the production of the original. They may produce a copy.

A. The copy contained in the petition is a true 10
copy of the agreement as signed.

Mr. McCarter: We offer that in evidence.

(The paper was marked Exhibit P8.)

Q. What is the amount of the specific legacies?

A. Eight hundred and forty-six thousand eight
hundred dollars.

Mr. Perskie: We offer in evidence an order made 20
in the course of these proceedings, allowing the
employment of experts to an expense not to exceed
ten thousand dollars. The order is dated June 7,
1930.

(The paper was marked Exhibit P9.)

Mr. Coulomb: Will you consent that that has been
appealed from and the appeal is pending? 30

Mr. Perskie: Whatever the facts are.

Mr. Richards: My memory is that it was not ap-
pealed from.

JOSEPH B. PERSKIE, SWORN.

By Mr. Cassman:

Q. Mr. Perskie, are you solicitor and counsel for
10 Bertha Hastings Braunstein in connection with a
suit filed on her behalf on a claim against the estate
in the sum of ten thousand dollars annual payment
and ten thousand dollar counsel fee?

A. I am. I filed a bill for specific performance,
entitled Bertha Hastings Braunstein, complainant,
and the Guarantee Trust Company, et al, executors,
et al, defendants, in the Court of Chancery of our
state, and it is there docketed under 74/489.

Q. Have you a copy of the file here?

20 A. I haven't them together. I will produce them.
I think we ought to offer the whole docket entry.

Mr. Cassman: I offer these papers in evidence,
the chancery file.

(The papers were marked Exhibit P10.)

By Mr. McCarter:

Q. It is appealed?

30 A. Yes, sir, it is still pending. Only abated by
virtue of the provisions contained in the agreement
between the parties in this suit.

By Mr. Conlomb:

Q. What do you mean by that?

A. There is a definite provision between the par-

Emerson L. Richards—Direct

ties that we wouldn't prosecute the appeal—I will put it the other way: That subject to the confirmation of this proposed agreement, nothing further was to be done with that appeal, but if, on the other hand, the terms of the proposed agreement should not be successfully carried out, then our rights in the respective suits should not in any wise be impaired 10 by reason of our not having gone ahead. In other words, we stopped everything and let things remain in status quo until the determination of this present agreement.

Q. Has the appeal been argued?

A. No, sir. The necessary deposit in accordance with the rules has been made and everything ready for the prosecution of the appeal, but it has only been stopped by virtue of the proposed agreement made between the parties that is now before the 20 Court for confirmation.

EMERSON L. RICHARDS, SWORN.

By Mr. Cassman:

Q. Mr. Richards, you are one of the administrators pendente lite in the estate of Samuel Braun- 30 stein, deceased?

A. I am.

Q. As such administrator did you execute the agreement of settlement between the parties which is proposed to be ratified at this time?

A. I did.

Q. In your opinion is that agreement for the best interest and advantage of the estate?

A. It is.

Q. On what do you base your opinion, Senator Richards?

10 A. I base it upon the fact that it would cost more to litigate the two claims than it would to make this settlement; that it would, in my judgment, very likely result in upsetting the will entirely, in which case the legatees under the will would get nothing. I have a divided allegiance in this case at the present time, but I am resolving that allegiance in favor of the estate, and the doubts that I may have are not that this is a good agreement, but that it is too good an agreement.

20

HARRY CASSMAN, SWORN.

By Mr. Perskie:

Q. Mr. Cassman, are you a member of the Bar of the State of New Jersey?

A. I am.

30 Q. And you represent the administrators pendente lite in this matter?

A. I am one of the proctors for the administrators.

Q. Of course, you are thoroughly familiar with the proposed agreement which has been offered to the Court for its consideration?

A. I am.

Q. Have you made any calculation of figures as

Harry Cassman—Direct

a result of which you are able to draw any conclusion as to whether or not it is to the best interest of this estate that this agreement be ratified?

A. I have.

Q. Will you please let us have the benefit of those calculations?

A. If the suit now pending in the Court of Errors and Appeals against the estate be resolved in favor of Mrs. Braunstein, she would at this time be entitled to in excess of thirty thousand dollars. Her counsel would be entitled to ten thousand dollars. There is outstanding an order of Judge Riggs allowing ten thousand dollars for medical expert testimony. The settlement under this agreement would eliminate all those payments, would entitle to December 1st, which is the date to which I made the other calculations, Mrs. Braunstein to a sum of ten thousand eight hundred dollars and the granddaughter to a sum of fifty-six hundred dollars, making a total of sixteen thousand four hundred dollars. Under the claim as filed by Mrs. Braunstein, she would be entitled to be paid annually the sum of ten thousand dollars. Under the settlement she would receive forty-eight hundred dollars a year and the granddaughter would receive twenty-five hundred dollars a year. So that the total settlement would amount to sixty-three hundred dollars a year as against the ten thousand dollars which would annually be paid to Mrs. Braunstein if she succeeds in her claim.

Q. As a result of those figures, are you of the opinion that it is for the best interest of the estate that the agreement proposed be ratified?

A. I have so expressed myself in conference regarding this estate and the settlement of it.

Q. How do you express yourself now while on the stand?

A. I believe so now.

10 By Mr. Coulomb:

Q. Mr. Cassman, you said sixty-three hundred dollars a year. You meant, of course, seventy-three hundred dollars, didn't you?

A. I am wrong about that. That is seventy-three hundred dollars.

Q. You are also counsel, are you not, for Mrs. Bertha Hastings Braunstein?

A. Yes.

20

HARRY BRAUNSTEIN, SWORN.

By Mr. Perskie:

Q. What is your name?

A. Harry Braunstein.

30 Q. Mr. Braunstein, you are one of the executors, are you not, under the will of your late brother, Samuel Braunstein?

A. I am.

Q. And you are also one of the devisees and legatees under the will, are you not?

A. I am.

Q. And you are the Harry Braunstein that is re-

Harry Braunstein—Direct

ferred to in the alleged will of your brother, are you not?

A. I am.

Q. One and the same person?

A. Yes.

Q. With reference to the grandchildren of the decedent, do you have any that are to participate 10 under this will?

A. A son and daughter.

Q. Are they minors?

A. They are.

Q. Are you their guardian?

A. I am.

Q. Are you perfectly satisfied, as guardian of your minor children, as well as executor of the estate, that this proposed agreement be ratified by the Court?

A. I am.

20

By Mr. Stern:

Q. Mr. Braunstein, when Mr. Perskie began a question, he spoke of grandchildren. What relation are your children to the decedent?

A. They are nieces and nephews.

By Mr. Perskie:

Q. Do you know, Mr. Braunstein, whether all of those who are to participate in the residuary portion of the estate, outside of your son and daughter, are all of full age?

A. I think they are all of full age.

Q. So that the only minors in this estate are those

30

over whom you are guardian, namely, your son and daughter; is that right?

A. I am guardian, yes. Young Harry Lowenberg, but I think he just came of age.

Q. Do you know whether he is now of age?

A. I wouldn't like to say positively.

10 Q. To the best of your information, the rest of them are of age at the present time, are they not, Mr. Braunstein?

A. To the best of my knowledge, yes.

Q. And you are one of the persons who will be substantially benefited under the will of your late brother, are you not, Mr. Braunstein?

A. How was that question?

Q. You are one of the heirs to whom your brother willed a goodly portion of his estate, are you not?

20 A. Yes, I am.

Q. And in your opinion, should this agreement be confirmed and ratified by the Court?

A. Yes.

Q. You feel it is for the best interest of the estate and everybody concerned that it should be ratified?

A. I do.

Mr. Coulomb: I want to offer in evidence this notice of appeal from the order made by Judge
30 Riggs, making an allowance of ten thousand dollars for medical services in the proposed contest of the will of Samuel Braunstein, deceased.

(The paper was marked Exhibit D1.)

Mr. McCarter: I understand your Honor will make an order confirming the agreement?

Petitioners' Exhibits

The Court: Yes, ratifying and approving the agreement.

EXHIBIT P1.

LAST WILL AND TESTAMENT OF SAMUEL M. BRAUNSTEIN. 10

I, SAMUEL M. BRAUNSTEIN, of the City of Atlantic City, County of Atlantic and State of New Jersey, being of sound and disposing mind and memory, do make this my last will and testament, hereby revoking all wills heretofore made by me.

FIRST: I direct that all my just debts and funeral expenses be paid as soon after my death as conveniently can be done. 20

SECOND: I give and bequeath to the GUARANTEE TRUST COMPANY of Atlantic City, New Jersey, IN TRUST, the sum of Fifty Thousand (\$50,000) Dollars, to invest and re-invest the same, and to pay the net income derived therefrom to my brother, PHILLIP BRAUNSTEIN, during his life, subject, however, to the provision that within three 30 years there be paid out of said fund to my said brother, PHILLIP BRAUNSTEIN, the sum of Ten Thousand (\$10,000) Dollars, the time of payment to be discretionary with my Trustee, and at his death, to add the principal remaining in the hands of my said Trustee to my residuary estate.

Petitioners' Exhibits

THIRD: I give and bequeath to each of my nieces and nephews living at the time of my death, the sum of Five Thousand (\$5,000) Dollars.

FOURTH: I give and bequeath the sum of Five Hundred (\$500) Dollars to each of the Cemetery Associations in which the lots are located where my parents are buried and where I may be buried, for the perpetual care of the same.

FIFTH: I give and bequeath the sum of Five Thousand (\$5,000) Dollars to the GUARANTEE TRUST COMPANY aforesaid, IN TRUST, to invest and re-invest, and to pay the income therefrom to DORIS ADELLE BRAUNSTEIN, daughter of my deceased son, DAVID BRAUNSTEIN, until she reaches the age of forty years, at which time to pay her Twenty Five Hundred (\$2500) Dollars, and the remaining Twenty Five Hundred (\$2500) Dollars of said trust fund at the age of fifty years.

SIXTH: I give and bequeath to EDNA BILLINGSLEY, the sum of Sixteen Thousand Five Hundred (\$16,500) Dollars, to be paid to her within three years from my death, Sixty Five Hundred (\$6500) Dollars of which amount is to be paid by assigning to her a mortgage of \$6500 which my corporation, S. M. Braunstein, Inc., holds against the property 13 N. Delevan Avenue, Margate City, and I do further direct that her services be retained for a period of ten years to perform such services as may be required in connection with my estate, and

Petitioners' Exhibits

my corporation, at a salary of Thirty (\$30.00) Dollars per week.

SEVENTH: I give and bequeath all the stock of the Boardwalk Realty Company known as the Woolworth property, Ocean Avenue and the Boardwalk, Atlantic City, New Jersey, or the proceeds of the same in case I shall have sold said stock prior to my death, to the GUARANTEE TRUST COMPANY aforesaid, IN TRUST, to pay three-fourths of the income derived therefrom to my brother, HARRY BRAUNSTEIN and the remaining one-fourth to my sister, ANNA LOWENBURG during their respective lives, and in case of the death of either, to the survivor during his or her life, and at the death of the survivor, to divide one-half of said stock or the proceeds of the sale of the same as the case may be, among my said brother's children, and the remaining one-half among my said sister's children, in equal shares per stirpes. 10 20

It is my desire that this stock shall not be sold until the expiration of the Woolworth lease, but in case the majority of the stockholders of the company should decide to dispose of their stock at any time before or after the expiration of the lease, I would then desire that my Trustee act in accord with said majority of the stockholders as to the disposition of said stock. 30

EIGHTH: I give and bequeath the sum of Ten Thousand (\$10,000) Dollars to my uncle, SAM BRAUNSTEIN, or his heirs, of Cleveland, Ohio.

Petitioners' Exhibits

NINTH: I give and bequeath to my aunt, Mrs. Shaw, of Cleveland, Ohio, or her heirs, the sum of Ten Thousand (\$10,000) Dollars.

TENTH: I give and bequeath the sum of Fifty Thousand (\$50,000) Dollars to the B'NAI B'RITH
10 ORPHANGE AND HOME FOR FRIENDLESS CHILDREN of Erie, Pennsylvania.

ELEVENTH: I give and bequeath the sum of Ten Thousand (\$10,000) Dollars to the NATIONAL FARM SCHOOL of Philadelphia, Pennsylvania.

TWELFTH: I give and bequeath the sum of Ten Thousand (\$10,000) Dollars to the JEWISH CONSUMPTIVE RELIEF SOCIETY of Denver, Colo-
20 rado.

THIRTEENTH: I give and bequeath the sum of Ten Thousand (\$10,000) Dollars to the NATIONAL HOME FOR JEWISH CHILDREN, of Denver, Colorado.

FOURTEENTH: I give and bequeath the sum of Twenty Five Thousand (\$25,000) Dollars to the JEWISH HOSPITAL FOR CONSUMPTIVES of
30 Denver, Colorado.

FIFTEENTH: I give and bequeath the sum of Twenty Five Thousand (\$25,000) Dollars to the LEVY MEMORIAL HOSPITAL of Hot Springs, Arkansas.

Petitioners' Exhibits

SIXTEENTH: I give and bequeath the sum of Ten Thousand (\$10,000) Dollars to the HEBREW SHELTERING HOME of Atlantic City, New Jersey.

SEVENTEENTH: I give and bequeath the sum of Ten Thousand (\$10,000) Dollars to AMERICAN FOUNDATION FOR THE BLIND, located at 125 East 46th Street, New York City, New York, and a like sum of Ten Thousand (\$10,000) Dollars to the NEW YORK GUILD FOR THE JEWISH BLIND. 10

EIGHTEENTH: I give and bequeath the sum of Two Hundred Thousand (\$200,000) Dollars to the CHILDREN'S SEASHORE HOUSE FOR INVALID CHILDREN of Atlantic City, New Jersey, this fund to be used in memory of my son, DAVID BRAUNSTEIN, and myself, for a new building to be erected on the premises, on condition that within one year from the date of my death, the Board of Governors of said institution shall agree in a manner satisfactory to my Executors, that there shall always be two Jewish members on said Board of Governors, and that not less than ten per cent. (10%) of the admissions to the Home shall be composed of Jewish children. 20

NINETEENTH: I give and bequeath the sum of Ten Thousand (\$10,000) Dollars to the JEWISH SEASHORE HOME of Ventnor City, New Jersey. 30

TWENTIETH: I give, devise and bequeath one-half of all the rest and residue of my estate, includ-

Petitioners' Exhibits

ing lapsed legacies, if any, to my brothers, HARRY BRAUNSTEIN and PHILLIP BRAUNSTEIN, and my sister, ANNA LOWENBURG, in equal shares, and the remaining one-half of said rest and residue of my estate, to my nieces and nephews in equal shares.

10

TWENTY FIRST: In view of the fact that the larger portion of my assets consist of stock in S. M. Braunstein, Inc., all of the stock of said company, except qualifying shares of directors, being owned by me, I authorize my Executors to continue my investment in said Corporation until such time as the same can be dissolved and the assets transferred to my estate, which course will be necessary in order that there may be funds to pay the various legacies
20 given under this will.

TWENTY SECOND: I direct that the legacies and trust funds created for the benefit of my relatives, shall have priority and be first paid in case there should not be sufficient to satisfy all the legacies given under this will.

TWENTY THIRD: I direct my Executors to pay all inheritance and transfer taxes that may be
30 due from my estate.

TWENTY FOURTH: I give my executors and Trustee, acting in either capacity, full power and authority to sell any or all of my real estate, either at public or private sale, upon such terms and con-

Petitioners' Exhibits

ditions as to them may seem advisable, and to give good and sufficient deeds in law therefor.

TWENTY FIFTH: I authorize my executors and Trustee, acting in either capacity, to renew any mortgages that may be existing on my properties at the time of my death, with power to bind my estate, 10 the execution of said mortgages to in no way cause my Executors or Trustee to become personally responsible for the same.

TWENTY SIXTH: I give my Trustee full power and authority to retain as investments for the trust funds herein created, any securities that I may own at the time of my death, without liability for depreciation in the value of the same.

20

TWENTY SEVENTH: I expressly relieve my Executors from the necessity of settling my estate and paying the various legacies therein, within one year from my death, but do direct that if, in their judgment, it may be deemed advisable, the final settlement of my estate need not take place until ten years after my death, giving my Executors the right to pay such of the legacies as they may think proper when funds are available for the purpose.

30

TWENTY EIGHTH: I nominate and appoint my brother, HARRY BRAUNSTEIN, and the GUARANTEE TRUST COMPANY OF Atlantic City, New Jersey, Executors of this my last will and testament, and I do further direct that my said brother, HARRY BRAUNSTEIN, being a non-resi-

Petitioners' Exhibits

dent of New Jersey, shall not be required to furnish bond for the faithful performance of his duties as Executors under this will.

I direct that Cole and Cole shall be employed by my Executors as attorneys for my estate.

10

IN WITNESS WHEREOF, I have hereunto set my hand and seal this Eleventh day of April, in the year of our Lord, one thousand nine hundred and twenty-eight.

SAMUEL M. BRAUNSTEIN (SEAL)

SIGNED, sealed published and declared by the above named SAMUEL M. BRAUNSTEIN to be his last will and testament, in the presence of us, who were present at the same time, and at his request have subscribed our names hereto as witnesses, in the presence of said testator and of each other.

D. J. WHITE

Hotel Traymore
Atlantic City, N. J.

HERMAN M. SYPHERD

100 Guarantee Trust
Bldg.

EDGAR R. SOMERS

Atlantic City, N. J.
100 Guarantee Trust
Bldg.
Atlantic City, N. J.

30

ATLANTIC COUNTY SURROGATE'S COURT.

IN THE MATTER OF }
THE PROBATE OF THE } CAVEAT AGAINST
ALLEGED WILL OF } PROBATE OF
SAMUEL M. BRAUN- } WILL.
STEIN, DECEASED. }

I, BERTHA HASTINGS BRAUNSTEIN, widow and next of kin of Samuel M. Braunstein, late of Atlantic City, who died on the 14th day of November, 1928, do hereby caveat and protest against admitting to probate any paper purporting to be the last will and testament of said Samuel M. Braunstein until examination and decree thereon by the Orphans' Court of said County of Atlantic.

Dated: Atlantic City, N. J.

November 23, 1928.

EXHIBIT P3.

ATLANTIC COUNTY SURROGATE'S COURT.

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IN THE MATTER OF THE PROBATE OF THE ALLEGED WILL OF SAMUEL M. BRAUN- STEIN, DECEASED.	}	CAVEAT AGAINST PROBATE OF WILL.
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20 TO ALBERT C. ABBOTT, SURROGATE OF THE
 COUNTY OF ATLANTIC:

I, ROSE RICHMAN, GUARDIAN FOR DORIS
 ADELE BRAUNSTEIN, granddaughter and next
 of kin of Samuel M. Braunstein, late of Atlantic
 City, who died on the 14th day of November, 1928,
 do hereby caveat and protest against admitting to
 probate any paper purporting to be the last will and
 testament of said Samuel M. Braunstein until ex-
 30 amination and decree thereon by the Orphans' Court
 of said County of Atlantic.

Dated: Atlantic City, N. J.

November 23, 1928.

ROSE RICHMAN
 GUARDIAN FOR DORIS
 ADELE BRAUNSTEIN.

Petitioners' Exhibits

EXHIBIT P4.

(Filed June 17, 1929.)

10

IN THE MATTER OF	}	PROOF OF CLAIM
THE ESTATE OF SAM-		OF BERTHA
UEL M. BRAUNSTEIN,		HASTINGS
DECEASED.		BRAUNSTEIN.

TO THE GUARANTEE TRUST COMPANY OF
ATLANTIC CITY AND EMERSON L. RICH-
ARDS, ADMINISTRATORS PENDENTE LITE 20
OF THE ESTATE OF SAMUEL M. BRAUN-
STEIN, DECEASED:

PLEASE TAKE NOTICE that the Estate of
Samuel M. Braunstein, deceased, of which estate you
are the administrators pendente lite, is now justly
indebted to Bertha Hastings Braunstein, the widow
of Samuel M. Braunstein, deceased, in the sum of
FIFTEEN THOUSAND EIGHT HUNDRED
THIRTY THREE DOLLARS AND THIRTY 30
THREE CENTS (\$15,833.33), of which amount the
sum of \$5,833.33 is due and payable to the said
Bertha Hastings Braunstein by virtue of an agree-
ment made between the said Samuel M. Braunstein,
deceased, and the said Bertha Hastings Braunstein,
on November 13, 1928, wherein and whereby said

Petitioners' Exhibits

Samuel M. Braunstein, deceased, agreed, in settlement of a certain maintenance suit then pending between the said Bertha Hastings Braunstein and the decedent in the Court of Chancery of New Jersey, to pay to said Bertha Hastings Braunstein the sum of \$10,000 per annum during the term of her natural
10 life, which said sum said decedent agreed to pay in equal monthly payments of \$833.33, commencing on the first day of December, 1928; and of which amount of \$15,833.33, the sum of \$10,000 is now also due and payable to said Bertha Hastings Braunstein by virtue of said agreement, wherein and whereby the said Samuel M. Braunstein, deceased, agreed to pay to said Bertha Hastings Braunstein said sum as
20 and for the counsel fee of Joseph B. Perskie and Harry Cassman, who were solicitors and counsel for said Bertha Hastings Braunstein in said maintenance suit, the performance of which said agreement, decedent agreed to secure by a deposit of sufficient stock of the Boardwalk Realty Company, a corporation of the State of New Jersey, the dividends on which amounted to at least \$10,000 per annum on the then dividend basis of the stock, with the Guarantee Trust Company of Atlantic City, as Trustee.

Under said agreement, there will be further due
30 and owing to the said Bertha Hastings Braunstein the sum of TEN THOUSAND DOLLARS (\$10,000) per annum, payable in equal monthly installments, during the term of her natural life.

Yours respectfully,

Bertha Hastings Braunstein,
CLAIMANT.

Petitioners' Exhibits

STATE OF NEW JERSEY }
COUNTY OF ATLANTIC } ss.

BERTHA HASTINGS BRAUNSTEIN, of full age, being duly sworn according to law, on her oath deposes and says that she is the claimant in the foregoing claim named; that the statements therein set forth are true, and especially is it true that the Estate of Samuel M. Braunstein, deceased, is now justly indebted to deponent, the widow of Samuel M. Braunstein, deceased, in the sum of FIFTEEN THOUSAND EIGHT HUNDRED THIRTY THREE DOLLARS AND THIRTY THREE CENTS (\$15,833.33), of which amount the sum of \$5,833.33 is due and payable to deponent by virtue of an agreement made between the said Samuel M. Braunstein, deceased, and this deponent, on November 13, 1928, wherein and whereby said Samuel M. Braunstein, deceased, agreed, in settlement of a certain maintenance suit then pending between this deponent and the said Samuel M. Braunstein, deceased, in the Court of Chancery of New Jersey, to pay to said deponent the sum of \$10,000 per annum during the term of her natural life, which said sum said decedent agreed to pay in equal monthly payments of \$833.33, commencing on the first day of December, 1928; and of which amount of \$15,833.33, the sum of \$10,000 is now also due and payable to this deponent by virtue of said agreement, wherein and whereby the said Samuel M. Braunstein, deceased, agreed to pay to this deponent said sum as and for the counsel fee of Joseph B. Perskie and Harry Cassman, who were solicitors and counsel for

Petitioners' Exhibits

said deponent in said maintenance suit; the performance of which agreement decedent agreed to secure by a deposit of sufficient stock of the Boardwalk Realty Company, a corporation of the State of New Jersey, with the Guarantee Trust Company of Atlantic City, as trustee, the dividends on which stock
 10 amounted to at least \$10,000 per annum on the then dividend basis of the stock.

Deponent further says that no part of the foregoing claim has been paid, and that the sum of \$15,-833.33 therein mentioned is justly due and owing to her.

Deponent further says that under said agreement there will be further due and owing to her the sum of \$10,000 per annum, payable in equal monthly installments, during the term of her natural life.

20 Bertha Hastings Braunstein.

Sworn and subscribed before me)

this 17th day of June, 1929)

Samuel Igenskie,

Notary Public of N. J.

Service of the within proof of claim
 is hereby acknowledged this 17th day
 of June, 1929.

Petitioners' Exhibits

EXHIBIT P5.

To Bertha Hastings Braunstein:

Notice that the claim filed by you against the Estate of Samuel M. Braunstein is disputed in toto, and that you are required to institute action thereon within three months from the date of receipt of this notice, or be barred of right of action. 10

Guarantee Trust Company, one
of the Executors named in the
will of Samuel M. Braunstein,
and one of the Administrators
pendente lite, by

HERMAN M. SYPHERD 20
Vice-President

June 24, 1929

EXHIBIT P6.

STATE OF NEW JERSEY

ATLANTIC COUNTY SURROGATE'S COURT. 30

I, Albert C. Abbott, Surrogate of the County of Atlantic, and Ex-Officio Clerk of the Orphans' Court of said County, do Certify that, on the First day of December, one thousand nine hundred and twenty-eight, Administration Pendente Lite, of the Goods

Petitioners' Exhibits

and Chattels, Rights and Credits which were of SAMUEL M. BRAUNSTEIN, late of the County of Atlantic, deceased, was granted by The Atlantic County Orphans' Court to GUARANTEE TRUST COMPANY of ATLANTIC CITY, N. J., and EMERSON L. RICHARDS, of the County of Atlantic, who are duly authorized to administer the same, agreeably to law.

Witness my Hand and Seal of Office,
this First day of December, in the year
(Seal) of our Lord one Thousand Nine Hundred
and Twenty-eight.

Albert C. Abbott,
SURROGATE AND EX-OFFICIO CLERK

20

[ENDORSED]

ATLANTIC COUNTY SURRO-
GATE'S COURT

In the Matter of the
Estate of

SAMUEL M. BRAUNSTEIN,
Deceased.

LETTERS OF ADMINISTRATION
PENDENTE LITE.

30

Recorded on the First day of December, 1928, in the Surrogate's Office of the County of Atlantic at Mays Landing, N. J., in Book "C" of Administrations at Page 426.

ALBERT C. ABBOTT, Surrogate.

Petitioners' Exhibits

EXHIBIT P7.

ATLANTIC COUNTY SURROGATE'S COURT.

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In the matter of the Estate of SAMUEL M. BRAUNSTEIN, deceased. } INVENTORY AND APPRAISEMENT.

An Inventory and Appraisement of the goods and chattels, rights and credits, moneys and effects of SAMUEL M. BRAUNSTEIN, deceased, late of the City of Atlantic City, in the County of Atlantic and State of New Jersey, made this day of , nineteen hundred and twenty-nine, by the Guarantee Trust Company and Emerson L. Richards, Administrators pendente lite, and John R. Siracusa and Max Grossman, Appraisers.

1 Diamond and Emerald Ring	350.00	
1 Lincoln 1928 Automobile (Le Baron type)	2,750.00	30
1 Silver Service	100.00	
Miscellaneous household furnishings, 12 So. Kenyon Ave., Margate City, N. J.	150.00	
3891 shares S. M. Braunstein, Inc., as per		

Petitioners' Exhibits

attached list of Assets and Liabilities,
 @ \$355.38 per share 1,382,773.15

TOTAL 1,386,123.15

GUARANTEE TRUST COMPANY,

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By

Trust Officer.

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Administrators pendente lite

.....

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Appraisers.

-
- 20 To Guarantee Trust Company and Emerson L. Richards, Administrators pendente lite Estate of Samuel M. Braunstein, deceased.

- Pursuant to our appointment as appraisers for the above estate, we report that nearly all the assets of Samuel M. Braunstein are in the corporation known as S. M. Braunstein, Inc., of which company there are outstanding and owned by Samuel M. Braunstein 3891 shares, and we place a valuation on
- 30 said stock of \$355.38, this valuation being computed in accordance with the following list of assets and liabilities.

REAL ESTATE	ASSETS VALUE	MORTGAGE	NET EQUITY
610-612 Market Street, and 619-621 King Street, Wilmington, Delaware, lot 44 by 110 feet	\$350,000.	\$169,000.	\$181,000.
1414-1418 Atlantic Avenue, Atlantic City, Lot 50 by 150 ft.	490,000.	207,600.	282,400.
6519 Ventnor Ave., Ventnor City, lot 37 by 80 feet	20,000.	20,000.	None
12 So. Kenyon Ave., Margate, lot 32½ by 80 feet	15,000.	10,000.	5,000.
21 and 25 So. Providence Ave., lot 75 by 150 feet	42,500.	None	42,500.
19 No. Delevan Ave., Margate lot 35 by 62½ feet	13,000.	None	13,000.
14 No. Clermont Ave., Margate, lot 35 by 62½ feet	11,000.	None	11,000.
One-half interest—S. W. Corner Ventnor & New Haven Aves., Ventnor, lot 120 by 99½ feet	30,000.	22,000.	8,000.

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Petitioners' Exhibits

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30	20	10	
Lot 4, Block 30, Ventnor City, situate East side of Dudley Pl., 150 feet South of Atlantic Avenue, lot 50 by 125 feet	17,500.	11,000.	6,500.
Lot 5, Block 30, Ventnor City, situate East line of Dudley Pl., 200 ft. So. of Atlantic Ave., lot 50 by 125 ft.	17,500.	11,000.	6,500.
Lot 13, Block 30, Ventnor City, situate West line of Oxford Pl., 200 ft. So. of Atlantic Ave., lot 50 by 125 ft.	15,000.	None	15,000.
NOTE—This lot is subject to mortgage \$11,000 deposited with Marine Trust Co., as collateral for loan of \$10,732.35 reflected in notes payable			
S. W. Cor. Little Rock and Atlantic Aves., Ventnor City, lot 62½ by 100 ft.	43,750.	19,000.	24,750.
Lots 4, 5, 6, and 12, Block 204A, Margate, situate East side of Delevan Ave. between Ventnor & Winchester Aves., each lot 35 by 62½ ft. (This mortgage of \$2000 covers lot 12 only)	12,000.	2,000.	10,000.

Lot 18, Block 204B, Margate, situate West side of Delevan Ave., between Ventnor and Winchester Aves., lot 35 by 62½ ft.	3,000.	None	3,000.
Lot 11, Block 216, Margate, situate S. W. Cor. Osborne and Winchester Aves., lot 48 by 80	4,500.	None	4,500.
Lot 6, Block 223A, Margate, situate West side of Vendome Ave., between Winchester and Ventnor Aves., lot 45 by 80	3,800.	None	3,800.
Lot 35, Block 130, Margate, situate Southerly line of Ventnor Ave., 100 ft. West of Madison Ave., lot 25 by 125 ft.	5,500.	3,000.	2,500.
Lot 19, Block 204B, Margate, situate on Delevan Ave., between Ventnor & Winchester Aves., lot 35 by 62½ ft.	3,000.	None	3,000.
Lot 21, Block 204B, Margate, situate on Delevan Ave., between Ventnor & Winchester Aves., lot 35 by 62½	3,000.	None	3,000.
Lot 15, Block 204A, Margate, situate on West side of Clermont Ave., between Ventnor and Winchester Aves., lot 35 by 62½	3,000.	None	3,000.

30	20	10	
Lot 3, Block 221, Margate, situate East side of Union Ave., between Ventnor & Winchester Aves, lot 50 by 80 feet	4,000.	2,000.	2,000.
Lot 1, Block 216, Margate, situate S. E. Cor. Winchester & Pembroke Aves., lot 56 by 80	4,500.	3,500.	1,000.
Lot 13, Block 12B, Margate, situate West side of Lancaster Ave., 200 ft. South of Atlantic Ave., lot 50 by 62½ ft.	7,000.	4,000.	3,000.
Lot 39, Block 204F, Margate, situate East side of Clermont Ave., 440 feet North of Ventnor Ave., with frontage of 40.27 ft. and irregular depth	3,000.	None	3,000.
Lot 1, Block 310B, Winchester Gardens, Situate S. E. Cor. Hanover & Winchester Aves., lot 40 by 67½	3,500.	None	3,500.
Lot 10, Block 222, Margate City, situate West side of Union Ave., lot 47 by 80 feet	3,700.	2,000.	1,700.
One-half interest in Lot 1, Block 210B, Margate City, situate S. E. Cor. of Ire-quois & Winchester Aves., lot 40 by 67½	1,750.	1,750.	None

One-half interest in Lot 2, Block 218, Margate City, situate East side of Rumson Ave., between Ventnor & Winchester Aves., lot 50 by 80 ft.	1,900.	1,250.	650.
One-half interest in Lot 1, Block 222, Margate City, situate at the S. E. Cor. Winchester & Vendome Aves., Lot 47 by 80 ft.	2,100.	1,000.	1,100.
One-half interest in Lot 12, Block 15, Margate City, situate West side of Nassau Ave., So. of Atlantic Ave., lot 50 by 80	4,000.	1,000.	3,000.
Lots in Longport, as follows:			
Lot 16 and 17, Block 19, situate West side line of Oregon Ave., North of Beach Ave., each lot 40 by 90 feet			
.....lot 16.....	2,000.		2,000.
.....lot 17.....	1,800.	None	1,800.
Part of two lots in Block 13, situate on East side of 20th Ave., with frontage of 185 ft. and depth of 110 feet	13,875.	5,000.	8,875.
Lot 17, Block 10, West side of 18th Ave.,			

Petitioners' Exhibits

30	20	10	90
lot 50 by 110	2,750.	None	2,750.
Lot 10, Block 24, situate at S. W. Cor. of Oregon & Oberon Aves., Lot 36 by 85 feet	3,250.	None	3,250.
Lots 1 and 2, Block 20, situate at No. W. Cor. of Montana Ave. and Beach, each lot 45 by 130 ft. Lot 1—\$1500.			
Lot 2— 1200.			
—	2,700.	2,500.	200.
Lot 21, Block 10, situate West side of 18th Ave., lot 50 by 110 feet.	3,000.	None	3,000.
Lot 11, Block 11, situate East side of 18th Ave., lot 50 by 110 ft.	2,750.	2,000.	750.
Lot 18, Block 10, situate West side of 18th Ave., lot 50 by 110 feet	2,750.	1,200.	1,550.
Lots 9 and 10, Block 16, situate S. E. Cor. Atlantic & 23rd Aves., lot 95 by 90 ft.			
Lot 9—\$3375.			
Lot 10— 5000.			
—	8,375.	None	8,375.
Lot 18, Block 19, West side of Oregon Ave., lot 40 by 90	1,600.	1,500.	100.

Petitioners' Exhibits

Lot 15, Block 11, situate West side of 18th Ave., lot 50 by 110 feet		3,000.	None	3,000.
Lot 12, Block 20, S. W. Cor. Montana & Atlantic Aves., lot 90.55 by 68.48	\$11,250.			
Lot 13, Block 20, West side of Montana Ave., between Beach and Atlantic Ave., lot 40 by 90 feet	2,600.	13,850.	3,000.	10,850.
Following lots in Block 12, Longport, known as Remington Block:				
Lot 1—43 by 125 ft.	5,375.			
Lots 2, 3, and 4, each lot 50 by 125 ft.	15,000.			
Lot 5—43 by 125 ft.	5,375.			
Lots 7 to 13 incl., and 16 to 20 incl., each lot 50 by 110 ft., in all 12 lots @ \$3000.	36,000.			
Lot 21—lot 50 by 110	3,750.			
Lot 6—lot 50 by 110	3,750.			

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	30		20		10	
Buildings located on premises		4,500.	73,750.		20,000.	53,750.
Acreage—Somers Point, N. J.			<u>19,045</u>		<u>30,000.</u>	<u>*10,955.</u>
TOTAL			<u><u>1,292,995.</u></u>		<u><u>556,300.</u></u>	<u><u>736,695.</u></u>

*In red ink

Petitioners' Exhibits

Petitioners' Exhibits

MORTGAGES

Milton Mendell, covering premises 138-140 So. North Carolina Ave., \$45,000, in which mortgage J. D. Farrington has an interest to the extent of \$3250. This property is subject to a first mortgage of \$50,000, second mortgage of \$10,000, and is valued by the appraisers at \$90,000. 10

Value of mortgage.....	\$22,500.
Less share of J. D. Farrington	1,625.

Net value	20,875.
Mortgage—Revere Finance Company, covering property Ventnor City, N. J., in East line of Dudley Place, 250 feet South of Atlantic Avenue	20 40,000.
Mortgage—Paul H. and Edna M. Billingsley, covering premises 13 No. Delevan Avenue, Margate City	6,500.
Mortgage—Charles L. Payne, covering premises 114 So. Pennsylvania Avenue	28,500.

STOCK

800 shares Ventnor Hotel Corporation @ 127½	30 102,000.
261 shares Beachfront Realty Company	200,000.
202½ “ Fidelity Bond & Mortgage Company	15,000.
60 shares Chelsea Title & Guaranty Co. @ 55	3,300.00

Petitioners' Exhibits

	10 shares Ocean Front Hotel Co., Ocean City, N. J.	100.00
	25 shares Security B. & L. Ass'n., 86th Series, withdrawal value	2,233.10
	25 double shares Bonded B. & L. Ass'n., withdrawal value	3,015.00
10	Trident B. & L. Ass'n. (\$500 paid monthly for 1 yr. 11 mos. @7%	12,348.38
	Atlantic City Loan & Building Ass'n.	
	10 shares 50th Series, withdrawal value	1,730.00
	5 " 52nd Series, " "	765.10
	David Berg B. & L. Ass'n., 50 double shares	3,818.66
	50 shares Neptune Trust Company @250	12,500.00
	100 shares General Electric Company	
20	@ 180	18,500.00
	100 shares Packard Motor Company @ 106	10,600.00
	100 shares Briggs Manufacturing Company @ 51½	5,150.00
	400 shares Lee Rubber & Tire Company @ 20¾	8,300.00
	100 shares Bayuk Cigar Company @ 103¾	10,375.00
	500 shares Robert Reis & Company @ 9⅝	4,812.50
30	390 shares Boardwalk Realty Company @ 820	319,800.00
	CASH ON DEPOSIT IN FOLLOWING BANKS	
	Marine Trust Company	5,099.95
	Marine Trust Company, Special Account	9.29

Petitioners' Exhibits

Guarantee Trust Company.....	4,012.04	
Neptune Trust Company.....	2,639.65	
Central National Bank, Wilmington, Delaware	4,701.88	
National Union Bank of Reading.....	2,450.33	
Broad Street Trust Company, Phila- delphia	1,969.50	10
Book account with Harry Braunstein..	870.57	
Book account with Paul H. Billingsley	365.00	

TOTAL—Personal Property	\$851,840.95
REAL ESTATE	\$736,695.00
PERSONAL PROPERTY	851,840.95

\$1,588,535.95

LIABILITIES

20

NOTES

Marine Trust Company.....	\$29,232.35
Guarantee Trust Company.....	35,063.50
Neptune Trust Company.....	9,500.00
Central National Bank of Wilmington..	25,000.00
National Union Bank of Reading.....	46,829.16

ACCOUNTS PAYABLE

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Morris Coblins	6,918.73
Fidelity Bond and Mortgage Company	5,960.00

MISCELLANEOUS BILLS

Pennsylvania Evergreens	131.00
Other miscellaneous bills	72.15

Petitioners' Exhibits

Notes of Revere Finance Company discounted by S. N. Braunstein at Marine Trust Company and Guar- antee Trust Company	15,000.00
Unpaid Taxes	6,609.15
Demand note to Jacob C. Myers.....	20,000.00
10 Balance due on Seawall Jetty at Long- port	5,446.76
TOTAL.....	\$205,762.80
TOTAL ASSETS.....	\$1,588,535.95
LIABILITIES	205,762.80
NET WORTH.....	\$1,382,773.15
20	
.....	

STATE OF NEW JERSEY }
COUNTY OF ATLANTIC }^{ss}

John R. Siracusa, one of the appraisers in the annexed inventory named, being duly sworn, deposes and says that the goods and chattels, rights, credits and effects in the annexed inventory set down and specified, were by him appraised at their just and true respective values, according to the best of his judgment, and that Max Grossman, the other appraiser whose name is thereunto subscribed, was present at the same time with this deponent, and consented in all things to the doing thereof, and par-

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Herman M. Sypherd, Trust Officer of Guarantee Trust Company, and Emerson L. Richards, Administrators pendente lite of the ESTATE of SAMUEL M. BRAUNSTEIN, deceased, being duly sworn on their oaths, say that the annexed writing contains a true and perfect inventory of all and singular the goods, chattels, rights, credits and effects of the same Samuel M. Braunstein, deceased, so far as they have come to their possession or knowledge, or to the possession of any other person or persons for their use, to their knowledge, and that the said appraisalment is just and true.

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.....

EXHIBIT P8.

THIS AGREEMENT made the First day of June, A. D. 1931, between GUARANTEE TRUST
10 COMPANY OF ATLANTIC CITY, a corporation of the State of New Jersey, and EMERSON L. RICHARDS, ADMINISTRATORS PENDENTE LITE OF THE ESTATE OF SAMUEL M. BRAUNSTEIN DECEASED (hereinafter called "Administrators"); HARRY BRAUNSTEIN and GUARANTEE TRUST COMPANY OF ATLANTIC CITY, a corporation as aforesaid, EXECUTORS named in a paper writing purporting to be the last will and testament of Samuel M. Braunstein, De-
20 ceased (hereinafter called "Executors"); BERTHA HASTINGS BRAUNSTEIN (hereinafter called "Widow"); and ROSE RICHMAN, GUARDIAN FOR DORIS ADELE BRAUNSTEIN (hereinafter called "Granddaughter");

WITNESSETH, That whereas Samuel M. Braunstein died on the Fourteenth day of November, 1928, leaving a certain paper writing dated April 11, 1928, purporting to be his last will and testament; and
30

WHEREAS, said Widow and Granddaughter, on the Twenty-third day of November, 1928, filed a caveat against the admission to probate of any paper writing purporting to be the last will and testament of said decedent, and citations were subsequently is-

Petitioners' Exhibits

sued out of the Atlantic County Orphans' Court and the proponents' proofs taken at a hearing; and

WHEREAS, said Widow has heretofore filed a claim against the Estate of Samuel M. Braunstein, deceased, and has instituted suit against said Estate in the Court of Chancery of New Jersey, and appealed from the decree of said court to the New Jersey Court of Errors and Appeals, said claim and suit being upon an alleged agreement by the decedent to pay to her during the term of her natural life, the sum of Ten Thousand Dollars (\$10,000) per annum, in equal monthly installments commencing December 1, 1928, and also to pay the sum of Ten Thousand Dollars (\$10,000) in cash for her legal fees and expenses; and

10
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WHEREAS, it is the desire of said Administrators and Executors to obtain a release from said Widow of her claim against the estate of said decedent and the consent of the Widow and Granddaughter to the admission to probate of said paper writing as the last will and testament of the decedent, and to secure a discontinuance of the litigation concerning said probate and a discontinuance of the suit of the Widow against the decedent's estate now pending in the New Jersey Court of Errors and Appeals;

30

NOW, THEREFORE, in consideration of the agreement of the said Widow and Granddaughter to consent to the probate, on the testimony heretofore adduced, of the said paper writing dated April

Petitioners' Exhibits

11, 1928 purporting to be the last will and testament of said decedent, and to consent to the discontinuance of all litigation with respect thereto, and the further agreement of said Widow to release the estate of said decedent from any and all liability by reason of the alleged agreement, and to discontinue
10 the suit thereon now pending in the New Jersey Court of Errors and Appeals, IT IS HEREBY CONTRACTED, COVENANTED AND AGREED by and between the parties hereto as follows:

1. That said Administrators and/or Executors as aforesaid, upon the conditions hereinafter mentioned, hereby agree to pay or cause to be paid to the said Widow the sum of FOUR HUNDRED DOLLARS (\$400.00) per month, commencing the first
20 day of September, 1929, and continuing to pay the sum of Four Hundred Dollars (\$400.00) per month to said Widow during the term of her natural life, but the Widow expressly agrees that the Administrators and/or Executors may make distribution of the estate of the decedent at any time they deem advisable provided they retain during the lifetime of the Widow a principal sum which, if invested at five per cent., will produce an income of Forty-eight Hundred Dollars (\$4800) per annum.

30 2. Said Administrators and/or Executors as aforesaid will pay or cause to be paid to said Granddaughter the sum of TWO HUNDRED EIGHT DOLLARS AND THIRTY THREE CENTS (\$208.33) on the first day of September, 1929, and the sum of Two Hundred Eight Dollars and Thirty-

Petitioners' Exhibits

three Cents (\$208.33) on the first day of each and every month thereafter during the term of her natural life, but the Granddaughter expressly agrees that the Administrators and/or Executors may make distribution of the estate of the decedent at any time they deem advisable, provided they retain during the lifetime of the Granddaughter a principal sum which, if invested at five per cent. will produce an income of Twenty-five Hundred Dollars (\$2500) per annum. 10

3. Said Administrators and/or Executors will pay to counsel for the proponents and contestaants of said paper writing purporting to be the last will and testament of the decedent such reasonable counsel fee, costs and expenses as the court may order, said Administrators and Executors hereby consenting that the allowance to counsel for the contestants shall be made as if there was reasonable cause for contesting the validity of said paper writing purporting to be the last will of said decedent, such consent, however, being solely for the purposes of this agreement and having no other force or effect whatsoever. 20

4. IT IS FURTHER EXPRESSLY UNDERSTOOD AND AGREED that as a condition precedent to the validity of this agreement, that it be approved by an order of the Atlantic County Orphans' Court and/or by any appellate court to which an appeal may be taken by any of the parties in interest. 30

Petitioners' Exhibits

5. IT IS DISTINCTLY AGREED AND UNDERSTOOD by and between the parties hereto that in case the Orphans' Court of Atlantic County shall either confirm or refuse to confirm this agreement, then and in either event all litigation now pending shall be unaffected, that is, all litigation now pending shall remain in status quo, until such time as the right to appeal from the order of the court made in the premises shall have expired or until such appeal, if made, shall be determined.

6. IT IS DISTINCTLY UNDERSTOOD AND AGREED that the Administrators and Executors herein are entering into this agreement in their representative capacities only, and personally and individually assume no responsibility with regard thereto.

IN WITNESS WHEREOF the individual parties to these presents have hereunto set their hands and seals, and the corporate parties hereto have caused their common or corporate seals to be affixed and set hereto, duly attested by their proper and authorized officers thereof affixing their signatures hereto, in attestation of their due execution and delivery, the day and year first above written.

30

GUARANTEE TRUST COMPANY
OF ATLANTIC CITY

(Corporate Seal)

By HERMAN M. SYPHERD

Vice President

ATTEST: Harry T. Sickler,

Secretary

Petitioners' Exhibits

EMERSON L. RICHARDS (SEAL)
 ADMINISTRATORS PENDENTE
 LITE OF THE ESTATE OF
 SAMUEL M. BRAUNSTEIN,
 DECD.

SIGNED, SEALED AND
 DELIVERED IN THE
 PRESENCE OF:

10

LILIAN R. HAGERTHEY

HARRY BRAUNSTEIN (SEAL)
 Guarantee Trust Company of At-
 lantic City

(Corporate Seal)

ELIZABETH R. POWELL

By HERMAN M. SYPHERD
 Vice-President

ATTEST: HARRY T. SICKLER 20
 Secretary

EXECUTORS OF THE LAST
 WILL AND TESTAMENT OF
 SAMUEL M. BRAUNSTEIN,
 DECD.

BERTHA HASTINGS BRAUN-
 STEIN (SEAL)

ELIZABETH R. POWELL

ROSE RICHMAN (SEAL)
 GUARDIAN FOR DORIS ADELE 30
 BRAUNSTEIN

JACK A. FUERST

Petitioners' Exhibits

STATE OF NEW JERSEY }
COUNTY OF ATLANTIC } ss.

BE IT REMEMBERED that on this first.....
day of June, 1931, before me, the subscriber, a No-
tary Public.....of the State of New Jersey, per-
10 sonally appeared Harry T. Sickler, who being by
me duly sworn, on his oath made due proof to my
satisfaction that HERMAN M. SYPHERD is the
Vice President and deponent is the Secretary of
GUARANTEE TRUST COMPANY OF ATLANTIC
CITY, one of the Administrators Pendente Lite
of the Estate of Samuel M. Braunstein, deceased,
and one of the Exécutors named in a paper writing
purporting to be the last will and testament of Sam-
uel M. Braunstein, deceased, named in the foregoing
20 agreement; that deponent well knows the common
seal of said corporation and that the seal affixed to
said agreement is the common seal of said corpora-
tion and was so affixed thereto and said agreement
was signed and delivered by said Vice President in
the presence of deponent as the voluntary act and
deed of said corporation, pursuant to resolution of
the directors thereof and that deponent thereupon
signed his name thereto as a witness thereof.

HARRY T. SICKLER

30

Sworn and subscribed before me
the day and year aforesaid.

RUTH E. CHAPMAN

Notary Public of New Jersey

Petitioners' Exhibits

STATE OF NEW JERSEY }
COUNTY OF ATLANTIC } ss.

BE IT REMEMBERED that on the 20th day of June, 1931, before me, the subscriber, a..... Notary Public.....of the State of New Jersey, personally appeared EMERSON L. RICHARDS, 10 one of the Administrators Pendente Lite of the Estate of Samuel M. Braunstein, Deceased, who, I am satisfied, is the person named in and who executed the foregoing agreement, and I having first made known to him the contents thereof, he acknowledged that he signed, sealed and delivered the same as his voluntary act and deed. All of which is hereby certified.

LILIAN R. HAGERTHEY
Notary Public of N. J. 20

STATE OF NEW JERSEY }
COUNTY OF ATLANTIC } ss.

BE IT REMEMBERED that on this 1st day of June, 1931, before me, the subscriber, a Notary Public of the State of New Jersey, personally appeared HARRY BRAUNSTEIN, one of the Ex- 30 ecutors named in a paper writing purporting to be the last will and testament of Samuel M. Braunstein, deceased, who, I am satisfied, is the person named in and who executed the foregoing agreement, and I having first made known to him the contents thereof, he acknowledged that he signed, sealed and delivered

Petitioners' Exhibits

the same as his voluntary act and deed. All of which is hereby certified.

ELIZABETH R. POWELL

Notary Public of N. J.

(Notarial Seal)

10

STATE OF NEW JERSEY }
COUNTY OF ATLANTIC } ss.

BE IT REMEMBERED that on this 22nd day of June, 1931, before me, the subscriber, a..... Notary Public.....of the State of New Jersey, personally appeared BERTHA HASTINGS BRAUNSTEIN, who, I am satisfied, is the person
20 named in and who executed the foregoing agreement, and I having first made known to her the contents thereof, she acknowledged that she signed, sealed and delivered the same as her voluntary act and deed. All of which is hereby certified.

ELIZABETH R. POWELL

Notary Public of N. J.

(Notarial Seal)

30

STATE OF NEW YORK, }
COUNTY OF NEW YORK } ss.

BE IT REMEMBERED that on this 17th..... day of June, 1931, before me, the subscriber, a Notary Public in and for the State of New York.....

Petitioners' Exhibits

personally appeared ROSE RICHMAN, Guardian for Doris Adele Braunstein, who, I am satisfied, is the person named in and who executed the foregoing agreement, and I having first made known to her the contents thereof, she acknowledged that she signed, sealed and delivered the same as her voluntary act and deed. All of which is hereby certified. 10

JACK A. FUERST

Notary Public

(Notarial Seal

New York County)

EXHIBIT P9.

ATLANTIC COUNTY ORPHANS' COURT. 20

IN THE MATTER OF	} On Caveat Against
THE PROBATE OF	
THE ALLEGED WILL	
OF SAMUEL M. BRAUNSTEIN, DECEASED.	
	Probate of Will.
	ORDER.

30

A petition and affidavit having been presented herein by Rose Richman, Guardian for Doris Adele Braunstein, praying the assistance and aid of expert medical witnesses to enable her to establish her contention that Samuel M. Braunstein, deceased,

Petitioners' Exhibits

was without testamentary capacity at the time of the execution of the paper writing purporting to be his last will and testament, the cost of such testimony to be borne by the estate of Samuel M. Braunstein, deceased, and

- 10 IT FURTHER APPEARING that due notice of said application has been given to all parties in interest in this matter pursuant to an order of the court herein, and the court having read and considered said petition and affidavit and having heard testimony and argument of counsel, and being satisfied that the prayer of said petition should be granted,

- IT IS on this 7th day of June, 1930, ORDERED,
20 that the said petitioner, Rose Richman, be permitted to charge the estate of Samuel M. Braunstein, deceased, with such sums of money as shall be necessary to employ medical experts to be approved by this court to assist her in establishing her contention that the said Samuel M. Braunstein, deceased, was without testamentary capacity at the time of the execution of the paper writing purporting to be his last will and testament, provided, however, that in no event is the estate of Samuel M. Braunstein,
30 deceased, to be liable or charged for any sum exceeding the sum of Ten Thousand Dollars (\$10,000).

Charles A. Rigg
Judge.

Petitioners' Exhibits

EXHIBIT P10.

74/489.

IN CHANCERY OF NEW JERSEY.

10

BETWEEN	
BERTHA HASTINGS	} On Bill for Specific Performance.
BRAUNSTEIN,	
Complainant,	
and	
GUARANTEE TRUST	} 20
COMPANY, et al., Ex-	
ecutors, &c., et al.,	
Defendants.	

1. Bill to Enforce Oral Agreement said to have been made between Samuel M. Braunstein and Bertha Hastings Braunstein, his wife, in his lifetime, whereby he, the said Samuel M. Braunstein, agreed to pay to his wife \$10,000, filed August 30 16, 1929.
2. Notice of Motion to Dismiss Bill of Complaint.
3. Order Amending Bill of Complaint.

Petitioners' Exhibits

4. Final Decree dismissing Bill of Complaint, dated September 12, 1930.
5. Conclusions of Vice-Chancellor Ingersoll dismissing Bill of Complaint

10

IN CHANCERY OF NEW JERSEY.

Between
Bertha Hastings Braun-
stein,
Complainant,
and
Guarantee Trust Com-
pany, et al, Executors,
&c, et al,
Defendants.

On Bill for Specific
Performance.

CONCLUSIONS.

20

Mr. Joseph B. Perksie for Complainant.
Messrs. Cole & Cole for Defendants.
INGERSOLL, V. C.

30 A bill having been filed for maintenance and brought to issue, during the hearing the parties met and entered into an oral agreement as to the contents of a proposed decree. Immediately thereafter, and prior to the presentation of such proposed decree, the defendant died:

Held:

Petitioners' Exhibits

1. That the contract was not enforceable by specific performance.

2. That such agreements are subject to approval or modification by this court before a decree can be based thereon.

3. The suit having abated by reason of the death of the defendant, such agreement cannot ripen into a decree.

10

The complainant, widow of Samuel M. Braunstein, files her bill praying for the specific performance of a contract alleged to have been made between the complainant and her husband, in his lifetime, for the payment of certain alimony and other costs and expenses. The allegations of the bill of complaint are that:

Complainant and said Braunstein were married in 1921 and lived together until about January 28, 1928, at which time Braunstein separated himself from the complainant and lived apart until his death, which occurred on November 14, 1928; that in April, 1928, complainant filed her bill praying that her husband be ordered to provide her with suitable support and maintenance; that an answer was filed to said bill and the cause being brought to issue, same was referred to one of the Vice Chancellors; that the cause was duly brought on for a hearing and the production of witnesses and taking of proof was entered upon.

30

It was stated in open court that a probability existed that a settlement of the differences might be

effected upon a conference of the parties, and the said hearing was continued for a period of two weeks. Said conference proceeded with the result that on or about the 13th day of November, 1928, an oral agreement was entered into whereby Braunstein agreed to pay his wife a certain sum of money, 10 to be paid in equal monthly instalments, commencing the 1st day of December, 1928, and to deposit certain shares of stock sufficient to provide from dividends thereon such sum so agreed to be paid (said stock being held by Samuel M. Braunstein, Inc., a corporation of the State of Delaware), and that said Braunstein should also pay the solicitor of said complainant a certain sum. The said agreement having been concluded, was intended to be incorporated in a final decree of this court, to be 20 entered in said cause then pending between the parties. This decree was never entered because of the fact that Braunstein died upon the day of the completion of said contract and before the decree could be presented to the court.

Motion is now made to strike the bill because the bill displays no equity, for eleven separate reasons, the sixth of which reads: "Upon the face of the bill, the alleged agreement was not to become effective until reduced to writing, or upon the entry of a 30 final decree in the maintenance suit, neither of which occurred."

It is apparent upon the allegations of the bill that the agreement was "intended to be incorporated in a final decree of this court, to be entered in said cause then pending between the parties to said agreement."

Petitioners' Exhibits

The question to be considered is, therefore, was there an agreement between the parties upon which specific performance could be decreed? No other construction can be made of the language in the bill than that the parties had agreed that they would consent to the entering of a final decree in this court embodying the terms of the agreement. 10

Vice Chancellor Berry, in *Dennison v. Dennison*, 98 N. J. Eq., p. 230, affirmed 99 N. J. Eq., p. 883, on p. 237, said: "Our Divorce Act vests in the Court of Chancery the power to order suitable support and maintenance for the wife, and 'from time to time to make such further orders touching the same as shall be just and equitable.' This power and authority has been jealously guarded by this court, in consequence of which it has uniformly been held that all such agreements are subject to approval or 20 modification by this court; and no such agreements, unless fair, equitable and just, will be approved or enforced. But they have just as uniformly been enforced when couched in such terms as to meet the court's approval. *Calame v. Calame*, 25 N. J. Eq. 548; *Buttlar v. Buttlar*, 70 N. J. Eq. 675; *Buttlar v. Buttlar*, 71 N. J. Eq. 671; *Halsted v. Halsted*, 74 N. J. Eq. 596; *Rennie v. Rennie*, 85 N. J. Eq. 1; *Boehm v. Boehm*, 88 N. J. Eq. 74; *Hollingshead v. Hollingshead*, 91 N. J. Eq. 261." 30

Chancellor Walker, in *Greenberg v. Greenberg*, 99 N. J. Eq. 461 at p. 469, said: "It is one thing for a wife to express her willingness to accept a certain sum in lieu of alimony, and quite another for the court to ascertain and adjudge that the sum is suitable and adequate for her support." And again in

Dreier v. Dreier, 101 N. J. Eq. p. 342, the Chancellor said, on page 345: "This whole proceeding, however, is irregular, as it is required that the provisions for the wife (on settlement) should be found to be suitable after the court has looked into the arrangements and other surroundings, and that it is for her benefit and found to be adequate, where it appears the parties have agreed upon a settlement as to permanent alimony for the future support of the wife. See *Greenberg v. Greenberg*, 99 N. J. Eq. 461, 466. This has not been done. No appeal has been made to the court to investigate this matter, as required by the cases; but a decree, as mentioned, has been handed to the court and it is asked to pass it pro forma. This, of course, it will not do."

This contract was not approved by this court, and by reason of the death of the defendant, it can never be approved by this court, nor can any decree be entered therein. Suits for divorce and maintenance are abated by the death of either party before the entry of a final decree and a decree entered after such death will be vacated. *Dunham v. Dunham*, 82 N. J. Eq. 395.

Without considering, therefore, the other points raised for the motion, the bill must be dismissed.

- 30 6. Notice of Appeal from Decree Dismissing Bill of Complaint, dated September 25, 1930.
7. Petition of Appeal filed in New Jersey Court of Errors and Appeals.

Defendants' Exhibit

EXHIBIT D1.

ATLANTIC COUNTY ORPHANS' COURT.

10

In the matter of the Pro- bate of the Alleged Will of S A M U E L M. B R A U N S T E I N, de- ceased.	}	On Petition of Ap- peal. NOTICE OF AP- PEAL.
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Harry Braunstein, individually, and Guarantee Trust Company and Harry Braunstein, the executors named in the Last Will and Testament of Samuel M. Braunstein, deceased, hereby appeal to the Prerogative Court from the order or decree dated the 7th day of June, 1930, on the petition of Rose Richman, permitting the charge against the estate "with such sums of money as shall be necessary to employ medical experts to be approved by this Court to assist her in establishing her contention that the said Samuel M. Braunstein, deceased, is without testamentary capacity, &c.," and from each and every part of said order. 20 30

Cole & Cole,
Proctors for Appellants.

ORDER.

ATLANTIC COUNTY ORPHANS' COURT.

10

In the matter of the probate of the alleged will of SAMUEL M. BRAUNSTEIN, deceased.	}	On Petition for Order Confirming Compromise Settlement, &c. Order.
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- 20 This matter being opened to the Court by Messrs. Cole & Cole, and Messrs. Cassman & Gottlieb, proctors for the petitioners, administrators *pendente lite* and executors named in the will, and in the presence of Joseph B. Perskie, Esq., and Hon. Robert H. McCarter, proctors for Bertha Hastings Brounstein; Messrs. Thompson & Hanstein, proctors for Jewish Seaside Home and Levy Memorial Hospital; Messrs. Bourgeois & Coulomb and Nathaniel Hyman, Esq., *pro se*, proctors for Rudolph Hyman, Bessie Hy-
- 30 man Alexander, Dora Hyman Cohan, Anna Hyman Yubas, and Bertie Silverberg; Louis E. Stern, Esq., and Hon. Emerson L. Richards, proctors for Rose Richman, guardian for Doris Adele Braunstein; and it appearing that the order to show cause made herein, together with the petition and copy of the proposed agreement on which the same is founded,

Order

all certified by the Surrogate of the County of Atlantic, have been duly served upon all persons interested in the estate of Samuel M. Braunstein, deceased, in the manner directed in and by said order to show cause; and the matter coming on to be heard, and the Court having taken testimony and heard arguments of respective counsel, and the Court having found that all of the allegations contained in the petition have been sustained, and being of the opinion that it is for the best interest and advantage of the estate of Samuel M. Braunstein, deceased, that a compromise settlement of the claim of Bertha Hastings Braunstein against the said estate be made, and that the consent of caveators, said Bertha Hastings Braunstein and Rose Richman, guardian for Doris Adele Braunstein, to the probate as the will of said decedent of a certain paper writing dated April 11, 1928, be secured in accordance with the terms and conditions set forth in the agreement in writing submitted to this Court, dated June 1, 1931, made between Guarantee Trust Company of Atlantic City, a corporation of the State of New Jersey, and Emerson L. Richards, administrators *pendente lite* of the estate of Samuel M. Braunstein, deceased; Harry Braunstein and Guarantee Trust Company of Atlantic City, a corporation as aforesaid, executors named in a paper writing purporting to be the last will and testament of Samuel M. Braunstein, deceased, Bertha Hastings Braunstein, and Rose Richman, guardian for Doris Adele Braunstein;

It is, on this sixteenth day of December, 1931, ordered, adjudged and decreed that the Court here-

Order

by determines, finds and adopts as its finding of facts all of the allegations contained in the petition, as though the same were again herein set forth in this order.

10 It is further ordered, adjudged and decreed that the compromise settlement and adjustment, in accordance with the terms and conditions set forth in agreement dated June 1, 1931, made between Guarantee Trust Company of Atlantic City, a corporation of the State of New Jersey, and Emerson L. Richards, administrators *pendente lite* of the estate of Samuel M. Braunstein, deceased; Harry Braunstein and Guarantee Trust Company, of Atlantic City, a corporation as aforesaid, executors named in a paper writing purporting to be the last will and testament of Samuel M. Braunstein, deceased; Bertha Hastings Braunstein, and Rose Rich-
20 man, guardian for Doris Adele Braunstein, be and the same is hereby in all respects ratified and approved.

It is further ordered, adjudged and decreed that Guarantee Trust Company of Atlantic City and Emerson L. Richards, administrators *pendente lite* of the estate of Samuel M. Braunstein, deceased, and/or Harry Braunstein and Guarantee Trust Company of Atlantic City, executors named in a
30 paper writing purporting to be the last will and testament of Samuel M. Braunstein, deceased, pay or cause to be paid to the said Bertha Hastings Braunstein the sum of \$400.00 per month, commencing the first day of September, 1929, and continue to pay the sum of \$400.00 per month to said Bertha Hastings Braunstein during the term of her natural life,

Order

provided, however, that said Guarantee Trust Company of Atlantic City and Emerson L. Richards, administrators *pendente lite* of the estate of Samuel M. Braunstein, deceased, and/or Harry Braunstein and Guarantee Trust Company of Atlantic City, Executors named in a paper writing purporting to be the last will and testament of Samuel M. Braunstein, deceased, may make distribution of the estate of the decedent at any time they deem advisable, provided they retain, during the lifetime of said Bertha Hastings Braunstein, a principal sum which, if invested at 5%, will produce an income of \$4800.00 per annum. 10

It is further ordered, adjudged and decreed that Guarantee Trust Company of Atlantic City and Emerson L. Richards, administrators *pendente lite* of the estate of Samuel M. Braunstein, deceased, and/or Harry Braunstein and Guarantee Trust Company of Atlantic City, executors named in a paper writing purporting to be the last will and testament of Samuel M. Braunstein, deceased, pay or cause to be paid to said Doris Adele Braunstein, the sum of \$208.33 commencing on the first day of September, 1929, and the sum of \$208.33 on the first day of each and every month thereafter during the term of her natural life, provided, however, that said Guarantee Trust Company of Atlantic City and Emerson L. Richards, administrators *pendente lite* of the estate of Samuel M. Braunstein, deceased, and/or Harry Braunstein and Guarantee Trust Company of Atlantic City, executors named in a paper writing purporting to be the last will and testament of Samuel M. Braunstein, deceased, may 20 30

Order

make distribution of the estate of the decedent at any time they deem advisable, provided they retain, during the lifetime of said Doris Adele Braunstein, a principal sum, which, if invested at 5%, will produce an income of \$2500.00 per annum.

10 It is further ordered, adjudged and decreed that upon the payment to said Bertha Hastings Braunstein of the sums hereinbefore decreed accruing to the date of payment, in accordance with the terms of said agreement, said Bertha Hastings Braunstein and/or her proctors shall, simultaneously with the receipt of such payment, execute a full and complete release of her said claim against the estate of said decedent, and a discontinuance of all litigation now
20 pending with respect thereto and a withdrawal of objection to the probate of said paper writing as the will of said decedent; provided that nothing herein decreed shall be construed in any wise to limit, modify or detract from the right of said Bertha Hastings Braunstein to continue to receive the payments, during the term of her natural life, in the manner provided by the agreement herein ratified and approved.

It is further ordered, adjudged and decreed that upon payment to said Doris Adele Braunstein of the sums hereinbefore decreed accruing to the date
30 of payment, in accordance with the terms of said agreement, said Rose Richman, guardian of said Doris Adele Braunstein, and/or her proctors shall, simultaneously with the receipt of such payment, execute a full and complete release of her said claim against the estate of said decedent, and a discontinuance of all litigation now pend-

Order

ing with respect thereto and a withdrawal of objection to the probate of said paper writing as the will of said decedent; provided that nothing herein decreed shall be construed in any wise to limit, modify or detract from the right of said Doris Adele Braunstein to continue to receive the payments, during the term of her natural life, 10 in the manner provided by the agreement herein ratified and approved.

It is further ordered, adjudged and decreed that the Court hereby determines as a fact that there was reasonable cause for contesting the validity of said paper writing purporting to be the last will and testament of Samuel M. Braunstein, deceased.

It is further ordered, adjudged and decreed that the proctors for the proponents, and the proctors for the contestants, in the paper writing purporting 20 to be the last will and testament of Samuel M. Braunstein, deceased, are to receive such reasonable counsel fees, costs and expenses as this Court may fix and allow at the hands of either the administrator *pendente lite* of the estate of Samuel M. Braunstein, deceased, and/or Harry Braunstein and Guarantee Trust Company of Atlantic City, executors named in a paper writing purporting to be the last will and testament of Samuel M. Braunstein, deceased. The right is hereby specifically granted to 30 and reserved unto the proctors as aforesaid to make application for such fees, costs and expenses on notice to all parties interested.

JOSEPH A. CORIO.

NOTICE OF APPEAL.

ATLANTIC COUNTY ORPHANS' COURT.

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- | | | | |
|----|---|---|---|
| 10 | In the matter of the probate of the alleged will of SAMUEL M. BRAUNSTEIN, deceased. | } | On Petition for Order Confirming Settlement, &c.
Notice of Appeal. |
|----|---|---|---|
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- Nathaniel S. Hyman, Rudolph Hyman, Bessie Hyman Alexander, Dora Hyman Cohan, Anna Hyman Yubas and Bertie Silverberg, legatees under the last will and testament of Samuel M. Braunstein,
- 20 deceased, hereby appeal to the Prerogative Court of the State of New Jersey from the whole and every part of the decree dated the 16th day of December, 1931, and signed on the 29th day of December, 1931, approving and confirming a certain agreement made by and between the Guarantee Trust Company of Atlantic City, a corporation of the State of New Jersey, and Emerson L. Richards, administrators *pendente lite* of the estate of Samuel M. Braunstein, deceased, Harry Braunstein and
- 30 Guarantee Trust Company of Atlantic City, a corporation as aforesaid, executors named in a paper writing purporting to be the last will and testament of Samuel M. Braunstein, deceased, of the one part, and Bertha Hastings Braunstein, widow of Samuel M. Braunstein, of the second part, and Rose Richman, guardian for Doris Adele Braunstein, of the

Notice of Appeal to Prerogative Court

third part, which said agreement is dated June 1, 1931, directing the settlement of certain claims made by the said Bertha Hastings Braunstein as to a contract said to have been made between herself and the said Samuel M. Braunstein during his lifetime for the payment of certain annuity, and further directing the payment of certain sums of money 10 to the said Rose Richman, guardian for Doris Adele Braunstein, upon certain conditions.

Dated: Atlantic City, N. J.

December 31, 1931.

NATHANIEL S. HYMAN, ESQ.,

BOURGEOIS & COULOMB,

Proctors for Nathaniel S.

Hyman, Rudolph Hyman,

Bessie Hyman Alexander,

Dora Hyman Cohan, Anna 20

Hyman Yubas and Bertie

Silverberg.

To:

COLE & COLE, ESQS.,

CASSMAN & GOTTLIEB, ESQS.,

Proctors for Petitioners.

JOSEPH B. PERSKIE, ESQ.,

HON. ROBERT H. McCARTER,

Proctors for Bertha Hastings

Braunstein.

30

THOMPSON & HANSTEIN, ESQS.,

Proctors for Jewish Seaside

Home and Levy Memorial

Hospital.

LOUIS E. STERN, ESQ.,

HON. EMERSON L. RICHARDS, ESQ.,

Proctors for Rose Richman,

Guardian for Doris Adele

Braunstein.

PETITION OF APPEAL.

NEW JERSEY PREROGATIVE COURT.

10

In the matter of the probate of the alleged will of SAMUEL M. BRAUNSTEIN, deceased.	} On Petition for Order Confirming Settlement, &c. Petition of Appeal.
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20 *To the Ordinary of the State of New Jersey:*

The petition of Nathaniel S. Hyman, Rudolph Hyman, Bessie Hyman Alexander, Dora Hyman Cohan, Anna Hyman Yubas and Bertie Silverberg, of the City of Atlantic City, County of Atlantic and State of New Jersey, respectfully shows:

30 1. Your petitioners, Nathaniel S. Hyman, Rudolph Hyman, Bessie Hyman Alexander, Dora Hyman Cohan, Anna Hyman Yubas and Bertie Silverberg, are nieces and nephews of Samuel M. Braunstein, deceased, and under and by virtue of a paper writing purporting to be the last will and testament of Samuel B. Braunstein, deceased, they are each entitled to a specific legacy of \$5,000, and as a class to one-fourth interest in the residuary estate of the said Samuel M. Braunstein, deceased. In and by

Petition of Appeal in Prerogative Court

said last will and testament, Harry Braunstein and Guarantee Trust Company of Atlantic City were appointed executors.

2. Said last will and testament was lodged for probate with the Surrogate of the County of Atlantic and caveats were filed to the probate thereof by Bertha Hastings Braunstein, widow of Samuel M. Braunstein, deceased, and Rose Richman, guardian of Doris Adele Braunstein, a granddaughter of the said Samuel M. Braunstein, deceased, and pending said probate the Guarantee Trust Company of Atlantic City and Emerson L. Richards were appointed administrators *pendente lite* of the estate of Samuel M. Braunstein, deceased. 10

3. On December 16, 1931, Guarantee Trust Company of Atlantic City and Emerson L. Richards, administrators *pendente lite* of the estate of Samuel M. Braunstein, deceased, and Harry Braunstein and Guarantee Trust Company of Atlantic City, executors of a paper writing purporting to be the last will and testament of Samuel M. Braunstein, deceased, presented to the Orphans' Court of Atlantic County an agreement in settlement and compromise of certain controversies between Bertha Hastings Braunstein, widow of Samuel M. Braunstein, deceased, and Rose Richman, guardian for Doris Adele Braunstein, arising out of the filing by the said Bertha Hastings Braunstein and Rose Richman, guardian for Doris Adele Braunstein, of caveats in the Orphans' Court of Atlantic County against the probate of the paper writing alleged to be the last will and 20 30

Petition of Appeal in Prerogative Court

- testament of Samuel M. Braunstein, deceased, and the institution by the said Bertha Hastings Braunstein of a suit in the Court of Chancery of New Jersey for the specific performance of a contract whereby it was alleged that the said Samuel M. Braunstein in his lifetime had agreed to pay to the said Bertha Hastings Braunstein the sum of \$10,000 per year for life and the further sum of \$10,000 for counsel fees for the respective counsel for said Bertha Hastings Braunstein, by which said agreement said controversies were settled by agreement on the part of the administrators *pendente lite* and the executors of the said paper writing to pay to the said Bertha Hastings Braunstein the sum of \$4800 per year during the term of her life at the rate of \$400 per month, commencing September 1, 1929, and to the said Rose Richman, guardian for Doris Adele Braunstein, the sum of \$2500 per year during the natural life of the said Doris Adele Braunstein at the rate of \$208.33 per month, commencing September 1, 1929, and certain counsel fees to be fixed and determined by said Orphans' Court in consideration of which the said Bertha Hastings Braunstein agreed to withdraw her caveat against said will and withdraw her suit for the specific performance of said contract, and the said Rose Richman, guardian of Doris Adele Braunstein, agreed to withdraw the caveat filed by her on behalf of said Doris Adele Braunstein against the probate of said will, it being further stipulated in said agreement that when the executors of said last will and testament were ready to make distribution an amount should be reserved, which at

Petition of Appeal in Prerogative Court

the rate of five per cent interest thereon would be sufficient to pay said annuities respectively.

4. Said agreement was presented for confirmation and approval of said Atlantic County Orphans' Court under and by virtue of an Act of the Legislature of the State of New Jersey entitled "A supplement to an Act entitled 'An Act respecting the Orphans' Court and relating to the powers and duties of the Ordinary and the Orphans' Court and Surrogates' (Revision of 1898), approved June fourteenth, one thousand eight hundred and ninety-eight" (P. L. 1931, Chapter 130, p. 222), and an amendment or supplement thereto passed sometime during the month of December, 1931, the exact chapter, number or page of said last mentioned amendment being unknown to your petitioners. 10 20

5. That upon presentation of said agreement, your petitioners appeared by their respective counsel, Bourgeois & Coulomb, and Nathaniel S. Hyman, and protested against the confirmation of said agreement upon the following grounds:

(1) That said Acts of the Legislature of the State of New Jersey were in violation of the Federal and State Constitutions.

(2) That the Legislature was without power or authority to vest in the administrators *pendente lite* the power to make such an agreement. 30

(3) That no letters testamentary has been issued to Harry Braunstein and Guarantee Trust Company, executors of the paper writing

Petition of Appeal in Prerogative Court

alleged to be the last will and testament of Samuel M. Braunstein, deceased.

10 (4) That said contract was unfair and unreasonable in that while appellants as a class, both as specific legatees and as residuary legatees, were entitled to but one-tenth of the estate of Samuel M. Braunstein, deceased, one-fourth of the income to be paid to the said Bertha Hastings Braunstein and Doris Adele Braunstein and one-fourth of the fund to be set aside to produce said income will be charged against the interests of appellants.

20 (5) Because the Legislature was without power or authority to vest either in the executors or in the administrators *pendente lite* or in any of the courts of this State power to direct the payment of any portion of the decedent's estate to someone not entitled thereto under the last will and testament of such decedent.

(6) Because the Legislature was without authority to vest in the executors or administrators *pendente lite* of the decedent's estate power or authority to settle the claim against said estate which had been adjudged or decreed by a court of this State as invalid.

30 6. Petitioners further say that by an order of the Atlantic County Orphans' Court dated as of the 16th day of December, 1931, but actually filed on the 29th day of December, 1931, said agreement was approved and the performance thereof ordered and directed.

Petition of Appeal in Prerogative Court

7. Your petitioners, therefore, complain and allege that the whole and every part of said order of the Orphans' Court of Atlantic County so as aforesaid dated the 16th day of December, 1931, but actually filed on the 29th day of December, 1931, approving said agreement and ordering and directing the payments to be made as therein provided is erroneous, improper and illegal and contrary to the provisions of the Federal and State Constitutions for the reasons above set forth, and that your petitioners and each of them are aggrieved thereby . 10

Your petitioners, therefore, pray that the aforesaid order of the said Orphans' Court and every part thereof by reversed by this Court.

Dated: January 7, 1931.

NATHANIEL S. HYMAN, 20
BOURGEOIS & COULOMB,
Proctors for and of Counsel
with Appellants.

*Answer to Petition of Appeal in
Prerogative Court*

ANSWER TO PETITION OF APPEAL.

NEW JERSEY PREROGATIVE COURT.

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In the matter of the probate of the alleged will of SAMUEL M. BRAUNSTEIN, deceased.	}	On Petition for Order Confirming Settlement, &c. Answer to Petition of Appeal.
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The answer of Guarantee Trust Company of Atlantic City, Emerson L. Richards and Harry Braundstein, respondents, to the petition of appeal of Nathaniel S. Hyman, Rudolph Hyman, Bessie Hyman Alexander, Dora Hyman Cohan, Anna Hyman Yubas and Bertie Silverberg, appellants, shows that:

1. They admit the allegations contained in paragraphs 1, 2, 3, 4 and 6 of the petition of appeal
30 filed herein.

2. They are advised, believe and submit that the decree complained of is just and in accordance with law, and deny that the decree or any part thereof is erroneous, improper, or illegal, but, on the con-

*Answer to Petition of Appeal in
Prerogative Court*

trary, allege that the entire decree is correct, proper and legal.

Wherefore, they pray that the decree may be in all things affirmed with costs to be adjudged to these respondents.

10

COLE & COLE,
CASSMAN & GOTTLIEB,
*Proctors for and of Counsel
with Respondents, Guar-
antee Trust Company of
Atlantic City, Emerson L.
Richards, and Harry
Braunstein.*

20

ANSWER TO PETITION OF APPEAL.

NEW JERSEY PREROGATIVE COURT.

In the matter of the pro- bate of the alleged will of SAMUEL M. BRAUN- STEIN, deceased.	}	On Petition for Order Confirming Settle- ment, &c. Answer to Petition of Appeal.	30
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The answer of Rose Richman, guardian for Doris Adele Braunstein, respondent, to the petition of ap-

*Answer to Petition of Appeal in
Prerogative Court*

peal of Nathaniel S. Hyman, Rudolph Hyman, Bessie Hyman Alexander, Dora Hyman Cohan, Anna Hyman Yubas and Bertie Silverberg, appellants, shows that:

10 1. She admits the allegations contained in paragraphs 1, 2, 3, 4, and 6 of the petition of appeal filed herein.

2. She is advised, believes and submits that the decree complained of is just and in accordance with law, and denies that the decree or any part thereof is erroneous, improper or illegal, but, on the contrary, alleges that the entire decree is correct, proper and legal.

20 Wherefore, she prays that the decree may be in all things affirmed with costs to be adjudged to this respondent.

EMERSON L. RICHARDS,
LOUIS E. STERN,
*Proctors for Rose Richman,
Guardian for Doris Adele
Braunstein, respondent.*

*Answer to Petition of Appeal in
Prerogative Court*

ANSWER TO PETITION OF APPEAL.

NEW JERSEY PREROGATIVE COURT.

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In the matter of the probate of the alleged will of SAMUEL M. BRAUNSTEIN, deceased.	}	On Petition for Order Confirming Settlement, &c. Answer to Petition of Appeal.
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The answer of Bertha Hastings Braunstein, respondent, to the petition of appeal of Nathaniel S. Hyman, Rudolph Hyman, Bessie Hyman Alexander, Dora Hyman Cohan, Anna Hyman Yubas and Bertie Silverberg, appellants, shows that:

1. She admits the allegations contained in paragraphs 1, 2, 3, 4 and 6 of the petition of appeal filed herein.

30

2. She is advised, believes and submits that the decree complained of is just and in accordance with law, and denies that the decree or any part thereof is erroneous, improper or illegal, but on the contrary alleges that the entire decree is correct, proper and legal.

*Decree of Prerogative Court Affirming
Order of Atlantic County Orphans'
Court*

Wherefore she prays that the decree may be in all things affirmed with costs to be adjudged to this respondent.

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JOSEPH B. PERSKIE,
*Proctor for and of Counsel with
Respondent, Bertha Hastings
Braunstein.*

DECREE AFFIRMING ORDER.

NEW JERSEY PREROGATIVE COURT.

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In the matter of the probate of the alleged will of SAMUEL M. BRAUNSTEIN, deceased.	}	On Appeal from Order of Orphans' Court Confirming Compromise Settlement, &c. Decree Affirming Order.
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Nathaniel S. Hyman, Rudolph Hyman, Bessie Hyman Alexander, Dora Hyman Cohan, Anna Hyman Yubas and Bertie Silverberg, legatees named in a paper writing purporting to be the last will and testament of Samuel M. Braunstein, deceased, hav-

*Decree of Prerogative Court Affirming
Order of Atlantic County Orphans'
Court*

ing presented their petition of appeal from an order of the Atlantic County Orphans' Court made on the 16th day of December, 1931, wherein said Court ordered, adjudged and decreed, among other things, that it is for the best interest and advantage of the estate of Samuel M. Braunstein, deceased, that a compromise settlement of the claim of Bertha Hastings Braunstein against the said estate be made, and that the consent of the caveators, Bertha Hastings Braunstein and Rose Richman, guardian for Doris Adele Braunstein, to the probate as the will of said decedent of a certain paper writing dated April 11, 1928, be secured in accordance with the terms and conditions set forth in the agreement in writing submitted to said Atlantic County Orphans' Court, dated June 1, 1931, made between Guarantee Trust Company of Atlantic City, a corporation of the State of New Jersey, and Emerson L. Richards, administrators *pendente lite* of the estate of Samuel M. Braunstein, deceased, Harry Braunstein and Guarantee Trust Company of Atlantic City, a corporation as aforesaid, executors named in a paper writing purporting to be the last will and testament of Samuel M. Braunstein, deceased, Bertha Hastings Braunstein and Rose Richman, guardian for Doris Adele Braunstein, and wherein said Atlantic County Orphans' Court further ordered, adjudged and decreed that the compromise settlement and adjustment made in accordance with the terms and conditions of the agreement aforesaid dated June 1, 1931, be in all respects ratified and approved, and

*Decree of Prerogative Court Affirming
Order of Atlantic County Orphans'
Court*

determined as a fact that there was reasonable cause for contesting the validity of said paper writing purporting to be the last will of Samuel M. Braunstein, deceased; and this matter having been

10 brought on to be heard in accordance with the practice in such cases made and provided, in the presence of Clarence L. Cole, Esq., of the firm of Cole & Cole, and Harry Cassman, Esq., of the firm of Cassman & Gottlieb, proctors for the respondents, administrators *pendente lite* and executors named in the will; Joseph B. Perskie, Esq. and Hon. Robert H. McCarter, proctors for Bertha Hastings Braunstein; Harry Coulomb, Esq., of the firm of Bourgeois & Coulomb, and Nathaniel Hyman, Esq.,

20 *pro se*, proctors for Rudolph Hyman, Bessie Hyman Alexander, Dora Hyman Cohan, Anna Hyman Yubas, Bertie Silverberg and Nathaniel S. Hyman; and Louis E. Stern, Esq., proctor for Rose Richman, guardian for Doris Adele Braunstein; and this Court having considered the pleadings and testimony and having heard the arguments of counsel for the respective parties, and the Court being satisfied that it is for the best interest and advantage of the estate of Samuel M. Braunstein, deceased,

30 that a compromise settlement of the claim of Bertha Hastings Braunstein against the said estate be made, and that the consent of the caveators, said Bertha Hastings Braunstein and Rose Richman, guardian for Doris Adele Braunstein, to the probate as the will of said decedent of a certain paper writing dated April 11, 1928, be secured in accordance with the

*Decree of Prerogative Court Affirming
Order of Atlantic County Orphans'
Court*

terms and conditions of the agreement aforesaid dated June 1, 1931;

It is thereupon, on this 5th day of February, 1932, ordered, adjudged and decreed that the order of the Atlantic County Orphans' Court under date of 10 December 16, 1931, ratifying and approving the compromise settlement and adjustment made in accordance with the terms and conditions of the agreement aforesaid dated June 1, 1931, be and the same is hereby in all things ratified and confirmed, and that the compromise settlement made in accordance with the terms and conditions set forth in the agreement dated June 1, 1931, made between Guarantee Trust Company of Atlantic City, a corporation of the State of New Jersey, and Emerson L. Richards, 20 administrators *pendente lite* of the estate of Samuel M. Braunstein, deceased, Harry Braunstein and Guarantee Trust Company of Atlantic City, a corporation as aforesaid, executors named in a paper writing purporting to be the last will and testament of Samuel M. Braunstein, deceased, Bertha Hastings Braunstein and Rose Richman, guardian for Doris Adele Braunstein, be and the same is hereby in all respects ratified and confirmed.

E. R. WALKER, 30
Ordinary.

Respectfully advised:

R. H. INGERSOLL,
Vice Ordinary.

*Notice of Appeal to Court of Errors
and Appeals*

NOTICE OF APPEAL.

NEW JERSEY PREROGATIVE COURT.

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In the matter of the pro- bate of the alleged will of SAMUEL M. BRAUNSTEIN, deceased.	}	On Petition, etc. Notice of Appeal.
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Nathaniel S. Hyman, Rudolph Hyman, Bessie Hyman Alexander, Dora Hyman Cohan, Anna Hyman Yubas and Bertie Silverberg, legatees under the last will and testament of Samuel M. Braunstein, deceased, hereby appeal to the Court of Errors and Appeals of the State of New Jersey, in the last resort in all causes, from the whole and every part of the decree dated the 5th day of February, 1932, affirming an order made by the Atlantic County

30 Orphans' Court, dated the 16th day of December, 1931, and signed on the 29th day of December, 1931, approving and confirming a certain agreement made by and between the Guarantee Trust Company of Atlantic City, a corporation of the State of New Jersey, and Emerson L. Richards, administrators

*Notice of Appeal to Court of Errors
and Appeals*

pendente lite of the estate of Samuel M. Braunstein, deceased, Harry Braunstein and Guarantee Trust Company of Atlantic City, a corporation as aforesaid, executors named in a paper writing purporting to be the last will and testament of Samuel M. Braunstein, deceased, of the one part, and Bertha Hastings Braunstein, widow of Samuel M. Braunstein, of the second part, and Rose Richman, guardian for Doris Adele Braunstein, of the third part, which said agreement is dated June 1, 1931, directing the settlement of certain claims made by the said Bertha Hastings Braunstein as to a contract said to have been made between herself and the said Samuel M. Braunstein during his lifetime for the payment of certain annuity, and further directing the payment of certain sums of money to the said Rose Richman, guardian for Doris Adele Braunstein, upon certain conditions.

Dated: Atlantic City, N. J.

February 25, 1932.

NATHANIEL S. HYMAN,
Proctor Pro Se.

BOURGEOIS & COULOMB,
Proctors for Rudolph Hyman, Bessie Hyman Alexander, Dora Hyman Cohan, Anna Hyman Yubas and Bertie Silverberg.

*Notice of Appeal to Court of Errors
and Appeals*

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

H. R. COULOMB,
Of Counsel.

To:

- 10 COLE & COLE, ESQS.,
*Proctors for Petitioners, Guar-
antee Trust Company and
Harry Braunstein, Executors
of the Paper Writing Alleged
to be the Last Will and Tes-
tament of Samuel M. Braun-
stein, Deceased.*
- COLE & COLE, ESQS.,
CASSMAN & GOTTLIEB, ESQS.,
- 20 *Proctors for Petitioners, Guar-
antee Trust Company and
Emerson L. Richards, Ad-
ministrators Pendente Lite of
the Estate of Samuel M.
Braunstein, Deceased.*
- JOSEPH B. PERSKIE, ESQ.,
HON. ROBERT H. McCARTER,
*Proctors for Bertha Hastings
Braunstein.*
- 30 THOMPSON & HANSTEIN, ESQS.,
*Proctors for Jewish Seaside
Home and Levy Memorial
Hospital.*
- LOUIS E. STERN, ESQ.,
HON. EMERSON L. RICHARDS, ESQ.,
*Proctor for Rose Richman,
Guardian for Doris Adele
Braunstein.*

*Petition of Appeal in Court of Errors
and Appeals*

PETITION OF APPEAL.

NEW JERSEY COURT OF ERRORS
AND APPEALS.

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In the matter of the probate of the alleged will of SAMUEL M. BRAUNSTEIN, deceased.	}	On Petition for Order Confirming Settlement, &c. Petition of Appeal.
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*To the Court of Errors and Appeals, in the Last
Resort in all Causes:*

The petition of Nathaniel S. Hyman, Rudolph Hyman, Bessie Hyman Alexander, Dora Hyman Cohan, Anna Hyman Yubas and Bertie Silverberg, of the City of Atlantic City, County of Atlantic and State of New Jersey, respectfully shows:

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1. Your petitioners, Nathaniel S. Hyman, Rudolph Cohan, Anna Hyman Yubas and Bertie Silverberg, Hyman, Bessie Hyman Alexander, Dora Hyman are nieces and nephews of Samuel M. Braunstein, deceased, and under and by virtue of a paper writing purporting to be the last will and testament of

*Petition of Appeal in Court of Errors
and Appeals*

Samuel B. Braunstein, deceased, they are each entitled to a specific legacy of \$5,000, and as a class to one-fourth interest in the residuary estate of the said Samuel M. Braunstein, deceased. In and by said last will and testament, Harry Braunstein and
10 Guarantee Trust Company of Atlantic City were appointed executors.

2. Said last will and testament was lodged for probate with the surrogate of the County of Atlantic and caveats were filed to the probate thereof by Bertha Hastings Braunstein, widow of Samuel M. Braunstein, deceased, and Rose Richman, guardian of Doris Adele Braunstein, a granddaughter of the said Samuel M. Braunstein, deceased, and pending said probate the Guarantee Trust Company of
20 Atlantic City and Emerson L. Richards were appointed administrators *pendente lite* of the estate of Samuel M. Braunstein, deceased.

3. On December 16, 1931, Guarantee Trust Company of Atlantic City and Emerson L. Richards, administrators *pendente lite* of the estate of Samuel M. Braunstein, deceased, and Harry Braunstein and Guarantee Trust Company of Atlantic City, executors of a paper writing purporting to be the last will and testament of Samuel M. Braunstein, deceased, presented to the Orphans' Court of Atlantic County an agreement in settlement and compromise of certain controversies between Bertha Hastings Braunstein, widow of Samuel M. Braunstein, deceased, and Rose Richman, guardian for
30

*Petition of Appeal in Court of Errors
and Appeals*

Doris Adele Braunstein, arising out of the filing by the said Bertha Hastings Braunstein and Rose Richman, guardian for Doris Adele Braunstein, of caveats in the Orphans' Court of Atlantic County against the probate of the paper writing alleged to be the last will and testament of Samuel M. Braunstein, deceased, and the institution by the said Bertha Hastings Braunstein of a suit in the Court of Chancery of New Jersey for the specific performance of a contract whereby it was alleged that the said Samuel M. Braunstein his lifetime had agreed to pay to the said Bertha Hastings Braunstein the sum of \$10,000 per year for life and the further sum of \$10,000 for counsel fees for the respective counsel for said Bertha Hastings Braunstein, by which said agreement said controversies were settled by agreement on the part of the administrators *pendente lite* and the executors of the said paper writing to pay to the said Bertha Hastings Braunstein the sum of \$4,800 per year during the term of her life at the rate of \$400 per month, commencing September 1, 1929, and to the said Rose Richman, guardian for Doris Adele Braunstein, the sum of \$2,500 per year during the natural life of the said Doris Adele Braunstein at the rate of \$208.33 per month, commencing September 1, 1929, and certain counsel fees to be fixed and determined by said Orphans' Court in consideration of which the said Bertha Hastings Braunstein agreed to withdraw her caveat against said will and withdraw her suit for the specific performance of said contract, and the said Rose Richman, guardian of Doris Adele Braunstein,

*Petition of Appeal in Court of Errors
and Appeals*

agreed to withdraw the caveat filed by her on behalf of said Doris Adele Braunstein against the probate of said will, it being further stipulated in said agreement that when the executors of said last will and testament were ready to make distribution an
10 amount should be reserved, which at the rate of five per cent interest thereon would be sufficient to pay said annuities respectively.

4. Said agreement was presented for confirmation and approval of said Atlantic County Orphans' Court under and by virtue of an Act of the Legislature of the State of New Jersey entitled "A Supplement to an Act entitled 'An Act respecting the Orphans' Court and relating to the powers and du-
20 ties of the ordinary and the Orphans' Court and surrogates' (Revision of 1898), approved June fourteenth, one thousand eight hundred and ninety-eight" (P. L. 1931, Chapter 130, p. 222), and an amendment or supplement thereto passed sometime during the month of December, 1931, the exact chapter number or page of said last mentioned amendment being unknown to your petitioners.

5. That upon presentation of said agreement,
30 your petitioners appeared by their respective counsel, Bourgeois & Coulomb, and Nathaniel S. Hyman, and protested against the confirmation of said agreement upon the following grounds:

(1) That said Acts of the Legislature of the State of New Jersey were in violation of the Federal and State Constitutions.

*Petition of Appeal in Court of Errors
and Appeals*

(2) That the Legislature was without power or authority to vest in the administrators *pendente lite* the power to make such an agreement.

(3) That no letters testamentary had been issued to Harry Braunstein and Guarantee Trust Company, executors of the paper writing alleged to be the last will and testament of Samuel M. Braunstein, deceased. 10

(4) That said contract was unfair and unreasonable in that while appellants as a class, both as specific legatees and as residuary legatees, were entitled to but one-tenth of the estate of Samuel M. Braunstein, deceased, one-fourth of the income to be paid to the said Bertha Hastings Braunstein and Doris Adele Braunstein 20 and one-fourth of the fund to be set aside to produce said income will be charged against the interests of appellants.

(5) Because the Legislature was without power or authority to vest either in the executors or in the administrators *pendente lite* or in any of the courts of this State power to direct the payment of any portion of the decedent's estate to someone not entitled thereto under the last will and testament of such decedent. 30

(6) Because the Legislature was without authority to vest in the executors or administrators *pendente lite* of the decedent's estate power or authority to settle the claim against said estate which had been adjudged or decreed by a Court of this State as invalid.

*Petition of Appeal in Court of Errors
and Appeals*

6. Petitioners further say that by an order of the Atlantic County Orphans' Court dated as of the 16th day of December, 1931, but actually filed on the 29th day of December, 1931, said agreement was approved and the performance thereof ordered and
10 directed.

7. Your petitioners, therefore, complain and allege that the whole and every part of said decree of the Prerogative Court of the State of New Jersey dated the 5th day of February, 1932, affirming the order of the Atlantic County Orphans' Court so as aforesaid dated the 16th day of December, 1931, but actually filed on the 29th day of December, 1931, approving said agreement and ordering and direct-
20 ing the payments to be made as therein provided is erroneous, improper and illegal and contrary to the provisions of the Federal and State Constitutions for the reasons above set forth, and that your petitioners and each of them are aggrieved thereby.

Your petitioners, therefore, pray that the aforesaid order of the said Prerogative Court and every part thereof be reversed by this Court.

Dated: February 25, 1932.

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NATHANIEL S. HYMAN,
Proctor Pro Se.

BOURGEOIS & COULOMB,
Proctors for Appellants, Rudolph Hyman, Bessie Hyman Alexander, Dora Hyman Cohan, Anna Hyman Yubas and Bertie Silverberg.

Conclusions

CONCLUSIONS.

NEW JERSEY PREROGATIVE COURT

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In the matter of the pro-	}	On Appeal. Conclusions.
bate of the alleged will		
and codicil of SAMUEL M.		
BRAUNSTEIN, deceased.		

(Not for publication in the official or unofficial reports.) 20

MESSRS. BOURGEOIS & COULOMB and NATHANIEL S. HYMAN, proctors for appellants, Nathaniel S. Hyman, Rudolph Hyman, Bessie Hyman Alexander, Dora Hyman Cohan, Anna Hyman Yubas and Bertie Silverberg.

MESSRS. COLE & COLE, proctors for petitioners, Guarantee Trust Company and Harry Braunstein, executors of the paper writing alleged to be the last will and testament of Samuel M. Braunstein, deceased. 30

MESSRS. COLE & COLE and CASSMAN & GOTTLIEB, proctors for petitioners, Guarantee Trust Company and Emerson L. Richards, admin-

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istrators pendente lite of the estate of Samuel M. Braunstein, deceased.

MR. JOSEPH B. PERSKIE and MR. ROBERT H. McCARTER, proctors for Bertha Hastings Braunstein.

10 MESSRS. THOMPSON & HANSTEIN, proctors for Jewish Seaside Home and Levy Memorial Hospital.

MR. LOUIS E. STERN and MR. EMERSON L. RICHARDS, proctors for Rose Richman, guardian for Doris Adele Braunstein.

INGERSOLL, V. C.:

20 On January 22, 1932, this appeal was heard by me and I expressed my views orally, stating that I would reserve the right to amplify those views in a prepared form of conclusions, if it became necessary. I have this day, May 4, 1932, been notified that an appeal has been taken from the order advised by me. I am, therefore, amplifying my views as expressed orally, as follows:

30 Samuel M. Braunstein was, in his lifetime, a resident of Atlantic City. He and Bertha Hastings Braunstein were married in 1921 and lived together until about January 28, 1928, at which time Braunstein separated himself from the complainant and lived apart until his death, which occurred on November 14, 1928. In April of that year, Mrs. Braunstein filed her bill praying that her husband be ordered to provide her with suitable support and maintenance. Answer was filed, cause brought to issue

Conclusions

and the same was referred to me. The cause was duly brought on for hearing and the production of witnesses and taking of proof was entered upon.

It was stated in open court that a probability existed that a settlement of the differences might be effected upon a conference between the parties and the hearing was, at the request of all parties, continued for a period of two weeks. Said conference proceeded, with the result that on or about the 13th day of November, 1928, an oral agreement was entered into whereby Braunstein agreed to pay his wife a certain sum of money, in equal monthly installments, commencing the 1st day of December, 1928. In addition thereto he was to provide security, etc., for such payments. The agreement having been concluded, it was intended to be incorporated in a final decree of this Court, to be entered in said cause then pending between the parties. This decree was never entered because of the fact that Braunstein died upon the day of the completion of said contract and before the decree could be presented to the Court for its approval. 10 20

A bill was filed by Mrs. Braunstein against the Guarantee Trust Company of Atlantic City, *et als.*, executors, etc., praying for the specific performance of this contract, which bill was dismissed for the reasons set forth in 106 N. J. Eq. 541. An appeal was taken from this order and is still pending in the Court of Errors and Appeals. 30

Braunstein died testate. In his will he gave and bequeathed "the sum of \$5,000 to the Guarantee Trust Company aforesaid, in trust, to invest and re-invest, and to pay the income therefrom to Doris

Conclusions

Adele Braunstein, daughter of my deceased son, David Braunstein, until she reaches the age of forty years, at which time to pay her \$2,500, and the remaining \$2,500 of said trust fund at the age of fifty years." He appointed his brother, Harry Braunstein, and the Guarantee Trust Company of Atlantic City, executors of the will. In due time Bertha Hastings Braunstein filed in the Atlantic County Surrogate's Court a caveat against the probate of this will, and Rose Richman, guardian for Doris Adele Braunstein, also filed a caveat.

On the 1st day of December, 1928, the Surrogate of Atlantic County appointed the Guarantee Trust Company of Atlantic City, N. J., and Emerson L. Richards, administrators *pendente lite* of the goods and chattels, rights and credits, which were of Samuel M. Braunstein, and they entered upon their duties as such. An inventory and appraisement was filed of Braunstein's estate, showing a net worth of \$1,382,773.15.

On the 17th day of June, 1929, the said Bertha Hastings Braunstein filed a claim against the estate of Samuel M. Braunstein, alleging that it was justly indebted to her in the sum of \$15,833.33. This claim was based upon the agreement made with Braunstein prior to his death for the payment to her of \$10,000 per year, and also because in said agreement he agreed to pay \$10,000 to her counsel.

On the 1st day of June, 1931, an agreement was entered into between the Guarantee Trust Company and Emerson L. Richards, administrators *pendente lite* of the estate of Samuel M. Braunstein, deceased, Harry Braunstein and the Guarantee Trust Com-

Conclusions

pany of Atlantic City, N. J., as executors named in the will of Braunstein, Bertha Hastings Braunstein, and Rose Richman, guardian for Doris Adele Braunstein, wherein, after reciting certain facts, it was agreed, in consideration of the widow and granddaughter consenting to the probate upon the testimony theretofore adduced, of the said paper writing dated April 11, 1928, purporting to be the last will and testament of said decedent, and to consent to the discontinuance of all litigation with respect thereto, and the further agreement of said widow to release the estate of said decedent from any and all liability by reason of the alleged agreement, and to discontinue the suit thereon now pending in the New Jersey Court of Errors and Appeals, that Mrs. Braunstein should be paid from the estate of Samuel M. Braunstein, deceased, \$400 per month, commencing the 1st day of September, 1929, during the term of her natural life, and that there should be paid to the granddaughter the sum of \$208.33 on the 1st day of September, 1929, and a like sum on the first day of each and every month during the term of her natural life. It was further expressly agreed that as a condition precedent to the validity of said agreement, that it be approved by an order of the Atlantic County Orphans' Court or by any Appellate Court to which an appeal may be taken by any of the parties in interest.

The petition of appeal stated as follows, in paragraph 4:

"On or about June 17, 1929, said Bertha Hastings Braunstein filed a claim against said decedent's estate with your petitioners as adminis-

trators *pendente lite* as aforesaid, and subsequently instituted suit thereon in the Court of Chancery of the State of New Jersey, and an appeal from the decree of said court being now pending in the Court of Errors and Appeals with respect to an alleged agreement made by the decedent in his lifetime to pay to said Bertha Hastings Braunstein, during the term of her natural life, the sum of \$10,000 per annum, in equal monthly installments, commencing December 1, 1928, and also to pay the sum of \$10,000 in cash for counsel fees and expenses to Joseph B. Perskie, Esq., incident to a suit for maintenance then pending in the Court of Chancery of the State or New Jersey.”

20 The reason given against the confirmation of said agreement was that said Acts of the legislature of the State of New Jersey were in violation of the Constitution, that the legislature was without power to vest in the administrators *pendente lite* the power to make such an agreement; that no letters testamentary had been issued to the executors; that the contract was unfair and unreasonable. The original argument against the constitutionality of the Act was that its title was not sufficient to cover the terms
30 of the Act and that it deprived persons of their property without due process of law.

Quoting from my oral conclusions: “Mr. Coulomb gave the grounds upon which he suggested this Act was unconstitutional. Counsel upon the other side replied to that question of constitutionality as suggested by Mr. Coulomb.” In the closing argu-

Conclusions

ment, associate counsel with Mr. Coulomb raised the question that the Act was *ex post facto* and I stated: "If I am to consider these reasons, every other counsel is entitled to reply to that question, which was an entirely different one than that which had been presented by Mr. Coulomb." I then stated, "Even considering the entire matter, I see no reason to find 10 that this Act is unconstitutional."

Benson v. Wolf, 43 N. J. Law 78, indicates that administrators *pendente lite* have a right to pay debts and recover debts due, maintain actions for recovering debts due the deceased and collect his effects. Mr. Justice Scudder, in that case, said:

"It is a mistake to suppose that an administrator *pendente lite* is an officer of the court making the appointment, merely to keep safely the goods of the decedent during the contro- 20 versy concerning the granting letters of administration or letters testamentary; that he is only a stakeholder, and that no action can be brought by him, or sustained against him, except by permission of the courts. The duties and powers of the office are not thus limited either by the statute to which reference has been made, or by the practice of the court. He not only holds the property until the suit terminates, but he may maintain actions for re- 30 covering debts due the deceased, collect his effects, and even obtain the possession of a leasehold estate by ejectment; but his power does not extend either to vest or distribute the proceeds. As incident to his office he may sue and be sued, collect and pay debts, but he cannot

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- pay legacies or make distribution of the estate, for the rights of the parties claiming the fund and its distribution are in litigation, and he may not anticipate the result. When these rights are established his functions cease, and he must pay over all he has in hand, in his
- 10 character of administrator, to the persons pronounced by the Court to be entitled, for further administration and distribution. He may perform all such acts as cannot be delayed without prejudice or danger to the estate, and creditors will not be obliged to postpone their actions until they may be prejudiced in the collection, or barred by the statute of limitations, while the parties interested in the estate or its
- 20 administration are litigating their rights. 1 Wms. on Ex'rs, 433; Tol. on Ex'rs, 404; Walker v. Woolaston, 2 P. Wms. 576; Wills v. Rich, 2 Atk. 285; Knight v. Duplessis, 1 Ves., Sr. 325; Ball v. Oliver, 2 Ves. & B. 96; Stanley v. Bernes, 1 Hagg. 221; Davis v. Chanter, 2 Phillips, 545; Godrich v. Jones, 2 Curt. 453; Ellis v. Deane, 1 Beat. 5; Gallivan v. Evans, 1 Ball & Beat. 191; Adair v. Shaw, 1 Sch. & Lef. 243; State v. Craddock, 7 Harr. & Johns. 40; Commonwealth v. Huston, 16 S. & R. 416; Ellmaker's
- 30 Estate, 4 Watts 34; Hinkle v. Eichelberger, 2 Penna. St. 484."

"Under the English Probate Act of 1857 (20 and 21 Vic., C. 77, par. 70), ample power is given to the Probate Court to appoint an administrator *pendente lite* to protect the property of the deceased, and to collect and pay

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debts, pending the litigation. *Hilchen v. Birks*, L. R., 10 Eq. Cas. 471; *Tichborne v. Tichborne*, L. R., 2 P. & D. 41; In goods of *Maria Dawes*, Id. 147; *Wright v. Rogers*, Id. 179."

Brown v. Brown, 72 N. J. Eq. 667, says:

"The Court will not, in advance, advise ex- 10
ecutors authorized to compromise debts due to the testator how they shall exercise the power, but they must, at their peril, exercise their own judgment with respect thereto."

Criticism was made of the fact that the executors, who, of course, have not yet qualified, signed this agreement. In *Thiefes v. Mason*, 55 N. J. Eq. 456, it was held that an executor who did not prove the will was none the less executor.

20
"An executor may receive and dispose of the personal estate of the testator before probate. *Brazier v. Hudson*, 8 Sim. 67; *Wankford v. Wankford*, 1 Salk. 301. He derives his power from the will and not from the probate. *Comber's Case*, 1 P. Wms. 768. It is only in order to assert his right to sue as executor that he must first have probated the will. *Humphreys v. Ingledon*, 1 P. Wms. 753. When Israel converted the estate of his testatrix to 30
other uses than those directed by the will, he became liable to the legatees for his wrongdoing, and they have a right of action against his executor to recover for the injury. The complainant in this case does not represent these legatees of *Gertrude* in any way. He is

10 administrator *cum testamento annexo* of Gertrude. In this capacity he has authority to take the goods of the testatrix, but he has no power to recover for an injury done by his predecessor, the executor of the will, by disposing of or converting the estate of the testatrix. *Brownlee v. Lockwood*, 5 C. E. Gr. 256. For such a conversion of the estate of the testator, the representative of the deceased executor must account to the legatees. *Carrick v. Carrick*, 8 C. E. Gr. 367. A very clear exposition of the principle on which this rule is based will be found in the opinion of the late Justice Bradley in the case of *Beall v. New Mexico*, 16 Wall. 540."

20 In *Mackey v. Mackey*, 71 N. J. Eq. 686, it was also held that

"an unprobated will is capable of conveying an interest in the property devised, and where a conveyance is made under a power in the will before probate, a subsequent probate validates the conveyance,"

and quotes 1 Jarm. Wills (6th Ed.) 662, and says,
30 "the latter authority going to the extent of saying: 'Executors derive their title under the will, and not by virtue of the probate, which is merely the proof of their title.'"

Now, as to the consideration, *Grandin v. Grandin*, 49 N. J. Law 508, says:

"The compromise of a disputed claim made

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bona fide is a good consideration for a promise, whether the claim be in suit, or litigation has not been actually commenced, even though it should ultimately appear that the claim was wholly unfounded; the detriment to the party consenting to a compromise arising from the alteration in his position, forms the real consideration which gives validity to the promise. 10

The only elements necessary to a valid agreement of compromise are the reality of the claim made and the bona fides of the compromise."

And held further that,

"the filing of a caveat by the plaintiff in the Surrogate's office was the commencement of a judicial contest over the will in the Orphans' Court. It was, therefore, the commencement of 20 a suit by the plaintiff to contest the defendant's right as residuary legatee."

As early as 1863, in *Woodward v. Woodward*, 16 N. J. Eq. 83, Chancellor Henry W. Green said:

"The real question in the cause arises upon the validity and effect of the agreement entered into by a part of the legatees of the residuary interest with the legatees for life, upon the death of the testator. It is urged that it was 30 in the contemplation of the parties to the agreement, that all the legatees should sign it, or that it should not be binding upon any. The bill charges, and the answer does not deny, that Elizabeth Black was dissatisfied with the limitation over her legacy to her brothers and

sisters upon her dying without issue, and threatened litigation in regard to the will; and that the legatees of the reversionary interest, with the exception of Forman Woodward, to reconcile the said Elizabeth, to avoid litigation, and by way of family compromise, signed the agreement. If the compromise was effected and the litigation avoided by the execution of the agreement by only a part of the legatees, it is not perceived why the assignment should not be binding upon such as did sign it. They derived all the benefit from the arrangement which they could have done, had it been signed by all the legatees. No additional burden, loss, or inconvenience was imposed upon them by the omission of a part to sign. Having authorized the executor to pay over the \$1400 to Elizabeth Black upon the decease of her husband, no one of the parties signing the agreement could have held the executors liable for paying over the money in pursuance of such authority. And although the instrument was inoperative as to the interest of the other legatees, it was valid against the parties to the agreement, to the extent of their respective interests. The consideration of the agreement was the avoiding of litigation and the effecting of a family compromise. Those ends were attained as fully as if the agreement had been signed by every legatee. There was sufficient consideration for the agreement, and it will be supported in equity. *Bunn v. Winthrop*, 1 Johns. Ch. R. 329; *Hayes*

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v. Kershow, 1 Sandf. Ch. R. 261; 1 Leading Cases in Eq. 234."

In *Blount v. Dillaway*, 85 N. E. Rep. 477, the appellants contended that there was lack of consideration in a contract such as the one now under consideration, because it was not proved that the plaintiff had a fair chance of success in contesting the will. Mr. Justice Loring said: 10

"There are decisions in other jurisdictions for the position taken by the appellants. A collection of the decisions to that effect may be found in *Wald's Pollock on Contracts* (3d Am. Ed.) 214, note 23. But since the decision of this court in *Prout v. Pittsfield Fire District*, 154 Mass. 450, 28 N. E. 679, those cases are not law in this Commonwealth, and the earlier case of *Palfrey v. Portland, Saco & Portsmouth Ry. Co.*, 4 Allen, 55, must be taken to be modified accordingly. This court in *Prout v. Pittsfield Fire District* adopted the rule finally established in England in *Miles v. New Zealand Alford Estate Co.*, 32 Ch. D. 266, in which *Cook v. Wright*, 1 B. & S. 559, *Callisher v. Bischoffsheim*, L. R. 5 Q. B. 449, *Ockford v. Barelli*, 20 W. R. 116, and the doubts thrown on those decisions by Lord Esher, M. R., in *Ex Parte Banner*, 17 Ch. D. 480, 490, were considered at length. The rule there laid down was stated on page 291 with accuracy by Lord Bowen to be: 'If an intending litigant bona fide forbears a right to litigate, he does give up something of value.' He added, speaking of the case then 20 30

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before him: 'I think therefore that the reality of the claim which is given up must be measured, not by the state of the law as it is ultimately discovered to be, but by the state of the knowledge of the person who at the time has to judge and make concession.' Again, on
 10 page 292, Lord Bowen says: 'When the Master of the Rolls in *Ex Parte Banner*, 17 Ch. D. 480, says he doubts if there was really and obviously no cause of action, whether the belief of the parties that there was, would be sufficient ground for a compromise, I agree if by that he means there must be a real cause of action, that is to say, one that is bona fide and not frivolous or vexatious; but I do not agree if
 20 he means by a real cause of action some cause of action which commends itself to the ultimate reasoning of the tribunal which has to consider and determine the case.' The case of *Prout v. Pittsfield Fire District*, 154 Mass. 450, 453, 28 N. E. 679, was affirmed in *Kennedy v. Welch* (Mass.), 83 N. E. 11."

Again quoting from my oral conclusions, I find nothing presented before me to indicate that this is not a fair bona fide agreement of settlement be-
 30 tween the parties. Finding that, and having found that the representatives of the estate, administrators *pendente lite* and the executors had authority to make such a contract, I find nothing before me which would require me to set aside the decree of the Orphans' Court, which affirmed that contract, and I will now advise a decree affirming the decree of the Orphans' Court.

NEW JERSEY COURT OF ERRORS AND
APPEALS.

In the matter of the probate of the alleged will of
SAMUEL M. BRAUNSTEIN, deceased.

ON PETITION FOR APPROVAL OF AGREEMENT OF
COMPROMISE.

ON APPEAL.

BRIEF OF APPELLANTS.

The appeal in this case is from an order of the Prerogative Court advised by Vice-Ordinary Ingersoll affirming an order of the Atlantic County Orphans' Court confirming an agreement made between Emerson L. Richards and Guarantee Trust Company, administrators *pendente lite* of the estate of Samuel M. Braunstein, deceased, and Harry Braunstein and Guarantee Trust Company, executors under a paper writing purporting to be the last will and testament of Samuel M. Braunstein, de-

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ceased, on the one part, and Bertha Hastings Braunstein, widow of Samuel M. Braunstein, deceased, and Rose Richman, guardian of Doris Adele Braunstein, a granddaughter of the said Samuel M. Braunstein, of the other part. The agreement so confirmed provided that in consideration of Bertha Hastings Braunstein and Rose Richman, guardian, etc., of Doris Adele Braunstein, withdrawing their respective caveats against the probate of the will of Samuel M. Braunstein, deceased, and in further consideration of said Bertha Hastings Braunstein withdrawing her appeal from a decree of the New Jersey Court of Chancery, advised by Vice-Chancellor Ingersoll, dismissing her bill of complaint, in which she prayed for the specific performance of an alleged contract made between herself and her late husband for the payment annually of a certain sum of money in lieu of alimony, etc., the said executors were to pay to Bertha Hastings Braunstein the sum of \$4800 per year during her life in equal monthly installments, and were to pay to Doris Adele Braunstein, or her guardian, the sum of \$2500 per year during her life, in equal monthly installments. The agreement also provided for the payment of counsel fees later to be fixed by the Orphans' Court, and further provided that when the executors were ready to settle the estate, they were to set aside a fund, which, at the rate of five per cent per annum, would be sufficient to produce the annuities above referred to.

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STATEMENT OF FACTS.

Samuel M. Braunstein was a resident of Atlantic City, having lived there many years prior to his death. He was thrice married. He married Bertha Hastings Braunstein when he was about 55 years of age. Shortly prior to his death, Mrs. Braunstein had filed a bill for alimony against him, which was in process of trial at the time of his death. It is alleged that on the night before Mr. Braunstein died, he had made an agreement with his wife through her lawyers whereby he was to pay her \$10,000 per year for life, and counsel fees amounting to \$10,000. Before the agreement could be executed, however, he died suddenly, on November 14, 1928, leaving a last will and testament, wherein he made no provision whatever for his widow. By a former wife, he had one son, David Braunstein, who died some years ago, leaving him surviving a daughter, Doris Adele Braunstein, now about 14 or 15 years of age. Samuel M. Braunstein gave his granddaughter \$5,000, to be paid as follows: she was to receive the income therefrom, and when she arrived at the age of 40 years, she was to be paid the sum of \$2500, and the balance of \$2500 when she arrived at the age of 50 years. Immediately after Mr. Braunstein's death, when the contents of the will were made known, Rose Richman, the mother of Doris Adele Braunstein, and Bertha Hastings Braunstein, his widow, filed caveats, and Bertha Hastings Braunstein filed a bill in the Court of Chancery praying for a spe-

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cific performance of the alleged agreement above referred to (Exhibit P10, p. 109). Vice-Chancellor Ingersoll dismissed the bill for the reasons set forth in his opinion (p. 110). An appeal was taken from the order dismissing the bill, which appeal is now pending and undetermined in this court, proceedings thereon having been held by consent of counsel pending negotiations for the agreement involved in this appeal. Partial hearing was had on the caveats before the Atlantic County Orphans' Court, the executors having offered the will for probate and having offered proof to establish the same. No further hearings have been had on the caveat. In addition to all this, a petition was filed by the caveators asking for the allowance of \$10,000 for medical expenses, the purpose of which was to engage experts to aid the caveators in their contention that Mr. Braunstein lacked testamentary capacity. The order was allowed in the Orphans' Court (p. 107) (Exhibit P9), from which an appeal was taken to the Prerogative Court (p. 115) (Exhibit D1). The agreement was the result of negotiations between Bertha Hastings Braunstein and Rose Richman, guardian of Doris Adele Braunstein, Harry Braunstein and the Guarantee Trust Company, executors of the last will and testament of Samuel M. Braunstein, and Emerson L. Richards and the Guarantee Trust Company, administrators *pendente lite* of the estate of Samuel M. Braunstein. A petition was filed, on which a rule to show cause was allowed, returnable in the Atlantic County Orphans' Court, and a hearing was had thereon on December 16, 1931, and by an order of the Orphans' Court the agreement was

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approved. An appeal was taken to the Prerogative Court, which court, by an order advised by Vice-Ordinary Ingersoll on February 5, 1932, affirmed the order of the Atlantic County Orphans' Court (p. 134).

ARGUMENT.

The agreement was made under the provisions of Chapter 130 of the Laws of 1931 (P. L., 1931, p. 222), as amended by a subsequent Act of 1931. The original Act provided that executors, administrators and trustees could make certain agreements and compromises, etc.; the later amendment added the words "administrators *pendente lite*," so that the Act as now amended permits executors, administrators, trustees and administrators *pendente lite* to make agreements, etc.

The agreement purports to be in compromise of

1. Two separate caveats filed by Bertha Hastings Braunstein and Rose Richman, guardian of Doris Adele Braunstein, against the probate of said will on the ground of testamentary incapacity of Samuel M. Braunstein;

2. A suit instituted by Bertha Hastings Braunstein to compel the specific performance of an oral agreement said to have been made by Mr. Braunstein, in his lifetime, whereby he agreed to pay Mrs.

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Braunstein \$10,000 during her lifetime and counsel fees to her attorneys to the amount of \$10,000. The bill of complaint in this suit was dismissed and an appeal is now pending in the Court of Errors and Appeals.

The agreement provides (p. 11):

1. For the withdrawal of the caveats, and the admission of the will to probate without contest;
2. For the withdrawal of the appeal in the Chancery suit;
3. For the payment by the executors and trustees to Bertha Hastings Braunstein of the sum of \$4,800 a year during her life, payable in monthly installments of \$400 beginning September 1, 1929;
4. For the payment to Rose Richman, guardian of Doris Adele Braunstein of the sum of \$2,500 a year during her life, payable in monthly installments of \$208.33, beginning September 1, 1929;
5. Upon the distribution of the estate, the setting aside of a fund, which, at the rate of five per cent, would produce sufficient to make the above payments.

The validity of the order is attacked upon the following grounds:

1. The said Acts of the legislature of the State of New Jersey were in violation of the Federal and State Constitutions.

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2. That the legislature was without power or authority to vest in the administrators *pendente lite* the power to make such an agreement.

3. That no letters testamentary had been issued to Harry Braunstein and Guarantee Trust Company.

4. That said contract was unfair and unreasonable in that while appellants as a class, both as specific legatees and as residuary legatees, were entitled to but one-tenth of the estate of Samuel M. Braunstein, deceased, one-fourth of the income to be paid to the said Bertha Hastings Braunstein and Doris Adele Braunstein and one-fourth of the fund to be set aside to produce said income will be charged against the interests of appellants.

5. Because the legislature was without power or authority to vest either in the executors or in the administrators *pendente lite* or in any of the Courts of this State power to direct the payment of any portion of the decedent's estate to someone not entitled thereto under the last will and testament of such decedent.

6. Because the legislature was without authority to vest in the executors or administrators *pendente lite* of the decedent's estate power or authority to settle the claim against said estate which had been adjudged or decreed by a Court of this State as invalid.

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These grounds may be conveniently grouped as follows:

1. The Act is in violation of the Federal and State Constitutions.
2. The agreement is unfair to the appellants.
3. The Act does not permit the settlement of a claim already adjudicated in favor of the executors by a competent court.

I.

A.

THE ACT IS UNCONSTITUTIONAL BECAUSE IT IS IN VIOLATION OF ARTICLE 4, SECTION 7, PARAGRAPH 4, OF THE CONSTITUTION OF THE STATE OF NEW JERSEY PROVIDING THAT EVERY LAW SHALL EMBRACE BUT ONE OBJECT AND THAT SHALL BE EXPRESSED IN ITS TITLE.

The title of the Act is as follows:

“A Supplement to an Act entitled, ‘An Act respecting the Orphans’ Court and relating to the powers and duties of the ordinary and the Orphans’ Court and surrogates’ (Revision of 1898), approved June fourteenth, one thousand eight hundred and ninety-eight.”

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We submit that this title does not express the object of the Act. The purpose of the Act is to vest in the executors and administrators *pendente lite* the power to effect compromises and settlements when those who have questionable claims against the estate arising *ex contractu* or in tort, and further to settle supposed claims against the estate having their origin only in a right to inherit under the intestate laws if the will were set aside. It is true that under the provisions of the Act no such agreement is effective until confirmed and approved by the Orphans' Court, and to that extent it might be conceded that the method of procedure would be looked for in An Act Concerning Orphans' Courts. The Orphans' Court has no jurisdiction to compel or advise such an agreement and can only act when an agreement of the character above mentioned is actually made. The function of making the agreement properly belongs to the executors or administrators, and, therefore, the Act should have been a supplement or amendment to an Act Concerning Executors and the Administration of Intestate's Estates (Revision of 1877, C. S., 1910, p. 2258). The act of making an agreement of the nature of the one here under review is peculiarly an act involving the functions of an executor or administrator in the administration of the decedent's estate, and has no proper place in An Act Concerning Orphans' Courts, etc.

The following cases are illustrative of the point that the provisions of a supplement to an Act must be within the scope of the title of the Act to which it is a supplement: *Lane v. State* (49 N. J. L. 673); *Haan v. Bedell* (67 N. J. L. 148); *Plainfield v. Hall*

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(61 N. J. L. 437); *Falkner v. Dorland* (54 N. J. L. 409).

We submit that it could not be inferred from the title of this Act that executors or administrators *pendente lite* were being vested with power to make an agreement such as the one here under review.

The second section of the Act purports to give the right to executors, etc., to adjust questions concerning the probate or construction of a will. This power is clearly not within the purview of the title.

The case of *Jonas Glass Works v. Ross* (69 N. J. L. 157), is directly in point. In that case it was sought by an amendment to the District Court Act to give that Court jurisdiction in landlord and tenant cases where the tenant held over after default in the payment of rent. Mr. Justice Collins, in writing the opinion of the Court, said (p. 158):

“Under an appropriate title such legislation would apply to every case within its terms, but under a title embracing nothing beyond judicial jurisdiction and procedure it can extend only to cases, where independent of the enactment, a landlord has the right to recover possession of demised premises in default of payment of rent.”

Thus, had the present Act been an amendment to the Act Concerning Executors, Administrators, etc., the title might have been sufficient not only to enable executors, etc., to make the agreement in question, but also to give the Orphans' Court jurisdiction to approve the same.

The Act, however, being an amendment to the

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Orphans' Court Act could not give that Court jurisdiction to pass upon the agreement unless the executor, etc., had power to make the agreement independent of the Statute.

B.

THE ACT IS UNCONSTITUTIONAL AS BEING
IN VIOLATION OF THE FOURTEENTH
AMENDMENT TO THE FEDERAL CON-
STITUTION.

The Act as amended reads as follows:

"1. The executor, administrator, trustee, or administrator *pendente lite* of the estate of any decedent, is hereby empowered and authorized to compromise, settle or adjust any claim arising prior or subsequent to the passage of this Act, whether in suit or not, of any legatee, devisee, caveator, widow, minor or any other claimant whatsoever, that may be made against the estate of the decedent.

"2. Any executor, administrator, trustee, or administrator *pendente lite*, as set forth in section one of this Act, is hereby further authorized and empowered to compromise, settle or adjust any question or any dispute concerning the probate or construction of any writing purporting to be a last will and testament, or any question or dispute relating to the distribution of the decedent's estate, in order to compromise, settle or adjust any claim made against the estate, in

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which he is either executor, administrator, trustee or administrator *pendente lite*."

The third Section provides the method of bringing the matter before the Orphans' Court for approval.

An examination of the inventory of Mr. Braunstein's estate discloses the fact that it amounts to about \$1,382,000 (p. 96). There may, of course, have been some shrinkage in this estate. The will makes many provisions for specific legacies; in the aggregate, however, they do not reach anywhere near the total of Mr. Braunstein's estate. Under the terms of the agreement, a fund must be set aside, which, at five per cent would produce the two annuities. These annuities amount to \$7,300. It would, therefore, take a fund of at least \$146,000. This sum must necessarily come out of the residuary estate. The six appellants are entitled to 6/26 of the residuary estate, and their interest in the fund of about \$146,000 would be approximately \$34,000. By the agreement in question, the appellants are deprived of their right to this fund and its use until the death of Bertha Hastings Braunstein and Doris Adele Braunstein. The right of the appellants to the share of the Braunstein Estate devised them by the will is a vested one and they can not be deprived of that right by any Act of the legislature passed subsequently to the death of Mr. Braunstein.

In the case of *Mickle v. Matlack, et al.* (17 N. J. L. 86), it was held (p. 93):

"The Statute of Wills (32 H. 8, C., 1), was never formally enacted in this State; neverthe-

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less, the power of disposing of real estate by will, always existed, and has been exercised from the earliest periods of our colonial government."

In the case of *Hartson v. Elden* (50 N. J. Eq. 522), a testator provided that the interest of \$5,000 of his estate should be used to keep in repair the graves of his wife and himself in the Oak Hill Cemetery of Vineland, and that the remainder of said interest should be employed in the general improvement of the cemetery. This provision was void under the statute of perpetuities. After the testator's death and before the time arrived for the payment thereof, the legislature passed an Act which made the bequests or legacy valid. The Court said:

"Where, at the death of a testator, a bequest to a cemetery was void under the rule against perpetuities and the property bequeathed vested in the testator's next of kin, the subsequent enactment of the statute above referred to, before the day for the payment of the legacy, did not divest the rights of the next of kin in favor of the cemetery company."

In the case of *Southard v. The Central Railroad Company* (26 N. J. L. 13), the Court said (p. 22):

"But admitting, for the sake of argument, that the Act does operate to make all contingent estates devisable, it cannot aid the plaintiff's case. The grantor, Isaac Southard, died, and his will took effect in September, 1850. At that time the contingent interest of the testator in

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the lands in question depending upon the breach of the condition was not devisable. It did not pass by the will. Immediately upon his death, it descended to and vested in his heirs-at-law. A subsequent Act of the legislature could not divest the estate of the heir or vest it in the devisee."

In the case of *Woodward's adm'r, v. Woodward's ex'rs.* (16 N. J. Eq. 83), the Court held:

"The sons and daughters of the testator, living at his death, took a *vested* interest in the residuary gift."

It will be observed that Mr. Braunstein gave his granddaughter only \$5,000 and ignored his wife entirely. This, he had the perfect legal right to do in this State. Under the statute, however, the executors or administrators *pendente lite*, without the consent and against the protest of others, interested in the estate, are permitted to enter into an agreement paying to the widow and the granddaughter large sums of money, the effect of which is to destroy the vested rights of the appellants in the estate. The Act purports to empower executors or administrators *pendente lite* to make such an agreement, they being the sole judges of the propriety of such an agreement and of its terms in the first instance, subject to the approval of the Court. It was argued in the Orphans' Court and also, in the Prerogative Court, that the right to make a will and to bequeath or devise property thereby is a creature of the statute, and that the legislature could at any time

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deprive a property owner in this State of that right or limit him in the exercise of it. Our answer to this contention is first, that the legislature cannot lawfully pass an Act subsequent to the death of the testator, who leaves a will vesting property in the beneficiary, the effect of which is to divest such beneficiary of the whole or any part of his devise or legacy; and second, the Act now under review does not purport to lay down any such rule or provision, but as we have pointed out, leaves it entirely to the discretion of the executors or administrators *pendente lite* to say whether or not the widow or next of kin, who has been ignored by the will, should be permitted to participate in the estate, and to determine the extent of that participation. While it is true in the present case the agreement deals with a widow and a granddaughter, the Act is not limited to such persons but could be extended to any relative in the remotest degree who might be entitled to participate in the estate had the decedent died intestate.

We submit, therefore, first, that an estate vested in a beneficiary by the last will and testament of a decedent cannot be divested in whole or in part by a subsequent Act of the legislature; and second, that until the legislature annuls or limits the right to devise or bequeath property by will, it cannot empower executors, administrators *pendente lite*, or even the Courts, to substitute their will for that of the decedent.

C.

THE ACT IS UNCONSTITUTIONAL BECAUSE
IT ATTEMPTS TO VEST JUDICIAL
POWER IN EXECUTORS, ADMINISTRA-
TORS, ETC.

Insofar as the Act purports to confer upon the administrators *pendente lite*, etc., power to adjust claims against the estate instituted by way of caveat or to adjust questions concerning the probate or construction of a will, it confers judicial power upon such officers contrary to the provision of the State Constitution.

Neither executors nor administrators *pendente lite* can lawfully be clothed with authority to settle disputes concerning the probate of a will or its construction against the protest or without the consent of those interested in the estate. That power belongs to the courts and cannot be taken away from them.

D.

IF ANY PART OF THE ACT BE UNCONSTITUTIONAL, THE WHOLE MUST FALL.

While it is true the Act contains a provision that if any part of the Act shall be declared unconstitutional, the remaining part of the Act shall not be affected, nevertheless, the various provisions of the Act are so closely connected that notwithstand-

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ing the dictum of the Legislature, the whole Act must fail if any part of it is unconstitutional. If the agreement is valid, it can only be so by virtue of the Act, for while it may be conceded that an executor at common law had the power to compromise claims, arising *ex contractu*, or in tort, he must do so upon his own responsibility and could not seek the aid or advice of the Court and thus escape his responsibility.

In the case of *Brown v. Brown* (72 N. J. Eq. 667), the Court held:

“The Court will not, in advance, advise executors authorized to compromise debts due to the testator how they shall exercise the power, but they must, at their peril, exercise their own judgment with respect thereto.”

Now, the Act in question not only purports to give the executor power to settle claims arising *ex contractu*, or in tort, but also to settle *quasi* claims arising by virtue of the filing of caveats, to settle questions concerning probate, the construction of wills, etc. The authority thus conferred is, as we have argued, beyond the power of the Legislature, unless it be limited to that of claims arising *ex contractu* or in tort. Can this authority, *i. e.*, that to settle claims, be separated from the balance of the Act? It may be conceded that the Legislature had power to vest in the executor, administrator, etc., the authority to settle a claim arising *ex contractu* or in tort, and in order to protect himself, to ask the approval of his action by the Court. We

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submit, however, that a careful analysis of the present Act will not permit of any such severance.

In the case of *Johnson v. State* (59 N. J. L. 535), the Court said:

“The same statute may be in part constitutional and in part unconstitutional, and if the parts are wholly independent of each other, that which is constitutional may stand and that which is unconstitutional will be rejected; but if the different parts of the Act are so intimately connected with and dependent upon each other as to warrant a belief that the Legislature intended them as a whole, and that if all could not be carried into effect the Legislature would not have passed the residue independently, and some parts are unconstitutional, all the provisions which are thus dependent upon each other must fail.”

To the same effect are the following cases: *In re Van Horne* (74 N. J. Eq. 600); *Albright v. Sussex County L. & P. Com.* (71 N. J. L. 309).

We point out that the Act permits the executors to settle with one caveator and not with another, to give to caveators standing in equal degree of relationship to the testator unequal amounts in settlement of their respective claims, to induce the withdrawal of caveats by the payment of money or property in settlement, regardless of the merit of the grounds upon which the caveat was filed. Executors would be induced to rid themselves of a caveator and thus retain in their own hands the administration of the estate.

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The Act does not properly provide for the protection of minors and those having contingent interests. In short, we believe that the Act was drawn specially to meet the exigencies of the present case and that its unconstitutional features are so manifest as to render the entire Act unconstitutional.

II.

THE AGREEMENT IS UNFAIR TO
APPELLANTS.

The agreement does not specifically provide out of what part of the estate income is to be paid or the capital fund segregated. The presumption is, however, that it must be out of the residuary estate. The six appellants are nieces and nephews of Samuel M. Braunstein, and are entitled to receive specific legacies of \$5,000 each. They are also entitled to a $\frac{1}{26}$ interest in the residuary estate, or $\frac{6}{26}$ altogether. Their interest in the whole estate is about $\frac{1}{10}$, whereas their interest in the residuary estate is $\frac{1}{4}$. If the income is to be taken out of the residuary estate, or the capital fund segregated therefrom, they are obliged to contribute approximately $\frac{1}{4}$ out of their share, whereas, in fairness, they should be obliged to contribute only their proportionate share in the whole estate, to wit, $\frac{1}{10}$.

The contract provides for the payment of the various sums beginning with September 1, 1929, notwithstanding that other parties interested in the

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estate may, in the discretion of the executors and trustees, not have their shares distributed to them for ten years. In other words, before the executors would be obliged to distribute to the appellants their respective shares of the estate, Mrs. Braunstein would receive \$48,000 and Miss Braunstein \$25,000.

Thus, while Doris Adele Braunstein was practically ignored by her grandfather's will, and Mrs. Braunstein absolutely ignored, under the terms of the agreement they stand in a more advantageous position with respect to the payment of their respective sums than those who Mr. Braunstein favored in his will.

A reading of the testimony taken in the Orphans' Court does not disclose any merit whatsoever so far as the caveats are concerned. Mr. Cassman, Mr. Richards and Mr. Harry Braunstein, a brother of the decedent and one of the executors, testified that in their opinion the agreement was for the best interests of the estate. It will be observed, however, that Mr. Cassman represents Mrs. Braunstein, and Mr. Richards represents Doris Adele Braunstein. So far as Mr. Harry Braunstein is concerned, he and his children are entitled to a one-fourth of the entire estate, and yet, if the fund is taken out of the residuary estate, the appellants, who as a class are entitled to but 1/10 of the estate, are charged with practically the same amount as Mr. Braunstein and his children, so that to this extent he is personally interested in having the agreement executed.

We submit that in a proceeding such as this,

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there should have been some evidence from disinterested parties tending to show at least a fair probability of a successful attack upon the will, and that the mere opinion of interested counsel and an interested executor is not sufficient to justify the agreement.

III.

THE ACT DOES NOT PERMIT THE SETTLEMENT OF A CLAIM ALREADY ADJUDICATED IN FAVOR OF THE EXECUTORS BY A COMPETENT COURT.

The bill of complaint was filed on behalf of Bertha Hastings Braunstein specifically to enforce the alleged agreement above referred to. This case came on for hearing, and the bill was dismissed. As the record now stands, Mrs. Braunstein has no claim whatever against the estate by reason of the alleged contract. We submit that neither the executors nor the administrators, etc., have the power to settle the claim against the estate, the merits of which have already been adjudicated in favor of the estate by a court of competent jurisdiction.

“After controversy has been determined in Court of Errors and Appeals, receiver of corporation is without power to compromise matter against wishes of party interested (2 Comp. St., 1910, p. 1643, Sec. 66). *Lincoln Materials Co., Inc., v. Goodwin Const. Co.* (156 Atl. Rep.

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634); *John R. Blair Co. v. Newark Holding Co.* (156 Atl. Rep. 634).”

IV.

THE AGREEMENT IS AN ENTIRE AGREEMENT.

It may be contended that the agreement can stand as to Bertha Hastings Braunstein so far as it concerns the settlement of her claim against the estate even though it may be adjudged invalid so far as it relates to the settlement of the caveats.

The agreement is based upon the withdrawal of the caveats in both cases, and the admission of the will to probate. If the agreement is without force so far as either Mrs. Bertha Hastings Braunstein or Rose Richman, guardian of Doris Adele Braunstein is concerned, it must fail as to both. It cannot be binding upon the estate as to one of these parties, and not binding as to the other. It must either be binding as to both of them or as to neither of them.

The main object which the executors desired to achieve was the admission of Mr. Braunstein's will to probate which could only be done by the withdrawal of both caveats. If, therefore, the agreement should be sustained as to Mrs. Braunstein so far as her claim on the alleged contract is concerned, it should be held invalid so far as her claim and that of Doris Adele Braunstein upon their respective caveats is concerned or the executors would

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be deprived of the very consideration which prompted the making of the contract, namely, the withdrawal of the caveats and the admission of the will to probate.

A reading of the agreement conclusively shows that it is an entire contract. In the preamble, it recites (S. of C., p. 99, l. 20):

“Whereas, it is the desire of said Administrators and Executors to obtain a release from said Widow of her claim against the estate from said decedent and the consent of the Widow and Granddaughter to the admission to probate of said paper writing as the last will and testament of the decedent, and to secure a discontinuance of the litigation concerning said probate and a discontinuance of the suit of the Widow against the decedent’s estate now pending in the New Jersey Court of Errors and Appeals.”

That part of the agreement setting forth the consideration (p. 99, l. 32), is as follows:

“Now, therefore, in consideration of the agreement of the said Widow and Granddaughter to consent to the probate, on the testimony heretofore adduced, of the said paper writing dated April 11, 1928, purporting to be the last will and testament of said decedent, and to consent to the discontinuance of all litigation with respect thereto, and the further agreement of said Widow to release the estate of said decedent from any and all liability by reason of the alleged agreement, and to discontinue the suit

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thereon now pending in the New Jersey Court of Errors and Appeals, * * *."

It seems clear, therefore, that the consideration was entire and unless it can be fully performed, the whole contract must fall.

If it be argued that the agreement to pay \$2500 annually to Doris Adele Braunstein is based in whole or in part upon the agreement by Mrs. Braunstein to withdraw her claim arising out of the alleged contract, it is sufficient answer to say that neither the executors nor the administrators *pendente lite* could settle a doubtful claim by paying in addition to that claim an invalid claim. In other words, if two claims were presented to the executors, one being doubtful, and the other absolutely invalid, the executors would not be permitted to include in the settlement of the doubtful claim a settlement of the invalid claim. If our argument is sound, then the executors are without right to agree to pay Doris Adele Braunstein and Bertha Hastings Braunstein anything as a consideration for the withdrawal of their caveats, and yet the Court would be asked to sanction the payment of these invalid claims upon the theory that they formed part of the consideration for the settlement of Mrs. Braunstein's doubtful claim arising out of her alleged contract.

Assuming, but not conceding, that Mrs. Braunstein could exact as a consideration for the withdrawal of her claim payment to Doris Adele Braunstein of the annuity, it is sufficient to say that that is neither the purpose, intent or effect of the contract here under review. The contract is made so

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far as Doris Adele Braunstein is concerned directly with her guardian for the payment of a specific sum of money to her in consideration of the withdrawal of her caveat.

We respectfully submit that the order of the Prerogative Court should be reversed for the reasons above discussed.

NATHANIEL S. HYMAN,

Proctor Pro Se.

BOURGEOIS & COULOMB,

Proctors for Appellants,

Rudolph Hyman, Bessie

Hyman Alexander, Dora

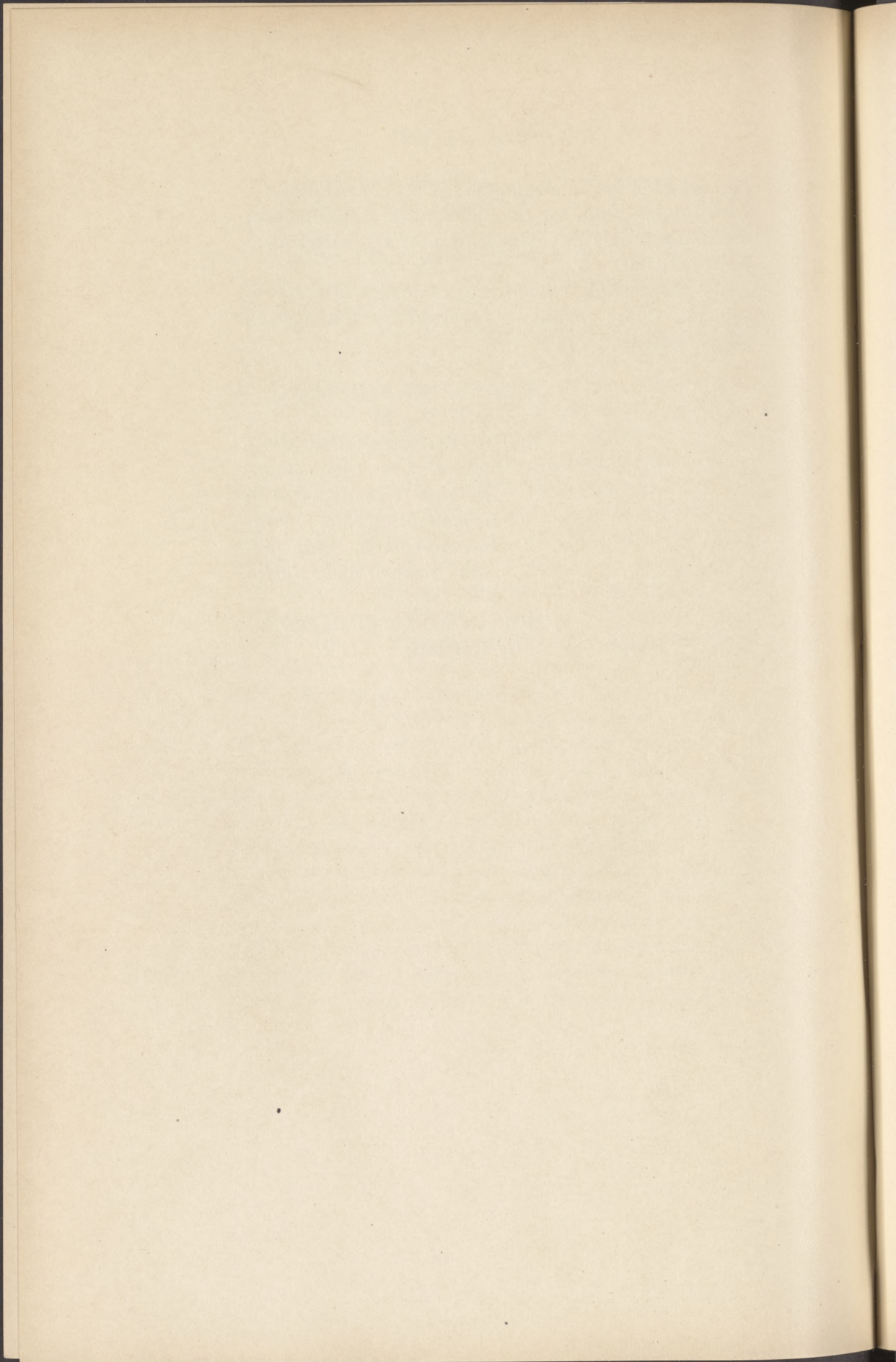
Hyman Cohan, Anna Hy-

man Yubas, and Bertie

Silverberg.

BOURGEOIS & COULOMB,

Of Counsel.



NEW JERSEY COURT OF ERRORS
AND APPEALS.

In the Matter of the Probate of the Alleged Will of
SAMUEL M. BRAUNSTEIN, Deceased.

ON PETITION FOR APPROVAL OF AGREEMENT
OF COMPROMISE.

ON APPEAL.

BRIEF OF RESPONDENTS.

PRELIMINARY STATEMENT.

This case is before this court on appeal from an order of the Prerogative Court ratifying and confirming an order of the Atlantic County Orphans' Court.

STATEMENT OF FACTS.

On November 14, 1928, Samuel M. Braunstein died leaving a purported last will and testament (State of Case, p. 67), disposing of an estate which was subsequently inventoried and appraised at approximately \$1,400,000 (State of Case, p. 83). Said paper writing made no provision for his wife, Bertha Hastings Braunstein, and for his only living direct blood descendant, an infant granddaughter, Doris Adele Braunstein, he created a \$5,000 trust fund, the principal of which she was to receive in two equal payments at the ages of forty and fifty years.

Within the statutory ten-day period, caveats were filed with the Surrogate of Atlantic County by the said widow and granddaughter against the admission to probate of the alleged last will and testament of Samuel M. Braunstein, deceased (State of Case, pp. 75 and 76).

Some seven months prior to the death of the decedent, Samuel M. Braunstein, his wife, Bertha Hastings Braunstein, had caused to be instituted in the Court of Chancery of New Jersey a bill for maintenance, which was at issue and at actual trial when the defendant therein died. Suit was then instituted in the Court of Chancery of New Jersey by said Bertha Hastings Braunstein, whereby it was alleged that the parties to the said suit for maintenance had, on November 13, 1928, entered into an

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oral amicable agreement whereby it was agreed that said suit for maintenance should be discontinued, in consideration of which the defendant therein agreed to pay to his wife the sum of \$10,000 a year during the term of her natural life and to deposit specific collateral with a designated trustee to secure said payment, and also agreed to pay her counsel a fee of \$10,000. Said agreement was intended to be incorporated into a final decree of the Court of Chancery in the said maintenance suit, but the defendant therein having died the night before it was to be presented in open court, said final decree was never made. The aforesaid suit was then filed to specifically enforce said oral agreement, and the Court of Chancery dismissed the bill on the grounds that the oral agreement was not enforceable by specific performance; that it was subject to the approval of the Court; and that the maintenance suit abated by reason of the death of the defendant therein (State of Case, p. 110). An appeal from said order was taken to the Court of Errors and Appeals, which is still pending, counsel having agreed to keep said appeal in *statu quo* pending the outcome of the present appeal.

In the meantime, a petition had been presented to the Atlantic County Orphans' Court by the guardian of the granddaughter, asking that she be allowed to charge the estate of Samuel M. Braunstein with the cost entailed in employing expert medical witnesses to enable her to establish her claim that the deceased testator was without testamentary capacity at the time of executing the will. The statutory require-

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ments having been established to the satisfaction of the Court, an order was made and entered permitting the petitioner to employ the necessary medical experts and to charge the estate with the cost thereof, with a proviso that in no event was the estate to be liable in excess of \$10,000 (State of Case, p. 107). From that order an appeal was taken to the Prerogative Court, which also remains in *statu quo* pursuant to agreement of counsel pending the outcome of the present appeal (State of Case, p. 115).

In order to settle the claim of the widow for the payment to her of the sum of \$10,000 a year, and to end all this costly litigation, an agreement was entered into on June 1, 1931, between the administrators *pendente lite* of the estate of Samuel M. Braunstein and the executors named in his purported will on the one side, and the widow and granddaughter on the other side (State of Case, p. 98). Said agreement provided, in substance, that in view of the desire of the executors and administrators *pendente lite* to settle the claim of the widow for the payment of \$10,000 a year and to bring an end to the litigation concerning the estate, and in consideration of such discontinuance by the granddaughter and widow, the executors and administrators *pendente lite* agreed to pay to the widow \$400 per month during her lifetime, and to pay to the granddaughter \$208.33 per month during her lifetime. It was further agreed that distribution of the estate could be made at any time provided a sufficient fund was set aside to earn sufficient income

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to make the aforesaid payments. It was also provided that certain counsel fees and costs were to be paid out of the estate under order of the Orphans' Court as if there had been reasonable cause for contesting the will. The agreement contained the further provision that as a condition precedent to the validity of the agreement, it was to be approved by the Atlantic County Orphans' Court, and/or any appellate court to which an appeal may be taken, and that all pending litigation was to remain in *statu quo* until the present appeal is determined. A petition was then filed in the Atlantic County Orphans' Court praying that the said agreement be confirmed by the Court (State of Case, p. 3). Pursuant to said petition, an order to show cause issued to all parties in interest (State of Case, p. 1). On the return day thereof, said Court, after taking testimony and hearing the argument of counsel, decided that it was to the best interest and advantage of the estate that the compromise agreement be confirmed. In accordance with said view, an order was signed and entered in said court that the submitted agreement be confirmed in the form submitted (State of Case, p. 116). From that order a small group of legatees appealed to the Prerogative Court (State of Case, p. 122), where, after considering the testimony and hearing the arguments of respective counsel, the Court decided that it was for the best interest and advantage of the estate that the compromise settlement be approved. In accordance with said views, a decree was entered ratifying and confirming the order appealed from, and ratifying and

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confirming the compromise settlement made in accordance with the terms of the written agreement dated June 1, 1931 (State of Case, p. 135). From that decree the present appeal is taken.

ARGUMENT OF LAW.

RIGHT OF PERSONAL REPRESENTATIVE TO
COMPROMISE CLAIMS AGAINST THE
ESTATE.

(a) AT COMMON LAW.

In the brief filed on behalf of the appellants, counsel direct their main argument to the alleged unconstitutional features of the statute which outlines the procedure by which personal representatives may obtain in advance the approval of the Orphans' Court to a proposed compromise settlement. The argument advanced by counsel is that if such statute be unconstitutional, the compromise must of necessity be void and of no effect. We contend that such result does not necessarily follow, since the statute is in great part merely declaratory of the common law, and in part purely procedure, and that aside from any statute, a personal representative, at common law, had under certain conditions a perfect right to compromise claims against the estate which he represented.

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In 11 *R. C. L.*, p. 202, Sec. 225, it is stated:

“At common law, the executor and administrator having absolute power of disposal over the whole of the personal effects of a decedent, had authority to compromise or accept any compromise or otherwise settle any debt, claim or thing whatsoever in regard thereto, and he still has such powers in that his compromise of a claim against the estate will be upheld if it is fair, beneficial to the estate and free from fraud, negligence or misconduct.”

In 24 *C. J.*, p. 448, Sec. 1227, cases from the various states are cited in support of the following statement:

“As a general rule, a personal representative may effect settlement of claims against the estate by compromising them, and should be allowed any sums paid by him in so doing if he has acted in good faith and with care and judgment of a man of ordinary prudence and sagacity.”

The courts of New Jersey have uniformly followed the general rule as above stated and have, without exception, held that an executor or administrator may compromise a law suit, he may buy the peace of the estate he represents, and extinguish even doubtful claims against it, provided he acts discreetly and in good faith.

Meeker v. Vandever, 15 N. J. L. 392;

Rogers v. Hand, 39 N. J. Eq. 270;

Manns v. Sanford Co., 82 N. J. L. 124-126;

Heisler v. Sharp, 44 N. J. Eq. 167.

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At common law a personal representative, so long as his compromise of a law suit or doubtful claim was made in good faith and with ordinary discretion, could not be successfully assailed, even though the compromise was made without the acquiescence of the legatees or next of kin and even in face of their open opposition and contrary to their express desire.

In *Meeker v. Vandever*, *supra*, Chief Justice Hornblower, speaking for the New Jersey Supreme Court, held:

“When executors appear to have acted right, he who would impeach their conduct must show fraud or mistake or that they have acted without authority or contrary to law. An executor may compromise a law suit; he may buy the peace of the estate he represents, and extinguish even doubtful claims against it, provided he acts discreetly and in good faith.”

In the case of *Rogers v. Hand*, 39 N. J. Eq. 270, the Prerogative Court dealt with this question on appeal from a decree of the Cape May County Orphans' Court. In that case, the facts were, substantially, that the testator gave to his housekeeper \$1,000 absolutely and the interest on \$8,000 during her lifetime. She had occupied the position of a housekeeper in his family for twenty years or more. She presented to the executors a claim for \$3,000 and interest (*i. e.*, \$500 a year for the preceding six years) for her services to the testator. Held that

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the executors, in the exercise of good faith and discretion, were justified after she had threatened to bring suit on her claim in compromising it for \$3,000; that the testamentary gifts to her were not in satisfaction of her claim for services, and that mere notice given by the residuary legatees to the executors not to pay her claim was not sufficient to prevent the executors from compromising it.

In the opinion, the Court states:

“The appellants further object to the allowance of the claim on the ground that they, being interested in the estate (they are residuary legatees) notified the executors that they were opposed to the payment of the claim, and they insist that the executors, having settled it after such notification without it having been previously established by suit, cannot lawfully obtain allowance for it. * * * While executors should in such cases act circumspectly and not disregard the protest of persons interested in the estate against the payment of disputed claims, they are not bound under such a protest to refuse to pay and submit to suit, if they are satisfied that resistance will be unavailing. Where they act in good faith, those who would impeach their conduct must show fraud or mistake or that they have acted without authority or contrary to law. They may compromise a law suit, may buy the peace of the estate, and extinguish even doubtful claims against it provided they act discreetly and in good faith.”

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In *Heisler v. Sharp*, 44 N. J. Eq. 167, the Vice-Ordinary of the Prerogative Court, on an appeal from a decree of the Orphans' Court of Burlington County, held:

“So long as an executor acts in good faith and with ordinary discretion and within the scope of his powers, his acts cannot be successfully assailed, and an executor may do anything within the scope of his powers without risk of personal liability for the consequences of his acts provided he exercises the care and judgment of a man of ordinary prudence and sagacity.”

That case involved but a single question and that was whether a credit claimed by the executors was rightfully allowed in the lower court. The amount in dispute was \$560, which was paid by the executors to a woman for services rendered by her as nurse and housekeeper to the testator for a period of 120 weeks immediately preceding his death at \$5.00 per week. This claim was exhibited to the executors under affirmation, and they, after full examination into its merits, paid it and prayed allowance for it in their final account. Its allowance was excepted to and the Orphans' Court, after hearing proofs and arguments, disallowed the exception and allowed the items. In the opinion, the Court states:

“On the presentation of Miss Deuson's claim, a state of affairs arose which required the executors to act with caution. It became their

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duty to examine into the merits of the claim carefully to see whether it was just or not, and after getting all the facts obtainable respecting it, to exercise their best judgment as to whether it should be paid or not. They were not bound to exercise a faultless judgment. They were in a position where it was impossible for them to escape trouble and annoyance if the legatees were inclined to be litigious. If they paid without suit, the legatees could say that the claim was unfounded and should not have been paid until established by judgment or law, or if they had refused to pay and compelled the plaintiff to sue, then the legatees might have said that they should have paid without suit, and that as they had causelessly resisted the payment of a just claim, they should be required to pay the costs of the suit out of their own pockets. All that the respondents (the executors) were required to do was simply to do what any man of ordinary prudence and caution would under like circumstances have done. So long as an executor acts in good faith and with ordinary discretion, and within the scope of his powers, his acts cannot be successfully assailed. No man is infallible. The wisest make mistakes, but the law holds no man responsible for the consequences of his mistakes which are the result of the imperfection of human judgment and do not proceed from fraud or gross carelessness or indifference to duty. An executor may pay a debt which is just, though barred by the statute of

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limitations (*Purcel v. Purcel*, 1 McCarter 514; *Vreeland v. Vreeland*, 1 C. E. Gr. 512). He may also buy the peace of the estate which he represents by compromising a law suit or a doubtful claim. (*Meeker v. Vandever*, 3 Gr. 392; *Rogers v. Hand*, 12 Stew. Eq. 270). Indeed, he may do anything within the scope of his powers without the least risk of personal liability for the consequences of his acts, provided he exercises the care and judgment of a man of ordinary prudence and sagacity. That is the test which the courts are required to apply in all cases."

In the courts below, the appellants contend that the common law power to compromise was not possessed by administrators *pendente lite*, and that executors had no such power unless letters testamentary were issued to them. These contentions are not argued in the brief of appellants and so may be assumed to be abandoned. In any event, we believe such contentions to be without legal justification.

In *Benson v. Wolf*, 43 N. J. L. 78, the Supreme Court in dealing with the powers and duties of an administrator *pendente lite*, states on page 80:

"It is a mistake to suppose that an administrator *pendente lite* is an officer of the court making the appointment merely to keep safely the goods of the decedent during the controversy concerning the granting letters of administration or letters testamentary; that he is only a stakeholder, and that no action can be brought

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by him or sustained against him except by permission of the courts. The duties and powers of the office are not thus limited either by the statute to which reference has been made, or by the practice of the Court. He not only holds the property until the suit terminates but he may maintain actions for recovering debts due the deceased, collect his effects, and even obtain the possession of a leasehold estate by ejectment; but his power does not extend either to vest or distribute the proceeds. As incident to his office, he may sue and be sued, collect and pay debts, but he cannot pay legacies or make distribution of the estate, for the rights of the parties claiming the fund and its distribution are in litigation, and he may not anticipate the result. When these rights are established, his functions cease and he must pay over all he has in hand in his character as administrator to the persons pronounced by the Court to be entitled for further administration and distribution. He may perform all such acts as cannot be delayed without prejudice or danger to the estate, and creditors will not be obliged to postpone their actions until they may be prejudiced in the collection or barred by the statute of limitations while the parties interested in the estate or its administration are litigating their rights" (citing cases).

While not expressly stated in the above case, it necessarily follows that as an incident to the right

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to sue and be sued, an administrator *pendente lite* has the right to compromise such suits.

In *Triefes v. Mason*, 55 N. J. Eq. 456, it is held that an executor derives his power from the will and not from its probate.

In 23 *C. J.*, p. 1019, Notes 21 and 22, many cases are cited in support of the above principle, among which is *In re Bergdorf*, 206 N. Y. 309, 312; 99 N. E. 714 (aff. 149 App. Div. 529, 133 N. Y. Supp. 1012), in which the Court states:

“The title and general powers of an executor have their source in the will under which the executorship exists. Within the regulations and restrictions prescribed by law, a testator may commit the custody and administration of his estate to such executor or executors as he pleases, and his selection and designation alone it is which invests them with authority and power. The letters testamentary founded upon the probate of the will neither create the executor nor confer title or power upon him. They are the authentic evidence that the will has been duly proven, that the testator competently and in fact made the selection and designation of the executor, and that permission has been given to the executor by the Court having jurisdiction to exercise the powers conferred by the testator through the will.”

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(b) BY STATUTE.

Although the above cases lead to the inevitable conclusion that at common law a personal representative had the right to compromise claims provided he acted discreetly and in good faith, he was exposed to the possible hazard that the probate court might not agree with him as to the wisdom of his act, and hold him personally liable therefor. The Court would not, in advance, advise a personal representative as to the advisability of such compromise, and he exercised his power in regard thereto at his peril.

Brown v. Brown, 72 N. J. Eq. 667.

The chance of being exposed to such danger was a deterrent to bona fide and desirable compromise and led many representatives to subject their estates to unnecessary, prolonged and expensive litigation. This unfortunate situation ran counter to the salutary policy of the law which favors the amicable settlement of controversies and prevention of litigation. In order to remedy this situation, many of the states passed statutes reenacting and affirming the common law right of a personal representative to make compromises, with the additional provision that application might be made to the Probate Court for its approval in advance, in order to relieve the representative of any personal responsibility. Such statutes were passed, among other jurisdictions, in England, Pennsylvania, Maryland, Arizona, California, New York, Connecticut,

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Georgia, Missouri and Montana. It has been said that the object of such statutes is not to confer upon executors or administrators any power which they otherwise would not possess, or to restrict their common law power of compromise, but merely to afford them an additional protection when acting in good faith in the exercise of their common law powers.

Wilks v. Slaughter, 49 Ark. 235, 3 S. W. 766;

Moulton v. Holmes, 57 Cal. 337;

Wyman's Appeal, 13 N. H. 18;

Chouteau v. Suydam, 21 N. Y. 179.

The Pennsylvania Statute on the subject of compromise is the Fiduciaries Act of 1917, which may be found in the Pennsylvania Laws of 1917, at page 447. Section 40 of that Act provides:

“Whenever it shall be proposed to compromise or settle any claim, whether in suit or not, by or against a minor or the estate of a decedent, or to compromise or settle any question or dispute concerning the validity or construction of any last will and testament or the distribution of any decedent's estate, the Orphans' Court having jurisdiction of the accounts of the fiduciary estate shall be authorized and empowered, on petition by such fiduciary setting forth all the facts and circumstances of such claim or question and proposed compromise or settlement, and duly verified by oath or affirmation, and after due notice to all parties inter-

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ested, and after due consideration, aided if necessary by the report of a master, if satisfied that such compromise or settlement will be for the best interests of such minor or of the estate of such decedent, to enter a decree authorizing the same to be made, which decree shall operate to relieve the fiduciary of responsibility in the premises."

The provisions of the above act are quoted here at length because a comparison of that act with the act under review will reveal the obvious fact that the draftsmen of the New Jersey Act patterned it after the provisions of the Pennsylvania Act. New Jersey followed the lead of the other States and passed such an act in 1931, known as Chapter 130 of the Laws of 1931 (P. L. 1931, p. 222), amended by Chapter 413 of the Laws of 1931 (P. L. 1931, p. 1486). The latter act merely adds an administrator *pendente lite* to the class of representatives named in the former. It is in conformity with the provisions of these acts that the compromise agreement involved in the present controversy was entered into. The act as amended reads:

"An Act to amend an act entitled 'A supplement to an act entitled "An act respecting the Orphans' Court and relating to the powers and duties of the ordinary and the Orphans' Court and surrogates"' (Revision of 1898), approved June fourteenth, one thousand eight hundred and ninety-eight,"

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approved April fourteenth, one thousand nine hundred and thirty-one.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

The act to which this act is an amendment is hereby amended to read as follows:

1. The executor, administrator, administrator *pendente lite*, or trustee of the estate of an decedent, is hereby empowered and authorized to compromise, settle, or adjust any claim arising prior or subsequent to the passage of this act, whether in suit or not, of any legatee, devisee, caveator, widow, minor, or any other claimant whatsoever, that may be made against the estate of the decedent.

2. Any executor, administrator, administrator *pendente lite*, or trustee, as set forth in section one of this act, is hereby further authorized and empowered to compromise, settle or adjust any question or any dispute concerning the probate or construction of any writing purporting to be a last will and testament or any question or dispute relating to the distribution of the decedent's estate, in order to compromise, settle or adjust any claim made against the estate, in which he is either executor, administrator, administrator *pendente lite*, or trustee.

3. The executor, administrator, administrator *pendente lite*, or trustee, as set forth in this act, desiring to effect a compromise, settlement, or adjustment under section one or two of this act, shall file a petition duly verified, on oath

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or affirmation, addressed to the Orphans' Court of the county wherein letters were granted to such executor, administrator, administrator *pendente lite* or trustee. Said petition shall set forth all the facts and circumstances of such claim or question proposed to be compromised, settled or adjusted; *provided, however*, that the executor, administrator, administrator *pendente lite* or trustee, as herein provided, has been able to effect and have executed, an agreement in writing, setting forth the terms and conditions of the proposed composition, settlement or adjustment with the claimant. A copy of said proposed agreement between the claimant and the executor, administrator, administrator *pendente lite* or trustee, shall be attached to the petition. The Court shall then mark the petition filed, issue a rule to show cause why the prayer of the petition should not be allowed, and to make same returnable in open court, not less than thirty days from the date of its allowance. A copy of said petition, order to show cause, and draft of the proposed agreement between the executor, administrator, administrator *pendente lite*, or trustee and the claimant, certified by the surrogate of the county, shall be served personally, or by registered mail, to the last known address upon all parties interested in said estate, at least ten days before the return day of the rule to show cause. Upon the return of said rule, and proof of service as herein provided, the Court shall consider

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said petition, take proof if it is deemed necessary by the Court, and if in the judgment of the Court it shall appear for and in the interest of the estate, that any such claim shall be compromised, settled or adjusted, in accordance with the terms and conditions set forth in the agreement of writing between the executor, administrator, administrator *pendente lite* or trustee and the claimant, the Court shall make an order or decree approving the proposed compromise, settlement or adjustment as submitted, or in such other form as may be agreed upon in writing between the executor, administrator, administrator *pendente lite* or trustee and the claimant. The decree or order made by the Court shall operate to relieve the fiduciary of any responsibility in the premises.

4. If any part of this act shall be declared unconstitutional, the remaining part of this act shall not be affected.

5. All acts and parts of acts inconsistent with this act, be and the same are hereby repealed.

6. This act shall take effect immediately.

Approved December 15, 1931."

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THE ACT DOES NOT VIOLATE ARTICLE 4, SECTION 7, PARAGRAPH 4 OF THE NEW JERSEY CONSTITUTION, WHICH PROVIDES THAT EVERY LAW SHALL EMBRACE BUT ONE OBJECT AND THAT SHALL BE EXPRESSED IN ITS TITLE.

The appellants contend that the Act was violative of the Constitution of New Jersey, in that its object is not expressed in its title. We believe this argument is sufficiently answered by the Supreme Court in *Freilitzsch v. Board of Education of Bayonne*, 7 N. J. Misc. Rep. 7, in which case, on page 9, it states:

“The rule of law governing this subject is contained in the following statement from a recognized authority: ‘The general rule is that where an Act is amendatory or supplemental of a former Act, if the subject of the original Act is sufficiently expressed in its title and the provisions of the amendatory or supplemental Act are germane to that subject, it is sufficient that the title of the amendatory or supplemental Act contains a specific reference to the original by its title and declares the Act to be an amendment or supplement to the original Act.’ 25 R. C. L. 869.

“So it has been held in this State that it is enough if the title is so phrased as to give sufficient notice to the Legislature and the public as reasonably to lead to an inquiry into the

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body of the bill to ascertain what changes are proposed in the existing law. *Schmalz v. Woodley*, 57 N. J. Eq. 303."

There can be no doubt that the primary and principal purpose and object of the Legislature in passing the Act in question was to confer upon the Orphans' Court of the State the authority and power to permit personal representatives to compromise various claims and suits against decedents' estates in order to avoid as much as possible the usual and expensive litigation that is found in the settlement of many estates. The powers incidentally conferred on personal representatives were merely part of the general scheme in order to effect the general object. If the title of an Act expresses broadly and inclusively the object of the statute, it need not express the means and method of attaining that object.

Rader v. Township of Union, 39 N. J. L. 509;

Erie R. R. Co. v. Public Utility Comrs., 89 N. J. L. 57, 80;

Bumstead v. Govern, 47 N. J. L. 368, affirmed 48 N. J. L. 612;

Hickman v. State, 62 N. J. L. 499, affirmed 63 N. J. L. 666.

In *Easton & Amboy R. R. Co. v. Central R. R. Co.*, 52 N. J. L. 267, the Court held:

"In giving effect to Section 7, Article 4 of the Constitution, the Courts give paramount

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consideration to the general object of the Act—the general purpose of the legislative scheme. The general object of the Act being ascertained, the Legislature may include in its provisions of a multiform character designed to carry into execution the legislative purpose which are not inconsistent with or foreign to the general object of the Act.”

In *State, ex rel., Walter, et al., v. Town of Union, County of Hudson*, 33 N. J. L. 350, it is held:

“2. The unity of the object must be sought in the end which the legislative act purposes to accomplish, and not in the details provided to reach that end.

3. The degree of particularity which must be used in the title of an Act rests in legislative discretion.

4. There are many cases where the object might with great propriety be more specifically stated, yet the generality of the title will not be fatal to an Act if by fair intendment it can be connected with it.”

In *Newark v. Mt. Pleasant Cemetery*, 58 N. J. L. 168, the Court of Errors and Appeals held:

“A statute which deals with various matters will satisfy the provisions of Article 4, Section 7, paragraph 4 of the Constitution if it has one general object and the matters enacted tend to effectuate that object and are properly related to each other.”

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In *Sherman v. Long Branch*, 9 N. J. Misc. Rep. 75, the Supreme Court, on page 80, states:

“In *Boniewsky v. Polish Home*, 103 N. J. L. 323 (at 332), it was held that the construction to be placed upon the constitutional provision here invoked is ‘that the leading subject of a statute should be fairly expressed in its title.’ Citing *State Board v. Phillipsburg*, 83 N. J. Eq. 402; affirmed 85 Id. 161. And further has held in *Gottuso v. Baker*, 80 N. J. L. 520: ‘Under our constitutional provision, the title of an Act is in the nature of a label by which the object of the Act is displayed; it is not a table of contents or an index to everything the statute contains.’ This was approved in the Court of Errors and Appeals in *Board v. Tait*, 81 N. J. Eq. 161.”

In *Erie R. R. Co. v. Public Utility Commissioners*, *supra*, on page 87, the Court states:

“The title of the original Act expresses broadly and inclusively the object of the statute; it does not express the means and methods of attaining this object, but this is not required. *Bumstead v. Govern*, 47 L. 368, affirmed 48 Id. 612; *Hickman v. State*, 62 Id. 499, affirmed 63 Id. 666. As was said by this Court in *Moore v. Burdett*, 62 N. J. L. 163, 164: ‘The object of a law must not be confused with its product. * * * The object of every law by force of the Constitution must be single and must be expressed in

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the title of the law; the product may be as diverse as the object requires, and finds its expression in the terms of the enactment only; in fine the tile of an Act is a label and not an index.' The statute has, in a constitutional sense, a single object. To attain this object it enacts various methods and matters so related to such object and to each other as to effectuate a single purpose, but the inclusion of such inter-related matters is not the intermixing of things that have no proper relation to each other, hence the statute as a whole has a single object. *Payne v. Mahon*, 44 N. J. L. 213; *Newark v. Mt. Pleasant Cemetery Co.*, 58 Id. 168."

In *Rahway Savings Institute v. Rahway*, 53 N. J. L. 48, the Supreme Court held that where an Act is entitled "A supplement to an Act, &c.," it will cover every species of amendatory legislation which goes to complete the legislative scheme.

THE ACT DOES NOT VIOLATE THE FOURTEENTH AMENDMENT TO THE FEDERAL CONSTITUTION.

The next contention of appellants is that the Act is unconstitutional as being in violation of the Fourteenth Amendment to the Constitution of the United States, in that it deprives them of their vested right to enjoy their share in the estate unimpaired by any reduction due to the compromise. If, as we contend, the compromise agreement was in all respects

proper and legal, there would seem to be little force in the contention of the appellants that because of such compromise their shares would in some measure be diminished. The law is replete with instances where the shares of legatees and devisees have been diminished because the estate or parts of it have been lawfully applied to other purposes. Certainly it cannot be denied that all lawful debts of the decedent must be paid before any bequest or devise can be deemed to vest. As was said by Chancellor Walker, then Vice-Chancellor, in *O'Donnell v. McCann*, 77 N. J. Eq. 188:

“Legatees succeed to the estate of the testator as beneficiaries and objects of his bounty, and have no rights or equities whatever as against creditors.”

ACT DOES NOT VEST JUDICIAL POWERS IN PERSONAL REPRESENTATIVES.

Appellants next contend that the statute is unconstitutional because it attempts to vest judicial powers in executors and administrators. It is indeed difficult to ascertain in what respect the Act confers upon personal representatives judicial powers. Appellants intimate that it does so by conferring on them the power to adjust claims against the estate instituted by way of caveat, or to adjust questions concerning the probate or construction of a will. The Act is susceptible of no such interpretation. It leaves that power where it has always

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been—in the Orphans' Court. Any such compromise by an executor or administrator is without a scintilla of legal effect until it has been approved by the Court. The personal representative is only an instrumentality in the procedure necessary to effect the compromise, and the agreement entered into by him is only a step toward the eventual compromise which comes into being when approved by the Court.

The Act no more confers upon personal representatives judicial powers than did the common law rule which empowered personal representatives to settle claims for or against the estate. When such claims were compromised at common law, the personal representatives, of course, had no right to determine the respective legal rights of the parties to the compromise. It was not within his province to determine whether or not the claim could have been proven and established in court. It was his right merely, irrespective of the precise legal merits of the controversy, to make an amicable adjustment of the claim, if in so doing he acted discreetly and in good faith.

In this regard, we believe the remarks of the Court of Appeals of Maryland in *Badders v. O'Brien*, 114 Md. 451, 79 A. 917, to be pertinent. That case was based on a similar statute. In the opinion, the Court states:

“This Act does not confer upon the Orphans' Court the full powers with which courts of law and equity are invested of deciding upon the validity and determining the amount of a creditor's claim against the estate of a decedent or

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ward, but merely the power to authorize an executor or a guardian to compromise a claim on such terms as meet the Court's approval, without undertaking to determine its exact legal status or exact amount. The law looks with favor upon the amicable settlement of controversies and the prevention of litigation, and a statute conferring power to effect compromises of claims threatening to involve estates in litigation upon a subordinate tribunal that is not fully equipped to determine their precise legal merits, is in harmony with the policy of the law, and the exercise of that power, when fairly made, should be upheld in the absence of evidence of positive error or injustice."

IF ANY PART OF THE ACT BE UNCONSTITUTIONAL, IT MAY BE EXSCINDED WITHOUT AFFECTING THE LEGALITY OF THE REMAINDER.

The next contention of appellants is that if the Act is unconstitutional, in that it permits the compromise of claims arising by way of caveat or questions concerning the probate or construction of a will, then the whole Act is invalid, even to the settlement of ordinary claims, even though appellants concede that the Legislature had the right to confer the latter power on personal representatives.

The evident and primary purpose of the Legislature in passing the Act in question was to permit

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a personal representative, with the approval of the Orphans' Court, to compromise a variety of claims in order that controversies involving estates might be amicably settled. If for any reason the Legislature did not have the power to permit or authorize the compromise of any one claim enumerated, that power may be excised from the statute without substantially affecting the legislative purpose, and the remainder of the Act be upheld. It is a fundamental rule of law that the existence of an unconstitutional provision in a statute, which may be readily excised therefrom without substantially affecting the legislative purpose exhibited by the enactment of the statute, will not render the whole Act void.

Shultise v. O'Neill, 85 N. J. L. 15;

State v. Davis, 72 N. J. L. 345;

Riccio v. Hoboken (E. & A.), 69 N. J. L. 649;

Rader v. Township of Union, 39 N. J. L. 509.

In the last cited case, Chief Justice Beasley states, on page 514:

“The rule that there must be a substantial unity in the statutable object as indicated by the title is, in this instance, obviously violated, but I do not, on this account, conclude, as counsel appears to have done, that by reason of this illegality, this entire statute is to be treated as a nullity. Such is not the legal rule, and no such consequence is denounced by the constitutional article in question, which merely pro-

hibits, without defining the effect of, its infraction. It will answer every purpose of law and of public policy to declare in such cases as the one now under advisement, the unlawful super-addition to the declared object of the statute to be inoperative and void. This can always be done when the objectionable feature stands by itself and is separable as a distinct thing from the body of the Act, and there is no reason to suppose that the portion thus eliminated constituted an essential motive to the enactment of the law.”

Of course, the plain intent of the Legislature that the unconstitutionality of any part of the Act shall not affect the remaining parts is expressly stated in the Act itself.

THE AGREEMENT IS NOT UNFAIR TO APPELLANTS.

The next contention of appellants is that the agreement is unfair in that while their interest in the whole estate is one-tenth, their interest in the residuary estate is one-fourth, and, therefore, if the income necessary for the compromise be taken from the residuary estate, their contribution will be disproportionate.

We are unable to see any force in this argument. It is undoubtedly the thought of the appellants that the burden of contributing to the compromise should be borne by all the legatees alike, whether specific,

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general or residuary. The law is to the contrary, and it is fundamental that in the absence of a contrary intention, sufficiently expressed in the will, the general or residuary personalty, not specifically bequeathed, exonerated or exempted, should first be applied to the payment of debts, and must be exhausted before resort can be had to specific or general legacies.

Berger v. Burnett (E. & A.), 95 N. J. Eq. 643;

In re Rowland's Trustee, 87 Eq. 307;

3 *Williams on Executors*, 1591;

Halsey v. Patterson, 37 N. J. Eq. 445.

THE AGREEMENT BY THE WIDOW TO DISCONTINUE HER APPEAL FROM THE DECREE OF THE COURT OF CHANCERY DISMISSING HER BILL FOR SPECIFIC PERFORMANCE OF THE ORAL AGREEMENT WAS A VALID CONSIDERATION FOR THE COMPROMISE.

Appellants next contend that personal representatives do not have the right, either at common law or by statute, to compromise a claim against the estate which has been adjudicated in the estate's favor by a court of competent jurisdiction.

The objection is directed specifically to the agreement of compromise insofar as it purports to be in settlement of the claim of the widow, Bertha Hastings Braunstein, against the estate based on the oral

agreement of the testator to pay her \$10,000 a year during her lifetime and certain counsel fees amounting to \$10,000. The record discloses that a claim based on the alleged oral agreement was presented to the personal representatives of the estate and was disputed by them; suit was filed in the Court of Chancery of New Jersey for specific performance of the alleged oral agreement, which was dismissed, and an appeal taken to the Court of Errors and Appeals, which is now pending in *statu quo* by agreement pending the decision of the present appeal.

In support of their contention, appellants cite *Lincoln Materials Co. v. John R. Blair Co.*, 109 N. J. Eq. 159. That case holds that a receiver has not the power to compromise a matter in dispute against the wishes of a party interested, after the dispute has been submitted and determined adversely to the claimant in the Court of Errors and Appeals. Conceding, for the sake of argument, that the same rule applies to personal representatives, we are unable to see its application. The decision of the Court of Chancery, an intermediate court, is quite a different thing than the decision by the Court of Errors and Appeals, the court of last resort in cases like the present one. In the former court, a right of appeal exists, with always a chance for reversal; in the latter court, a decision is final.

An agreement not to appeal or prosecute a writ of error from a judgment is a sufficient consideration to support an agreement to compromise a claim against a judgment debtor if a right of appeal exists

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or if there are sufficient grounds for a belief in its existence.

12 *C. J.*, 334, Note 68 and cases cited.

It is a sufficient consideration for a compromise if a party agrees not to appeal or to abandon an appeal.

13 *C. J.*, 350, Notes 24 and 25 and cases cited.

In the case of *In re Gilman's Estate*, 87 N. Y. Supp. 128, a compromise by an executor was approved by the Probate Court, one of the considerations for the settlement being the abandonment of an appeal taken by the claimant from a decree rendered against her in an action brought to recover upon a check for \$10,000 alleged to have been made and delivered to her by the intestate.

THE AGREEMENT MAY BE ENFORCED BY
EITHER THE WIDOW OR GRAND-
DAUGHTER WITHOUT REGARD TO ITS
VALIDITY AS TO THE OTHER.

The final contention of the appellants is that the agreement is entire, and that if it fails as to either the widow or granddaughter, it must of necessity fail as to both.

We are unable to agree as to this contention. It is our belief that the agreement is severable and may stand as to either, irrespective of its failure as to the other. In this respect it must be borne in

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mind that the considerations flowing from the widow and granddaughter were separate and distinct. The widow, in addition to consenting that the will be admitted to probate and consenting to the discontinuance of all litigation with respect thereto, further agreed to release the estate from any liability by reason of the agreement by the decedent to pay her \$10,000 annually for life and to pay her counsel \$10,000, and to discontinue the appeal in the Court of Errors and Appeals based on such agreement. The granddaughter, in addition to consenting to the probate of the will and to discontinue all further litigation in respect thereto, further, as a necessary incident, agreed to relinquish her right to charge the decedent's estate with the cost of expert medical testimony to assist her in establishing her contention that the decedent was without testamentary capacity, with a proviso that the cost of such testimony was not to exceed \$10,000. It will be noted that not only is the consideration flowing from the widow and granddaughter separate, but the amounts agreed to be paid to them for such consideration are apportioned.

A test of severability which has been frequently applied is to the effect that if the consideration is single, the contract is entire, but if the consideration is either expressly or by necessary implication apportioned, the contract will be regarded as severable.

13 C. J., 563, citing, among other cases,
Haslack v. Myers, 26 N. J. L. 284.

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In *Haslack v. Myers*, *supra*, Justice Potts, speaking for the Supreme Court, on page 287, states:

“The rule as stated in *Parsons on Contracts*, 29, is that ‘if the part to be performed by one party consists of several distinct and separate items, and the price to be paid by the other is *apportioned* to each item to be performed, or is left to be *implied by law*, such a contract will generally be held to be severable.’ ”

If for any reason it should be held that the executors or administrators *pendente lite* had no legal authority to compromise the will contest, there still remains the agreement of the widow to discontinue all further litigation in respect to the agreement by the decedent to pay her \$10,000 yearly during her life and to pay to her counsel \$10,000. The agreement, of course, did not apportion a certain amount for her agreement to discontinue the will contest and a certain amount for her agreement to discontinue the litigation with respect to the claim based on the agreement of the decedent to support her. Under the compromise agreement she was to receive \$4800 yearly during her lifetime for both considerations.

The law is well settled that where there is a failure of a part of a lawful consideration, the part which failed is simply a nullity and imparts no taint to the residue. In such a case, as no particular amount of consideration is required, the promise may be enforced. In other words, if there is a substantial consideration left, it will still be sufficient to sustain the contract.

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13 C. J., 368, and cases cited;
Allen v. U. S. Bank, 20 N. J. L. 620.

In the last cited case, the New Jersey Supreme Court states, on page 624:

“Again, the counsel for plaintiff-in-error insisted that the bank could not, in law, recover because the evidence showed a failure of consideration; upon the supposition that the declarations by Mr. Colt on the day of sale amounted to an agreement that the gangway was to go with the lots, and as a consequence of a sale of it to a third person, the lots are less valuable. Under the view of the cases, there is not a total but a partial failure of consideration. Now, it is well settled that the partial failure of consideration is not a good defense at law, if the amount to be deducted on that account *be unliquidated*.”

We further contend, on the same theory, that irrespective of the consideration of the consents by the widow and granddaughter, to withdraw the will contest, the consideration of the widow agreeing to discontinue all further litigation in respect to the agreement by the decedent to pay her \$10,000 yearly and \$10,000 counsel fee, will support not only the promise of the personal representatives to pay her \$4800 yearly, but also the promise to pay the granddaughter \$2500 yearly. The agreement to pay the widow and granddaughter a total sum of \$7300 yearly resulted in a saving of \$2700 per year to the

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estate. For all that appears in the case, the widow might have exacted the sum of \$7300 yearly in settlement of her claim, and if the personal representatives acted in good faith and with discretion in allowing her that sum, the settlement would have been upheld. By the same token, the widow had a perfect right to ask for \$4800 for herself, and because of love and affection for the granddaughter, or for any other reason, the sum of \$2500 for the granddaughter. On this theory, no consideration at all need have been given by the granddaughter if the agreement was made for her benefit, and she can maintain an action on the promise.

3 Comp. Stat. 4059, Sec. 28;

Burt v. Brownstone Realty Co., 95 N. J. L. 457;

Styles v. Long Co., 70 N. J. L. 301;

Whitehead v. Burgess, 61 N. J. L. 75;

Josline v. New York Car Spring Co., 36 N. J. L. 141.

It should be further noted that the granddaughter, beside agreeing to withdraw her caveat, also gave up her right to charge the estate with the cost of medical experts in a sum not exceeding \$10,000. While, of course, the order allowing her so to do was incidental to the will contest, the estate by virtue of the compromise will be benefited in a substantial pecuniary manner by the saving of the proposed expenditure.

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CONCLUSION.

It is respectfully submitted that the compromise agreement was a proper and legal exercise of authority by the personal representatives, both at common law and by statute, and that the order of the Prerogative Court so holding should be affirmed.

Respectfully submitted,

COLE & COLE,

Proctors for Petitioners, Guarantee Trust Company and Harry Braunstein, Executors of the Paper Writing Alleged to be the Last Will and Testament of Samuel M. Braunstein, Deceased.

COLE & COLE,

CASSMAN & GOTTLIEB,

Proctors for Petitioners, Guarantee Trust Company and Emerson L. Richards, Administrators Pendente Lite of the Estate of Samuel M. Braunstein, Deceased.

JOSEPH B. PERSKIE,

HON. ROBERT H. McCARTER,

Proctors for Bertha Hastings Braunstein.

LOUIS E. STERN,

HON. EMERSON L. RICHARDS,

Proctors for Rose Richman, Guardian for Doris Adele Braunstein.

NEW JERSEY COURT OF ERRORS AND
APPEALS

DANIEL B. FRAZER CO., Incorporation of
New Jersey

Plaintiff in Error

v.

ROBERT W. LOW, Administrator of the

Defendant in Error

In Error

In Error

In Error

BRIEF FOR THE DEFENDANT

