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

EMANUEL WEITZ,
Of counsel with defendants, Joseph A. Hicks (known also as Joseph Hicks) and Elena M. Hicks (known also as Lena Hicks).

Petition of Appeal.

[Filed March 22, 1926.]

NEW JERSEY COURT OF ERRORS AND APPEALS.

Ella Hicks, Complainant-Appellee, *v.* Leon Hicks, Beatrice Hicks, Florence Hicks, Marion D. Hicks, individually and as substitutionary administratrix with the will of Percy D. Hicks (known also as Percy Hicks), deceased, annexed, and as guardian of the person and property of John Hicks, John Hicks, Defendants-Appellees, and Joseph A. Hicks (known also as Joseph Hicks) and Elena M. Hicks (known also as Lena Hicks), Defendants-Appellants.	On Appeal from Court of Chancery.

Petition of Appeal.

To the Honorable, the Court of Errors and Appeals, in the Last Resort in all Causes:

The petition of Joseph A. Hicks (known also as Joseph Hicks) and Elena M. Hicks (known also as Lena Hicks), the appellants in the above stated cause, respectfully show that petitioners find themselves aggrieved by a final decree made in the Court of Chancery by his Honor Edwin Robert Walker, Chancellor of the State of New Jersey, bearing date February 15, 1926, in a certain cause in said Court of Chancery wherein Ella Hicks was complainant and Leon Hicks, Beatrice Hicks, Joseph A. Hicks (known also as Joseph Hicks), Florence Hicks, Elena M. Hicks (known also as Lena Hicks), Marion D. Hicks, individually and as substitutionary administratrix with the will of Percy D. Hicks (known also as Percy Hicks), deceased, annexed, and as guardian of the person and property of John Hicks, and John Hicks, were defendants, in these respects, to wit:

FIRST.—The said decree adjudges that under and by virtue of the clause or subdivision numbered "Fifth" of the last will and testament of John Hicks, deceased, said John Hicks gave and devised to the defendant, Leon Hicks, and Percy D. Hicks (known also as Percy Hicks) the lands and premises mentioned and referred to in said subdivision numbered "Fifth" of said last will and testament, as tenants in common; whereas it should have adjudged that under and by virtue of said clause or subdivision numbered "Fifth" of said last will and testament said John Hicks gave and devised said lands and premises to said Leon Hicks and Percy D. Hicks (known also as Percy Hicks as tenants in common, when said Leon Hicks arrived at the age of thirty years.

SECOND.—The said decree adjudges that all the estate, right, title and interest of John Hicks, deceased, in and to the lands and premises mentioned and referred to in the subdivision numbered "Fifth" of his last will and testament became vested in the defendant Leon Hicks and Percy D. Hicks (known also as Percy Hicks) on the death of said John Hicks on August 2, 1910, subject, however, to the right, power and authority of the complainant and Martin D. Hicks over said lands and premises and the income thereof from the death of said John Hicks on August 2, 1910, until December 17, 1923, as such right, power and authority is defined in and by the paragraphs lettered "(c)," "(d)," "(e)," "(f)," "(g)" and "(h)" of the subdivision numbered "Second" of said decree; whereas it should have adjudged that all the estate, right, title and interest of said John Hicks, deceased, in and to said lands and premises became vested in Martin D. Hicks and the complainant Ella Hicks on the death of said John Hicks on August 2, 1910, in trust, however, to receive the income from said lands and premises and pay moneys for the upkeep of said lands and premises, the residue or remainder of such income to be equally paid and divided between said Percy D. Hicks (known also as Percy Hicks) and Leon Hicks until said Leon Hicks should arrive at the age of thirty years.

THIRD.—The said decree adjudges:

(1) That the defendant Marion D. Hicks is entitled to have paid to her individually one-sixth of all income received by the complainant from the lands and premises mentioned and referred to in the subdivision numbered "Fifth" of the last

will and testament of John Hicks, deceased, covering the period subsequent to September 1, 1918, less:

(a) One-sixth of such payments as the complainant may have made subsequent to September 1, 1918, for charges, impositions and liens imposed or acquired upon the lands and premises mentioned and referred to in said subdivision numbered "Fifth" of said last will and testament of John Hicks, deceased, and one-half of such expenses, covering periods subsequent to September 1, 1918, as were necessary or advisable for the care, safety and preservation of said lands and premises, and for keeping said lands and premises tenantable and in good order and condition;

(b) One-sixth of the costs and expenses of administering, from September 1, 1918 to December 17, 1923, the trust reposed in the complainant in and by said last will and testament of John Hicks, deceased, including such compensation, commissions and allowances as the complainant may be entitled to for her services as trustee under said last will and testament; and

(c) So much of the income of the lands and premises mentioned and referred to in the subdivision numbered "Fifth" of said last will and testament of John Hicks, deceased, as said Marion D. Hicks, individually, may have received; and

(2) That the defendant John Hicks is entitled to have paid to Marion D. Hicks, as guardian of the person and property of said defendant John Hicks, two-sixths of all income received by the complainant from the lands and premises mentioned and referred to in the subdivision numbered

"Fifth" of said last will and testament of John Hicks, deceased, covering the period subsequent to September 1, 1918, less:

(a) Two-sixths of such payments as the complainant may have made subsequent to September 1, 1918, for charges, impositions, and liens imposed or acquired upon the lands and premises mentioned and referred to in the subdivision numbered "Fifth" of said last will and testament of John Hicks, deceased, and two-sixths of such expenses, covering periods subsequent to September 1, 1918, as were necessary or advisable for the care, safety and preservation of said lands and premises and for keeping said lands and premises tenantable and in good order and condition;

(b) Two-sixths of the costs and expenses of administering, from September 1, 1918, to December 17, 1923, the trust reposed in the complainant in and by said last will and testament of John Hicks, deceased, including such compensation, commissions and allowances as the complainant may be entitled to for her services as trustee under said last will and testament of John Hicks, deceased; and

(c) So much of the income of the lands and premises mentioned and referred to in the subdivision numbered "Fifth" of said last will and testament of John Hicks, deceased, as Marion D. Hicks as guardian of the person and property of the defendant John Hicks may have received; whereas it should have adjudged that the defendants Leon Hicks, Joseph A. Hicks (known also as Joseph Hicks), Elena M. Hicks (known also as Lena Hicks), and Marion D. Hicks as guardian of the person and property of the defendant John

Hicks are each entitled to have paid to them respectively, one-eighth of all income received by the complainant from the lands and premises mentioned and referred to in the subdivision numbered "Fifth" of said last will and testament of John Hicks, deceased, covering the period subsequent to September 1, 1918, less:

(a) One-eighth of such payments as the complainant may have made subsequent to September 1, 1918, for charges, impositions, and liens imposed or acquired upon the lands and premises mentioned and referred to in said subdivision numbered "Fifth" of said last will and testament of John Hicks, deceased, and one-eighth of such expenses covering periods subsequent to September 1, 1918, as were necessary or advisable for the care, safety and preservation of said lands and premises, and for keeping said lands and premises tenantable and in good order and condition;

(b) One-eighth of the costs and expenses of administering from September 1, 1918 to December 17, 1923, the trust reposed in the complainant in and by said last will and testament of John Hicks, deceased, including such compensation, commissions and allowances as the complainant may be entitled to for her services as trustee under said last will and testament of John Hicks, deceased; and

(c) So much of the income of the lands and premises mentioned and referred to in the subdivision numbered "Fifth" of said last will and testament of John Hicks, deceased, as the defendants Leon Hicks, Joseph A. Hicks (known also as Joseph Hicks), Elena M. Hicks (known also as Lena

Hicks) and Marion D. Hicks, as guardian of the person and property of the defendant John Hicks, may respectively have received.

FOURTH.—The said decree adjudges that the defendants Leon Hicks, Marion D. Hicks and John Hicks are seized of and entitled to the lands and premises mentioned and referred to in the subdivision numbered "Fifth" of said last will and testament of John Hicks, deceased, and that their respective rights, estates and interests therein are as follows:

(1) The defendant Leon Hicks is seized in fee of and entitled to one equal undivided half part of said lands and premises, subject to the inchoate right of dower of his wife the defendant, Beatrice Hicks, in and to said last mentioned one equal undivided half part of said lands and premises;

(2) The defendant Marion D. Hicks, individually, is seized in fee of and entitled to one equal undivided sixth part of said lands and premises; and

(3) The defendant John Hicks is seized in fee of and entitled to two equal undivided sixth parts of said lands and premises;

whereas it should have adjudged that the defendants Leon Hicks, Joseph A. Hicks (known also as Joseph Hicks), Elena M. Hicks (known also as Lena Hicks) and John Hicks are seized of and entitled to the lands and premises mentioned and referred to in the subdivision numbered "Fifth" of said last will and testament of John Hicks, deceased, and that their respective rights, estates and interests therein are as follows:

(1) The defendant Leon Hicks is seized in fee of and entitled to five equal undivided eighth parts

of said lands and premises subject to the inchoate right of dower of his wife, the defendant Beatrice Hicks, in and to said last mentioned five equal undivided eighth parts of said lands and premises;

(2) The defendant Joseph A. Hicks (known also as Joseph Hicks) is seized in fee of and entitled to one equal undivided eighth part of said lands and premises subject to the inchoate right of dower of his wife, the defendant Florence Hicks, in and to said last mentioned one equal undivided eighth part of said lands and premises;

(3) The defendant Elena M. Hicks (known also as Lena Hicks) is seized in fee of and entitled to one equal undivided eighth part of said lands and premises; and

(4) The defendant John Hicks is seized in fee of and entitled to one equal undivided eighth part of said lands and premises.

FIFTH.—The said decree adjudges that Leon Hicks, who was appointed receiver in and by an order made in said cause, dated January 19, 1925, deliver to the defendants Leon Hicks, Marion D. Hicks individually and as guardian of the person and property of John Hicks possession of the lands and premises mentioned and referred to in the subdivision numbered "Fifth" of said last will and testament of John Hicks, deceased; whereas it should have adjudged that Leon Hicks who was appointed receiver in and by an order made in said cause, dated January 19, 1925, deliver to the defendants Leon Hicks, Joseph A. Hicks (known also as Joseph Hicks), Elena M. Hicks (known also as Lena Hicks) and Marion D. Hicks as guardian of the person and property of the defendant John

Hicks possession of the lands and premises mentioned and referred to in the subdivision numbered "Fifth" of said last will and testament of John Hicks, deceased.

Petitioners appeal from those parts of the decree of the Chancellor which decrees as aforesaid upon the ground that the same is erroneous for the reasons aforesaid.

Petitioners, therefore, pray that the said decree of the said Chancellor may be, in the particulars aforesaid, reversed, set aside and for nothing holden, and that petitioners may have such other relief in the premises as to this Court shall seem proper.

EMANUEL WEITZ,
Solicitor for and of counsel
with Appellants.

Answer to Petition of Appeal.

[Filed March 24th, 1926.]

NEW JERSEY COURT OF ERRORS AND APPEALS.

ELLA HICKS,
Complainant-Appellee,

v.

LEON HICKS, BEATRICE HICKS, FLORENCE HICKS, MARION D. HICKS, individually and as substitutionary administratrix with the will of Percy D. Hicks (known also as Percy Hicks), deceased, annexed, and as guardian of the person and property of John Hicks, JOHN HICKS,
Defendants-Appellees,

and

JOSEPH A. HICKS (known also as Joseph Hicks) and ELENA M. HICKS (known also as Lena Hicks),
Defendants-Appellants.

On Appeal from Court of Chancery.

The answer of the above-named defendants-appellees Marion D. Hicks, individually and as substitutionary administratrix with the will of Percy D. Hicks (known also as Percy Hicks), deceased, annexed, and as guardian of the person and property of John Hicks, and John Hicks, to the petition of appeal of the above-named defendants-appellants.

These defendants-appellees, not acknowledging all or any of the matters which in the said petition of appeal are contained to be true, for answer thereto, nevertheless, say and admit, that a decree was, on the fifteenth day of February last past, made and entered in the Court of Chancery, in the cause for that purpose mentioned in the said petition, as is therein stated; but as to the substance and form thereof, these defendants-appellees pray to refer thereto when the same shall be produced. And these defendants-appellees are advised and believe, that the said decree is agreeable to equity, and they pray that the same may be affirmed, with costs to be adjudged to these defendants-appellees.

JOHN S. APPLEGATE & SON,
Solicitors for and of Counsel with Defendants-Appellees Marion D. Hicks, individually and as substitutionary administratrix with the will of Percy D. Hicks (known also as Percy Hicks), deceased, annexed, and as guardian of the person and property of John Hicks, and John Hicks.

Bill of Complaint.

[Filed January 15, 1924.]

IN CHANCERY OF NEW JERSEY.

To the Honorable EDWIN ROBERT WALKER, Chancellor of the State of New Jersey.

The complainant Ella Hicks, who resides in the City of Long Branch, in the County of Monmouth and State of New Jersey, respectfully shows that:

1. John Hicks, late of the City of Long Branch, in the County of Monmouth and State of New Jersey, died on August 2, 1910, seized and possessed of a considerable estate, both real and personal.

2. Said John Hicks left a will, dated March 14, 1910, to which are two codicils annexed, one executed without date, and one dated July 1, 1910. "Exhibit A" hereto annexed is a copy of said will and of said two codicils thereto.

3. After the death of said John Hicks said will and codicils thereto annexed were duly presented for probate to the Surrogate of the County of Monmouth, in this State, in which County said John Hicks resided at the time of his death, and said will and codicils thereto annexed were, on August 18, 1910, admitted to probate by the Surrogate of said County of Monmouth and were duly recorded in the records of the office of said Surrogate.

4. On August 18, 1910, complainant and Martin D. Hicks duly qualified as the executors of said will and codicils and letters testamentary with said will and codicils annexed were, on August 18, 1910, issued by the Surrogate of said County of

Monmouth to complainant and said Martin D. Hicks.

5. From the issuance of said letters testamentary until on or about July 3, 1913, complainant and said Martin D. Hicks acted as executors of and trustees under said will and codicils.

6. In a petition dated March 28, 1913, and filed in the office of the Surrogate of said County of Monmouth on April 1, 1913, said Martin D. Hicks prayed the Orphans Court of the County of Monmouth that he be discharged from further performance of the duties of the office of executor and trustee of the estate of said John Hicks, deceased.

7. In and by an order of the Orphans Court of the County of Monmouth, dated July 3, 1913, and filed in the office of the Surrogate of the County of Monmouth on July 3, 1913, and duly recorded in the records of the office of said Surrogate, it was ordered that said Martin D. Hicks be, and he thereby was, relieved and discharged from all further duties of his said office except accounting for and paying over the moneys or assets received by him by virtue of his said office.

8. Ever since on or about July 3, 1913, complainant has been, and is now, the only acting executor of said will and codicils and trustee of the real property devised and bequeathed, or attempted to be devised and bequeathed, in and by the subdivision numbered "Fifth" of said will.

9. Said testator left him surviving complainant, his widow, and Leon Hicks, Elena M. Hicks (known also as Lena Hicks), Percy D. Hicks (known also as Percy Hicks) and Joseph A. Hicks (known also as Joseph Hicks), his only children.

10. Said Leon Hicks was born December 17, 1893, and arrived at the age of thirty years on December 17, 1923.

11. Said Percy D. Hicks (known also as Percy Hicks) died at said City of Long Branch on September 1, 1918, and long before said Leon Hicks arrived at the age of thirty years.

12. Said Percy D. Hicks (known also as Percy Hicks) left him surviving Marion D. Hicks, his widow, and John Hicks his only child.

13. On or about October 24, 1918, there was presented for probate to the Surrogate of said County of Monmouth, in which said county said Percy D. Hicks (known also as Percy Hicks) resided at the time of his death, a paper writing, dated August 30, 1918, purporting to be the will of said Percy D. Hicks (known also as Percy Hicks).

14. Clauses or sub-divisions numbered "Third", "Fourth" and "Fifth" of said paper writing purporting to be the will of said Percy D. Hicks (known also as Percy Hicks) read as follows:

> "THIRD.—I give, devise and bequeath unto my executors, hereinafter named, all my estate, real, personal or mixed, in whatever form and wheresoever situate, in trust, however, to sell and dispose of the same as soon after my death as it can legally, and in their judgment conveniently and properly, be done, and that they distribute the proceeds thereof as follows, namely: Two-thirds of my entire estate to my infant son John Hicks, and the other one third of my estate to my wife Marion D. Hicks, which gift and devise is in lieu of dower.

"FOURTH.—I hereby nominate and appoint my wife Marion D. Hicks guardian of my infant son John Hicks to serve until he shall become of age.

"FIFTH.—I hereby nominate and appoint the Long Branch Trust Company and Edward R. Slocum executors of this my last Will and Testament."

15. Said paper writing purporting to be the will of said Percy D. Hicks (known also as Percy Hicks) was admitted to probate by the Surrogate of said County of Monmouth on October 24, 1918, and was recorded in the records of the office of said Surrogate.

16. In and by an instrument in writing dated October 24, 1918, and filed in the office of said Surrogate, and recorded in the records of the office of said Surrogate, said Edward R. Slocum renounced executorship and the execution of the last Will and Testament of said Percy D. Hicks (known also as Percy Hicks) and refused to take upon himself the burden of the same.

17. On October 24, 1918, letters testamentary with said paper writing purporting to be the will of said Percy D. Hicks (known also as Percy Hicks) annexed were issued by the Surrogate of said County of Monmouth to Long Branch Trust Company (body corporate) of the State of New Jersey.

18. In and by its petition dated April 21, 1920, and filed in the office of the Surrogate of said County of Monmouth April 29, 1920, said Long Branch Trust Company (body corporate) of the State of New Jersey prayed the Orphans Court

of said County of Monmouth, among other things, to be discharged from the further performance of the duties of its office as executor of the estate of said Percy D. Hicks (known also as Percy Hicks).

19. In and by an order of the Orphans Court of the County of Monmouth, dated June 10, 1920, and filed in the office of the Surrogate of said County of Monmouth on June 10, 1920, and recorded in the records of the office of said Surrogate, it was ordered that the said Long Branch Trust Company be, and it thereby was, relieved and discharged from all further duties of its said office, except accounting for and paying over the moneys received by it by virtue of said office.

20. In and by her petition dated July 16, 1920, and filed in the office of the Surrogate of said County of Monmouth, September 16, 1920, said Marion D. Hicks petitioned the Orphans Court of said County of Monmouth that letters of substitutionary administration with the will of said Percy D. Hicks (known also as Percy Hicks), deceased, annexed, might be granted to her.

21. In and by an order dated September 16, 1920, and filed on that day in the office of the Surrogate of said County of Monmouth, and recorded in the records in the office of said Surrogate, the Orphans Court of said County of Monmouth ordered that letters of substitutionary administration with the will of said Percy D. Hicks (known also as Percy Hicks) annexed, be issued to said Marion D. Hicks upon the giving by her of a bond as provided in said last mentioned order.

22. Letters of substitutionary administration

of the estate of said Percy D. Hicks (known also as Percy Hicks), deceased, to administer said estate agreeably to the will of said Percy D. Hicks (known also as Percy Hicks), deceased, were issued by the Surrogate of said County of Monmouth to said Marion D. Hicks on September 16, 1920.

23. On September 16, 1920, the Surrogate of said County of Monmouth issued to said Marion D. Hicks letters authorizing her to execute the trust as guardian of the person and property of John Hicks, the son of said Percy D. Hicks (known also as Percy Hicks), deceased, according to law and the terms of the last Will and Testament of said Percy D. Hicks (known also as Percy Hicks), deceased.

24. Said John Hicks, the son of said Percy D. Hicks (known also as Percy Hicks), deceased, has not yet become twenty-one years of age.

25. Said Leon Hicks is married and his wife's name is Beatrice Hicks.

26. Said Joseph A. Hicks (known also as Joseph Hicks) is married and his wife's name is Florence Hicks.

27. Said Leon Hicks, Beatrice Hicks, Joseph A. Hicks (known also as Joseph Hicks), Florence Hicks, Elena M. Hicks (known also as Lena Hicks), Marion D. Hicks, individually and as substitutionary administratrix with the will of Percy D. Hicks (known also as Percy Hicks), deceased, annexed, and as guardian of the person and property of John Hicks, and John Hicks, the son of Percy D. Hicks (known also as Percy Hicks), deceased, claim to have some interest in or right or title to the principal and income of the real

property devised and bequeathed, or attempted to be devised and bequeathed, in and by the subdivision numbered "Fifth" of the said will of said John Hicks, deceased.

28. Various questions have arisen, and various claims have been made, by the different persons hereinbefore named, relative to the construction, validity and legal effect of the provisions, devises and trusts contained in the subdivision numbered "Fifth" of said will of said John Hicks, deceased, among which are the following:

(a) Whether any legal effect can be given to the whole or to any part of the subdivision numbered "Fifth" of said will, and if so, what legal effect; and whether all, or any, of said subdivision is, or is not, void; and if a part or parts only of such subdivision is, or are, void, what part or parts; and whether any portion of the scheme contemplated by said subdivision can be made legally operative;

(b) Whether the trust made, or which it was attempted to make, in said subdivision is valid, legal and operative, and capable of being carried out in any legal manner, and if so, how; and whether if any of the provisions of said subdivision numbered "Fifth" are illegal or invalid, the other provisions of said subdivision are thereby rendered inoperative or void;

(c) Whether any of the provisions, devises or bequests in said subdivision numbered "Fifth" contained, or which it was sought or intended to make by said subdivision, are ineffectual, or void, or have failed; and in what proportion and to whom such parts of the estate devised or be-

queathed, or sought or intended to be devised or bequeathed, by any of the provisions of said subdivision, which are adjudged to be inoperative (if any there be) go and of right belong;

(d) Whether said Marion D. Hicks is entitled to have paid over to her individually any income received from the real property mentioned in said subdivision numbered "Fifth" prior to the arrival of said Leon Hicks at the age of thirty years; and if so, what part of such income;

(e) Whether said John Hicks, son of Percy D. Hicks (known also as Percy Hicks), deceased, is entitled to have paid to him or his guardian any income received from the real property mentioned in said subdivision numbered "Fifth" prior to the arrival of said Leon Hicks at the age of thirty years, and if so, what part of such income;

(f) Whether said Leon Hicks, Beatrice Hicks, Joseph A. Hicks (known also as Joseph Hicks), Florence Hicks and Elena M. Hicks (known also as Lena Hicks), or any one or more of them, are or is entitled to have paid to them, him or her any income received from the real property mentioned in said subdivision "Fifth" prior to the arrival of said Leon Hicks at the age of thirty years, and if so to whom and in what proportions such income should be paid; and

(g) Whether complainant may deliver possession of the real property mentioned in said subdivision "Fifth" to said Leon Hicks, Beatrice Hicks, Joseph A. Hicks (known also as Joseph Hicks), Florence Hicks, Elena M. Hicks (known also as Lena Hicks), Marion D. Hicks, individually or as substitutionary administratrix with the will of Percy D. Hicks (known also as Percy Hicks), de-

ceased, or as guardian of the person and property of John Hicks, and John Hicks the son of Percy D. Hicks (known also as Percy Hicks), deceased, and if so to whom.

29. Complainant is ready and willing to pay and apply the income received by her from the real property mentioned in the subdivision numbered "Fifth" of the will of said John Hicks, deceased, prior to the arrival of said Leon Hicks at the age of thirty years in a legal manner, and to deliver possession of said real property to whomsoever the same legally belongs, but by reason of the conflicting claims of the various parties in interest complainant is exposed to sundry suits by said parties, and to loss and damage therefrom.

30. Complainant is advised by counsel that she cannot, with safety to herself, and the rights and interests of others, pay and dispose of the income received by her from the real property mentioned and described in said subdivision numbered "Fifth" of said will of John Hicks, deceased, prior to the arrival of said Leon Hicks at the age of thirty years, or deliver possession of said real property without the advice and protection of this Court in giving a construction to the provisions of said subdivision numbered "Fifth" of said will of John Hicks, deceased, in respect to which have arisen said various claims and questions.

Complainant is without adequate remedy in the courts of law and therefore prays:

1. That Leon Hicks, Beatrice Hicks, Joseph A. Hicks (known also as Joseph Hicks), Florence Hicks, Elena M. Hicks (known also as Lena Hicks), Marion D. Hicks individually and as substitution-

ary administratrix with the will of Percy D. Hicks (known also as Percy Hicks), deceased, annexed, and as guardian of the person and property of John Hicks, and John Hicks (the son of Percy D. Hicks (known also as Percy Hicks, deceased), who are the defendants in this suit, may, without oath, answer this bill of complaint and each statement herein made;

2. That a decree may be made adjudicating as to the several matters in respect to which said questions and doubts have arisen and settling the construction of the subdivision numbered "Fifth" of said will of John Hicks, deceased, and fully instructing and directing complainant as to her duties under the subdivision numbered "Fifth" of said will, and as to the manner in which complainant shall execute the trusts created, or attempted to be created, by said subdivision numbered "Fifth," or dispose of the real property devised and bequeathed, or attempted to be devised and bequeathed, by said subdivision numbered "Fifth," and the income of such real property, so as to enable complainant to execute the trusts created, or attempted to be created, by said subdivision numbered "Fifth" and dispose of the real property devised and bequeathed, or attempted to be devised and bequeathed, by said subdivision numbered "Fifth," and the income of such property, properly and with safety to herself; and

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

J. R. BOWEN,
Solicitor for and of Counsel
with Complainant.

Exhibit A.

IN THE NAME OF GOD, AMEN.

I, JOHN HICKS, of the City of Long Branch, in the County of Monmouth and State of New Jersey, being of sound mind, memory and understanding, and mindful of the uncertainty of life, do make, publish and declare the following to be my Last Will and Testament, namely:

FIRST.—It is my will and desire that all my just debts and funeral expenses be duly paid as soon as conveniently may be after my death, as hereinafter provided.

SECOND.—I will, devise and bequeath to my wife, ELLA HICKS, to be received by her in lieu and satisfaction of her dower interest, or other claim, in and to any lands or real estate owned by me, the following property:

(a) The proceeds of a Five Thousand Dollar mortgage which I now hold against Lester Lane of Long Branch, New Jersey, on his property located on Franklin Avenue;

(b) Twenty-five hundred dollars in cash, to be paid to her out of the proceeds of a Five Thousand Dollar Insurance Policy on my life, issued by the Northwestern Mutual Life Insurance Company and payable to my estate;

(c) All of my household furniture and effects now in the building known as the Hicks Building, located at Nos. 188 and 190 Broadway, in the City of Long Branch and State of New Jersey, excepting one parlor suite and the pictures in my bedroom.

Exhibit A, Annexed to Bill of Complaint.

THIRD.—I will, devise and bequeath to my wife, ELLA HICKS, the sum of Fifteen hundred dollars in cash out of the proceeds of said Five thousand dollar insurance policy on my life, issued by the Northwestern Mutual Life Insurance Company and payable to my estate; said Fifteen hundred dollars to be held by her in trust for my daughter, Lena Hicks, and to be used for my said daughter's separate use and benefit, said trust to cease when my said daughter shall become of legal age, and any balance then in the hands of said trustee to be conveyed and delivered to my said daughter.

I also will, devise and bequeath to my wife ELLA HICKS, to be held in trust for my said daughter, Lena Hicks, one brood mare named "Half a Sovereign" which is now in the hands of Frederick A. Forsythe, in Kentucky, and it is my desire that the future foals of said mare, if raced on any race course shall be raced in the name of my said daughter, Lena Hicks, and all the proceeds of said races to be paid to my said wife Ella Hicks, in trust for my said daughter and upon my said daughter's becoming of legal age said trustee is directed to convey and deliver to her, my said daughter, said brood mare together with all foals and all proceeds derived from said brood mare or said foals, and said trust then to cease.

FOURTH.—I will, devise and bequeath to my wife Ella Hicks the sum of One thousand dollars out of the proceeds of said Five thousand dollar Insurance Policy on my life issued by the Northwestern Mutual Life Insurance Company and payable to my estate, said one thousand dollars to be held by her in trust for my son JOSEPH HICKS and to be used for my said son's separate use and benefit,

said trust to cease when my said son shall become of legal age, and any balance then in the hands of said trustee to be conveyed and delivered to my said son.

FIFTH.—I will, devise and bequeath to my brother MARTIN D. HICKS the following described real property:

ALL that certain tract of land, situate and lying on the southwestern corner of Broadway and Academy Alley, in the City of Long Branch, New Jersey, known as the Hicks Building, at Nos. 188-190 Broadway, together with all buildings thereon situate: IN TRUST HOWEVER, to receive the income from said property and pay monies for the upkeep of said property, the residue or remainder thereof to be equally paid and divided between my two sons PERCY D. HICKS and LEON HICKS until my said son Leon Hicks shall arrive at the age of thirty years, at which time I give, devise and bequeath to my said sons Percy D. Hicks and Leon Hicks said real property as tenants in common.

SIXTH.—I will, devise and bequeath to my brother MARTIN D. HICKS my jewelry business, including all fixtures, merchandise and ledger accounts or bills receivable due me in the operation of my business, located in the Hicks Building at No. 188 Broadway, in the City of Long Branch, New Jersey, to be held by my said brother Martin D. Hicks in trust for my two sons Percy D. Hicks and Leon Hicks with this proviso, however, that my said brother Martin D. Hicks shall permit my said son Percy D. Hicks to manage and operate said business until my said son Leon Hicks shall become twenty-one years of age, the profits from said business during said period to be used for the benefit

of my said sons Percy D. Hicks and Leon Hicks, and when my said son Leon Hicks shall become twenty-one years of age this trust shall cease and said trustee Martin D. Hicks shall convey and deliver to my said sons Percy D. Hicks and Leon Hicks all of said business.

SEVENTH.—I direct that my executor pay all my just debts out of moneys on deposit in bank by me at the time of my decease and the proceeds of any notes due me at that time; and in the event said cash in bank and the proceeds of said notes shall be insufficient to pay all of my debts I direct that my said brother Martin D. Hicks, as trustee, pay any balance which may be due my creditors out of the proceeds of the ledger accounts and bills receivable due me in my said jewelry business.

EIGHTH.—In the event there should be moneys on deposit in bank by me at the time of my decease more than sufficient to pay all my just debts, I will, devise and bequeath such balance to my four children, Percy D. Hicks, Leon Hicks, Lena Hicks and Joseph Hicks, to be equally distributed among them.

NINTH.—I direct that any money paid to my estate by any lodge or lodges of which I am a member be used towards defraying my funeral expenses, and if that be not sufficient, that the balance of my funeral expenses be paid in the same manner as hereinbefore provided for the payment of my other debts.

LASTLY.—I hereby nominate and appoint my brother Martin D. Hicks executor of this my last will and testament.

Exhibit A, Annexed to Bill of Complaint.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this fourteenth day of March, Nineteen hundred and ten.

John Hicks (Seal)

Signed, acknowledged and declared by the said John Hicks as and for his last Will and Testament, in the presence of us (both being present at the same time), who, at his request, in his presence and in the presence of each other, have hereunto subscribed our names as witnesses.

Harry Truax, Long Branch, N. J.
Arthur L. Holston, Long Branch, N. J.
Chas. H. Greene, Jr., Long Branch, N. J.

ELEVENTH.—I also will, devise and bequeath to my said son Percy D. Hicks one parlor suite and the pictures in my bedroom in the building known as the Hicks Building located at numbers 188 and 190 Broadway, Long Branch, New Jersey.

John Hicks (Seal)

Witnesses:

Harry Truax
Arthur L. Holston
Chas. H. Greene, Jr.

I, John Hicks, of the City of Long Branch, in the County of Monmouth and State of New Jersey, do this eleventh day of July, A. D. Nineteen hundred and ten, make and publish this codicil to my last will and testament, in manner following, that is to say:—

WHEREAS, by my said will, dated March 14th, 1910, and witnessed by Harry Truax, Arthur Holston and Charles H. Greene, Jr., I have appointed my brother Martin D. Hicks trustee and executor

thereof and I deem it advisable that my wife Ella Hicks be made a trustee and executrix in order that she may attend to the interest of my son Leon Hicks and make provision so that he may attend a suitable school until he is twenty-one years of age or more.

Now, I hereby revoke the appointment of the said Martin D. Hicks as such sole trustee and executor and I appoint my said wife Ella Hicks and the said Martin D. Hicks to be such trustees and executrix and executor of my said will and testament in the place of the said Martin D. Hicks alone, and I declare that my said will shall be construed and take effect as if the name of my said wife Ella Hicks were inserted in my will throughout, together with the name of my said brother Martin D. Hicks, and in all other respects I confirm my said will.

In Witness Whereof, I have hereunto set my hand and seal the day and year aforesaid.

John Hicks (Seal)

Signed, sealed, published and declared by the said John Hicks as and for his codicil to his last will and testament and to be taken as part thereof in the presence of three several witnesses, whose names are hereunder subscribed as witnesses to the signing, sealing and publishing of the same, which said three persons did so hereunder subscribe their names at the request and in the presence of the said John Hicks and in the presence of each other.

Chas. H. Greene, Jr., Long Branch, N. J.
Arthur L. Holston, Long Branch, N. J.
Harry Truax, Long Branch, N. J.

Answer and Counterclaim.

[Filed January 23, 1924.]

IN CHANCERY OF NEW JERSEY.

Between

ELLA HICKS,
Complainant,

and

LEON HICKS, *et als.*,
Defendants.

On Bill, &c.

The answer and counterclaim of the defendants, Marion D. Hicks, individually and as substitutionary administratrix with the will of Percy D. Hicks, annexed, and as guardian of the person and property of John Hicks, infant, and John Hicks, infant, against the complainant, Ella Hicks, as individual and as acting executrix and trustee of and under the last Will and Testament of John Hicks, deceased.

These defendants Marion D. Hicks, individually, and as substitutionary administratrix with the will annexed of Percy D. Hicks, and as guardian of the person and property of John Hicks, infant, and John Hicks, infant by said guardian, answering the bill of complaint, say:

1. Paragraphs one to twenty-seven inclusive are admitted.

2. Paragraph twenty-eight is admitted, excepting that it is denied that there is any substance or merit in the contention of any person or persons, to the effect that any person or persons have any

interest in the premises devised under the fifth paragraph of the last Will and Testament of John Hicks, deceased, other than the co-defendant, Leon Hicks, and these defendants.

3. Paragraph twenty-nine is denied.

4. As to paragraph thirty, these defendants have no knowledge or information as to what complainant has been advised by counsel, therefore, neither admit, nor deny.

5. Defendants further answering, respectively, say by way of counterclaim, that under and by virtue of the provisions of paragraph five of the said will of John Hicks, deceased, and the provisions of the third paragraph of the will of Percy D. Hicks, deceased, these defendants are vested with the following interests, in and to the premises in question, namely: Marion D. Hicks, individually, a one-sixth fee simple interest; John Hicks, infant, an undivided two-sixths fee simple interest.

Since March 20th, 1913, the complainant, Ella Hicks, either as individual, or as acting executrix and trustee under the will of John Hicks, deceased, has been collecting the rents and profits accruing from said premises and now has in her possession large sums of money, representing said profits, and has refused and neglected to distribute same to these defendants, according to their respective interests, contrary to the provisions of said will, and for eleven years has refused to render any accounting in relation to the same though often requested so to do, and upon the said Leon Hicks attaining the age of thirty years and since that time, has refused to terminate said trusteeship, and deliver possession of said premises to these de-

fendants according to their respective interests, contrary to the terms of said will.

That neither the complainant, individually, Joseph A. Hicks, Florence Hicks, or Elena M. Hicks has any interest in the premises in question either jointly or severally, notwithstanding any allegations to the contrary, contained in the bill of complaint.

That these defendants are being unlawfully deprived of their interest in said premises by the said complainant, and have been and are unable to obtain from her, in any capacity, any lawful accounting. Nor have they been able to compel or persuade her to deliver to them their said interests; on the contrary she has persistently and unlawfully denied that these defendants have any interest in said premises and refused and neglected to deliver same.

And these defendants are without adequate remedy at law, and therefore, pray:

1. That said complainant as individual, and as acting executrix and trustee of and under the last Will and Testament of John Hicks, deceased, and the defendants Leon Hicks, Beatrice Hicks, Joseph A. Hicks, Florence Hicks, Elena M. Hicks, may answer this counterclaim without oath, and each statement herein made.

2. That a decree may be made adjudicating as follows:

(a) That these defendants, Marion D. Hicks, individually, and as guardian of the person and property of John Hicks, infant, and John Hicks, infant, are vested with a one-sixth, and a two-sixths fee simple interest, respectively, in the premises in question; that Leon Hicks is vested with an un-

divided one-half fee simple interest therein, and that Ella Hicks individually, Joseph Hicks, Florence Hicks and Elena Hicks have no interest in said premises.

(b) Directing said complainant as individual and trustee, and as acting executrix as aforesaid to deliver possession of their said interests in said premises to these defendants.

(c) That complainant as individual, and as acting executrix and trustee as aforesaid to account for all moneys received by her in any capacity from the income of the premises in question.

(d) That complainant as individual or as acting executrix and trustee as aforesaid pay to these defendants the amount found due them on said accounting.

J. S. APPLEGATE & SON,
Solicitors of Marion D. Hicks, individually, Marion D. Hicks, substitutionary administratrix with the will annexed of Percy D. Hicks, Marion D. Hicks, as guardian of the person and property of John Hicks, infant, and John Hicks, infant.

Replication.

[Filed Feb. 21, 1924.]

IN CHANCERY OF NEW JERSEY.

Between

ELLA HICKS,
Complainant,

and

LEON HICKS, *et als.*,
Defendants.

} On Bill, &c.

The complainant joins issue on the answer "of the defendants Marion D. Hicks individually and as substitutionary administratrix with the will of Percy D. Hicks, annexed, and as guardian of the person and property of John Hicks, infant, and John Hicks, infant."

As to the matters stated to be alleged by way of counterclaim in "The answer and counterclaim of the defendants Marion D. Hicks, individually and as substitutionary administratrix with the will of Percy D. Hicks, annexed, and as guardian of the person and property of John Hicks, infant, and John Hicks, infant, against the complainant Ella Hicks as individual and as acting executrix and trustee of and under the last Will and Testament of John Hicks, deceased," the complainant, individually and as acting executrix and trustee of and under the last will and testament of John Hicks, deceased, says that:

1. Complainant does not know whether the allegations contained in the first paragraph of the

subdivision numbered "5" are, or are not, true, and complainant repeats and reiterates the allegations contained in the paragraphs numbered "1" to "3," inclusive, "9" to "15," inclusive, and "23" to "28," inclusive, of her bill of complaint, and makes the same a part of this answer.

2. Complainant denies the allegations contained in the second paragraph of the subdivision numbered "5" except as admitted in the following statements:

(a) On and after March 20, 1913, or thereabouts, complainant, as acting trustee under the will of John Hicks, deceased, collected income from the real property mentioned and referred to in the subdivision numbered "Fifth" of the will of John Hicks, deceased, and paid out moneys, amounting in the aggregate to large sums of money, and paid to Percy D. Hicks and Leon Hicks named in said subdivision numbered "Fifth" of said will of John Hicks, deceased, divers sums of money from the income of said real property, amounting in the aggregate to a large sum of money; and

(b) Complainant repeats and reiterates the allegations contained in the paragraphs or subdivisions numbered "1" to "30," inclusive, of her bill of complaint and makes same a part of this answer.

3. Answering the third paragraph of the subdivision numbered "5" complainant says:

(a) She, individually, has no interest in the real property mentioned and referred to in the subdivision numbered "Fifth" of said will of John Hicks, deceased;

(b) She has no knowledge as to whether the defendants Joseph A. Hicks, Florence Hicks or Elena M. Hicks have any interest in said real property, and leaves the determination of that subject to the adjudication of this Court;

(c) She repeats and reiterates the allegations contained in the paragraphs or subdivisions numbered "1" to "15," inclusive, and "24" to 30," inclusive, of her bill of complaint and makes same a part of this answer.

4. Answering the allegations contained in the fourth paragraph of the subdivision numbered "5" complainant says:

(a) Said allegations are denied; and

(b) Complainant repeats and reiterates the allegations contained in the paragraphs or subdivisions numbered "1" to "30," inclusive, of her bill of complaint and makes same a part of this answer.

Complainant further says:

5. She repeats and reiterates the allegations contained in the paragraph lettered "(a)" of the subdivision numbered "2" hereof.

6. She prays this Court to take and state an account of the income of the real property mentioned and referred to in the subdivision numbered "Fifth" of the will of John Hicks, deceased, received by her, as an individual and as acting executrix and trustee of and under the will of John Hicks, deceased, or in one or more of such capacities, and of her payments for and on account of said real property, and of her payments to the defendants to this suit and to Percy

D. Hicks mentioned in the subdivision numbered "Fifth" of the will of John Hicks, deceased, and she further prays that this Court adjust and determine how much, if anything, each of the parties to this suit should pay to other or others of the parties to this suit.

J. R. BOWEN,
Solicitor of Complainant.

Replication on Behalf of Marion D. Hicks, Individually and as Substitutionary Administratrix With the Will of Percy D. Hicks, Annexed, and as Guardian of the person and Property of John Hicks, Infant, and John Hicks, Infant.

[Filed Feb. 23, 1924.]

IN CHANCERY OF NEW JERSEY.

Between
ELLA HICKS,
Complainant,
and
LEON HICKS, *et als.*,
Defendants.
} On Bill, &c.

Defendants join issue on the answer of the complainant to the counterclaim of the defendants as set forth in complainant's so-called replication.

JOHN S. APPLEGATE & SON,
Solicitors of defendants, Marion D. Hicks, individually, etc.

Answer to Counterclaim.

[Filed Feb. 21, 1924.]

IN CHANCERY OF NEW JERSEY.

Between
ELLA HICKS,
Complainant,
and
LEON HICKS, *et al.*,
Defendants.
} On Bill, &c.

The answer of defendants Leon Hicks and Beatrice Hicks to the counterclaim of Marion D. Hicks, individually and as substitutionary administratrix with the will of Percy D. Hicks, annexed and as guardian of the person and property of John Hicks, infant and John Hicks, infant.

These defendants answering the counterclaim say that

(1) Paragraph five and all the statements in the counterclaim are admitted.

LEO J. WARWICK,
Solicitor of Defendants Leon Hicks
and Beatrice Hicks, his wife.

Amended Answer of Defendants Joseph A. Hicks (known also as Joseph Hicks) and Elena M. Hicks (known also as Lena Hicks) to Matters Stated to be Alleged by Way of Counterclaim.

[Filed March 3, 1924.]

IN CHANCERY OF NEW JERSEY.

Between
ELLA HICKS,
Complainant,
and
LEON HICKS, *et als.*,
Defendants.
} On Bill, &c.

Now come the defendants Joseph A. Hicks (known also as Joseph Hicks) and Elena M. Hicks (known also as Lena Hicks) by Emanuel Weitz, their solicitor, and hereby withdraw the answer heretofore filed by them with the defendants Leon Hicks and Beatrice Hicks to matters stated to be alleged by way of counterclaim in a paper styled "The answer and counterclaim of the defendants Marion D. Hicks individually and as substitutionary administratrix with the will of Percy D. Hicks annexed, and as guardian of the person and property of John Hicks, infant, and John Hicks, infant, against the complainant Ella Hicks, as individual and as acting executrix and trustee of and under the last Will and Testament of John Hicks, deceased"; and in place of the answer so withdrawn these defendants Joseph A. Hicks (known also as Joseph Hicks) and Elena M.

Amended Answer of Joseph and Elena Hicks.

Hicks (known also as Lena Hicks) answering the matters stated to be alleged by way of counterclaim in said paper styled "The answer and counterclaim of the defendants Marion D. Hicks, individually and as substitutionary administratrix with the will of Percy D. Hicks annexed, and as guardian of the person and property of John Hicks, infant, and John Hicks, infant, against the complainant Ella Hicks, as individual and as acting executrix and trustee of and under the last Will and Testament of John Hicks, deceased," say that:

1. The allegations contained in the first paragraph of the subdivision numbered "5" are denied.

2. The allegations of the second paragraph of the subdivision numbered "5" are denied, except as admitted by the following statement:

On and after on or about March 20, 1913, the complainant Ella Hicks as acting trustee under the will of John Hicks, deceased, collected rents and profits accruing from the premises mentioned and described in the subdivision numbered "Fifth" of the will of John Hicks, deceased.

3. The allegations of the third paragraph of the subdivision numbered "5" are denied, excepting as admitted in the following statement:

The complainant, individually, has no interest in the premises mentioned and described in the subdivision numbered "Fifth" of the will of John Hicks, deceased.

4. The allegations of the fourth paragraph of the subdivision numbered "5" are denied.

Further answering these defendants say that:

5. On December 17, 1923, the defendant John Hicks became seized of and entitled to, and, in so far as these defendants have any knowledge or information, still is, seized of and entitled to one equal undivided eighth part of the land and premises mentioned and described in the subdivision numbered "Fifth" of the will of John Hicks, deceased.

6. On December 17, 1923, these defendants each severally became seized of and entitled to one equal undivided eighth part of the lands and premises mentioned and described in the subdivision numbered "Fifth" of the will of John Hicks, deceased, and these defendants, ever since December 17, 1923, have been, and still are, each severally seized of and entitled to one equal undivided eighth part of said lands and premises.

7. On and after about March 20, 1913, the complainant as acting trustee under the will of said John Hicks, deceased, collected and received income from the real property mentioned and referred to in the subdivision numbered "Fifth" of said will of John Hicks, deceased, and paid money for the upkeep of said property and also paid divers moneys to and for the Leon Hicks and Percy D. Hicks mentioned in said subdivision numbered "Fifth" of said will of John Hicks, deceased, but to what amounts and how much exactly these defendants do not know and pray a discovery thereof.

8. These defendants pray that this Court take and state an account of the income of said lands and premises which the parties to this suit, and each and every of them, have received, and the moneys paid for the upkeep of said lands and

premises, and by whom, and the moneys received by the parties to this suit, and each of them, from said complainant as acting trustee as aforesaid, and that this Court clear, adjust and determine how much, if anything, each of the parties to this suit should pay to other or others of the parties to this suit for, upon or by reason of income received from said lands and premises and of payments made for the upkeep of said lands and premises, and of payments made to and for the parties to this suit by the complainant as acting trustee as aforesaid, or otherwise.

EMANUEL WEITZ,
Solicitor of defendants Joseph A. Hicks (known also as Joseph Hicks) and Elena M. Hicks (known also as Lena Hicks).

Answer and Counterclaim.

[Filed Feb. 21, 1924.]

IN CHANCERY OF NEW JERSEY.

Between
ELLA HICKS,
Complainant,
and
LEON HICKS, *et als.*,
Defendants.
} On Bill, &c.

The answer and counterclaim of the defendants Leon Hicks and Beatrice Hicks against the complainant Ella Hicks, as individual and as acting

executrix and trustee of and under the last will and testament of John Hicks, deceased.

These defendants answering the bill of complaint say that,

(1) Paragraphs one to twenty-six inclusive are admitted.

(2) As to paragraph twenty-seven these defendants have no knowledge or information of any claim of interest in or right or title to the principal income of the real property devised and bequeathed in and by the subdivision numbered "Fifth" of said will of said John Hicks, deceased, excepting the claim of these defendants and Marion D. Hicks, individually and as substitutionary administratrix with the will of Percy D. Hicks, deceased, annexed, and as guardian of the person and property of John Hicks, and John Hicks, the son of said Percy D. Hicks, deceased.

(3) Answering paragraph twenty-eight these defendants deny that there is any substance or merit in the contention of any person or persons to the effect that any person or persons have any interest in the premises devised under the fifth paragraph of the last will and testament of John Hicks, deceased, or any interest in the income received from real property other than these defendants and their codefendants Marion D. Hicks, individually and as substitutionary administratrix with the will of Percy D. Hicks, deceased, annexed, and as guardian of the person and property of John Hicks, and John Hicks, the son of said Percy D. Hicks, deceased.

(4) Paragraph twenty-nine is denied.

(5) As to paragraph thirty, these defendants

have no knowledge or information as to what complainant has been advised by counsel, therefore neither admit nor deny.

Defendants further answering and by way of counterclaim say that under and by virtue of the provisions of paragraph five of the said will of John Hicks, deceased, the defendant Leon Hicks is vested with an undivided one half fee simple interest in the premises in question.

Since March 20, 1913, the complainant Ella Hicks either as individual or as acting executrix and trustee under the will of John Hicks, deceased, has been collecting the rents and profits accruing from said premises and now has in her possession large sums of money representing said profits and has refused and neglected to distribute the same to the defendant Leon Hicks, according to his interest therein contrary to the provisions of said will, and for eleven years has refused and neglected to render any accounting in relation to the same though often requested so to do. That upon this defendant, Leon Hicks, obtaining the age of thirty years and since that time the said complainant has refused to terminate said trusteeship, and deliver possession of said premises to the defendant Leon Hicks according to his interest therein, contrary to the terms of said will.

That neither the complainant, individually, Joseph A. Hicks, Florence Hicks, or Elena M. Hicks has any interest in the premises in question either jointly or severally, notwithstanding any allegations to the contrary, contained in the bill of complaint.

That these defendants are being unlawfully deprived of their interest in said premises by the said complainant, and have been and are unable

to obtain from her, in any capacity any lawful accounting. Nor have they been able to compel or persuade her to deliver to them their said interest; although the said complainant has on more than one occasion admitted that the defendant Leon Hicks has an undivided one-half interest in the premises in question.

And these defendants are without adequate remedy at law, and therefore pray:

(1) That said complainant as individual and as acting executrix and trustee of and under the last will and testament of John Hicks, deceased and the defendants Marion D. Hicks, individually and as substitutionary administratrix with the will of Percy D. Hicks, deceased, annexed and as guardian of the person and property of John Hicks, infant and John Hicks, infant, Joseph A. Hicks, Florence Hicks, Elena M. Hicks may answer this counterclaim without oath, and each statement herein made.

(2) That a decree may be made adjudicating as follows:

(a) That said defendant Leon Hicks is vested with an undivided one-half fee simple interest in the premises in question; and that Marion D. Hicks, individually and as guardian of the person and property of John Hicks, infant, and John Hicks, infant are vested with an undivided one-sixth and an undivided two-sixths fee simple interest respectively in the premises in question; and that Ella Hicks, individually, Joseph A. Hicks, Florence Hicks and Elena M. Hicks have no interest in said premises.

(b) Directing said complainant as individual

and trustee, and as acting executrix as aforesaid to deliver possession of their said interests in said premises to these defendants.

(c) That complainant as individual and as executrix and trustee as aforesaid to account for all monies received by her in any capacity as income of the premises in question.

(d) That complainant as individual and as acting executrix and trustee aforesaid pay to these defendants the amount found due them on said accounting.

LEO J. WARWICK,
Solicitor of Leon Hicks
and Beatrice Hicks.

Replication to Answer of Defendants Leon Hicks and Beatrice Hicks.

[Filed March 10, 1924.]

IN CHANCERY OF NEW JERSEY.

Between
ELLA HICKS,
Complainant,
and
LEON HICKS, *et als.*,
Defendants.
} On Bill, &c.

The complainant joins issue on the answer of the defendants Leon Hicks and Beatrice Hicks.

As to the matters stated to be alleged by way of counterclaim in "The answer and counterclaim of the defendants Leon Hicks and Beatrice Hicks

against the complainant Ella Hicks, as individual and as acting executrix and trustee of and under the last will and testament of John Hicks, deceased" the complainant, individually and as acting executrix and trustee of and under the last will and testament of John Hicks, deceased, says that:

1. Complainant does not know whether the allegations contained in the first paragraph of the matters alleged by way of counterclaim are, or are not, true, and complainant repeats and reiterates the allegations contained in the paragraphs numbered "1" to "3," inclusive, "9" to "15," inclusive, and "23" to "28," inclusive, of her bill of complaint, and makes the same a part of this answer.

2. Complainant denies the allegations contained in the second paragraph of the matters alleged by way of counterclaim except as admitted in the following statements:

(a) On and after March 20, 1913, or thereabouts, complainant, as acting trustee under the will of John Hicks, deceased, collected income from the real property mentioned and referred to in the subdivision numberd "Fifth" of the will of John Hicks, deceased, and paid out moneys, amounting in the aggregate to a large sum of money for the upkeep of said real property, and complainant also paid to and for Percy D. Hicks and Leon Hicks named in said subdivision numbered "Fifth" of said will of John Hicks, deceased, divers sums of money, which moneys so paid to and for said Percy D. Hicks and Leon Hicks amounted in the aggregate to a large sum of money; and

(b) Complainant repeats and reiterates the allegations contained in the paragraphs or subdivisions numbered "1" to "30," inclusive, of her bill of complaint, and makes same a part of this answer.

3. Answering the third paragraph of the matters alleged by way of counterclaim complainant says:

(a) She, individually, has no interest in the real property mentioned and referred to in the subdivision numbered "Fifth"" of said will of John Hicks, deceased;

(b) She has no knowledge as to whether the defendants Joseph A. Hicks, Florence Hicks or Elena M. Hicks has any interest in said real property, and leaves the determination of that subject to the adjudication of this Court;

(c) She repeats and reiterates the allegations contained in the paragraphs or subdivisions numbered "1" to "15," inclusive, and "24" to "30," inclusive, of her bill of complaint, and makes same a part of this answer.

4. Answering the allegations contained in the fourth paragraph of the matters alleged by way of counterclaim complainant says:

(a) Said allegations are denied; and

(b) Complainant repeats and reiterates the allegations contained in the paragraphs or subdivisions numbered "1" to "30," inclusive, of her bill of complaint and makes same a part of this answer.

Complainant further says:

Replication.

5. She repeats and reiterates the allegations contained in the paragraph lettered "(a)" of the subdivision numbered "2" hereof.

6. She prays this Court to take and state an account of the income of the real property mentioned and referred to in the subdivision numbered "Fifth" of the will of John Hicks, deceased, received by her, as an individual and as acting executrix and trustee of and under the will of John Hicks, deceased, or in one or more of such capacities, and of her payments for and on account of said real property, and of her payments to and for the defendants to this suit and to Percy D. Hicks mentioned in the subdivision numbered "Fifth" of the will of John Hicks, deceased, and she further prays that this Court adjust and determine how much, if anything, each of the parties to this suit should pay to other or others of the parties to this suit.

J. R. BOWEN,
Solicitor of Complainant.

Answer of Defendants Joseph A. Hicks (known also as Joseph Hicks) and Elena M. Hicks (known also as Lena Hicks) to Matters Stated to be Alleged by Way of Counterclaim by the Defendants Leon Hicks and Beatrice Hicks.

[Filed March 11, 1924.]

IN CHANCERY OF NEW JERSEY.

Between ELLA HICKS, Complainant, and LEON HICKS, *et als.*, Defendants.	On Bill, &c.

These defendants, Joseph A. Hicks (known also as Joseph Hicks) and Elena M. Hicks (known also as Lena Hicks) answering the matters stated to be alleged by way of counterclaim in the paper styled "The answer and counterclaim of the defendants Leon Hicks and Beatrice Hicks against the complainant Ella Hicks, as individual and as acting executrix and trustee of and under the last will and testament of John Hicks, deceased," say that:

1. The allegations contained in the first paragraph of the matters alleged by way of counterclaim are denied.

2. The allegations of the second paragraph of the matters alleged by way of counterclaim are denied, except as admitted by the following statement:

On and after on or about March 20, 1913, the complainant Ella Hicks as acting trustee under the will of John Hicks, deceased, collected income accruing from the premises mentioned and described in the subdivision numbered "Fifth" of the will of John Hicks, deceased.

3. The allegations of the third paragraph of the matters alleged by way of counterclaim are denied, excepting as admitted in the following statements:

The complainant, individually, has no interest in the premises mentioned and described in the subdivision numbered "Fifth" of the will of John Hicks, deceased.

4. The allegations of the fourth paragraph of the matters alleged by way of counterclaim are denied.

Further answering, these defendants say that:

5. On December 17, 1923, the defendant John Hicks became seized of and entitled to, and, in so far as these defendants have any knowledge or information, still is, seized of and entitled to one equal undivided eighth part of the lands and premises mentioned and described in the subdivision numbered "Fifth" of the will of John Hicks, deceased.

6. On December 17, 1923, these defendants each severally became seized of and entitled to one equal undivided eighth part of the lands and premises mentioned and described in the subdivision numbered "Fifth" of the will of John Hicks, deceased, and these defendants, ever since December 17, 1923, have been, and still are, each sev-

erally seized of and entitled to one equal undivided eighth part of said lands and premises.

7. On and after about March 20, 1913, the complainant as acting trustee under the will of said John Hicks, deceased, collected and received income from the real property mentioned and referred to in the subdivision numbered "Fifth" of said will of John Hicks, deceased, and paid moneys for the upkeep of said property, and the complainant also paid moneys to and for the Leon Hicks and Percy D. Hicks mentioned in said subdivision numbered "Fifth" of said will of John Hicks, deceased, but to what amounts and how much exactly these defendants do not know and pray a discovery thereof.

8. These defendants pray that this Court take and state an account of the income of said lands and premises which the parties to this suit, and each and every of them, have received, and the moneys paid for the upkeep of said lands and premises, and by whom, and the moneys received by the parties to this suit, and each of them, from said complainant, and that this Court clear, adjust and determine how much, if anything, each of the parties to this suit should pay to other or others of the parties to this suit for, upon or by reason of income received from said lands and premises and of payments made for the upkeep of said lands and premises, and of payments made to and for the parties to this suit by the complainant.

EMANUEL WEITZ,
Solicitor of defendants Joseph A. Hicks (known also as Joseph Hicks) and Elena M. Hicks (known also as Lena Hicks).

Answer and Counterclaim.

[Filed Feb. 28, 1924.]

IN CHANCERY OF NEW JERSEY.

Between
ELLA HICKS,
Complainant,
and
LEON HICKS, *et als.*,
Defendants.
} On Bill, &c.

The answer and counterclaim of the defendant Marion D. Hicks, guardian ad litem of John Hicks, infant, against the complainant Ella Hicks as individual and as acting executrix and trustee of and under the last Will and Testament of John Hicks, deceased.

This defendant, Marion D. Hicks, guardian ad litem of John Hicks, infant, answering the bill of complaint, says:

1. Paragraphs one to twenty-seven inclusive are admitted.

2. Paragraph twenty-eight is admitted, excepting that it is denied that there is any substance or merit in the contention of any person or persons, to the effect that any person or persons have any interest in the premises devised under the fifth paragraph of the Last Will and Testament of John Hicks, deceased, other than the co-defendants, Leon Hicks, Marion D. Hicks, individually, and this defendant.

4. As to paragraph thirty this defendant has

no knowledge or information as to what complainant has been advised by counsel, therefore neither admits nor denies.

5. Defendant further answering says by way of counterclaim that under and by virtue of the provisions of paragraph five of the said will of John Hicks, deceased, and the provisions of the third paragraph of the will of Percy D. Hicks, deceased, this defendant is vested with the following interest in and to the premises in question, namely, an undivided two-sixths fee simple interest.

Since March 20th, 1913, the complaint, Ella Hicks either as individual or as acting executrix and trustee under the will of John Hicks, deceased, has been collecting the rents and profits accruing from said premises and now has in her possession large sums of money representing said profits, and has refused and neglected to distribute same to these defendants, according to their respective interests, contrary to the provisions of said will, and for eleven years has refused to render any accounting in relation to the same though often requested so to do, and upon the said Leon Hicks attaining the age of thirty years and since that time, has refused to terminate said trusteeship, and deliver possession of said premises to this defendant according to his respective interest, contrary to the terms of said will.

That neither complainant, individually, Joseph A. Hicks, Florence Hicks, or Elena M. Hicks has any interest in the premises in question either jointly or severally, notwithstanding any allegations to the contrary contained in the bill of complaint.

That this defendant is being unlawfully deprived of his interest in said premises by the said complainant, and has been and is unable to obtain from her, in any capacity, any lawful accounting. Nor has he been able to compel or persuade her to deliver to him his said interest; on the contrary she has persistently and unlawfully denied that this defendant has any interest in said premises and refused and neglected to deliver same.

And this defendant is without adequate remedy at law, and therefore, prays:

1. That said complainant as individual and as acting executrix and trustee of and under the last Will and Testament of John Hicks, deceased, and the defendants Leon Hicks, Beatrice Hicks, Joseph A. Hicks, Florence Hicks, Elena M. Hicks, may answer this counterclaim without oath and each statement herein made.

2. That a decree may be made adjudicating as follows:

(a) That the defendants Marion D. Hicks, individually and as guardian of the person and property of John Hicks, infant, and John Hicks, infant, are vested with a one-sixth, and a two-sixths fee simple interest, respectively in the premises in question; that Leon Hicks is vested with an undivided one-half fee simple interest therein, and that Ella Hicks individually, Joseph Hicks, Florence Hicks and Elena Hicks have no interest in said premises.

(b) Directing that said complainant as individual and trustee, and as acting executrix as aforesaid to deliver possession of their said interests in said premises to these defendants.

(c) That complainant as individual, and as acting executrix and trustee as aforesaid to account for all monies received by her in any capacity from the income of the premises in question.

(d) That complainant as individual or as acting executrix and trustee as aforesaid pay to these defendants the amount found due them on said accounting.

JOHN S. APPLEGATE & SON,
Solicitors of Marion D. Hicks,
Guardian ad litem of John
Hicks, Infant.

Replication to Answer of Marion D. Hicks, Guardian ad litem of John Hicks, Infant.

[Filed March 10, 1924.]

IN CHANCERY OF NEW JERSEY.

Between
ELLA HICKS,
Complainant,
and
LEON HICKS, *et als.*,
Defendants.
} On Bill, &c.

The complainant joins issue on the answer of "Marion D. Hicks, guardian ad litem of John Hicks, infant."

As to those matters stated to be alleged by way of counterclaim in "The answer and counterclaim of the defendant Marion D. Hicks, guardian ad litem of John Hicks, infant, against the complainant Ella Hicks as individual and as acting execu-

trix and trustee of and under the last Will and Testament of John Hicks, deceased," the complainant Ella Hicks, individually and as acting executrix and trustee of and under the last will and testament of John Hicks, deceased, says that:

1. Complainant does not know whether the allegations contained in the first paragraph of the subdivision numbered "5" are, or are not, true, and complainant repeats and reiterates the allegations contained in the paragraphs numbered "1" to "3," inclusive, "9" to "15," inclusive, and "23" to "28," inclusive, of her bill of complaint, and makes the same a part of this answer.

2. Complainant denies the allegations contained in the second paragraph of the subdivision numbered "5" except as admitted in the following statements:

(a) On and after March 20, 1913, or thereabouts, complainant, as acting trustee under the will of John Hicks, deceased, collected income from the real property mentioned and referred to in the subdivision numbered "Fifth" of the will of John Hicks, deceased, and paid out moneys, amounting in the aggregate to a large sum of money, for the upkeep of said real property, and complainant also paid to and for Percy D. Hicks and Leon Hicks named in said subdivision numbered "Fifth" of said will of John Hicks, deceased, divers sums of money, which moneys so paid to and for said Percy D. Hicks and Leon Hicks amounted in the aggregate to a large sum of money; and

(b) Complainant repeats and reiterates the allegations contained in the paragraphs or subdivisions numbered "1" to "30," inclusive, of her bill

of complaint, and makes same a part of this answer.

3. Answering the third paragraph of the subdivision numbered "5" complainant says:

(a) She, individually, has no interest in the real property mentioned and referred to in the subdivision numbered "Fifth" of said will of John Hicks, deceased;

(b) She has no knowledge as to whether the defendants Joseph A. Hicks, Florence Hicks or Elena M. Hicks has any interest in said real property, and leaves the determination of that subject to the adjudication of this Court;

(c) She repeats and reiterates the allegations contained in the paragraphs or subdivisions numbered "1" to "15," inclusive, and "24" to "30," inclusive, of her bill of complaint, and makes same a part of this answer.

4. Answering the allegations contained in the fourth paragraph of the subdivision numbered "5" complainant says:

(a) Said allegations are denied; and

(b) Complainant repeats and reiterates the allegations contained in the paragraphs or subdivisions numbered "1" to "30," inclusive, of her bill of complaint and makes same a part of this answer.

Complainant further says:

5. She repeats and reiterates the allegations contained in the paragraph "(a)" of the subdivision numbered "2" hereof.

6. She prays this Court to take and state an account of the income of the real property mentioned and referred to in the subdivision numbered "Fifth" of the will of John Hicks, deceased, received by her, as an individual and as acting executrix and trustee of and under the will of John Hicks, deceased, or in one or more of such capacities, and of her payments for and on account of said real property, and of her payments to and for the defendants to this suit and to Percy D. Hicks mentioned in the subdivision numbered "Fifth" of the will of John Hicks, deceased, and she further prays that this Court adjust and determine how much, if anything, each of the parties to this suit should pay to other or others of the parties to this suit.

J. R. BOWEN,
Solicitor of Complainant.

Replication.

[Filed March 12, 1924.]

IN CHANCERY OF NEW JERSEY.

Between
ELLA HICKS,
Complainant,
and
LEON HICKS, *et als.*,
Defendants.
} On Bill, &c.

Replication on behalf of Marion D. Hicks, guardian ad litem of John Hicks, infant.

Defendant joins issue on the answer of the com-

plainant to the counterclaim of the defendant as set forth in complainant's so-called replication.

JOHN S. APPLEGATE & SON,
Solicitors of defendant, Marion D. Hicks, guardian ad litem of John Hicks.

Answer of Defendants Joseph A. Hicks (known also as Joseph Hicks) and Elena M. Hicks (known also as Lena Hicks) to Matters Stated to be Alleged by Way of Counterclaim in "The Answer and Counterclaim of the Defendant Marion D. Hicks, Guardian ad litem of John Hicks, Infant."

[Filed March 11, 1924.]

IN CHANCERY OF NEW JERSEY.

Between
ELLA HICKS,
Complainant,
and
LEON HICKS, *et als.*,
Defendants.
} On Bill, &c.

The defendants Joseph A. Hicks (known also as Joseph Hicks) and Elena M. Hicks (known also as Lena Hicks) answering the matters stated to be alleged by way of counterclaim in "The answer and counterclaim of the defendant, Marion D. Hicks, guardian ad litem of John Hicks, infant, against the complainant Ella Hicks as individual and as acting executrix and trustee of and under

the last Will and Testament of John Hicks, deceased," say that:

1. The allegations contained in the first paragraph of the subdivision numbered "5" are denied.

2. The allegations of the second paragraph of the subdivision numbered "5" are denied, except as admitted by the following statement:

On and after on or about March 20, 1913, the complainant Ella Hicks as acting trustee under the will of John Hicks, deceased, collected income accruing from the premises mentioned and described in the subdivision numbered "Fifth" of the will of John Hicks, deceased.

3. The allegations of the third paragraph of the subdivision numbered "5" are denied, excepting as admitted in the following statement:

The complainant, individually, has no interest in the premises mentioned and described in the subdivision numbered "Fifth" of the will of John Hicks, deceased.

4. The allegations of the fourth paragraph of the subdivision numbered "5" are denied.

Further answering these defendants say that:

5. On December 17, 1923, the defendant John Hicks became seized of and entitled to, and, in so far as these defendants have any knowledge or information, still is, seized of and entitled to one equal undivided eighth part of the lands and premises mentioned and described in the subdivision numbered "Fifth" of the will of John Hicks, deceased.

6. On December 17, 1923, these defendants each

severally became seized of and entitled to one equal undivided eighth part of the lands and premises mentioned and described in the subdivision numbered "Fifth" of the will of John Hicks, deceased, and these defendants, ever since December 17, 1923, have been, and still are, each severally seized of and entitled to one equal undivided eighth part of said lands and premises.

7. On and after about March 20, 1913, the complainant as acting trustee under the will of said John Hicks, deceased, collected and received income from the real property mentioned and referred to in the subdivision numbered "Fifth" of said will of John Hicks, deceased, and paid moneys for the upkeep of said property, and the complainant also paid moneys to and for the Leon Hicks and Percy D. Hicks mentioned in said subdivision numbered "Fifth" of said will of John Hicks, deceased, but to what amounts and how much exactly these defendants do not know and pray a discovery thereof.

8. These defendants pray that this Court take and state an account of the income of said lands and premises which the parties to this suit, and each and every of them, have received, and the moneys paid for the upkeep of said lands and premises, and by whom, and the moneys received by the parties to this suit, and each of them, from said complainant, and that this Court clear, adjust and determine how much, if anything, each of the parties to this suit should pay to other or others of the parties to this suit for, upon or by reason of income received from said lands and premises and for payments made for the upkeep of said

lands and premises, and of payments made to and for the parties to this suit by the complainant.

EMANUEL WEITZ,
Solicitor of defendants Joseph A. Hicks (known also as Joseph Hicks) and Elena M. Hicks (known also as Lena Hicks).

Replication.

[Filed March 12, 1924.]

IN CHANCERY OF NEW JERSEY.

Between
ELLA HICKS,
Complainant,
and
LEON HICKS, *et als.*,
Defendants.
} On Bill, &c.

Replication in behalf of Marion D. Hicks, guardian ad litem of John Hicks, Infant.

Defendant joins issue on the answer of the defendants Joseph A. Hicks (known also as Joseph Hicks and Elena M. Hicks (known also as Lena Hicks) as set forth in said defendants' answer to the answer and counterclaim of the defendant Marion D. Hicks, guardian ad litem of John Hicks, Infant.

JOHN S. APPLEGATE & SON,
Solrs. of Marion D. Hicks, Guardian ad Litem of John Hicks.

Amended Answer of Defendants Joseph A. Hicks (known also as Joseph Hicks) and Elena M. Hicks (known also as Lena Hicks) to the Bill of Complaint.

[Filed March 11, 1924.]

IN CHANCERY OF NEW JERSEY.

Between
ELLA HICKS,
Complainant,
and
LEON HICKS, *et als.*,
Defendants.
} On Bill, &c.

Now come the defendants, Joseph A. Hicks (known also as Joseph Hicks) and Elena M. Hicks (known also as Lena Hicks) by Emanuel Weitz, their solicitor, and hereby withdraw the answer heretofore filed by them with the defendants Leon Hicks and Beatrice Hicks to the bill of complaint, and in place of the answer so withdrawn these defendants Joseph A. Hicks (known also as Joseph Hicks) and Elena M. Hicks (known also as Lena Hicks) answering the bill of complaint, say that:

1. The allegations contained in the paragraphs or subdivisions numbered "1" to "30", inclusive, are admitted.

2. The rights of these defendants are submitted to the judgment of the Court.

3. These defendants submit that:
On December 17, 1923, these defendants each

severally became seized of and entitled to one equal undivided eighth part of the lands and premises mentioned and described in the subdivision numbered "Fifth" of the will of John Hicks, deceased, and these defendants, ever since December 17, 1923, have been, and still are, each severally seized of and entitled to one equal undivided eighth part of said lands and premises.

4. On and after about March 20, 1913, the complainant as acting trustee under the will of said John Hicks, deceased, collected and received income from the real property mentioned and referred to in the subdivision numbered "Fifth" of said will of John Hicks, deceased, and paid money for the upkeep of said property and also paid divers moneys to and for the Leon Hicks and Percy D. Hicks mentioned in said subdivision numbered "Fifth" of said will of John Hicks, deceased, but to what amounts and how much exactly these defendants do not know and pray a discovery thereof.

5. These defendants pray that this Court take and state an account of the income of said lands and premises which the parties to this suit, and each and every of them, have received, and the moneys paid for the upkeep of said lands and premises, and by whom, and the moneys received by the parties to this suit, and each of them, from said complainant as acting trustee as aforesaid. and that this Court clear, adjust and determine how much, if anything, each of the parties to this suit should pay to other or others of the parties to this suit for, upon or by reason of income received from said lands and premises and of payments made for the upkeep of said lands and

premises, and of payments made to and for the parties to this suit by the complainant as acting trustee as aforesaid, or otherwise.

EMANUEL WEITZ,
Solicitor of defendants Joseph A. Hicks (known also as Joseph Hicks) and Elena M. Hicks (known also as Lena Hicks).

Replication to Amended Answer of Joseph A. Hicks (known also as Joseph Hicks) and Elena M. Hicks (known also as Lena Hicks).

[Filed March 15, 1924.]

IN CHANCERY OF NEW JERSEY.

Between
ELLA HICKS,
Complainant,
and
LEON HICKS, *et als.*,
Defendants.
} On Bill, &c.

The complainant joins issue on the amended answer of the defendants Joseph A. Hicks (known also as Joseph Hicks) and Elena M. Hicks (known also as Lena Hicks).

J. R. BOWEN,
Solicitor of Complainant.

Decree Pro Confesso.

[Filed May 20, 1924.]

IN CHANCERY OF NEW JERSEY.

Between

ELLA HICKS,
Complainant,

and

LEON HICKS, *et als.*,
Defendants.

} On Bill, &c.

This cause being opened to the Court by James R. Bowen, of counsel with the complainant, and it appearing that process of subpoena for the defendant Florence Hicks to answer the bill of complaint of the complainant hath been duly issued and returned served upon said defendant Florence Hicks, and that said defendant Florence Hicks has not filed an answer to said bill in the office of the Clerk of this Court within the time limited by law and the rules of this Court, or at any other time, but that she has wholly failed and neglected so to do.

It is on this 20th day of May, Nineteen hundred and twenty-four, on motion of James R. Bowen, of counsel with the complainant, Ordered, decreed and directed that the complainant's bill be, and the same hereby is, taken as confessed against said defendant Florence Hicks to the end that such decree may be made against her as the Chancellor shall think equitable and just.

E. R. WALKER,
C.

Order of Reference.

[Filed June 20, 1924.]

IN CHANCERY OF NEW JERSEY.

Between

ELLA HICKS,
Complainant,

and

LEON HICKS, *et als.*,
Defendants.

} On Bill, &c.

This matter being opened to the Court by James R. Bowen, of counsel with the complainant, and the solicitors for the defendants Leon Hicks, Beatrice Hicks, Joseph A. Hicks (known also as Joseph Hicks), Elena M. Hicks (known also as Lena Hicks) and Marion D. Hicks individually and as substitutionary administratrix with the will of Percy D. Hicks (known also as Percy Hicks), deceased, annexed, and as guardian of the person and property of John Hicks, consenting to the making of this order; and due and timely notice of application for this order having been given to Marion D. Hicks, guardian ad litem of the infant defendant John Hicks; and a decree pro confesso having been duly entered against the defendant Florence Hicks; and no good reason being shown to the contrary.

It is on this 20th day of June, Nineteen hundred and twenty-four, on motion of James R. Bowen, of counsel with the complainant, Ordered that the above entitled cause be referred to Hon. John Griffen, one of the Vice Chancellors of this Court,

to hear the same for the Chancellor, and to report thereon to him and to advise what order or decree should be made herein.

E. R. WALKER,
C.

It is hereby consented that the foregoing Order may be made.

LEO J. WARWICK,
Solicitor for defendants Leon Hicks and Beatrice Hicks.

EMANUEL WEITZ,
Solicitor for defendants Joseph A. Hicks (known also as Joseph Hicks) and Elena M. Hicks (known also as Lena Hicks).

JOHN S. APPLEGATE & SON,
Solicitors for defendant Marion D. Hicks individually and as substitutionary administratrix with the will of Percy D. Hicks (known also as Percy Hicks), deceased, annexed, and as guardian of the person and property of John Hicks.

Due and timely service of notice of application for the foregoing order is hereby admitted.

MARION D. HICKS,
Guardian ad litem of defendant John Hicks.

Order Appointing Receiver.

[Filed January 19, 1925.]

IN CHANCERY OF NEW JERSEY.

Between
ELLA HICKS,
Complainant,
and
LEON HICKS, *et als.*,
Defendants.
} On Bill, &c.

This matter being opened to the Court by James R. Bowen, solicitor of the complainant, in the presence of John S. Applegate, solicitor of the defendants, Marion D. Hicks, individually and substitutionary administratrix with the will annexed of Percy Hicks, deceased, and guardian of John Hicks, infant and John Hicks, and Emanuel Weitz, solicitor for the defendants Joseph A. Hicks (known also as Joseph Hicks) and Elena M. Hicks (known also as Lena Hicks), and Leo J. Warwick, solicitor of the defendants, Leon Hicks and Beatrice Hicks;

And it appearing that it is necessary in the interest of the Estate of John Hicks, deceased, and the subject matter of this suit pending the termination thereof that a receiver be appointed to take charge of the rents and income therefrom;

And it further appearing that the parties hereto have consented to the appointment of said receiver;

It is on this 19th day of January, 1925,

ORDERED, that Leon Hicks, of the City of Long Branch, be and he hereby is appointed receiver

pendente lite of one-half of the rents and income accruing and which have accrued from the real estate designated at 188-190 Broadway, in the City of Long Branch, County of Monmouth and State of New Jersey; and said receiver shall have authority to possess, receive in his own name as such receiver and sue for such property and things in action, and to pay one-half of all taxes that may accrue and to keep said premises in necessary repair, and to pay one-half of all expenses necessary for the care, management and preservation of the property and insurance thereon.

The said receiver shall give bond in the sum of five thousand ($5,000) dollars, with sufficient sureties to be approved by one of the Masters of this Court as to form and sufficiency of surety.

Respectfully advised,

E. R. WALKER,
C.

JOHN GRIFFIN,
V. C.

We hereby consent that the foregoing order may be entered.

J. R. BOWEN,
Solicitor of Complainant.

LEO J. WARWICK,
Solicitor for Defendants Leon Hicks and Beatrice Hicks.

EMANUEL WEITZ,
Solicitor for Defendants Joseph A. Hicks (known also as Joseph Hicks) and Elena M. Hicks (known also as Lena Hicks).

JOHN S. APPLEGATE & SON,
Solicitor for Defendant Marion D. Hicks, individually and as substitutionary administratrix, etc., and guardian of the person and property of John Hicks.

Minutes of Final Hearing.

IN CHANCERY OF NEW JERSEY.

Between
ELLA HICKS,
Complainant,
and
LEON HICKS, *et al.*,
Defendants.
} On Bill, etc.

APPEARANCES:

JAMES R. BOWEN, Esq., for Complainant.
Messrs. J. S. APPLEGATE & SON, for Marion D. Hicks, guardian *ad litem* of John Hicks, infant.
EMANUEL WEITZ, Esq., for Joseph A. and Elena M. Hicks.
LEO J. WARWICK, Esq., for Leon Hicks and Beatrice Hicks.

Before—Hon. JOHN GRIFFIN, Vice Chancellor.

Chancery Chambers, Jersey City, N. J.
January 13, 1925.

The Vice Chancellor: As I understand it, your difficulty is with the fifth paragraph of this will?

Mr. Bowen: The fifth paragraph.

The Vice Chancellor: Well, where is there any doubt about it?

Mr. Bowen: Well, it says, "at which time, I will devise and bequeath to my two sons," etc. You see, he first devises the property to the brother, and by a codicil, he adds the wife as a trustee, and that is to run until Leon reaches the age of thirty, "at which time, I will devise, and bequeath," etc.; and there is no residuary clause.

The Vice Chancellor: He gives the net income to Percy and Leon until Leon shall arrive at the age of thirty years, at which time, "I will, devise and bequeath to my said sons," etc. You think that that language suspends the vesting until Leon attains the age of thirty years, and that if either dies before that time, it lapses?

Mr. Bowen: It lapses.

The Vice Chancellor: I have some doubt whether he meant that, because the will was not drawn by a lawyer, or he never would have said "I will devise and bequeath," etc.; he would say, "I give, devise and bequeath." Who are the contesting parties?

Mr. Applegate: I represent the widow and infant child of the Hicks that died before Leon came to the age of 30 years, namely, Percy Hicks; and under Percy's will he left his interest one-third to his widow, and two-thirds to the infant child. I appear for those two persons.

Mr. Weitz: I appear for the two of the heirs, Elena Hicks and Joseph A. Hicks.

The Vice Chancellor: What have you to say as to that clause, Mr. Applegate?

Mr. Applegate: I do not think there is any doubt about it whatever, that the interest is a vested interest upon the death of the testator. You have got to construe the will after looking at the entire contents of the will, and take into consideration, in the first instance, that this property was to be held in trust—left to the trustee, to pay the interest over. All the cases seem to hold, under such circumstances, that that is strong evidence in favor of the conclusion that the estate was vested, and intended to be, by the testator; otherwise, why would he, with one hand, direct to give the interest of the estate, the income, over, and, with the other, take it away upon the happening of some event?

The Vice Chancellor: It may be that he intended to give the income to Percy and Leon until Leon attained the age of thirty years, and then to have it vest in both, and that he was not concerned with the heirs of Percy and Leon, if either one of them died before attaining the age of 30 years.

Mr. Applegate: He uses the words "tenants in common," which would seem to indicate that he did consider the heirs; otherwise, he would have said "joint tenants."

The Vice Chancellor: Well, he assumed that Percy would live until Leon attained the age of thirty years, and then they would take as tenants in common.

Mr. Applegate: There is also the fact as suggested by Mr. Bowen, that there is no residuary clause, and if the testator had in mind the possibility that the estate would lapse with this con-

tingent interest, he would have provided a residuary clause, and not permit part of his estate to pass as though he had died intestate. Your Honor will notice that the entire family is provided for—the widow and all the daughters and all the children; now, it cannot be possible that this man, after having provided for his entire family, then left his will in such form that, upon the happening of a certain event, one of these children (which the evidence will show he considered highly) should receive nothing upon his death. It was his desire, according to the phraseology of the will, to place the children upon the same footing, so far as the inheritance is concerned.

The Vice Chancellor: Now, you see, in the next paragraph (I read that to see if there was anything in that where similar language was used) he says: (Reading the Sixth Clause). There again, but in a different form, he provided that when Leon attained the age of twenty one years, the trust shall cease. Those are the only two Clauses in which there is language which rather indicates the intention of the testator.

Mr. Bowen: If he had used the word "when" (and "when" is equivalent to "at which time"), the case would come within *Gifford vs. Thorne,* and he would have died intestate. "When," or "at which time" or "if" are all equivalent expressions, and *Gifford vs. Thorne* (9 N. J. Eq. 702), of course, is the leading case in the State. Had Percy died in the lifetime of the testator, then that, of course, would have been provided for by the statute, but having died after the testator, a different situation arises.

The Vice Chancellor: Yes; the statute does not apply to any case excepting where the legatee or devisee predeceases the testator.

Mr. Bowen: Yes, sir. Then I have a line of cases, which I propose to submit to the Court, which holds that an heir is a favored creature in the law, and that his rights cannot be taken away unless the testator has made a devise which cannot go beyond the testator's will; and you cannot assume that the testator would have done so and so, if such and such a thing would happen.

The Vice Chancellor: I know, but that is the old common law construction, that the common law favored the heir, and it went to the extreme limit in defeating the plain intent of the testator, for the purpose of giving it to the heir. In *Aitken vs. Sharp,* I went into that question, and I overruled one or two English cases, which, in effect, would give the property to the heir and treat the will as invalid, and, to my surprise (there were eminent counsel in the case, from Boston, New York, and New Jersey) they all agreed that I was right, and signed a consent decree where there was considerable money involved. I do not think that we construe wills according to the theory of the common law. What we look for is the plain intention of the testator, and we give it effect, if it is possible to do so, regardless of the rule that the common law favors the heir.

Mr. Bowen: But then we are up against *Gifford vs. Thorn,* which has been followed right down to date.

Mr. Applegate: Well, in that case of *Gifford vs. Thorn,* if your Honor please, after considering the entire will, and its contents, the Court reached the conclusion that, irrespective of the words used by the testator, the estate ought to be contingent. There is no hard and fast rule that applies, so far as "if," "when," etc. are concerned. They

undertake to arrive at the intention of the testator, after considering the entire contents of the will, as indicating what his intention was; and courts are opposed to contingent interests, and if it is possible, they will resolve a question of doubt in favor of the vested interest. That seems to be the trend of the authorities in this State. I have considerable authorities here on that. I do not know as your Honor wants to go into the question at this time.

The Vice Chancellor: The only thing I see here now, in a brief examination of the will is that he gave to his trustee this property to give the income to these two sons, and when Leon reached the age of thirty years, then he devised and bequeathed this property to Percy and Leon. Now does that contain a contingent estate, or is it a vested estate? The law favors a vested estate as against a contingent estate. It is a nice question. The scrivener evidently was not a lawyer, or was not a capable one, or he never would have said, "I *will,* devise and bequeath," when the common phraseology is "I give, devise and bequeath." And in construing a will, consideration must be given to the character of the person who drew the will, as apparent in the will itself. I found, in *Aiken vs. Sharp,* that that thing had to be done; and the degree of latitude one had in construing a will was due to the fact that the person who drew the will did not understand legal phraseology, and the will had to be construed from the four corners of the will, taking it from every angle. Who contends for the construction that no estate passed to Percy?

Mr. Weitz: I contend that. I contend that there was a condition precedent, that Leon should

become of the age of 30 before the title would vest. Now, in as much as Percy died before Leon's attaining the age of 30, the condition precedent was not established, and that there was no vesting and that if title vested at the same time he reached that age, it could not have passed.

The Vice Chancellor: You have your authorities on that, have you?

Mr. Weitz: I am following the authorities under *Gifford* vs. *Thorn,* which has been brought right straight down until recent years.

The Vice Chancellor: All right; have you any testimony to take?

Mr. Bowen: On account of their being one person against whom a decree *pro confesso* was taken, and on account of one of the parties being an infant, I think we had better have a record.

The Vice Chancellor: Oh, yes.

MRS. ELLA HICKS, sworn.

Direct examination by Mr. Bowen:

Q. Where do you reside? A. Long Branch.

Q. And you are the complainant in this cause? A. Yes.

Q. You are the widow of John Hicks? A. Yes, I am.

Q. Where did Mr. Hicks die? A. Long Branch.

Q. When? A. The 2nd of August, 1910.

Mr. Bowen: I offer in evidence certified copies of the following papers:

The Petition for Probate of the Will of John Hicks, deceased; the Will of John Hicks, deceased, with the two codicils annexed (the 11th Clause is really a codicil

as your Honor will notice; it was signed after the execution of the will); also the proofs of the execution of the will; the qualification of the executors; order of the Surrogate admitting the will to probate, and granting letters testamentary to Ella Hicks and Martin D. Hicks, and the letters testamentary issued.

(These papers are marked as one Exhibit, C, 1).

Mr. Bowen: I also offer in evidence Petition of Martin D. Hicks that he be discharged from the further performance of the duties of his office as executor and trustee; and an order therein of the Monmouth County Court, dated July 3rd, 1913, relieving and discharging Martin D. Hicks from the duties of his office.

(Admitted and marked Exhibit, C, 2).

Mr. Applegate: Those matters are all set forth in the bill of complaint, and all admitted in the answer.

The Vice Chancellor: There is an infant.

Mr. Applegate: I think, if you simply read the allegations in the answer—

The Vice Chancellor: No; proof has to be put in because there are infants.

Mr. Weitz: There is also an absent defendant.

Q. Did you and Martin D. Hicks act as executors and trustees from the date of your appointment until Mr. Martin D. Hicks was discharged? A. Yes.

Q. And ever since Martin D. Hicks was dis-

charged, you have been acting as the executor and trustee of this estate? A. Yes.

Q. How many children did your husband have —he had four, did he not? A. Four, yes, sir.

Q. He had five—one is dead? A. Yes, sir.

Q. And what were their names? A. Eva, Percy, Leon, Joseph and Lena.

Q. Now the first one you mentioned was who? A. Eva.

Q. Is she alive? A. No.

Q. She died when—in infancy? A. Yes.

Q. Never married ? A. Oh, no; about two years and a half old she was.

Q. And your husband was married twice, was he not? A. Yes.

Q. By his first wife, who were his children? A. Eva, Percy and Leon.

Q. And by you, who were his children? A. Joseph and Lena.

By the Vice Chancellor:

Q. When did Percy die? A. 1918.

Q. How old was he when he died? A. I just don't remember.

Q. Do you know how old Percy was when he died? A. I don't know exactly; I think about 29, I am not quite sure; I think about 29.

Q. And when did Leon reach the age of thirty? A. 1923, December 17th.

By Mr. Bowen:

Q. Percy was also known as John? A. No.

Q. Leon was known as John? A. That is the way it was recorded—as "John."

Q. And he was born on December 17, 1893? A. Yes.

Mr. Bowen: I offer in evidence certified copy from the Bureau of Vital Statistics of the State of New Jersey, of the birth of Leon Hicks.

(Admitted and marked Exhibit C, 3).

By the Vice Chancellor:

Q. Well, then, Percy was older than John? A. Yes.

By Mr. Bowen:

Q. Is Percy, one of your husband's children, alive or dead? A. Dead.

Q. When did he die? A. 1918, September 1st, as near as I can remember.

Mr. Bowen: I offer in evidence certified copy of petition of Long Branch Trust Company for the probate of the will of Percy D. Hicks; renunciation of Edward R. Slocum, named as one of the executors; the will of Percy D. Hicks; proofs of probate, order for probate, and for letters testamentary to be issued to Long Branch Trust Company; and letters testamentary issued to the Long Branch Trust Company.

(Admitted and marked as one Exhibit C, 4).

Mr. Bowen: I also offer in evidence the petition of the Long Branch Trust Company asking to be discharged from the further performance of the duties of its office as executor of the will of Percy D. Hicks; and the order of the Monmouth County Orphans' Court discharging the Long Branch Trust Company as executor.

(Admitted and marked Exhibit C, 5).

Mr. Bowen: I also offer in evidence, certified copy of petition of Marion D. Hicks for letters of substitutionary administration, with the will of Percy D. Hicks annexed; the order of the Monmouth County Orphans' Court directing that letters of substitutionary administration, with the will annexed, be issued to Marion D. Hicks; and letters of substitutionary administration issued to Marion D. Hicks.

(Admitted and marked as one Exhibit C, 6.)

Mr. Bowen: I also offer in evidence the letters of guardianship issued to Marion D. Hicks, of the person and property of John Hicks, child of Percy D. Hicks.

(Admitted and marked Exhibit C, 7.)

Q. Was Percy D. Hicks married? A. Yes.

Q. What was the name of his wife? A. Marion D. Hicks.

Q. Did she live after Percy's death? A. Yes.

Q. And is she still alive? A. Yes.

Q. Did Percy D. Hicks ever have any children? A. One.

Q. And what is the name of that child? A. John.

Q. How old is that child? A. I am not sure—nine, I think, last September.

Q. Did Percy D. Hicks marry before or after his father's death? A. After.

Q. Who was the elder of the two children, Percy or Leon? A. Percy.

Q. How much older was Percy than Leon? A. A little over four years.

Q. Is Leon married? A. Yes.

Q. And what is the name of his wife? A. Beatrice.

Q. Is Joseph married? A. Yes.

Q. What is the name of his wife? A. Florence.

Q. Is Elena, or Lena, married or single? A. Single.

Q. Is Percy's son, John, married or single? A. Single.

Mr. Bowen: That is all, Mr. Applegate; I think that completes the record.

The Vice Chancellor: Any cross examination?

Mr. Applegate: I think not, if your Honor please. There is a question involved in this proceeding of the counterclaim filed on the part of the infant and widow, requiring Mrs. Hicks, as trustee, to account.

Mr. Bowen: We have joined in asking for the accounting in the Court; and, of course, the distribution of the moneys will follow the construction of the will.

Mr. Applegate: To a certain extent; and the question will become important, no matter how the decision of the court will be on the question of this will, because we contend there are moneys to be accounted for by the trustee, even before the death of Percy Hicks.

Mr. Bowen: If there are any moneys found by the Master to have been payable to Percy at the time of his death, my notion is that those moneys should go to the administrator of Percy's estate.

The Vice Chancellor: There is no question about it.

Mr. Bowen: And as to the moneys that accrued after Percy's death, they should be

distributed in accordance with whatever construction your Honor places on the will.

Mr. Applegate: There is no question about that. The only question I am raising now is whether we shall go into the question of whether or not the widow, Mrs. Hicks, shall be required to account.

The Vice Chancellor: Well, that can be determined after the will is construed.

Mr. Bowen: We all join in the prayer for an accounting in this Court.

Mr. Applegate: Well, there will be no difficulty then, whatever about that.

Mr. Weitz: I think, at this time, that it might not be amiss for the Court to appoint a receiver, for this reason—that Leon Hicks has collected one-half of the rents, and I understand that the widow of Percy has notified the people not to pay any rent to the trustee under the will of Mr. Hicks. Now, no one is collecting that rent, as far as I know, and no one is taking care of that half interest in the building, unless Leon, who is collecting half of the rent, is taking care of it; there is half of it that is not being taken care of. One-half of the rent is not being paid; or if it is, we do not know to whom.

Mr. Applegate: I think, really, that some one ought to be appointed to collect the rent, because the tenants are at sea; they don't know what to do.

The Vice Chancellor: Well, if you draw a consent order, I will sign it.

Mr. Bowen: Can we agree upon any receiver?

Mr. Applegate: Whom do you suggest?

Mr. Bowen: Well, whom do you suggest, Mr. Weitz?

Mr. Weitz: The nearest one I know is Mr. McMichael in Asbury Park.

The Vice Chancellor: Oh, a real estate agent in Long Branch could do it.

Mr. Weitz: Frank Howell, or Green, I suggest. I understand they are both in Long Branch.

Mr. Warwick: If your Honor please, I am appearing in the case for Leon Hicks, and it seems to be conceded by all that his interest is at least a one half undivided share, vested now. If one contention is true, he has even more than that; if the other is true, one half interest exists in him. He is collecting one half of the rents representing his interest; the other half is being retained by the tenants, and has not been paid to us at all.

The Vice Chancellor: How long has this been going on?

Mr. Applegate: Over a year.

The Vice Chancellor: Well, why was not an application made for a receiver before?

Mr. Warwick: It was hoped at the time, I believe, that they might agree upon some friendly intermediary, so as to avoid the expense of a receivership. That, I think, was the thought at the time.

The Vice Chancellor: Well, just agree on a receiver.

Mr. Applegate: We have no objection to Mr. Leon Hicks. He is the party in possession of one half.

The Vice Chancellor: It might be better to have him. Is there any objection to having him?

Mr. Brown: No, I have no objection if he gives bond.

Mr. Weitz: That is satisfactory to my client.

The Vice Chancellor: Then take an order appointing Leon Hicks to collect the rent, permitting him, however, to withdraw from the collections his own one half share. There is nothing in the law that does not, at least, give him one half, and he can hold the remaining half as receiver until the further order of the Court.

Mr. Applegate: I think that Leon Hicks has paid the taxes.

Mr. Warwick: He has been taking care of the property.

The Vice Chancellor: Well, of course, for that he will be reimbursed.

Mr. Bowen: Now, the amount of the bond?

The Vice Chancellor: How much of the taxes are unpaid?

Mr. Leon Hicks: About $1000. It was paid by me.

The Vice Chancellor: How much are the rents?

Mr. Weitz: About $250 a month.

Mr. Leon Hicks: More than that.

Mr. Bowen: Then there is a year's rent he will have to collect. I think the order should be made broad enough to permit him to collect the arrears.

The Vice Chancellor: Yes.

Mr. Weitz: $255 a month is about the total of the rents.

The Vice Chancellor: About $3,000 a year, and there is $1,000 in arrears—that would be about $4,000.

The Vice Chancellor: (After further discussion). Put this on the record: It is stipulated and agreed between the counsel of the various parties that Leon Hicks shall be appointed receiver; that he shall give a bond in the sum of $5,000. It is conceded that the amount of the income is about $3,000 a year, and during the past year Leon has collected his own one-half, leaving about $1,500 uncollected for the past year. The order shall be broad enough, in appointing the receiver, to collect the back rents as well as those accruing in the future.

Mr. Bowen: And that, out of the rents which are collected, Leon Hicks, should be paid, each month, 35%, I suppose—he is to pay the taxes.

The Vice Chancellor: Well, he is the receiver.

Mr. Bowen: One-half of the net rents, then, should be paid to Leon monthly?

Mr. Weitz: That is right.

The Vice Chancellor: He is not appointed receiver for that; he is only appointed receiver for one-half.

Mr. Applegate: Now, if your Honor please, I should like to put a witness on the stand—Mrs. Hicks, the widow of Percy Hicks and the guardian of the infant—for this purpose—I will announce my purpose so that your Honor might rule upon it now, if necessary—I should like to get upon the record, as nearly as we possibly can, the characteristics, at least in part, of Leon Hicks, at or

about the time that Mr. Hicks, the testor drew this will; and also the general character or characteristics of Percy Hicks, in order that there may be some atmosphere and background that I think may possibly aid the Court in reaching a conclusion as to what the intent of the testator was at the time this will was drawn.

The Vice Chancellor: I suppose you have the right to prove the surrounding circumstances under which the will was drawn. You may put the lady on.

MRS. MARION D. HICKS, sworn.

Direct examination by Mr. Applegate:

Q. Mrs. Hicks, you are the widow of Percy Hicks, are you? A. Yes.

Q. And the mother of John Hicks, the infant in this suit? A. Yes.

Q. I do not think it appears how old the testator was—how old was Mr. John Hicks, the testator, at the time of his decease? A. Well, as near as I remember, he was between 45 and 50.

Q. Which—the grandfather? A. The grandfather.

Q. At the time of his death? A. Yes.

Mr. Bowen: Is this witness talking from personal knowledge?

The Witness: Yes.

Q. How old was Percy Hicks when you and he were married? A. He was 23—between 23 and 24—nearest 24.

Q. And you were married after the death of John Hicks? A. Yes.

Q. What was the business of John Hicks? A. Jeweler.

Q. Where did he conduct that business? A. He conducted it at Long Branch, but he left the business, for a year or two before he died, to Percy Hicks; Mr. Hicks was not well for a year or two before he died, and he left the care of his jewelry business to Percy.

Q. And in what building was the business conducted? A. In the Hicks building.

Q. And the Hicks Building is a part of the estate that is now in dispute? A. Yes.

Q. And that is located on Broadway, Long Branch? A. Yes.

Q. And consists of what? A. It is a brick building, and consists of three stores—one is a store subdivided into two parts.

Q. And in one of those stores John Hicks conducted the jewelry business for some time, did he? A. Yes; thirty years he was in the jewelry business.

Q. And Percy Hicks was associated with him?

The Vice Chancellor: He could not have conducted the business for thirty years; he was only forty-four when he died.

The Witness: Well, I say he might be fifty; I don't know exactly how old Mr. Hicks was; he seemed to me a young man, comparatively young; fifty, he may have been.

The Vice Chancellor: Well, if the age is important, Mrs. Ella Hicks can tell.

Q. At any rate, Percy Hicks was associated with his father in that business? A. Yes.

Q. For how many years? A. Well, I understood the—

Q. No, no. A. Well, twenty-five or thirty years, as near as I know.

Q. That Percy was associated with his father? A. No; Percy used to work in the jewelry store after school, from the time he was a little boy.

Q. And after Mr. Hicks was taken ill, as you say, about the last year of his life, then did Percy conduct the business? A. Percy conducted it then; and every year Mr. Hicks went to New Orleans and left Percy in the store.

Q. Was Percy of steady disposition? A. Yes, he was.

Q. And industrious? A. Yes.

Q. And sober? A. Yes.

Q. A man of good habits? A. Yes.

Q. Leon Hicks was a brother of Percy? A. Yes.

Q. And Leon also was a boy of good habits, was he not—good character? A. Well, he was a very young boy; he was very wild.

Q. Well, you are not speaking now derogatorily of his character? A. Not of his character, no.

Q. And you refer to Leon, as a boy, being a little wild—what do you mean by that? A. Well, he ran away from school a couple of times, and he rode his bicycle around the Loop-the-Loop down there.

Q. What do you mean by "Loop-the-Loop"? A. Well, he was wild; very wild; he used to worry his father.

Q. Well, was he in a circus or anything of that sort? A. He went in vaudeville once.

Q. But he was a good fellow? A. A good fellow—nothing wrong; he was very young.

Q. He was also in the service was he not? A. Yes, he was in the service.

Q. Across the sea? A. Yes, across the sea.

By the Vice Chancellor:

Q. Well, he was a good, industrious young man

when he grew up, wasn't he? A. Well, I cannot speak with a knowledge of when he grew up. Up to the time he went across, I believe he worked, off and on. After that I left Long Branch, and I don't know much about him.

Cross-examination by Mr. Bowen:

Q. How long was it after the death of John Hicks that you were married? A. Mr. Hicks died in 1910, and we were married in 1912.

Q. How long had you been acquainted with your husband before your marriage? A. I knew him from the time he was a little boy.

Q. Do you know where Leon Hicks now lives? A. Yes, I do.

Q. Where does he live? A. He lives in Long Branch.

Q. With whom? A. With his wife.

Mr. Bowen: That is all, as far as I am concerned.

CASE HELD FOR BRIEFS.

Conclusions.

[Filed April 15, 1926.]

IN CHANCERY OF NEW JERSEY.

Between
ELLA HICKS,
Complainant,
and
LEON HICKS, *et als.*,
Defendants.
} On Bill, &c.

Submitted September 8, 1925; decided December 30, 1925.

Mr. JAMES R. BOWEN, for Complainant.
Messrs. J. S. APPLEGATE & SON, for Marion D. Hicks and John Hicks.
Mr. EMANUEL WEITZ, for Jos. A. Hicks and Elena Hicks.
Mr. LEO J. WARWICK, for Leon Hicks and Beatrice Hicks.

GRIFFIN, V. C.:

The bill in this cause is filed for the construction of the will of John Hicks, of the City of Long Branch, N. J., dated the 14th of March, 1910, with a codicil thereto which need not be considered.

The decedent left him surviving his widow, and, as his heirs-at-law and next of kin, Percy D. Hicks, a son; Leon Hicks, a son; Elena M. Hicks, a daughter, and Joseph Hicks, a son. In the second, third and fourth paragraphs of the will he gave certain legacies to his wife for her benefit, and also for the

benefit of his daughter, Elena, and his son, Joseph, who were infants.

The fifth paragraph of the will, which requires construction, is as follows:

> "Fifth. I will, devise and bequeath to my brother, Martin D. Hicks, the following described real property: All that certain tract of land, situate and lying on the southwestern corner of Broadway and Academy Alley, in the City of Long Branch, New Jersey, known as the Hicks Building, at No. 188-190 Broadway, together with all buildings thereon situate: In Trust, However, to receive the income from said property and pay monies for the upkeep of said property, the residue or remainder thereof to be equally paid and divided between my two sons, Percy D. Hicks and Leon Hicks, until my said Son, Leon Hicks, shall arrive at the age of thirty years, at which time I give, devise and bequeath to my said sons, Percy D. Hicks, and Leon Hicks, said real property as tenants in common."

At the time this will was made Percy was twenty-one years of age, and Leon seventeen. Leon attained the age of thirty years December 17, 1923. Percy died on September 1st, 1918, aged twenty-nine years, before Leon had attained the age of thirty. Percy left him surviving his widow, Marion, and a son, John. Percy died testate, giving two-thirds of his estate to his son and the other third to his wife, Marion.

The will of John Hicks contains no residuary clause.

It is contended by the heirs-at-law that the de-

vise to Percy and Leon created an estate on condition, which would not vest in Percy unless he was living when Leon attained the age of thirty years, and, as Percy died prior thereto, the devise lapsed and passed to the heirs-at-law. On the other hand, it is contended by the widow and child of Percy Hicks that the estate vested on the death of the testator.

If the language of the will "at which time" (referring to Leon's attaining thirty years) "I give, devise and bequeath to my said sons, Percy D. Hicks and Leon Hicks, said real property as tenants in common" stood alone, I would incline to the view that the estate was contingent. But it does not. The will gives to Martin Hicks, as trustee, the premises in question "to receive the income from said property and pay the monies for the upkeep of said property, the residue and remainder thereof to be equally paid and divided between my two sons, Percy D. Hicks and Leon Hicks, until my said son Leon shall arrive at the age of thirty years." Thus, all the income from the property, from the date of the testator's death down to the time when Leon reached the age of thirty years, was payable to these two sons; and, upon his reaching thirty, then the trust, under the will, would cease, and Percy and Leon were to take absolutely.

The plain intent of the testator, in this paragraph, was to give this property to his two sons as tenants in common, suspending their rights to manage the same until Leon reached the age of thirty years.

The rule deducible from the English authorities is that if language in a will, standing alone, would make the legacy contingent, yet if the will also

provides that the legatee should receive the income from the legacy until the period had arrived when the legatee would take, then the legacy vests in the legatee from the time of the death of the testator, subject to the control of the trustee until the time of payment arrives. *Hanson* v. *Graham,* 6 Vesey Jr., 239; 31 Full Eng. Repr., 1030; *Goodttle* v. *Whitby,* 1 Burr., 228; 97 Full Eng. Repr., 287; *Lane* v. *Soudge,* 9 Vesey Jr., 225; 32 Full Eng. Repr., 589; *Stapleton* v. *Cheales,* Prec. Ch., 318; 24 Full Eng. Repr., 150; *Fonereau* v. *Fonereau,* 3 Atk., 645; 26 Full Eng. Repr., 1171; *Dodson* v. *Hay,* 3 Bro. C. C., 405; 29 Full Eng. Repr., 511; *In Re Hart's Trust,* 3 Deg & J, 195; 44 Full Eng. Repr., 1243; *Boraston's Case,* 3 Coke Rep., 19; 76 Full Eng. Repr., 1030. This is also the rule in other states. *Fuller* v. *Winthrop,* 3 Allen (Mass.), 51; *Warner* v. *Durant,* 76 N. Y., 134.

Counsel for complainant cites *Gifford* v. *Thorn,* 9 N. J. Eq., 702, to support the theory that the estates devised to Leon and Percy were contingent and not vested. The will in that case is as follows:

> "I give and devise all the residue and remainder of my property, both in England and America, of every kind and description whatever, to the said William Jauncey Thorn when he arrives at the age of twenty-one years, to him and his heirs forever."

This clause clearly created a contingent estate. Chief Justice Green, who sat for the Chancellor, said, on p. 708: "In the present instance there is no severance of the legacy from the rest of the estate, and no appropriation of the interest to the separate benefit of the legatee; on the contrary,

the whole estate, real and personal, is vested in the hands of trustees, who are to receive the entire interest, rents and profits, for the general purposes of the will. The legatee is to receive not the interest on the residuary legacy, but a maintenance and education from the general fund, in common with the other children of Jane Mary Thorn. Such a disposition of the estate can raise no presumption of any intention on the part of the testator that the legacy should vest immediately." In his opinion the Chief Justice dealt with a great number of English cases (some of which are above cited), and said (p. 708): "Where the interest of the legacy is directed to be paid to the legatee until he receive the principal, or where the legacy is placed in the hands of trustees for the exclusive benefit of the legatee until it is directed to be paid over, the legacy will be deemed vested." The case was affirmed on appeal.

The clause in question in this case comes clearly within the rule laid down in the last clause above referred to in *Gifford* v. *Thorn, supra.* The testator set apart the premises in question, in which he had carried on his jewelry business, for the benefit of his two sons, Percy and Leon. He devised the same to his brother Martin, in trust, until Leon should arrive at the age of thirty years; and, in the meantime, directed him to receive the income from the property and pay moneys for the upkeep of the same, and the residue or remainder thereof to pay and divide equally between his two sons, Percy and Leon; and then, when Leon attained the age of thirty years, he gave, devised and bequeathed to Percy and Leon the said real estate as tenants in common.

Here we have a situation which complies with

every condition required to vest the estate. There was the property separated and taken from the mass of his estate, conveyed to a trustee to pay all the net income derived from the property to Percy and Leon until Leon reached the age of thirty years, and then he devised the property to Percy and Leon.

The case of *Gifford* v. *Thorn,* therefore, is against the theory of the complainant. (See also, *Post* v. *Herbert's Ex'rs.,* 27 N. J. Eq., 540; *Moore* v. *Matthews,* 70 N. J. Eq., 373.)

Another circumstance which tends to the above conclusion, based upon the intention of the testator, is the fact that the will contains no residuary clause, and the presumption is that the testator did not intend to die intestate; and the will was drawn by a scrivener who evidently was not well versed in the law of wills. (See *Aitaken* v. *Sharpe,* 93 N. J. Eq., 336, 346.)

I will advise a decree that, under the terms of the will, Percy and Leon took a vested estate, and that upon Percy's death his one-half interest passed to his heirs or devisees, with the right of possession in Leon when Leon attained the age of thirty years.

Hon. Bayard Stockton,
American Mechanics Building,
Trenton, N. J.

My dear Mr. Stockton:-

In Hicks vs Hicks, in my written memorandum, last page, fourth line from the bottom, will you please strike out "a" between "took" and "vested", and change "estate" to "estates," so that it will read "took vested estates"; and in the second line from the bottom, strike out "in Leon," so that it will read "with the right of possession when Leon attained the age of thirty years."

Very truly yours,

John Griffin

Final Decree.

[Filed Feb. 15, 1926.]

IN CHANCERY OF NEW JERSEY.

Between ELLA HICKS, Complainant, and LEON HICKS, *et als.*, Defendants.	On Bill, &c.

This cause coming on to be heard in the presence of James R. Bowen, of counsel with the complainant, and of Leo J. Warwick, Esq., of counsel with the defendants Leon Hicks and Beatrice Hicks, and of John S. Applegate, Jr.. Esq., of Messrs. John S. Applegate & Son, of counsel with the defendant Marion D. Hicks individually and as substitutionary administratrix with the will of Percy D. Hicks (known also as Percy Hicks) deceased, annexed, and as guardian of the person and property of John Hicks, and of Emanuel Weitz, Esq., of counsel with the defendants Joseph A. Hicks (known also as Joseph Hicks) and Elena M. Hicks (known also as Lena Hicks), and of Marion D. Hicks the guardian ad litem of the defendant John Hicks; and the bill of complaint in this cause having been heretofore taken as confessed against the defendant Florence Hicks; and the Court having read the pleadings herein and heard the proofs in open Court, and having also heard the arguments of counsel, and having considered the pleadings herein and the proofs taken in open

Court and the arguments of counsel; and it appearing to the satisfaction of this Court, and this Court now here determining and hereby adjudging that:

(1) John Hicks, late of the City of Long Branch, in the County of Monmouth, in this State, died August, 1910;

(2) Said John Hicks left a last will and testament dated March 14, 1910, with two codicils thereto annexed, one of which codicils is dated July 11, 1910;

(3) The subdivisions numbered "Fifth" and "Sixth" of said last will and testament are in the words and figures following, that is to say:

> "FIFTH.—I will, devise and bequeath to my brother Martin D. Hicks the following described real property:
>
> All that certain tract of land, situate and lying on the southwestern corner of Broadway and Academy Alley, in the City of Long Branch, New Jersey, known as the Hicks Building, at Nos. 188-190 Broadway, together with all buildings thereon situate: IN TRUST HOWEVER, to receive the income from said property and pay monies for the upkeep of said property, the residue or remainder thereof to be equally paid and divided between my two sons Percy D. Hicks and Leon Hicks until my said son Leon Hicks shall arrive at the age of thirty years, at which time I give, devise and bequeath to my said sons Percy D. Hicks and Leon Hicks said real property as tenants in common.

"SIXTH.—I will, devise and bequeath to my brother Martin D. Hicks my jewelry business, including all fixtures, merchandise and ledger accounts or bills receivable due me in the operation of my business, located in the Hicks Building at No. 188 Broadway, in the City of Long Branch, New Jersey, to be held by my said brother Martin D. Hicks in trust for my two sons Percy D. Hicks and Leon Hicks with this proviso, however, that my said brother Martin D. Hicks shall permit my said son Percy D. Hicks to manage and operate said business until my said son Leon Hicks shall become twenty-one years of age, the profits from said business during said period to be used for the benefit of my said sons Percy D. Hicks and Leon Hicks, and when my said son Leon Hicks shall become twenty-one years of age this trust shall cease and said trustee Martin D. Hicks shall convey and deliver to my said sons Percy D. Hicks and Leon Hicks all of said business."

(4) In said last will and testament said John Hicks nominated and appointed his brother Martin D. Hicks as executor thereof;

(5) In said codicil dated July 11, 1910, said John Hicks provided in the words and figures following, that is to say;

"Whereas, by my said will, dated March 14th, 1910, and witnessed by Harry Truax, Arthur Holston and Charles H. Greene, Jr., I have appointed my brother Martin D. Hicks trustee and executor thereof and I

deem it advisable that my wife Ella Hicks be made a trustee and executrix in order that she may attend to the interest of my son Leon Hicks and make provision so that he may attend a suitable school until he is twenty-one years of age or more.

"Now, I hereby revoke the appointment of the said Martin D. Hicks as such sole trustee and executor and I appoint my said wife Ella Hicks and the said Martin D. Hicks to be such trustees and executrix and executor of my said will and testament in the place of the said Martin D. Hicks alone, and I declare that my said will shall be construed and take effect as if the name of my said wife Ella Hicks were inserted in my will throughout, together with the name of my said brother Martin D. Hicks, and in all other respects I confirm my said will.";

(6) On August 18, 1910, the Surrogate of said County of Monmouth admitted said last will and testament and codicils to probate, and said last will and testament and codicils were duly recorded in the records of the office of said Surrogate;

(7) On August 18, 1910, the complainant and said Martin D. Hicks duly qualified as executors of said last will and testament and codicils;

(8) Letters testamentary with said last will and testament and codicils thereto annexed were, on August 18, 1910, issued by the Surrogate of said County of Monmouth to the complainant and said Martin D. Hicks;

(9) From the issuance of said letters testamentary until July 3, 1913, the complainant and

said Martin D. Hicks acted as executors of and trustees under said last will and testament and codicils;

(10) In and by an order of the Orphans Court of said County of Monmouth dated July 3, 1913, and filed in the office of the Surrogate of said County of Monmouth on July 3, 1913, and duly recorded in the records of the office of said Surrogate, it was ordered that said Martin D. Hicks be, and he thereby was, relieved and discharged from all further duties of his office as executor and trustee of the estate of said John Hicks, deceased, except accounting for and paying over the moneys or assets received by him by virtue of his said office;

(11) From July 3, 1913, until December 17, 1923, the complainant was sole acting executor of said last will and testament and codicils and sole acting trustee of the real property mentioned and referred to in the subdivision numbered "Fifth" of said last will and testament;

(12) Said John Hicks, deceased, left him surviving the complainant, his widow, and the defendants Leon Hicks, Elena M. Hicks (known also as Lena Hicks) and Joseph A. Hicks (known also as Joseph Hicks) and Percy D. Hicks (known also as Percy Hicks) his only children;

(13) The defendant Leon Hicks was born December 17, 1893, and arrived at the age of thirty years on December 17, 1923;

(14) Said Percy D. Hicks (known also as Percy Hicks) died on September 1, 1918, after having attained the age of twenty-one years, and

before said defendant Leon Hicks arrived at the age of thirty years;

(15) Said Percy D. Hicks (known also as Percy Hicks) left him surviving the defendant Marion D. Hicks, his widow, and the defendant John Hicks, his only child;

(16) Said Percy D. Hicks (known also as Percy Hicks) left a last will and testament dated August 30, 1918, the clauses or subdivisions numbered "Third", "Fourth" and "Fifth" whereof are as follows:

> "THIRD.—I give, devise and bequeath unto my executors, hereinafter named, all my estate, real, personal or mixed, in whatever form and wheresoever situate, in trust, however, to sell and dispose of the same as soon after my death as it can legally, and in their judgment conveniently and properly, be done, and that they distribute the proceeds thereof as follows, namely: Two thirds of my entire estate to my infant son John Hicks, nad the other one third of my estate to my wife Marion D. Hicks, which gift and devise is in lieu of dower.
>
> "FOURTH.—I hereby nominate and appoint my wife Marion D. Hicks guardian of my infant son John Hicks, to serve until he shall become of age.
>
> "FIFTH.—I hereby nominaite and appoint the Long Branch Trust Company and Edward R. Slocum executors of this my last will and Testament";

(17) Said last will and testament of said Percy D. Hicks (known also as Percy Hicks) was ad-

mitted to probate by the Surrogate of said County of Monmouth on October 24, 1918, and was recorded in the records of the office of said Surrogate;

(18) In and by an instrument in writing dated October 24, 1918, and filed in the office of said Surrogate, and recorded in the records of the office of said Surrogate, said Edward R. Slocum renounced executorship and the execution of the last will and testament of said Percy D. Hicks (known also as Percy Hicks) and refused to take upon himself the burden of the same;

(19) On October 24, 1918, letters testamentary with said last will and testament of said Percy D. Hicks (known also as Percy Hicks), deceased, annexed were issued by the Surrogate of said County of Monmouth to Long Branch Trust Company (body corporate) of the State of New Jersey;

(20) In and by an order of the Orphans Court of said County of Monmouth dated June 10, 1920, and filed in the office of the Surrogate of said County of Monmouth on June 10, 1920, and recorded in the records of the office of said Surrogate, it was ordered that said Long Branch Trust Company be, and it thereby was, relieved and discharged from all further duties of its office as executor of the estate of said Percy D. Hicks (known also as Percy Hicks), deceased, except accounting for and paying over the moneys received by it by virtue of said office;

(21) In and by an order dated September 16, 1920, and filed on said last mentioned day in the office of the Surrogate of said County of Monmouth, and recorded in the records in the office of said Surrogate, the Orphans Court of said

County of Monmouth ordered that letters of substitutionary administration with the will of said Percy D. Hicks (known also as Percy Hicks), annexed, be issued to the defendant Marion D. Hicks upon the giving by her of a bond as provided in said last mentioned order;

(22) Letters of substitutionary administration of the estate of said Percy D. Hicks (known also as Percy Hicks), deceased, to administer said estate agreeably to the will of said Percy D. Hicks (known also as Percy Hicks), deceased, were issued by the Surrogate of said County of Monmouth to said defendant Marion D. Hicks on September 16, 1920;

(23) On September 16, 1920, the Surrogate of said County of Monmouth issued to the defendant Marion D. Hicks letters authorizing her to execute the trust as guardian of the person and property of the defendant John Hicks, according to law and the terms of the last will and testament of said Percy D. Hicks (known also as Percy Hicks), deceased;

(24) The defendant John Hicks has not yet attained the age of twenty one years;

(25) The defendant Leon Hicks is married and his wife is the defendant Beatrice Hicks; and

(26) The defendant Joseph A. Hicks (known also as Joseph Hicks) is married and his wife is the defendant Florence Hicks.

It is on this 15th day of February, Nineteen hundred and twenty six, by his Honor Edwin Robert Walker, Chancellor of the State of New Jersey, Ordered, Adjudged and Decreed, and

the said Chancellor, by virtue of the power and authority of this Court, doth hereby Order, Adjudge and Decree:

FIRST.—That the provisions contained in said subdivision numbered "Fifth" of said last will and testament of John Hicks, deceased, are in all things good and valid in law.

SECOND.—That the construction and legal effect of said subdivision numbered "Fifth" of said last will and testament of said John Hicks, deceased, be, and hereby is, settled as follows:

(a) Under and by virtue of said clause or subdivision numbered "Fifth" of said last will and testament of said John Hicks, deceased, said John Hicks gave and devised to the defendant Leon Hicks and said Percy D. Hicks (known also as Percy Hicks) the lands and premises mentioned and referred to in said subdivision numbered "Fifth" of said last will and testament of John Hicks, deceased, as tenants in common;

(b) All the estate, right, title and interest of said John Hicks, deceased, in and to the lands and premises mentioned and referred to in said subdivision numbered "Fifth" of said last will and testament of said John Hicks, deceased, became vested in the defendant Leon Hicks and said Percy D. Hicks (known also as Percy Hicks) on the death of said John Hicks on August 2, 1910, subject, however, to the right, power and authority of the complainant and said Martin D. Hicks over said lands and premises and the income thereof from the death of said John Hicks on August 2, 1910, until December 17, 1923, as such right, power and authority is defined in and by the

paragraphs lettered "(c)," "(d)," "(e)," "(f)," "(g)" and "(h)" of this subdivision numbered "Second" of this decree;

(c) From the death of said John Hicks on August 2, 1910, until July 3, 1913, the complainant and said Martin D. Hicks had the right, power and authority to receive the income from the lands and premises mentioned and referred to in the paragraph or subdivision numbered "Fifth" of said last will and testament of said John Hicks, deceased;

(d) From the death of said John Hicks on August 2, 1910, until July 3, 1913, the complainant and said Martin D. Hicks had the right, power and authority to incur all such expenses as were necessary or advisable for the care, safety and preservation of the lands and premises mentioned and referred to in the subdivision numbered "Fifth" of said last will and testament of said John Hicks, deceased, and to keep said lands and premises tenantable and in good order and condition;

(e) The complainant and said Martin D. Hicks were entitled to reimbursement for all payments made by them for charges, impositions and liens imposed or acquired upon the lands and premises mentioned and referred to in the subdivision numbered "Fifth" of said last will and testament of said John Hicks, deceased, and for such expenses as were necessary or advisable for the care, safety and preservation of said lands and premises and for keeping said lands and premises tenantable and in good order and condition; and the complainant and said Martin D. Hicks were also entitled to the costs and expenses of admin-

istering, from August 2, 1910, to July 3, 1913, the trust reposed in them in and by said last will and testament of said John Hicks, deceased, including such compensation, commissions and allowances as they may have become entitled to for their services as trustees under said last will and testament of said John Hicks, deceased;

(f) From July 3, 1913, until December 17, 1923, the complainant had the right, power and authority to receive the income from the lands and premises mentioned and referred to in the subdivision numbered "Fifth" of said last will and testament of said John Hicks, deceased;

(g) From July 3, 1913, until December 17, 1923, the complainant had the right, power and authority to incur all such expenses as were necessary or advisable for the care, safety and preservation of the lands and premises mentioned and referred to in the subdivision numbered "Fifth" of said last will and testament of said John Hicks, deceased, and to keep said lands and premises tenantable and in good order and condition;

(h) The complainant is entitled to reimbursement for all payments made by her for charges, impositions and liens imposed or acquired upon the lands and premises mentioned and referred to in the subdivision numbered "Fifth" of said last will and testament of said John Hicks, deceased, and for such expenses as were necessary or advisable for the care, safety and preservation of said lands and premises and for keeping said lands and premises tenantable and in good order and condition; and the complainant is also entitled to the costs and expenses of administering, from July 3, 1913, to December 17, 1923, the trust

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reposed in her in and by said last will and testament of said John Hicks, deceased, including such compensation, commissions and allowances as she may be entitled to for her services as trustee under said last will and testament of said John Hicks, deceased;

(i) The defendant Leon Hicks is entitled to have paid to him one-half of all income received by the complainant from the lands and premises mentioned and referred to in the subdivision numbered "Fifth" of said last will and testament of said John Hicks, deceased, after the death of said John Hicks on August 2, 1910, less:

(1) One-half of such payments as the complainant may have made for charges, impositions and liens imposed or acquired upon the lands and premises mentioned and referred to in the subdivision numbered "Fifth" of said last will and testament of said John Hicks, deceased, and one-half of such expenses as were necessary or advisable for the care, safety and preservation of said lands and premises and for keeping said lands and premises tenantable and in good order and condition;

(2) One-half of the costs and expenses of administering, from August 2, 1910, to December 17, 1923, the trust reposed in the complainant in and by said last will and testament of said John Hicks, deceased, including such compensation, commissions and allowances as the complainant may be entitled to for her services as trustee under said last will and testament of said John Hicks, deceased;

(3) Such payments as the complainant may

have made for or in relation to the support, maintenance and education of said defendant Leon Hicks; and

(4) So much of the income of the lands and premises mentioned and referred to in the subdivision numbered "Fifth" of said last will and testament of said John Hicks, deceased, as said defendant Leon Hicks may have received;

(j) The defendant Marion D. Hicks is entitled to have paid to her as substitutionary administrix with the will of Percy D. Hicks (known also as Percy Hicks), deceased, annexed, one half of all income received by the complainant from the lands and premises mentioned and referred to in the subdivision numbered "Fifth" of said last will and testament of said John Hicks, deceased, covering the period from the death of said John Hicks on August 2, 1910, to September 1, 1918, less:

(1) One-half of such payments as the complainant may have made prior to September 1, 1918, for charges, impositions and liens imposed or acquired upon the lands and premises mentioned and referred to in the subdivision numbered "Fifth" of said last will and testament of said John Hicks, deceased, and one-half of such expenses, covering periods prior to September 1, 1918, as were necessary or advisable for the care, safety and preservation of said lands and premises and for keeping said lands and premises tenantable and in good order and condition;

(2) One-half of the costs and expenses of administering from August 2, 1910, to September 1, 1918, the trust reposed in the complainant in and

by said last will and testament of said John Hicks, deceased, including such compensation, commissions and allowances as the complainant may be entitled to for her services as trustee under said last will and testament of said John Hicks, deceased;

(3) So much of the income of the lands and premises mentioned and referred to in the subdivision numbered "Fifth" of said last will and testament of said John Hicks, deceased, as said Percy D. Hicks (known also as Percy Hicks) may have received; and

(4) Such payments as the complainant may have made to the executor of the last will and testament of said Percy D. Hicks (known also as Percy Hicks), deceased, and to the substitutionary administratrix with the will of said Percy D. Hicks (known also as Percy Hicks), deceased, annexed;

(k) The defendant Marion D. Hicks is entitled to have paid to her individually one-sixth of all icnome received by the complainant from the lands and premises mentioned and referred to in the subdivision numbered "Fifth" of said last will and testament of said John Hicks, deceased, covering the period subsequent to September 1, 1918, less:

(1) One-sixth of such payments as the complainant may have made subsequent to September 1, 1918, for charges, impositions and liens imposed or acquired upon the lands and premises mentioned and referred to in said subdivision numbered "Fifth" of said last will and testament of said John Hicks, deceased, and one-half of such expenses covering periods subsequent to Septem-

ber 1, 1918, as were necessary or advisable for the care, safety and preservation of said lands and premises and for keeping said lands and premises tenantable and in good order and condition;

(2) One-sixth of the costs and expenses of administering, from September 1, 1918, to December 17, 1923, the trust reposed in the complainant in and by said last will and testament of said John Hicks, deceased, including such compensation, commissions and allowances as the complainant may be entitled to for her services as trustee under said last will and testament of said John Hicks, deceased; and

(3) So much of the income of the lands and premises mentioned and referred to in the subdivision numbered "Fifth" of said last will and testament of said John Hicks, deceased, as said Marion D. Hicks individually may have received; and

(1) The defendant John Hicks is entitled to have paid to Marion D. Hicks as guardian of the person and property of said defendant John Hicks two sixths of all income received by the complainant from the lands and premises mentioned and referred to in the subdivision numbered "Fifth" of said last will and testament of said John Hicks, deceased, covering the period subsequent to September 1, 1918, less:

(1) Two-sixths of such payments as the complainant may have made subsequent to September 1, 1918, for charges, impositions and liens imposed or acquired upon the lands and premises mentioned and referred to in the subdivision numbered "Fifth" of said last will and testament of

sad John Hicks, deceased, and two-sixths of such expenses covering periods subsequent to September 1, 1918, as were necessary or advisable for the care, safety and preservation of said lands and premises and for keeping said lands and premises tenantable and in good order and condition;

(2) Two-sixths of the costs and expenses of administering from September 1, 1918, to December 17, 1923, the trust reposed in the complainant in and by said last will and testament of said John Hicks, deceased, including such compensation commissions and allowances as the complainant may be entitled to for her services as trustee under said last will and testament of said John Hicks, deceased; and

(3) So much of the income of the lands and premises mentioned and referred to in the subdivision numbered "Fifth" of said last will and testament of said John Hicks, deceased, as Marion D. Hicks as guardian of the person and property of said John Hicks may have received.

THIRD.—That the defendants Leon Hicks, Marion D. Hicks and John Hicks are seized of and entitled to the lands and premises mentioned and referred to in the subdivision numbered "Fifth" of said last will and testament of John Hicks, deceased, and that their respective rights, estates and interests therein are, and they are hereby, ascertained, adjudged and declared to be as follows:

(a) The defendant Leon Hicks is seized in fee of and entitled to one equal undivided half part of said lands and premises subject to the inchoate right of dower of his wife, the defendant Beatrice Hicks in and to said last mentioned one equal undivided half part of said lands and premises;

(b) The defendant Marion D. Hicks individually is seized in fee of and entitled to one equal undivided sixth part of said lands and premises; and

(c) The defendant John Hicks is seized in fee of and entitled to two equal undivided sixth parts of said lands and premises.

FOURTH.—That the rights, estates, shares and interests of the defendants Leon Hicks, Beatrice Hicks, Marion D. Hicks individually and John Hicks, and each and every of them, in and to the lands and premises mentioned and referred to in the subdivision numbered "Fifth" of said last will and testament of John Hicks deceased are subject to the payment of the costs which, in and by the subdivision numbered "Thirteenth" of this decree, are made liens and charges upon said lands and premises.

FIFTH.—That Leon Hicks, who was appointed receiver in and by an order made in this cause, dated January 19, 1925, forthwith deliver to the defendants Leon Hicks, Marion D. Hicks individually and as guardian of the person and property of John Hicks possession of the lands and premises mentioned and referred to in the subdivision numbered "Fifth" of said last will and testament of John Hicks, deceased.

SIXTH.—That the complainant procure a copy of this decree to be duly certified by the Clerk of this Court, and that said complainant cause said copy so certified to be recorded in the office of the Clerk of the County of Monmouth, in this State.

SEVENTH.—That the sum of three thousand dol-

lars be, and hereby is, allowed to the complainant as and for a counsel fee in this cause, and that said last mentioned sum be included in the complainant's taxed bill of costs.

EIGHTH.—That the sum of twenty-five hundred dollars be, and hereby is, allowed to the defendants Leon Hicks and Beatrice Hicks as and for a counsel fee in this cause, and that said last mentioned sum be included in the taxed bill of costs of said defendants Leon Hicks and Beatrice Hicks.

NINTH.—That the sum of three thousand dollars be, and hereby is, allowed to the defendant Marion D. Hicks individually and as substitutionary administratrix with the will of Percy D. Hicks (known also as Percy Hicks), deceased, annexed, and as guardian of the person and property of John Hicks, as and for a counsel fee in this cause, and that said last mentioned sum be included in the taxed bill of costs of said defendant Marion D. Hicks individually and as substitutionary administratrix with the will of Percy D. Hicks (known also as Percy Hicks), deceased, annexed, and as guardian of the person and property of John Hicks.

TENTH.—That the sum of twenty-five hundred dollars be, and hereby is, allowed to the defendants Joseph A. Hicks (known also as Joseph Hicks) and Elena M. Hicks (known also as Lena Hicks) as and for a counsel fee in this cause, and that said last mentioned sum be included in the taxed bill of costs of said defendants Joseph A. Hicks (known also as Joseph Hicks) and Elena M. Hicks (known also as Lena Hicks).

ELEVENTH.—That the complainant be, and here-

by is, allowed her costs to be taxed, in which said costs as taxed there shall be included the sum mentioned in the subdivision numbered "Seventh" of this decree, the expenses of procuring the certified copies of records which were introduced as evidence on the hearing of this cause, the charges of the Clerk of this Court for the certified copy of this decree mentioned in the subdivision numbered "Sixth" of this decree, and the fees and charges of the Clerk of said County of Monmouth for recording the certified copy of this decree, which in and by the subdivision numbered "Sixth" of this decree the complainant is directed to have recorded.

TWELFTH.—That the defendants Leon Hicks and Beatrice Hicks, Marion D. Hicks individually and as substitutionary administratrix with the will of Percy D. Hicks (known also as Percy Hicks), deceased, annexed, and as guardian of the person and property of John Hicks, and Joseph A. Hicks (known also as Joseph Hicks) and Elena M. Hicks (known also as Lena Hicks) be, and hereby are, allowed their respective costs to be taxed; that in the costs as taxed of the defendants Leon Hicks and Beatrice Hicks there be included the sum mentioned in the subdivision numbered "Eighth" hereof; that in the costs as taxed of the defendant Marion D. Hicks individually and as substitutionary administratrix with the will of Percy D. Hicks (known also as Percy Hicks), deceased, annexed, and as guardian of the person and property of John Hicks, there be included the sum mentioned in the subdivision numbered "Ninth" hereof; that in the costs as taxed of the defendants Joseph A. Hicks (known also as Joseph Hicks) and Elena M.

Hicks (known also as Lena Hicks) there be included the sum mentioned in the subdivision numbered "Tenth" hereof; and that the guardian ad litem of the defendant John Hicks be, and hereby is, allowed her costs to be taxed.

THIRTEENTH.—That the costs allowed in and by the subdivisions numbered "Eleventh" and "Twelfth" hereof, with interest from the date of this decree until paid, be, and hereby are, ordered, adjudged and decreed to be liens upon the lands and premises mentioned and referred to in said subdivision numbered "Fifth" of said last will and testament of John Hicks, deceased.

FOURTEENTH.—That it be, and hereby is, referred to John W. Slocum, one of the Special Masters of this Court, to take and state an account of the rents, issues and profits which the complainant and Percy D. Hicks (known also as Percy Hicks), Long Branch Trust Company, Leon Hicks, Beatrice Hicks, Marion D. Hicks, individually and as substitutionary administratrix with the will of Percy D. Hicks (known also as Percy Hicks), deceased, annexed, and as guardian of the person and property of John Hicks, John Hicks, Joseph A. Hicks (known also as Joseph Hicks), Florence Hicks and Elena M. Hicks (known also as Lena Hicks), and each and every of them, have and has received from the lands and premises mentioned and referred to in said subdivision numbered "Fifth" of said last will and testament of John Hicks, deceased, for the better clearing of which account the complainant and Long Branch Trust Company, Leon Hicks, Beatrice Hicks, Marion D. Hicks, individually and as substitutionary administratrix with the will of Percy D. Hicks (known also as

Percy Hicks), deceased, annexed, and as guardian of the person and property of John Hicks, John Hicks, Joseph A. Hicks (known also as Joseph Hicks), Florence Hicks and Elena M. Hicks (known also as Lena Hicks), and each and every of them, are hereby ordered and directed to produce before said Special Master, upon oath or affirmation, if required, and leave with said Special Master all books, papers and writings in their, or any of their, custody, control or power relating thereto, and are and is to be examined as said Special Master shall direct, and said Special Master is also to have power, and is hereby given power, to examine other witnesses in relation to said account, and in taking said account said Special Master is to make all parties all just and proper allowances, and is to report the amounts to which the parties to this cause are respectively entitled of such rents, issues and profits, and how much each party to this cause has received of such rents, issues and profits, and if in taking such account any special matter shall arise said Special Master is at liberty to state the same to the Court.

FIFTEENTH.—That any person to whom any money is made payable under this decree may have leave to apply to this Court in this cause for aid in collecting the same; and

SIXTEENTH.—That the parties hereto, or any of them, be at liberty to apply to this Court for further directions from time to time upon the foot of this decree.

Respectfully advised,

E. R. WALKER,

C

JOHN GRIFFIN,

V. C.

Exhibit C-1.

To DAVID S. CRATER, Surrogate of the County of Monmouth, New Jersey.

Ella Hicks, of the City of Long Branch, and Martin D. Hicks, of the City of Trenton, N. J., respectfully represent that they are the executors named in the Last Will and Testament of John Hicks, dated the fourteenth day of March A. D., 1910, to which there are two codicils annexed; one without date and one dated July 11, 1910.

That said John Hicks departed this life at Long Branch in the County of Monmouth and State of New Jersey, on Tuesday, the Second day of August, A. D., 1910; leaving him surviving as his heirs at law and next of kin, the following named persons to wit:

Ella Hicks, Widow, one of your petitioners.

Percy D. Hicks, Son. City of Long Branch, N. J.

Leon Hicks, Son, (minor), Long Branch, N. J.

Elena M. Hicks, Daughter (minor), Long Branch, N. J.

Joseph A. Hicks, Son, (minor), Long Branch, N. J.

That said testator died seized of real estate to the value of $20,000.00 and was possessed of personal property to the value of $15,000.00.

Therefore the said Ella Hicks and Martin D. Hicks respectfully applies for probate of the said Last Will and Testament and Codicils thereto annexed and for Letters Testamentary thereon.

Dated, Aug. 18, A. D., 1910.

ELLA HICKS,
MARTIN D. HICKS.

STATE OF NEW JERSEY, }
MONMOUTH COUNTY, } ss.:

Ella Hicks and Martin D. Hicks, named in the above application, being duly sworn, on their oaths say that the matters and things set forth in the above application are true, to the best of heir knowledge and belief.

ELLA HICKS,
MARTIN D. HICKS.

Sworn before me at Freehold,
Aug. 18th, 1910.

DAVID S. CRATER,
Surrogate.

Filed and recorded August 18th, 1910.

IN THE NAME OF GOD, AMEN.

I, JOHN HICKS, of the City of Long Branch, in the County of Monmouth and State of New Jersey, being of sound mind, memory and understanding, and mindful of the uncertainty of life, do make, publish and declare the following to be my last Will and Testament, namely:

FIRST. It is my Will and desire that all my just debts and funeral expenses be duly paid as soon as conveniently may be after my death, as hereinafter provided.

SECOND. I will, devise and bequeath to my wife, Ella Hicks, to be received by her in lieu and satisfaction of her dower interest, or other claim, in and to any lands or real estate owned by me, the following property:

(a) The proceeds of a Five Thousand Dollar Mortgage, which I now hold against Lester Lane,

of Long Branch, New Jersey, on his property, located on Franklin Avenue;

(b) Twenty-five hundred dollars in cash, to be paid to her out of the proceeds of a Five Thousand Dollar Insurance Policy on my life, issued by the Northwestern Mutual Life Insurance Company, and payable to my estate.

(c) All of my household furniture and effects now in the building known as the Hicks Building, located at Nos. 188 and 190 Broadway, in the City of Long Branch, and State of New Jersey excepting one parlor suite and the pictures in my bedroom.

THIRD. I will, devise and bequeath to my wife, Ella Hicks, the sum of Fifteen hundred dollars in cash, out of the proceeds of said Five Thousand dollars insurance policy on my life, issued by the Northwestern Mutual Life Insurance Company, and payable to my estate, said Fifteen hundred dollars to be held by her in trust for my daughter, Lena Hicks, and to be used for my said daughter's separate use and benefit, said trust to cease when my said daughter shall become of legal age, and any balance then in the hands of said trustee to be conveyed and delivered to my said daughter.

John Hicks
Witnesses
Harry Truax
A. L. Holtson
Chas. H. Greene, Jr.

I also will, devise and bequeath to my wife, Ella Hicks, to be held in trust for my said daughter, Lena Hicks, one brood mare, named "Half a Soverign" which is now in the hands of Frederick A. Forsythe, in Kentucky, and it is my desire that the future foals of said mare if raced on any race course shall be raced in the name of my said daughter, Lena Hicks, and all the proceeds of said races to be paid to my said wife, Ella Hicks, in trust for my said daughter and upon my said daughter's becoming of legal age, said trustee is

directed to convey and deliver to her, my said daughter, said brood mare, together with all foals and all proceeds derived from said brood mare or said foals, and said trust then to cease;

FOURTH. I will, devise and bequeath to my wife, Ella Hicks, the sum of One Thousand Dollars, out of the proceeds of said Five Thousand Dollars Insurance on my life issued by the Northwestern Mutual Life Insurance Company, and payable to my estate, said one thousand dollars to be held by her in trust for my son, Joseph Hicks, and to be used for my said son's separate use and benefit, said trust to cease when my said son shall become of legal age, and any balance then in the hands of said trustee to be conveyed and delivered to my said son.

FIFTH. I will, devise and bequeath to my brother, Martin D. Hicks, the following described real property: All that certain tract of land situate and lying on the southwestern corner of Broadway and Academy Alley, in the City of Long Branch, New Jersey, known as the Hicks Building, at No. 188-190 Broadway, together with all buildings thereon situate; In Trust, However, to receive the income from said property and pay monies for the upkeep of said property, the residue or remainder thereof to be equally paid and divided between my two sons, Percy D. Hicks and Leon Hicks, until my said son, Leon Hicks, shall arrive at the age of thirty years, at which time I give, devise and bequeath to my said sons, Percy D. Hicks, and Leon Hicks, said real property as tenants in common.

SIXTH. I will, devise and bequeath to my brother, Martin D. Hicks, my jewelry business,

including all fixtures, merchandise and ledger accounts or bills receivable due me in the operation of my business, located in the Hicks Building, at No. 188 Broadway, in the City of Long Branch, New Jersey, to be held by my said brother, Martin D. Hicks, in trust for my two sons, Percy D. Hicks and Leon Hicks with this proviso, however, that my said brother, Martin D. Hicks, shall permit my said son Percy D. Hicks to manage and operate said business until my said son, Leon Hicks, shall become twenty-one years of age, the profits from said business during said period to be used for the benefit of my said sons, Percy D. Hicks and Leon Hicks, and when my said son, Leon Hicks, shall become twenty-one years of age, this trust shall cease and said trustee, Martin D. Hicks, shall convey and deliver to my said sons, Percy D. Hicks and Leon Hicks, all of said business.

John Hicks
Witnesses
Harry Truax
A. L. Holtson
Chas. A. Greene Jr.,

SEVENTH. I direct that my Executor pay all of my just debts out of moneys on deposit in bank by me at the time of my decease, and the proceeds of any notes due me at that time, and in the event said cash in bank and the proceeds of said notes shall be insufficient to pay all of my debts, I direct that my said brother, Martin D. Hicks, as trustee, pay any balance which may be due my creditors out of the proceeds of the ledger accounts and bills receivable due me in my said jewelry business.

EIGHTH. In the event there should be moneys on deposit in bank by me at the time of my decease more than sufficient to pay all my just debts, I will, devise and bequeath such balance to my four children, Percy D. Hicks, Leon Hicks, Lena Hicks and Joseph Hicks, to be equally distributed among them.

NINTH. I direct that any money paid to my estate by any lodge or lodges of which I am a member be used towards defraying my funeral expenses, and if that be not sufficient, that the balance of my funeral expenses be paid in the same manner as hereinbefore provided for the payment of my other debts.

LASTLY. I hereby nominate and appoint my brother, Martin D. Hicks, executor of this my last will and testament.

IN WITNESS WHEREOF, I have hereunto set my hand and seal, this Fourteenth day of March, Nineteen Hundred and Ten.

JOHN HICKS (L. S.)

Signed, acknowledged and declared by the said John Hicks, as and for his last Will and Testament, in the presence of us (both being present at the same time), who at his request, in his presence and in the presence of each other, have hereunto subscribed our names as witnesses.

Harry Truax, Long Branch, N. J.
Arthur L. Holtson, Long Branch, N. J.
Chas. H. Greene, Jr., Long Branch, N. J.

ELEVENTH. I also will, devise and bequeath to my said son, Percy D. Hicks, one parlor suite, and the pictures in my bedroom in the building known as the Hicks Building, located at Nos. 188 and 190 Broadway, Long Branch, New Jersey.

JOHN HICKS (L. S.)

Witnesses:

HARRY TRUAX,
ARTHUR L. HOLTSON,
CHAS. H. GREENE, JR.

I, JOHN HICKS, of the City of Long Branch, in the County of Monmouth and State of New Jersey do this Eleventh day of July A. D. Nineteen Hundred and Ten, make and publish, this Codicil to my last Will and Testament, in manner following, that is to say:

Whereas, by my said Will dated March 14th, 1910, and witnessed by Harry Truax, Arthur Holtson and Charles H. Greene, Jr., I have appointed my brother Martin D. Hicks trustee and executor thereof and I deem it advisable that my wife Ella Hicks, be made a trustee and executrix in order that she may attend to the interest of my son Leon Hicks and make provision so that he may attend a suitable school until he is twenty-one years of age or more.

Now, I hereby revoke the appointment of the said Martin D. Hicks as such sole trustee and executor and I appoint my said wife Ella Hicks and the said Martin D. Hicks to be such trustees and executrix and executor of my said Will and Testament, in the place of the said Martin D. Hicks alone, and I declare that my said Will shall be construed and take effect as if the name of my said Wife Ella Hicks were inserted in my Will throughout, together with the name of my said brother Martin D. Hicks, and in all other respects I confirm my said Will.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year aforesaid.

JOHN HICKS (L. S.)

Signed, sealed, published and declared by the said John Hicks as and for his codicil to his last will and testament and to be taken as part thereof

in the presence of three several witnesses, whose names are hereunder subscribed as witnesses to the signing, sealing and publishing of the same, which said three persons did so hereunder subscribe their names at the request and in the presence of the said John Hicks and in the presence of each other.

Chas. H. Greene Jr., Long Branch, N. J.
Arthur L. Holtson, Long Branch, N. J.
Harry Truax, Long Branch, N. J.

State of New Jersey, }
Monmouth County, } ss.:

HARRY TRUAX, one of the witnesses of the within Will, being duly sworn according to law, did depose and say, that he saw John Hicks the testator therein named, sign and seal the same and heard him publish, pronounce and declare the annexed writing to be his last will and testament, and that at the doing thereof the said testator was of sound and disposing mind and memory and in all respects competent to make a Will, and was not under restraint as far as this deponent knows and as he verily believes and that Arthur L. Holtson and Charles H. Greene, Jr., the other subscribing evidences were present at the same time, and signed their names as witnesses to the said will, together with these deponents in the presence of the said testator and of each other, and at the request of said testator.

HARRY TRUAX.

Sworn and subscribed before me, this }
Eighteenth day of August A. D. 1910. }

DAVID S. CRATER,
Surrogate.

State of New Jersey, }
Monmouth County, } ss.:

HARRY TRAUX, one of the witnesses to the First Codicil to the within Will, being duly sworn according to law, did depose and say that he saw John Hicks the testator therein named, sign and seal the same, and heard him publish, pronounce and declare the annexed writing to be his, a Codicil to his last Will and Testament and that at the doing thereof the said testator was of sound and disposing mind and memory and in all respects competent to make a Will, and was not under restraint as far as this deponent knows and as he verily believes, and that Arthur L. Holtson and Charles H. Greene, Jr., the other subscribing evidences were present at the same time, and signed their names as witnesses to the said Codicil, together with this deponent in the presence of the said testator and of each other, and at the request of said testator.

HARRY TRUAX.

Sworn and subscribed before me, this }
Eighteenth day of August, A. D. 1910 }

DAVID S. CRATER,
Surrogate.

State of New Jersey, }
Monmouth County, } ss.:

HARRY TRUAX, one of the witnesses to the Second Codicil to the within Will, being duly sworn according to law, did depose and say that he saw John Hicks the testator therein named, sign and seal the same, and heard him publish, pronounce and declare the annexed writing to be a Codicil to his last Will and Testament and that at the

doing thereof the said testator was of sound and disposing mind and memory, and in all respects competent to make a Will, and was not under restraint as far as this deponent knows and as he verily believes and that Charles H. Greene, Jr., and Arthur L. Holtson, the other subscribing evidences were present at the same time, and signed their names as witnesses to the said Codicil, together with this deponent in the presence of the said testator and of each other, and at the request of said testator.

HARRY TRUAX.

Sworn and subscribed before me, this
Eighteenth day of August, A. D. 1910

DAVID S. CRATER,
Surrogate.

State of New Jersey,
Monmouth County, } ss.:

Ella Hicks and Martin D. Hicks, the Executors in the within Testament and Codicils thereto annexed named, being duly sworn according to law, did depose and say that the annexed instruments contain the true last Will and Testament and Codicils thereto annexed of John Hicks the testator therein named, as far as they know and as they verily believe; that they will well and truly perform the same, by paying first the debts of said deceased, and then the legacies in said Will specified, so far as the goods, chattels and credits of said deceased can thereto extend; and they will make and exhibit into the Surrogate's Office of the County of Monmouth, a true and perfect inventory of all and singular the goods, chattels and credits of said deceased, that have or shall come to their knowl-

edge or possession or to the possession of any other person or persons, for their use and render a just and true account, when thereto lawfully required.

ELLA HICKS.
MARTIN D. HICKS.

Sworn and subscribed before me, this Eighteenth day of August, A. D. 1910.

DAVID S. CRATER,
Surrogate.

MONMOUTH COUNTY SURROGATE'S OFFICE.

In the Matter of the Probate of Alleged Will and Codicils thereto annexed of JOHN HICKS, deceased.	Order for Probate.

Application having been made by Ella Hicks and Martin D. Hicks for probate of the Last Will and Testament and Codicils thereto annexed of John Hicks, deceased, and Letters Testamentary thereon, and the Surrogate having inquired into the circumstances and taken proof, and being satisfied of the genuineness of the Will and Codicils produced, the validity of their execution and the competency of the testator, and the probate of said Will and Codicils not having been contested. And it appearing that the testator died more than ten days ago, it is, on this Eeighteenth day of August, A. D. Nineteen hundred and Ten, adjudged that the instruments offered for probate in this matter are

the last Will and Testament and Codicils thereto annexed of John Hicks, deceased, and the same are hereby admitted to probate, and it is ordered that Letters Testamentary be issued thereon to Ella Hicks and Martin D. Hicks, the Executrix and Executor named in said Will and Codicils.

DAVID S. CRATER,
Surrogate.

State of New Jersey,
Monmouth County, } ss.:

I, DAVID S. CRATER, Surrogate of the County of Monmouth, do certify the annexed to be a true copy of the Last Will and Testament and Codicils thereto annexed of John Hicks, late of the County of Monmouth, deceased, and that Ella Hicks of the County of Monmouth and Martin D. Hicks of the County of Mercer, the Executrix and Executor therein named, proved the same before me and are duly authorized to take upon themselves the administration of the estate of the testator agreeably to the said will and codicils.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal of office, at Freehold, the eighteenth day of August, in the year of our Lord, one thousand nine hundred and ten.

(L. S.)

DAVID S. CRATER,
Surrogate.

Filed, August 18th, 1910.

State of New Jersey,
Monmouth County, } ss.:

I, JOSEPH L. DONAHAY, Surrogate of said County, do certify the foregoing to be a true copy of the

last Will and Testament and Codicils thereto annexed of John Hicks, deceased, together with the probate thereof, and the letters testamentary granted thereon as the same remain of record in my office, in Book X-2 of Wills, page 417.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal of office, at Free-
(Seal) hold, the twenty-ninth day of December in the year of our Lord one thousand nine hundred and twenty-four.

JOSEPH L. DONAHAY,
Surrogate.

Exhibit C-2.

MONMOUTH COUNTY ORPHANS' COURT.

ON PETITION OF EXECUTOR AND TRUSTEE FOR DISCHARGE.

In the Matter of The Estate of JOHN HICKS, Deceased.	Petition.

To the Orphans' Court of the County of Monmouth:

The petition of Martin D. Hicks, respectfully shows: That he is the Executor and Trustee, and Ella Hicks Executrix and Trustee, named in the Last Will and Testament of John Hicks, deceased; that said Will was duly proved before, and Letters Testamentary thereon duly issued by the Surrogate of the County of Monmouth on the Eighteenth day

of August, in the year of our Lord, Nineteen Hundred and Ten, and that your petitioner has entered on the duties of his office, and that said duties consist of the management of the real estate holdings and the oversight of a jewelry business in the City of Long Branch in said County of Monmouth; that your petitioner is a resident of the City of Trenton, in the County of Mercer and State of New Jersey, and that your petitioner is not able, on account of the distance between the two cities, to give the affairs of this Estate the time and attention necessary; that your petitioner therefore desires to be discharged from the further performance of his duties of his said office.

Your petitioner therefore prays that he may be discharged from the further performance of the duties of the said office as Executor and Trustee of the aforesaid Estate.

Dated, Long Branch,

New Jersey, March 28th, 1913.

MARTIN D. HICKS.

State of New Jersey, }
County of Monmouth, } ss.:

MARTIN D. HICKS, being duly sworn on his oath according to law, deposes and saith: That he is the petitioner in the foregoing petition named; that the matters and things therein contained are true to the best of his knowledge and belief.

MARTIN D. HICKS.

Sworn and subscribed to before me
this 28th day of March, A. D. 1913,
at Long Branch, New Jersey.

H. C. MORFORD,
Atty. at Law of New Jersey.

Filed, April 1, 1913.

MONMOUTH COUNTY ORPHANS' COURT.

ON PETITION OF EXECUTOR FOR DISCHARGE.

In the Matter
of
The Estate of JOHN HICKS,
Deceased.

Order.

It appearing from the petition of Martin D. Hicks, filed herein, that the said Martin D. Hicks is executor and trustee of the Last Will and Testament of John Hicks, deceased, and that letters testamentary were issued to him by the Surrogate of the County of Monmouth; and it appearing that due notice of this application has been given to all parties interested in the Estate of John Hicks, deceased, and the Court having examined into the matter and it appearing that there is sufficient reason for such discharge:

IT IS THEREUPON, on this third day of July, Nineteen Hundred and Thirteen, ORDERED, that the said Martin D. Hicks be and he hereby is relieved and discharged from all further duties of his said office, except accounting for and paying over the monies or assets received by him by virtue of his said office.

JOHN E. FOSTER, P. J.

Filed July 3, 1913.

MONMOUTH COUNTY SURROGATE'S OFFICE.

State of New Jersey, }
Monmouth County, } ss.:

I, JOSEPH L. DONAHAY, Surrogate of said County, do certify the foregoing to be a true copy of the Petition and Order discharging Executor and Trustee in the Matter of the Estate of John Hicks, Deceased, as the same remain of Record in my office.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal of office, at Freehold, the Twenty-ninth day of December in the year of our Lord one thousand nine hundred and Twenty-four.

(Seal)

JOSEPH L. DONAHAY,
Surrogate.

Exhibit C-3.

STATE OF NEW JERSEY

BUREAU OF VITAL STATISTICS

NOTE.—If birth occurs in a hospital or institution or the parents are transient residents, their usual residence should be given on the line below.

.....

Street and Number. City.

Registered No.....

Place of birth—County of Monmouth

Township of or Village of or City of—Long Branch (No. ——— St.; Ward)

Full name of child—John Hicks (If child is not yet named, make supplemental report, as directed)

Sex of Child—Male Date of Birth—Dec. 17, 1893

FATHER

Full name—John Hicks
Residence—Long Branch, N. J.
Color—White Age at last birthday—35
Birthplace—U. S.
Occupation—Jeweler

MOTHER

Full maiden name—Lena I. Hughes
Residence—Long Branch, N. J.
Color—White Age at last birthday—29
Birthplace—U. S.
Occupation—
Number of children born to this mother, including present birth—3 Number of children of this mother now living—2

CERTIFICATE OF ATTENDING PHYSICIAN OR MIDWIFE*

I hereby certify that I attended the birth of this child, who was (Born alive or Stillborn)
at M., on the date above stated.

(Signature) JNO. P. PEMBERTON

Address Long Branch, N. J.

*When there was no attending physician or midwife, then the father or mother should make this return. A stillborn child is one that neither breathes nor shows other evidence of life after birth.

Given name added from a supplemental report ,19

Registrar.

Filed , 19 .

Registrar.

DEPARTMENT OF HEALTH
OF THE
STATE OF NEW JERSEY,

BUREAU OF VITAL STATISTICS.

I, JACOB C. PRICE, Medical Superintendent of the Bureau of Vital Statistics of the State of New Jersey, do hereby Certify, that the foregoing and annexed is a true copy of a certain Certificate of Birth, as taken from and compared with the original now remaining on file in my office.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Official Seal of said (Seal) Bureau, at Trenton, this eighth day of January A. D. 1924.

JACOB C. PRICE M. D.
Medical Superintendent.

Attest:

DAVID S. SOUTH
State Registrar.
M.

Exhibit C-4.

To Joseph L. Donahay, Surrogate of the County of Monmouth, New Jersey:

Long Branch Trust Company (body corporate), by Edward R. Slocum, Secretary and Treasurer of the City of Long Branch, in the County of Monmouth and State of New Jersey, respectfully represents that it is the Acting executor named in the last Will and Testament of Percy D. Hicks dated the Thirtieth day of August, A. D. 1918.

That said Percy D. Hicks departed this life at

Long Branch in the County of Monmouth and State of New Jersey, on Sunday the First day of September, A. D. 1918, leaving him surviving as his heirs at law and next of kin, the following named persons to wit:

Marian D. Hicks, Widow, Red Bank, N. J.

John Hicks, Son (Minor 4 years of age), Red Bank, N. J.

That said testator died seized of real estate to the value of $12,500.00 and was possessed of no personal property.

Therefore the said Long Branch Trust Company (body corporate) respectfully applies for probate of the said Last Will and Testament, and for Letters Testamentary thereon.

Dated, October 24th, A. D. 1918.

LONG BRANCH TRUST CO.,
By EDWARD R. SLOCUM,
Secy. & Treas.

Monmouth County—ss.:

EDWARD R. SLOCUM, Secretary and Treasurer of Long Branch Trust Company (body corporate) named in the above application, being duly sworn, on his oath says that the matters and things set forth in the above application are true, to the best of his knowledge and belief.

EDWARD R. SLOCUM,
Secy. & Treas. of
Long Branch Trust Company.

Sworn to before me at Freehold, N. J.
Oct. 24th, 1918.

JOSEPH L. DONAHAY,
Surrogate.

Filed and Recorded Oct. 24th A. D. 1918.

To all whom it may concern:

Whereas, Percy D. Hicks, late of the City of Long Branch, County of Monmouth, in the State of New Jersey, deceased, in and by his last Will and Testament, bearing date the Thirtieth day of August, nineteen hundred and eighteen, did appoint the subscriber one of the executors thereof.

Now, be it known that for divers good causes I have and hereby do renounce the said executorship, and the execution of said Will and Testament, and do refuse to take on myself, the burden of the same.

IN WITNESS WHEREOF, I have hereto set my hand and seal, this Twenty-fourth day of October, A. D. nineteen hundred and eighteen.

EDWARD R. SLOCUM (L. S.)

Signed and Sealed in the presence of:

JOHN A. DEROCHE.

State of New Jersey, }
County of Monmouth, } ss.:

BE IT REMEMBERED that on this Twenty-fourth day of October, A. D. nineteen hundred and eighteen, before me, the subscriber, a Notary Public of New Jersey, personally appeared Edward R. Slocum, who I am satisfied is the person named in and who executed the foregoing renunciation, and I having first made known to him the contents thereof he did thereupon acknowledge that he signed, sealed and delivered the same as his voluntary act and deed for the uses and purposes therein expressed.

JOHN A. DEROCHE,
Notary Public of New Jersey.

I, PERCY D. HICKS, of the City of Long Branch, Monmouth County, New Jersey, being of sound and disposing mind and memory, declare this to be my last Will and Testament as follows:

FIRST.—I direct that Clifton L. Morris, undertaker, of Long Branch, New Jersey, do take charge of and inter my mortal remains at Greenlawn Cemetery, Long Branch, and that the total expenses of my funeral and interment do not exceed the sum of Two Hundred and Fifty Dollars.

SECOND.—I direct that all my just debts and funeral expenses be paid.

THIRD.—I give, devise and bequeath unto my Executors, hereinafter named, all my estate, real, personal or mixed, in whatever form and wheresoever situate, in trust however, to sell and dispose of the same as soon after my death as it can legally and in their judgment conveniently and properly, be done, and that they distribute the proceeds thereof as follows:—Two-thirds of my entire estate to my infant son, John Hicks, and the other one-third of my estate to my wife, Marian D. Hicks, which gift and devise is in lieu of dower.

FOURTH.—I hereby nominate and appoint my wife, Marian D. Hicks, guardian of my infant son, John Hicks, to serve until he shall become of age.

FIFTH.—I hereby nominate and appoint the Long Branch Trust Company and Edward R. Slocum, Executors of this, my last Will and Testament.

IN WITNESS WHEREOF, I have hereunto set my hand and seal, this Thirtieth day of August, A. D. Nineteen hundred and eighteen

his
PERCY X D. HICKS (L. S.)
Mark

Signed, sealed, acknowledged and declared by the said Percy D. Hicks as and for his last Will and Testament, in the presence of us (both being present at the same time), who, at his request, in his presence, and in the presence of each other, have hereunto subscribed our names as witnesses.

LYDIA J. DONNELLY
WILLIAM A. STEVENS

State of New Jersey, }
Monmouth County, } ss.:

WILLIAM A. STEVENS, one of the witnesses of the within Will, being duly sworn, according to law, did depose and say that he saw Percy D. Hicks, the testator therein named, sign and seal the same, and heard him publish, pronounce and declare the annexed writing to be his last Will and Testament, and that at the doing thereof, the said testator was of sound and disposing mind and memory and in all respects competent to make a Will and was not under restraint as far as this deponent knows and as he verily believes and that Lydia J. Donnelly, the other subscribing witness was present at the same time, and signed her name as witness to the said Will, together with this deponent, in the presence of the said testator and of each other, and at the request of said testator.

WILLIAM A. STEVENS.

Sworn and subscribed before me, this
Twenty-fourth day of October, A. D.
1918.

JOSEPH L. DONAHAY,
Surrogate.

State of New Jersey, }
Monmouth County, } ss.:

EDWARD R. SLOCUM, Secretary and Treasurer of Long Branch Trust Company (body corporate) the acting Executor in the within Testament named, being duly sworn, according to law, did depose and say that the annexed instrument contains the true last Will and Testament of Percy D. Hicks, the testator therein named, as far as he knows and as he verily believes; that it will well and truly perform the same, by paying first the debts of said deceased, and then the legacies in said Will specified, so far as the goods, chattels and credits of said deceased can thereto extend; and it will make and exhibit into the Surrogate's Office of the County of Monmouth, a true and perfect inventory of all and singular the goods, chattels and credits of said deceased that have or shall come to its knowledge or possession or to the possesion of any other person or persons, for its use, and render a just and true account, when thereto lawfully required.

EDWARD R. SLOCUM,
Secy-Trusr. Long Branch Trust Company.

Sworn and subscribed before, me this
Twenty-fourth day of October, A. D.
1918.

JOSEPH L. DONAHAY,
Surrogate.

ORDER FOR PROBATE.

MONMOUTH COUNTY SURROGATE'S OFFICE

In the Matter
of
The Probate of alleged Will of
PERCY D. HICKS, *deceased.*

Application having been made by Long Branch Trust Company, (body corporate) for Probate of the last Will and Testament of Percy D. Hicks, deceased, and Letters Testamentary thereon, and the Surrogate having inquired into the circumstances and taken proof, and being satisfied of the genuineness of the Will produced, the validity of its execution and the competency of the testator and the probate of said Will not having been contested.

And it appearing that the testator died more than ten days ago, it is, on this twenty-fourth day of October, A. D. nineteen hundred and eighteen, adjudged that the instrument offered for probate in this matter is the Last Will and Testament of Percy D. Hicks, deceased, and the same is hereby admitted to probate;

And it is ordered that Letters Testamentary be issued thereon to Long Branch Trust Company (body corporate) the Acting Executor named in said will.

JOSEPH L. DONAHAY,
Surrogate.

State of New Jersey, }
Monmouth County, } ss.:

I, JOSEPH L. DONAHAY, Surrogate of the County of Monmouth, do certify the annexed to be a true copy of the last Will and Testament of Percy D. Hicks, late of the County of Monmouth, deceased, and that Long Branch Trust Company (body corporate), of the State of New Jersey, the Acting Executor therein named, proved the same before me and is duly authorized to take upon itself, the Administration of the Estate of the Testator agreeably to the said Will.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal of office, at Free-
(L.S.) hold, the Twenty-fourth day of October, in the year of our Lord one thousand nine hundred and eighteen.

JOSEPH L. DONAHAY,
Surrogate.

Filed, October 24, 1918.

State of New Jersey, }
Monmouth County, } ss.:

I. JOSEPH L. DONAHAY, Surrogate of said County, do certify the foregoing to be a true copy of the last Will and Testament of Percy D. Hicks, deceased, together with the Probate thereof, and the Letters Testamentary granted theron as the same remain of Record in my office, in Book 67 of Wills, page 343.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal of office, at Free-
(Seal) hold, the Twenty-ninth day of December in the year of our Lord one thousand nine hundred and Twenty-four.

JOSEPH L. DONAHAY,
Surrogate.

Exhibit C-5.

MONMOUTH COUNTY ORPHANS' COURT.

To the Orphans' Court of the County of Monmouth:

The petition of Long Branch Trust Company (body corporate), of the State of New Jersey, respectfully shows that:

1. The last Will of Percy D. Hicks, deceased, named your petitioner, Long Branch Trust Company, and Edward R. Slocum, as Executors. The said Will was duly proved, and Letters Testamentary thereon duly issued by the Surrogate of the County of Monmouth on the 24th day of October, 1918. The said Edward R. Slocum did not qualify as Executor.

Your petitioner has qualified, and is now acting Executor of the estate of the said Percy D. Hicks, deceased.

2. Your petitioner has been unable to discover any assets of the estate, excepting such assets as are comprised in certain real property situate on Broadway, in the City of Long Branch, in the County of Monmouth and State of New Jersey, in which the said Percy D. Hicks had some interest by virtue and by reason of the Will of his father, John Hicks, deceased, which said Will of John Hicks was duly admitted to probate by the Surrogate of the County of Monmouth, and contained the following clause:

"Fifth: I will, devise and bequeath to my brother MARTIN D. HICKS, the following described real property: All that certain tract of land, situate and lying on the southwestern corner of Broadway and Academy Alley, in the City of Long

Branch, New Jersey, known as the Hicks Building, at No. 188-190 Broadway, together with all the buildings thereon situate; IN TRUST HOWEVER, to receive the income from said property and pay moneys for the upkeep of said property; the residue or remainder thereof to be equally paid and divided between my two sons, PERCY D. HICKS and LEON HICKS, until my said son, LEON HICKS, shall arrive at the age of thirty years, at which time I give, devise and bequeath to my said sons, PERCY D. HICKS and LEON HICKS, said real property as tenants in common."

That petitioner has been unable to collect any funds from said real property, and does not believe that it is possible to collect any funds without institution of proceedings at law or in equity. That your petitioner has no means of said estate of the said Percy D. Hicks with which to institute or prosecute said proceedings at law or in equity.

Your petitioner has been unable to obtain any funds for this purpose from anyone directly interested in the estate, and therefore desires to be discharged from the further performance of the duties of its said office.

3. That petitioner has advanced and paid from its own funds the following amounts:

State of New Jersey, inheritance tax	$10.55
Joseph L. Donahay, Surrogate	21.18

That the said estate is still obligated to pay for expenses incurred by your petitioner in furtherance of its duties, the following:

Taylor Publishing Co., for publishing notices	$10.60
Counsel fees in a sum to be allowed by the Court.	

4. The persons interested in this application are as follows: Marion D. Hicks, widow of the said Percy D. Hicks, who resides in the Borough of Red Bank, in the County of Monmouth and State of New Jersey, and John Hicks, son of the said Percy D. Hicks, deceased, who resides in the Borough of Red Bank, aforesaid. All of the aforesaid parties in interest are of full age, with the exception of the said John Hicks, who is a minor under the age of fourteen years, and resides with his mother, the said Marion D. Hicks, as aforesaid.

5. Your petitioner therefore prays that it may be discharged from the further performance of the duties of its said office of executor of the aforesaid estate, and that it may have such moneys as it has advanced for the benefit of said estate paid to it by its successor, together with such costs and counsel fees as to the Court may seem equitable and just, or have such other relief as to the Court may seem just.

LONG BRANCH TRUST COMPANY,
By Edward R. Slocum, Secy-Treas.,
Trust Officer.

State of New Jersey,
County of Monmouth, } ss.:

EDWARD R. SLOCUM, of full age, being duly sworn according to law, on his oath deposes and says, that he is the Treasurer of the Long Branch Trust Company, the petitioner in the foregoing petition named, and that the matters and things contained

therein are true to the best of his knowledge and belief.

EDWARD R. SLOCUM.

Subscribed and sworn to before me this 21st day of April, A. D. 1920.

WM. S. VAN BRUNT,
Notary Public of N. J.

Filed, April 29, 1920.

MONMOUTH COUNTY ORPHANS' COURT.

ON PETITION FOR DISCHARGE OF EXECUTOR.

In the Matter of The Estate of PERCY D. HICKS, Deceased.	Order Discharging Executor.

It appearing from the petition of Long Branch Trust Company (body corporate), filed herein, that the said Long Branch Trust Company is the acting Executor of the last Will of Percy D. Hicks, deceased, and that Letters Testamentary were issued to it by the Surrogate of the County of Monmouth on the 24th day of October, 1918, and that said petitioner prays that it may be discharged from the further performance of its duties as such Executor, and it appearing that due notice of this application has been given to all parties interested in the estate of the said Percy D. Hicks, deceased, in the manner and form as directed by a certain order made by this Court, dated April 29, 1920, and no one appearing in opposition thereto, and John S. Applegate, Jr., Esq., having appeared for

Marion D. Hicks and consenting thereto, and the Court having examined into the matter, and it appearing that there is sufficient reason for such discharge.

It is thereupon, on this tenth day of June, 1920, ordered, that the said Long Branch Trust Company (body corporate), be and it is hereby relieved and discharged from all further duties of its said office except accounting for and paying over the moneys received by it by virtue of said office.

RULIF V. LAWRENCE,
Judge.

Filed, June 10, 1920.

MONMOUTH COUNTY SURROGATE'S OFFICE.

State of New Jersey, }
Monmouth County, } ss.:

I, JOSEPH L. DONAHAY, Surrogate of said County, do certify the foregoing to be a true copy of the Petition and Order Discharging Executor in the Matter of the Estate of Percy D. Hicks, Deceased, as the same remain of Record in my office.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal of office, at
(Seal) Freehold, the Twenty-ninth day of December, in the year of our Lord one thousand nine hundred and Twenty-four.

JOSEPH L. DONAHAY,
Surrogate.

Exhibit C-6.

MONMOUTH COUNTY ORPHANS' COURT.

ON PETITION FOR LETTERS SUBSTITUTIONARY ADMINISTRATION WITH THE WILL ANNEXED.

In the Matter of The Estate of PERCY D. HICKS, Deceased.	Petition.

To the Orphans' Court of the County of Monmouth:

The petition of Marion D. Hicks of the Borough of Red Bank, in the County of Monmouth and State of New Jersey respectfully shows that Percy D. Hicks late of the City of Long Branch, in the County of Monmouth and State of New Jersey, died on the 1st day of September, A. D. 1918, leaving a last will and testament in and by which he appointed The Long Branch Trust Company, of the City of Long Branch in the County of Monmouth and State of New Jersey, the Executor thereof, that said will was duly proved before the Surrogate of said County of Monmouth, on the Twenty-fourth day of October, A. D. 1918, and by him duly recorded in his office in Book 67 of Wills page 343, and that probate thereof was on the said day duly granted and letters testamentary, issued to the said Long Branch Trust Company as such Executors, and your petitioner further shows that the said Long Branch Trust Company after taking upon itself the burden of administration, was discharged by an order of the Orphans' Court of said County of Monmouth, bearing date the Tenth day

of June, 1920, leaving certain property and assets of the estate of the said Percy D. Hicks unadministered, and that the value of the property remaining unadministered as aforesaid, does not exceed, as your petitioner is informed and verily believes, the sum of Seventy-five dollars.

Your petitioner further shows that the said Percy D. Hicks left him surviving as his only next of kin and heirs at law:

Marion D. Hicks, Widow, Monmouth Street, Red Bank, N. J.

John Hicks, son, Minor, Monmouth Street, Red Bank, N. J., and your petitioner further shows she is interested in the estate of said Percy D. Hicks.

Your petitioner therefore prays that letters of substitutionary administration with the will of the said Percy D. Hicks, deceased, annexed, may be granted to her.

Dated, July 16th, 1920.

MARION D. HICKS.

State of New Jersey, }
Monmouth County, } ss.:

MARION D. HICKS, being duly sworn according to law, deposes and says that she is the petitioner in the foregoing petition named, and that the matters and things therein contained are true to the best of her knowledge and belief.

MARION D. HICKS.

Sworn and subscribed to this 16th day of July, A. D. 1920, before me,

JOSEPH L. DONAHAY,
Surrogate.

State of New Jersey, } ss.:
County of Monmouth, }

MARION D. HICKS, being duly sworn upon her oath, deposes and says that she will well and truly administer all and singular the goods, chattels, rights and credits of Percy D. Hicks, late of the City of Long Branch in the County of Monmouth, and State of New Jersey, deceased, which have or shall come to her hands or possession or to the hands or possession of any other person or persons to her use, agreeably to the said will and testament, of said deceased, and that she will make and exhibit in the Surrogate's office of the County of Monmouth, a true and perfect inventory of all and singular the goods and chattels, rights and credits, and render a just and true account thereof, as and when by law required so to do.

MARION D. HICKS.

Sworn before me, at Freehold on the 16th day of July, A. D. 1920. }

JOSEPH L. DONAHAY,
Surrogate.

Filed, September 16th, 1920.

MONMOUTH COUNTY ORPHANS' COURT.

In the Matter of The Estate of PERCY D. HICKS, Deceased.	On Petition. Order.

It appearing from petition of Marion D. Hicks

filed herein that Percy D. Hicks, late of the City of Long Branch, County of Monmouth and State of New Jersey, died on or about the first day of September, 1918, having first duly made and executed a paper in writing purporting to be his last will and testament, bearing date August , 1918, in and by which he appointed the Long Branch Trust Company of the City of Long Branch, County of Monmouth and State of New Jersey the executor thereof, and it further appearing that the said The Long Branch Trust Company has been discharged by an order of the Orphans' Court of said County of Monmouth, dated the tenth day of June, 1920, and it appearing from said petition that Marion D. Hicks is the widow of Percy D. Hicks, deceased, and the one entitled to administration of the estate of Percy D. Hicks, deceased,

It is on this 16th day of September, 1920, ordered that letters of substitutionary administration with the will annexed be issued thereon to the said Marion D. Hicks, upon the giving by her of a bond in the sum of one hundred and fifty dollars with the sureties according to law, approved by the Court.

RULIF V. LAWRENCE,
Judge.

Filed, September 16, 1920.

MONMOUTH COUNTY SURROGATE'S OFFICE.

To All to Whom These Presents Shall Come, Greeting:

Whereas Percy D. Hicks, late of the County of Monmouth in the State of New Jersey, departed this life, having made and executed a last Will and

Testament which has been duly proved according to law, before the Surrogate of the County of Monmouth, and Letters Testamentary granted thereon to The Long Branch Trust Company the Executor named therein; and whereas the Orphans Court of said County of Monmouth, did by an order bearing date the Tenth day of June, Nineteen Hundred and Twenty discharge the Long Branch Trust Company from the further performance of its duties as such Executor, and did by a further order bearing date the sixteenth day of September, Nineteen hundred and twenty appoint Marion D. Hicks, as Substitionary Administratrix with the Will annexed of said Percy D. Hicks, deceased, in the place and stead of the said the Long Branch Trust Company.

Therefore, I, Joseph L. Donahay, Surrogate of the County of Monmouth, do certify that the said Marion D. Hicks, has appeared and qualified as such Substitutionary Administratrix with the Will annexed of Percy D. Hicks, deceased, as required by said Order, and is duly authorized as such Substitutionary Administratrix to adminster the estate of the said Percy D. Hicks, deceased, agreeably to said Will.

In Witness Whereof, I have hereunto set my hand and seal of Office, this Sixteenth day
(L. S.) day of September, One Thousand Nine hundred and twenty.

JOSEPH L. DONAHAY,
Surrogate.

MONMOUTH COUNTY SURROGATE'S OFFICE.

State of New Jersey, }
Monmouth County, } ss.:

I, JOSEPH L. DONAHAY, Surrogate of said County, do certify the foregoing to be a true copy of the Petition, Order and Letters of Substitutionary Administration with Will annexed in the Matter of the Estate of Percy D. Hicks, Deceased, as the same remain of Record in my office.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal of office, at Freehold, the Twenty-ninth day of December in the year of our Lord one thousand nine hundred and Twenty-four.

(Seal)

JOSEPH L. DONAHAY,
Surrogate.

Exhibit C-7.

MONMOUTH COUNTY SURROGATE'S OFFICE.

State of New Jersey, }
County of Monmouth, } ss.:

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETING:

Whereas, Percy D. Hicks, late of the County of Monmouth in the State of New Jersey, in and by his last will and testament, duly proved before the Surrogate of the County of Monmouth, did appoint Marion D. Hicks to be guardian of the person and property of John Hicks, his child, an infant, under the age of twenty-one years; and whereas, the said Marion D. Hicks has accepted the said appointment and entered into bond according to law; therefore

I, JOSEPH L. DONAHAY, Surrogate of the County of Monmouth, do hereby certify that the said Marion D. Hicks is duly authorized to execute the said trust according to law and the terms of the said last will and testament.

IN WITNESS WHEREOF, I have hereunto set my hand and seal of office, this Sixteenth day (L. S.) of September, A. D., nineteen hundred and twenty.

JOSEPH L. DONAHAY,
Surrogate.

State of New Jersey, }
Monmouth County, } ss.:

I, JOSEPH L. DONAHAY, Surrogate of the County of Monmouth, do certify, that I have compared the foregoing copy of the Letters of Guardianship issued to Marion D. Hicks, Guardian of the person and property of John Hicks, minor, with the record thereof, now remaining in my office, and have found the same to be a correct transcript therefrom, and the whole of such record. And I further certify that said Letters are now in full force and unrevoked.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal of office, at (Seal) Freehold, the Twenty-ninth day of December, in the year of our Lord one thousand nine hundred and Twenty-four.

JOSEPH L. DONAHAY,
Surrogate.

New Jersey Court of Errors and Appeals.

Between

ELLA HICKS
Complainant-Appellee,

and

LEON HICKS, BEATRICE HICKS, FLORENCE HICKS, MARION D. HICKS, individually, etc., and JOHN HICKS,
Defendants-Appellees,

and

JOSEPH A. HICKS (known also as JOSEPH HICKS) and ELENA M. HICKS (known also as LENA HICKS),
Defendants-Appellants.

On Appeal from Court of Chancery.

BRIEF FOR APPELLANTS JOSEPH A. HICKS (KNOWN ALSO AS JOSEPH HICKS) AND ELENA M. HICKS (KNOWN ALSO AS LENA HICKS).

Preliminary Statement.

This is an appeal from parts of a decree of the Court of Chancery (advised by Vice Chancellor Griffin) settling the construction and legal effect of the will of John Hicks, late of Long Branch, Monmouth County, deceased.

By the clause numbered "First" of his will de-

cedant directed payment of his debts and funeral expenses as thereinafter provided.

In lieu and satisfaction of her dower interest, or other claim, in any real property owned by him, the decedent, in and by the "Second" clause of his will, bequeathed to his widow Ella Hicks:

(1) The proceeds of a certain $5,000.00 mortgage;

(2) $2,500.00 in cash to be paid from the proceeds of a certain $5,000.00 insurance policy on decedent's life; and

(3) All decedent's household furniture and effects in the Hicks Building at Nos. 188 and 190 Broadway, Long Branch, except one parlor suite and the pictures in decedent's bed room.

By the "Third" clause of his will the decedent bequeathed to his widow $1,500.00 out of the above mentioned life insurance policy, said $1,500.00 to be held by decedent's widow in trust for his daughter Lena, and to be used for the separate use and benefit of said daughter, said trust to cease when said daughter became of legal age, and any balance then in the hands of said trustee to be conveyed and delivered to said daughter.

In this "Third" clause decedent also bequeathed to his widow a brood mare to be held in trust for his said daughter Lena, and stated that it was his desire that the future foals of said mare, if raced on any race course, be raced in the name of his said daughter Lena Hicks, all the proceeds of said races to be paid to his widow in trust for his said daughter, and upon said daughter becoming of legal age said trustee was directed to convey and deliver to said daughter said mare with all foals and all proceeds derived from said mare or foals, said trust then to cease.

By the "Fourth" clause of his will the decedent bequeathed to his widow $1,000.00 out of the above

mentioned life insurance policy, said $1,000.00 to be held by decedent's widow in trust for his son Joseph Hicks and to be used for the separate use and benefit of said Joseph Hicks, said trust to cease when said Joseph Hicks became of legal age, and any balance then in the hands of said trustee to be conveyed and delivered to said Joseph Hicks.

The "Fifth" clause of the will reads:

"Fifth.—I will, devise and bequeath to my brother Martin D. Hicks the following described real property:

"All that certain tract of land, situate and lying on the southwestern corner of Broadway and Academy Alley, in the City of Long Branch, New Jersey, known as the Hicks Building, at Nos. 188-190 Broadway, together with all buildings thereon situate: IN TRUST HOWEVER, to receive the income from said property and pay monies for the upkeep of said property, the residue or remainder thereof to be equally paid and divided between my two sons Percy D. Hicks and Leon Hicks until my said son Leon Hicks shall arrive at the age of thirty years, at which time I give, devise and bequeath to my said sons Percy D. Hicks and Leon Hicks said real property as tenants in common."

By the "Sixth" clause of his will decedent bequeathed to his brother Martin D. Hicks decedent's jewelry business located in the Hicks Building at 188 Broadway, Long Branch, including all fixtures, merchandise and ledger accounts or bills receivable due decedent in the operation of said jewelry business, to be held by said Martin D. Hicks in trust for decedent's two sons Percy D. Hicks and Leon Hicks, with the proviso that Martin D. Hicks should permit said Percy D. Hicks to manage and operate said business until said Leon Hicks became twenty one years of age, the profits from said business during said period to be used for the benefit of said Percy D. Hicks and Leon Hicks, and

when said Leon Hicks became twenty one years of age said trust to cease and said Martin D. Hicks to convey and deliver to said Percy D. Hicks and Leon Hicks all said business.

By the "Seventh" clause of his will decedent directed his executor to pay all his just debts out of moneys in bank at the time of decedent's death and the proceeds of any notes due decedent at that time. The decedent further directed that if such moneys and proceeds of notes were insufficient to pay all his debts Martin D. Hicks, as trustee, should pay any balance due decedent's creditors out of the proceeds of the ledger accounts and bills receivable due decedent in said jewelry business.

By the "Eighth" clause of his will decedent provided that if the moneys in bank to decedent's credit at the time of his death should be more than sufficient to pay all his just debts the balance remaining of such moneys after payment of his debts should be equally distributed among his children Percy D. Hicks, Leon Hicks, Lena Hicks and Joseph Hicks, to whom he bequeathed such balance.

By the "Ninth" clause of his will decedent directed that any money paid to his estate by any lodge or lodges of which he was a member be applied to the payment of his funeral expenses, and that if such money be not sufficient the balance of the funeral expenses be paid in the same manner as was provided for the payment of his other debts.

Decedent's brother Martin D. Hicks was nominated and appointed executor.

The will was dated March 14, 1910.

In an undated codicil the decedent bequeathed to his son Percy D. Hicks one parlor suite and the pictures in decedent's bedroom in the Hicks Building at 188 and 190 Broadway, Long Branch.

Decedent made another codicil dated July 11,

1910, which contained the following recital and declaration:

"Whereas, by my said will, dated March 14th, 1910, and witnessed by Harry Truax, Arthur Holston and Charles H. Greene, Jr., I have appointed my brother Martin D. Hicks trustee and executor thereof and I deem it advisable that my wife Ella Hicks be made a trustee and executrix in order that she may attend to the interest of my son Leon Hicks and make provision so that he may attend a suitable school until he is twenty one years of age or more.

"Now, I hereby revoke the appointment of the said Martin D. Hicks as such sole trustee and executor and I appoint my said wife Ella Hicks and the said Martin D. Hicks to be such trustees and executrix and executor of my said will and testament in the place of the said Martin D. Hicks alone, and I declare that my said will shall be construed and take effect as if the name of my said wife Ella Hicks were inserted in my will throughout, together with the name of my said brother Martin D. Hicks, and in all other respects I confirm my said will."

The will and codicils appear at pages 23 to 28, State of the Case.

Decedent died at Long Branch August 2, 1910, and the will and codicils were admitted to probate August 18, 1910, by the Surrogate of Monmouth County, who, on that day, issued letters testamentary on said will and codicils to decedent's widow, Ella Hicks, and decedent's brother Martin D. Hicks, who duly qualified as executors.

John Hicks, the decedent, was survived by his widow, said Ella Hicks, and by the four children named in his will, *i. e.,* the defendants Leon Hicks, Elena M. Hicks (known also as Lena Hicks), Percy D. Hicks (known also as Percy Hicks) and Joseph A. Hicks (known also as Joseph Hicks). The de-

fendant Beatrice Hicks is the wife of the defendant Leon Hicks, and the defendant Florence Hicks is the wife of the defendant Joseph A. Hicks (known also as Joseph Hicks).

On July 3, 1913, the Monmouth County Orphans Court, on the application of Martin D. Hicks, ordered that he (Martin D. Hicks) be relieved and discharged from all further duties of his office as executor and trustee except accounting for and paying over the assets received by him by virtue of his said office.

The defendant Leon Hicks was born December 17, 1893, and attained the age of thirty years on December 17, 1923.

Percy D. Hicks (known also as Percy Hicks) died at Long Branch September 1, 1918, and before Leon Hicks arrived at the age of thirty years. Percy D. Hicks was survived by his widow, the defendant Marion D. Hicks, and by the infant defendant John Hicks, his only child.

Percy D. Hicks left a will which contained the following provisions:

"Third. I give, devise and bequeath unto my executors hereinafter named all my estate, real, personal or mixed, in whatever form and wheresoever situate, in trust, however, to sell and dispose of the same as soon after my death as it can legally, and in their judgment conveniently and properly, be done, and that they distribute the proceeds thereof as follows, namely: Two-thirds of my entire estate to my infant son John Hicks, and the other one third of my estate to my wife Marion D. Hicks, which gift and devise is in lieu of dower.

"Fourth. I hereby nominate and appoint my wife Marion D. Hicks guardian of my infant son John Hicks to serve until he shall become of age.

"Fifth. I hereby nominate and appoint the Long Branch Trust Company and Edward R. Slocum executors of this my last will and testament."

The will of Percy D. Hicks was admitted to probate by the Surrogate of Monmouth County on October 24, 1918, and Edward R. Slocum having renounced executorship and refused to take upon himself the burden thereof, said Surrogate, on October 24, 1918, issued letters testamentary of the will of Percy D. Hicks to Long Branch Trust Company.

Thereafter, on June 10, 1920, the Long Branch Trust Company, on its application, was, by the Monmouth County Orphans Court, relieved and discharged from all further duties of its office except accounting for and paying over the moneys received by it by virtue of its said office, and on September 16, 1920, said Orphans Court ordered that letters of substitutionary administration with the will of Percy D. Hicks annexed be issued to Marion D. Hicks upon her giving bond as provided in said last mentioned order. Marion D. Hicks gave such bond and letters of substitutionary administration were issued to her by the Surrogate of Monmouth County on September 16, 1920. On the same day said Surrogate issued to said Marion D. Hicks letters authorizing her to execute the trust as guardian of the person and property of the infant defendant John Hicks according to law and the terms of the last will and testament of Percy D. Hicks, deceased. Marion D. Hicks individually and as substitutionary administratrix with the will of Percy D. Hicks, deceased, annexed, and as guardian of the person and property of the infant defendant John Hicks, is a defendant.

The suit was brought to settle the construction and legal effect of the clause numbered "Fifth" of the will of John Hicks, deceased.

Vice Chancellor Griffin, to whom the cause was referred, being of opinion that under the terms of this clause Percy D. Hicks and Leon Hicks took a vested estate in the real property mentioned in that clause and that upon the death of Percy D. Hicks

his one-half interest passed to his heirs and devisees with the right of possession in Leon when the latter attained the age of thirty years, a decree was made in which it was adjudged, among other things, substantially that:

By virtue of the clause numbered "Fifth" of the will of John Hicks, deceased, said John Hicks devised the lands described in that clause to Leon Hicks and Percy D. Hicks, as tenants in common;

All the estate said John Hicks, deceased, in said lands became vested in Leon Hicks and Percy D. Hicks on the death of said John Hicks on August 2, 1910, subject to the right, power and authority of the decedent's widow Ella Hicks and decedent's brother Martin D. Hicks over said lands and the income thereof from August 2, 1910 (the date of decedent's death) until December 17, 1923 (the date when Leon Hicks attained the age of thirty years) as such right, power and authority is defined in the decree;

Marion D. Hicks is entitled to have paid to her individually one-sixth of the net income of said lands covering the period subsequent to September 1, 1918 (the date of the death of Percy D. Hicks);

The infant defendant John Hicks is entitled to have paid to Marion D. Hicks as guardian of his person and property two-sixths of the net income of the lands covering the period subsequent to September 1, 1918 (the date of the death of Percy D. Hicks).

The defendants Leon Hicks, Marion D. Hicks and John Hicks are seized of and entitled to said lands and their respective rights, estates and interests therein are:

(*a*) Leon Hicks an undivided one half;

(*b*) Marion D. Hicks individually an undivided one-sixth; and

(*c*) The infant defendant John Hicks an undivided two-sixths; and

Leon Hicks, appointed receiver of said lands by the Court of Chancery, deliver possession of said lands to the defendants Leon Hicks and Marion D. Hicks individually and as guardian of the person and property of the infant defendant John Hicks.

It is the insistment of the appellants that so much of said decree is erroneous.

(The words "net income" hereinabove used are employed for conciseness of expression merely and are intended to mean the gross income less the deductions therefrom allowed by the decree.)

Argument.

"The disposition of a man's earthly belongings, after his death, is a *privilege of the statute* (Savings Investment & Trust Co. *v.* Crouch, 93 N. J. Eq. 311), and to effectively exercise that privilege he must declare his intention in writing, executed in the manner required by law, and in words free from doubt. The heir takes not by intention, but in the absence of intention (Fitch *v.* Usher, 6 Hare, 145). Heirs at law do not take in pursuance of a testator's intention but by force of law regardless of what his intentions were (Skellenger's Exors. *v.* Skellenger's Exor., 32 N. J. Eq. 659). The law throws the title to real property upon the heir at law, and the heirs of a decedent are not to be disinherited unless a clear intention appears *by the language of the will* to that effect (Woodruff *v.* White, 78 N. J. Eq. 410). 'The heir will not be disinherited, nor forfeiture of an estate decreed, except upon *words free of doubt*'. (Graydon's Exors. *v.* Graydon, 25 N. J. Eq. 561). The law undertakes to take care of the disposition of a man's property so far as he does not make a lawful testamentary disposition of it. It is not enough to show that the testator did not intend the

heir to take, but, to disinherit the heir, it must be shown that the testator made a disposition in favor of another (Roy *v.* Monroe, 47 N. J. Eq. 356).

"The question in expounding a will is not what the testator meant but what *is the meaning of his words.* * * * The use of the expression that the intention of the testator is to be the guide, unaccompanied with the constant explanation that it is to be sought *in his words and a rigorous attention to them,* is apt to lead the mind insensibly to speculate upon what the testator may be supposed to have intended to do, instead of strictly attending to the true question, which is, *what that which he has written means.* The will must be expressed in writing *and that writing only is to be considered.* And in construing that writing the rule is to read it in the ordinary and grammatical sense of the words, unless some obvious absurdity or some repugnance or inconsistence with the declared intentions of the writer, to be extracted from the whole instrument, should follow from so reading it" (Williams on Executors, 6th. Amer. Ed., Vol. 2, page 1078).

The court is called upon to construe what the testator *has said* (Woodruff *v.* White, *supra*). The question is not what the testator intended to do, or supposed he had done, *aside from the language of the will* (Graydon's Exors. *v.* Graydon, *supra*).

The rule which overrides all others in the construction of wills is that the intention of the testator is to govern, but that intention is to govern *only so far as the testator has declared it by his will* (Skellenger's Exors. *v.* Skellenger's Exor. *supra*). "The manner must be found within the four corners of the instrument" (Savings Investment & Trust Co. *v.* Crouch, *supra*).

"All doubts are to be resolved in favor of the testator's having said exactly what he meant" (Cody *v.* Bunn, 46 N. J. Eq. 131), and "plain clear words

read in their ordinary sense must always control in searching for the intent of the testator unless repugnant to other words used in another part of the will" (Burnet *v.* Burnet, 30 N. J. Eq. 595). "Where the testator's language and the provisions of the will are plain the court must be guided by them" although the result may frustrate the intentions of the testator (Terry *v.* Smith, 42 N. J. Eq. 504). "We are to inquire not what the testator meant to say but what he meant by what he did say" (Walton *v.* Walton, 73 N. J. Eq. 60).

In Van Houten's Exors. *v.* Pennington, 8 N. J. Eq. 745, this Court said:

"It was said upon the argument, probably with much truth, that upon the construction now given to the will this estate will take a direction which the testator never could have contemplated and which he would not have approved. The answer to this objection will be best given in the language of Chief Justice Kirkpatrick in Nevison *v.* Taylor, 3 Halst. 46, in reply to a similar suggestion: 'This is no argument against the construction. A will is not to be construed according to future contingencies but according to the true meaning appearing on the face of it at the death of the testator. Contingencies not contemplated cannot be provided against. Man sees but a little way into futurity. A single event unforeseen deranges all his plans and teaches us that man, with all his wisdom, toils for heirs he knows not whom'."

The decedent uses the following plain, clear words to express his intention: "I will, devise and bequeath to my brother Martin D. Hicks * * * real property * * * on the southwestern corner of Broadway and Academy Alley, in the City of Long Branch * * * in trust * * * until my said son Leon Hicks shall arrive at the age of thirty years".

That language is of definite significance, free

from ambiguity and in apt words and phraseology. Not only is that language clear and unambiguous but it must be construed to mean exactly what it says.

The trust was an active trust. The trustees were "to receive the income from said property" and that very fact vested the title in fee in them (Zabriskie *v.* Morris & Essex R. R. Co., 33 N. J. Eq. 22; affirmed 34 N. J. Eq. 282). Not only were the trustees "to receive the income from said property" but they were "to pay monies for the upkeep of said property". And the residue of the income was to be equally paid and divided "between my two sons Percy D. Hicks and Leon Hicks until my said son Leon Hicks shall arrive at the age of thirty years".

But what did the testator intend should be done with the one half of the net rents which were to be paid to Percy until Leon attained the age of thirty years should Percy die before Leon reached thirty years of age? The will is silent.

Did the testator contemplate the possibility that Percy might die before Leon attained thirty years of age? By the "Sixth" subdivision of his will the testator provided that Percy should be permitted to manage and operate testator's jewelry business until Leon became twenty one years of age, and by the codicil of July 1, 1910, the testator constituted his wife an executrix and trustee with his brother Martin "in order that she may attend to the interest of my son Leon Hicks and make provision so that he may attend a suitable school until he is twenty one years of age or more". Nowhere in the will or in either codicil is there any indication that the testator contemplated the contingency that Percy might die before Leon reached thirty years of age. If the testator did not contemplate the possibility that Percy might die it necessarily follows that the testator had no will or intention respecting that contingency. "The failure to provide for the

contingency which has happened was due to the absence of any will or intention on the part of the testator to make such provision" (Walton *v.* Walton, *supra*).

It is quite probable that the possibility of Percy's death before Leon attained the age of thirty years did not occur to the mind of the decedent when he made this will; it is quite probable that if it had he would have made some provision for it; but how is it possible to know what that provision would have been? If he did not *think* of it then he could have had no *intention* respecting it. If he did think of it then he did *not intend* to make any further or other distribution than he had made.

From the absence of all provision on the subject it is evident that the emergency which occurred did not present itself to the mind of the testator.

"The failure to provide for the contingency which has happened was due to the absence of any will or intention on the part of the testator to make such provision" (Pitney, Master, in 73 N. J. Eq. 60).

If a testator through ignorance, inattention or inadvertence fails to make provision which, except for ignorance, inattention or inadvertence he would have made, it is not within the power of the court to supply omissions. The province of the court is to construe, not make, wills.

"AT WHICH TIME" (*i. e.,* the arrival of Leon at the age of thirty years) "I give, devise and bequeath to my said sons Percy D. Hicks and Leon Hicks said real property as tenants in common".

As already seen, the intention of a testator is to govern only so far as he declares it within the four corners of his will, and in construing a will plain clear words read in their ordinary sense must always control unless repugnant to other words used in another part of the will.

The language just quoted is free from ambiguity

and in apt words and phraseology and must be construed to mean exactly what it says. It plainly points out the time when the title to the property was to vest, and if plain words read in their ordinary sense are to control in searching for intent there is no room to doubt that it was the intent of the decedent that estate should vest when Leon attained the age of thirty years.

Not only is the language used by the testator free from ambiguity and in apt words and phraseology, but the language is of definite legal significance.

The part of the will under consideration in Gifford *v.* Thorn, 9 N. J. Eq. 702, was "I give and bequeath all the residue and remainder of my property * * * to the said William Jauncey Thorn *when* he arrives at the age of twenty one years, to him and his heirs forever". William Jauncey Thorn died before he attained the age of twenty one years. It was held by this Court that the gift was contingent and not vested and that the next of kin of William Jauncey Thorn were not entitled to the fund in controversy.

In Clayton *v.* Somers Exor., 27 N. J. Eq., 230, the court said: "The gift is to the legatees *when* when arrive at the age of twenty one years. It is established that the right to a legacy given in such terms is contingent on the legatee's attaining to the specified age. Gifford *v.* Thorn, 1 Stock. 702." It was held that the legacies were not vested.

In House *v.* Ewen, 37 N. J. Eq. 368, the court said: "Some of the legacies * * * are * * * conditional. The latter are those which are contingent on the legatee's attaining the age of twenty one years. They are given to the legatee *'at the age of twenty one years'* the time being annexed to the gift itself. They are therefore not vested but contingent * * * The contingent legacies will lapse

in case of the death of the legatee before arriving at the age of twenty one years".

In re Peterson's Estate, 85 N. J. Eq. 135, the will provided: "All the rest and residue of my estate * * * I give, devise and bequeath to my executors * * * in trust to hold the same and keep the same invested * * * and the interest accruing on the same to be paid to my beloved wife Anna during her natural life or widowhood, but if my said beloved wife should marry then and in that case I order my said executors to divide all of my said estate between my said wife aforesaid and my two children to be equally divided between them, share and share alike, and I hereby order my said executors to pay over to each of them, my said wife and two children, an equal one third share or part of my said estate so held by them, to them, my said wife and children, their heirs and assigns". The testator was survived by his widow and two daughters Lizzie and Addie. Lizzie died in her mother's lifetime leaving a husband and two sons. Held that Lizzie's share never vested and therefore lapsed and that the testator to that extent died intestate as the will made no disposition of the lapsed estate.

In Leake *v.* Robinson, 2 Merrivale, 385, Sir William Grant said: "If I give to persons of any description *when* they attain twenty five or from and after their attaining twenty five is it not precisely the same thing as if I gave to *such* of those persons as should attain twenty five? None but a person who can predicate of himself that he has attained the age of twenty five can claim anything under such a gift".

"At which time" is, if anything, a more definite expression than "when" to fix the period of vesting.

The words "at which time" are not repugnant to or inconsistent with any other words contained in the will.

The learned Vice Chancellor says that "the will was drawn by a scriviner who was not well versed in the law of wills" and he directs attention to Aitken *v.* Sharp, 93 N. J. Eq. 336, where it was said (at p. 346): "What difference in treatment should be accorded in a case where a will is drawn by one learned in the law and one unlearned in the law? My judgment is that it resolves itself into a question of evidence, where the burden is more strongly upon the person seeking to prove that the word was not used in its technical sense where the instrument was drafted by one learned in the law than in the case where it was drawn by one unlearned in the law."

In the case at bar the words "at which time" are not only free from ambiguity but they are of definite legal significance. It is the contention of the appellants that the words were used not only in their ordinary and grammatical sense but also in their technical sense, and if the burden of proving that the will was drawn by one unlearned in the law and that the words should therefore be given a construction different from their ordinary and grammatical sense and from their technical sense that the burden is not on the appellants. And not only is there no evidence that the will was drafted by one unlearned in the law, but one of the subscribing witnesses to the will and to the two codicils thereto was Harry Truax, and if any inference can fairly be indulged in, it is respectfully submitted, a fair inference that Harry Truax drafted the will, and Harry Truax was, and is, a member of the Bar of this State and admitted to the Bar after the court admitting him had found that he was learned in the law.

The learned Vice Chancellor says: "If the language of the will 'at which time' * * * stood alone I would incline to the view that the estate was contingent", but because, as he says, all the in-

come "from the property from the date of the testator's death down to the time when Leon reached the age of thirty years was payable to these two sons" he concluded that the estate was vested, his reason being that "The rule deducible from the English authorities is that if language in a will, standing alone, would make the *legacy* contingent, yet if the will also provided that the *legatee* should receive the income from the *legacy* until the period had arrived when the legatee would take, then the *legacy* vests in the *legatee* from the time of the death of the testator".

In the first place the will does not provide that all the income from the date of the testator's death down to the time when Leon reached the age of thirty years was payable to these two sons. That would have been so if both sons were alive when Leon attained the age of thirty years but, as heretofore pointed out, the testator made no disposition of so much of the income of the one half of the net rents which were to be paid to Percy until Leon arrived at the age of thirty years in the event of the death of Percy before Leon attained that age. In the second place the case at bar is not a *legacy* but a devise of real estate.

If the subject matter of the testamentary disposition under consideration were a legacy payable out of personalty, and if the will provided that the beneficiary of that legacy should meanwhile receive the income the rule deduced by the Vice Chancellor might, perhaps, be applicable, but if the subject matter of the testamentary disposition was not payable out of *personalty* the rule would not apply.

"The reason for this distinction is that in the civil law a bequest to a person to be paid at a future time was held to confer on him a present right to the legacy notwithstanding the time of payment was future; so that immediately upon the testator's decease it became in the eyes of the civil law a

present debt payable at a future time. Now anciently legatory matters arising on personal estate were solely under the jurisdiction of the ecclesiastical courts and the decisions of those courts were regulated by the civil law. By degrees courts of equity took cognizance of them, and with a view to uniformity of decision, adopted the rule in question in respect to such legacies. But legacies payable out of real estate never fell within the cognizance of ecclesiastical courts; there was not, therefore, the same reason for applying this rule to that description of legacies; and as it appeared contrary to the favor which the law shows to the owner of the inheritance courts of equity rejected it as a general rule in respect to all such legacies" (Williams on Exors., *supra,* Vol. 2, p. 1352).

The general doctrine is that if a legacy be given *out of personal estate* payable at a certain time or if given at a certain time and *interest in the meantime* it is a vested legacy; but the rule as to legacies out of *real estate* is otherwise. Lord Chancellor in Van *v.* Clark, 1 Atk. 510.

Neither land nor charges upon land was ever subject to the jurisdiction of the spiritual court and the rules borrowed by the spiritual court from the civil law on the subject of pecuniary legacies and adopted by courts of equity for the sake of uniformity and consistency with the spiritual court in matters of which the ecclesiastical court and courts of equity had concurrent jurisdiction have no application to devises of real property or to bequests payable out of real property.

The rule referred to by the Vice Chancellor was, as stated, a refinement borrowed from the civil law and applied to pecuniary legacies, but no valid reason exists for refining upon a refinement and holding arbitrarily that the rule applies to real property.

In Gifford *v.* Thorn, *supra,* the Chief Justice

(who heard the case for the Chancellor) said (at p. 708), "Where the interest of the *legacy* is directed to be paid to the *legatee* until he receive the principal, or where the *legacy* is placed in the hands of trustees for the exclusive benefit of the *legatee* until it is directed to be paid over, the *legacy* will be deemed vested." The Vice Chancellor directs attention to that sentence and says that the case at bar comes clearly within it. But the devise in the case at bar was of real property. The bill in Gifford *v.* Thorn was filed to recover a distributive share of *personal* estate (p. 703) and the language above quoted manifestly relates to personal estate.

This court said (p. 729): "In construing wills, the primary rule is that the *intention* of the testator is to govern; and to ascertain this intention we are to look first to the language used by the testator himself, and if this is ambiguous, or susceptible of different constructions, or if carried out would defeat the intention as clearly deducible from other parts, or from the whole scope of the instrument, the intention thus manifested will control the particular words.

"We look then, first to the language used by the testator himself to express his intention. The words are, 'I give and bequeath &c. to the said William Jauncey Thorn *when he arrives at the age of twenty one years,* to him and his heirs forever'."

"Now, it has been repeatedly held, and seems at this day to be the settled law, that where the bequest made to a legatee is in these, or words of similar meaning, without being controlled by the context of the will, they imply a condition precedent, to-wit, that the legatee live to that age; and consequently the legatee does not take a vested interest in the legacy until twenty one."

There are no words in the context of the will under discussion which require any other or different construction to be given the words "at which

time" than was given the words "when the arrives at the age of twenty one years" in Gifford *v.* Thorn.

Adverting to first principles:

(1) The law throws the title to real property upon the heir at law;

(2) The disposition of real property by will is a privilege;

(3) That privilege must be exercised by a writing executed in accordance with the statute; and

(4) If the words of that writing are not free of doubt the title which the law throws on the heir is not extinguished.

In the case at bar there is no ambiguity of phraseology or language. "At which time" (the arrival of Leon at the age of thirty years) "I give, devise and bequeath to my said sons Percy D. Hicks and Leon Hicks said real property" definitely fixes the time at which the testator gives the real property to his said two sons. To fix any other time for the vesting of the title in those sons would do violence to the language of the testator.

But what did the decedent intend should be done with the half of this property which would have gone to Percy had he been alive when Leon reached the age of thirty years? Did he contemplate the possibility of Percy's death before Leon attained the age of thirty years? The words of this Court in Gifford *v.* Thorn (at p. 733) appear apposite: "It is quite probable that the possibility of the legatee's dying under twenty one did not occur to the mind of the testator when he made this will. It is quite probable that if it had, he would have made some provision for it. But how is it possible for us to know what that provision would have been? If he did not *think* of it, then he could have no *intention* respecting it. If he *did* think of it, then he did *not intend* to make any further or other distribution of this residue than he has made."

It may be that if there had been presented to him the possibility that Percy would marry, have issue and die before Leon attained the age of thirty years the testator might have provided for that contingency. Would the testator have given the share which Percy would have taken had he lived until Leon attained thirty years of age to Leon alone? Would he have given that share to his (testator's) children who were alive when Leon attained the age of thirty years? Did he intend that Percy, married or not married, with children or without children, might make any disposition he might desire of that share and thereby divert the share to persons the testator never saw and from whom he could not have had any regard? It so happens that Percy married and had a child and that Percy made a will in favor of that wife and child. But suppose Percy did not marry, how did John Hicks desire that share to go? Suppose Percy did not have issue, how did John Hicks desire that share to go?

"It may be conjectured that if his (the testator's) attention had been directed to the subject he would have used language to prevent the lapse and it is quite probable that he would have done so. The question, however, is not what he probably would have said but what did he mean by the language which he has used" (Hand *v.* Marcy, 28 N. J. Eq. 59).

"The intention of the testator is to govern only so far as he has declared it by his will. With regard to that part of his property which his will did not pass it must be declared he had no will and therefore the court cannot know his intention concerning it. The next of kin cannot take until intestacy is found and then they take not in pursuance of the testator's intention but by force of law regardless of what his intentions were" (Skellenger's Exors. *v.* Skellenger's Exor, *supra*).

"The vicious reasoning to be avoided lies in the assumption that a testator must have thought of

things which he might have thought or ought to have thought of, or perhaps would have thought of if he had had an experienced lawyer to do thinking for him and make suggestions to him" (Hewitt *v.* Green, 77 N. J. E. 345, at p. 360).

"The court is called upon to construe what the testator has said and not to supply language and thereby make him say what he did not say; and the heirs of a decedent are not to be disinherited unless a clear intention appears *by the language of the will* to that effect" (Woodruff *v.* White, *supra*).

In Stout *v.* Cook, 79 N. J. Eq. 573, this court said: "It nevertheless not infrequently happens that a testator unintentionally dies intestate as to some part of his estate by reason of his failing to contemplate the happening of a contingency which actually occurs after his death; and as was said by Lord Chas. Halsbury in Inderwick *v.* Tatchell (1903) L. R. App. Cas., 122, Courts are not at liberty because an event has happened which the testator has not provided for, to disregard the ordinary rules of construction that words must be read according to their natural and reasonable meaning and inject into the will a provision that the testator would probably have made had he contemplated the happening of the contingency".

In Kempson *v.* Kempson, 89 N. J. Eq. 205, this court said: "That the will must furnish the basis for construction is elemental. It can make no difference whether the testator through ignorance or inadvertance fails to dispose of all his estate. The courts cannot supply the omission. The province of the courts is to construe, not make, wills."

Residuary clauses are sometimes included in wills and courts have considered residuary clauses evidence of intention not to die intestate and have shown a disposition to so construe residuary clauses as to prevent intestacy in regard to any part of the property of a testator who has incorporated in his

will a general residuary clause. But in the case at bar the testator showed no intention to provide against intestacy by a gift over or a general residuary clause. And while a residuary clause may be a circumstance to which some weight might be attached in doubtful cases I do not find any case in which the decision has rested upon the sole ground that the will has contained a residuary clause. *In re* Edwards (1906) 1 Ch. (Eng.) 570, Lord Justice Romar said: "It is said that the court leans against intestacy. I do not know whether that expression at the present day means anything more than this, that in cases of ambiguity, you may, at any rate, in certain wills, gather an intention that the testator did not intend to die intestate, but it cannot be that merely with a view to avoiding intestacy you are to do otherwise than construe plain words according to their plain meaning."

As a matter of speculation it is not difficult to suppose that the testator intended to dispose of all his property and has failed to use words to express that intention * * * . When we look outside the will for intention and use speculation and *probabilities* to ascertain what a testator intended and did not express we repeal the statute of wills and make testaments by the imagination of the judge" (Graydon's Exor. *v.* Graydon, 23 N. J. Eq. 229).

The intention of the testator is not to be conjectured arbitrarily; it must be found in the express words, or be the fair deduction from the words, of the will itself. The common law doctrine of lapse is founded on the assumption that the testator intends his devise as a personal bounty and an intention to extend it to heirs or children will not be presumed but must be expressed.

There is nothing to show that the decedent had any testamentary intention favorable to a grandchild not in existence in his lifetime, and the possibility of the disinhersion of such a grandchild will

not countervail the ordinary rules of construction and render that a vested gift which would, according to the ordinary interpretation of language, be contingent only. *Re* Wrangham (1860), 1 Drew & S. 358, 62 Eng. Reprint 416, 30 L. J. Ch. N. S. 258, 7 Jur. N. S. 15, 3 L. T. N. S. 722, 9 Week. Rep. 156.

The law of the land prescribes the disposition which shall be made of real property and provides a definite successor to such property, and the disposition which the law makes of real property should not be thwarted and the heir disinherited by conjecture or speculation as to what a testator would have done had a case not provided for been suggested to him. When we look outside of a will for intention and use speculation and probabilities to ascertain what a testator intended and did not express, we not only thwart the disposition which the law makes of real property in the absence of any effective testamentary disposition of it, but we repeal the statute of wills and make testaments by the imaginations of a judge; imaginations may lead into fields of fancy; property will have no permanent resting place, but, floating in the capricious element of conjecture, it will be one man's today and another's tomorrow.

It is respectfully submitted that the decree should be, in the particulars set forth in petition of appeal (Case, pp. 3-10), reversed.

Respectfully submitted,

EMANUEL WEITZ,
Of Counsel with Appellants.

New Jersey Court of Errors and Appeals.

Between

ELLA HICKS,
Complainant-Appelle,

v.

LEON HICKS, BEATRICE HICKS, FLORENCE HICKS, MARION D. HICKS, individually, etc., and JOHN HICKS,
Defendants-Appellees,

and

JOSEPH A. HICKS (known also as Joseph Hicks) and ELENA M. HICKS (known also as Lena Hicks),
Defendants-Appellants.

On Appeal from Court of Chancery.

Brief on part of Appellees Marion D. Hicks, individually, and as Guardian of John Hicks, infant, and John Hicks, infant.

This is an appeal by Joseph A. Hicks (known also as Joseph Hicks) and Elena M. Hicks (known also as Lena Hicks) from a decree of the Court of Chancery advised by Vice Chancellor John Griffin on February 15th, 1926 construing the fifth clause of the Last Will and Testament of John Hicks, deceased, which said clause reads as follows:

"I will, devise and bequeath to my brother, Martin D. Hicks, the following described real property: All that certain tract of land situate and lying on the southwestern corner of Broadway and Academy Alley, in the City of Long Branch, New Jersey,

known as the Hicks Building, at No. 188-190 Broadway, together with all buildings thereon situate; in Trust, however, to receive the income from said property, the residue or remainder thereof to be equally paid and divided between my two sons, Percy D. Hicks and Leon Hicks, until my said son, Leon Hicks shall arrive at the age of thirty years, at which time I give, devise and bequeath to my said sons, Percy D. Hicks and Leon Hicks, said real property as tenants in common."

The final decree appealed from (see printed case 97; conclusions, printed case 91) adjudged and decreed that by virtue of the provisions of said fifth clause of said Will the estate therein devised vested in Percy and Leon Hicks, the devisees therein named, upon the death of the testator, and that upon the death of Percy Hicks his one-half interest descended to his heirs or devisees with the right of possession with Leon Hicks when said Leon attained the age of thirty years.

I.

John Hicks, the testator, died August 2nd, 1910.

Leon Hicks, a son of testator, survived his father, and attained the age of thirty years in the year 1923. Percy Hicks, the other son, likewise survived his father, but died at the age of 29 in the year 1918, leaving a will and devising his estate to his widow, Marion D. Hicks, one-third, and to his son John (infant) the remaining two-thirds.

It is the insistence of these appellees that by virtue of the provisions of the fifth clause of the will of John Hicks, father of Percy and Leon, they are entitled to the interest of Percy devised to him by said will, namely to Marion one-sixth, and to John two-sixths, representing the one-half interest in the real estate referred to in said clause five. That by the terms thereof the devise to Percy and Leon was

a vested interest, vesting at the time of the death of testator.

It is the insistence of the complainant, and the opposing defendants, namely Joseph Hicks and Elena Hicks, that the estate devised to Leon and Percy Hicks was a contingent one only, and did not vest until Leon attained the age of thirty years, and Percy having died prior to that time, his devise lapsed, and consequently his share passed to the heirs-at-law of the testator. The will contains no residuary clause.

The immediate question to be argued is whether the devise contained in the fifth clause is a vested or a contingent one. We respectfully submit the devise vested at the death of the testator, Leon Hicks, and consequently upon the death of Percy prior to Leon, his brother, attaining the age of thirty years, the interest of Percy passed under the latter's will to the devisee therein mentioned, namely his widow Marion, and his infant son John.

II.

At the threshold of this argument we quote from Gifford v. Thorne in 9 N. J. Eq. at page 729, illustrative of the method of construction applicable in endeavoring to ascertain the true meaning of the phraseology in question through the intent of the testator:

"In construing wills, the primary rule is that the **intention** of the testator is to govern; and to ascertain this intention, we are to look first to the language used by the testator himself, and if this is ambiguous, or susceptible of different constructions, or if carried out would defeat the intention as clearly deducible from other parts, or from the whole scope of the instrument, the intention thus manifested will control the particular words."

And again in Post v. Herbert's Executors, 27 N. J. Eq. 543, 544—

"The rule first stated, that where a legacy is given to a person when a future event happens, the legacy will be contingent until the occurrence of such event, is, like all other similar rules applicable to wills, a mere judicial exposition of the natural meaning of a certain form of expression. It is not an artificial contrivance which, when present, is to have a supreme effect, but is a rule simply because the phrases in question, considered intrinsically, and without qualification ab extra, import a definite testamentary purpose. The phraseology has received its accepted interpretation, because it is supposed that such interpretation will carry out the view of the testator. The consequence is, the rule is always subject to be modified or abrogated by the conditions of the case to which it is applied; and thus a number of admitted exceptions to it have supervened."

Consequently the mere use of the words "at" or "when" or "from and after" or "at which time" is not conclusive in any case. The will or other instrument under construction may have been drawn by some unskillful person, not versed in the technical meaning or application of the words with reference to the document in which they may be employed. It is the intention that must be sought through a study of the entire instrument.

It is a primary rule of construction applicable to wills that the law favors the vesting of estates, and in the absence of words expressing a clear intent to the contrary an estate will be construed as vested rather than contingent.

40 Cyc 1646-1661.
Hopper v. Demarest, 21 N. J. L. 525.
Kimble v. White, 50 N. J. Eq. 28.
Keene v. Plume, 82 N. J. Eq. 526.

Quoting from the last cited case—at page 528:
"As a preliminary matter it may be stated that in

doubtful cases every intendment of the law is in favor of the vesting of estates, for the reason that it must be presumed that a person who goes through the formality of making a will intends to dispose of his whole estate, unless the contrary clearly appears. This canon of construction is so well known as to need no citation of authorities" * * *

In the case sub judice, the will apparently was drawn by some person not skilled in testamentary law nor in the use of words employed in drafting wills, for example, in the second clause of the will this unusual phraseology is found—"I will devise and bequeath"—. Further that clause disposes of personal estate only, yet the technical word devise is also employed. In the third and fourth clauses, the same—and in other respects the phraseology resorted to is to say the least inartistic.

By the terms of the will the testator first provides for his wife (see clause two). It is significant that the bequest therein contained is given not only in lieu of dower, but also in lieu and satisfaction of that "Or other claim in and to any lands or real estate owned by" testator. This provision, it is submitted would bar complainant from any claim to any interest in the premises title to which is now disputed.

The testator then provides for his children Lena (clause 3) and Joseph (clause 4). Thus far he has disposed of his personalty only, the real estate he devises to his remaining two children Percy and Leon, and his real estate consisted only of store premises where he had conducted a jewelry business for years and with him was associated his son, Percy, (see testimony) and he provided for the continuance of the jewelry business after his death at the same location by Percy, and ultimately by both sons, Percy and Leon (clause 6) indicative of an intention to give the premises itself ultimately to said two sons as a means for the continuance of said

business indefinitely. The wife and two of the children were provided for by bequests, then the remaining two children, Percy and Leon, were given the real estate. There was no great inequality in this distribution of the estate, considering the time thereof. To conclude that Percy's share, or Leon's as well were contingent and that either or both might never vest, for if Percy's was contingent, Leon's was also until he reached the age of thirty years, would be to assume that the testator had discriminated against said two sons in favor of his other heirs when there is no apparent reason for such injustice and a clear intent to the contrary, namely, the disposition to them of the jewelry business and a permanent place wherein to conduct it.

By the fifth clause testator first devised the premises in question to a trustee, thereby he divested himself of the legal title and there remained in him only a power as to the disposition of the trust res or corpus at the termination of the trust period—so that the recurring use of the words "I give devise and bequeath to my said sons" referring to the time when Leon attained the age of 30 years, were of no effect as a disposition of the legal title as of the time the will was made, and are to be considered merely as a direction to the trustee to deliver the corpus of the trust to the beneficiaries. The time of the vesting of the devise in the beneficiaries was when the estate passed to the trustee, namely at the death of the testator; the time of the delivery was when Leon reached the age of thirty years. The condition is annexed to the delivery of the devise by the trustee to the beneficiaries not to devise itself. It is the delivery that is postponed, not the gift. It is as though testator had said, I give this property to my trustee until Leon reaches the age of thirty years at which time said trustee shall convey or deliver said property to my two sons as tenants in common.

See Neilson v. Bishop, 45 N. J. Eq. 473.
Booraem's case, 55 N. J. Eq. page 739.
Post v. Herbert, 12 C. E. Green 544.
L. R. A. 1918 E, 1112.

The severance of the subject matter of the devise from the estate as by a direction that it be set apart, or given to trustees, for the purpose of distribution is a circumstance showing an intention that the gift shall vest at once.

L. R. A. 1918 E, 1126, 1127.
Fisher v. Johnson, 38 N. J. Eq. 46, 48.

The gift of the intermediate income to the beneficiaries indicated an intent that the devise should vest at once.

L. R. A. 1918 E, 1114.
L. R. A. 1915 C, 1036.

In this connection see case of Neilson vs. Bishop, 45 N. J. Eq. 475, 476, where a gift by will was made to trustee for the sole use and benefit of the legatees to receive the principal when one became of lawful age. It was held that the property was vested, and the court in its opinion says:

"The gift under consideration was not made directly to the legatees, but to trustee for the sole use and benefit of the legatees. The gift to the trustee is absolute; they held the $12,000. by as perfect title as could be made; they held it, however, not for their own benefit, but for the benefit of their cestuis que trust. The terms of the trust were that they were to hold and invest the money for the benefit of the cestuis que trust until the youngest of the two became of lawful age, and then the fund, principal and interest, to be paid to the cestuis que trust, share and share alike. A gift in this form is in equity equivalent in all respects to a direct gift

to the cestuis que trust. They are in effect the legatees."

Also Gifford v. Thorne, 9 N. J. Eq. 702.
Booraem's case, 55 N. J. Eq. 759.
Post v. Herbert, 27 N. J. Eq. 540.
Dutch Church v. Smock, 1 N. J. Eq. 548.
Dusenberry, Executor, v. Johnson, 59 N. J. Eq. 336, 338.
40 Cyc 1661.

As stated in the note in L. R. A. 1918 E, 1097:

"Two reasons are given for the rule that the gift of the intermediate interest is indicative of an intention to postpone possession only, and not the vesting. One is, that for the purpose of the interest there must be an immediate separation of the legacy from the bulk of the estate, thereby bringing the case within an exception elsewhere discussed (III. d, infra); but a more logical reason is that the right to the whole of the income from the fund is equivalent to a gift of the fund from which such income is derived."

In the case of Gifford v. Thorne, 9 N. J. Eq. 702 relied on by complainant and the opposing defendants, the phrase "when he arrives at the age of twenty-one" as applied to the disposition of a legacy was held to indicate a contingent legacy according to the intent as disclosed by the entire will. The early authorities are reviewed and distinguished. The exceptions to the rule are recognized by the court, but the facts were conclusive as to the intent of the testator to make a conditional gift. There was no trust disposition of the legatee's interest in that case, nor any beneficial enjoyment of the income prior to the happening of the contingency.

In order to save the time of the court, we have followed down in Shepard's Annotations the above case of Gifford v. Thorne, and the following is the

result, eliminating repetitions of citations appearing in Atlantic Reporter:

Chambers v. Sharp, 61 N. J. Eq. 253:

Testatrix gave the income of her estate for life, and then provided:

"And upon the death of the survivor of my said brother and sister, and after the sale of my real estate as hereinbefore directed, I do hereby give and bequeath to" etc. Held, the words "Hereby give and bequeath" indicate a present gift, at the time the will speaks, and that the estate was a vested one.

House, et al. v. Ewen, 37 N. J. Eq. page 368, 377:

Legacy to be given "at the age of twenty-one years." Held, contingent, time being annexed to the gift itself.

Neilson et al. v. Bishop, 45 N. J. Eq. 473:

A devise in trust to executors, paying over the income to a grandson and a great-grandson until the great-grandson should become of lawful age, then paying over the principal to the grandson and great-grandson, share and share alike. Held, a vested estate.

Booraem's case, 55 N. J. Eq. page 759, 761:

Testator left all his estate to his wife during widowhood, and then to his grandson upon the death or marriage of said widow, declaring that if his wife should die or marry before the grandchild should attain the age of thirty years then all his estate so devised to the grandson should be held in trust by the executor with discretion to convey same to said grandson before the latter attained the

age of thirty years. Widow died; trustee died; grandson died in his twenty-sixth year after the death of testator, but before death of widow, and after death of executor.

Held the residuary personal estate of testator became a vested interest at his death in his grandson in fee, and that the gift to the trustee did not affect the vesting of the interest for the gift being for the sole use and benefit of the cestuis que trust is to be regarded as a gift to the cestuis que trust.

Barnes Cycle Co. vs. Haines, 69 N. J. Eq. 651, 658:

Devise to wife for life and bequest to trustee for benefit of wife during her lifetime, remainder in both estates "Unto such child or children as I shall leave or have living at the time of my decease, and to their heirs and assigns forever."

Held, children of the testator, all of whom survived him took upon his death a vested interest.

Moore v. Matthews, 70 N. J. Eq. 373, 377:

Testator gave income from his undivided interest in a house and lot of land to his wife for life. On her death the income to H. and C., during their joint and several lives, then "On the death of the said H. and C., my entire interest in said house, No. 31 North Second Street, Camden, N. J., **to be given** in fee-simple in equal parts to Amy J. Roberts and Hetty Roberts."

Held, the devise over to Amy and Hetty passed to them an estate in fee, as tenants in common, in equal share, which vested immediately upon the death of the testator. In that case both H. and C. died in the lifetime of the widow so that they never came into actual enjoyment of the estate. It was contended in the case that the words "to be given" indicated an intent on the part of the testator that

the gift to Amy and Hetty should not pass until H. and C. had died, which language is substantially the same as the words "at which time" used in the will of the testator Hicks, and as the words "when he arrives at the age of twenty-one years" employed in the will construed in the case of Gifford v. Thorne. The court distinguishes the cases through the difference in the conditions, namely the attainment of a certain age which was uncertain, and the event certain to happen, namely, death. It is to be noted there was no trust estate intervening.

Howell, Executor, vs. Green, 31 N. J. L. 570:

A bequest of a thousand dollars in trust, the interest to be paid to M. G. during life and after her death "I give and bequeath the said $1,000. to her two daughters."

Held, vested legacies in the two daughters, legacy of one of the daughters lapsed by her death in the lifetime of the testator, the other legatee survived testator, but died in the lifetime of the life tenant M. G.; note the recurrent expression used after original bequest "I give and bequeath."

Re Peterson's Estate, 85 N. J. Eq. 135:

Testator devised all his estate to his executors in trust, paying the interest to the widow for life or widowhood and upon her remarrying "Then in that case **I then order** my said executors to divide all of my said estate between my said wife aforesaid and my two children to be equally divided between them, share and share alike, and I hereby order my said executors to pay over to each of them, my said wife and two children, an equal one third share or part of my said estate so held by them, to them, my said wife and children, their heirs and assigns."

The estate consisted entirely of personal property. The widow and the two daughters survived. One

daughter died in her mother's lifetime leaving two sons; the widow died without having remarried. The Orphan's Court ordered the estate distributed to the surviving daughter and the children of the deceased daughter. The gift over upon the widow again marrying was contingent. The event never came to pass and the legacy lapsed.

Carter v. Bugbee, 92 N. J. L. 391, 393:

This case while citing Gifford v. Thorne case has no application.

Keen v. Plume, 82 N. J. Eq. 526:

Court discusses what constitutes a vested estate as distinguished from a contingent one; the limitation in this case depended upon death.

See also the case of Hartson v. Elden, 50 N. J. Eq. 522, 528, holding:

That a bequest of the interest or produce of a fund, directly or through a trustee to a legatee, without limitation as to continuance is a gift of the fund itself.

Question in the case was whether at the death of testator a bequest to a cemetery was void under the rule against perpetuities and the property bequeathed passed to the testator's next of kin, the subsequent enactment of the statute before date fixed for payment of legacy did not divest the rights of the next of kin in favor of the cemetery company.

See also L. R. A. 1918 E, Note, 1097:

Note of this case is extensive and voluminous and cites many different instances of vested and contingent remainders. It discusses the question whether the survival of the person presumptively

entitled to the postponed provision until the time of enjoyment was intended by the testator as a condition precedent to the gift's taking effect.

It is authority for the following propositions: Courts are inclined to construe legacies as vested, when possible. If doubtful whether words of contingency or condition apply to the gift itself or to the time of enjoyment they are to be construed as applying to the latter.

There is a preference for a construction which will preserve the gift to the children of legatees or devisees in case of their death before time of payment or distribution or of an inclination in favor of the construction which will avoid any intestacy.

The general rule is stated that if futurity is annexed to the substance of the gift the vesting is suspended, but where the gift is absolute and the time of payment only is postponed the gift is not suspended, but vests at once. The note unequivocally states that where there is a gift of intermediate income or maintenance that fact is the strongest circumstance, next to the words of present gift, going to show that gift of the substance to which futurity is apparently annexed is not contingent upon surviving the time of payment. Among numerous other cases the case of Gifford v. Thorne is cited.

The use of the words, "At which time, I give, devise" etc. appearing in the clause of the will under discussion are not necessarily conclusive as indicating a future devise, or an intention to postpone vesting—it is the intent that governs—

Nelson v. Bishop, 45 N. J. Eq. 473.
Moore v. Matthews, 70 N. J. Eq. 373, 377.
Howell, Exr. v. Green, 31 N. J. L. 570.
L. R. A. 1915 C, 1143.

At the time the will was made Leon was but seventeen years of age. May it not have been the in-

tent of the testator to provide for him an income, and to keep the estate intact until not only he attained his majority, but to years of discretion which period the testator fixed at thirty years, preventing him from disposing of his interest in the estate and thereby interfering with the continuance by Percy of the jewelry business. If such was the testator's purpose in postponing the devise, assuming it to be contingent, the case falls within the rule of Post v. Herbert ibid, page 544—"But if, upon the whole will, it appears that the future gift is only postponed to let in some other interest, or, as the law has commonly expressed it, for the benefit of the estate, the same reasoning has never been applied to the case—the interest is vested notwithstanding, although the enjoyment is postponed," supra

Also Howell v. Green, ~~ibid~~, and the N. J. authorities cited in L. R. A. 1918 E, 1122 note.

The fact that testator made no provision for the disposition of the estate in the event that Leon died before attaining the age of thirty years is a strong factor in favor of the construction that testator intended the estate to vest at once. The very use of the condition "Shall arrive at the age of thirty years" through association of ideas should have given rise to the thought that Leon might die before attaining that age, and in that case what disposition shall I make of the property.

L. R. A. 1915 C, page 1056.

In the case sub judice Leon Hicks is living and has reached the age of thirty years. It is not as though the limitation, if it be a limitation, was that Percy the deceased should attain the age of thirty years, even so, under the circumstances of this case, we submit the estate would have vested at the death of testator for the reasons already given.

We have then in this case the following conditions all indicative of an intent on the part of the

testator, of the estate devised vesting at the time of his death—namely a devise to trustees, with the equitable interest therein vesting immediately in the beneficiaries; the payment to the beneficiaries of the entire net income from said estate; no residuary clause; a previous disposition of the personal estate to the widow and to two of the children and the subsequent devise of the real estate to the remaining two children; an apparent desire to keep the inheritance intact in the interest of the two devisees until the younger should have reached the age of discretion; the apparent injustice and inexplicable discrimination against the eldest son of disinheriting his issue; the inartistic phraseology of the testament; the use of the words of inheritance "tenants in common;" that the time of limitation has been reached and the person to whose age it is attached has survived; we submit all these circumstances fully warrant the conclusion that the estate in question vested notwithstanding any phraseology in the will to the contrary. The least favorable view to be taken is that the estate vested in the beneficiaries by virtue of the devise in trust, liable to be divested in case Leon did not attain the age of thirty years. Leon survived the contingency and the estate became irrevocably vested.

It is respectfully submitted that the decree of the Court of Chancery appealed from should be affirmed.

JOHN S. APPLEGATE & SON,

Solicitors of defendants Marion D. Hicks, individually, and Guardian of John Hicks, infant.