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— 2 Actions —

Besson et al. Exec., vs. Elizabeth C. Stevens.

Besson et al. Exec., vs. Dorothy P. Stevens.

Both Actions.

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In Chancery of New Jersey

B e t w e e n :

J. W. RUFUS BESSON, *et als*, ex-
ecutors of Estate of RICHARD
STEVENS, deceased,

Complainants,

and

ELIZABETH C. STEVENS, JR., *et als*,

Defendants,

10

On Bill
etc.

20

B e t w e e n :

J. W. RUFUS BESSON, *et als*, ex-
ecutors of Estate of RICHARD
STEVENS, deceased,

Complainants,

and

DOROTHY P. STEVENS, *et als*,

Defendants,

On Bill
etc.

30

These two causes were commenced by Bill of Complaint filed April 1st, 1920. Answers were filed by the defendant thereto, and the cause regularly referred to Honorable Malcolm G. Buchanan, Vice-Chancellor. After some testimony had been taken an order was made directing the filing of an amended Bill of Complaint in each case; the testimony already taken to stand. The Pleadings, as amended follow.

40

Amended Bill of Complaint.

(Filed November 30, 1920.)

In Chancery of New Jersey.

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

THE COMPLAINANTS, J. W. Rufus Besson of the
City of Hoboken, in the County of Hudson and
10 State of New Jersey, Edwin A. S. Brown, of Mont-
clair, in the County of Essex and State of New
Jersey, W. Willis Reese, of the City, County and
State of New York, and the Farmers' Loan and
Trust Company of New York, a corporation of the
State of New York, Executors and Trustees
under the last Will and Testament of Richard
Stevens, late of the City of Hoboken, aforesaid,
deceased, respectfully show that:

20 1. Richard Stevens, complainants' testator, de-
parted this life May 18, 1919.

2. Said Richard Stevens left him surviving his
widow, Elizabeth C. S. Stevens, and four chil-
dren, namely; Elizabeth C. Stevens, Jr., then aged
24 years; Caroline B. Stevens, then aged 21 years;
Dorothy P. Stevens, then aged 16 years, and
Richard Stevens, Jr., then aged 14 years.

30 3. Said Richard Stevens left a last Will and
Testament bearing date March 7, 1917, wherein
he appointed complainants executors and trus-
tees.

40 4. Said Will was on the 5th day of June, 1919,
duly admitted to probate by the Deputy Sur-
rogate of the County of Hudson, and letters
testamentary duly issued thereon to the com-
plainants, who have taken upon themselves the
burden of the administration of the said estate
and the execution of the trust confided to them
in and by the said Will.

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5. That in and by said Will said Richard Stevens made the following specific bequests to his four children;

“Sixth: I give and bequeath to my daughter Dorothy Pintard Stevens and to my son Richard Stevens, Jr., when they shall reach the age of twenty-one, the sum of Twenty-eight Thousand (\$28,000.) Dollars each, in order to place them on the same financial footing with my two oldest children, who received a bequest of a similar sum each from my mother, the late Martha B. Stevens. This bequest is given to my said daughter Dorothy Pintard Stevens and my son Richard Stevens, Jr., in addition to the subsequent residuary bequests to them made in this my last Will.”

“Twelfth: I give and bequeath to each of my children in case and when they shall respectfully attain the age of twenty-four years, the sum of Fifty Thousand (\$50,000.) Dollars.”

6. After certain other specific, including certain charitable bequests, said testator disposed of his residuary estate as follows:

“Twenty-Second; ALL the rest, residue and remainder of my property, both real and personal and wheresoever situated, of which I shall die seized or possessed, or to which I may be entitled at the time of my decease, I give, devise and bequeath to the said Edwin A. S. Brown, W. Willis Reese, J. W. Rufus Besson and to the Farmers' Loan & Trust Company, a corporation organized and existing under the laws of the State of New York, having its principal place of business at number 22 William Street, in the Borough of Manhattan, City, County and State of New York, IN TRUST, to divide the same into so many equal parts

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that there shall be one equal part for each
 of my children me surviving and one equal
 part for the issue collectively of any child
 of mine who may have predeceased me
 of whom issue shall survive me, and to set
 aside said equal parts accordingly for such
 10 children and issue; but if there be only one
 such child or the issue of only one such
 child me surviving, to set apart the whole
 of my said residuary estate for such child
 or such issue; to distribute (per stirpes)
 among the issue me surviving of any such
 deceased child the part (or the whole) set
 aside for such issue; to hold IN TRUST,
 the parts set aside for said surviving chil-
 20 dren, other than the part set aside for my
 daughter Elsie (or the whole if there be
 only one child); to receive the rents, issues
 and profits of said parts (or the whole) and
 to apply to the use of said children respect-
 ively so much of the net income of their
 respective parts as may be necessary or
 proper for their comfortable support, edu-
 cation and maintenance, until they shall
 respectively attain the age of 21 years, and
 to accumulate the remainder (if any) of
 30 such net income during the respective minor-
 ities of said children respectively; and as
 said children respectively reach the age of
 twenty-one years to pay over to said chil-
 dren respectively the accumulated net income
 (if any) of their respective parts, and
 thereafter to apply to the use of said chil-
 dren respectively the entire net income of
 their respective parts until they attain the age
 of 40 years, and then to transfer and pay
 over to them respectively the principal of
 40 their respective parts, and if any such child
 who shall have survived me (other than my
 said daughter Elsie) shall die before at-
 taining the age of 40 years, upon the death
 of such child to distribute the principal of
 the part then held in trust for such child

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and all accumulated income thereon (if any) among the then surviving issue of such deceased child, in equal shares, per stirpes, and in default of such issue; among my issue then surviving in equal shares, per stirpes; PROVIDED HOWEVER, that the share distributable to my said daughter Elsie in the event of the death of any child of mine under the age of 40 years without leaving issue surviving such deceased child shall be added to the principal of the trust fund hereinafter directed to be held in trust for my said daughter, the share so added to follow in all respects, both as to income and principal, the disposition of the fund to which it is added; and as to the part (or the whole) of my said residuary estate directed to be held in trust for my said daughter Elsie, to apply to her use the net income thereof during the term of her natural life. My said Trustees are hereby authorized to use said net income for the purpose of supplying said Elsie with all medical care and nursing that her condition may require from time to time, and to see that she is well and tenderly taken care of and all her wants supplied in a manner fitting to her position in life, using for that purpose either a part of said net income or the whole of said net income. Upon the death of my said daughter Elsie, I give, devise and bequeath the principal of the part then held in trust for her, and also all net income (if any) accumulated thereon, to my issue her surviving, in equal shares, per stirpes."

7. Complainants are informed and believe that on or about the 14th day of February, 1917, the said Richard Stevens transferred to one Caroline B. Wittpenn of the City of Hoboken, County of Hudson and State of New Jersey, 600 shares of the capital stock of the Hoboken Land &

Amended Bill of Complaint.

Improvement Company, a corporation of the State of New Jersey, and 410 shares of the common capital stock of the Hoboken Paper Mill Company, a corporation of the State of New Jersey, of which said stock the said Richard
 10 Stevens was then the owner that said transfer was made to said Caroline B. Wittpenn in trust for certain purposes, one of which purposes was to transfer said stock, upon the demand of the said Richard Stevens, to any person named by him; that said Caroline B. Wittpenn acquired no interest in said stock by said transfer except as trustee as above stated.

8. On the 1st day of October, 1918, the said
 20 Richard Stevens caused said 600 shares of stock of the Hoboken Land & Improvement Company to be transferred on the books of said company from the name of the said Caroline B. Wittpenn, Trustee, to the name of Elizabeth C. Stevens, Jr., that said transfer was effected by the surrender to the said Hoboken Land & Improvement Company of the certificate for said 600 shares
 30 of stock issued in the name of Caroline B. Wittpenn, Trustee, and by filing with said Hoboken Land & Improvement Company, an irrevocable power of attorney executed by the said Caroline B. Wittpenn, Trustee, for the transfer of said stock on the books of said Company, to the said Elizabeth C. Stevens, Jr., that said power of attorney was executed and filed and said stock transferred by the said Caroline B. Wittpenn, Trustee, upon the demand of the said
 40 Richard Stevens.

9. Complainants are informed and believe that on or about said 1st day of October, said Richard Stevens caused Certificate No. 334 for said 600 shares of stock of the said Hoboken Land &

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Improvement Company to be issued by said Company in the name of said Elizabeth C. Stevens, Jr., which certificate was placed by Edwin A. S. Brown, Secretary of the said Hoboken Land & Improvement Company, at the direction of the said testator in the private compartment of said testator located in the safe of the Hoboken Land and Improvement Company, mentioned in paragraph 18 hereof; that no consideration passed from said Elizabeth C. Stevens, Jr., either to the said Caroline B. Wittpenn, Trustee, or to the said Richard Stevens for the transfer of said stock on the books of said Company to the name of the said Elizabeth C. Stevens. 10

10. Complainants are informed and believe that on or about the 2nd day of October, 1918, the said Richard Stevens caused said 410 shares of the common capital stock of the Hoboken Paper Mill Company to be transferred on the books of said Company from the name of said Caroline B. Wittpenn to the name of Elizabeth C. Stevens, Jr., that said transfer was effected by the surrender to the said Hoboken Paper Mill Company of the certificate for said 410 shares of stock issued in the name of Caroline B. Wittpenn and by filing with said Hoboken Paper Mill Company an irrevocable power of attorney executed by the said Caroline B. Wittpenn for the transfer of said stock on the books of said company, to the said Elizabeth C. Stevens, Jr.; that said power of attorney was executed and filed and said stock transferred by the said Caroline B. Wittpenn, upon the demand of the said Richard Stevens. 20 30 40

11. Complainants are informed and believe that on or about the said 2nd day of October, the said Richard Stevens caused Certificate No. 36 for said 410 shares of the common capital stock of the said

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10 Hoboken Paper Mill Company to be issued by said Company in the name of said Elizabeth C. Stevens, Jr., which certificate was placed by Edwin A. S. Brown, Secretary of the said Hoboken Land & Improvement Company, at the direction of the said testator in the private compartment of said testator, located in the safe of the Hoboken Land & Improvement Company, mentioned in paragraph 18 hereof; that no consideration passed from said Elizabeth C. Stevens, Jr., either to the said Caroline B. Wittpenn, or to the said Richard Stevens for the transfer of said last mentioned stock on the books of said Hoboken Paper Mill Company to the name of the said Elizabeth C. Stevens, Jr.

20 12. On the 1st day of October, 1916, and subsequent thereto, the said Elizabeth C. Stevens, Jr., had an account with said Hoboken Land and Improvement Company on the books of said Company in the name of Elsie Stevens, Jr., in which account said Elizabeth C. Stevens, Jr., was credited with the dividends and income from certain securities which were the property of the said Elizabeth C. Stevens, Jr., and which securities were kept in the compartment in a safe located in the vault of the Hoboken Land and Improvement Company.

30 13. The dividends accruing on said 600 shares of stock of the Hoboken Land and Improvement Company from October 1, 1918 to December 6, 1918 were credited to the said account in the name of said Elsie Stevens, Jr., by said Hoboken Land and Improvement Company, and the dividends accruing on said 410 shares of the common capital stock of the Hoboken Paper Mill Company from
40 October 2, 1918 to December 6, 1918 were collected by the said Hoboken Land and Improvement Company and credited to the said account in the name of Elsie Stevens, Jr., by said Company.

14. On the 6th day of December, 1918, the said

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Richard Stevens directed the Hoboken Land and Improvement Company to open a new account under the name of Elsie Stevens, Jr., Special, and to transfer to said account from the account in the name of Elsie Stevens, Jr., the dividends on said stock of the Hoboken Land and Improvement Company and said stock of the Hoboken Paper Mill Company, which had been deposited in the said account of said Elsie Stevens, Jr., between the 2nd day of October, 1918 and the 6th day of December, 1918 and to thereafter deposit in said account of Elsie Stevens, Jr., Special, the said dividends paid on said 600 shares of the Hoboken Land and Improvement Company stock standing in the name of Elizabeth C. Stevens, Jr., and on said 410 shares of stock of the Hoboken Paper Mill Company standing in the name of said Elizabeth C. Stevens, Jr.,

15. Following the direction of the said Richard Stevens the said Hoboken Land and Improvement Company, on said 6th day of December, 1918, opened an account in the name of Elsie Stevens, Jr., Special and transferred to said account the dividends on said stock theretofore credited to the account in the name of Elsie Stevens, Jr., and thereafter credited to the said account of Elsie Stevens, Jr., Special, the dividends thereafter accruing on the said 600 shares of stock of the Hoboken Land and Improvement Company and on said 410 shares of stock of the Hoboken Paper Mill Company.

16. Complainants are informed and believe that said account in the name of Elsie Stevens, Jr., Special, was at all times under the control of the said Richard Stevens; that no monies were credited to or drawn from said account except upon the order of the said Richard Stevens; that the said Elizabeth C. Stevens, Jr., exercised no control over and made no use of said account.

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17. Complainants are informed and believe that the federal income tax for the year 1918 upon the said dividends on said 600 shares of stock of the Hoboken Land and Improvement Company and upon the said dividends on said 410 shares of stock of the said Hoboken Paper Mill Company was assessed upon a return signed by Elizabeth C. Stevens, Jr., in the name of Elizabeth C. Stevens, Jr., and that the said Hoboken Land and Improvement Company, acting pursuant to orders given by the said Richard Stevens, paid out the said income tax and charged the same to the account of the said Elsie Stevens, Jr., Special.

18. Complainants are informed and believe that between the said 1st day of October, 1918 and the 29th day of January, 1919, said Elizabeth C. Stevens, Jr., acting at the request of the said Richard Stevens, executed and delivered an assignment of said 600 shares of stock of the Hoboken Land and Improvement Company unto the said Richard Stevens and also an irrevocable power of attorney authorizing the transfer of said stock on the books of the company to the said Richard Stevens, or his nominee; that said assignment and power of attorney were fastened by the said Richard Stevens to the certificate of stock issued in the name of the said Elizabeth C. Stevens, Jr., and were kept by the said Richard Stevens in a private compartment maintained for his sole use in the safe of the Hoboken Land and Improvement Company located in the vault at the offices of said Company in the City of Hoboken, and was found annexed to said Certificate of stock in said private compartment of the said Richard Stevens in said safe by complainants after the death of the said Richard Stevens.

19. Complainants are informed and believe that between the 2nd day of October, 1918 and the 1st

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day of November, 1918, said Elizabeth C. Stevens, Jr., acting at the request of the said Richard Stevens, executed an assignment of said 410 shares of the common capital stock of the Hoboken Paper Mill Company unto the said Richard Stevens and also an irrevocable power of attorney authorizing the transfer of said stock on the books of the Company to the said Richard Stevens, or his nominee; that said assignment and power of attorney were engraved on the back of said certificate of stock and that said certificate with the said assignment and power of attorney thereon, was kept by the said Richard Stevens in a private compartment maintained for his sole use in the safe of the Hoboken Land and Improvement Company located in the vault at the office of said Company in the City of Hoboken, and was found in said private compartment of the said Richard Stevens in said safe by complainants after the death of the said Richard Stevens.

20. On or about the 9th day of December, 1918 as complainants are informed and believe, the said Elizabeth C. Stevens, Jr., at the request of the said Richard Stevens, executed and delivered to the said Richard Stevens her certain power of attorney, bearing date December 9, 1918, wherein and whereby she constituted the said Richard Stevens and Palmer Campbell and Walter B. Wilson or either of them, her true and lawful attorneys to vote as her proxy at all meetings of the stockholders of the Hoboken Paper Mill Company, and to execute waivers of notice of such meetings.

21. Complainants are informed and believe that prior to the first of November, 1918, the said Richard Stevens, the testator and one Palmer Campbell, were the owners of bonds of the Hoboken Paper Mill Company, amounting to \$100,000 in the proportion of nine to one, (that is nine parts

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belonging to said testator and one to said Campbell), and also the owners of a mortgage of \$29,728.23 on the property of the said Hoboken Paper Mill Company in the same proportion. On or before the 1st of November, 1918, this bonded indebtedness and mortgage indebtedness was converted by
 10 the payment of \$728.23 in cash and the issuance of \$129,000 of preferred stock.

22. On and prior to November 1, 1918 the said testator was a director and the President of said Hoboken Paper Mill Company. At a director's meeting of said company, held November 1, 1918, the following resolution was adopted by unanimous vote of the directors, including the testator:

20 Further Resolved: That the President and Secretary, are hereby authorized to issue to Elsie C. Stevens a certificate for 1161 shares of the new preferred stock of the Company in exchange for \$90,000., par value of bonds of the Company owned by her."

23. Thereafter, on the 1st day of November, 1918, at the direction of said testator, a certificate
 30 for 1161 shares of the said preferred stock of the Hoboken Paper Mill Company was duly issued by said Company in the name of the said Elizabeth C. Stevens, Jr., said certificate, however, was delivered by the said Hoboken Paper Mill Company to the said testator and was not delivered by him to the said Elizabeth C. Stevens, Jr., but was placed by the said Edwin A. S. Brown, Secretary of the Hoboken Land and Improvement Company
 40 as aforesaid in a box marked "Elsie C. Stevens Jr." which box contained securities belonging to said Elsie C. Stevens, Jr., and to which the testator has access.

24. The dividends on said 1161 shares of the preferred stock of the Hoboken Paper Mill Company, accruing between said 1st day of November

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and the 6th day of December, were collected by the said Hoboken Land and Improvement Company and credited to the said account of the said Elsie Stevens, Jr.

25. On said 6th day of December, 1918, the said testator directed the said Hoboken Land and Improvement Company to open a new account under the name of Elsie Stevens, Jr., Special, as above stated, and to transfer to said account from the account in the name of Elsie Stevens, Jr., the dividends on said preferred stock of the Hoboken Paper Mill Company which had been deposited in the said account of said Elsie Stevens, Jr., between the 1st day of November, 1918 and the 6th day of December, 1918 and to thereafter deposit in said account of Elsie Stevens, Jr., Special, the said dividends paid on said 1161 shares of the preferred stock of the Hoboken Paper Mill Company standing in the name of said Elizabeth C. Stevens, Jr.

26. Following the directions of the said Richard Stevens the said Hoboken Land and Improvement Company, on said 6th day of December, 1918, opened an account in the name of Elsie Stevens, Jr., Special, and transferred to said account the dividends on said preferred stock theretofore credited to the account in the name of Elsie Stevens, Jr., and thereafter credited to the said account of Elsie Stevens, Jr., Special, the dividends thereafter accruing on the said 1161 shares of preferred stock of the Hoboken Paper Mill Company.

27. Complainants are informed and believe that the federal income tax for the year 1918 upon the said dividends on said 1161 shares of preferred stock of the Hoboken Paper Mill Company was assessed upon a return made by Elizabeth C. Stevens, Jr., in the name of Elizabeth C. Stevens, Jr., and that the said Hoboken Land and Improvement Company, acting pursuant to orders given by the said Richard Stevens, paid the said income

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tax and charged the same to the account of the said Elsie Stevens, Jr., Special.

10 28. Complainants are informed and believe that between the 1st day of November, 1918 and to 29th day of January 1919, said Elizabeth C. Stevens, Jr., acting at the request of the said Richard Stevens, executed and delivered an assignment of
20 said 1161 shares of preferred stock of the Hoboken Paper Mill Company unto the said Richard Stevens and also an irrevocable power of attorney authorizing the transfer of said stock on the books of the company to the said Richard Stevens, or his nominee; that said assignment and power of attorney were fastened by said Richard Stevens to the certificate of stock issued in the name of the said
30 Elizabeth C. Stevens, Jr., that after the death of the said Richard Stevens, the said certificate for 1161 shares of the preferred stock of the Hoboken Paper Mill Company, with said assignment and irrevocable power of attorney duly executed as aforesaid by said Elizabeth C. Stevens, Jr., attached thereto, was found in said safe located in the vault in the offices of said Hoboken Land and
40 Improvement Company in a compartment in said safe used for the safekeeping of securities belonging to the said Elizabeth C. Stevens, Jr., and bearing her name; that testator has access at all times to said last mentioned compartment.

29. That said Caroline B. Wittpenn, who resides as aforesaid in the City of Hoboken, County of Hudson and State of New Jersey, claims to have been the owner of the 90 first mortgage six per centum bonds of the Hoboken Paper Mill Company
40 mentioned in paragraph 21 hereof, as belonging to the testator, under an alleged assignment from the said testator bearing date July 27, 1914 and because of the alleged ownership of said bonds the said Caroline B. Wittpenn claims to be the owner

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of the said preferred stock of the said Hoboken Paper Mill Company issued upon the surrender of said bonds; that said Caroline B. Wittpenn has filed with the complainants a claim for said stock, of which a copy is hereto annexed and marked Schedule "A".

10

30. Complainants are informed and believe that the alleged assignment of said Richard Stevens to the said Caroline B. Wittpenn, if made, was voluntary and without any consideration and that said assignment, if made, was not completed by the delivery of the bonds therein mentioned or any of them to the said Caroline B. Wittpenn with intent to make a gift thereof to the said Caroline B. Wittpenn. Complainants further say that said assignment, if made, was in trust, to be used for charitable purposes and was revocable by the said Richard Stevens; that said Richard Stevens thereafter did revoke said trust and become possessed of the bonds in his own right.

20

31. Complainants allege that they are the owners of the said 600 shares of stock of the Hoboken Land and Improvement Company, of the said 410 shares of the common capital stock of the Hoboken Paper Mill Company and said 1161 shares of the preferred stock of the said Hoboken Paper Mill Company and are entitled to have said stock transferred to their names as executors on the books of the respective companies.

30

32. The said stock of the Hoboken Land and Improvement Company and the Hoboken Paper Mill Company is of great and peculiar value and is closely held and cannot be purchased in the open market.

40

33. Complainants are informed and believe that the said Elizabeth C. Stevens, Jr., claims that said stocks were given to her by the testator in ademption of the residuary legacy to her in the last Will and Testament of the said testator and upon the

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trust that if the value of said stock exceeded the value of one-fourth of the testator's residuary estate that the said Elizabeth C. Stevens, Jr., should hold such excess as trustee for the other children of said testator and should transfer and deliver, such excess to such children.

10

COMPLAINANTS ARE WITHOUT ADEQUATE REMEDY IN THE COURTS OF THE LAW, AND, THEREFORE, PRAY :

1. That the said Elizabeth C. Stevens, Jr., Caroline B. Stevens, Dorothy P. Stevens, Richard Stevens, Jr., Caroline B. Wittpenn, Hoboken Land and Improvement Company and Hoboken Paper Mill Company, who are the defendants to this suit, may answer this bill of complaint and each statement therein made.

20

2. That the interest of the complainants and of the said Elizabeth C. Stevens, Jr., and Caroline B. Wittpenn in said shares of stock or any of them may be determined by this Honorable Court and that the complainants may be instructed with regard to their duties in reference thereto.

3. That the Hoboken Land and Improvement Company may, in the event that it is determined that the said stock belongs to the complainants, be decreed to transfer on its books to the complainants, said 600 shares of stock evidenced by certificate No. 334 in the name of the said Elizabeth C. Stevens, upon the surrender to said Hoboken Land and Improvement Company of said certificate with the assignment and power of attorney above mentioned annexed thereto.

30

4. That the Hoboken Paper Mill Company may in the event that it is determined that the said stock belongs to the complainants, be decreed to transfer on its books to the complainants, said 410 shares of the common capital stock evidenced by certificate No. 36 in the name of the said Eliza-

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beth C. Stevens, upon the surrender to said Hoboken Paper Mill Company of said certificate with the assignment and power of attorney above mentioned appearing on the back of said certificate of stock.

5. That the Hoboken Paper Mill Company may, in the event that it is determined that the said stock belongs to the complainants, be decreed to transfer on its books to the complainants, said 1161 shares of the preferred stock evidenced by certificate No. 1 in the name of the said Elizabeth C. Stevens, upon the surrender to said Hoboken Paper Mill Company of said certificate with the assignment and power of attorney above mentioned annexed thereto.

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

Besson, Alexander & Stevens,
Solicitors for and of counsel with
complainants.

Schedule "A."

Executors of the Estate of Richard Stevens,
1 Newark Street,
Hoboken, N. J.

DEAR SIRs:—

I herewith enclose a copy of Deed of Gift executed by my late brother, Richard Stevens, by which he delivered to me certain securities named therein. These securities were in my possession and were placed by me in the vault of the Hoboken Land and Improvement Company. Upon investigation I find that these securities were taken by my brother, Richard Stevens, without my knowledge or consent, and were disposed of by exchange

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for other securities. I therefore demand the substitute securities or their value to be paid to me from his estate.

Yours very truly,
(Signed) CAROLINE B. WITTPENN.

10 STATE OF NEW JERSEY }
COUNTY OF HUDSON } ss.:

CAROLINE B. WITTPENN, being duly sworn, says that she is the claimant named in the above demand and that the facts stated in said demand are true of her own knowledge and that the estate of Richard Stevens is indebted to her for the value of the securities named in the transfer of such securities as were exchanged for the same.

20 (Signed) CAROLINE B. WITTPENN.

Sworn and subscribed to before me }
this 26th day of June, A. D. 1919. }
(Seal.)

(Signed) EMMA L. BADER,
Notary Public of New Jersey.

For value received, I hereby sell, assign, transfer and set over unto Caroline B. Wittpenn, of the City of Hoboken, in the County of Hudson, and State of
30 New Jersey, all my right, title and interest in and to ninety (90) First Mortgage Six Per Cent Bonds of the Hoboken Paper Mill Company, an incorporated Company of the State of New Jersey, issued December 1st, 1901, due August 1, 1926. Subject, however, to the lien of the Hoboken Land & Improvement Company in and to said Bonds which have been deposited with the Hoboken Land & Improvement Company to secure the payment of
40 a certain Bond and Mortgage covering part of the property of the said Hoboken Paper Mill Company and which mortgage was executed by Richard Stevens and Palmer Campbell.

And I do further sell, assign, transfer and set over unto said Caroline B. Alexander all my right, title and interest in and to Ten (10) \$1,000 General Mortgage Fifteen Year Five Per Cent Bonds of the New Jersey Central Traction Co., due December, 1954, and numbered 600, 601, 602, 603, 634, 635, 636, 637, 638, 639 respectively.

(Signed) RICHARD STEVENS.

10

July 27, 1914.

Order Reviving Suit.

(Filed December 30th, 1920.)

IN CHANCERY OF NEW JERSEY.

Between	}	On Bill &c. Order Revi- ving Suit Against Theodosius Stevens, Ad- ministrator.	20
J. W. RUFUS BESSON, <i>et al.</i> , EX- ECUTORS, &c.,			
<i>Complainants,</i>			
<i>and</i>			
ELIZABETH C. STEVENS, JR., <i>et al.</i> ,			
<i>Defendants.</i>			

Upon reading and filing the affidavit of J. W. Rufus Besson, solicitor of the complainants in the above entitled cause, whereby it appears that Elizabeth C. Stevens, Jr., one of the defendants to this suit, has departed this life intestate, and that Theodosius Stevens has been appointed administrator of her estate by the Surrogate of the County of Hudson, and that the suit has become defective by reason of the death of the said Elizabeth C. Stevens, Jr., and that it is necessary for a determination of the controversy in this suit that the said Theodosius Stevens should be made party defendant to this suit in the place and stead of the said Elizabeth C. Stevens, Jr.,

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10 It is, on this twenty-ninth day of December, nineteen hundred and twenty, ORDERED that this suit stand revived against Theodosius Stevens, administrator of the estate of Elizabeth C. Stevens, Jr., and he be made defendant in the place and stead of the said Elizabeth C. Stevens, Jr., and that the said Theodosius Stevens, administrator as aforesaid, have leave to answer the amended bill of complaint in this cause.

E. R. WALKER,
C.

Respectfully advised,
MALCOM G. BUCHANAN,
V. C.

20 **Answer of Theodosius Stevens, Administrator.**

(Filed March 14, 1921.)

IN CHANCERY OF NEW JERSEY.

30	<p style="text-align: center;">Between</p> <p>J. W. RUFUS BESSON, <i>et al.</i>, EXECUTORS, ETC., OF RICHARD STEVENS, DECEASED,</p> <p style="text-align: right;"><i>Complainants,</i></p> <p style="text-align: center;"><i>and</i></p> <p>ELIZABETH C. STEVENS, JR., <i>et al.</i>,</p> <p style="text-align: right;"><i>Defendants.</i></p>	}	On Bill &c.
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The Answer of the Defendant, Theodosius Stevens, Administrator of the Goods, Chattels and Credits of Elizabeth C. Stevens, Jr., to the Amended Bill of Complaint of the Complainants.

40 This defendant answering the amended bill of complaint says that:

1. 2. This defendant admits the death of Rich-

Answer of Theodosius Stevens, Administrator.

ard Stevens, and that he left him surviving his widow, Elizabeth C. S. Stevens, and his four children mentioned in the second paragraph of the amended bill of complaint, and their ages as stated in said paragraph.

3. 4. This defendant admits that a paper purporting to be the last will and testament of Richard Stevens, bearing date March 7, 1917, wherein he appointed complainants executors and trustees, was admitted to probate by the Deputy Surrogate of the County of Hudson, on the 5th day of June, 1919, and letters testamentary issued thereon, as stated in the 4th paragraph of the amended bill of complaint. **10**

5. 6. 7. 8. This defendant admits the contents of paragraphs 5, 6, 7 and 8 of the amended bill of complaint. **20**

9. This defendant admits the contents of the 9th paragraph of the said amended bill of complaint, except so much thereof as alleges that the compartment wherein the said Certificate number 334 for the said 600 shares of stock of the said Hoboken Land & Improvement Company issued to Elizabeth C. Stevens, Jr., was placed was the private compartment of the said testator, and this he denies. **30**

10. This defendant admits the contents of the 10th paragraph of the said amended bill of complaint.

11. This defendant admits the contents of the 11th paragraph of the said amended bill of complaint, except so much thereof as alleges that the compartment wherein the said Certificate number 36 for 410 shares of the said Hoboken Paper Mill Company was placed was the private compartment of the said testator, and this he denies. **40**

12. This defendant admits the contents of the 12th paragraph of the said amended bill of complaint.

Answer of Theodosius Stevens, Administrator.

13. This defendant admits the contents of the 13th paragraph of the said amended bill of complaint.

10 14. This defendant admits 14th paragraph of the amended bill of complaint, and says that said Richard Stevens further directed that the dividends on the preferred stock of the Hoboken Paper Mill Company standing in the name of the said Elizabeth C. Stevens, Jr., should also be deposited into the new account to be opened under the name of Elsie Stevens, Jr., Special.

15. This defendant admits the 15th paragraph of the amended bill of complaint.

20 16. This defendant denies the contents of paragraph 16.

17. This defendant admits the contents of the 17th paragraph of the amended bill of complaint, except so far as it alleges that the said Hoboken Land & Improvement Company acted pursuant to orders of the said Richard Stevens in paying the income tax and charging the same to the account of Elsie Stevens, Jr., Special. This defendant alleges that the income tax return was made by the said Elizabeth C. Stevens, Jr.

30 18. This defendant admits the signing of the assignment of the said 600 shares of the stock of the Hoboken Land & Improvement Company by the said Elizabeth C. Stevens, Jr., to the said Richard Stevens, and the power of attorney therein mentioned. This defendant says, however, that said assignment was not stamped with Internal Revenue stamps of the United States of America in accordance with the Federal statute, and that said assignment and power of attorney are therefore void and of no effect. This defendant denies that the said stock, with the said alleged assignment and power of attorney, were kept by the said Richard Stevens in a private compartment maintained for his sole use in the safe of the Hoboken Land & Im-

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Answer of Theodosius Stevens, Administrator.

provement Company, located in the vault of said Company, in the City of Hoboken; but says that the same were kept in an open compartment in the safe of the Hoboken Land & Improvement Company, accessible to the said Richard Stevens and the said Elizabeth C. Stevens, Jr., as well. 10

19. As to the 19th paragraph of the amended bill of complaint, this defendant denies that the said Elizabeth C. Stevens, Jr., executed an assignment of the said 410 shares of the common capital stock of the Hoboken Paper Mill Company unto the said Richard Stevens, and also an irrevocable power of attorney, authorizing the transfer of the said stock, and says that it is true that the said Elizabeth C. Stevens, Jr., signed such an assignment. 20
This defendant denies that the said certificate, with the said assignment and power of attorney, was kept by the said Richard Stevens in a private compartment maintained for his sole use in the safe of the Hoboken Land & Improvement Company, located in the vault of said Company in the City of Hoboken, but says that the same were kept in an open compartment in the safe of the said Hoboken Land & Improvement Company, accessible to the said Richard Stevens and the said Elizabeth C. Stevens, Jr., as well. 30

20. This defendant admits the contents of the 20th paragraph of the said amended bill of complaint.

21. 22. This defendant admits the contents of the 21st and 22nd paragraphs of the said amended bill of complaint.

23. This defendant admits that the certificate for 1161 shares of the preferred stock of the Hoboken Paper Mill Company was duly issued by said Company in the name of Elizabeth C. Stevens, Jr. This defendant denies that the said certificate was delivered by the said Hoboken Paper Mill Company to the said testator, and denies that it was 40

Answer of Theodosius Stevens, Administrator.

not delivered by him to the said Elizabeth C. Stevens, Jr., but this defendant says that the said certificate of stock was delivered to the said Elizabeth C. Stevens, Jr., and was after the death of the testator found in the compartment of the said Elizabeth C. Stevens, Jr., in the said vault of the Hoboken Land & Improvement Company, together with the other assets of the said Elizabeth C. Stevens, Jr.

24. 25. This defendant admits the contents of the 24th and 25th paragraphs of the said amended bill of complaint.

26. This defendant admits the contents of the 26th paragraph of the amended bill of complaint.

20 27. This defendant admits the contents of the 27th paragraph of the amended bill of complaint, except so far as it alleges that the said Hoboken Land & Improvement Company, acted pursuant to orders of the said Richard Stevens in paying the income tax and charging the same to the account of Elsie Stevens, Jr., Special. This defendant alleges that the income tax return was made by the said Elizabeth C. Stevens, Jr.

30 28. As to paragraph 28 of the amended bill of complaint, this defendant denies that the said Elizabeth C. Stevens, Jr., ever delivered the assignment therein mentioned. This defendant admits that she signed the same. This defendant denies that the said assignment and power of attorney were fastened by the said Richard Stevens to the certificate of stock issued in the name of Elizabeth C. Stevens, Jr. He admits that after the death of the said Richard Stevens the said certificate of stock, with the assignment and power of attorney thereon, were found in a compartment of the safe of the Hoboken Land & Improvement Company used for the safe-keeping of securities belonging to said Elizabeth C. Stevens, Jr., and bearing her name.

40 29. 30. As to paragraphs 29 and 30 of the

Answer of Theodosius Stevens, Administrator.

amended bill of complaint, this defendant, says that the said Caroline B. Wittpenn has no claim whatever to the securities mentioned in the said paragraphs, and states he understands that the said Caroline B. Wittpenn has formally abandoned any claim which she might have ever made in and to the same. 10

31. This defendant denies the contents of paragraph 31 of the amended bill of complaint.

32. This defendant admits the contents of paragraph 32 of the amended bill of complaint.

33. This defendant further answering said amended bill of complaint says that the said Elizabeth C. Stevens, Jr., died intestate on the twelfth (12th) day of December, Nineteen hundred and twenty (1920), and that this defendant was, on the Twenty-eighth (28th) day of December, Nineteen hundred and twenty (1920), duly appointed by the Surrogate of the County of Hudson, administrator of her estate, and has duly qualified as such, and has taken upon himself the burden of the administration of her estate. 20

34. This defendant further answering says that the said Elizabeth C. Stevens, Jr., had a number of conversations with her father, the said Richard Stevens, during October and November, 1918, which disclosed his intention that said transfers of stock to the said Elizabeth C. Stevens, Jr., were to be an absolute gift of said stock in satisfaction pro tanto of her portion of the residuary estate of the testator as given to her in his will, and that it was his desire that should the value of said stock exceed her interest in said residuary estate that then she should account for such excess to her brother and sisters. 30 40

35. At the time the testator's will was made the said Elizabeth C. Stevens, Jr., was seriously and dangerously ill. At the time of these conversations

Answer of Theodosius Stevens, Administrator.

she had recovered and no reason existed why she should not have the control of her own estate.

36. The said gift was accepted by the said Elizabeth C. Stevens, Jr., upon the understanding above mentioned.

10 37. The said assignments of stock to Richard Stevens were executed by the said Elizabeth C. Stevens, Jr., at the request of said Richard Stevens under these circumstances: Some months after the transfers had been made and in January, 1919, said Richard Stevens asked the said Elizabeth C. Stevens, Jr. to make a will so as to safeguard the interests of her brother and sisters in said shares of stock should she die. The said Elizabeth C. Stevens, 20 Jr. said that she did not care to make a will and said Richard Stevens then said that he would have it done for her in some other way. Within a few days thereafter the said Richard Stevens submitted to the said Elizabeth C. Stevens, Jr. the said assignments which she executed.

38. The said Elizabeth C. Stevens, Jr. never parted with the said stock certificates nor was it ever her intention to convey said shares back to her 30 father. The said assignments were intended to be operative only in the event of the death of the said Elizabeth C. Stevens, Jr., before the testator Richard Stevens, and this defendant is now advised that the same are invalid.

39. This defendant insists therefore that the said shares of stock were either a gift to the said Elizabeth C. Stevens, Jr., absolutely or in ademption of the residuary legacy to her in the will of the 40 said Richard Stevens to the extent of the amount of said legacy (viz.: a gift to her to the extent of one-fourth of the residuary estate of the said testator, the said Elizabeth C. Stevens, Jr., in the event of said gift exceeding the one-fourth to account for the difference), whichsoever this Court may under the facts of this case determine.

And this defendant respectfully submits to the jurisdiction of this honorable Court and prays that a decree may be made sustaining the aforesaid claim of this defendant, or for such other relief in the premises as this honorable Court may determine that he is entitled to.

M. T. ROSENBERG,
Solicitor for and of Counsel with
Defendant Theodosius Stevens, Ad-
ministratoꝛ of the Estate of Eliza-
beth C. Stevens, Jr., Deceased.

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Answer of Caroline B. Stevens.

(Filed March 14, 1921.)

IN CHANCERY OF NEW JERSEY.

<p style="text-align: center;">Between</p> <p>J. W. RUFUS BESSON, <i>et al.</i>, EX- ECUTORS, ETC., OF RICHARD STEV- ENS, DECEASED,</p> <p style="text-align: center;"><i>Complainants,</i></p> <p style="text-align: center;"><i>and</i></p> <p>ELIZABETH C. STEVENS, JR., <i>et al.</i>, <i>Defendants.</i></p>	}	<p>On Bill, &c.</p>
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*The Answer of the Defendant, Caroline B. Stevens,
to the Amended Bill of Complaint of Complain-
ants.*

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This defendant, answering the amended bill of complaint, says that:

1. She believes that the contents of paragraphs 1 to 6 inclusive of the amended bill of complaint in this cause are true.

2. As to the other matters stated in the amended bill of complaint, this defendant has no knowledge or information sufficient to form a belief.

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And this defendant respectfully submits herself to the jurisdiction of this honorable Court.

Robert Carey,

Solicitor of answering defendant

Caroline B. Stevens.

10 **Answer of Dorothy Stevens by Guardian
ad Litem.**

(Filed March 14, 1921.)

IN CHANCERY OF NEW JERSEY.

20	<hr/> Between J. W. RUFUS BESSON, <i>et al.</i> , EX- ECUTORS, ETC., OF RICHARD STEV- ENS, DECEASED, <i>Complainants,</i> <i>and</i> ELIZABETH C. STEVENS, JR., <i>et al.</i> , <i>Defendants.</i> <hr/>	}	On Bill &c.
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*The Answer of the Defendant, Dorothy P. Stevens,
by Henry J. Camby, Her Guardian ad Litem, to
Amended Bill of Complaint of Complainants.*

30 This defendant, answering by Henry J. Camby,
her Guardian ad litem, appointed in this cause,
says that:

1. She is informed and believes that the contents of paragraphs 1 to 6 inclusive of the amended bill of complaint in this cause are true.

2. As to the other matters stated in the amended bill of complaint, this defendant has no knowledge or information sufficient to form a belief.

40 This defendant being an infant of tender years respectfully submits herself to the jurisdiction of this honorable Court and prays that her interests may be protected and saved to her.

Henry J. Camby,

Guardian ad litem of Dorothy P.
Stevens, and Solicitor pro se.

**Answer of Richard Stevens, Jr., by
Guardian ad Litem.**

(Filed March 14, 1921.)

IN CHANCERY OF NEW JERSEY.

<p style="text-align: center;">Between</p> <p>J. W. RUFUS BESSON, <i>et al.</i>, EX- ECUTORS, ETC., OF RICHARD STEV- ENS, DECEASED,</p> <p style="text-align: center;"><i>Complainants,</i></p> <p style="text-align: center;"><i>and</i></p> <p>ELIZABETH C. STEVENS, JR., <i>et al.</i>,</p> <p style="text-align: center;"><i>Defendants.</i></p>	}	<p>10</p> <p>On Bill &c.</p>
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The Answer of the Defendant, Richard Stevens, Jr., by Matthew J. Tackella, His Guardian ad Litem, to the Amended Bill of Complaint of Complainants. 20

This defendant, answering by Matthew J. Tackella, his Guardian ad litem appointed in this cause, says that:

1. He is informed and believes that the contents of paragraphs 1 to 6 inclusive of the amended bill of complaint in this cause are true. 30

2. As to the other matters stated in the amended bill of complaint, this defendant has no knowledge or information sufficient to form a belief.

This defendant being an infant of tender years, respectfully submits himself to the jurisdiction of this honorable Court and prays that his interests may be protected and saved to him.

MATHEW J. TACKELLA,
Guardian ad litem of Defendant 40
Richard Stevens, Jr., and Solicitor
pro se.

Answer of Hoboken Land and Improvement Company.

(Filed March 14, 1921)

IN CHANCERY OF NEW JERSEY.

	Between	
10	J. W. RUFUS BESSON, <i>et al.</i> , EX- ECUTORS, ETC., OF RICHARD STEV- ENS, DECEASED,	} On Bill, etc.
	<i>Complainants,</i>	
	<i>and</i>	
	ELIZABETH C. STEVENS, JR., <i>et al.</i> ,	}
	<i>Defendants.</i>	

20 *The Answer of the Defendant, Hoboken Land and Improvement Company, to the Amended Bill of Complaint of the Complainants.*

This defendant, answering the amended Bill of Complaint, says:

1. That it has no knowledge of the allegations stated in the Bill of Complaint, except that on the first day of October, nineteen hundred and eighteen, six hundred (600) shares of stock of the Hobo-
 30 ken Land and Improvement Company was transferred on the books of said Company, from the name of Caroline B. Wittpenn, Trustee, to the name of Elizabeth C. Stevens, Jr., That said stock remains at the present time in the name of Elizabeth C. Stevens, Jr.; that no demand has been made to transfer the said stock from the name of Elizabeth C. Stevens, Jr., and that this defendant is ready to transfer the said shares from the name
 40 of Elizabeth C. Stevens, Jr., to anyone whom this Court may find is the proper owner thereof.

DAVID F. PLAHN

Solicitor for and of Counsel
with Defendant, Hoboken Land
and Improvement Company.

Answer of Hoboken Paper Mill Co.

(Filed March 14, 1921)

IN CHANCERY OF NEW JERSEY.

<p style="text-align: center;">Between</p> <p>J. W. RUFUS BESSON, <i>et al.</i>, EX- ECUTORS, ETC., OF RICHARD STEV- ENS, DECEASED,</p> <p style="text-align: center;"><i>Complainants,</i></p> <p style="text-align: center;"><i>and</i></p> <p>ELIZABETH C. STEVENS, JR., <i>et al.</i>, <i>Defendants.</i></p>	}	<p>10</p> <p>On Bill, etc.</p>
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The Answer of the Defendant, Hoboken Paper Mill Company, to the Amended Bill of Complaint of the Complainants. 20

This defendant answering the amended Bill of Complaint, says:

1. That it has no knowledge of the allegations stated in the Bill of Complaint, except that on the second day of October, nineteen hundred and eighteen, four hundred and ten (410) shares of the common capital stock of the Hoboken Paper Mill Company were transferred on the books of said Company from the name of Caroline B. Wittpenn to the name of Elizabeth C. Stevens, Jr., and that said stock now remains in the name of said Elizabeth C. Stevens, Jr.. 30

2. This defendant admits that on the first day of November, nineteen hundred and eighteen, at the direction of Richard Stevens, a certificate for eleven hundred and sixty-one (1161) shares of the preferred stock of the Hoboken Paper Mill Company was issued by said Company in the name of Elizabeth C. Stevens, Jr., and that said stock now 40

remains in the name of said Elizabeth C. Stevens, Jr.

That no demand has been made to transfer the said stock from the name of Elizabeth C. Stevens, Jr., and that this defendant is ready to transfer the said shares of common and preferred stock from the name of Elizabeth C. Stevens, Jr., to anyone
 10 whom this Court may find is the proper owner thereof.

DAVID F. PLAHN

Solicitor for and of Counsel with
 Defendant, Hoboken Paper Mill
 Company.

**Statement of Withdrawal of Claim of
 Caroline B. Wittpenn.**

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The claim of Caroline B. Wittpenn was withdrawn and bill dismissed as to her—

Amended Bill of Complaint.

(Filed Nov. 30, 1920)

IN CHANCERY OF NEW JERSEY.

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To His Honor, EDWIN ROBERT WALKER,
 Chancellor of the State of New Jersey:

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The complainants, J. W. Rufus Besson, of the City of Hoboken, in the County of Hudson and State of New Jersey, Edwin A. S. Brown, of Montclair, in the County of Essex and State of New Jersey, W. Willis Reese, of the City, County and State of New York, and The Farmers' Loan and Trust Company of New York, a corporation of the State of New York, Executors and Trustees under
 the last Will and Testament of Richard Stevens, late of the City of Hoboken, aforesaid, deceased, respectfully show that:

Amended Bill of Complaint.

1. Richard Stevens, complainants' testator, departed this life May 18, 1919.

2. Said Richard Stevens left him surviving his widow, Elizabeth C. S. Stevens, and four children, namely: Elizabeth C. Stevens, Jr., then aged 24 years; Caroline B. Stevens, then aged 21 years; Dorothy P. Stevens, then aged 16 years, and Richard Stevens, Jr., then aged 14 years. 10

3. Said Richard Stevens left a last Will and Testament bearing date March 7, 1917, wherein he appointed complainants executors and trustees.

4. Said Will was on the 5th day of June, 1919, duly admitted to probate by the Deputy Surrogate of the County of Hudson, and letters testamentary duly issued thereon to the complainants, who have taken upon themselves the burden of the administration of the said estate and the execution of the trust confided to them in and by the said Will. 20

5. That in and by said Will said Richard Stevens made the following specific bequests to his four children:

"Sixth: I give and bequeath to my daughter Dorothy Pintard Stevens and to my son Richard Stevens, Jr., when they shall reach the age of twenty-one, the sum of Twenty-eight Thousand Dollars (\$28,000.) each, in order to place them on the same financial footing with my two oldest children, who received a bequest of a similiar sum each from my mother, the late Martha B. Stevens. This bequest is given to my said daughter, Dorothy Pintard Stevens and to my son Richard Stevens, Jr., in addition to the subsequent residuary bequests to them made, in this my last Will." 30 40

"Twelfth: I give and bequeath to each of my children in case and when they shall respectively attain the age of twenty-four years

Amended Bill of Complaint.

the sum of Fifty Thousand (\$50,000.) Dollars."

6. After certain other specific, including certain charitable bequests said testator disposed of his residuary estate as follows:

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"Twenty-Second: All the rest, residue and remainder of my property, both real and personal and wheresoever situated, of which I shall die seized or possessed, or to which I may be entitled at the time of my decease, I give, devise and bequeath to the said Edwin A. S. Brown, W. Willis Reese, J. W. Rufus Besson, and to the Farmers' Loan & Trust Company, a corporation organized and existing under the laws of the State of New York, having its principal place of business at number 22 William Street, in the Borough of Manhattan, City, County and State of New York, In Trust, to divide the same into so many equal parts that there shall be one equal part for each of my children me surviving and one equal part for the issue collectively of any child of mine who may have predeceased me of whom issue shall survive me, and to set aside said equal parts accordingly for such children and issue; but if there be only one such child or the issue of only one such child me surviving, to set apart the whole of my said residuary estate for such child or such issue; to distribute (per stirpes) among the issue me surviving of any such deceased child the part (or the whole) set aside for such issue; to hold In Trust the parts set aside for said surviving children other than the part set aside for my daughter Elsie (or the whole if there be only one child); to receive the rents, issues and profits of said parts (or the

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Amended Bill of Complaint.

whole) and to apply to the use of said children respectively so much of the net income of their respective parts as may be necessary for their comfortable support, education and maintenance until they shall respectively attain the age of 21 years, and to accumulate the remainder (if any) of such net income during the respective minorities of said children respectively; and as said children respectively reach the age of 21 years to pay over to said children respectively the accumulated net income (if any) of their respective parts, and thereafter to apply to the use of said children respectively the entire net income of their respective parts until they shall attain the age of 40 years, and then to transfer and pay over to them respectively the principal of their respective parts, and if any such child who shall have survived me (other than my said daughter Elsie) shall die before attaining the age of 40 years, upon the death of such child to distribute the principal of the part then held in trust for such child and all accumulated income thereon (if any) among the then surviving issue of such deceased child, in equal shares, per stirpes, and in default of such issue, among my issue then surviving, in equal shares, per stirpes; Provided However, that the share distributable to my said daughter Elsie in the event of the death of any child of mine under the age of 40 years without leaving issue surviving such deceased child shall be added to the principal of the trust fund hereinafter directed to be held in trust for my said daughter, the share so added to follow in all respects, both as to income and principal, the disposition of the fund to which it is added; and as to the part (or the whole)

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Amended Bill of Complaint.

10 of my said residuary estate directed to be
 held in trust for my said daughter Elsie, to
 apply to her use the net income thereof dur-
 ing the term of her natural life. My said
 Trustees are hereby authorized to use said
 net income for the purpose of supplying said
 Elsie with all medical care and nursing that
 her condition may require from time to time,
 and to see that she is well and tenderly taken
 care of and all her wants supplied in a man-
 ner fitting to her position in life, using for
 that purpose either a part of said net income
 or the whole of said net income. Upon the
 20 death of my said daughter Elsie, I give, devise
 and bequeath the principal of the part then
 held in trust for her, and also all net income
 (if any) accumulated thereon, to my issue her
 surviving, in equal shares, per stirpes."

30 7. Complainants are informed and believe that
 on or about the 30th day of April, 1919, and with-
 in three weeks before the death of the testator,
 the said Richard Stevens caused 700 shares of the
 capital stock of the Hoboken Land and Improve-
 ment Company, of which he was then the owner
 and which then stood upon the books of the said
 company in his name, to be transferred on the
 books of said company from his name to the name
 of the said Dorothy P. Stevens, and thereupon
 caused a certificate to be issued by the said Hobo-
 ken Land & Improvement Company in the name
 of the said Dorothy P. Stevens for said 700 shares
 of said stock, which certificate bore the No. 336.

40 8. Said certificate was delivered by said com-
 pany to the said Richard Stevens and was re-
 tained by him in his possession, being placed by
 him in a private compartment maintained for his
 sole use in the safe of the Hoboken Land and
 Improvement Company, located in the vault in the

Amended Bill of Complaint.

office of said company, in the City of Hoboken, where said certificate was found by complainants after the death of the said testator.

9. No consideration passed from said Dorothy P. Stevens to the testator for the transfer of said stock on the books of said company to the name of the said Dorothy P. Stevens. 10

10. On or about said 30th day of April, said Richard Stevens directed the said Hoboken Land and Improvement Company to open an account on its books in the name of Dorothy P. Stevens, Richard Stevens, Guardian, and to enter in said account the dividends paid on said 700 shares of capital stock of said Hoboken Land and Improvement Company. 20

11. Said account was opened by said Hoboken Land and Improvement Company pursuant to the directions above mentioned, and on May 1, 1919, dividends on said stock amounting to the sum of \$1050. were credited thereto.

12. Complainants are informed and believe that on or about said 30th day of April the said Dorothy P. Stevens, acting at the request of the said Richard Stevens, executed and delivered an assignment of said 700 shares of the capital stock of the Hoboken Land and Improvement Company unto the said Richard Stevens and also an irrevocable power of attorney authorizing the transfer of said stock on the books of the Company to the said Richard Stevens or his nominee; that said assignment was placed by said Richard Stevens in an envelope and placed by Edwin A. S. Brown, Secretary of the said Hoboken Land and Improvement Company, at the direction of the said testator, in the private compartment mentioned in paragraph 8 of this bill and was found in said compartment by complainants after the death of the said Richard Stevens. 30
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Amended Bill of Complaint.

13. At the time of the said transfer and until the time of his death, the said Richard Stevens was President of the Hoboken Land and Improvement Company.

10 14. Complainants allege that the transfer of the books of the company of said 700 shares of the stock to the name of the said Dorothy P. Stevens was not done by the said testator with the intent to make a gift of said stock to the said Dorothy P. Stevens; that the certificate of said stock remained at all times in the possession and under the control of the said Richard Stevens; that the complainants further allege that they are the owners of said 700 shares of stock of the Hoboken Land and Improvement Company and are entitled to have said stock transferred to their names as executors on the books of the said Company.

20 15. The said stock is of great and peculiar value and is closely held and cannot be purchased in the open market.

30 16. Complainants are informed and believe that the said Dorothy P. Stevens claims that said stock was given to her by the testator in ademption of the residuary legacy to her in the last Will and Testament of the said testator and upon the trust that if the value of said stock exceeded the value of one-fourth of testator's residuary estate that the said Dorothy P. Stevens should hold such excess as trustee for the other children of the said testator and should transfer and deliver such excess to such children.

40 COMPLAINANTS ARE WITHOUT ADEQUATE REMEDY IN THE COURTS OF THE LAW, AND, THEREFORE, PRAY:

1. That the said Dorothy P. Stevens, Elizabeth C. Stevens, Jr., Caroline B. Stevens, Richard Stevens, Jr., and Hoboken Land & Improvement Com-

Amended Bill of Complaint.

pany, a body corporate, who are the defendants to this suit may answer this bill of complaint and each statement therein made.

2. That the interest of the complainants and of the said Dorothy P. Stevens in said shares of stock or any of them may be determined by this Honorable Court and that the complainants may be instructed with regard to their duties in reference thereto. **10**

3. That the Hooken Land and Improvement Company may, in the event that it is determined that the said stock belongs to the complainants, be decreed to transfer on its books to the complainants, said 700 shares of stock evidenced by certificate No. 336 in the name of the said Dorothy P. Stevens, upon the surrender to said Hoboken Land & Improvement Company of said certificate with the assignment and power of attorney above mentioned annexed thereto. **20**

4. That a writ of subpoena may issue commanding the said defendants to answer this bill of complaint and to abide by such decree as this court may make in the premises. **30**

BESSON, ALEXANDER & STEVENS
Solicitors for and of counsel with
complainants. **30**

40

**Answer of Dorothy Stevens by Guardian
ad Litem.**

(Filed March 14, 1921)

IN CHANCERY OF NEW JERSEY.

	Between 10 J. W. RUFUS BESSON, <i>et al.</i> , EX- ECUTORS, ETC., OF RICHARD STEV- ENS, DECEASED, <div style="text-align: right; padding-right: 20px;"><i>Complainants,</i></div> <div style="text-align: center; padding: 5px 0;"><i>and</i></div> <div style="text-align: left; padding-left: 20px;">DOROTHY P. STEVENS, <i>et al.</i>,</div> <div style="text-align: right; padding-right: 20px;"><i>Defendants.</i></div>	}	On Bill &c.
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20 *The Answer of the Defendant, Dorothy P. Stevens,
by Henry J. Camby, Her Guardian ad Litem, to
the Amended Bill of Complaint of Complain-
ants:*

This defendant answering by Henry J. Camby,
her Guardian ad litem appointed in this cause,
says that:

30 1. She is informed and believes that Richard
Stevens departed this life on the 18th day of May,
1919.

2. The said Richard Stevens left him surviving
his widow and four children mentioned in the
second paragraph of the bill of complaint.

40 3. 4. She is informed and believes that a paper
purporting to be the last Will and Testament of
Richard Stevens, bearing date March 7, 1917,
wherein he appointed complainants executors and
trustees, was admitted to probate by the Deputy
Surrogate of the County of Hudson, on the 5th
day of June, 1919, and letters testamentary issued
thereon, as stated in the 4th paragraph of the
amended bill of complaint.

Answer of Dorothy Stevens, by Guardian ad litem.

5. 6. This defendant believes that the provisions of said will as stated in the 5th and 6th paragraphs of the amended bill of complaint are truly stated in the said paragraphs.

7. This defendant believes that the contents of the 7th paragraph of the amended bill of complaint are truly stated therein. 10

8. As to the contents of paragraph 8 of the amended bill of complaint, this defendant denies the same. This defendant alleges that the said certificate was delivered by said Company to the said Richard Stevens as Guardian of this defendant, and was retained by him in his possession as such Guardian. That said certificate was placed in a compartment in the safe of the Hoboken Land & Improvement Company by the said Richard Stevens, which compartment was used by himself and other members of the Stevens family, and that said certificate was there found by the complainants after the death of the said Richard Stevens. 20

9. 10. 11. This defendant admits the contents of paragraphs 9, 10 and 11 of the amended bill of complaint.

12. As to paragraph 12 of the amended bill of complaint, this defendant says that she was on the 30th day of April, 1919, an infant under the age of twenty-one (21) years. As to what happened to the said assignment after her execution thereof, she has no knowledge. 30

13. This defendant has no knowledge or information sufficient to form a belief as to the contents of the 13th paragraph of the amended bill of complaint.

14. This defendant denies the contents of the 14th paragraph of the amended bill of complaint. 40

15. This defendant has no knowledge or information sufficient to form a belief as to the con-

Answer of Dorothy Stevens, by Guardian ad litem.

tents of paragraph 15 of the amended bill of complaint.

16. This defendant respectfully insists that the said shares of stock were either a gift to this defendant absolutely or in ademption of the residuary legacy to her in the will of the said Richard Stevens to the extent of the amount of the said legacy, (namely, a gift to her to the extent of one fourth of the residuary estate of the said testator, this defendant in the event of said gift exceeding the one-fourth to account for the difference), whichsoever this Court may under the facts of this case determine.

This defendant being an infant of tender years respectfully submits herself to the jurisdiction of this honorable Court.

HENRY J. CAMBY,
Guardian ad litem of Defendant
Dorothy P. Stevens, and Solicitor pro se.

30

40

Order Reviving Suit.

(Filed Dec. 30th 1920)

IN CHANCERY OF NEW JERSEY.

Between

J. W. RUFUS BESSON, *et al.*, EX-
ECUTORS, &c.,*Complainants,*DOROTHY P. STEVENS, *et al.*,*Defendants.*

On Bill &c. 10

Order Reviving Suit Against Theodosius Stevens, Administrator.

Upon reading and filing the affidavit of J. W. Rufus Besson, solicitor of the complainants in the above entitled cause, whereby it appears that Elizabeth C. Stevens, Jr., one of the defendants to this suit, has departed this life intestate, and that Theodosius Stevens has been appointed administrator of her estate by the Surrogate of the County of Hudson, and that the suit has become defective by reason of the death of the said Elizabeth C. Stevens, Jr., and that it is necessary for a determination of the controversy in this suit that the said Theodosius Stevens should be made party defendant to this suit in the place and stead of the said Elizabeth C. Stevens, Jr.,

IT IS, on this twenty-ninth day of December, nineteen hundred and twenty, ORDERED that this suit stand revived against Theodosius Stevens, administrator of the estate of Elizabeth C. Stevens, Jr., and he be made defendant in the place and stead of the said Elizabeth C. Stevens, Jr., and that the said Theodosius Stevens, Administrator as aforesaid, have leave to answer the amended bill of complaint in this cause.

Respectfully advised,

E. R. WALKER,

MALCOLM G. BUCHANAN,

C.

V. C.

Answer of Theodosius Stevens, Administrator.

(Filed March 14, 1921)

IN CHANCERY OF NEW JERSEY.

10	Between J. W. RUFUS BESSON, <i>et al.</i> , EXECUTORS, ETC., OF RICHARD STEVENS, DECEASED, <div style="text-align: right; padding-right: 20px;"><i>Complainants,</i></div> <div style="text-align: center; padding: 5px 0;"><i>and</i></div> DOROTHY P. STEVENS, <i>et al.</i> , <div style="text-align: right; padding-right: 20px;"><i>Defendants.</i></div>	} On Bill &c.
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20 *The Answer of the Defendant, Theodosius Stevens, Administrator of the Goods, Chattels and Credits of Elizabeth C. Stevens, Jr. to the Amended Bill of Complaint of the Complainants:*

This defendant answering the said amended bill of complaint says that:

30 1. Elizabeth C. Stevens, Jr., having died intestate, this defendant was on the 28th day of December, 1920, appointed by the Surrogate of the County of Hudson administrator of her estate, and has duly qualified as such.

2. He believes that Richard Stevens left a will as stated in the amended bill of complaint, and that the said will was admitted to probate by the Deputy Surrogate as therein stated.

40 3. This defendant believes that the contents of the said will as stated in the 5th and 6th paragraphs of the amended bill of complaint are truly stated therein.

4. As to the remainder of the amended bill of

complaint, this defendant has no knowledge or information sufficient to form a belief.

And this defendant respectfully submits to the jurisdiction of this honorable Court.

M. T. ROSENBERG,
Solicitor for and of Counsel with
Defendant Theodosius Stevens,
Administrator of the Estate of
Elizabeth C. Stevens, Jr., De-
ceased.

10

Answer of Caroline B. Stevens.

(Filed March 14, 1921)

IN CHANCERY OF NEW JERSEY.

Between

J. W. RUFUS BESSON, *et al.*, EX-
ECUTORS, ETC., OF RICHARD STEV-
ENS, DECEASED,

Complainants,

and

DOROTHY P. STEVENS, *et al.*,

Defendants.

On Bill &c.,

20

The Answer of the Defendant, Caroline B. Stevens, to the Amended Bill of Complaint of Complainants:

30

This defendant answering the amended bill of complaint says that:

1. She believes that the contents of paragraphs 1 to 6 inclusive of the amended bill of complaint in this cause are true.

2. As to the other matters stated in the amended bill of complaint, this defendant has no knowledge or information sufficient to form a belief.

40

And this defendant respectfully submits herself to the jurisdiction of this honorable Court.

MATHEW J. TACKELLA,
Solicitor of answering de-
fendant Caroline B. Stevens.

10 **Answer of Richard Stevens, Jr., by
Guardian ad Litem.**

(Filed March 14, 1921)

IN CHANCERY OF NEW JERSEY.

Between

J. W. RUFUS BESSON, *et al.*, EX-
ECUTORS, ETC., OF RICHARD STEV-
ENS, DECEASED,

20

Complainants,

On Bill &c.

and

DOROTHY P. STEVENS, *et al.*,
Defendants.

The Answer of the Defendant, Richard Stevens, Jr. by Matthew J. Tackella, His Guardian ad litem, to the Amended Bill of Complaint of Complainants:

30

This defendant answering by Matthew J. Tackella, his Guardian ad litem appointed in this cause, says that;

1. He is informed and believes that the contents of paragraphs 1 to 6 inclusive of the amended bill of complaint in this cause are true.

2. As to the other matters stated in the amended bill of complaint, this defendant has no knowledge or information sufficient to form a belief.

40

This defendant being an infant of tender years respectfully submits himself to the jurisdiction of

this honorable Court and prays that his interests may be protected and saved to him.

MATHEW J. TACKELLA,
Guardian ad litem of Defendant
Richard Stevens, Jr., and
Solicitor pro se.

Answer of Hoboken Land & Improvement Company. 10

(Filed March 14, 1921)

IN CHANCERY OF NEW JERSEY.

Between

J. W. RUFUS BESSON, *et al.*, EX-
ECUTORS, ETC., OF RICHARD STEV-
ENS, DECEASED,

Complainants,

and

DOROTHY P. STEVENS, *et al.*,
Defendants.

On Bill &c. 20

The Answer of the Defendant, Hoboken Land and Improvement Company, to the Amended Bill of Complaint of the Complainants. 30

This defendant answering the amended Bill of Complaint says:

1. That it has no knowledge of the allegations stated in the Bill of Complaint, except that on the thirtieth day of April, nineteen hundred and nineteen, seven hundred (700) shares of the capital stock of the Hoboken Land and Improvement Company, of which Richard Stevens was the then owner were transferred from his name to the name of Dorothy P. Stevens. 40

That said stock remains at the present time in the name of Dorothy P. Stevens; that no demand

has been made to transfer the said stock from the name of Dorothy P. Stevens, and that this defendant is ready to transfer the said shares from the name of Dorothy P. Stevens to anyone whom this Court may find is the proper owner thereof.

DAVID F. PLAHN

10

Solicitor for and of Counsel
with Defendant, Hoboken Land
and Improvement Company.

Testimony.

IN CHANCERY OF NEW JERSEY.

Between
20 J. W. RUFUS BESSON, *et al.*, EX-
ECUTORS, ETC., OF RICHARD STEV-
ENS, DECEASED,
Complainants,
and
THEODOSIUS STEVENS, ADMINISTRA-
TOR, *et al.*
Defendants.

Between
30 J. W. RUFUS BESSON, *et al.*, EX-
ECUTORS, ETC., OF RICHARD STEV-
ENS, DECEASED,
Complainants,
and
DOROTHY P. STEVENS, *et al.*,
Defendants.

On Bill &c

(two cases)

40 Testimony taken in the above-entitled causes at
the State House, Trenton, New Jersey, on Thurs-
day, May 20th, 1920, at 10:30 A. M.

Before HON. MALCOLM G. BUCHANAN, Vice Chan-
cellor:

Motion for Postponement.

A P P E A R A N C E S :

Messrs. BESSON, ALEXANDER & STEVENS,
by Mr. BESSON, for the complainants;

M. T. ROSENBERG, ESQ., for the defendant
ELIZABETH C. STEVENS, JR.;

HENRY J. CAMBY, ESQ., for the defendant,
DOROTHY P. STEVENS;

MATTHEW J. TACKELLA, ESQ., for the defend-
ants CAROLINE STEVENS and RICHARD
STEVENS, JR.

JOSIAH STRYKER, ESQ., for the complainants,
FARMERS' LOAN AND TRUST COMPANY and
MR. W. WILLIS REESE.

10

(Mr. Stryker makes a motion for a postpone-
ment of the case until he has had time to famili-
arize himself with it, stating that the case was
first brought to his attention late yesterday after-
noon, and also that his clients had no knowledge
of the proceedings until yesterday. Mr. Stryker
reads affidavits).

20

(After Mr. Besson and Mr. Rosenberg had ad-
dressed the Court in opposition to the motion, the
Court stated that, if counsel desired, he would take
a recess for half an hour in order to give counsel
an opportunity to present answering affidavits).

30

MR. BESSON: May I suggest that I be sworn
rather than present written affidavits?

THE COURT: Yes, you may do that; you may
take that course.

40

J. W. Rufus Besson—Direct.

J. W. RUFUS BESSON, a witness produced on behalf of the complainants, being duly sworn, testified, in answer to affidavits read by Mr. Stryker, as follows:

(DIRECT TESTIMONY:

10 I am one of the executors named in the last will and testament of Richard Stevens, deceased, and have qualified as such, together with the Farmers' Loan and Trust Company, W. Willis Reese and Edwin A. S. Brown.

At a conference held in my office from four to six months ago—I don't remember the exact date at which conference there were present Mr. William A. Duncan, Vice President of the Farmers' Loan and Trust Company, representing that company, Mr. Reese, Mr. Brown, Mr. Theodosius Stevens and Mr. Charles A. Capron, of the firm of Geller, Rolston and Blank, attorneys of the State of New York; and at that conference we discussed the question of the title of the Hoboken Land and Improvement Company's stock, which, previous to the death of Richard Stevens, had been transferred on the books of the company to Elsie Stevens, Jr. and Dorothy Stevens, and also the transfer of 410 shares of the Hoboken Paper Mill common stock, and 1161 shares of the Hoboken Paper Mill preferred stock; and it was agreed that an action should be brought to determine the title to these several blocks of stock, and I stated that I would begin such an action as soon as possible and bring it on for a hearing in as short a time as possible. This was agreed to by Mr. Reese and Mr. Duncan and Mr. Brown, and in carrying out that understanding, I prepared and filed the bills that are before the Court this morning.

The bills contain a statement of the facts as they

J. W. Rufus Besson—Direct.

existed and found from the records of these two companies, and under the circumstances, there was nothing for me to consult either Mr. Reese or the Farmers' Loan and Trust Company in regard to the actions, as I had been authorized by them to begin these actions; and I deny the statement made by Mr. Duncan in his affidavit when he says that "I never authorized the said J. W. Rufus Besson to appear or represent the said Farmers' Loan and Trust Company in said proceedings." 10

In relation to the firm of Geller, Rolston and Blank to the matter, I have always told Mr. Duncan that he was perfectly free to consult them as he saw fit, but that was only as the attorneys for the Farmers' Loan and Trust Company. 20

Mr. Duncan on one occasion asked me if I would be willing to allow a certain percentage of the commissions to be paid to the firm of Geller, Rolston and Blank. I told him that I would not consent to it, that they had absolutely no interest in the estate.

BY THE COURT:

Q. Were the facts, as alleged in the two bills, all known to the two executors and to the persons present at this conference at the time of this conference you have spoken of? A. I don't think there is any variance of the facts at all, as we understood them then, that developed afterwards. 30

Q. And were those facts discussed by the several persons at the conference at the time, or prior to that time? A. They had been discussed, yes; we had had talks about them. 40

Q. So that the situation in regard to the facts in the proceedings are now precisely what they were at the time of the conference you speak of? A. Absolutely.

J. W. Rufus Besson—Cross.

CROSS-EXAMINATION BY MR. STRYKER:

10 Q. Judge Besson have you acted alone as counsel for the estate in any other matter? A. I think this is the only proceeding we have brought; these two actions are the only two actions that were brought.

Q. Had you not been informed, on a number of occasions, that the Farmers' Loan and Trust Company did not desire you to represent them as executors? A. In this specific matter they asked me to proceed.

20 Q. Is it not a fact that both prior to this conference which you mention, and subsequent to that, they had told you they did not desire you to represent them as executors? A. They contended that each executor was entitled to his own representative, and that that was a charge against the estate, and I disagreed with them on that proposition.

Q. Won't you answer my question?

30 THE COURT: I suppose counsel is entitled to a direct answer, Judge.

Q. (Stenographer repeats the question). A. I don't think they ever told me that they didn't want me to represent them as executors.

Q. They told you they would select their own counsel, didn't they? A. As I say, they insisted that Geller, Rolston and Blank should represent the estate.

40 Q. Well, now, at this conference that you mention, was not the only business transacted at that conference the determination upon the fact that it was necessary to bring a suit, rather than the selection of any particular counsel to bring the suit? A. It was not; I was requested to begin the actions.

J. W. Rufus Besson—Cross.

Q. Do you know who made that request, who spoke? A. Why, I think Mr. Reese and Mr. Duncan both.

Q. Each of them made the request verbally? A. I mean during the conversation, yes; I forget who it was that suggested it; I think I told them it would be necessary to bring an action to determine the title of this stock; and that I would prepare the papers, and they said I should proceed. 10

Q. You would prepare the papers? A. Yes, and file the actions.

Q. Did they ask you to actually institute actions or prepare papers and submit them to them? A. There was never any request for me to submit any papers to them. 20

Q. Did they authorize the filing of the papers specifically? A. Proceed with the actions to determine the title.

Q. Or proceed with the preparation of the papers? A. Well, the idea was the action was to be brought.

Q. There is a difference of opinion as to what the idea was, what language was used; was it to proceed with the preparation of the papers, or proceed with the filing of the papers? A. To proceed with the action. 30

Q. And you said you would prepare the papers? A. Naturally.

Q. When were the papers prepared? A. I think about two months ago.

Q. Have you had conferences with Mr. Duncan since then? A. No, I haven't seen Duncan since then. 40

Q. Since the papers were prepared? A. No.

Q. Have you had a conference with Mr. Reese since then? A. No.

Q. Who has been attending to the affairs of the estate since then? A. I have.

Edwin A. S. Brown—Direct.

Q. Solely? A. And Mr. Brown in New Jersey, and reports are sent over to the Farmers' Loan & Trust Company at their request.

Q. But you never reported the institution of this suit to them, did you? A. I never did.

10 Q. Why not? A. As I say, having been instructed to proceed with the action, there was nothing for me to consult with them about.

Q. Although at that time you knew they desired to be represented by counsel of their selection?

A. I didn't know they desired to be represented in this action by counsel, other than myself.

20 EDWIN A. S. BROWN, a witness produced on behalf of the complainants, being duly sworn, testified in reply to affidavits read by Mr. Stryker, as follows:

DIRECT EXAMINATION BY MR. BESSON:

Q. You are one of the executors of the last will and testament of Richard Stevens, deceased? A. I am.

30 Q. Do you remember attending a conference in my office in regard to the estate matters? A. I do.

Q. Will you state who were present? A. On this particular conference there were present Mr. Duncan, representing the Farmers' Loan and Trust Company, one of the executors of the estate, Mr. Capron, who represented himself as counsel of the executor, Farmers' Loan and Trust Company, Mr. Reese, one of the executors, Mr. Besson, as one of the executors, myself, as one of the executors, 40 and Theodosius Stevens, representing his sister, the widow of Richard Stevens, and the children of Richard Stevens.

Edwin A. S. Brown—Cross.

Q. Will you state what the conversation was in regard to the necessity for determining the title to the stock in question, and what was directed to be done? A. The conversation centered on the question of the ownership of the stock. The request was made that proceedings be brought as speedily as possible to determine the ownership, and a request was made that the proceedings be brought by the counsel of the estate, Mr. Besson, at as early a date as he could possibly arrange. 10

Q. Do you remember who made that statement? A. Why, the initiation was made by Mr. Duncan, I am positive, and seconded by Mr. Reese.

CROSS-EXAMINATION BY MR. STRYKER: 20

Q. What did Mr. Duncan say? A. That proceedings should be taken at once.

Q. Is that all he said? A. Yes; there wasn't anything else to say.

Q. When did you first learn that the proceedings had been taken? A. Almost—within a very short time, as speedily as Mr. Besson could get the necessary papers together to present to the court. 30

Q. Under what circumstances did you learn that the proceedings had been started; how did you come to know? A. The preparation of the papers to present to the court.

Q. Were you concerned with the preparation of the papers? A. Only for the necessary information for the court to act on.

Q. Did Mr. Besson consult with you in securing that information? A. He did.

Q. Did you read the bill before it was filed? A. I did not. 40

Q. Did you know when it was filed at the time? A. Yes, sir.

Edwin A. S. Brown—Cross.

Q. Have you seen Mr. Duncan or Mr. Reese since then? A. Oh, yes.

Q. Did you ever mention this bill to them? A. Not necessarily.

Q. Have you done it? A. No.

10 Q. Why not? A. Because there was no need.

Q. Why wasn't there just as much need for them to know as for you to know? A. Because they knew the preparation was going on?

Q. So that you—is that the only answer you can make? A. That is the only answer, yes.

Q. You knew, didn't you, Mr. Brown, that the Farmers' Loan and Trust Company desired to consult their counsel? A. They had perfect liberty to.

20 Q. You knew that was what they desired? A. Yes.

Q. They desired to be represented by their counsel, rather than by Judge Besson? A. Not necessarily.

Q. Well, I don't know what you mean by that. A. There was no objection to their consulting with their counsel, but that didn't interject their counsel into the case as a matter of record.

30 Q. Did you know their counsel had never seen this bill or never had any knowledge of the filing of the bill; did you know that? A. No, I didn't.

Q. You say you have seen Mr. Duncan and Mr. Reese frequently since that conference?

THE COURT: He didn't say frequently.

Q. How many times have you seen them? A. Mr. Reese, as a matter of fact, once a month for nearly a year, as a director of the Hoboken Land and Improvement Company.

40 Q. And Mr. Duncan, how often have you seen him since that conference? A. I think at least once, personally, and a couple of conversations over the 'phone on other matters.

Edwin A. S. Brown—Re-Direct.
Theodosius Stevens—Direct.

Q. In regard to the affairs of the estate? A. Yes, sir.

Q. Have you seen Mr. Reese with regard to the affairs of the estate since that conference? A. Yes.

Q. Or talked to him over the telephone? A. No, 10
right in his presence.

RE-DIRECT EXAMINATION BY MR. BESSON:

Q. You are the secretary of the Hoboken Land and Improvement Company? A. I am.

Q. And the records on which these facts are based are in the possession of the Hoboken Land and Improvement Company? A. They are.

Q. And in preparing these bills you were asked 20
to produce the different books and so on? A. I was.

BY THE COURT:

Q. At this conference was there anything said by Mr. Duncan, or by anyone else, any request, or anything in the nature of a request, that the bill be submitted to this New York firm prior to its being filed? A. No. 30

Q. Or that they should have anything to do with the preparation of the suit? A. No.

THEODOSIUS STEVENS, a witness produced on behalf of the complainants, being duly sworn, testified, in answer to the affidavits read by Mr. Stryker, as follows:

DIRECT EXAMINATION BY MR. BESSON: 40

Q. What is your profession? A. Attorney and Counsellor at Law of the New York Bar.

Q. Practicing in New York? A. Practicing in New York.

Q. What relation are you to the decedent, Rich-

Theodosius Stevens—Direct.

ard Stevens? A. The decedent was my cousin, and also married my sister.

10 Q. Since his death, have you taken any interest, professionally or otherwise, in the interests of any of the family? A. I have for my sister, and the oldest daughter, Elsie, of my sister, individually, and as guardian of her two minor children. And, of course, I don't want to leave out the other two children; my other niece and nephew; I naturally would have their interest at heart.

Q. Have you attended any conference of the executors of the— A. I have.

20 Q. How many? A. Several. I think the first one was when they went over the securities and when this question was first raised.

Q. That was at the time the representative of the Comptroller of the State of New Jersey made an inventory, was it not? A. Yes, I think there were two such conferences, and perhaps more.

Q. Did you attend a conference in my office subsequently? A. With all four executors?

Q. Yes. A. I did.

30 Q. Will you state what conversation there was, if any, in regard to what could be done in order to determine the title to the stock involved in this suit? A. After a temporary arrangement had been made regarding the payment of income to the family for their living expenses, which was the question I was particularly interested in, the question of having the determination made about this stock transfer in question was then taken up, and it was the unanimous opinion of every one present
40 that should be brought about as soon as possible. I can't remember your exact words, but you said a suit would have to be brought for that purpose; and my recollection is, that Mr. Reese turned to you and said, "Will you do that?" and you said

Theodosius Stevens—Cross.

“Yes;” then I said that I hoped that the matter could proceed as rapidly as possible after that.

Q. Did anyone else say anything at the time?

A. Mr. Duncan, I think, interjected something along that line; I can't remember the exact phraseology. 10

Q. Were any attorneys suggested to represent the Farmers' Loan and Trust Company as distinguished from the other executors? A. No; Mr. Capron was there, as I understood, in the capacity of counsel of the Farmers' Loan and Trust Company, because I had frequently had correspondence with the Farmers' Loan and Trust Company on that very point. 20

Q. What point? A. On the point of the New York counsel for the Farmers' Loan and Trust Company representing the estate as such. 20

Q. Had you made a protest? A. I had.

Q. Have you seen Mr. Duncan or Mr. Reese since that time? A. I don't think I have seen Mr. Duncan since that time; I have seen Mr. Reese a couple of times since then, I think, several times.

Q. Did he, in any of those conversations, refer to those actions? A. Yes, he did. 30

Q. What did he say? A. He asked me if I would see what I could do to have you hurry the actions.

CROSS-EXAMINATION BY MR. STRYKER:

Q. I don't suppose you recall the language that Mr. Reese used in speaking of having this litigation started; did he ask to have the papers prepared, or the suit instituted, or what did he say? A. I can't remember the exact words; we didn't go into the detail of papers, or anything of that kind. He expressed the desire that I do what I could to hurry the institution of the suit by Judge Besson. 40

THE COURT: Do counsel desire to be further heard?

Theodosius Stevens—Cross.

MR. STRYKER: I don't think so; I think it is very apparent from the testimony, that Judge Besson in good faith believed that he was authorized to bring this suit. I have not had any question about that at any time; that is, I believe at the time of his first argument, I don't think he said the Farmers' Loan and Trust Company had said he was authorized, but I have no doubt that he thinks he was authorized. I think it is also apparent that a little difference of a word or two in the conversation might have created a situation where Mr. Reese and Mr. Duncan had gone away with the impression that no suit would be instituted until they were further consulted. I think the situation is one of a misunderstanding.

THE COURT: I think it is perfectly clear, upon the affidavits before me, that the motion must be denied. I have never known of any practice involving the appearance of more than one solicitor for complainants in an action of this kind. I don't see how litigation could be carried on if there were more than one solicitor for the complainants, for the parties who are concerned with the carrying on of the action.

I am entirely satisfied from the facts set forth in the affidavits before me, that they constitute an authorization to Judge Besson to institute these actions. It probably would have been more courteous, and, perhaps, better all around, if notice had been sent, as some of us have done in the past, to all those interested in the action at the time it was brought; but the sole question before me is as to whether the action was authorized, and I think it is clear that it was.

The motion for a postponement is denied.

Elizabeth Stevens—Direct—Cross.

ELIZABETH STEVENS, a witness produced on behalf of the complainants, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. BESSON:

Q. Mrs. Stevens, you are the widow of Richard Stevens? A. I am. 10

Q. When did Mr. Stevens die? A. A year ago from this May 18th.

Q. 1919? A. 1919, yes.

Q. Who survived Mr. Stevens? A. You mean his children or me?

Q. Yes. A. I, his widow, and four children.

Q. Give their names and ages. A. Elsie—exact age, or just the years? 20

Q. I think the years are sufficient. A. —25 years old; Caroline, 22 years old—now, or at the time of his death?

Q. At the present time. A. 25 and 22; Dorothy Stevens, 17; and Richard Stevens, 15.

CROSS EXAMINATION BY MR. ROSENBERG:

Q. Mrs. Stevens, the daughter that you have referred to as Elsie Stevens, her full name is Elizabeth C. Stevens, Jr., so called because she has the same name as you? A. Yes. 30

MR. BESSON: I offer a copy of the will of Richard Stevens, certified by the Surrogate of Hudson County—the will and probate and letters.

Said paper is marked "Exhibit C-1." 40

Edwin A. S. Brown—Direct.

EDWIN A. S. BROWN, a witness produced on behalf of the complainants, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. BESSON:

10

Q. You are the Secretary of the Hoboken Land and Improvement Company? A. I am.

Q. And as such, do you have the stock and transfer books of that company in your possession? A. I have.

Q. Have you those books with you? A. I have.

Q. Produce them please. A. (Witness produces books.)

20

Q. Does the stock and transfer book show a transfer dated October 3, 1918; will you turn to the book and see if such transfer is recorded? A. To whom?

Q. I don't know that there was any other on that day; 600 shares of the Hoboken Land and Improvement Company? A. To Elsie Stevens, it does.

30

MR. BESSON: I ask that that transfer as shown on the books, be marked.

THE COURT: The offer will be of the entire book. I will admit it.

(Said book is marked "Exhibit C-2.")

Q. Read the record of the transfer. A. The stock ledger reads, that Elizabeth C. Stevens, Jr.—

BY THE COURT:

40

Q. Read what it says. A. "Elizabeth C. Stevens, Jr., Ledger folio 34, October 1, 1918, transferred from Caroline B. Wittpen, trustee, 600 shares."

Edwin A. S. Brown—Direct.

Jr.

BY MR. BESSON:

Q. What does the ledger show in regard to the previous transfers of that specific stock? A. That it came from Caroline B. Wittpen trustee.

Q. From whom had it been transferred? A. The entry there is "Caroline B. Wittpen, trustee, Ledger folio 18, 1917, February 14, transferred from Richard Stevens, 600 shares." **10**

Q. When was that transfer made? A. February 14, 1917; the counter-entry is, "Ledger, folio page 35, October 1st, 1918, transferred to Elizabeth C. Stevens Jr., 600 shares."

Q. In whose name has that stock stood on the books of the company since October 3, 1918? A. Elizabeth C. Stevens, Jr. **20**

BY THE COURT:

Q. It has so stood since October 1st, 1919, hasn't it? A. Yes, sir.

BY MR. BESSON:

Q. To whom have the dividends declared on that stock since that date been paid? A. To Elizabeth C. Stevens, Jr. **30**

Q. Have you the checks representing the payment of those dividends? A. I have.

Q. Will you produce them? A. Yes. (Producing them.)

MR. BESSON: I offer them in evidence.

(Said bundle of checks is marked "Exhibit C-3.")

Q. Read them in the record. A. The first check is dated November 1st, 1918. **40**

Q. What is the amount? A. \$900.00.

Q. To whom drawn? A. Elizabeth Stevens, Jr., rubber stamped.

Q. How indorsed? A. Rubber-stamped "Elsie Stevens, Jr."

Edwin A. S. Brown—Direct.

Q. Give the dates and the amounts? A. The next is December 2, 1918, \$900.00; the next is January 2, 1919, \$900.00; the next is February 2, 1919, \$900.00; the next is February 21, 1919, \$2400.00; that is an extra dividend; March 1, 1919, \$900.00; April 1st, 1919, \$900.00; May 1st, 1919, \$900.00; that is up to the month of Richard Stevens' death.

BY THE COURT:

Q. Since that time have they continued the same way? A. Yes, they have continued the same way since that time; the amounts continued the same, except the extra dividends.

Q. You have read all you have there? A. Yes, sir.

Q. Each of these checks is indorsed for deposit? A. Rubber-stamped "Elsie Stevens, Jr.," and then rubber-stamped—

Q. That indorsement indicates they were deposited to her credit? A. Yes, sir.

Q. The rubber stamp indorsement—do you know by whom that indorsement was placed upon these checks? A. Yes, by the cashier of the Hoboken Land and Improvement Company.

Q. Do you know by whose instructions it was done? A. By rather custom than direct instructions.

Q. What do you mean by "custom"? A. An internal arrangement of the company's rule was, that where the different interests had accounts with the company, they issued the check for the dividends, and then it was turned back to the cashier for use through his books to these accounts, crediting the account and then depositing the check to the company's machinery.

Edwin A. S. Brown—Direct.

BY MR. BESSON:

Q. In other words, the bank—— A. Simply circled around back to the company.

Q. Do you know whether any direction was given by Mr. Richard Stevens in regard to these payments? A. There was. 10

Q. Was that in writing? A. Under date of December 6, written instructions.

Q. What year? A. December 6, 1918; written instructions were handed to me that the——

Q. Is that the paper that was given to you? A. Yes, sir.

Q. By whom? A. By Richard Stevens.

Q. What did he say to you at the time he gave you the paper? A. He stated that he wished to have these instructions followed concerning certain stocks that were in the name of Elsie Stevens, Jr. 20

Q. Is that the original paper? A. Yes.

Q. Is his signature attached? A. Yes.

Q. And you are familiar with his signature? A. I am.

MR. BESSON: I offer that in evidence 30

(Said paper is marked "Exhibit C-4.")

MR. BESSON: "December 6, 1918, H. L. & I. Co., Please open new account under following name, 'Elsie Stevens, Jr., Special.' In this account deposit monthly dividends paid to Elizabeth C. Stevens, Jr., on the following stocks: 600 shs. Hoboken Land & Impt. Co., 410 shs. *common stock* of Hoboken Paper Mill Co., 1161 shs. *preferred stock* of Hoboken Paper Mill Co. 40

Richard Stevens."

A. The bridge between the date you are read-

Edwin A. S. Brown—Direct.

ing from to bridge the time from the date of this certificate to December——

Q. Have you any other instructions? A. Yes, sir.

10 Q. Written instructions? A. This bridges the time between the date of the certificate——

Q. October 1st? A. October 1st and the date when he requested Elsie Stevens, Jr., Special.

Q. Is that a written order signed by Mr. Stevens? A. Yes, sir.

MR. BESSON: I ask that that be admitted in evidence.

(Said paper is marked "Exhibit C-5.")

20 BY THE COURT:

Q. What is the date of that? A. December 6, 1918.

Q. Both the same time? A. Yes, sir.

30 Q. Read that notice in the record. A. "December 6, 1918, H. L. & I. Co., Please transfer from the account of Elsie Stevens, Jr., to the account of Elsie Stevens, Jr., Special the sum of \$3220. This amount represents the following payments that were deposited to the credit of Elsie Stevens Jr., account, viz: October, 1918, dividend of 1 per cent. on 410 shs. of Hoboken Paper Mill, \$410; November, 1918, ditto on 600 shs. of H. L. & I. Co., \$900.00; ditto 1918, interest due on old bonds of Hoboken Paper Mill, \$1500.00; ditto 1918 div. on 410 shs. Hoboken Paper Mill Co., \$410.00; \$3220.00.

Richard Stevens."

40

BY MR. BESSON:

Q. Have you the ledger account showing what subsequent deposits were made in the account of Elsie Stevens? A. I have.

Q. Will you turn to that account? A. Yes, sir. (Doing so.)

Edwin A. S. Brown—Direct.

Q. What is that book? A. This is Ledger No. 38 of the Hoboken Land and Improvement Company.

Q. And that is the book kept by the Hoboken Land and Improvement Company in account with Elsie Stevens, Jr.? A. Yes, sir 10

MR. BESSON: I offer that account in evidence.

(Said account is marked "Exhibit C-6.")

BY THE COURT:

Q. This whole page, 518 here, is the account of Elsie Stevens, Special? A. Yes, sir.

MR. ROSENBERG: These entries will be copied and then sent to the stenographer. 20

MR. BESSON: I will be very glad to do that.

BY MR. BESSON:

Q. Do you know by whom the income taxes on the dividends on these stocks were paid? A. I do.

Q. What record have you? A. Evidenced by the report to the Federal Income Tax and the rough make-up of the report (producing papers.) 30
The rough make-up of the details, because the report would only have the summary.

MR. BESSON: I offer a copy of the income tax report and the memorandum from which it is made, in evidence.

(Said report and memorandum are marked "Exhibits C-7" and "C-8," respectively.) 40

BY MR. BESSON:

Q. Are you familiar with the method Mr. Stevens had of preserving his personal papers? A. I am.

Edwin A. S. Brown—Direct.

Q. Where did he keep his personal papers? A. In a file in the inside safe in the vault of the Hoboken Land and Improvement Company.

Q. This is a safe that was placed in the vault?
A. In the vault, yes, sir.

10 Q. And who had access to that safe? A. I had, and he had, also.

Q. Anyone else? A. Yes, sir, the treasurer of the company.

Q. And were any of his personal papers found in that saafe after his death? A. They were.

Q. Can you describe how they were placed in the safe? A. Yes, in this file (producing it). The rule was, that he would, if the safe would not open,
20 would indicate on an envelope that he wanted to file it on R. S. box, indicating to me that he wanted that paper filed in the inside in a safe.

Q. You actually took charge of his papers? A. I did.

Q. And you have produced the files which he used in that safe? A. Yes, sir, here it is.

MR. BESSON: I offer the file in evidence.
(Said file is marked "Exhibit C 9.")

30 BY THE COURT:

Q. This file, as now offered, is in the same condition as at that time? A. No, because of the removal to the safe deposit box of the securities.

BY MR. BESSON:

Q. That is the actual box? A. That is the actual box that contained his papers.

BY MR. ROSENBERG:

40 Q. The papers there are entirely different? A. Some are, and some are not.

BY MR. BESSON:

Q. How is that placed in the safe? A. Filed in the usual cabinet form.

Edwin A. S. Brown—Direct.

Q. Is there any lock on the file itself? A. Absolutely none.

Q. Have any other members of the Stevens family similar files? They have.

Q. How many? A. Well, practically the whole family. Mrs. Wittpenn, Caroline Stevens, and Mr. Richard Stevens had, and Albert Stevens and— **10**

Q. Did any of Mr. Stevens' children have files there? A. Yes, sir.

Q. Who were they? A. One was marked "Elsie Stevens, Jr.," and the other "Caroline Stevens," but not of that type of file, just the thin paperoid box.

Q. And they were placed in the safe? A. Yes.

Q. With Mr. Stevens' papers? A. No, separate. **20**

BY THE COURT:

Q. When were the last two files commenced? A. Elsie and Caroline?

Q. Yes. A. On the birthday of Elsie, which was in 1917; I may be mistaken as to that date, because I am not positive, but it was on her birthday.

Q. What year? A. That I would have to have Miss Stevens testify to. The account was opened before her birthday, but the box was only established on her birthday. **30**

Q. About what time? A. I would say about 1917.

Q. That was prior to the transfer of this stock, prior to October 1, 1918? A. Yes, sir.

Q. You are positive of that? A. Yes, sir; the reason—

Q. Some months prior? A. Yes, sir. **40**

Q. How as to the Caroline Stevens' file? A. Similar.

Q. At the same time? A. No, but on her birthday.

Edwin A. S. Brown—Direct.

BY MR. BESSON:

Q. By her birthday, you mean when she became of age? A. When she became of age Mr. Stevens, as custodian of property that came to the child from her grandmother, turned over the property then belonging to the child and obtained her release, as far as her interest in her grandmother's estate was concerned. That affected both cases.

BY THE COURT:

Q. What did this have to do with the establishing of these files? A. Except opening a separate file to take care of this security belonging to the children, and it was placed there—

Q. By Mr. Stevens? A. Yes.

Q. Any instructions given to you or anyone else, at the time you placed these files in there? A. Yes, to put them in there for their use and the securities. He had made a schedule in both cases of the securities that came to them from the grandmother's estate, and issued instructions to deposit certain income from those securities, against which he gave orders to draw out monthly approximately the earnings of the security, the total security.

Q. I don't quite understand that. A. Well, he made up a statement to the girl of approximately what the annual income of those securities would be, whether they came in one month or the other month, but the twelve months' rate was arrived at. Against that he gave an order to deposit to their account in the banks the monthly income, irrespective of whether it was received or not in one month or the subsequent month.

BY MR. BESSON:

Q. In this file, after his death, were any of these certificates found in that file? A. Yes, they were.

Q. Where was this certificate for 600 shares of

Edwin A. S. Brown—Direct.

the Hoboken Land and Improvement Company filed? A. In this file here (Exhibit "C 9.")

BY THE COURT:

Q. In the Richard Stevens file? A. Yes.

Q. Was there anything with the certificate of stock? A. Yes, there was. 10

Q. Where is that certificate of stock? A. Now?

Q. Yes. A. In the file; at least in the safe deposit box of the estate in the Hudson Trust.

BY MR. BESSON:

Q. Why isn't it produced here? A. The requirements of the executors were, that two executors may enter the box, one of them being the Farmers' Loan, or their representative, and one other executor. 20

Q. And did the Farmers' Loan and Trust refuse to deliver that certificate so it could be brought here to-day? A. They didn't positively refuse; they simply deferred the time so that it was impossible to bring it.

MR. ROSENBERG: I have no objection to introducing secondary evidence, if that is what is desired. It is practically admitted. 30

Q. Can you state what the paper was that was attached to the original 600 shares of the Hoboken Land and Improvement Company, and in what way it was attached to it? A. Upon the reverse side of the certificate of the Hoboken Land and Improvement Company, which is an old time form with no power of transfer printed on it, which the newer certificates have, was an attached form of transfer signed by Elsie Stevens, Jr. 40

BY THE COURT:

Q. A form of transfer, or a form of assignment

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of stock? A. Assignment of stock, transfer of stock as it is known.

Q. A transfer of stock is a different thing from an assignment of stock.

BY MR. BESSON:

10 Q. Have you a form similar to the one used?

A. I have.

Q. Read it into the record. A. This is the form, not the particular paper: "Know all men by these presents, that I"—

BY THE COURT:

Q. Read it as if it were the actual one. A. Yes, sir, "I, Elsie Stevens, Jr., for value received, have
20 bargained, sold, assigned, and transferred, and by these presents do bargain, sell, assign and transfer unto Richard Stevens Six hundred shares of the capital stock of the Hoboken Land and Improvement Company standing in my name on the books of said company, and I do hereby constitute and appoint
30 true and lawful attorney, irrevocably for me and in my name and stead, to use to sell, assign, transfer and make over all or any part of the said
and for that purpose to make and execute all necessary acts of assignment and transfer thereof, and substitute one or more persons with like power, hereby ratifying and confirming all that said attorney
or
substitute or substitutes shall legally do by virtue hereof.

40 IN WITNESS WHEREOF, I have hereunto set my hand and seal at Hoboken, New Jersey, the
day of

(I don't know that date).

Signed, sealed and delivered, in the presence of
(I am not positive of that.)

(Signed) Elsie Stevens, Jr."

Edwin A. S. Brown—Cross.

Edwin A. S. Brown—Direct.

CROSS EXAMINATION BY MR. ROSENBERG :

Q. Don't you know, Mr. Brown, that you were appointed transfer agent on that particular certificate? A. I would be ordinarily by power of the Hoboken Land and Improvement Company's— 10

Q. Do you know whether or not there were any revenue stamps on that? A. That I can't positively say without the knowledge of the paper before me.

Q. You did see the paper? A. I did see the paper.

Q. It is on this form that you have got there, H. K. Bloor & Company, 114? A. Yes, sir. 20

MR. ROSENBERG: I have no objection.

THE COURT: I would like to have that certificate.

MR. ROSENBERG: We will get that.

FURTHER DIRECT EXAMINATION BY MR. BESSON :

Q. Were any of the other of these certificates in that box? A. Yes, there was.

Q. What other certificate? A. A similar certificate of the Hoboken Land and Improvement Company, in the name of Dorothy P. Stevens. 30

Q. No, I mean in the name of Elsie? A. No, not of the Hoboken Land and Improvement Company, of another company, yes, there was.

Q. The Hoboken Paper Mill? A. Of another company.

Q. What certificates were they? A. Certificate of 410 shares of the Hoboken Paper Mill Company, which certificate is also on file in the Hudson Trust box. 40

Q. In regard to this assignment that was found

Edwin A. S. Brown—Direct.

with the 600 shares of the Hoboken Land and Improvement Company, was that actually attached to the stock? A. It was affixed, yes, sir.

Q. In what way? A. By means of a fastener.

BY THE COURT:

10 Q. A temporary fastener? A. Yes, sir, a pin or clamp.

BY MR. BESSON:

Q. Pinned with a little wire clamp? A. Yes, sir.

Q. Was there anything found on the 410 shares of the Hoboken Paper Mill Company's stock? A. Yes, there was; that is a newer form of certificate, with the power printed on.

20 Q. Do you remember how that was filled out?

MR. BESSON: I ask to have leave to produce the original.

THE COURT: Yes, you may.

A. I can't answer that particular question, because I wasn't so interested in observing.

Q. It was found in the same file in the safe in the vault? A. Yes, sir.

30 Q. Did you know whether or not the testator, Richard Stevens, had an interest in a mortgage on the property of the Hoboken Paper Mill Company? A. I did.

Q. Did you handle those papers for Mr. Stevens? A. Yes sir.

Q. And, can you state about the amount of that mortgage? A. I am not positive, because not having knowledge of the mortgage paper of itself, but the securities that belonged to the mortgage.

40 Q. Do you know whether or not anyone else had an interest in that mortgage? A. They did.

Q. Who? A. Palmer Campbell.

Q. What position did he hold at the time in the

Edwin A. S. Brown—Direct.

Hoboken Land and Improvement Company? A. He was then Treasurer.

Q. Do you remember what proportion of interest they held together? A. Richard Stevens had ninety-hundredths and Palmer Campbell ten-hundredths. 10

Q. Do you know where the 1161 shares of preferred stock of the Hoboken Paper Mill Company was found after Mr. Stevens' death? A. In the box marked "Elsie Stevens, Jr."

Q. The one to which you have referred previously? A. Yes, sir.

BY THE COURT:

Q. That was a folder, not a box? A. One of those paper boxes. 20

Q. Not a file like this? ("C 9"). A. No, a paper box.

BY MR. BESSON:

Q. Was there any assignment attached to that certificate of stock? A. There was.

Q. Do you remember whether that was executed? A. I have that. 30

Q. What? A. The original paper before me.

Q. The assignment? A. Yes.

Q. And where was that found? A. In the paper box marked "Elsie Stevens, Jr."

Q. Was that with the certificate or separate? A. No, they were together; the certificate of stock and transfer were pinned together.

Q. Have you both of those in your hand? A. I have. 40

MR. BESSON: I offer them in evidence.

MR. ROSENBERG: I have no objection.

(Said papers, being the certificate of stock and assignment, are marked "Exhibits "C-11" and "C-12."

Edwin A. S. Brown—Cross.

BY MR. BESSON :

Q. Does the account in Ledger 38 show the crediting of the dividends on the 410 shares of the common, and also the 1161 shares of the Hoboken Paper Mill Company? A. It does.

10 Q. Does the Federal Income Tax Return show that the taxes on the dividends of both the common and preferred shares of the Hoboken Paper Mill Company were returned by Miss Elsie Stevens, in the memorandum from which the return was made? A. I won't be sure, because the change of form of security occurred about the time that—
 20 occurred in 19—late in 1918, and the income of that change would not take place until 1919 on the preferred stock; it changed its character from a bond to stock.

Q. When was that? A. The change was made in November, 1918.

Q. Subsequent to Mr. Stevens' death? A. Prior. I wanted to state that the report for the income to the Income Tax showed that the interest on the bonds were accounted for up to the adjustment of the transfer from bonds to stock.

30 Q. And those are entered in Miss Elsie Stevens' return? A. Yes, sir.

Q. Did Mr. Stevens hold an office in the Hoboken Land and Improvement Company? A. Yes, sir.

Q. What was he at the time these transfers—
 A. He was President.

CROSS EXAMINATION BY MR. ROSENBERG :

40 Q. As I understand it, Mr. Brown, the Hoboken Land and Improvement Company was organized originally by the Stevens' family? A. It was.

Q. And has been largely controlled by the Stevens' family? A. Entirely.

Edwin A. S. Brown—Cross.

Q. And the banking of the various members of the Stevens' family, their dividends and income, was done to a very large extent, through the Hoboken Land and Improvement Company? A. Through their books.

Q. And the Hoboken Land and Improvement Company attended to depositing their checks and crediting dividends on their own books and paying them out by their own checks? A. Yes. 10

Q. You say each of the children of Richard Stevens had her own file opened for her at the time she came of age? A. As each one of these two children came to age, boxes were opened for their securities.

Q. And, therefore, Elsie's box was opened when she was 21? A. Yes, sir. 20

Q. Was this 1916 or 1917? A. I made the statement 1917; I can't say positively at the moment, because the accounts of Elsie Stevens, Jr. and Caroline B. Stevens were carried as open accounts by reason of their having income coming from their grandmother's estate credited to them under the title of Richard Stevens, Guardian.

Q. Up to a certain time? A. Yes. 30

Q. If I told you that Elsie Stevens came of age in April, 1916, would you feel that you would want to correct your answer as to your impression as to the time when the file was started? A. I would.

Q. The certificate for 410 shares, the transfer on that was found also in Richard Stevens' box? A. Yes.

Q. And is not yet paid? A. No. 40

Q. The tax, or so much of the income of Elsie Stevens as was derived from the bonds of the Hoboken Paper Mill Company, before the transfer into

Edwin A. S. Brown—Cross.

preferred stock, was paid by Elsie Stevens, wasn't it? A. It was, yes.

10 Q. And the income tax on the preferred stock issued in lieu of that bond, the interest was paid by her also, from and after that date? A. I presume so; we didn't make up that statement, but that would be the—

Q. So far as it does appear in Elsie Stevens' statement? A. Yes.

Q. And it does so appear? A. It does.

Q. So the income tax for that whole year on income derived from these securities in the Hoboken Paper Mill Company were paid by Elsie Stevens? A. They would be.

20 Q. Well, they were, weren't they? A. You are speaking now of 1919?

Q. No, of 1918, from October on. A. They were paid by Elsie Stevens.

BY THE COURT:

Q. That was interest on bonds? A. Both bonds, which ran to November 1st.

30 Q. The bonds carried interest February and August, and in November, 1918, they were changed from bonds to preferred stock.

BY MR. ROSENBERG:

Q. And the income from and after that was included in Elsie Stevens' income tax report? A. Yes.

Q. And paid by her? A. Yes.

40 Q. Now, Mr Brown, you went to the Richard Stevens file immediately after his death, didn't you, a short time after? A. I did, shortly after.

Q. Did you find any other securities belonging to Elsie Stevens in that box? A. I did.

Q. What did you find there? A. Why, some

Edwin A. S. Brown—Cross.

Liberty Bonds, I think they were; I am positive they were Liberty Bonds.

Q. And marked? A. "Elsie Stevens, Jr."

Q. They were in that box? A. They were in that box.

Q. How many of them? A. That I couldn't say, 10 just an envelope marked—

Q. Were Elsie's Liberty Bonds in her box or in Richard Stevens' box, or don't you remember? A. Well, there was a gathering of two or three other interests, Dorothy P. Stevens, some of them were marked "Dorothy P. Stevens;" and a life insurance policy of Dorothy P. Stevens in the Metropolitan Life Insurance Company.

20

BY THE COURT:

Q. And these were all in the Richard Stevens box? A. With the mark, "Property of Richard Stevens, Jr.," "Property of Caroline P. Stevens."

Q. I think we have ourselves a little mixed. Well, that's all.

BY THE COURT:

Q. The moneys that went into this Elsie Stevens 30 Special account, shown on page 518 of the Ledger 38, apparently consisted of nothing but the Hoboken Land and Improvement Company dividends, and the Hoboken Paper Mill Company dividend; that is all, isn't it? A. That is all, yes, entirely.

Q. How were moneys withdrawn from that account? A. Well, a payment of the income tax was part of the—

Q. The debit items on that account are all entitled "Sundry credits"? A. We have a voucher 40 book, and the aggregate of the entries of the vouchers for the month are entered in that way against the individual account, similar to this.

Q. Well, by whom were moneys drawn from

Edwin A. S. Brown—Cross.

that Elsie Stevens Special account? A. By Richard Stevens.

Q. And by him alone? A. By him alone.

10 Q. Who actually made up the income tax return, a copy of which you have produced in evidence here? A. The person himself; I have office—

Q. The person himself? A. A party named Harold Massey.

Q. An employee? A. An employee of the Hoboken Land and Improvement Company.

20 Q. And the same of the memoranda sheet you have there; that was his work, too? A. Yes; this rough sheet indicating the make-up; from this was gathered the totals and put into the report.

Q. You have offered the copy as an exact copy? A. That is known as the "Work Sheet."

Q. That does not have attached to it the name or the signature? A. No.

Q. Do you know by whom the return of Elsie Stevens for the year 1918 was signed and sworn to? A. By Elsie Stevens.

30 Q. Herself? A. Yes.

Q. Did Elsie Stevens have access to the file in the safe which was marked with her name? A. Yes, sir.

Q. At all times from and after the commencement of that file? A. Oh, yes, yes.

Q. And that access was obtained through some of the officers of the Hoboken Land and Improvement Company who had the combination of the safe? A. Yes.

40 Q. She didn't have the authority or the ability to open the safe herself? A. She had no knowledge of the safe.

Q. She had to have some officer to get this file out? A. Yes.

Edwin A. S. Brown—Re-Direct.

Q. What access had she to Richard Stevens file in that safe? A. If she wished to make use of it, she could draw out this file,—no protection whatever.

Q. As a practical matter, then, she could have had just as free access to the Richard Stevens' file as to her own file? A. Yes, sir. 10

Q. And, of course, Richard Stevens had the same access to his own files and the other files in the safe? A. Yes, sir.

Q. When you say the moneys withdrawn from this Elsie Stevens' Special account were by Richard Stevens alone, how were those withdrawals accomplished? A. By orders similar to the one I exhibited there, similar to this order here, on which, of course, would be a different file slip.— 20

Q. There would be a written direction or order from Mr. Richard Stevens to the Hoboken Land and Improvement Company to draw a check up on the Hoboken Land and Improvement Company's bank account, to the order of such a person as Richard Stevens named? A. Yes, sir.

Q. Were you the one who found Richard Stevens' will after his decease? A. Yes, sir. 30

Q. Where was that will found? A. In the desk in the office, in Alexander Stevens' office.

Q. Not in the safe? A. No, sir.

RE-DIRECT EXAMINATION BY MR. BESSON:

Q. The desk was open? A. It is a roll-top desk, and it was always down; he left it open. 40

Q. In a pigeon-hole? A. In a pigeon-hole.

William H. Gould—Direct.

WILLIAM H. GOULD, a witness produced on behalf of the complainants, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. BESSON:

10 Q. Mr. Gould, are you connected with the Hoboken Paper Mill Company? A. Yes, sir.

Q. What position do you hold? A. President at this time.

Q. Before Mr. Stevens' death? A. Vice President and General Manager.

Q. What office did he hold? A. Mr. Stevens?

Q. Yes. A. President.

20 Q. Have you brought with you the stock book of the Hoboken Paper Mill Company? A. I have. (Producing it)

Q. Will you open the stock book and show the record of the transfer of 410 shares of the Hoboken Paper Mill Company stock? A. I am not in anywise familiar with the stock book.

Q. That is the stock book? A. Yes, it is.

30 MR. BESSON: I offer the stockbook of the Hoboken Paper Mill Company, with particular reference to stub 36 for 410 shares, issued to Elizabeth C. Stevens, Jr., dated October 2, 1918, transferred from Caroline B. Wittpenn, dated Dec. 11, 1916, number of original certificate 30, number of original shares 410, number of shares transferred 410. Received certificate number 36 for 410 shares, this day of
 40 1918, (Signed) Elizabeth C. Stevens, Jr. The stamp December 9, 1918
 Said book is marked Exhibit C-12a.

William H. Gould—Direct.

Q. To whom were the dividends on these 410 shares paid subsequent to the transfer? A. Subsequent to the transfer?

Q. Yes. A. Richard Stevens.

Q. Subsequent to the transfer, after the transfer? A. After the transfer? Elsie. 10

Q. Have you the checks by which those dividends were paid? A. Yes, sir. (Producing them)

Q. Are those the checks in your hand? A. Yes, sir.

MR. BESSON: I offer them in evidence.

(Said checks are marked Exhibit C-13.)

BY THE COURT:

Q. Read each check, date and amount, into the record? A. November 2, 410 shares, amount \$410.00 20

Q. Just the date and amount? A. December 2, 410 shares; January 2, \$410.00; February 1, \$2,050.00; February 1, 410 shares, \$410.00; March 1, 410; April 2, 410; May 1, 410; May 1, \$4,063.50; June 11, 410.

BY MR. ROSENBERG:

Q. Are these all to Elizabeth C. Stevens' order? A. Yes. May 21, 410; October 14, 410; September 19, 410; January 27, \$1,640.00. 30

BY THE COURT:

Q. These are all endorsed, rubber stamp, Elsie Stevens, Jr., and endorsed "Pay to the First National Bank," by the Hoboken Land and Improvement Company, William A. Brown, Cashier?" 40

A. Yes.

Q. The earlier checks you read in the early part of the year 1919, there appears to have been a dividend of one per cent. each month. You

William H. Gould—Direct.

do not present checks for some of the months later on in the year. Were there some months in which the company did not pay dividends of one per cent? A. The dividend is contingent with common stock. The dividends were discontinued at one of our meetings. I can't just remember when that was. After we decided to build a new plant.

10 Q. About when? A. I can't remember.

Q. Was it the year 1919? A. Yes, the year 1919.

Q. Well, you must know whether it was last year or the year before or this year? A. 1919. I am very sure.

20 Q. What part of the year? A. It was the latter part of the year. It was either the latter part of 1919 or the early part of 1920.

Q. Are there any dividend checks on the Hoboken Paper Mill Company to Elizabeth C. Stevens, Jr., during the year 1919 that you have not produced here? A. Yes.

Q. Where are they? A. There is one for \$4,060.00.

30 Q. Where is that? A. That is in the safe.

Q. Why? A. At that time we were advised to not pay any dividends at all until we found out—

Q. That was after the dispute as to the question of the ownership of this stock had come up? A. Yes, sir.

BY MR. BESSON:

Q. You are still holding that check? A. It is in the safe.

40 BY THE COURT:

Q. Aside from that check are there any checks that you have not produced here, drawn to the order of Elizabeth C. Stevens, Jr.? A. No.

William H. Gould—Direct.

Q. I show you this book and ask you what it is? A. A minute book.

Q. Of what? A. The Hoboken Paper Mill Company.

MR. BESSON: I offer it in evidence, and especially the minutes of the meeting held November 1, 1918, of the Board of Directors, (Said book is marked Exhibit C-14. 10

MR. BESSON: I will read this portion into the record:

“Further resolved that the president and secretary are hereby authorized to issue to Elizabeth C. Stevens a certificate for 1161 shares of the preferred stock of the Company in exchange for the 90,000 par value of bonds of the Company owned by her, and her nine-tenths interest in the bond and mortgage for \$29,728.23, of which her share in the \$728.23 is to be paid in cash, and to Palmer Campbell a certificate for 129 shares of such stock in exchange for his 10,000 par value of the bonds of this Company, and his one-tenth interest in the above-mentioned mortgage, his share of the \$728.23 also to be paid in cash.” 20 30

That is on page 107 of the minute book.

Also the minutes of the annual meeting of the stockholders of the Hoboken Paper Mill Company held at No. 1 Newark Street, Hoboken, N. J., October 20, 1919, on page 110, especially the record of the vote, “Elizabeth C. Stevens, Jr., by Palmer Campbell, proxy, 410.” 40

On page 107 it is recorded that the following were present of the directors:

Richard Stevens, Palmer Campbell, William

William H. Gould—Cross.

H. Gould, Walter B. Wilson. Absent, none.

I offer that in evidence.

(Said Paper Marked Exhibit C-15.)

10 MR. BESSON: There were present at the annual meeting of the stockholders of the Hoboken Paper Mill Company on Monday October 20, 1919 in person, Palmer Campbell 85 shares, William H. Gould 195 shares, Walter B. Wilson 5 shares, Estate of Richard Stevens by J. W. Rufus Besson, Executor 6 shares. Present by proxy, Elizabeth C. Stevens Jr., by Palmer Campbell proxy 410 shares, Caroline B. Alexander, by Palmer Campbell proxy 90, Helen B. Alexander by Walter B. Wilson proxy 10 shares, 20 Margaretta H. McGuire by Palmer Campbell proxy 25 shares, Edwin L. Reeves by Walter B. Wilson proxy 24 shares, Walter D. Gould by William H. Gould proxy 21 shares, total shares 871. All shares of stock were represented in person or by proxy.

CROSS EXAMINATION BY MR. ROSENBERG:

30 Q. It would seem that the voting power is only in the common stock? A. Yes.

Q. Mr. Gould, you knew Richard Stevens quite well, didn't you? A. Yes.

Q. Do you remember having had an interview with him just about the time that the preferred stock of the Hoboken Paper Mill Company was issued, with reference to the person to whom that stock was issued? A. Do you mean a personal conversation?

40 Q. Yes. A. Alone?

Q. Yes. A. I had a conversation with him in the presence of Mr. Campbell.

William H. Gould—Cross.

Q. Do you remember whether or not anything was said at that time as to why he had made the transfer in that way? A. We were talking over the transfer or the converting of the bonds into preferred stock, and in the presence of Mr. Campbell, standing at Mr. Campbell's table, he said to me— **10**

BY THE COURT:

Q. Who said to me? A. Richard Stevens. Richard Stevens said to me that he wanted to have his will fixed, that he hadn't got it attended to yet. I think he held his will in his hand, but he said, "During the coming week I will." He said, "I want to fix things so you and Walter," referring to my son, "will have the voting power of my girl's stock as long as either of you live." **20**

BY MR. ROSENBERG:

Q. Was that or not said at the time this 1161 shares was issued? A. It was about that time. I can't remember. I don't think it was on the day that the bonds were destroyed. I think it was a few days after that.

BY THE COURT:

Q. I thought you said it was while you were talking over the question of transfer of the bonds? A. We were talking over what we had done. **30**

Q. After the issue of the 1161 shares? A. I think after; only a very few days, maybe a day or two.

BY MR. ROSENBERG:

Q. That was all he said at the time? A. He said, as I remember it, he said he was getting it next week, "I want to have this fixed; my girls understand it," but he said, "You never know what happens after a man's dead." **40**

Complainants Rest.

Elsie Stevens—Direct.

ELSIE STEVENS, a witness produced on behalf of the defendants, being duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. ROSENBERG:

10

Q. Miss Stevens, I call your attention to the stub of certificate No. 36 of the Hoboken Paper Mill Company, of stock, Elizabeth C. Stevens Jr. Will you please look at that and tell me whether that is your signature? A. Yes, it is.

20

Q. You are the Elizabeth C. Stevens, Jr., who has been alluded to all through this case? You are the defendant? You are the oldest daughter of Richard Stevens, deceased? And when did you come of age? A. About four years ago.

Q. Suppose you tell us exactly? A. On the ninth of April, 1916.

Q. Do you remember in the fall of 1918 having a conversation with your father about certain transfers of stock? A. Yes, sir, I do. He said he was going to transfer some stock to my name.

30

Q. What did he say to you at the time about it? A. He said he was going to transfer some stock to my name, and that I remember his mentioning the paper mill stock, but he didn't mention the other stock.

Q. And he said he was going to do that, did he? A. Yes, he did.

Q. Did he say anything further about it at that time? A. No, but he said it wasn't ready at that time. He didn't do it just then.

40

Q. Can you fix the date of that? A. That was in September, or I am not exactly sure when.

Q. The September before he died? A. Yes.

Q. Do you remember after that that he took up the matter with you at a later time? A. Yes,

Elsie Stevens—Direct.

about two or three months later, I went down to his office and I signed some papers.

Q. Do you remember the papers you signed at that time? A. Yes. Well, I remember some paper mill stock, but I don't remember the others.

Q. Do you remember the first interview you say was in September 1918, or thereabouts? **10**

A. Yes, sir.

Q. Now, didn't you have another conversation with him between that time and the time you were down at Hoboken? A. Yes, I did. We had several conversations all about the same thing.

Q. What was the purpose of those conversations? A. He just explained to me that he was going to sign this stock over to me; that's all. **20**

Q. Did he say anything about what he wanted you to do with it? A. No, I don't remember exactly.

Q. Do you know whether or not—A. Oh, yes, he said in case of his death—

Q. Do you know whether he said anything to you about making a will? A. Yes, he asked me to make a will. I said I didn't want to at the time. He said in case of his death he wanted the money to go back to the estate or go back so we would each get an equal one-quarter, because the stock he signed over to me was more than an equal quarter. **30**

Q. Did he say anything about in case of his death? A. In case of his death it was to be divided equally.

Q. In case of his death what were you to do? A. In case of his death it was to be divided equally between us four children. **40**

Q. Do you remember whether or not you signed the income tax report? A. Yes, I did.

Elsie Stevens—Direct.

Q. At whose request did you sign the income tax? A. He telephoned me that he was going to send a blank, and he sent it, so I signed a blank.

10 Q. At the time you were twenty-one years of age your father opened this box for you in the Hoboken Land and Improvement Company office?

A. Yes.

Q. Did he tell you about it at that time?

A. Yes.

Q. Did you take possession of it? A. Yes, sir.

Q. The box is situated just about as Mr. Brown testified this morning, isn't it? A. Yes.

20 Q. Now, when was it, about, Miss Stevens, that your father said to you that he thought this stock was something more than your quarter interest in the property? A. That was when I went to his office around December, I should say, when he signed it over to me.

Q. Do you remember the papers you signed at that time? A. Some was paper mill stock, but I don't remember the others.

MR. BESSON: No cross-examination.

30 BY THE COURT:

Q. Do you remember when it was that you signed the stub of the stock certificate, Miss Stevens? A. I think it was in December 1918.

Q. About when? A. About in December. I am not quite sure. I think about in December.

Q. It was for how many shares? A. I don't know.

40 THE COURT: What does the stock stub show?

MR. BESSON: 410 shares; that is the stub of the common stock book.

Elsie Stevens—Direct.

Jr.

BY THE COURT:

Q. I show you Exhibit C-12, which is an assignment from yourself to Richard Stevens of the 1161 shares of the preferred stock of the Hoboken Paper Mill Company, purporting to be signed by you. Is that your signature? A. Yes, it is. **10**

Q. Now, when did you sign that? A. I signed that about the middle of February, I think.

Q. It bears date January 29, 1919? A. I guess it was around that time; I don't exactly remember.

Q. How did you come to sign that? A. Well, my father asked me to make a will, and I said I wouldn't. He said he would fix something for me to sign in place of a will, more or less, so that the stocks would go back to him in case I died. **20**

Q. That was in this conversation you have already testified to? A. Yes.

Q. Won't you tell me again what it was he said he wanted to have happen to this stock in case of his death? A. In case of his death he wanted it to go back to the rest of his money, of the whole thing, so it would be divided equally. He wanted it arranged so it would be divided equally into fourths. **30**

Q. In case of your death? A. He wanted me to make a will so it would go back to him, and I refused to make a will, and he said he wanted me to sign something so it would go back to him.

Q. What stock was it he was talking about? A. The paper mill stock and the other, too, both. **40**

Q. As to the paper mill stock, both the common and preferred stock? A. Yes.

Q. Did you know what this Exhibit C-12 was?

Elsie Stevens—Direct.

Did you understand what that was at the time you signed it? A. No, I don't think so.

Q. Except that it was something to put it back into your father's power in case of the death of yourself? A. Yes, like a will.

10 Q. Did you sign similar papers with regard to the common stock of the Hoboken Paper Mill Company and the Hoboken Land and Improvement Company? A. I think I did, because I signed them all together. I really wasn't very much paying much attention.

Q. Do you remember what your father said to you when he told you he was going to put this stock in your name? A. Not anything else
20 except that.

Q. Are you sure that if you signed the assignment of the stock that you signed all the assignments at one time? A. No, I am not sure, because I went down to his office several times.

Q. You didn't have any very clear idea about what any of this was? A. No. I had a general idea that he was signing stock over to me, but not a very clear idea.

30 Q. You did what he asked you in regard to it because it was something he was doing, and you understood he was doing something he wanted to do in his own way, carrying out whatever purpose he had? A. Yes.

Q. It appears that you gave a proxy to Palmer Campbell to vote the common stock of this paper company at the last annual meeting. Do you recall executing that proxy? A. No.

40 Q. Do you know what a proxy is? A. Yes, I do.

Q. Authorizing someone else to vote stock that stands in your name? A. Yes.

Q. You say you have no recollection of ex-

Elsie Stevens—Direct.

ecuting such a proxy? A. No, I have no recollection, but I might have signed it with other papers.

Q. You think if you did sign such a proxy it was in connection with these same circumstances here? A. Yes, sir. **10**

Q. Your father didn't tell you why he was transferring the stock to your name? A. I can't remember.

Q. Either at the time he did it or afterwards? A. No. I can't exactly remember.

Q. Did you know anything about his transferring stock to your sister? A. Yes, he mentioned that at the time he transferred it to me.

Q. What did he say about that? A. He said he was doing the same thing to her. He was transferring stock to her under the same conditions that he was to me. **20**

Q. That was your sister— A. Dorothy.

Q. And he told you that at the time— A. At the time I signed them.

Q. At the time you signed these last papers you have mentioned? A. Yes, sir. **30**

Q. And had your sister Dorothy attained the age of twenty-one at that time? A. No. **30**

Q. Then, did he say he was transferring stock to her or he was about to transfer stock to her? A. I don't exactly remember, but I think he said he was about to transfer stock to her. I don't exactly remember.

Q. Your sister Dorothy is not yet of age? A. No. **40**

Q. Did he say anything about transferring stock or securities of any kind to anyone else, to your brother or your other sister? A. No. **40**

Q. Either at that time or any other time? A. No.

Elsie Stevens—Direct.

Q. Or to your mother? A. No.

10 Q. Did you ever have anything to do with any of these three stocks after the transfers had been made to you? A. No, I didn't have anything to do with them directly, but then I was living away from home at the time, and he managed it for me, you see. I didn't have anything to do with it directly.

Q. Did you understand he was managing it for you, or that he was managing it for himself in your name? A. Well, I didn't stop to think. I thought he was managing it for me in his name—I thought he was managing it for me.

20 Q. At the time that these transfers were made of the stock to you, did you have any knowledge of the affairs of either of the companies? No, I didn't

Q. Your father didn't ask you whether you wanted to have this stock transferred to you or not? A. He asked me if I wanted it, but I didn't have any knowledge of the companies at all, of the stock.

BY MR. ROSENBERG:

30 Q. Well, you knew, didn't you, that the Hoboken Land and Improvement Company—you knew of the Hoboken Land and Improvement Company? A. Yes, sir.

Q. You knew what kind of a company it was? A. Yes, but I mean to say—

Q. And that it was the Stevens family corporation? A. Yes, but nothing about the business managing of it.

40 Q. You knew the Hoboken Paper Mill Company was an active going concern, didn't you? A. Yes.

Elsie Stevens—Direct.

BY THE COURT:

Q. Did you know from the time that these stocks were transferred to you, did you know you were receiving dividends from them? A. Yes.

Q. How did you know that? A. Because my father told me he was opening an account in Elsie Stevens Special, which would be a separate account from the money I would receive when I came of age, which was just Elsie Stevens, Jr., and the money he transferred to me last year— **10**

Q. The money he transferred to you last year?

A. I mean the money he transferred to me.

Q. You mean the dividends from these stocks? **20**

A. Yes, put in a separate account.

Q. He told you he was going to do that? A. Yes.

Q. Did you know the dividends were put in that account? A. No, I didn't.

Q. Made no effort to ascertain? A. No.

Q. You made no effort to draw money out of that account? A. He drew money out for me.

Q. You didn't? A. No. **30**

Q. You say he drew money out for you? A. Yes, sir.

Q. At your request or because of things he thought ought to be done? A. Because of things he thought ought to be done.

Q. Did he speak to you about what moneys he was going to withdraw from your account before he did so, and ask you whether he should do it or not? A. I can't remember exactly. **40**

Q. Well, do you know for what purpose any of the moneys were withdrawn from this Elsie Stevens Special account? A. While I was living away from home part of it was for my expenses.

Elsie Stevens—Direct.

Q. How do you know that? A. Because my expenses were paid by that.

Q. Your expenses were paid by whom? A. By my father.

10 Q. That is what your knowledge is? You have no knowledge from where or from what account that money came? A. No.

Q. So far as you know he never did ask you or consult with you before transferring money from the Elsie Stevens Special account? A. No, as far as I can remember.

20 Q. Did he tell you why he thought it advisable to have the separate account opened, the Elizabeth Stevens Special account, when you already had an account there? A. Yes, because the first one I had when I came of age I used for my clothes, for my dress, and I wanted to keep that separate from my other expenses.

Q. Did you have other accounts with the company besides these two? A. No, not that I know of.

30 Q. You mean that the first account, the one opened at the time you became of age, and which contained, as I understand it, the moneys or assets that came to you from your grandmother's estate, that was kept by you as a dress account, purely? A. Yes.

Q. Not including any other incidental expenses? A. No.

40 Q. And how long had you kept that as a purely dress account? A. Before I came of age he gave it to me as a dress account, and after I came of age I had it myself. I had it since I was fifteen.

Q. In what account did you carry your other expenses? A. He paid my other expenses.

Elizabeth C. Stevens.—Direct

Q. After you came of age as well as before?

A. Yes.

Q. The account that you had before that,—the other Elsie Stevens account,—was for moneys that came to you from your grandmother's estate?

A. Yes.

10

Q. When you were twenty-one years old? A. Yes.

Q. From the estate of Martha B. Stevens? A. Yes.

ELIZABETH C. STEVENS, a witness produced on behalf of the defendants, being duly sworn, testifies as follows:

20

DIRECT EXAMINATION BY MR. ROSENBERG:

Q. You are the widow of Richard Stevens, deceased? A. Yes, I am.

Q. And the mother of the last witness, of course. Your husband's will bears date March 7, 1917; do you know what the condition of health of your daughter was at that time? A. Yes, my daughter was very ill; she was at death's door for several months.

30

Q. And when did she recover her health? A. Do you mean when she got perfectly well?

Q. Yes. A. Why, about six months afterwards, I think.

Q. Six months after that? A. Yes.

Q. Did you, during the last months of your husband's life have any conversation with him with reference to the disposition of his will in favor of Elsie? A. Yes, I did.

40

Q. Suppose you tell us, in your own way, just when those conversations were had and what Mr. Stevens said to you at the time. When was

Caroline B. Stevens—Direct.

the first one? A. The first one, I think, was in April, two years ago from this April, that would be in 1918.

Q. A year before he died? A. Yes. He said, "I want to tell you something about my will."

10 He said, "At the time I made my will, Elsie was considered by the doctors as desperately ill, and the probability was she might not live or get well; she was very ill;" and, he said, "I have made my will and put her money in trust." I said, "Richard, you haven't put her money in trust." He said, "Of course, that ought to be changed." I said, "Will you change it?" He said, "Of course I will, I'm going to change it."

20 Then about six months afterwards I said, "Richard, have you changed Elsie's money yet?" He said, "Oh, no, I haven't, but I am going to do it right away; it is not fair; she is perfectly well now; it is not fair, and I am going to change it."

Q. That was all that was said? A. Yes, that is all I can remember.

30 MR. BESSON: No cross-examination.

BY THE COURT:

Q. What was the illness from which your daughter was suffering at that time? A. Nervous collapse from intestinal trouble.

CAROLINE B. STEVENS, a witness produced on behalf of the defendants, being duly sworn, testified as follows:

40

DIRECT EXAMINATION BY MR. ROSENBERG:

Q. You are the daughter of the late Richard Stevens? A. Yes, sir.

Q. You are now 22? A. Yes.

Caroline B. Stevens—Direct.

Q. When did you become of age? A. A year ago last May.

Q. That is how long before your father's death? A. About three days before he died.

Q. Do you remember whether or not your father, at that time, gave you a box in the Hoboken Land and Improvement Company? A. Yes. **10**

Q. What happened? A. I went over there about two days before my birthday, and he showed me all securities and told me where they were.

Q. And gave you a box there? A. Yes.

BY THE COURT:

Q. Do you recall what securities there were that he showed you? A. Yes, sir, some Hoboken Land and Improvement Company bonds, and some Hackensack Water Company. **20**

Q. Were these securities which had come to you from your grandmother's estate? A. Yes, they were, all of them.

Q. Did you ever have any conversation with your father,—did he ever say anything to you in regard to stocks he had given to your sister Elsie? A. No; I was abroad at that time. **30**

Q. At what time; at the time he turned over to her? A. Yes.

Q. He never spoke to you about it after-wards? A. No. **40**

Dorothy Stevens—Direct.

DOROTHY STEVENS, a witness produced on behalf of the defendants, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. ROSENBERG:

10

Q. How old are you? A. 17.

Q. You are the youngest daughter and the third child of the late Richard Stevens? A. Yes.

Q. Do you remember that your father said something to you some months before his death, with reference to the transfer of some shares of stock to you? A. Yes, sir.

Q. Where did that interview take place? A. At the house, in Hoboken.

Q. Tell the court in your own way—how long was it before his death? A. It was in January or February, I think; I can't remember the exact date.

Q. He died in May? A. Yes.

Q. What did he say to you at that time? A. He said he was going to turn over some stock in my name, and that I wouldn't have anything to do with it, except it would just be in my name, and that he wanted me to sign a paper, which I did, in case that I should die, this stock would come back to him.

Q. And in case he died? A. And in case he died, it would be divided equally between my sisters and brother and myself.

Q. Did he say to you whether or not he had given Elsie some stock? A. Yes, he either said he had done it or he was going to.

MR. BESSON: No cross-examination.

THE COURT: Have you the assignments or certificates of the stock?

Elizabeth C. Stevens.—Direct

MR. BESSON: I have not; I will produce them.

ELIZABETH C. STEVENS, being recalled on behalf of the defendants, testified as follows:

10

DIRECT EXAMINATION BY MR. ROSENBERG:

Q. Mrs. Stevens, do you remember whether or not, at any of these interviews your husband said anything to you about transferring any stock to your daughters? A. Yes, he mentioned it to me last spring; I am not certain whether he said it was to Dorothy, but he said "I have transferred a lump of stock to Elsie, I have such faith in her, I have transferred a lump of stock to her." And I was very glad.

20

BY THE COURT:

Q. When was it, if you recall, that he told you that? Was it before the second time that he spoke to you, or you to him, about the change of the will? A. Yes, it was just about that time.

Q. Can you recall whether it was before or after? A. I couldn't swear; I think it was in the same month; just about the same time. One conversation took place in New York, and one took place in Hoboken; I can't remember which was first.

30

Q. The first time you spoke of it, you were surprised to learn that the provisions of his will did—A. No, I wasn't surprised; but I was surprised that it hadn't been changed.

40

Q. Yes; and then he said he would change it right away? A. Yes.

Q. It was about a month after that? A. No, it was in the same month that he spoke to me

Elizabeth C. Stevens.—Direct

about this stock, that he had given Elsie a big lump of stock.

Q. Then it was after that, that you asked him again whether he had changed his will; you said that was about six months after the first time?

10 A. Yes; well, the time I asked him if he changed the will, between the first time and the second time, he didn't mention anything about Elsie's stock; then it was after the second time when I reminded him, when I said, "Have you changed your will to make Elsie's money like the others?" It was his intention to treat them all alike; and he said, "Oh, no, I haven't done it." Just about that time he said to me, "I have transferred a lump of stock in Elsie's name," and 20 he said, "Of course, I had no business; it wouldn't be fair at all to leave the money like that."

Q. But you are unable to recall—A. Which conversation took place first of the two last, I can't. I am awfully sorry that I can't; I can't tell you which was first. I think he felt very badly—

Q. If the conversation about the transfer of the stock had been the last one, wouldn't that 30 have recalled to your mind the question of the will, and wouldn't you have asked him then whether he had done that in lieu of changing his will? A. No, because I didn't know how much stock it was; he didn't tell me; I didn't know it was as much as I learned it was; I always had a feeling that he was trying to do something about Elsie; he was devoted to her, and that he was sorry and wanted to rectify it, 40 having left it on a different basis than the others.

William H. Gould—Direct.

Edwin A. S. Brown—Direct.

WILLIAM H. GOULD, being recalled on behalf of the defendants, testified as follows:

DIRECT EXAMINATION BY MR. ROSENBERG:

Q. Mr. Gould, at the time Mr. Stevens spoke to you about his providing for voting the stock, his girls' stock, in the Hoboken Paper Mill Company, did he say anything else to you about his daughters? A. Yes. 10

Q. What did he say? A. He said, "Mr. Gould, I am going to provide in my will that you and Walter shall have the voting power of my girls' stock as long as either of you live;" he said, "I haven't got it straightened out yet; I haven't mentioned it here, but I am going to, and other matters pertaining to my daughters." I think he said, "I am going up to court next week and get the matter straightened out." 20

EDWIN A. S. BROWN, being recalled on behalf of the complainants, testified as follows:

DIRECT EXAMINATION BY MR. BESSON:

Q. Have you the stock transfer book of the Hoboken Land and Improvement Company? A. I have. 30

Q. Will you turn to certificate No. 336—you have the ledger there? A. Yes.

Q. What stock has been issued to Dorothy P. Stevens, according to the ledger? A. 700 shares. 40

Q. From whom was that transferred? A. Richard Stevens.

Q. By what certificate? A. By certificate—

Q. 336? A. No. 336.

Edwin A. S. Brown—Direct.

Q. Did you have any conversation with Mr. Stevens in regard to the dividends upon this stock? A. Yes, I had.

Q. What did he tell you to do with them; did he give you any written instructions? A. **10** In this case it was oral instructions, no written instructions whatever.

Q. He came to you directly? A. He came to me directly, yes.

Q. Whatⁱ was that conversation? A. That he was anxious to have this certificate issued prior to the dividend that was payable on May 1st, 1919, so that the holder, Dorothy, would receive the dividend on that date.

20 BY THE COURT:

Q. That was to be an extra dividend? A. No, the rule of the company is to declare dividends on the third Wednesday of the month, of the quarter, and this would have taken the first payment of the dividend that was declared in the middle of April, payable on the first of May, and the subsequent dividends.

Q. They were declared quarterly and paid **30** monthly? A. Yes, payable monthly for the next succeeding three months.

BY MR. BESSON:

Q. Prior to the transfer to Dorothy Stevens of these shares, to whom had the accruing dividends been credited? A. Richard Stevens.

Q. Did he pay the income tax on those dividends in 1918? A. Yes.

Q. Where was that certificate found after his **40** death? A. That was found in this filing case.

BY THE COURT:

Q. The Richard Stevens file? A. Yes.

Edwin A. S. Brown—Direct.

BY MR. BESSON:

Q. Do you remember the indorsement on the envelope; have you that envelope here? A. No, I have not.

Q. In which this certificate was enclosed? A. No. 10

Q. That is in the box, too, isn't it? A. Yes. I have simply the certificate—

Q. You haven't the envelope in which this 700 shares was found? A. No.

Q. Do you know where the envelopes are? A. The envelopes contained both these certificates in question here in the box of the estate in the Hudson Trust Company.

Q. Are they just as you found them? A. Yes. 20

BY THE COURT:

Q. The stock of the Hoboken Land and Improvement Company given to each of these young ladies? A. Yes.

BY MR. BESSON:

Q. And also the 410 shares? A. Yes.

BY THE COURT:

Q. And that is also in the Hudson Trust Company? A. Yes. 30

Q. Do you remember whether there is an assignment of the stock of the 700 shares in the name of Dorothy Stevens? A. Yes.

Q. Is that the assignment of stock? A. That is attached to the stock certificate.

Q. Did Miss Dorothy Stevens have a separate box in the safe? A. No. 40

Q. For her holdings? A. No, she had not.

Q. Who was present in the Hoboken Land and Improvement Company when this transfer took place, just before his death, that is? A. Richard Stevens.

Edwin A. S. Brown—Direct.

BY THE COURT:

Q. Do you recall, Mr. Brown, whether you witnessed the signatures of the trustees of assignments of the Hoboken Land and Improvement Company stock which were executed by Miss Elizabeth Stevens and Miss Dorothy Stevens?
 10 A. Elizabeth Stevens, I did; Dorothy, I am not certain.

Q. Do you recall the circumstances under which Elizabeth Stevens, Jr.'s assignment of the Hoboken Land and Improvement Company stock was executed by her? A. The reasons?

Q. The circumstances? A. No, I do not, other than the request to witness the transfer.

20 Q. Do you know anything as to the reasons why the assignment was made? A. No.

Q. How, as to the assignment of the Hoboken Paper Mill Company preferred stock, which you also witnessed? A. That would bear the same application; there would be no reason, to my mind, other than the witnessing of the signature at the request of the person.

30 Q. Have you no recollection as to anything said or done by either of them as to why the transfer was made? A. No.

Q. Is there an account in the ledger of Hoboken Land and Improvement Company in the name of Miss Dorothy Stevens? A. Yes, there is.

Q. Refer to that; that is in Volume 38? A. Page 527.

40 Q. And that shows that it was opened on May 1st, 1919. The only entries therein appear to be dividends from the Hoboken Land and Improvement Company? A. Yes; that, as I said, was an oral request that the account be opened in that way, "Dorothy P. Stevens, Richard Stevens, Guardian;" and that the dividends on the shares of stock of the Hoboken Land and Improvement Company be credited to that account.

Q. There had been no withdrawals? A. None.

Edwin A. S. Brown—Cross.

Q. Have you the checks showing the payment of those dividends? A. Yes; not here, though.

THE COURT: (To counsel) Produce those also.

Q. You said, Mr. Brown, that Miss Dorothy Stevens had no other box; did she have any other papers that her father had custody of? A. Yes; I think there were some of those Liberty Bonds that I mentioned before about the other girl's holdings, and also a policy of insurance in her name. 10

Q. Where were they kept? A. In this box of Richard Stevens.

Q. The same file? A. The same file.

BY THE COURT: 20

Q. A policy of insurance? A. Yes.

Q. On his life? A. No, on Dorothy Stevens' life.

Q. In whose favor? A. In her favor.

Q. In favor of her estate? A. That's the way it works out.

Q. An endowment policy? A. Not an endowment, a term policy, I think.

BY THE COURT: 30

Q. Then it would not be payable to her if it was on the life of Dorothy Stevens? A. Well, it would be a term policy, that is, for a period, and then the policy would be payable to herself; if she deceased, it would be to the estate.

CROSS EXAMINATION BY MR. ROSENBERG:

Q. I call your attention to the revenue stamps on the certificate of preferred stock of the Hoboken Paper Mill Company; those stamps are on the original certificate? A. Yes. 40

Q. Those stamps are of the original issue? A. Of the new issue.

Q. Not of the transfer? A. No.

Q. The assignment is not stamped? A. No.

Theodosius Stevens—^{direct}~~Cross~~.

THEODOSIUS STEVENS, a witness produced on behalf of the defendants, being duly sworn, testified as follows:

CROSS EXAMINATION BY MR. ROSENBERG:

10

Q. Mr. Stevens, you are an attorney and counsellor at law of the State of New York, and are the attorney for Mrs. Stevens, the widow of Richard Stevens, and his children? A. Yes.

20

Q. Were you present at the opening of Mr. Stevens' box in the vault of the Hoboken Land and Improvement Company? A. I was present at the conference called for the purpose of going over Mr. Stevens' securities, at which all the executors were present.

30

Q. What was found in that file of Richard Stevens, as the property of his children; did you make a list of them? A. Yes, I did make a list. There were seven groups of papers, one, the certificates for these shares of the Hoboken Land and Improvement Company, and the assignment; the second group was the certificate of stock of the Hoboken Paper Mill Company, and the assignment relating to that, 410 common; the third group of papers was the 700 shares of Hoboken Land and Improvement Company to Dorothy, and the assignment of that; there was this life insurance policy on Miss Dorothy Stevens, and then there were three sets of Liberty Bonds, also in envelopes, endorsed in the testator's handwriting, and I made a copy of those seven papers;

40

and I made a demand at that time upon the executors for the possession of those papers for the family, simply to make a record of the fact that a demand was made; and I requested the executors, if they would segregate the papers in a vault by themselves in the box of the Hudson Trust Company which the executors hired to keep papers

Theodosius Stevens—^{direct}Cross.

of the estate in, so that all these securities would be in exactly the same shape when needed, as they were in when first found by the executors. There were the Liberty Loan bonds; there was a \$100 loan bond with an envelope marked "Dorothy P. Stevens;" there was a \$150.00 third Liberty loan bond, marked "Dorothy P. Stevens," and a \$50.00 Fourth Liberty loan bond, marked, "Richard C. Stevens, Jr.," and these were all in that file that Mr. Brown has testified to this morning.

BY THE COURT:

Q. And each of these bonds in an envelope? A. Yes, they were each in an envelope, and I made a copy of the envelope.

Q. The respective indorsements upon these envelopes containing the Liberty Bonds were what?

A. A printed envelope, with "Hoboken Land and Improvement Company" printed in the upper left hand corner, endorsed in the handwriting of Richard Stevens, with which I am familiar, "Richard Stevens" Box, two \$50.00 Fourth Lib. Bond, property of Dorothy Stevens." This envelope contained two United States Fourth Liberty Loan 4 $\frac{1}{4}$ bonds, Nos. 731495—

Q. Take them up respectively. A. The second envelope was a brown envelope of the First National Bank, indorsed "One \$100. Liberty Bond, one \$50.00 Liberty Bond," in the handwriting of Richard Stevens, with which I am familiar, with the words, "Property of Dorothy Stevens; place in box of Richard Stevens in H. L. & I. Co.'s safe." That contained two United States third Liberty Loan bonds. The next envelope was an envelope with the "Hoboken Land and Improvement Company" printed in the left-hand corner, and indorsed in said Richard Stevens' handwriting, "Richard Stevens' Box, one \$50.

Edwin A. S. Brown—Direct.

00 Fourth Liberty Bond, property of Richard Stevens, Jr.," and the envelope contained that bond.

Q. The court asked you, Mr. Brown, about the life insurance policy that was on the life of Dorothy P. Stevens? A. Yes.

10 Q. An endowment policy? A. I can't recall.

BOTH SIDES REST.

Trial continued in the above-entitled cause, on Tuesday the twenty-fifth day of May, 1920, at 10.30 A. M.

Appearances as heretofore noted.

20 EDWIN A. S. BROWN, being recalled on behalf of the complainants, testified as follows:

DIRECT EXAMINATION BY MR. BESSON:

Q. Mr. Brown, have you with you the certificates in question that have been referred to? A. Yes, that were asked for.

30 Q. Where were these exhibits taken from by you? A. Yesterday noon time from the box in the Hudson Trust company.

Q. Are they in the same condition they were in when they were placed there? A. Yes.

Q. And those were the certificates that were taken from the files referred to by you in the safe in the Hoboken Land and Improvement Company office? A. Yes.

40 Q. Please produce them. A. (Witness produces envelope.)

BY THE COURT:

Q. They are now in the same condition as they were when they were found after Mr. Stevens' death. A. Yes.

Q. The certificate for 600 shares of the Ho-

Edwin A. S. Brown—Direct.

boken Land and Improvement Company? A.
(Witness produces envelope.)

MR. BESSON: I offer that in evidence.

Said envelope with the certificate is marked "Exhibit C 16."

10

Q. Now, the certificate of 410 shares of common stock of the Hoboken Paper Mill Company? A.
(Witness produces envelope containing said certificate.)

Q. This is in the same condition in which you found it after Mr. Stevens' death? A. Yes sir.

MR. BESSON: I offer that in evidence.

said envelope and the certificate for 410 shares of said company is marked "Exhibit C17."

20

Q. The certificate for the 700 shares of the Hoboken Land and Improvement Company stock? A. (Witness produces envelope containing said certificate.)

MR. BESSON: I offer that in evidence and ask that it be marked.

Said envelope, together with the certificate for 700 shares, is marked "Exhibit C18."

30

Q. What is this envelope that you have just handed to me? A. That is indorsed "700 shares R. S. box Dorothy Stevens' shares of H. L. & I Co. stock."

Q. What does the envelope contain? A. It contains the power of transfer reading that "I, Dorothy P. Stevens"—

40

Q. What is it? A. Signed by Dorothy P. Stevens, transferring 700 shares.

MR. BESSON: I offer that in evidence.

Said envelope, containing the transfer is marked "Exhibit C19."

Edwin A. S. Brown—Direct.

Q. Have you any other papers that were found in this file? A. In the box in the Hoboken Land and Improvement Company's file?

Q. Yes? A. Yes.

10 Q. What other papers have you? A. An envelope marked "Richard Stevens' Box two \$50.00 Fourth Liberty Bonds, property of Dorothy Stevens."

MR. BESSON: I offer that in evidence.

Said envelope, containing the said two bonds, is marked "Exhibit C20."

20 Q. What other papers were filed in that box that belonged to the children? A. Another envelope marked "one \$100 Liberty Bond, one \$50.00 Liberty Bond, property of Dorothy Stevens; place in box of Richard Stevens in H. L. & I. Co., safe."

MR. BESSON: I offer that in evidence.

Said envelope, with the one bond for \$100.00, and the other for \$50.00, is marked "Exhibit C21."

30 Q. What other paper? A. One envelope, indorsed "Richard Stevens' box one \$50.00 Liberty Bond, property of Richard Stevens, Jr."

MR. BESSON: I offer that in evidence.

Said envelope with said bond, is marked "Exhibit C23."

40 Q. Have you any other paper that you found in that box? A. One envelope, indorsed "Metropolitan Life Insurance Company Policy No. 379537A," on the life of Dorothy P. Stevens, amount \$3,000; premium \$131.22; due on the 29th day of April—

Q. Are there any marks on that policy by Mr. Stevens himself? A. Pencil marking, "Richard Stevens' box."

Edwin A. S. Brown—Cross.

Q. These last four exhibits are the papers you referred to in your testimony previously given at the last hearing? A. Yes.

Q. Are there any thrift stamps? A. In one of these envelopes there is one dollar's worth of thrift stamps. 10

Q. Which one? A. In the white envelope (producing it.)

Q. In what exhibit are they? A. In the envelope marked "Exhibit 21."

CROSS EXAMINATION BY MR. ROSENBERG:

Q. Mr. Brown, you have produced these exhibits in exactly the same shape in which you found them? A. Yes. 20

Q. And they have continued in the same shape since? A. Yes.

Q. In the same envelopes? A. Yes.

Q. How old was Mr. Stevens at the time of his death, do you know? A. He would have been 52 years old in August, 1919.

Q. You mean to say he was in— A. His 51st year. 30

Q. And up to within a few days of his death he was in good health? A. Excellent health.

Q. He died of pneumonia? A. He did, yes.

Q. After an illness of how long? A. Practically four days.

Q. You have filed no inventory of the estate in the Hudson County Surrogate's office? A. Not as yet.

Q. The bulk of the estate of Mr. Stevens, did it or not, consist of stocks and bonds? A. It consisted of stocks and bonds. 40

Q. Almost entirely, didn't it? A. Yes.

BY THE COURT:

Q. And of approximately what amount? A.

Edwin A. S. Brown—Cross.

Approximately a million dollars.

Q. In "Exhibit 18" the words "Richard Stevens' box," in his hand-writing is that? A. In the handwriting of Richard Stevens.

10 Q. "Exhibit 19," the pencil indorsement on that envelope? A. That is Richard Stevens'.

Q. His handwriting? A. Yes.

Q. "Exhibit 20"— A. All in his handwriting.

Q. "Exhibit 21"? A. In Richard Stevens' handwriting.

Q. "Exhibit 16," the name "Elizabeth C. Stevens, Jr."? A. That is my handwriting. The significance of Richard Stevens' box—

20 Q. That referred to the file in the safe? A. The idea was, it indicated by placing it behind the handle attached to the safe, indicating to me, or one of the other officers, to place the paper in his box.

MR. BESSON: I offer in evidence the insurance policy.

Said insurance policy, No. 379537A on the life of Dorothy P. Stevens, for \$3,000, is marked "Exhibit C23."

30 Q. "C22," the handwriting on that is Mr. Stevens'? A. In Mr. Stevens' handwriting.

Q. Coming back to "Exhibit 16," on which you say you wrote the name there, do you recall the circumstances of your writing that name in there? A. Yes, sir; the certificate was handed me with a request that it be placed in the box, and I prepared the envelope containing it.

Q. Request made by whom? A. Mr. Stevens.

40 Q. That it be placed in what box? A. In this box, his box in our vault.

Q. The one which has been called the Richard Stevens file? A. Yes.

Q. Did he tell you to put Miss Stevens' name on it? A. No, because the certificate read with

Edwin A. S. Brown—Cross.

her name on; there was no specific request that it be indorsed; it was simply my own, using the knowledge that the certificate was made in her name.

Q. His request was to put it in his file? A. Yes. 10

Q. And thereupon you made out the envelope, but you put no indorsement on there indicating it was to go in his file? A. No; that is the reason I explained the significance of the indorsement by Mr. Stevens to place in Richard Stevens' box.

Q. Well, then, if this had been taken out of this box at any time, what is there on it to indicate that it should have gone back there? A. Nothing, other than the person having it placing it back again. 20

Q. Do you know anything about the Liberty Bonds, as to who purchased them? A. No, I don't.

Q. Any of them? A. No.

Q. The power of attorney in "Exhibit C19" to yourself for the 700 shares of the Hoboken Land and Improvement Company, do you know about when and why that was executed? The date on it is blank. A. I do not. I have knowledge that the power was prepared coincident with the issuance of the stock in the name of Dorothy P. Stevens, and handed to Mr. Stevens for execution by Dorothy Stevens; Mr. Stevens taking the power away with him for execution, and returning it in this envelope. 30

Q. "Exhibit C18," which is the certificate to Dorothy P. Stevens for 700 shares of H. L. & I. Co. Stock,—at the top of that envelope are the figures 336 and 700; are they in your handwriting? A. The figures 336 and the figure 700, are in my handwriting. 40

Q. And that certificate and envelope were

Edwin A. S. Brown—Cross.

made at the same time the power of attorney was drafted? A. Yes.

Q. The power of attorney was given to Mr. Stevens for him to take with him and have it executed by Miss Dorothy Stevens? A. Yes.

10 Q. What was done with the certificate of stock in the envelope? A. As indicated by his mark placed in Richard Stevens' box.

Q. That was done at the time it was issued? A. Yes.

Q. At the time he took the power of attorney away to have it signed? A. Yes.

Q. Have you the stock certificate book here of the Hoboken Land and Improvement Company?

20 A. No, I have not.

Q. Do you know whether there was a receipt signed for this stock certificate by Miss Dorothy Stevens? A. There was not; it was signed by Richard Stevens as attorney.

Q. "C 18" 700 shares, to Dorothy P. Stevens, has no revenue stamps on. A. It would not have.

Q. Why? A. The power is a separate document in that old fashioned form of certificate, and the power would have the revenue stamps on.

30 Q. You mean the assignment? A. The transfer, yes.

Q. Don't let us get mixed on the terms; the power is a power of attorney— A. The transfer of stock would have the stamps on.

Q. Was there not an assignment of that certificate in blank? A. The 700?

Q. Yes. A. You just handled it; that paper there (indicating.)

40 Q. Yes, it is my mistake; I thought that was a proxy; I didn't look at it carefully. That is the document that would carry the stamps.

Q. And that also has no stamps? A. Has no stamps.

Edwin A. S. Brown—Cross.

Q. Do you know why? A. No, other than it not having been put into operation.

Q. That is, you mean, there never had, in fact, a subsequent stock certificate been issued in furtherance of a transfer by that assignment?

A. Yes.

10

Q. "C 17," a certificate for 710 shares of the Paper Mill Company to Elizabeth C. Stevens, Jr.; the assignment upon the back of that certificate appears to have been signed in blank by Elizabeth C. Stevens, Jr. (handing witness paper); is that her signature? A. Yes.

Q. And you are the witness? A. I am.

Q. Do you recall the circumstances and the time when that was executed? A. That was executed about the first of November, 1918.

20

Q. How do you know that? A. By the cancellation of the stamps affixed to the transfer.

Q. Who cancelled those stamps? A. They are cancelled by Walter Wilson.

BY MR. ROSENBERG:

Q. Are those stamps on the transfer or stamps on the certificate? A. They are stamps on the transfer.

30

BY THE COURT:

Q. How do you know those stamps were cancelled on the date the assignment was signed? A. The action would be coincident.

Q. It should be, but do you know it actually was? A. Yes.

Q. Now, how did that assignment come to be executed? A. That I can't say.

Q. Well, were you present when Miss Stevens signed it? A. Yes, sir.

40

Q. Well, did she bring the certificate to you, or did you take it to her? A. No, she came to the office.

Edwin A. S. Brown—Cross.

Q. And brought the certificate with her? A. Together with her father.

Q. Did they bring the certificate with them, or was the certificate there at the office? A. The certificate was at the office and they came at the
10 time.

Q. Then this certificate has never been in Miss Elizabeth C. Stevens' possession? A. No.

Q. It has never left the office? A. No.

Q. She came there with her father to sign it, and left it there? A. Yes.

Q. The only dealings she ever had in regard to this was the coming there and signing her name upon the back? A. Yes, sir.

20 Q. "Exhibit C 16"; the certificate for 600 shares of the H. L. & I. Co.'s stock to Elizabeth C. Stevens, Jr., with the assignment purporting to be executed by Elizabeth C. Stevens, Jr., and witnessed by you, the signature on the assignment is that of Miss Stevens? A. Yes.

Q. That assignment has no revenue stamps on it; do you know why? A. No, other than the non-execution of the act of transfer to another person.
30

Q. That is, the non-completion of it? A. The non-completion of the transfer to another person.

Q. Do you recall the circumstances of the execution of that assignment? A. Yes, they were simply that also would apply, as I stated in the other testimony,—that the execution was done before me.

Q. The assignment was prepared in the office of the company? A. Yes.
40

Q. And the stock certificate and the draft of assignment were kept there until Miss Stevens came and executed the assignment? A. Yes.

Q. That was not done upon the same day that

Edwin A. S. Brown—Cross.

she executed the assignment of the Paper Mill Company's stock? A. No.

Q. Are you positive of that from an actual recollection? A. Yes.

Q. As to "C 12," the certificate for the preferred stock of the Hoboken Paper Mill and the assignment; that, I think, you have already testified, is signed by Miss Stevens and bears your name as subscribing witness; was that stock certificate and that assignment likewise kept at the office of the company? A. It was. **10**

Q. From and after the time they were originally drawn, and until Miss Stevens came down and executed the assignment? A. Yes.

Q. And they were left there by her? A. Yes. **20**

Q. So all she had to do with any of these three I have mentioned, was simply to come there and write her name upon the assignment in each case? A. That's all.

Q. Do you know when the assignment in "C 12" was signed by Miss Stevens? A. The preferred stock?

Q. Yes. A. That was done at the date indicated on the transfer. **30**

Q. January 29, 1919? A. January 29, 1919.

Q. And is that true also of the one of the H. L. & I. Company stock? A. Yes.

Q. Now, I call your attention to the fact that the revenue stamps upon the stock certificate of the Paper Mill Company, the common stock, and the preferred stock of the Paper Mill Company, are both cancelled as of the same date, November 1 1918. Bearing that in mind, are you still positive that the two assignments were not signed by Miss Stevens on the same day? A. On the Paper Mill? I am positive the two papers were not signed on the same day. **40**

Edwin A. S. Brown—Cross.

Q. What makes you positive? A. The two distinct actions; the date that is used on this transfer—

10 Q. Referring to the preferred stock? A. I am referring to the preferred stock—was subsequent to the execution of the earlier paper.

20 Q. I know; they are all subsequent; the preferred certificate and the common certificate were both prepared prior to November 1st, on or prior to November 1st, 1918, both have stamps that were cancelled on November 1st, 1918, and the assignments on both were evidently executed after that time. Now, what is there that makes you sure that the assignments on those two were executed at different times when, as a matter of fact, the assignment of the H. L. & I. Co.'s stock was also executed on January 29, 1919; the ink looks alike and the signatures all look alike? A. There is a difference in the writing there against the subsequent writings—

30 Q. If you tell me that you have a positive and distinct recollection that Miss Stevens came there on two different occasions— A. I am positive, that I can say.

THE COURT: Where is the proxy?

MR. BESSON: That is in the possession of the Paper Mill Company; I neglected to bring that; I will bring it at the next hearing.

40 Q. Mr. Brown, in answer to a question by the Vice-Chancellor you said that the estate of Mr. Stevens amounted to about one million dollars; is that inclusive of these securities that are in question in this suit, or outside of this suit? A. It was the bulk of the securities.

Q. No, but you said the bulk of the estate was

Edwin A. S. Brown—Cross.

in stocks and bonds, and then his Honor asked you what the estate was, and you said about one million dollars? A. Yes.

Q. In that one million dollars are they inclusive of these securities mentioned in this suit, or exclusive? A. Inclusive. **10**

Q. Then, how much is the entire estate? A. A trifle under a million and a half.

Q. So that there is a million in stocks and bonds? A. Yes.

BY THE COURT:

Q. I don't understand that; there is approximately one million dollars in stocks and bonds, including these stocks and bonds in this case? A. Yes. **20**

Q. There was not a million dollars outside of these in stocks and bonds, roughly speaking? A. The estate would not include those stocks in question.

Q. Not including the securities in question in this suit, the estate consists of approximately a million dollars? A. Let's see—

Q. You didn't understand my word "exclusive." Mr. Stevens also had a box in the Hudson Trust, Hoboken? A. Yes. **30**

Q. In which box did he keep the bulk of his property? A. In the box in the Hudson Trust.

Q. And what proportion of his estate did you find in the box of the Hudson Trust Company? A. The bulk, the greater portion.

Q. By how much the greater portion? A. Oh, practically the whole. **40**

Q. Were his own Liberty Bonds in the box in the Hudson Trust Company? A. Yes.

Q. To what an amount? A. That I can't recall now.

Q. Over \$5,000, wasn't it? A. Yes.

Edwin A. S. Brown—Cross.

Q. Now, when you are testifying as to the occasions on which Mr. Stevens came to the office to execute these papers, are you testifying by anything more than impressions? A. On the two specific transfers there were specific dates.

- 10 Q. And from that you make up your mind that Miss Stevens was down there on two occasions? A. Yes.

BY THE COURT:

Q. I think you are under a misapprehension; the two assignments are both dated the same date; the other one is not dated? A. Not dated.

- 20 BY MR. ROSENBERG:

Q. Now, on December 6, you received from Richard Stevens the order to open a new account to Elsie Stevens, Jr., Special? A. Yes.

Q. Had those assignments been executed at that time or not? A. I am not positive.

THE COURT: What year?

MR. ROSENBERG: 1918.

- 30 Q. Mr. Brown, suppose we read into the record the amount of stamps on each of these documents that actually do bear revenue stamps?

THE COURT: Well, the stamps on the 410 are \$8.20.

Q. Well, give the amount of the stamps so we don't have any question each time when we have the exhibits here. The 1161 only had the stamps on the issue? A. Yes.

- 40 Q. And the 410 certificate—

BY THE COURT:

Q. The 1161 is \$23.22? A. That is the stamps on the new issue.

*Elsie**Theodosius Stevens—Direct.*

Q. They are affixed to the stock certificate? A. To the stock certificate itself.

Q. You testified at the last hearing, that you were secretary of the Hoboken Land and Improvement Company? A. Yes.

Q. These assignments were never presented to you for transfer on the books of the company, were they? A. No. **10**

ELSIE STEVENS, JR., being recalled by the complainants, testified as follows:

BY THE COURT:

Q. Miss Stevens, with these assignments before you, "Exhibits C 16, C17" and "C 12," are you able to recall anything more about the circumstances of your signing those assignments? A. No, I don't think I can. **20**

Q. Anything more than you testified to on the last day? A. No, I can't.

Q. Do you recall whether they were all signed at one time? A. No, I either went down to the office twice or three times in November, I think, and in the end of January. **30**

Q. And you went there each time at your father's request? A. Yes, with my father.

Q. And the instruments were there, prepared, ready for you; all you did was to go in and sign your name and leave them? A. Yes. **40**

Adjourned until Tuesday, June 1, 1920.

Trial continued in the above entitled case on Monday, March 14, 1921, at 11 o'clock A. M.

APPROVED:

Dorothy P. Stevens—Direct.

DOROTHY P. STEVENS, being recalled by the complainants, testified as follows:

BY THE COURT:

10 Q. Do you know anything about the Liberty Bonds, Exhibits "C 21" and "C 22," (handing witness paper)? A. The Liberty Bonds in my own personal property, I bought some myself and some my father gave me for Christmas.

Q. I am speaking about these Liberty Bonds in your father's file in the safe; do you know whether they were bonds you had bought or bonds he had bought? A. I don't remember how many there were; I bought some myself, and he gave the others to me as presents.

20 Q. You had others outside of these that I show you; outside of those found in his box at the time of his death? A. No.

Q. Those which he had, taking care of for you were all Liberty Bonds you owned? A. Yes.

Q. And of those some you bought yourself and some he bought for you? A. Yes.

Q. But you don't recall which is which? A. No, I don't.

30 Q. I show you "Exhibit C 19," which is an assignment purporting to be signed by you; is that your signature? A. Yes.

Q. Do you recall anything about the circumstances of your signing? A. Nothing more than I said last time.

Q. Nothing about the assignment itself that recalls anything more to your mind? A. No; I remember having signed it, but nothing more than I said last time.

40 Adjourned until Tuesday, June 1, 1920.

Trial continued in the above entitled cause, on Monday, March 14, 1921, at 11 o'clock A. M. Appearances:

Dorothy P. Stevens—Direct.

Same as heretofore noted, with the exception, however, that Robert H. McCarter, Esquire, appeared, associated with Mr. Rosenberg, for defendants.

MR. ROSENBERG: There is in the testimony just one error,—a very natural one of the stenographer's; and that is on page 54 of the testimony. It says: "On page 107 it is recorded that the following were present of the directors,—Mrs. Richard Stevens, Palmer Campbell, William H. Gould and Walter B. Wilson. Absent, none;" referring to a meeting of the Hoboken Paper Mill Company held on the twentieth of October, 1919. That is a mistake for "Messrs." It is the annual meeting. Wherever it appears "Mrs.," it should be "Messrs." with that correction the testimony is in proper shape,—excellent shape.

The claim of Mrs. Whittpenn,—I understand that has been withdrawn.

MR. BESSON: If your Honor please, the bill was amended to include Caroline B. Wittpenn, who filed a claim with the executors in regard to the 1161 preferred stock of the Paper Mill. Since the amendment Mrs. Wittpenn appeared by her counsel, Robert Carey, and subsequently withdrew her defense, and has executed a release to the executors from that claim. So that that part of the case has been disposed of in that way.

There are several papers we wish to prove on the part of the complainants, and I will call Mr. Brown.

Edwin A. S. Brown—Direct.

EDWIN A. S. BROWN, being recalled on behalf of the complainants, testifies as follows:

DIRECT EXAMINATION BY MR. BESSON:

10 Q. Mr. Brown, is that your signature? (Showing witness a paper.) A. Yes, sir.

Q. And what is the paper that I show you? A. It is a power of attorney.

Q. By whom? A. By what is known as Elsie Stevens, Jr.

MR. BESSON: I offer the paper.

20 THE COURT: Is there any objection? If not, let it be marked. It is dated originally October 9, 1918 and apparently executed December 9th.

Said paper is marked Exhibit C 24.

FURTHER DIRECT EXAMINATION BY MR. STRYKER:

30 Mr. Brown, I show you a paper dated March 12, 1919, purporting to be signed, "Richard Stevens," and ask you what it is? A. That was an order or instruction to pay the first installment of the income tax for the year 1918 that was due on tax report of what we know as Elsie Stevens.

Q. Is that in Richard Stevens' handwriting? A. Yes, sir.

Q. Signature and all? A. Yes.

Q. When did you first see it? A. At this date.

Q. At the date of the paper? A. Yes, sir.

40 MR. STRYKER: I desire to offer that in evidence?

Said paper is marked Exhibit C-25.

MR. STRYKER: The paper reads: "March 12, 1919. H. L. & I. Pay 25% of the income

Edwin A. S. Brown

Theodosius Stevens—Direct.

tax on the income of Elizabeth C. Stevens, Jr., and charge to account of Elsie Stevens, Jr., special, and pay 25% of my tax and charge to me. (Signed) Richard Stevens."

BY MR. STRYKER:

10

Q. Pursuant to this order did you pay 25% of the taxes of Elizabeth C. Stevens, Jr.? A. did.

Q. And charged it to what account? A. Elsie Stevens, Jr., Special.

Q. At the previous hearing in this case there was some evidence with regard to charges made against Elsie Stevens, Jr., Special account for wines and liquors purchased. Can you state why those charges were made against the Elsie Stevens, Jr., special account? A. Under instructions of the father, Mr. Richard Stevens, they were charged that way.

20

Q. Referring, Mr. Brown, to the shares of preferred stock of the Hoboken Paper Mill Company do you know who placed that certificate in the Elsie Stevens, Jr., file in the safe? A. I did.

Q. And from whom did you receive the certificate? A. The certificate was in an envelope, marked.

30

Q. From whom did you receive the envelope containing the certificate? A. My memory is that it was delivered by Richard Stevens.

Q. One more question, Mr. Brown. You testified, I think, or there is some testimony in the case, to the effect that the bulk of Mr. Stevens' securities were found after his death, in the vault of the Hudson Trust Company. Does that refer to value or number of securities,—that term "bulk"? A. More in bulk than in value.

40

Edwin A. S. Brown
Theodosius Stevens—Direct.

Q. That is, the securities of the greater value were found where? A. In the Hoboken Land Improvement Company.

10 Q. Whereabouts in the Hoboken Land Improvement Company? A. In the box marked "Richard Stevens."

Q. And that is the box in which the certificates of stock of the Hoboken Land Improvement Company and the Hoboken Paper Mill Company, issued in the name of Elizabeth C. Stevens, Jr., and Dorothy P. Stevens, was found. Is that the same box? A. No, not the box—

Q. Was there more than one box in the Hoboken safe marked "Richard Stevens"? A. No.

20 Q. (Stenographer repeats the question as follows): "And that is the box in which the certificates of stock of the Hoboken Land Improvement Company and the Hoboken Paper Mill Company, issued in the name of Elizabeth C. Stevens, Jr., and Dorothy P. Stevens, was found. Is that the same box"? This question just read refers to the certificate of the Hoboken Land Improvement Company stock issued in the name of Elizabeth C. Stevens, the certificate of the Hoboken
 30 Paper Mill common stock issued in the name of Elizabeth C. Stevens, and the certificate of the Hoboken Land and Improvement Company stock issued in the name of Dorothy P. Stevens. The testimony at the former hearing was that all of those certificates were found in the Richard Stevens box. I want to know whether that was the same Richard Stevens box in which you say the bulk of Richard Stevens' estate, having regard to
 40 value, was found? A. I think that is nearer. I think the stocks you are referring to were two separate papers and in two separate boxes.

Q. Who was there when this box was opened,

Edwin A. S. Brown—Cross.

—the Richard Stevens box,—in the Hoboken Land Improvement Company safe? A. Why the representatives of the Farmers' loan and Trust Company, Mr. Reese, Mr. Besson and myself.

Q. Did they go over any other apartments in the safe at that time except the Richard Stevens box? A. I am pretty certain they did not. 10

Q. And at that time they found these certificates, did they not,—the certificates of the Hoboken Land Improvement Company, the certificates for 600 shares of the Hoboken Land Improvement Company common issued in the name of Elizabeth C. Stevens, Jr., a certificate for 700 shares of the same stock issued in the name of Dorothy P. Stevens; and the certificate for, I think, 410 shares of the Hoboken Paper Mill Company common stock issued in the name of Elizabeth C. Stevens. They were found at that time weren't they,—at the time all the executors were present and went through the Richard Stevens box? 20

MR. MCCARTER: That is all in the evidence.

MR. STRYKER: If that is conceded there is no use of going into it. 30

MR. MCCARTER: The evidence shows that those certificates were in the so-called box of Richard Stevens. There is no question about that.

A. You bring in confusion the boxes. The answer I made at the first examination was correct,—that it was in Richard Stevens' box. 40

CROSS EXAMINATION BY MR. ROSENBERG:

Q. That refers to the 600 shares of the Hoboken Land Improvement Company and the 410 shares of the Hoboken Paper Mill Company and the

Edwin A. S. Brown—Cross.

700 shares of the Hoboken Land Improvement Company? A. Yes.

10 Q. Suppose you tell us in detail what securities of Richard Stevens were in his box at the Hudson Trust Company and what securities were in his box at the Hoboken Land Improvement Company. Can you tell us that from memory? A. No, I can't, because in bulk the greater quantity was in the Hudson Trust.

Q. When you say in bulk, what do you mean,—thickness of paper, or what? A. Yes, quantity of paper and quantity of security.

Q. You say those were not the greater part of his securities in value? A. No, they were not.

20 Q. When you talk of the greater part of the securities in value, you mean those which stood in his name irrespective of the ones in this suit? A. Yes.

Q. Can you tell us, then, from what you make up your mind now, that the greater part in bulk was in the Hudson Trust Company and the greater part in value was in the Hoboken Land Improvement Company. How do you happen to say that? A. I am referring now to the certificates in the Hoboken Land Improvement Company when I speak of value.

30 Q. Then the only certificates that belonged to Mr. Stevens that were in his box at the Hoboken Land Improvement Company, were his certificates in the Hoboken Land Improvement Company? A. Yes.

Q. And none others? A. No.

Q. All his other securities were in his box at the Hudson Trust Company? A. Yes, sir.

40 Q. Are you positive that his certificates of stock in the Hoboken Land Improvement Company were not in his box in the Hudson Trust Company? A. In his individual name?

Edwin A. S. Brown—Cross.

Q. Yes? A. They were in the Hudson Trust box.

Q. Then the certificates of stock that were held in Mr. Stevens' own name, all stock in the Hoboken Land Improvement Company,—those certificates were in his box in the Hudson Trust Company? A. Yes. **10**

Q. And those were the more valuable part of his possessions, weren't they? A. I think it was about half, amounting to 1300 shares of the two items, out of 2500 that was in the Hudson Trust Company.

Q. Then do you want to correct your previous answer, Mr. Brown? A. I will put it in that way, yes, I will. **20**

Q. Then about fifty per cent of his securities in value were in his box in the Hudson Trust Company and fifty per cent in his box in the Hoboken Land Improvement Company? A. Yes.

Q. Then his stock that he owned in the Hoboken Land Improvement Company in his own name,—these certificates were in the box in the Hudson Trust Company? A. Yes.

Q. What other securities were there? A. Without enumerating them, there were railroad bonds and stocks,—a type of securities of that kind that required bulk. The bonds and mortgages on property, for convenience were in the box of the Hoboken Land Improvement Company. **30**

Q. Wasn't that because the Hoboken Land Improvement Company collected for him the interest on the mortgages? A. Yes.

Q. So that the only securities he had in his box in the Hoboken Land Improvement company were those on which the Hoboken Land Improvement Company collected moneys for him? A. Yes. **40**

Edwin A. S. Brown—Re-Direct.

Q. When the box was opened there were present yourself, you say, and Mr. Reese, Judge Besson and the representative of the Farmers' Loan and Trust Company? A. Yes, representatives; there were more than one.

10 Q. Was Mr. Theodosius Stevens present too? A. Yes.

Q. Was he also present when the box of the Hudson Trust Company was opened, also? A. Yes.

BY THE COURT:

Q. Wasn't there a list of these securities made at the time these boxes were opened? A. Yes.

20 Q. Where is that list, or those lists? A. I haven't a copy here. They are both in our office and in the Farmers' Loan and Trust Company.

Q. Wasn't there a list made by the representative of the collateral Inheritance Tax Department? A. Yes, sir, he also: at the time the representative of the tax on the inheritance was present.

MR. STRYKER: I think we can get that list.

30 THE COURT: I think it would be a good thing to put it in evidence.

RE-DIRECT EXAMINATION BY MR. STRYKER:

Q. Do you know, Mr. Brown, how many shares of stock Richard Stevens had in the Hoboken Land Improvement Company, in his own name? A. It was over 2500.

40 Q. Now, where do you say that the certificates for that stock were found after Mr. Stevens' death? A. Well, they were divided I told you. The 1300 shares were in our office, and the balance was in the Hudson Trust box.

Q. Are you sure of that? A. Pretty certain, yes, sir.

Edwin A. S. Brown—Re-Direct.

MR. STRYKER: I will ask to put in those lists.

THE COURT: You may.

MR. BESSON: I ask that the release by Mrs. Wittpenn be put in evidence.

THE COURT: Let it be marked. 10

Said release, by Mrs. Wittpenn to the executors, is marked C-26.

MR. STRYKER: We have nothing further, except we wish to establish the fact of these securities in this safe.

THE COURT: You may do that.

MR. ROSENBERG: I will call Mr. Brown again.

THE COURT: What is the purpose? 20

MR. ROSENBERG: To correct his testimony.

THE COURT: If there is no objection I will allow it. However, let it be noted on the record that there has been a colloquy between the witness and counsel, Mr. Rosenberg and Mr. Stevens since the witness left the witness stand.

MR. ROSENBERG: I have no objection to that. 30

MR. STRYKER: I have no objection to his going back, with that notation on the record.

Q. When you spoke of 1300 shares of Hoboken Land Improvement Company a few minutes ago as having been found in that box, did you mean the 1300 shares in dispute in this suit?

A. The 1300 shares in dispute in this case.

Q. And the other shares that Mr. Stevens owned in his own right, where were they? A. 40

Edwin A. S. Brown—Re-Direct.

RE-DIRECT EXAMINATION BY MR. STRYKER:

10 Q. As a matter of fact you are not positive as to what shares in the Hoboken Land and Improvement Company safe, are you? A. I was answering you on the two particular certificates. You were asking where they were found.

Q. You are not positive, are you, as to where they were found? A. The 1200?

Q. Yes. A. I am positive they were in the Hudson Trust.

20 Q. Then what did you mean by answering my question, when you answered the question as to where the bulk in value was found, and said it was found in the safe of the Hoboken Land Improvement Company; if your present testimony is a fact, that answer was not true, was it? A. The bulk of the estate,—the value,—you are speaking of value now?

Q. Yes. A. The individual ownership was practically in the Hoboken Land Improvement Company, 1200 shares in his own name.

30 Q. What do you mean? Well, you said in answer to my question at first that the more valuable portion of the estate was found in the safe of the Hoboken Land Improvement Company? A. I will correct that; that was not so in the sense of your declaring the question now.

Q. And before you went on the witness stand when I asked you that question, you answered in the same way? A. Yes.

40 Q. And now you wish to correct that and say the more valuable portion of the estate was in the Hudson Trust Company? A. Yes.

Q. Are you sure of it? A. Yes, positive.

Q. What has made you sure of it? A. Be-

Edwin A. S. Brown—Re-Direct.

cause of the clarifying of the question. You put it in the way of two certificates that were in dispute.

Q. I didn't ask you about certificates at first. I asked you where the more valuable portion of the estate was. You answered it was in the safe of the Hoboken Land Improvement Company, in the Richard Stevens box. Is that true? 10

A. That is the way I answered you.

Q. Is that answer correct or not? A. It is now corrected.

BY THE COURT:

Q. Why did you make that answer in the first place? A. Confusion of the question.

Q. What was the confusion to the question? A. He brought in a question of boxes and bulk and quantity. 20

Q. He asked you where the more valuable portion of the estate was found. There is nothing confusing about that question. The estate was found in two different places. One part was found in the Hudson Trust Company, and one in the Hoboken Land Improvement Company safe. He asked you which one was the more valuable. You said the one in the Hoboken Land Improvement Company's office. Now you say it is the one in the Hudson Trust Company safe. I am asking you why you said that in the first place? A. In my mind was the bulk in quantity rather than the question of value. 30

Q. I understand you to say that the bulk in quantity was also in the Hudson Trust Company? 40

A. I am speaking of bulk rather than value.

Q. That, you say, was in the Hudson Trust Company? A. Yes. 02

Q. Then both bulk as to quantity and bulk

Edwin A. S. Brown—Re-Direct.

as to value were in the Hudson Trust Company?

A. The answer was confused.

10 Q. What was in your mind? A. In my mind was the reference to the two certificates of stock of the Hoboken Land Improvement Company in dispute.

Q. But that didn't constitute the bulk in value, or the bulk in quantity, of the estate? A. As the question was put it was bringing in those certificates of stock as though it were a part of the question.

20 MR. McCARTER: There seems to have been some confusion. I think the real thing to do is to have Mr. Stryker bring the certificate from New York or else get it from the comptroller's office.

MR. STRYKER: I think I could probably get it down here to-day on the next train.

THE COURT: I think it ought to be put in evidence.

30 MR. BESSON: The minutes of the annual meeting of the stockholders of the Hoboken Paper Mill Company held on Thursday December 19, 1918 at 4 p. m., page 108 of the minute book of the Hoboken Paper Mill Company.

The particular minute is the fact that: present by proxy, Elizabeth C. Stevens by Richard Stevens 410 shares. After this proxy was issued it was voted by him at that meeting.

40 A bill for liquor, with letter attached dated February 21, 1919 to Charles Weinacht, are offered in evidence and marked Exhibit C-27.

Edwin A. S. Brown—Re-Direct.

Another bill of the same character is offered in evidence, dated March 13, 1919, and is marked Exhibit C-28.

MR. STRYKER: We have this statement here now. The first is entitled: "Removed from office of Hoboken Land Improvement Company—" **10**

THE COURT: Just offer it in evidence and forward it to me later.

Said list or statement is marked Exhibit C-29.

Both Sides Rest.

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**Memorandum of Conclusions of Vice
Chancellor.**

(Filed April 6, 1922.)

IN CHANCERY OF NEW JERSEY.

- | | | |
|----|---|----------------------------------|
| 10 | <p>Between
 J. W. RUFUS BESSON <i>et als</i>, EX-
 ECUTORS AND TRUSTEES OF RICH-
 ARD STEVENS, DECEASED,
 <i>Complainants,</i>
 <i>and</i>
 ELIZABETH C. STEVENS, JR., <i>et als</i>,
 <i>Defendants.</i></p> |)

On
Final
Hearing. |
| 20 | <p>Between
 J. W. RUFUS BESSON <i>et als</i>, EX-
 ECUTORS AND TRUSTEES OF RICH-
 ARD STEVENS, DECEASED,
 <i>Complainants,</i>
 <i>and</i>
 DOROTHY P. STEVENS, <i>et als</i>,
 <i>Defendants.</i></p> | |

30 MESSRS. BESSON, ALEXANDER AND STEVENS
 AND MR. JOSIAH STRYKER, for Com-
 plainants.

MR. M. T. ROSENBERG, MR. ROBERT H.
 MCCARTER, and MR. THEODOSIUS STE-
 ENS (of the New York bar), for De-
 fendant Theodosius Stevens, Admini-
 strator of Elizabeth C. Stevens, Jr.,
 and DOROTHY P. STEVENS.

40

Conclusions.

BUCHANAN, V. C.

Complainants, as executors of the last will and testament of Richard Stevens, deceased, filed two bills, one to determine the ownership of 600 shares of stock of the Hoboken Land and Improvement Company and 410 shares of common and 1161 of preferred stock of Hoboken Paper Mill Company, standing of record in the name of Elizabeth C. Stevens, Jr., and the other a like bill but relating to 700 shares of stock of the Hoboken Land and Improvement Company standing of record in the name of Dorothy P. Stevens, Elizabeth C. Stevens, Jr., died intestate shortly after the bill was filed and the suit was revived as against her administrator. Both suits were tried together. There is no dispute over the principles of law involved, nor over the facts susceptible of direct proof; the controversy is as to inferences of fact and as to the application of the legal principles to the facts.

It appears from the evidence and the admissions in the pleadings that the testator, Richard Stevens, was a man of high standing and of large means. His wealth (including the securities in question in this litigation) amounted to about \$1,500,000.00,—of which about \$1,000,000.00 was in securities. He died May 18th, 1919,—at the age of fifty-one years, after an illness of four days with pneumonia. He left him surviving a widow and four children; Elizabeth aged twenty-four, (at his death); Caroline, twenty-one; Dorothy 16; and Richard, fourteen,—of whom Elizabeth and Dorothy are the respective principal defendants in the two suits.

He was a lawyer, a member of the bar of this state and engaged to some extent at least in active

Conclusions.

10 practised. He was also active in business and financial pursuits, being the president of the Hoboken Paper Mill Company, and also of the Hoboken Land and Improvement Company—both “close corporation” of the Stevens family, in which he had large stockholdings.

20 It further appears that the 600 shares of Land Company stock and the 410 shares of Paper Company stock above mentioned were, prior to the transfers to Elizabeth C. Stevens, the property of the testator; that some time prior to October 1st, 1918, this stock was transferred by the testator to his sister, Caroline B. Wittpenn in trust for certain purposes, one of which was to transfer the stock upon the demand of testator to any person named by him; that Mrs. Wittpenn had no interest whatever in the stock; that on October 1st, 1918, the testator caused the 600 shares of the Land Company stock above mentioned to be transferred on the books of the company from the name of Caroline B. Wittpenn to the name of Elizabeth C. Stevens, Jr. Either at this time or later, a certificate was issued by the company for said 600 shares of stock in the name of Elizabeth C. Stevens, Jr. This certificate was placed by the secretary of the company, at the direction of the testator, in the private compartment of the testator in the safe of the company, where it was found at his death.

30 On the 2nd day of October a similar transfer was made from Mrs. Wittpenn to Elizabeth C. Stevens, Jr., of 410 shares of the common stock of the Paper Company and Certificate No. 36
40 for said shares was issued in the name of Elizabeth C. Stevens, Jr., and was placed by the secretary of the Land Company at the direction of the

Conclusions.

testator in the above mentioned private compartment in the safe of the Land Company, and was found there at his death. Both of these transfers were made without consideration and in neither case was the certificate of stock physically delivered to Elizabeth C. Stevens, either at the time of the transfer or at any other time. 10

On November 1st, 1918, the Paper Company, of which the testator was then president, passed a resolution authorizing its president and secretary to issue to Elsie C. Stevens (the name by which said Elizabeth C. Stevens, Jr. was commonly known) a certificate for 1161 shares of the new preferred stock of the company in exchange for \$90,000 par value of bonds of the company and a 9/10 interest in a bond and mortgage of the company amounting to \$29,728.23, which bonds and mortgage, the resolutions states, were then owned by the said Elsie C. Stevens, but which were in fact owned by Richard Stevens. The preferred stock was duly issued to Elizabeth C. Stevens, Jr., but the certificate was delivered by the Paper Company to Richard Stevens who in turn delivered it to Mr. Brown, secretary of the Land Company directing him to put it in the Land Company's safe in the office of that company. Mr. Brown placed the certificate in that safe in the file marked "Elsie Stevens, Jr." 20 30

About January 29th, 1919, Elizabeth C. Stevens, Jr., acting at the request of the testator, executed and delivered an assignment of said 600 shares of stock of the Land Company unto said Richard Stevens and also an irrevocable power of attorney authorizing the transfer of said stock on the books of the company to said Richard Stevens or his nominee. This assignment was fastened by Richard Stevens to the certificate of stock 40

Conclusions.

issued in the name of Elizabeth C. Stevens, Jr., above referred to and was found with such certificate after his death. At the same time, and at her father's request, a similar assignment and power of attorney, was executed by Elizabeth C. Stevens, Jr., on the reverse side of the certificate for 410 shares of the common stock of the Paper Company; also an assignment and irrevocable power of attorney, of the 1161 shares of preferred stock of the Paper Company, which was delivered to him and attached by him to the certificate of preferred stock, and so found at his death.

The financial dealings of the members of the Stevens family were carried on largely, if not entirely, through the Land Company, which collected the dividends and interest for the several members of the family, depositing them to its own account, crediting them respectively, on their several accounts in its books, and from time to time paying out moneys on their respective orders or instructions and debiting their accounts with the moneys so paid out. So also their securities, or some of them, were kept in the Land Company's safe, in separate files or envelopes. Elizabeth came into possession of some securities from her grandmother's estate when she became twenty-one, and a file in the safe was set apart for her securities and an account opened in her name,—Elsie Stevens Jr.,—on the books of the Land Company. To her credit in that account were entered the income from the securities just mentioned, Collected by the Land Company, and checks for 1/12 the annual income were made and sent her by the Company monthly and charged against that account. This account and the moneys derived therefrom was used by her solely as a "dress" or clothing account. Her other expenses were paid by her father as well af-

Conclusions.

ter her majority as before. (A similar file and account were instituted for Caroline when she became of age.)

The dividends accruing in October and November, 1918, on the three blocks of stock issued in the name of Elizabeth, were collected by the Land Company (if it can be said to collect dividends which it pays) and credited to this account of "Elsie Stevens, Jr." This was not by any instructions from Elizabeth but following the usual custom or routine of the office and the family. On December 6th, 1918, however, the testator gave the company written instructions to open a new account in the name of "Elsie Stevens, Jr." account the dividends of the preceding three months on the stock in question, and to credit it thereafter with all future dividends on the stock in question. These instructions were carried out, and all subsequent dividends were credited to the new or "Special" account,—and nothing else was credited therein. No moneys were withdrawn from this account by the order of anyone other than the testator, up until his death. During that period the "deposits" or credits totalled \$16,347.55; and there was charged against it only \$3245.95,—\$2638.20 in February 1919, and \$607.75 in March. The February charge of \$2638.20 and \$578.00 of the March charge were for wines and liquors (mostly whisky) bought by the testator in the name of Elsie; the remaining \$29.75 of the March charge was the quarterly instalment of Elsie's 1918 income tax, due March 15th. The income tax report for 1918 was not made up by her but by the Land Company's office force; it included in the return the October, November and December dividends above mentioned. (It may be noted here that there is no evidence that the

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Conclusions.

October 1918 monthly dividend on the Land Company stock was in anywise paid to Elsie; neither however, does it appear that any such dividend was paid by the Land Company except by mere presumption from the fact that such dividends
 10 were paid each subsequent month).

The testator's will was executed March 17th, 1917. By it, (aside from sundry bequests to persons outside his family), he gave \$28,000.00 to his youngest two children, to equalize them with what the other two had received from their grandmother, gave to each of the four children \$50,000.00 at age twenty-four, and left the residue of his estate in trust for the four equal shares, all except
 20 Elsie to get the principal of their shares at age forty, Elsie's share being kept in trust during her life and at her death going to testator's then living issue. At the time this will was made Elsie was desperately ill with nervous collapse and her recovery was doubtful. Apparently it must have been feared by her father that if she lived she might be nervously or mentally affected for the rest of her life. After her recovery he told his wife he
 30 was going to change his will as to the provisions affecting Elsie, and repeated the statement about six months before he died. At his death his will was found open in current documents on his desk.

The Land Company's safe was in that Company's office. It contained, besides property of the Land Company itself, files (boxes or envelopes) of the individual property of members of the Stevens family and others interested in the Company. Among these was the file or box of Richard Stevens himself, the one of Elsie Stevens, Jr., and
 40 the one of Caroline Stevens. As to the safe, and therefore to all the contents thereof, Richard Stevens as president of the company, had complete

Conclusions.

access thereto, and absolute control thereover. Neither Elsie or Dorothy knew the combination, nor could have had access thereto against the father's consent. In fact however, they, or at least Elsie, had free access to the safe and hence to everything therein pursuant to her father's consent and directions (express or implied). 10

At the father's death there was found in his file in the safe, in addition to the "Elsie Stevens, Jr." certificates of Land Company and the Paper Company stock and assignments, as above mentioned, and the certificates of Land Company stock in Dorothy's name, (hereafter to be mentioned) four Liberty bonds marked "property of Dorothy Stevens" and one Liberty bond marked "property of Richard Stevens, Jr." and also a considerable quantity of title papers and agreements and securities (principally corporate stocks)—the individual property of Richard Stevens. These latter aggregated in par value approximately \$250,000. (the par value of the "Elsie, Jr." and "Dorothy" stock would be an additional \$163,200.00), —and included 6 shares of Paper Company common stock and 1216 shares of Land Company stock. Testator also had a safe deposit box at the Hudson Trust Company, wherein was found securities owned by him (principally bonds; no Land Company or Paper Company stock) aggregating in par value about \$165,000.00. The total outstanding stock of the Land Company was 14,739 shares, of which testator had 1216 shares after the transfer of the 1300 shares to Dorothy and Elsie; the total outstanding common stock of the Paper Company was 871 shares, of which testator held six after the transfer of 410 to Elsie. The value of these stocks was far above par, for they paid dividends of 25 to 30 per cent. a year. 20 30 40

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The foregoing I think summarizes the evidence in regard to the stock standing in Elsie's name,—except the testimony as to the testator's conversation with Elsie, and his other statements of intention.

10 With regard to the 700 shares of Land Company stock standing in Dorothy's name,—that transfer was made by testator in April, 1919, from stock standing in his own name, and the certificate was issued in Dorothy's name, dated April 30th, 1919, delivered to the testator and at his direction placed in his box or file in the safe, where it remained at his death together with an assignment thereof and irrevocable power of attorney, to Richard

20 Stevens signed by Dorothy but undated. At the father's instructions an account was opened by the Land Company on its books in the name of "Dorothy P. Stevens, Richard Stevens, Guardian", and the May 1 dividend credited thereon. There were no other credits and no debit entries,—his death occurring May 18th. Dorothy had no file or box in the safe.

30 Let us now consider the testator's statements,—and first in relation to the stock transferred to Dorothy.

He told Mr. Edwin Brown, (who was the secretary of the Land Company and evidently also in fact a confidential secretary of Mr. Stevens), to have the transfer of the 700 shares made; that he was anxious to have the new certificate issued prior to May 1, 1919 "so that the holder, Dorothy, would receive the dividends on that date." Dorothy

40 says that her father said to her, at home a few months before his death, probably January or February, 1919, "he was going to turn over some stock in my name, and that I wouldn't have anything to do with it, except it would just be in

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my name, and that he wanted me to sign a paper, which I did, in case I should die, this stock would come back to him; and in case he died it would be divided equally between my sisters and brothers and myself." That he also said he had "given" Elsie some stock or was going to. (The word "given" was not used by the witness but was in counsel's question). Mr. Brown also testifies that the assignment back from Dorothy to her father and power to transfer was prepared coincident with the issuance of the stock in her name and returned by him executed. Elsie Steves, Jr., testifies that at the time her father transferred stock to her "he said he was doing the same thing to her, (Dorothy). He was transferring stock to her under the same conditions that he was to me. I don't exactly remember, but I think he said he was about to transfer stock to her." (She had already testified to statements by her father as to what should become of the stock transferred to her, on her death and on his death,—similarly to the testimony of Dorothy.)

So far as the transfer to Dorothy is concerned, it seems quite clear from the evidence, that no gift was made to her of the stock in question. The requisites to establish a gift *inter vivos* (and of course there was here no claim or pretence of a gift *causa mortis*) are (1) a donative intent on the part of the donor; (2) an actual delivery of the subject matter of the gift, and at least to the extent practicable or possible considering the nature of the thing given; and (3) a stripping of the donor of all ownership and dominion over the subject matter of the gift, at least to the extent practicable considering the nature of the thing given. *Swayze vs. Huntington*, 82 N. J. Eq., 127, at 133; *aff'd* 83 N. J. Eq., 335.

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Conclusions.

In the present case, as to "Dorothy's stock" we need go no further than the first of these elements. There was no donative intent, either specific or general. The inherent probability is against it, in the first place,—against his giving away to a girl of fifteen or sixteen, (even though one of his daughters) such a block of stock in this particular company, depriving himself (in connection with the assumed gift of 600 shares to Elsie) of *over* half of his holdings in the company. In the second place neither his statements nor his acts indicate any such intent. He did not say to Dorothy or to Elsie that he was "*giving*", or going to give, the stock to Dorothy. He said he was going to transfer it to Dorothy, to "turn it over to her name"—and (still more cogent) that she wouldn't have anything to do with it except it would just be in her name. And his further explanation that at her death it was to come back to him, and at his death it was to be divided equally among the four children, shows conclusively that the stock was not intended by him to be hers to do with as she pleased,—but at most to be hers only as an agent or trustee for him. The only colorable evidence to the contrary, i. e. the statement to Brown, that he wanted the May 1 dividend to go to the holder, Dorothy, does not in fact militate against what I have said, because the dividends were not to go, and did not go, to Dorothy herself, but to him, though nominally, as her guardian. His actions likewise correspond (without reciting them again in detail)—particularly the simultaneous taking back of an assignment from her to himself. True, if the stock were hers the assignment from a minor would be legally valueless,—but it was undated and was at least a precautionary measure good on its face after she

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came of age. Moreover, under all the evidence, I have no doubt whatever that at his direction, the company would have acted on that assignment even before she came of age.

Returning to the stock transferred to Elsie; there is considerably more testimony as to testator's statements than in Dorothy's case. 10

Elsie herself says that her father talked to her in the Fall of 1918, in September she thinks; "he said he was going to transfer some stock to my name"; he mentioned the Paper Mill stock but didn't mention the other stock; it wasn't ready at that time, he didn't do it just then, "Two or three weeks later I went down to his office and signed some papers. I remember some Paper Mill stock, but I don't remember the other." She thinks this was in December. In between there was at least one other conversation on the subject. "He just explained to me that he was going to sign this stock over to me, that's all." "He asked me to make a will; I said I didn't want to at the time; he said (at just which conversation this was is not apparent) in case of his death he wanted the money to go back to the estate, or go back so we would each get an equal one-quarter because the stock he signed over to me was more than an equal quarter." "In case of his death it was to be divided equally between us four children." 20 30

She says she signed the assignment back to her father of the Paper Company preferred stock (dated January 29th) about the end of January or middle of February. She signed that because "My father asked me to make a will and I said I wouldn't; he said he would fix something for me to sign in place of a will, more or less, so that the stock would go back to him in case I 40

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died." This was as to all three stocks. She didn't, exactly understand what the assignment was; thought it was something like a will. She thinks she signed like assignments for the other stocks, because "I signed them all together, I really wasn't paying very much attention." Later she
 10 says she is not sure she signed all the assignments at one time. She didn't have any very clear idea what it was all about,—just a general idea he was signing stock over to her; she did what he asked because he asked it; she doesn't recall signing the proxy to vote.

She cannot remember whether her father told her why he was transferring the stock to her name; he said he was going to transfer to Dorothy under the same conditions that he was to her
 20 (Elsie). Nothing was ever said about transferring any stock or securities to the other two children or the mother. She never had anything to do with the stocks after the transfers. She thought her father was managing it for her though she really never topped to think. She had no knowledge of the affairs of the companies.

Her father told her he was opening an "Elsie
 30 Stevens, Special" account, in which the dividends would be placed, to keep them separate from her other moneys. She herself never drew moneys out of the "Special Account", and she cannot remember that her father spoke to her or asked her consent about drawing moneys therefrom. She says he drew moneys from that account to pay
 40 her expenses,—but in this of course she is mistaken; the account itself shows that nothing was drawn therefrom by him or anyone else in his lifetime, except the payment for the liquors and the instalment of income tax.

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The mother testifies that her husband told her, after Elsie's recovery from the illness, that he had by his will trusted Elsie's share of his estate; but that he was going to change that; and again six months later (about six months before his death) he again said he was going to change his will in that respect—Elsie was perfectly well and it was no longer fair to her. (He never did change it.) At about the same time, but whether before or after she cannot recall, he said "I have transferred a lump of stock to Elsie; I have such faith in her, I have transferred a tump of stock to her."

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To William H. Gould (a close business friend and the then general manager of the Paper Company), the testator said, at the time of the transfer to Elsie of the Paper Company preferred stock, (November 1st, 1918) that he was going to have his will fixed during the ensuing week; "I want to fix things so you and Walter (Gould's son) will have the voting power of my girls' stock as long as either of you live." "I want to have this fixed (referring to the will); my girls understand it, but you never know what happens after a man's dead."

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In all this search will be made in vain for testimony that testator spoke of the transfer as a gift. He spoke of it to Elsie as "transferring it to her name" "signing it over to her"; to the mother he said "I have transferred a lump of stock to her because I have such faith in her." There is nothing but the answer of Dorothy hereinbefore mentioned and commented upon. That is absolutely without weight because of the leading form of the question. His statements to his wife about changing the will have no bearing on the stock transfer. He was simply going to eliminate the trust

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for life of Elsie's share. But what he said about transferring the stock to Elsie because he had faith in her is quite significant. So also was his statement to Gould; by "my girls' stock" he clearly meant the stock which would come to them directly or as *cestuis que trustent* under his will,—their share of his estate after his death. Under no other theory is it possible to understand this statement that he would accomplish his expressed intention by a provision in his will.

I think it is clear from all this testimony,—quite as clear as in Dorothy's case,—that he had no intent to make an absolute gift of the stock to Elsie. Why should he? Why should he give away a third of his total wealth? Why should he give it to two only of his four children, when everything else shows that he intended to treat them all alike? What reason was there to induce him to deprive himself of ownership of over half his Land Company stock and practically all of his Paper Company stock,—to deprive himself of control over the two companies, which were, so to speak, his own companies,—he being vigorous and active and still in the prime of life? There is no reason suggested and I can conceive of none. He intended simply to put it in Elsie's name, but himself to have the beneficial interest; he still regarded it as under his control, and so spoke and acted afterwards. I think if any disinterested person,—nay, even any one of counsel for the two girls,—considering all the testimony, will suppose that Elsie, at the time of the transfer had said to her father,—“Do you mean that this stock is to be absolutely mine? that I am to have the right to dispose of it absolutely as I wish? Of course under all ordinary circumstances I would follow your requests or desires, but if any extra-

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ordinary occasion should arise, have I the right to deal with it irrespective of or contrary to what you wish?" there can be no doubt that the father would have answered, "no."

And his and her actions, or practically all of them, corroborate this conclusion. The non-delivery of the certificates to Elsie; the retention thereof in his safe, and of all but the preferred stock, which had no voting power, in his own file or box; the taking back of assignments and proxies; the exercise of authority over dividends; the opening of the special account for the dividends separate from the moneys which were really hers absolutely; the lack of knowledge, or even interest, by Elsie as to the whole matter; her lack of exercise or of attempt to exercise any control or authority or act of ownership as to stock or dividends; the use by him of the dividends to buy his liquors (without her authority) and for no other purpose except to pay the income tax on such dividends (Elsie's other income was insufficient to be subject to tax), although he during the whole six months paid all her expenses except for clothing, just as he had before,—and other acts which I need not reiterate. Some of these acts by themselves would of course not be conclusive,—some would by themselves, be not inconsistent with, or unexplainable from the standpoint of, the view that he had made a gift; but taken collectively they are incompatible with any such theory.

There are three points which are urged by counsel for the "donees" as proving a donative intent, to which allusion should be made. One is the fact that he wanted Elsie to make a will so that the stock would go back to his estate; and that for a will to be operative presupposes ownership

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by the prospective testatrix. To this it may be said, that it by no means appears that the request as to the will was made after the transfers; moreover the insistence upon a will or in lieu thereof upon a re-assignment, proves that his intent was

10 that the stock should remain subject to the final disposition that he desired; and finally a will would operate upon the bare legal title of a trustee to carry it back to the *cestui* just as efficaciously as upon a complete beneficial title.

The second argument is that the issuance of the stock certificates by the company in the name of Elsie, at testator's instances and procurement, in itself constituted a delivery though the certificate was retained by testator, and that *ipso facto*

20 the donative intent is proven,—citing and quoting from, *In re Roberts*, 85 Pa. 84. I have not read that opinion, but I gather from defendants' excerpts therefrom that there was no other evidence in that case as to the donor's intent to make a gift. If in this I am mistaken, then I must beg leave to differ from the conclusions therein. In

30 the present case, as I have shown, the evidence completely controverts the idea that testator intended that the transferee should have the absolute ownership or beneficial interest in the stock. Hence, assuming there was a valid delivery, that at most could establish only an intent to transfer the legal title,—not a donative intent.

The third contention is that since testator had Elsie include the dividends from this stock in her

40 income tax return and excluded them from his own return, he therefore must have had the donative intent as to the transfers,—or at least then believes that he had had it at the time of the transfers; otherwise he must be convicted of deliberate tax evasion. It may be noted that there

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is in fact no evidence that he excluded these dividends from his own return, or in and by his return reduced his assessment from what it would have been if the stocks stood in his own name; however I think it may fairly and reasonably be argued that he did. My own belief is that the transfers were made by him for the purpose of lightening the burden of the income tax, since I can conceive of no other reason or motive under the evidence; and that one is plausible, for the high surtaxes cut so deeply into incomes such as testator's and, for reasons which are doubtless well known and need not here be detailed, it was exceedingly difficult, except by sacrifice of capital assets to reduce expenditure to the point correspondingly necessitated. That such a purpose however, involved a criminal intent or moral turpitude upon the part of testator is in no wise a necessary sequence,—nor do I believe it to be the fact. As I pointed out in *Re Bottome*, 111 Atl. 605, there is nothing wrong in a desire or an attempt to do things,—or to do them by methods,—which do not come within the operation of the provisions of a taxings statute. The testator's mind had been trained along legal lines; was accustomed in some degree to legal concepts and habits of thought,—to legal refinements, distinctions and technicalities. I can readily conceive an honest belief on his part that he had made a legal gift, notwithstanding his intent and purpose was to avoid the taxing provisions and not to strip himself absolutely of all interest in the stock in favor of the daughters; and that he failed to realize that because of the latter the former failed of accomplishment. There is, too, a Scylla to companion defendants' Charybdis,—for if it be as-

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sumed that he had made an absolute and complete gift of the stock and dividends, then it was unlawful for him to take from his daughter's funds some \$3000.00 for his own individual purposes.

- 10 In addition to the lack of donative intent, I am satisfied, too, that there was no valid delivery,—though this, in view of the finding as to intent, is probably material only in connection with the form of the decree or the precise nature of the relief to be given. The transactions took place subsequent to the Uniform Stock Transfer Act (P. L. 1916, p. 398) and are therefore subject to its provisions. Section 1 of that act provides
- 20 that title to a stock certificate “and to the shares represented thereby,” can only be transferred by delivery of the certificate endorsed or accompanied by a written assignment or power to assign, &c. The statute does not expressly so state, but the necessary implication of course, is, that the delivery shall be made to the transferee or the transferee's agent in that behalf.

- 30 The Land Company stock and the Paper Company common stock were all represented by certificates. Those certificates (though we may assume they were properly endorsed or assigned in writing) were not delivered to the transferee. The only delivery was to the companies themselves,—and the companies were not the agents of transferees to receive delivery for them.

- 40 The Paper Company preferred stock was not represented by any certificate prior to the one issued in Elsie's name. Testator caused bonds of the company, held by or for him to be surrendered to the company in exchange for the issue of the preferred stock in Elsie's name,—so that the tran-

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saction does not come within the language of the act. It might be argued that the other transactions do not come within the spirit or intended purview of the act, that when a transfer has progressed to the point of the issue of the new certificates by the company, it has progressed past the point at which the act was directed. It may be doubted that this argument can contravene the express language of the statute, but yielding that point for the sake of the argument, it brings us to the question of whether the issuance of the new stock by the company in the name of the transferee, without delivery thereof to the transferee or her agent, can constitute a valid and sufficient delivery for a gift *inter vivos*. There are three points or steps in the transactions which might severally be conceived of as intended by the testator as acts of delivery; (1) the delivery by him to the company of the old stock certificates and assignments (the bonds in the Paper Company preferred stock instances); (2) the issuance by the company of the new stock certificates; (3) the delivery of the new certificates by testator to Elsie and Dorothy. As to the last of these three, I think it is clear, that there never was any delivery of the new certificates by testator to the "donees",—not even of the preferred stock of the Paper Company to Elsie. As I had occasion recently to hold in *Reiley vs. Fulper*, 115 Atl. 661, where the circumstances on this point were very similar indeed to those here *sub judice*,—if the placing of the certificates in the safe was intended to constitute delivery, it was legally insufficient to do so. But in my view of the testator's mental processes, he did not intend that step as the act of delivery,—certainly not in the case of the certificates of common stock, for it would

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be practically impossible for his mind to conceive of placing the certificates in his own file as constituting a delivery. Yet since he conceived (as in my view that he had accomplished the transfer, he must have looked upon some other act as a delivery. It is impossible that it was the first of the three steps above mentioned,—especially in the instances of the Paper Company preferred stock, for there was no transfer, or pretence thereof, (at least the recital in the minutes of the company was nothing more than a pretence or fiction) of the bonds to Elsie. They were surrendered by testator to the company. And as to the other three transfers,—his actions and statements to Mr. Brown on the transfer to Dorothy, indicate that he thought the transfer would be incomplete until the actual issuance of the new stock in her name.

I think, then, that he intended the issuance of the new certificates as the act of delivery. I think that such issuance, even in the name of the intended transferee, unless and until completed by delivery to such transferee or her agent,, was insufficient to constitute a valid delivery. Stock holding has a dual aspect. On the one hand it involves a contractual relationship between corporate entity and the stockholder, and on the other it involves the ownership of property,—of an interest in the corporate property. Considering the contractual aspect,—the dissolution of the contractual relationship between the corporation and the old stockholder is conditioned upon, and is incomplete until, the perfection or completion of the contractual relationship between the corporation and the new stockholder (the transferee), and that is not complete, (at any rate, in a case where the transferee has not received from the trans-

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feror the assignment of the shares and himself presented it to the company,) until the delivery of the new certificates and its acceptance by, the gift of a watch or a dollar bill. It is not done when the new certificate is delivered by the corporation, not to the transferee but back to the transferor. Until the delivery of the new certificate to the transferor, the transferor has not tripped himself completely of dominion and control,—nor as nearly completely as possible under the circumstances and nature of the thing given. His retention of possession of and control over the new certificate deprives the transferee of complete dominion and control. The latter could not sell or transfer the stock to anyone else, even though he might vote and receive dividends thereon. Hence, even though so intended, it is not a legally valid and sufficient act of delivery. I think perhaps it is somewhat clearer, if looked at from another angle. Suppose testator after receiving the new certificate from the company had changed his mind and decided that he wanted the stock for himself; that Elsie had demanded the certificate from him and he refused to give it to her. There is no doubt in my mind that Elsie's claim of ownership, in whatever court or by whatever form of action asserted, would not be sustained.

There was of course, no delivery in the present case to the transferee's agent assuming that if testator might validly act in such capacity, he had not here been constituted such agent by the transferee.

The question of the legal sufficiency, as an act of delivery, of the issuance by the company of a new stock certificate without delivery thereof to the transferee, seems never to have been decided heretofore in this state; but I think the

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conclusion as to its insufficiency in that behalf necessarily flows from the application to the facts, of the well established principles of the law of gifts transferee. No one can become a stockholder in a company without his knowledge and consent. *Great Council &c. v. Mohican Tribe, &c.* 114 Atl. 440. Obviously then, until that time, the transferee does not become the owner of the interest in the company's property, which ownership is the other attribute of his character of stockholder,—and until that time the transfer of that interest, that property, is incomplete, considering the matter from the property aspect,—the transfer of the stockholder's ownership of property or interest in corporate assets,—the transaction is one solely between transferor and transferee. The corporation has no interest in the thing, from this standpoint,—it is an outside party entirely. Either before or since the act of 1916 hereinbefore referred to, the change of ownership is complete upon the delivery by the transferor to the transferee of the certificates duly assigned. *Mathews v. Hoagland*, 48 N. J. Eq. 455, 486 *et seq.* Thereafter the corporation is a mere agent, so to speak, of the transferee, to perfect his legal title, supply him with the evidence thereof and perfect his relationship to and with the other stockholders. Conversely, as it seems to me, where the transferor delivers nothing to the transferee, but delivers the certificate and assignment to the company, the latter is simply the agent of the transferor to accomplish the delivery to the transferee. That is—not done until the delivery of the new certificate to the transferee (although it might conceivably be done by delivering the old certificates and assignment to him). Until that is done the change of

Conclusions.

ownership is not complete; until it is done there is no relationship between the corporation and the transferee; and until it is done the transferee can, at least in the case of a gift, stop the agent's action in the matter just as well as he could stop his own hand half extended toward a manual delivery of an *inter vivos*. It is of course in conflict with the decision in *In Re Robert*, 85 Pa., 84. It is not, however in conflict with such cases as *East Rutherford Bldg. & Loan Assn. v. McKenzie*, 87 N. J. Eq. 375; *N. J. & c. Trust Co. v. Archibald*, 108 Atl. 434; *Kauffman v. Edwards*, 113 Atl. 598, where the thing given is not the whole of the asset owned by the donor, but only a partial interest therein, and the delivery is of the kind of which nature of the thing given is susceptible.

Defendants argue that it would be absurd to require an actual delivery to Elsie and a re-delivery by her, if she intended and desired her father to manage the stock for her as her agent. Doubtless all positive rules do or may seem absurd in exceptional cases,—but it must be remembered that such rules upon reasons of public policy, for the general good, to which the inconvenience of the few must yield. I think it cannot be questioned that the rule requiring a delivery exists,—that a gift can never be made by words alone,—and that it exists just as definitely and absolutely in a court of equity as in a court of law. There is no reason for equity to aid a donee,—a volunteer,—in the establishment of a gift, (although if the gift be once established, a donee is as much entitled to the aid of equity in the protection of his ownership as an owner who has become such by any other means).

It results from what I have said, that testator was at his death the owner of the four blocks of

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Conclusions.

stock in question, and of the indebtedness (representing the dividends on this stock prior to his death) standing in the books of the Land Company in the name of "Elsie Stevens, Jr., Special" and "Dorothy Stevens, Richard Stevens, Guardian," and to such ownership his executors succeeded. The latter are entitled (upon their surrender of the outstanding certificates now in their possession) to new certificates of stock, in their own names, from the two companies (who are parties to the suits); and to the unpaid dividends on the stock since testator's death (which have been held in abeyance during the litigation); and to the return of such moneys as have been paid since testator's death to or for Elsie and Dorothy, out of the aforesaid dividend accounts.

I think the case is one where no costs should be awarded.

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Final Decree.

(Filed June 23rd, 1922.)

IN CHANCERY OF NEW JERSEY.

Between J. W. RUFUS BESSON, <i>et al.</i> , EX- ECUTORS AND TRUSTEES OF RICH- ARD STEVENS, DECEASED, <div style="text-align: right;"><i>Complainants,</i></div> <div style="text-align: center;"><i>and</i></div> ELIZABETH C. STEVENS, JR., <i>et als.</i> , <div style="text-align: right;"><i>Defendants.</i></div>	}	On Bill Etc. Final Decree	10
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THIS CAUSE coming on to be heard in the pres-
 ence of J. W. Rufus Besson and Josiah Stryker,
 of counsel with the Complainants; Henry J. Cam-
 by, of counsel with the defendant Dorothy P. Stev-
 ens; Maximilian T. Rosenberg and Robert H.
 McCarter, of counsel with defendant Theodosius
 Stevens, as Administrator of the Estate of Eliza-
 beth C. Stevens, Jr., deceased; Mathew J. Tack-
 ella, of counsel with defendants Caroline B. Stev-
 ens and Richard Stevens, Jr., and David F. Plahn
 of counsel with defendant, the Hoboken Land and
 Improvement Company, and the pleadings and
 proofs having been read, and the arguments of
 the respective counsel having been heard and con-
 sidered, and the court having duly considered the
 said pleadings, proofs and arguments;

And it appearing to the court that Richard
 Stevens, at the time of his death was the owner
 of six-hundred (600) shares of the stock of the
 Hoboken Land and Improvement Company, evi-
 denced by certificate No. 334 issued by the Hobo-

Final Decree (Elizabeth C. Stevens, Jr.)

ken Land and Improvement Company in the name of Elizabeth C. Stevens; and also was the owner of four hundred and ten (410) shares of the common capital stock of the Hoboken Paper Mill Company, evidence by certificate No. 36 issued
 10 by the Hoboken Paper Mill Company in the name of Elizabeth C. Stevens; and also the owner of eleven hundred and sixty-one (1161) shares of the preferred stock of the Hoboken Paper Mill Company, evidenced by certificate No. 1, issued by the Hoboken Paper Mill Company, in the name of Elizabeth C. Stevens;

And it further appearing to the Court that the complainants are entitled to the relief sought and
 20 prayed for by them in their Bill of Complaint;

IT IS ON THIS twenty-first day of June A. D. Nineteen hundred and twenty-two by 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 order, adjudge and decree that the complainants, as executors and trustees under the last will and testament of Richard Stevens, deceased, are the owners of the 600 shares of stock of the Hoboken Land and Improvement Company, a corporation of New Jersey, evidenced by Certificate No. 334 in the name of
 30 Elizabeth C. Stevens; and also the owners of the 410 shares of common capital stock of the Hoboken Paper Mill Company, a corporation of the state of New Jersey, evidenced by Certificate No. 36 in the name of Elizabeth C. Stevens; and also are the owners of the 1161 shares of preferred
 40 stock of the Hoboken Paper Mill Company, a corporation of the State of New Jersey, evidenced by Certificate No. 1 in the name of Elizabeth C. Stevens;

Final Decree (Elizabeth C. Stevens, Jr.)

AND IT IS FURTHER ORDERED that upon the surrender to the defendant, the Hoboken Land and Improvement Company of said Certificate No. 334, the said Hoboken Land and Improvement Company do transfer on its books to the complainants the said 600 shares of common capital stock of said company evidenced by said certificate and do execute in the name of the complainants and deliver to said complainants a certificate or certificates for said 600 shares of stock; 10

AND IT IS FURTHER ORDERED that upon the surrender to the defendant the Hoboken Paper Mill Company of said Certificate No. 36, the said Hoboken Paper Mill Company do transfer on its books to the complainants the said 410 shares of common capital stock of said company evidenced by said certificate and do execute in the name of the complainants and deliver to said complainants a certificate or certificates for said 410 shares of stock; 20

AND IT IS FURTHER ORDERED that upon the surrender to the defendant, the Hoboken Paper Mill Company of said Certificate No. 1, the said Hoboken Paper Mill Company do transfer on its books to the complainants the said 1161 shares of preferred capital stock of said company evidenced by said certificate and do execute in the name of the complainants and deliver to said complainants a certificate or certificates for said 1161 shares of stock; 30

AND IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the balance credited on the books of the Hoboken Land and Improvement Company in the account known as the "Elsie Stevens Special Account" at the date of the death of the said Richard Stevens is the property of the said com- 40

Final Decree (Elizabeth C. Stevens, Jr.)

plainants as executors and trustees under the last will and testament of the said Richard Stevens, deceased, and that the said Hoboken Land and Improvement Company pay over and deliver to the said complainants as executors and trustees
10 as aforesaid, upon demand by them, the amount of such balance.

AND IT IS FURTHER ORDERED, ADJUDGED AND DECREED that all dividends declared since the death of said Richard Stevens on said six hundred (600) shares of stock of the Hoboken Land and Improvement Company, evidenced by said certificate No. 334, are the property of the said complainants as executors of the Estate of the said Richard Stevens, deceased, and that such dividends, so far as
20 the same have not been heretofore paid either to the said complainants or on their order, shall be paid by the said Hoboken Land and Improvement Company to the said complainants;

AND IT IS FURTHER ORDERED, ADJUDGED AND DECREED that all dividends declared since the death of said Richard Stevens on said four hundred and ten (410) shares of common capital stock of the
30 Hoboken Paper Mill Company, evidenced by said Certificate No. 36, and on said eleven hundred and sixty-one (1161) shares of the preferred stock of the Hoboken Paper Mill Company, evidenced by said Certificate No. 1, are the property of the said complainants as executors of the Estate of the said Richard Stevens, deceased, and that such dividends, so far as the same have not been
40 heretofore paid either to the said complainants or on their order, shall be paid by the said Hoboken Paper Mill Company to the said complainants.

AND IT IS FURTHER ORDERED that the following counsel fees to be paid out of the estate of the said Richard Stevens, deceased be and the same

Final Decree (Elizabeth C. Stevens, Jr.)

hereby are allowed: To J. W. Rufus Besson, solicitor of complainant three thousand dollars; To Josiah Stryker, of counsel with the complainants Twenty-five hundred dollars; To Maximilian T. Rosenberg, solicitor, and Robert H. McCarter, of counsel with the defendants, Theodosius Stevens, administrator of the estate of Elizabeth C. Stevens, deceased together Five thousand dollars; to Henry J. Camby, guardian ad litem and solicitor of defendant, Dorothy P. Stevens, Four hundred dollars; to Mathew J. Tackella, guardian ad litem and solicitor of Richard Stevens, and solicitor of Caroline B. Stevens, Four hundred dollars.

Respectfully advised,

MALCOLM G. BUCHANAN,

V. C.

E. R. WALKER,

C.

A true copy

JESSE R. SALMON.

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Final Decree.

(Filed June 23rd, 1922.)

IN CHANCERY OF NEW JERSEY.

Between

10 J. W. RUFUS BESSON, *et al.*, EX-
ECUTORS AND TRUSTEES OF RICH-
ARD STEVENS, DECEASED,

*Complainants,**and*DOROTHY P. STEVENS, *et al.*,*Defendants.*

etc.

Final

Decree

On Bill

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This cause coming on to be heard in the presence of J. W. Rufus Besson and Josiah Stryker of counsel with the complainants; Henry J. Camby, of counsel with the defendant Dorothy P. Stevens; Maximilian T. Rosenberg and Robert H. McCarter of counsel with the defendant Theodosius Stevens, as administrator of the Estate of Elizabeth C. Stevens, Jr., deceased; Mathew J. Tackella, of

30 counsel with the defendants Caroline B. Stevens and Richard Stevens, Jr., and David F. Plahn, of counsel with the defendant, The Hoboken Land and Improvement Company, and the pleadings and proofs having been read and the arguments of the respective parties having been heard and considered, and the court having duly considered the said pleadings and proofs and arguments, and it appearing to the court that Richard Stevens, at the time of his death, was the owner of

40 seven hundred (700) shares of the capital stock of the Hoboken Land and Improvement Company,

Final Decree (Elizabeth C. Stevens, Jr.)

represented by Certificate No. 336 issued by the Hoboken Land and Improvement Company to Dorothy P. Stevens, and that to such ownership the complainants herein, have succeeded, and that the complainants are entitled to the relief sought and prayed for by them in their bill of complaint: **10**

IT IS ON THIS twenty-first day of June A. D. one thousand nine hundred and twenty-two, by 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, that the complainants as executors and trustees under the last will and Testament of Richard Stevens, deceased, are the owners of the 700 shares of stock of the Hoboken Land and Improvement Company, a corporation of New Jersey, evidenced by Certificate No. 336 in the name of Dorothy P. Stevens; **20**

AND IT IS FURTHER ORDERED, that upon the surrender to the Hoboken Land and Improvement Company of said certificate with the assignment and power of attorney executed by Dorothy P. Stevens annexed thereto, said Hoboken Land and Improvement Company shall cancel said certificate No. 336 and in lieu thereof shall execute in the name of complainants a certificate or certificates for the 700 shares of common capital stock of the said Hoboken Land and Improvement Company evidenced by said Certificate No. 336 and shall deliver said new certificate to the complainants as such executors and trustees. **30**

AND IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the balance credited on the books of the Hoboken Land and Improvement Company in the account known as the "Dorothy P. Stevens Account" at the date of the death of the said Rich- **40**

Final Decree (Dorothy P. Stevens.)

ard Stevens is the property of the said complainants as executors and trustees under the last will and testament of the said Richard Stevens, deceased and that the said Hoboken Land and Improvement Company pay over and deliver to the said complainants as executors and trustees as aforesaid, upon demand by them, the amount of such balance.

AND IT IS FURTHER ORDERED, ADJUDGED AND DECREED that all dividends declared since the death of said Richard Stevens on said seven hundred (700) shares of common capital stock of the Hoboken Land and Improvement Company, evidenced by said certificate No. 336, are the property of the said complainants as executors of the Estate of the said Richard Stevens, deceased, and that such dividends so far as the same have not been heretofore paid either to the said complainants or on their order, shall be paid by the said Hoboken Land and Improvement Company to the said complainants.

AND IT IS FURTHER ORDERED that the following counsel fees to be paid out of the estate of the said Richard Stevens, deceased, be and the same hereby are allowed: To J. W. Rufus Besson, solicitor of complainant three thousand dollars; To Josiah Stryker, of counsel with the complainants twenty-five hundred dollars; to Maximilian T. Rosenberg, solicitor, and Robert H. McCarter, of counsel with the defendants, Theodosius Stevens, administrator of the estate of Elizabeth C. Stevens, deceased, together five thousand dollars; to Henry J. Camby, Guardian ad litem and solicitor of defendant, Dorothy P. Stevens; four hundred dollars; to Mathew J. Tackella guardian ad litem and solicitor of Richard Stevens, and solicitor of Caroline B. Stevens four hundred dollars.

Respectfully advised:

MALCOLM G. BUCHANAN,
V. C.

E. R. WALKER,
C.

JESSE R. SALMON,
Clerk.

A true copy.

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Notice of Appeal.

(Filed October 26, 1922)

IN CHANCERY OF NEW JERSEY.

Between

J. W. RUFUS BESSON, *et al.*, EX-
ecutors and Trustees of Richard
Stevens, deceased,

Complainants,

and

ELIZABETH C. STEVENS, JR., *et al.*,
Defendants.

On Bill etc.

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Notice of Appeal.

The defendant, Theodsius Stevens, Administrator
of the goods, chattels and credits of Elizabeth C.
Stevens, Jr., hereby appeals to the Court of Er-
rors and Appeals in the last resort in all causes,
from so much of the final decree made in this
Court, in the above entitled cause, as decrees that
the complainants as executors and trustees under
the last will and testament of Richard Stevens,
deceased, are the owners of the six hundred (600)
shares of stock of the Hoboken Land and Improve-
ment Company, a corporation of the State of New
Jersey, evidenced by certificate No. 334, in the

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Notice of Appeal.

name of Elizabeth C. Stevens; and also are the owners of the 410 shares of common capital stock of the Hoboken Paper Mill Company, a corporation of the State of New Jersey, evidenced by certificate No. 36, in the name of Elizabeth C. Stevens; and also are the owners of the 1161 shares of the preferred stock of the Hoboken Paper Mill Company, a corporation of the State of New Jersey, evidenced by certificate No. 1, in the name of Elizabeth C. Stevens:

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And also, from so much of the said final decree as orders that upon surrender to the defendant, the Hoboken Land and Improvement Company of said Certificate No. 334, the said Hoboken Land and Improvement do transfer on its books to the complainants the said 600 shares of common stock of said company evidenced by said certificate and do execute in the name of the complainants and deliver to said complainants a certificate or certificates for said 600 shares of stock:

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And also, from so much of the said final decree as orders that upon the surrender to the defendant the Hoboken Paper Mill Company of said Certificate No. 36, the said Hoboken Paper Mill Company do transfer on its books to the complainants the said 410 shares of common capital stock of said company evidenced by said certificate and do execute in the name of the complainants and deliver to said complainants a certificate or certificates for said 410 shares of stock;

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And also, from so much of the said final decree as orders that upon the surrender to the defendant, the Hoboken Paper Mill Company of said Certificate No. 1, the said Hoboken Paper Mill Company do transfer on its books to the complainants the said 1161 shares of preferred capital stock of said company evidenced by said certificate and do execute in the name of the complainants and

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Notice of Appeal.

deliver to said complainants a certificate or certificates for said 1161 shares of stock;

And also, from so much of the said final decree as decrees that the balance credited on the books of the Hoboken Land and Improvement Company in the account known as the "Elsie Stevens, Special Account" at the date of the death of the said Richard Stevens is the property of the said complainants as executors and trustees under the last will and testament of the said Richard Stevens, deceased, and that the said Hoboken Land and Improvement Company pay over and deliver to the said complainants as executors and trustees as aforesaid, upon demand by them, the amount of such balance;

And also, from so much of the said final decree as decrees that all dividends declared since the death of said Richard Stevens on said six hundred (600) shares of stock of the Hoboken Land and Improvement, evidenced by said certificate No. 334, are the property of the said complainants as executors of the Estate of the said Richard Stevens, deceased, and that such dividends, so far as the same have not been heretofore paid either to the said complainants or on their order, shall be paid by the said Hoboken Land and Improvement Company to the said complainants;

And also, from so much of the said final decree as decrees that all dividends declared since the death of said Richard Stevens on said four hundred and ten (410) shares of common capital stock of the Hoboken Paper Mill Company, evidenced by said certificate No. 36, and on said eleven hundred and sixty-one (1161) shares of the preferred stock of the Hoboken Paper Mill Company, evidenced by said certificate No. 1 are the property of the said complainants as executors of the Estate of the said Richard Stevens, deceased, and that

such dividends so far as the same have not been heretofore paid either to the said complainants or on their order, shall be paid by the said Hoboken Paper Mill Company to the said complainants.
Dated October 17th, 1922.

10 M. T. ROSENBERG
Solicitor for and of Counsel
with Theodosius Stevens, Ad-
ministratoꝛ.

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

M. T. ROSENBERG
of Counsel with Theodosius
Stevens, Administrator.

20 **Notice of Appeal.**

(Filed October 26, 1922)

IN CHANCERY OF NEW JERSEY.

30	Between J. W. RUFUS BESSON, <i>et al.</i> , EX- ecutors and Trustees of Richard Stevens, deceased, <div style="text-align: right;"><i>Complainants,</i></div> <div style="text-align: center;"><i>and</i></div> DOROTHY P. STEVENS, <i>et al.</i> , <div style="text-align: right;"><i>Defendants.</i></div>	} On Bill &c.
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Notice of Appeal.

40 The defendant, Dorothy P. Stevens, by Henry J. Camby, her Guardian ad litem, hereby appeals to the Court of Errors and Appeals in the last resort in all causes, from so much of the final decree made in this Court, in the above entitled cause, as decrees that the complainants as executors

Notice of Appeal.

and trustees under the last Will and Testament of Richard Stevens, deceased, are the owners of the 700 shares of stock of the Hoboken Land and Improvement Company, a corporation of New Jersey, evidenced by Certificate No. 336 in the name of Dorothy P. Stevens.

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And also, from so much of the said final decree as orders that upon surrender to the Hoboken Land and Improvement Company of said certificate with the assignment and power of attorney executed by Dorothy P. Stevens annexed thereto, said Hoboken Land and Improvement Company shall cancel said certificate No. 336 and in lieu thereof shall execute in the name of the complainants, a certificate or certificates for the 700 shares of common capital stock of the said Hoboken Land and Improvement Company, evidenced by said Certificate No. 336 and shall deliver said new certificate to the complainants as such executors and trustees.

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And also, from so much of the said final decree as decrees that the balance credited on the books of the Hoboken Land and Improvement Company, in the account known as the "Dorothy P. Stevens, Account" at the date of the death of the said Richard Stevens, is the property of the said complainants as executors and trustees under the last Will and Testament of the said Richard Stevens, deceased, and that the said Hoboken Land and Improvement Company pay over and deliver to the said complainants as executors and trustees as aforesaid, upon demand by them, the amount of such balance.

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And also, from so much of the said final decree as decrees that all dividends declared since the death of said Richard Stevens on said seven hundred (700) shares of common capital stock of the Hoboken Land and Improvement Company, evi-

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Notice of Appeal.

10 denced by said Certificate No. 336, are the property of the said complainants as executors of the Estate of the said Richard Stevens, deceased, and that such dividends so far as the same have not been heretofore paid either to the said complainants or on their order, shall be paid by the said Hoboken Land and Improvement Company to the said complainants.

Dated October 17th, 1922.

HENRY J. CAMBY

Guardian ad litem of Dorothy
P. Stevens, and solicitor pro se.

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

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HENRY J. CAMBY,
Of Counsel.

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Petition of Appeal.

(Filed Oct. 27, 1922.)

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between

J. W. RUFUS BESSON, *et al.*, EXECUTORS AND TRUSTEES OF RICHARD STEVENS, DECEASED,*Complainants-Respondents,*
*and*ELIZABETH C. STEVENS, JR., *et al.*,
*Defendants,*THEODOSIUS STEVENS, ADMINISTRATOR OF ELIZABETH C. STEVENS, JR.,
Appellant.

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To the Honorable the court of Errors and Appeals
in the last resort in all causes:

The petition of Theodosius Stevens, Administrator of the goods, chattels and credits of Elizabeth C. Stevens, Jr., the appellant in the above-stated cause, respectfully shows that your petitioner finds himself aggrieved by a final decree made in the Court of Chancery by his Honor Edwin Robert Walker, Chancellor of the state of New Jersey, bearing date the Twenty-first day of June, Nineteen hundred and twenty-two, wherein J. W. Rufus Besson, Edwin A. S. Brown, W. Willis Reese and Farmers' Loan and Trust Company of New York, executors of and Trustees under the last will and testament of Richard Stevens, deceased, were complainants, and the said Theodosius Stevens Administrator of the goods, chattels and credits of Elizabeth C. Stevens, Jr., and Caroline B. Stevens, Dorothy P. Stevens, Richard Stevens, Jr., and Hoboken Land and Improvement Company,

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Petition of Appeal.

were defendants, in this respect, to wit:

That the said decree orders, adjudges and decrees that the complainants, as executors and trustees, under the last will and testament of Richard Stevens, deceased, are the owners of the
 10 600 shares of stock of the Hoboken Land and Improvement Company, a corporation of New Jersey, evidenced by certificate No. 334 in the name of Elizabeth C. Stevens; and also are the owners of the 410 shares of common capital stock of the Hoboken Paper Mill Company, a corporation of the State of New Jersey, evidenced by certificate No. 36 in the name of Elizabeth C. Stevens; and also are the owners of the 1161
 20 shares of preferred stock of the Hoboken Paper Mill Company, a corporation of the State of New Jersey, evidenced by certificate No. 1 in the name of Elizabeth C. Stevens.

That the said decree orders that upon surrender to the defendant, the Hoboken Land and Improvement Company of said certificate No. 334, the said Hoboken Land and Improvement Company do transfer on its books to
 30 the complainants the said 600 shares of common stock of said company evidenced by said certificate and do execute in the name of the complainants and deliver to said complainants a certificate or certificates for said 600 shares of stock.

That the said decree orders that upon the surrender to the defendant the Hoboken Paper Mill Company of said certificate No. 36, the said Hoboken Paper Mill Company do transfer on its
 40 books to the complainants the said 410 shares of common capital stock of said company evidenced by said certificate and do execute in the name of the complainants and deliver to said complainants a certificate or certificates for said 410 shares of stock.

Petition of Appeal.

That the said decree orders that upon the surrender to the defendant, the Hoboken Paper Mill Company of said certificate No. 1, the said Hoboken Paper Mill Company do transfer on its books to the complainants the said 1161 shares of preferred capital stock of said company evidenced by said certificate and do execute in the name of the complainants and deliver to said complainants a certificate or certificates for said 1161 shares of stock. **10**

That the said decree orders, adjudges and decrees, that the balance credited on the books of the Hoboken Land and Improvement Company in the account known as the "Elsie Stevens, Special Account" at the date of the death of the said Richard Stevens is the property of the said complainants as executors and trustees under the last will and testament of the said Richard Stevens, deceased, and that the said Hoboken Land and Improvement Company pay over and deliver to the said complainants as executors and trustees as aforesaid, upon demand by them, the amount of such balance. **20**

That the said decree orders, adjudges and decrees that all dividends declared since the death of said Richard Stevens on said six hundred (600) shares of stock of the Hoboken Land and Improvement Company, evidenced by said certificate No. 334, are the property of the said complainants as executors of the Estate of the said Richard Stevens, deceased, and that such dividends, so far as the same have not been heretofore paid either to the said complainants or on their order, shall be paid by the said Hoboken Land and Improvement Company to the said complainants. **30**
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That the said decree orders, adjudges and decrees that all dividends declared since the death of

Petition of Appeal.

10 said Richard Stevens on said four hundred and ten (410) shares of common capital stock of the Hoboken Paper Mill Company, evidenced by said certificate No. 36, and on said eleven hundred and sixty-one (1161) shares of the preferred stock of the Hoboken Paper Mill Company, evidenced by said certificate No. 1 are the property of the said complainants as executors of the Estate of the said Richard Stevens, deceased, and that such dividends so far as the same have not been heretofore paid either to the said complainants or on their order, shall be paid by the said Hoboken Paper Mill Company to the said complainants.

20 And your petitioner humbly appeals from that part of the decree which decrees and orders as aforesaid, upon the ground that the same is erroneous, for that, the Chancellor should have decreed that the said shares of stock, balance of account and dividends therein mentioned were the property of the said Elizabeth C. Stevens, Jr., at the time of the death of the said Richard Stevens, and at the time of her death, and are the property of this appellant as administrator.

30 Your petitioner therefore prays that the said decree of the said Chancellor may, in the particulars aforesaid, be reversed, set aside and for nothing holden.

And that your petitioner may have such relief in the premises as to this honorable court shall seem meet.

M. T. Rosenberg,
Solicitor for and of Counsel with Appellant

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Petition of Appeal.**NEW JERSEY COURT OF ERRORS AND APPEALS.**

Between - J. W. RUFUS BESSON, <i>et al.</i> , EX- ECUTORS AND TRUSTEES of RICH- ARD STEVENS, DECEASED, <i>Complainants-Respondents,</i> <i>and</i> DOROTHY P. STEVENS, <i>Appellant,</i> <i>et al.,</i> <div style="text-align: right;"><i>Defendants.</i></div>	}	Petition Of Appeal.	10
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To the Honorable the Court of Errors and Appeals in the last resort in all causes: **20**

The petition of Dorothy P. Stevens, by Henry J. Camby, her Guardian ad litem, the appellant in the above-stated cause, respectfully shows that your petitioner finds herself aggrieved by a final decree made in the court of Chancery by his Honor Edwin Robert Walker, Chancellor of the State of New Jersey, bearing date the Twenty-first day of June, Nineteen hundred and twenty-two, wherein J. W. Rufus Besson, Edwin A. S Brown, W. Willis Reese and Farmers' Loan and Trust Company of New York, Executors of and Trustees under the last Will and Testament of Richard Stevens, deceased, were complainants, and the said Dorothy P. Stevens, and Theodosius Stevens, Administrator of the goods, chattels and credits of Elizabeth C. Stevens, Jr., Caroline B. Stevens, Richard Stevens, Jr., and Hoboken Land and Improvement Company, were defendants, in this respect, to wit: **30**

That the said decree orders, adjudges and de- **40**

Petition of Appeal.

crees that the complainants as executors and trustees under the last Will and Testament of Richard Stevens, deceased, are the owners of the 700 shares of stock of the Hoboken Land and Improvement Company, a corporation of New Jersey, evidenced by certificate No. 336 in the name of Dorothy P. Stevens.

That the said decree orders that upon surrender to the Hoboken Land and Improvement Company of said certificate with the assignment and power of attorney executed by Dorothy P. Stevens annexed thereto, said Hoboken Land and Improvement Company shall cancel said certificate No. 336 and in lieu thereof shall execute in the name of the complainants, a certificate or certificates for the 700 shares of common capital stock of the said Hoboken Land and Improvement Company, evidenced by said Certificate No. 336 and shall deliver said new certificate to the complainants as such executors and trustees.

That the said decree orders, adjudges and decrees that the balance credited on the books of the Hoboken Land and Improvement Company, in the account known as the "Dorothy P. Stevens, Account" at the date of the death of the said Richard Stevens, is the property of the said complainants as executors and trustees under the last Will and Testament of the said Richard Stevens, deceased, and that the said Hoboken Land and Improvement Company pay over and deliver to the said complainants as executors and trustees as aforesaid, upon demand by them, the amount of such balance.

That the said decree orders, adjudges and decrees that all dividends declared since the death of said Richard Stevens on said seven hundred (700) shares of common capital stock of the Ho-

Petition of Appeal.

boken Land and Improvement Company, evidenced by said certificate No. 336, are the property of the said complainants as executors of the Estate of the said Richard Stevens, deceased, and that such dividends so far as the same have not been heretofore paid either to the said complainants or on their order, shall be paid by the said Hoboken Land and Improvement Company to the said complainants. **10**

And your petitioner humbly appeals from that part of the decree which decrees and orders as aforesaid, upon the ground that the same is erroneous, for that, the Chancellor should have decreed that the said shares of stock, balance on deposit and dividends therein mentioned are the property of the said Dorothy P. Stevens. **20**

Your petitioner therefore prays that the said decree of the said Chancellor may be, in the particulars aforesaid, received, set aside and for nothing holden.

And that your petitioner may have such relief in the premises as to his honorable Court shall seem meet.

Henry J. Camby, **30**

Guardian ad litem of Dorothy P. Stevens, Appellant and solicitor pro se.

Henry J. Camby,
M. T. Rosenberg,
Of Counsel.

Exhibit C-1.

IN THE NAME OF GOD, AMEN: I, RICHARD STEVENS, of the City of Hoboken, County of Hudson and State of New Jersey, being in good health and of sound and disposing mind and memory and desirous of settling and arranging my earthly affairs with due deliberation, hereby make final disposition of my property, to take effect after my departure from this life and in pursuance of my intention thus expressed, do hereby make, publish and declare this my last will and testament in manner and form as follows:

10 First. I do order and direct that all my just debts be paid as soon as can conveniently be done after my decease.

20 Second: I give and bequeath to St. Paul's School at Concord, New Hampshire, Two Thousand (\$2,000) Dollars in cash.

Third: I give and bequeath to the trustees of the church of the Holy Innocents, in the City of Hoboken, New Jersey, Eight Thousand (\$8,000) Dollars in cash.

30 Fourth: I order and direct my executors hereinafter named, to set aside whatever sum of money may be necessary for the purchase of the following annuity, viz: Three Hundred (\$300) Dollars per year to Bertha Bonyman of Bridgeport, Connecticut, during the rest of her natural life.

Fifth: I give and bequeath the sum of Two Thousand (\$2,000) Dollars to Gilbert Y. Tompkins, formerly known as "Brother Gilbert."

40 Sixth: I give and bequeath to my daughter Dorothy Pintard Stevens and to my son Richard Stevens, Jr., when they shall reach the age of

Exhibit C—1

twenty-one, the sum of Twenty-eight Thousand (\$28,000) Dollars each, in order to place them on the same financial footing with my two oldest children, who received a bequest of a similiar sum each from my mother, the late Martha B. Stevens. This bequest is given to my said daughter Dorothy Pintard Stevens and my son Richard Stevens, Jr., in addition to the subsequent residuary bequests to them made in this my last will. **10**

Seventh: I give and bequeath to my friend, Elsie Jenvey, the sum of Four Thousand (\$4,000) Dollars in recognition for the many services she has rendered to me and my children.

Eighth: I give and bequeath the sum of Ten Thousand (\$10,000) Dollars to Miss Mary M. Moran. **20**

Ninth: I give and bequeath to my said executors the sum of Ten Thousand (\$10,000) Dollars to be distributed among my personal employees, said executors are to determine in what proportion said sum shall be distributed, having in consideration the length of service of said employees.

Tenth: I give and bequeath to my friend Julius C. Durstewitz, of the City of Hoboken, Two Thousand (\$2,000) Dollars. **30**

Eleventh: I give and bequeath to my friend Mrs. James A. Butler, of the City of Jersey City, Two Thousand (\$2,000) Dollars.

Twelfth: I give and bequeath to each of my children in case and when they shall respectively attain the age of twenty-four years, the sum of Fifty Thousand (\$50,000) Dollars. **40**

Thirteenth: I give and bequeath to Christ Hospital in Jersey City, New Jersey, the sum of Ten Thousand (\$10,000) Dollars.

Fourteenth: I hereby nominate, constitute and appoint Edwin A. S. Brown of Montclair,

Exhibit C—1

10 New Jersey, W. Willis Reese of New York, J. W. Rufus Besson of the City of Hoboken, New Jersey, and the Farmers' Loan and Trust Company of New York, now located at No. 22 William Street, in the City of New York, executors of and trustees under this my last will and testament and order and direct that they shall not nor shall any of them be required to give bond for the faithful performance of their duties as such executors and trustees.

20 Fifteenth: And I do further give to my said executors or to the survivor or survivors of them, full power and authority to grant, bargain, sell, convey or mortgage any or all of my property, real or personal, at public or private sale at such time and upon such terms as they shall think fit.

Sixteenth: I give and bequeath the sum of Three Thousand (\$3,000) Dollars to St. Katherine's Home of Jersey City, New Jersey.

Seventeenth: I give and bequeath the sum of One Thousand Dollars to United Aid Home of Hoboken, New Jersey.

30 Eighteenth: I give and bequeath to Henry Ott, Two Thousand (\$2,000) Dollars; this legacy to be in addition to the Ten Thousand (\$10,000) Dollars bequeathed to my personal employees in paragraph nine of this my last will, and I direct my said executors to purchase an annuity bringing in Nine hundred (\$900) per year for the benefit of my housekeeper Miss Josephine B. Quinn, said annuity to be paid to her for the term of her natural life.

40 Nineteenth: I give and bequeath to my dear sister, Caroline B. Wittpenn, should she survive me, any ten articles which she may select from my home in Castle Point, such as family portraits, old silver, etc.

Exhibit C—1

Twentieth: I give and bequeath to my friend Louise B. Scott, the sum of Five Hundred (\$500) Dollars in cash.

Twenty-first. If any person or persons after my decease attempt to defeat, alter, set aside or contest this my last will and testament or any clause or clauses of it or part or parts of it, or any codicil or codicils to it, then shall that person or persons forfeit all and every right and claims which he, she or they now have or hereafter may acquire under this my last will and testament or otherwise to any part or parts of my estate, real and personal and the forfeited property shall be given to my children or such of them as do not attempt to defeat, alter, set aside or contest this my will or any codicil thereof, such distribution to be per stirpes ad infinitum. 10 20

Twenty-second: All the rest, residue and remainder of my property, both real and personal and wheresoever situated, of which I shall die seized or possessed or to which I may be entitled at the time of my decease, I give, devise and bequeath to the said Edwin A. S. Brown, W. Willis Reese, J. W. Besson, and to the Farmers' Loan and Trust Company, a corporation organized and existing under the laws of the State of New York, having its principal place of business at number 22 William Street, in the Borough of Manhattan, City, County and State of New York, IN TRUST, to divide the same into so many equal parts that there shall be one equal part for each of my children me surviving and one equal part for the issue collectively of any child of mine who may have predeceased me of whom issue shall survive me, and to set aside said equal parts accordingly for such children and issue; but if there be only one such child or the issue of only 80 40

Exhibit C—1

one such child me surviving, to set apart the whole of my said residuary estate for such child or such issue; to distribute (per stirpes) among the issue me surviving of any such deceased child the part (or the whole) set aside for such issue;

10 to hold IN TRUST the part set aside for said surviving children, other than the part set aside for my daughter Elsie (or the whole if there be only one child); to receive the rents, issues and profits of said parts (or of the whole) and to apply to the use of said children respectively so much of the net income of their respective parts as may be necessary or proper for their comfortable support, education and maintenance, until they shall

20 respectively attain the age of 21 years, and to accumulate the remainder (if any) of such net income during the respective minorities of said children respectively; and as said children respectively reach the age of 21 years to pay over to said children respectively the accumulated net income (if any) of their respective parts, and thereafter to apply to the use of said children respectively the entire net income of their respective

30 parts until they shall attain the age of 40 years, and then to transfer and pay over to them respectively the principal of their respective parts, and if any such child who shall have survived me (other than my said daughter Elsie) shall die before attaining the age of 40 years, upon the death of such child to distribute the principal of the part then held in trust for such child and all accumulated income thereon (if

40 any) among the then surviving issue of such deceased child, in equal shares, per stirpes, and in default of such issue, among my issue then surviving, in equal shares, per stirpes; PROVIDED HOWEVER, that the share distributable to my said daughter Elsie in the event of the death of any

Exhibit C—1

child of mine under the age of 40 years without leaving issue surviving such deceased child shall be added to the principal of the trust fund hereinafter directed to be held in trust for my said daughter, the share so added to follow in all respects, both as to income and principal, the disposition of the fund to which it is added; and as to the part (or the whole) of my said residuary estate directed to be held in trust for my said daughter Elsie, to apply to her use the net income thereof during the term of her natural life. My said Trustees are hereby authorized to use said net income for the purpose of supplying said Elsie with all medical care and nursing that her condition may require from time to time, and to see that she is well and tenderly taken care of and all her wants supplied in a manner fitting to her position in life, using for that purpose either a part of said net income or the whole of said net income. Upon the death of my said daughter Elsie, I give, devise and bequeath the principal of the part then held in trust for her, and also all net income (if any) accumulated thereon, to my issue her surviving, in equal shares, per stirpes.

IN WITNESS WHEREOF, I have hereunto set my hand and seal, this 7th day of March, 1917.

RICHARD STEVENS (Seal.)

Signed, sealed, published and declared by the above named testator, Richard Stevens, as and for his last will and testament in the presence of us, who by his request and in his presence and in the presence of each other, have hereunto subscribed our names as attesting witnesses.

Samuel A. Besson,

1112 Bloomfield St., Hoboken, N. J.

Walter B. Wilson,

907 Castle Point Terrace, Hoboken, N. J.

(Signed) Richard Stevens.

Exhibit C-2.

Stub entries in Certificate of Stock Book, of
Hoboken Land & Improvement Company, as fol-
lows:—

- 10 #326
Feb. 14, 1917
Issued to Caroline
B. Wittpenn, Trustee
from #151
Surrendered
600 shares
Recd. Cft.
Caroline B. Wittpenn.
- 20 #334
Oct. 1, 1918
issued from
#326
to Elizabeth C. Stevens, Jr.
600 shares
Recd. Cft.
Elizabeth C. Stevens, Jr.
Dec. 9, 1918.
- 30 #336
Apl. 30, 1919
Issued to
Dorothy P. Stevens
from #327
700 shares
Rec'd Cft.
Apl. 30, 1919.
Dorothy P. Stevens
per Richard Stevens
Atty.

Exhibit C-3.

Exhibit C-3 consists of the following eight checks all drawn on the order of the First National Bank of Hoboken, by the Hoboken Land & Improvement Company, to the order of Elsie Stevens, Jr., whose name was stamped thereon, as payee, and all signed by William C. Brown, as Cashier and countersigned by Edwin A. S. Brown, as Secretary, bearing a rubber stamp endorsement "Elsie Stevens, Jr." **10**

The numbers, dates and amounts of said checks being respectively, as follows.

Number	Date	Amount	
6648	May 1st 1919	900.	20
6615	April 1st, 1919	900.	
6582	March 1st, 1919	900.	
6549	February 21st, 1919	2400.	
6516	February 1st, 1919	900.	
6483	January 9th, 1919	900.	
6450	December 2nd, 1918.	900.	
6417	November 1st, 1918	900.	

Exhibit C-4.

Dec. 6, 1918.

H. L. & I. Co.

Please open new account under following name

"Elsie Stevens, Jr. Special."

In this account deposit monthly dividends paid to Elizabeth C. Stevens, Jr. on following stocks, **40**

600 shs. Hoboken Land & Imp. Co.

410 shr. *Common Stock* of Hoboken Paper
Mill Co.

1161 shr *Preferred Stock* of " " " "

(Signed) Richard Stevens.

Exhibit C-5.

Dec. 6, 1918.

H. L. & I. Co.

10 Please transfer from the account of Elsie Stevens, Jr., to the new account of Elsie Stevens, Jr., *Special*, the sum of Thirty-two hundred and twenty (3220) Dollars. This amount represents the following payments that were deposited to the credit of Elsie Etevens, Jr. account, viz:

	Oct. 1918	Dividend of 1% on 410 shs. Hoboken Paper Mill	\$410
	Nov. 1918.	Dividend on 600 shs. of H. L. & I. Co.	900
20	" 1918	Interest due on old bonds of Hoboken Paper Mill	1500
	" 1918	Div on 410 shs Hoboken Pa- per Mill Co.	410
			\$3220

(Signed) Richard Stevens.

30

40

in account with Elsie Stevens Special
 & Improvement Company
 Land

Hoboken Land & Improvement Company
Statement for Month

in account with Elsie Stevens Special
of 19

Cr.

		1918					
		Dec. 19	By Elsie Stevens, Jr.		4,530.00	4,530.00	
		1919					
		Jan. 2	By Cash: H. L. & I. Co.	Div.	900.00		
		2	" Hoboken Paper Mill Co.	"	410.00	1,310.00	
To Sundry Creditors	2,638.20	2,638.20	Feb. 1	By cash: H. L. & I. Co.	Div.	900.00	
					410.00		
			6	" Hoboken Paper Mill Co.	"	2,050.00	
			20	" H. L. & I. Co. extra	"	2,400.00	5,760.00
To Sundry Creditors	607.75	607.75	Mar 1	By cash: H. L. & I. Co.	Div.	900.00	
Balance		9,664.05	7	" Hoboken Paper Mill Co.	"	410.00	1,310.00
		12,910.00					
			Apr. 1	Balance			9664.05
			1	By cash: H. L. & I. Co.	Div.	900.00	
			2	" Hoboken Paper Mill Co.	"	410.00	1,310.00
			May 1	By cash: H. L. & I. Co.	Div.	900.00	
			2	" Hoboken Paper Mill Co.	"	4,473.50	5,373.50
Balance	17,657.55	17,657.55	June 2	By cash: H. L. & I. Co.	Div.	900.00	
			11	" Hoboken Paper Mill Co.	"	410.00	1,310.00
							17,657.55

Exhibit C-6.

Exhibit C-7.

Page 1.

**WORK SHEET for INDIVIDUAL INCOME
TAX RETURN**

For Net Incomes of More than \$5,000.

10

For Calendar Year 1918.

Elsie Stevens, Jr.

Castle Point,

Hoboken, N. J.

1. Did you make a return for 1917? No.
2. If so, what address did you give on that?
None.
3. To what collector's office was it sent? None
- 20** 4. Give number, if any, assigned to you for
1917, if it does not appear in address at
head of return. None.
5. Were you, in 1918, married and living with
wife (or husband)? No.
6. If not, were you head of a family as defined
in instructions under "Personal Ex-
emptions"? No.
- 30** 7. How many dependent persons under 18 (or
mentally or physically defective) re-
ceived their chief support from you in
1918? None.
8. If you claim any additional exemption on
account of dependent persons other than
your children, what was their relation-
ship to you? No.
- 40** 9. Write "R" if this return shows income re-
ceived or "A" if it shows income ac-
crued. R.
10. Did your wife (or husband) or minor child
make a separate return? No.

Exhibit C—7

- (If so give name, and address entered at head of that return.) None.
11. Enter below all nontaxable income received by (or accrued to) you during the year:
None.
12. State amount of stock dividends received by **10**
(or accrued) to you directly during the year, declared from earnings of domestic or resident corporations accumulated since February 28, 1913, and prior to January 1, 1918:
- (a) accumulated in 1917, \$ none
(b) Accumulated in 1916. \$ none.
(c) Accumulated since February 28, 1913, and prior to January 1, 1916. **20**
\$ none.
13. Enter in table below interest on Liberty Bonds and other obligations of the United States issued since September 1, 1917, received by (or accrued to) you during the year, and maximum amount of such obligations (par value) held at any one time from which such interest was derived (see instructions page 2 **30** under K (b) :

40

Exhibit C-7

1.	Class of	Maximum	Total	Maximum
	Obligation	Maximum		Exemption
	(d) Fourth Liberty			See note.
10	Loan	\$500	\$500	\$45,000.
				(In addition
				(an exemption
				(of \$5000. may
				(be claimed as
			30,000.	(to any one of
				(these classes
				(or may be
				(divided among
			30,000.	(them

(f) Totals 500 none 0

Note:—This exemption (maximum \$45,000.) is limited to one and one-half times the amount of bonds of the Fourth Liberty Loan originally subscribed for and still held. State here amount of bonds of the Fourth Liberty loan originally subscribed for and still held \$500.

14. Enter in table below income from partnerships, personal service corporations, and estates and trusts: none.

15.

Total Net Income Subject to Surtax.

15	Item L, page 2	\$5,926.05
16.	Item 12 (a)	none
17.	Item 14 (b), column 8	none

18.	Total (Items, 15, 16 and 17)	\$5,926.05
19.	Item 12 (b)	none
20.	Item 14 (c)	none
21.	Total (Items 18, 19 & 20)	\$5,926.05
22.	Item 12 (c)	none
23.	Item 14 (d)	none
24.	Total Net Income (Items 21, 22 and 23)	\$5,926.05

*Exhibit C—7**Total Net Income Subject to Normal Tax.*

At 1918 Rates.

25. Net Income shown page 2, Item J	\$2608.30	
26. Less personal exemption	1,000.00	
	<hr/>	
27. Balance	1,608.30	10
28. Amount subject to tax at 6% (not over \$4,000)	1,608.30	
29. Balance subject to tax at 12%	none	

At 1917 Rates.

30. Amount of Item 14 (b) column 7	none	
31. Balance of personal exemption not used above (Item 26 minus Item 25)	none	
	<hr/>	20
32. Balance subject to tax at 4%	none	

Calculation of Tax.

33. Normal Tax of 6% on amount of Item 28	156.50	
34. Normal tax of 12% on amount of Item 29	none	
35. Normal tax of 4% on amount of Item 32	none	
36. Surtax at 1918 rates (see surtax table on page 1 of instructions)	9.00	30
37. Surtax at prior rates (see surtax table on page 1 of instructions)	none	
38. Total Tax	165.50	
39. Tax paid at source (2% of amount of Item F, page 2)	46.50	
40. Income war profits, and excess-profits taxes paid in 1918 to foreign countries and possessions of the U. S.	none	40
	<hr/>	
41. Balance of Tax Due (Item 38 minus items 39 and 40)	119.00	
	<hr/>	

Exhibit C—7

42. Amount of tax paid on submission of return \$29.75

TAXPAYER'S RECORD OF PAYMENTS.

10	Pay-ment	Amount	Date	Check	Bank
				or M. O. Voucher No.	or office of Issue
	First	\$29.75	Mar. 15/19	366	
	Second				
	Third				
	Fourth				

Page 2 of Work Sheet.

20 TAXPAYER'S WORK SHEET FOR RETURN OF INCOME TAXABLE AT 1918 RATES.

- A. Income from business or profession. none.
- B. Income from salaries, wages, commissions, bonuses, directors fees and pensions. none.
- C. Income from partnerships, personal service corporations, and estates and trusts. none.
- 30 D. Profit from sale of land, buildings, stocks, bonds and other property. none.
- E. *Income from Rents and Royalties.*

40	Net income from Rents and Royalties (total of column 3 minus total of column 4, 5, 6, and 7	Amount	Re-	Other
		of rent roy-alties.	pairs, etc. Int.	Ex-penses.
		\$403.20	188.06	none 95.24 none
		\$403.20	\$188.06	none \$95.24 none \$283.30

F. Interest on corporation bonds containing tax-free covenants, on which a tax of 2% was paid by debtor corporation (including such interest received through fiduciary)	2325.00	
G. Other income (not including dividends, or interest on obligations of the United States)	none	10
H. Total net income from above sources	\$2608.30	
I. General deduction not included above	none	
J. Total net income on which normal tax is to be calculated at 1918 rates (H minus I) (enter as 25, page 1)	\$2608.30	
K. (a) Dividend on stock of corporations organized or doing business in the United States (not including income from personal service corporations):		20
Received directly, \$3318.75; received through partnerships, personal service corporations, etc. . . . Total	3318.75	
L. Total net income subject to surtax at 1918 rates (if this amount is \$5000. or less, make your return on Form 1040A, unless you had income taxable at 1917	\$5926.05	30

Exhibit C-8.

Rough Memorandum of Income Tax Report of
Elsie Stevens, Jr.

* * * * *

Disbursements.

Commission on rents	16.80
	<hr/>
	16.80

40

Exhibit C—8

	Bank deposits—	Repairs	P. S.
	and cash 90.00	3.32	1/10 int. on
	90.00	5.40	Hoboken Paper
			Mill bond.
	200.00	4.39	
	100.00	19.90	150.00
10			<hr/>
	90.00	139.00	150.00
	90.00	.25	
	90.00	10.80	
	90.00	4.39	
	90.00	.61	
		<hr/>	
	90.00	188.06	Taxes
	90.00		95.24
			<hr/>
20			95.24
	90.00		
	90.00		
	90.00		
	<hr/>		
	\$1380.00		
	Receipts.		Rents.
	Shore Road Div.	28.00	35.
		28.00	35.
		49.00	35.
		<hr/>	35.
		105.00	35.
30			35.
	Reading Co. coups.	120.00	35.
		<hr/>	
		120.00	35.
			35.
	United N. J. R. R.		35.
	& Canal coupons	160.00	35.
		<hr/>	35.
		160.00	<hr/>
			420.
	St. Louis, Iron	Less Comm.	16.80
40	Mt. etc. coupons	320.00	<hr/>
		<hr/>	\$403.20
		320.00	
	Hob. Ferry Co. "	375.00	
		<hr/>	
		375.00	

Exhibit C-8

Hackensack Water				
dividend	91.88			
	91.87			
	<u>183.75</u>			
Hoboken Paper Mill,				10
dividend	410.		\$213.75	
	410.			
	410.	Coupons		
		Div.	3318.75	
	1230.	Rents	420.00	
			<u>\$6063.75</u>	
H. L. & I. Co.	900.00	plus		
	900.00	150	150.	
	<u>1800.00</u>		<u>\$6213.75</u>	20
Hoboken Paper Mill				
interest on bond	1500.00			
	<u>1500.00</u>			
	150.00	to P. Campbell		
net	\$1350.00			
		Interest on bonds.		
		Coupons		30
		120.		
		160.		
		320.		
		375.		
		1350.		
		<u>\$2325.</u>		
		Dividends		40
		105.		
		183.75		
		1230.		
		1800		
		<u>\$3318.75</u>		

Exhibit C-9.

Exhibit C-9 consists of a wood and metal file compartment without lock about 10 inches high, 5 inches wide and about 1 foot deep.

There was no exhibit C-10.

10

Exhibit C-11.

Incorporated under the Laws of the State of New Jersey.

No.	shares.
1	-1161-

20

Hoboken Paper Mill Company.

Capital stock \$229,000.

Preferred stock \$129,000 Common stock \$100,000

This certifies that Elizabeth C. Stevens, Jr., is the owner of -1161- shares of the preferred capital stock of this company, full paid and non-assessable, transferable only in the books of this company by the holder hereof in person or by duly authorized attorney, upon surrender of this certificate properly endorsed.

30

This stock is part of an issue amounting in all to \$129,000. par value, authorized by the certificate of increase of capital stock and assent of the stockholders of the company thereto, filed in the office of the secretary of State of New Jersey, on the _____ day of _____, 1918.

40

This certificate entitles the holder thereto to receive, and the company is bound to pay, a fixed yearly dividend of seven per cent per annum payable half-yearly, before any dividends shall be set apart or paid on common stock, and the divi-

dends on the preferred stock are cumulative. The preferred stock is subject to redemption at par and accrued dividends after three years from the date of issue.

The holders of the preferred stock have no right to vote or to notice of meetings of stockholders.

The stock represented by this certificate shall not be resold or offered for sale or subscription during the period of the war without the consent of the Capital Issue Committee. **10**

Witness the seal of this Company and the signatures of the president and treasurer, this first day of November, 1918.

(Seal)

(Signed)

Richard Stevens President.

Sec'y and Treas. **20**

Palmer Campbell.

(Signed)

Shares \$100.00 each.

Exhibit C-12.

KNOW ALL MEN BY THESE PRESENTS,
That I, Elizabeth C. Stevens, Junior, for value received, have bargained, sold assigned and transferred, and by these presents do bargain, sell, assign and transfer unto Richard Stevens, one thousand one hundred and sixty-one shares of the Hoboken Paper Mill Company, of the preferred capital stock standing in my name on the books of the said Hoboken Paper Mill Company. **30**

And I do hereby constitute and appoint my true and lawful attorney, IRREVOCABLY, for me and in My name and stead but to use, sell assign, transfer and make over, all or any part of the **40**

said and for that purpose to make and execute all necessary acts of assignment and transfer thereof, and to substitute one or more persons with like power, hereby ratifying and confirming all that said attorney or substitutes shall lawfully do by virtue hereof.

10 IN WITNESS WHEREOF, I have hereunto set my hand and seal at Hoboken, the twenty-ninth day of January, 1919.

Signed, sealed and delivered in the presence of

Edwin A. S. Brown

(Signed)

Elizabeth C. Stevens, Jr. (L. S.)

(Signed)

20

Exhibit C-12a

CERTIFICATE.

No. 30

For 410 Shares

Issued to

Caroline B. Wittpenn

Dated Dec. 11, 1916

30 From whom transferred

Rich. Stevens.

Dated #1 Dec. 31st 1901

5 May 13th 1902

10 Feb. 5th 1908

No. Original Certificate	No. Original Shares	No. of Shares Transferred
# 1	220	220
5	32	1
10	189	189

40

Exhibit C—12A

Received Certificate No. 30

for 410 Shares

this 12th day of Dec. 1916.

Signed — Caroline B. Wittpenn,

per Richard Stevens,

Atty.

10

—o—

CERTIFICATE.

No. 36.

For 410 Shares

Issued to

Elizabeth C. Stevens, Jr.

Dated Oct. 2, 1918.

From whom transferred

Caroline B. Wittpenn.

20

Dated Dec. 11, 1916.

No. Original Certificate	No. Original Shares	No. of Shares Transferred
30	410	410

Received Certificate No. 36

for 410 Shares.

this day of 19

(Signed) — Elizabeth C. Stevens, Jr.

Stamped — Dec. 9, 1918.

30

40

Exhibit C-13.

10 Exhibit C-13 consists of nine checks of which two were drawn on the First National Bank of Hudson, to the order of Elizabeth C. Stevens, Jr., endorsed with rubber stamp "Elsie Stevens, Jr." and signed by Mr. William H. Gould as Vice-President, and Richard Stevens as President, as follows:

Number	Date	Amount.
12432	Feb. 1, 1919	\$ 410.
12442	Feb. 1, 1919	2,050.

20 The remaining seven checks were drawn on the Second National Bank of Hoboken, to the order of Elizabeth C. Stevens, Jr., all endorsed with rubber stamp "Elsie Stevens, Jr.", and all seven checks were signed by Palmer Campbell as Treasurer and William H. Gould, as Vice President, except No. 11487, which was signed by Richard Stevens and William H. Gould as Vice-President, as follows:

Number	Date	Amount
30 11250	Nov. 2, 1918.	\$410.
11314	Dec. 2, 1918	410.
11388	Jan 2, 1919	410.
11487	Mar. 1, 1919	410.
11541	Apr. 2, 1919	410.
11593	May 1, 1919	4,063.50
11597	May 1, 1919	410.

Exhibit C-14.

Page 107 of Minute Book.

Minutes of a special meeting of the Board of Directors of the Hoboken Paper Mill Company held at its principal office No. 1 Newark Street, Hoboken, N. J., on Friday, November 1st, 1918, at 1:45 p.m.

10

Present: Messrs. Richard Stevens,
Palmer Campbell,
Wm. H. Gould,
Walter B. Wilson.

Absent: None.

The minutes of the last meeting were read and approved.

The Secretary presented a Certificate of Increase of Capital stock of the Company which had been duly filed in the office of the Treasurer of the State of New Jersey on the 31st day of October, 1918. A copy of said certificate is hereto attached.

20

The President presented a letter from the District Committee on Capital Issues, Federal Reserve District No. 2, No. 120 Broadway, New York, signed by its secretary, and also a favorable opinion, No. A-2340, from the Capital Issues Committee in Washington, D. C. dated October 25th, covering the issue of \$129,000. 7% cumulative preferred stock of the Company. Copies of both letters are also attached hereto.

30

The following resolutions were duly made and carried.

RESOLVED that the by-laws of the Company be, and they hereby are amended as follows:

40

Article IV: Add a new section.

"Section 5th. Whenever the word "stock-

Exhibit C—14

holder" or "stockholders" is used in this article it refers only to holders of common stock."

Article V: Add a new section.

- 10 "Section 10th: Whenever the word "stockholder" or "stockholders" is used in this article it refers only to holders of common stock."

Article XII. Change section 2nd to read as follows:

- 20 "Dividends on the preferred stock shall be payable on May and November 1st. Dividends on the common stock may be declared out of the net profits at such times as the Directors may elect, not inconsistent with the provisions of Article Fourth of the Certificate of Incorporation or with the laws under which the Company is organized."

- 30 FURTHER RESOLVED, that the President and Secretary are hereby authorized to issue to Elizabeth C. Stevens a certificate for 1161 shares of the new preferred stock of the Company in exchange for the \$90,000. par value of bonds of the Company owned by her, and her 9/10 interest in the bond and mortgage for \$29,728.23 (of which her share in the \$728.23 is to be paid in cash) and to Palmer Campbell a certificate for 129
40 shares of said stock in exchange for his \$10,000. par value of the bonds of this Company and his 1/10 interest in the above mentioned mortgage (his share of the \$728.23 also to be paid in cash.)

On motion duly made and seconded the meeting adjourned.

Appended hereto is notice of waiver of meeting signed by all the directors.

Secretary.

Exhibit C-15.

Page 110 of Minute Book.

Minutes of the Annual Meeting of the Stockholders of the Hoboken Paper Mill Company, held at No. 1 Newark Street, Hoboken, N. J., on Monday, October 20th, 1919, at two p.m.

Present in Person

	No of Shares.
Messrs. Palmer Campbell	85
Wm. H. Gould	195
Walter B. Wilson	5
Estate of Richard Stevens by J. W. Rufus Besson, ex- ecutor	6

Present by Proxy

Elizabeth C. Stevens, Jr. by Palmer Campbell	Proxy	410
Caroline B. Alexander, " " "	"	90
Helen B. Alexander, " Walter B. Wilson	"	10
Margaret H. McGuire " Palmer Campbell	"	25
Edwin C. Reeves, " Walter B. Wilson	"	24
Walter D. Gould, " Wm. H. Gould	"	21

Total Shares 871

All shares of stock were represented in person or by proxy.

Mr. Palmer Campbell was elected to preside as Chairman. Chairman appointed Mr. Walter B. Wilson to act as Secretary for the meeting. The minutes of the last annual meeting of the stockholders were read and approved.

Exhibit C—15

The Secretary having reported and the chairman having announced a quorum, the Chairman declared the polls opened for the election of the Directors for the ensuing year.

The Chairman appointed Messrs. Harold G. Macy and Frank A. Hayes as Tellers.

The following vote was cast for the following Directors:— Palmer Campbell, Wm. H. Gould and Walter B. Wilson

	Elizabeth C. Stevens, Jr., by Palmer Campbell Proxy	410
	Wm. H. Gould	195
	Caroline B. Alexander by Palmer Campbell Proxy	25
20	Palmer Campbell	85
	Margaretta H. McGuire by Palmer Campbell, Proxy	25
	Edwin C. Reeves by Walter B. Wilson Proxy	24
	Walter D. Gould by Wm. H. Gould, Proxy	21
	Helen B. Alexander by Walter B. Wilson Proxy	10
30	Estate of Richard Stevens by J. W. Rufus Besson, Executor	6
	Walter B. Wilson	5
		<hr/>
	Total Votes	871

—o—

CERTIFICATE OF TELLERS.

We, the undersigned tellers appointed to canvass and report the votes cast for Directors of the Hoboken Paper Mill Company at the meeting held October 20th, 1919, do hereby report that the said Palmer Campbell, Wm. H. Gould, and Walter B. Wilson each received 871 votes and that the total of 871 shares was cast.

10

(Signed)

Harold G. Macy,

Frank A. Hayes,

Tellers.

On motion duly made and seconded the meeting adjourned.

Appended hereto are waivers of notice of the meeting signed by all the stockholders.

20

The following proxies are permanent and on file with the Company:

Caroline B. Alexander to Palmer Campbell et al.

Helen B. Alexander " " " " "

Elizabeth C. Stevens, Jr. " " " " "

Margaretta H. McGuire " " " " "

Edwin C. Reeves " " " " "

Walter D. Gould to William H. Gould, et al.

W. B. WILSON (signed)

30

Secretary.

40

Exhibit C-16.

No. 334 600 shares.

Hoboken Land & Improvement Company
Incorporated by an Act of the Legislative Council,
and General Assembly of the State of New
Jersey,

10 Hoboken — Opposite the City of New York.

This is to certify that Elizabeth C. Stevens,
Jr., is entitled to Six hundred shares of the
Capital stock of the Hoboken Land & Improvement
Company, on which one Hundred Dollars per
share has been paid, and transferable only on the
books of the company, at their office in Hoboken,
New Jersey, either personally or by attorney.

20 In witness whereof, the said company have
caused their corporet seal to be hereunto affixed
and the same to be signed by their president and
secretary, this first day of October, one thousand
nine hundred and eighteen.

(Seal)

Edwin A. S. Brown, Sec'y.

Richard Stevens Pres.

Capital \$2,000,000.

Divided into 20 Thousand Shares at

One Hundred Dollars Per Share.

30

—o—

Know all men by these presents, That I, Eliza-
beth C. Stevens, Junior, for value received, have
bargained, sold, assigned and transferred, and
by these presents do bargain, sell, assign and
transfer unto Richard Stevens, six hundred shares
of the capital stock of the Hoboken Land & Im-
provement Co., standing in my name on the
books of the said Hoboken Land and Improve-
ment Company.

40

And I do hereby constitute and appoint my
true and lawful attorney, irrevocable, for me in

my name and stead but to use, sell, assign, transfer and make over all or any part of the said

and for that purpose to make and execute all necessary acts of assignment and transfer thereof, and to substitute one or more persons with like power, hereby ratifying and confirming all that said Attorney or substitute or substitutes shall lawfully do by virtue hereof. 10

In witness whereof, I have hereunto set my hand and seal at Hoboken, the twenty-ninth day of January, 1919.

Signed, sealed and delivered in the presence of
Edwin A. S. Brown

(L. S.)

Elizabeth C. Stevens, Jr.

Envelope containing above certificate of stock and Assignment, endorsed (handwriting E. A. S. Brown) 20

"Cft. 334 600 Shs.

Hoboken Land & Improvement Co.

Elizabeth C. Stevens, Jr."

Exhibit C-17.

30

Incorporated under the laws of the State of New Jersey.

Number	Shares.
36	-410-

Hoboken Paper Mill Company

Capital Stock, \$100,000.

This certifies that Elizabeth C. Stevens, Jr., is the owner of four hundred and ten shares of the capital stock of Hoboken Paper Mill Company, full paid and non-assessable, transferable only on the books of the corporation by the holder thereof 40

Exhibit C—17

in person or by attorney upon surrender of this certificate properly endorsed.

In Witness Whereof, the said Corporation (L. S.) has caused this certificate to be signed by its duly authorized officers and to be sealed with the Seal of the corporation at Hoboken, N. J., this second day of October, A. D. 1918.

Palmer Campbell Richard Stevens
Sec'y & Treas. President.

Shares \$100 each

Endorsement as follows:

For value received, hereby sell, assign and transfer unto

Shares of the capital stock represented by the within certificate, and do hereby irrevocably constitute and appoint _____

_____ Attorney to transfer the said stock on the books of the within named corporation with full power of substitution in the premises.

30 Dated _____ 1 _____

Elizabeth C. Stevens, Jr.

In the presence of

Edwin A. S. Brown.

Envelope containing above certificate of stock, endorsed (in typewriting) as follows:

"Cft. No. 36 410 shares

Hoboken Paper Mill Company

40 _____
Elizabeth C. Stevens, Jr."

Exhibit C-18.

No. 336 700 Shares
**HOBOKEN LAND & IMPROVEMENT
 COMPANY.**

Incorporated by an Act of the Legislative
 Council and General Assembly of the
 State of New Jersey, Hoboken (oppo- **10**
 site the City of New York.)

This is to certify that Dorothy P. Stevens, is
 entitled to Seven hundred Shares of the Capital
 Stock of the Hoboken Land & Improvement Com-
 pany, on which One Hundred Dollars per share
 has been paid, and transferable only on the Books
 of the Company, at their office in Hoboken, New
 Jersey, either personally or by Attorney.

In Witness Whereof, the said Company have **20**
 caused their Corporate Seal to be hereunto af-
 fixed and the same to be signed by their Presi-
 dent and Secretary, this 30th day of April, One
 thousand nine hundred and nineteen.

Edwin A. S. Brown Richard Stevens,
 Sec'y. Pres.
 Capital \$2,000,000.

Divided into 20 Thousand Shares At **30**
ONE HUNDRED DOLLARS PER SHARE.

Envelope containing above certificate endorsed
 as follows (in typewriting) :

"Certificate No. 336 700 Shares
 Hoboken Land & Improvement Co.,
 Dorothy P. Stevens,
 (In Richard Stevens' handwriting)
 Richard Stevens Box."

40

Exhibit C-19

10 KNOW ALL MEN BY THESE PRESENTS, That I, Dorothy P. Stevens, For Value Received, have bargained, sold, assigned, and transferred, and by these presents do bargain, sell, assign and transfer unto Richard Stevens, Seven Hundred shares of the capital stock of the Hoboken Land & Improvement Company standing in my name, on the books of the said Company.

20 And I do hereby constitute and appoint Edwin A. S. Brown my true and lawful attorney, Irrevocably, for me and in my name, and stead but to — use, to sell, assign, transfer and make over, all or any part of the said — and for that purpose to make and execute all necessary acts of assignment and transfer thereof, and to substitute one or more persons with like power, hereby ratifying and confirming all that said Attorney — or — substitute or substitutes shall lawfully do by virtue hereof.

In Witness Whereof, I have hereunto set my hand and seal at — the — day of — 1919.

30 Signed, Sealed and Delivered in the presence of _____

Dorothy P. Stevens,
(L. S.)

Envelope containing the above assignment is endorsed (in Richard Stevens' handwriting) as follows:

40 "R. Stevens
700 shs Box
Dorothy Stevens
Assng. of H. L. & I. Co. Stock."

Exhibit C-20

Exhibit C-20 consists of an envelope upon which, in the handwriting of Richard Stevens, was the endorsements

“Richard Stevens Box

Two - \$50. - 4th Liberty Bonds

Property of

Dorothy Stevens”

10

Envelope contained two \$50. 4¼ Fourth U. S. Liberty Loan Bonds numbers 731495 - 731497 with coupons of April 15th, 1919, and subsequent coupons attached.

Exhibit C-21.

20

Exhibit C-21 consists of an envelope upon which in the handwriting of Richard Stevens is the following endorsement

“1 - 100 Liberty Bond

1- 50 “ “

Property of

Dorothy Stevens.

30

Place in box of

Richard Stevens

in H. L. & I. Co. Safe.”

Envelope contained one \$100. 4¼ Third U. S. Liberty Loan Bond No. 2590151, with coupons of March 15th, 1919, and subsequent coupons attached; and one \$50. 4¼ U. S. Third Liberty Loan bond No. 1530173, with coupons of March 15, 1919, and subsequent coupons attached; and four twenty-five cent U. S. Thrift Stamps.

40

Exhibit C-22.

Exhibit C-22 consists of an envelope upon which, in the handwriting of Richard Stevens is the following endorsement:

10 "Richard Stevens - Box
One - \$50. - 4th Liberty Bond
Property of
Richard Stevens, Jr."

Envelope contained one \$50. 4 $\frac{1}{4}$ U. S. Fourth Liberty Loan Bond No. 731496, with coupons of April 15, 1919, and subsequent coupons attached.

20

Exhibit C-23.

Exhibit C-23 consists of a printed envelope issued by the Metropolitan Life Insurance Company, which had printed and written thereon the following:

30 "Policy No. 379537, on the life of Dorothy P. Stevens
Amount - \$3,000.
Premium - \$131.22.
Due on the 29 day of April,
Agent - Hoboken."

and also on the envelope, written in handwriting of Richard Stevens, were words:

40 "Richard Stevens Box
Richard Stevens."

The envelope contained Metropolitan Life Insurance Co. policy No. 379537-A, being a child's endowment eighteen year policy insurance on the life of Dorothy P. Stevens, Hoboken, N. J., amount of \$3,000. annual premium \$131.22, dated April 29th, 1905, agent S. Blum, Hoboken.

10

Exhibit C-24.

Know all men by these presents, that I, Elizabeth C. Stevens, Jr., of the city of Hoboken, County of Hudson and State of New Jersey, have made, constituted and appointed, and by these presents do make, constitute and appoint Richard Stevens, Palmer Campbell and Walter B. Wilson or either of them, true and lawful attorneys for me and in my name, place and stead vote as my proxy at all meetings of the stockholders of the Hoboken Paper Mill Company and to execute waivers of notice of such meetings from the date hereof until the written revocation of this power of attorney shall have been filed by me with the said Hoboken Paper Mill Company at its principal office No. 1 Newark Street, Hoboken, N. J., giving and granting unto my said attorney full power and authority to do and perform all and every act and thing whatsoever requisite and necessary to be done in and about the premises, and fully to all intents and purposes as I might or could do if personally present, with full power of substitution and revocation, hereby ratifying and confirming all that my said attorney or their substitute shall lawfully do or cause to be done by virtue hereof.

20

30

40

In witness whereof, I have hereunto set my hand and seal the ninth day of December, in the year one thousand eight hundred and eighteen.

Sealed and delivered in

the presence of

Edwin A. S. Brown

(Signed)

10 Elizabeth C. Stevens, Jr.

(Signed

(L.S.)

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

I, Wm. C. Brown, one of the commissioners of deeds, County of Hudson and State of New Jersey, do hereby certify that on the day of December, A. D. one thousand nine hundred and
20 eighteen before me personally appeared Elizabeth C. Stevens, Jr., a femme sole who, I am satisfied is the grantor mentioned in, and who executed the within power or letters of attorney, and to whom I first made known the contents thereof; That thereupon she acknowledged that she had signed, sealed and delivered the same as her voluntary act and deed.

William C. Brown,

30 Commissioner of Deeds in and for
Hudson County, New Jersey.

Exhibit C-25.

Mch. 12, 1919.

H. L. & I. Co.

40 Pay 25% of Income Tax on income of Elizabeth C. Stevens, Jr., \$29.75., and charge to account of Elsie Stevens, Jr., Special, and pay 25% my tax and charge to me \$2792.88.

(Signed) Richard Stevens.

Exhibit C-26.

General Release (on H. K. Brewer form No. 425, New Jersey, dollar consideration) from Caroline B. Whittpenn, of Jersey City, New Jersey, to J. W. Rufus Besson, W. Willis Reese, the Farmer's Loan & Trust Company, and Edwin A. S. Brown, executors and trustees under the Last Will and Testament of Richard Stevens, deceased and Theodosius Stevens, administrator of the estate of Elizabeth C. Stevens, deceased, and especially by reason of the claim filed by me with the executors of the estate of Richard Stevens, a copy of which claim is hereto annexed and made a part hereof." 10

Dated March 10, 1921, and signed and acknowledged by Caroline B. Wittpenn. 20

Exhibit C-27.

Hoboken, N. J., January 27th, 1919. 30
 Miss Elsie Stevens, Jr. No. 1 Newark St., City.
 To CHARLES WEINACHT, Dr.
 Cor Fourth Street. 332 Madison Street.

40	Cases	Dewars White Label	@ 37.50	\$1500.00	
3	"	Ushers Green Stripe	@ 38.50	115.50	
2	"	Sanderson Mountain			
		Dew	@ 42.50	85.00	
1	"	King William		42.50	40

4	"	King George	@ 37.00	148.00
4	"	Marashino	@ 34.50	138.00
2	"	Red Heart Rum	@ 38.00	76.00
5	"	Amontillado Sherry		
		(Dry)	@ 24.00	120.00
6	"	St. Julien	@ 18.00	108.00
6	"	Gold Seal Pints	@ 26.50	159.00
2	"	" " Qts.	@24.50	49.00
6	"	Moselblumchen Pts.	@ 16.20	97.20

10

2638.20

Received Payment

Feb. 26, 1919

Charles Weinacht

Per — A —

Thank you.

20

—o—

Exhibit C-27

February 21st, 1919.

Mr. Charles Weinacht,
332 Madison Avenue,
Hoboken, N. J.

80 My dear Mr. Weinacht:

Please find enclosed check for \$2,638.20 for merchandise bought for Miss Elsie Stevens, Jr. I may not have explained to you at the time, but these goods were bought for Miss Elsie Stevens, Jr., and I am enclosing you her check therefor.

Would you kindly return itemized receipted bill made out against Miss Elsie Stevens, Jr., but addressed to me at No. 1 Newark Street,
40 N. J.?

Very truly yours,

R. Stevens.

Exhibit C-28.

Hoboken, N. J. March 13th, 1919.
 Miss Elsie Stevens, Jr., City.
 To Charles Weinacht, Dr.
 Cor. Fourth St. 332 Madison St.

 5 Cases Whyte & Mackay @ \$48.00 \$240.00 **10**
 5 " Dewars Special @ 48.00 240.00
 1 " Dewars White Label 48.00
 1 " Haig & Haig xxx 50.00

 \$578.00

Received payment
 April 1, 1919
 Charles Weinacht,
 Per C. W. **20**

Thank you.

H. L. & I. Co.

Charge to acct. of
 Elsie Stevens, Jr., Special.
 (Signed) R. Stevens.

30

Exhibit C-29.

Jun 16 1919

Various papers, etc., removed from office of
 the Hoboken Land & Improvement Co.,
 found in compartment of safe marked
 "Richard Stevens."

Two coupons due May 1913 from \$2000 Union
 Cemetery Association 6s due **40**
 1930.

" " " Nov. 1913 fro -do-
 Receipt of Steneck Trust Company representing

Exhibit C—29

- first payment of 30% (\$300) on subscription to Hexamer Riding Academy.
- 10 Copy of bond from Richard Stevens to the United Shirt & Collar Machinery Co., indemnifying it in the sum of \$1000 for the issuance of 5 shares First Preferred Stock issued in the name of Bridget J. Quinn.
- Deed dated Sept. 14, 1892, Martha B. Stevens, Executrix and Samuel B. Dodd Surviving Executor of the Last Will and Testament of Edwin A. Stevens to Richard Stevens, conveying three lots in Hoboken, known as 28 Hudson Street, (old number) 21 Washington Street and 110 River Street. Recorded Hudson County Register's Office Sept. 16, 1892, book 562 of Deeds, page 52.
- 20 Contract between Palmer Campbell and Mr. Stevens as Trustee for May B. Hall in re sale of certain property.
- Deed from May B. Hall and Charles S. Hall to Richard Stevens dated Aug. 26, 1903, conveying property in Hoboken. Recorded Hudson County Register's Office Sept. 19, 1903, book 847, page 333.
- 30 Release of part of mortgaged premises from Palmer Campbell, Trustee, etc., of C. A. Stevens, deceased, to Richard Stevens, dated May 11 1904.
- Policy of Title Insurance, New Jersey Title Guaranty & Trust Co., to Richard Stevens, No. 8610, relating to plot No. 4, Castle Point property. 5 199/1000 Acres.
- 40 Release of part of mortgaged premises from Palmer Campbell, Trustee of the Estate of C. A. Stevens, to Richard Stevens, dated Dec. 31, 1907.

Exhibit C—29

All of the above were enclosed in envelope marked
 "Title to Section 4, Castle Point."

Assignment of mortgage Edwin A. Stevens and
 others as Executors of Martha B. Stevens to
 Richard Stevens, dated May 15, 1899.

10

Assignment of Mortgages of John L. Mathey
 for \$8000, dated May 1, 1890, recorded in book
 247 of Mortgages, page 16 and mortgage of
 Morris S. Kerrigan for \$6000, dated Feb. 23,
 1895, book 327 of mortgages, page 298.

Deed from Edwin A. Stevens and others as
 Executors of the Estate of Martha B. Stevens to
 Richard Stevens dated May 29, 1902, recorded
 June 4, 1902, Hudson County Register's Office,
 Book 815 of Deeds, page 14, indexed under block
 numbers 1896, 1859, 1852, 1905, 1840, 1884.

20

Deed from Arthur Seitz and others to Richard
 Stevens dated Dec. 31, 1900, recorded Hudson
 County Register's Office Jan. 9, 1901, book 768
 of Deeds, page 418, indexed under block No.
 1897.

Deed from Hoboken Land & Improvement Co.
 to Richard Stevens dated May 8, 1906, recorded
 Hudson County Register's Office July 9, 1906,
 book of Deeds, page 583, indexed under block
 No. 1859.

30

Bill of sale from Michael Phelan to Margaret
 Mooney of certain household goods at Castle
 Point. Mr. Besson states this has no value to
 the estate.

Title Papers to 975 Third Place, North Ber-
 gen. Sheriff's Deed, Nicholas P. Weden, Sheriff,
 to Richard Stevens, dated Mar. 19, 1914. Re-
 corded March 23, 1914, Hudson County Register's
 Office, book 1177 of Deeds, page 265.

40

Deed from Harrington Company, a corporation,

Exhibit C—29

to Richard Stevens dated Nov. 29, 1916, covering the above property, releasing tax lien.

Policy of fire insurance, Continental Insurance Co. No. 13058 expiring Jan. 10, 1922, \$2000. Also other papers relating to taxes, etc.

10 Mr. Stevens evidently held 25 shares of the stock of the Borrowers Building & Loan Association, Jersey City. Mr. Brown states that this is in the office of the Hoboken Land & Improvement Co., together with receipt book showing payments made on the certificate.

20 Envelope marked "Three policies of Prudential Life Insurance Company, property of Mrs. Nellie Reilly, 170 New York Avenue, Jersey City Heights, N. J., to be returned to her at my death." Also receipt of Nellie Reilly for \$20, dated May 25, 1917, to Richard Stevens, which states that for payment of said sum she has pledged three Prudential Life Insurance policies.

30 Endowment Policy of the Metropolitan Life Insurance Co. for \$3000 on life of Dorothy P. Stevens, pursuant to which the company agrees to pay \$3000 on 28th day of September, 1923. Number of policy 379537A, dated April 29, 1905, together with receipt of premium paid April 29, 1919.

Receipt of Miller & Co., dated April 16, 1915, for 60 shares of Pittsburgh, McKeesport and Youghiogeny R. R. Co.

Lease between Mr. Stevens and United States Army dated July 15, 1918, expiring June 30, 1919, Castle Point property, Manor House.

40 Mr. Stevens holds a note of James E. Hulsheizer, 200 5th Avenue, for \$350, which Mr Stevens stated in a letter to Hulsheizer had been discounted at his bank. The note was dated Jan. 5, 1916, payable in three months, and there was pledged as collateral certain shares of Erie & Pennsylvania RR Co.

Exhibit C—29

Receipt of Samuel Cross for \$250 as a loan, dated Dec. 29, 1907, upon which are endorsed payments aggregating \$162, the last payment having been made in May, 1913.

New York Life Insurance Company Policy No. 3340956. This policy was pledged on Nov. 17, 1911, with the insurance company as security for a loan of \$901. 10

Note of Edward Hayes dated Dec. 9, 1904, payable four months after date, for \$375, with interest, payable to the order of Richard Stevens.

Declaration signed by Mr. Rudolph F. Raeb and J. W. R. Besson, dated Oct. 18, 1910, declaring that Mr. Richard Stevens had paid \$4000 out of \$46500 advanced on ten promissory notes made by Samuel E. Renner to Thomas Henry for the total value of \$46500., secured by a certain mortgage made by Renner to Henry and by bonds of the Union Cemetery Association of the par value of \$700,000. Also a letter dated Nov. 7, 1912, from J. W. R. Besson saying that he held a note to the amount of \$9000 made by Samuel E. Renner to the order of Thomas Henry and endorsed by Henry, secured by mortgage on Weatherbee Tract North Bergen and Highwood Bluffs Tract, Weehawken, and that of those notes Mr. Richard Stevens had advanced \$2200. 20 30

Lease dated March 1, 1910 between Richard Stevens and Caroline B. Alexander relating to the house at Castle Point, Hoboken, whereby Mr. Stevens let said house to Mrs. Alexander for a period of 20 years, unless sooner terminated, without payment of rent. The property is part of plot 4, Castle Point, 200 x 200, and the lease provides that Mrs. Alexander should repair and replace the dwelling house. The agreement also provides for an advance of \$12,000 to Mrs. Alexander to be used in the erection of a new house. 40

Exhibit C—29

She agreed to pay interest at the rate of 5% per annum thereon from the date of the agreement. Mr. Brown states that the money was advanced in the manner of paying for the work as it progressed.

10 Chattel Mortgage from William H. Gould to Richard Stevens, dated Jan. 28, 1890, covering property in the building known as the Hoboken Paper Mill, situated on the east side of Adams Street, between 8th and 9th Streets, Hoboken, given as security for a promissory note made by Gould for \$3500 and drawn to the order of Richard Stevens, bearing even date with the agreement, payable on demand.

20 Note of D. Freeland Lenz dated Oct. 4, 1904, on demand, for \$750, interest at 5%. Mr. Stevens states that the maker of this note has died and believes that he left no estate.

Six notes made by Alexander Stevens for \$100 each, all payable on demand, dated Nov. 19, 1896, Dec. 15, 1896, Jan. 22, 1897, Feb. 17, 1897, Mar. 30, 1897, May 6th, 1897.

30 Receipt of Lewis & Vredenburg for \$1000 for subscription to stock of a new company to be formed to take over the assets of the American Lien Company, dated Dec. 25, 1907. Mr. Stevens states that the present stock is the American Linen Fibre Company and that he holds the shares of stock for this and they are registered in various persons' names for the real owners. They are probably worthless.

40 Agreement made by William H. Gould running to Richard Stevens and Palmer Campbell, dated Feb. 1901, whereby Gould agreed to pay \$450, together with interest thereon payable in weekly instalments, the same as rent. Mr. Brown states that this has undoubtedly been all settled up.

Agreement of Clara Rieser dated July 13,

Exhibit C--29

1915, assigning to Richard Stevens all benefits which might be payable in the event of the death of Robert I. Rieser by the Seventh Regiment Veteran & Active League. Blank note for blank amount of Robert Rieser dated Nov. 12, 1915, and endorsed by him. **10**

Agreement made by Catherine B. Barnes and Ogden H. Hammond and others, dated May 1912, agreeing to indemnify Messrs. Stevens, Besson, Renner and others from loss or liability by reason of said persons executing a bond accompanying a mortgage to be given by the Colonial Land & Improvement Co. to the Title Guaranty & Trust Co. for \$200,000. **20**

Mr. Stevens also had a boat. **20**

Papers in envelope marked 1019 Willow Avenue.

Deed from Edmund D. Vanderbilt and Richard Frederick Schill to Richard Stevens conveying property on Willow Avenue, dated May 29, 1902, recorded in the office of the Register of the County of Hudson, June 13, 1902, book 804 of Deeds, page 634, and indexed under Block No. 1883. **30**

General Release Oscar N. Wooley to Richard Stevens dated December 30, 1909.

Papers in envelope marked Bernardville Land & Title Co.

Deed from George B. Post and Alice M., his wife, to Richard Stevens dated March 28, 1899, recorded in Clerk's Office, County of Somerset, April 4, 1899, book X8 of Deeds, Page 291. **40**

Deed from George B. and Alice M. Post to Richard Stevens dated Aug. 11, 1905, recorded

Exhibit C—29.

Oct. 14, 1905 in Book PNO10, page 213, Somerset County.

Copy of affidavit made by George B. Post, verified March 28, 1899.

10

All of the foregoing papers have been placed with the other property of the Estate of Richard Stevens in Box 256 at the Hudson Trust Company.

Removed from office of the Hoboken Land & Improvement Co. Found in compartment of safe marked "Richard Stevens."

20

Seven envelopes marked as follows:

"Property of Dorothy Stevens."

2 \$50 Fourth Liberty Loan 4 $\frac{1}{4}$ s
due 1938, Nos. 731495, 731497.

"Property of Richard Stevens, Jr."

1 \$50 Fourth Liberty Loan 4 $\frac{1}{4}$ due
1938, No. 731496.

"Hoboken Land & Improvement Co.,

30

700 shares Hoboken Land and
Improvement Co. Ctf. No. 336
n/o Dorothy P. Stevens, dated
April 30, 1919.

"Hoboken Land & Improvement Co.,

Elizabeth C. Stevens, Jr."

40

600 shares Hoboken Land and
Improvement Co. Ctf. No. 334
dated Oct. 1st, 1918, n/o Eliza-
beth C. Stevens, Jr., with power
of attorney signed by her dated
Jan. 29, 1918, assigning same
to Richard Stevens. Witnessed
by E. A. S. Brown.

Exhibit C—29

"Property of Dorothy Stevens"

\$150 Third Liberty Loan 4 $\frac{1}{4}$ s
due 1928, Nos. 2590151 at \$100,
1530173 at \$50.

Four 25¢ Thrift Stamps.

"Hoboken Paper Mill Co." 10

410 shares Hoboken Paper Mill
Co. Ctf. 36 n/o Elizabeth C.
Stevens, Jr. & endorsed (in
blank) not dated. Witnessed
by Edwin A. S. Brown.

"Richard Stevens Box, 700 shrs.

Dorothy Stevens."

Stock power signed by Dorothy
P. Stevens, undated and un- 20
witnessed, assigning 700 shares
Hoboken Land & Improvement
Co. to Richard Stevens, and
appointing Mr. E. A. S. Brown
attorney to make the transfer
on the books of the company.

The above property was placed with the other
property belonging to the Estate of Richard 30
Stevens in Box 356 at the Hudson Trust Com-
pany.

*Securities found in safe deposit box No. 356 at
Hudson Trust Company.*

2 Bonds Union Cemetery Association,
First Mortgage 6%, due 40
May 1, 1930, Nos. 327/8,
May 1914 cpn. \$2,000.00

2 " Middlesex Electric Light &
Power Co. First Mortgage
5s due Jan. 1, 1955. Nos.
360/. July 1910 cpn. 2,000.

Exhibit C-29

	1	"	Chicago & Western Indiana R.R. Co. Genl. Mtge. 6s due Dec. 1, 1932, No. 7670. June 1919 cpn.	1,000.
10	1	"	Beneficial Loan Society, Profit Sharing Certificate (New- ark, N. J.) No. 6, registered n/o Richard Stevens, 6% (due date?). Interest pay- able quarterly, J J A & O Ist.	500.
20	17	Shares	Beneficial Loan Society, Cap- ital Stock, Ctfs. 690 for 2 shrs. 121 for 15 shrs, n/o Richard Stevens. Par \$10.	170.
	1	Bond	Acme White Lead Co. First Mortgage 6% due July 1, 1923, No. 757. July 1919 cpn.	1,000.
30	2	Bonds	Carteret Club, Second Mtge. 5s due July 1, 1937, Nos. 1152/3, registered in the name of Richard Stevens. Interest payable Jan. and July 1st.	200.
40	10	"	Sinclair Oil & Refining Co. First Lien 7s due Aug. 1, 1920, Nos. 13474/83. Au- gust 1919 cpn.	10,000.
	2	"	P. Lorillard Co. 7s due Oct. 1, 1944, Nos. 3210/11. Oct. 1919 cpn.	2,000.
	5	"	Liggett & Myers Tobacco Co. 5s due Aug. 1, 1951, Nos. 170, 2403, 8860, 8816, Aug. 1919 cpn.	4,000.
	2	"	Ligget & Myers Tobacco Co. 7s due Oct. 1, 1944, Nos. 4613/4. Oct 1919 cpn.	2,000.

Exhibit C—29

3	"	Evening Journal Association of Jersey City, N. J. Sink- ing Fund Deb. 6s. due Jan. 1, 1934, Nos. 121/2, 124 at \$500 each. July 1919 cpn	1,500.	
6	"	United States Steel Corp. S/f 5s due Apr. 1, 1963, Nos. 11786, 137286/89, 161257. Nov. 1919 cpn	6,000.	10
6	"	Trenton Street Railway Co. Cons. Mtge. 5s due 1938, Nos. 1054/9. July 1919 cpn	6,000.	
16	"	Wilkes Barre Wyoming Val- ley Traction Co. 1st Mtg. 5s due Apr. 1, 1921, Nos. 1618/33, Oct 1919 cpn.	8,000.	20
1	Bond	Virginia Carolina Chemical Co. 1st Mtge. 5s due Dec. 1, 1923, No. 10259, June 1919 cpn.	1,000.	
3	Bonds	Kansas City Clinton & Spring- field Ry. Co. 5s due 1925, Nos. 3236/8, Oct. 1919 cpn.	3,000.	
1	"	New York Lake Erie & West- ern Coal & R.R. Co. First Mtge. 6s due 1922, No. 2192. No. 1919 cpn.	1,000.	30
1	"	Chicago & Western Indiana R.R. Consolidated Mtge. 4s due 1952, No. 4266. July 1919 cpn.	1,000.	
2	"	Hudson County Gas Co. 1st Mtge. 5s due 1949, Nos. , 1401/2. Nov. 1919 cpn.	2,000.	40
3	"	Hackensack Water Co. First Mortgage 4% due July 1, 1952, Nos. 1025, 1418, 1420. July 1919 cpn.	3,000.	

Exhibit C—29

	1	"	New Orleans Texas & Mexico Ry. Co. 1st Mtge. 6s due Oct. 1, 1925, No. 4492. June 1919 cpn.	1,000.
10	3	"	New Orleans Texas & Mexico Ry. Co. Income 5s, Ser. A, due Oct. 1, 1935, Nos. 6483/4 at \$1000, D298 at \$500, Coupon No. 6 and subsequent	2,500.
	25 shares		New Orleans Texas & Mexico Ry Co. Capital Stock, Vot- ing Trust Ctf. No. 0605 n/o Richard Stevens	2,500.
20	5 Bonds		E. I. Du Pont de Nemours Powder Co. 4½s due June 1, 1936, Nos. 1595, 1597, 1596, 7432, 3874, June 1919 cpn.	5,000.
	17	"	Hoboken Land & Improve- ment Co. 20 Year 5s due Nov. 1, 1930, Nos. 171/87. Nov. 1919 cpn.	17,000.
30	3	"	New Jersey & Pennsylvania R.R. Co. 1st Mtge 5s due June 1, 1927, Nos. 43/5. Dec. 1912 cpn.	3,000.
	40	"	Hoboken Tennis Club, Regis- tered Third Mtge. Adj. 6s due Jan. 15, 1947, Nos. 65/104 at \$25 each. In- terest payable annually Jan. 15th	1,000.
40	100 shares		Hackensack Water Co. Capi- tal Stock, (Par \$25) Ctf. 2788 for 90 shares, 2784 for 10 shares, n/o Richard Ste- vens. (N. J. corp.)	2,500.

Exhibit C—29

40	"	Knox Hat Company, First Pfd. Stock, Ctf. No. 058 n/o Richard Stevens	4,000.	
40	"	Knox Hat Company, Second Pfd. Stock, Ctf. 0116, n/o Richard Stevens	4,000.	10
5	"	Finch School, Preferred Stock, Ctf. No. 4, n/o Richard Stevens. (Inc. in N. Y.)	500.	
50 shares		Todd Shipyards Corporation (no par) Capital Stock, Ctf. 0585 n/o Richard Stevens. (N. Y. Corp.)	-----	
5	"	Peg Lock Block Co. Capital Stock Ctf. No. 6 n/o Richard Stevens. (N. Y. Corp.)	500.	20
10	"	Ten Eyck Investment Co. Capital Stock, Par. \$50, Ctf. No. 40 n/o Richard Stevens (N. J. Corp.)	500.	
40	"	Cox Automatic Pipe Bending Co. Capital Stock, Ctf. No. 23 n/o Richard Stevens. (Delaware corp.)	-----	30
10	"	United Motors Company, Common Stock, Ctf. 538, n/o Richard Stevens (Delaware corp) Par \$10	100.	
30	"	Phenix Cheese Company, Capital Stock, Ctf. No. 1115, n/o Richard Stevens. (South Edmeston, N. Y.) Par \$50.	1,500.	40
50	"	Piggly Wiggly Corporation, First Preferred Stock, Ctf. No. 218. (Delaware Corp.) Stamped on face as follows:— "This certificate	5,000.	

Exhibit C—29

		of stock is valid only when registered by the Union and Planters Bank & Trust Co. Non transferable during the period of the war except upon written consent of the Capital Issues Committee." 5000.	
10	50	" Piggly Wiggly Corporation, Common Stock (No par) Ctf. No. 283 n/o Richard Stevens. (Stamped as above) ----	
	100	" Colonial Land & Improvement Co. Capital Stock, Ctf. No. 4 for 10 shs. 19 for 90 shares, n/o Richard Stevens (N. J. corp.) 10,000.	
20	1 Note	Colonial Land & Improvement Co. dated Nov. 1, 1917 payable on demand, with interest. Payable at the Trust Company of New Jersey, Hoboken, N. J. 6,000.	
	25 shares	The Lyceum Company, second Pfd. Stock, Ctf. No. 4, n/o Richard Stevens. (New Jersey Corp.) 2,500.	
30	25	" The Lyceum Company, Common Stock, Ctf. No. 9. n/o Richard Stevens. 2,500.	
	50	" The Lyceum Company, First Pfd. Stock, Ctf. 14, n/o Richard Stevens 5,000.	
40	40	" Bernardsville Land Company, Capital Stock, Ctf. No. 15 n/o Richard Stevens. (N. J. Corp.) 4,000.	
	50	" Funk Mfg. Co. Preferred Stock, Ctf. No. 20 n/o	

Exhibit C—29

	Richard Stevens (N. J. Corp.) Par \$10	500.	
50	" Funk Mfg. Co. Common Stock Ctf. No. 18, n/o Richard Stevens. Par \$10.	500.	
3	Ctfs. U. S. A. War Saving Stamps, Issue of 1918, due 1923.	300.	10
7	Bonds U. S. A. 4 $\frac{1}{4}$ s due 1942, Nos. 95383/7, 958361, at \$1000. 788104 at \$100, Nov. 1919 cpn.	6,100.	
6	" U. S. A. 3 $\frac{1}{2}$ s due 1947, Nos. 1124212/6 at \$1000, 638145 at \$50. June 1919 cpn.	5,050.	
11	" U. S. A. 4 $\frac{1}{4}$ s due 1928, Nos. 671774/9 at \$1000, 300-718/9 at \$500, 2590150/50 at \$100, 5554518 at \$50. Sept. 1919 cpn.	7,250.	20
2	shares Somerset Hills Improvement Co. Ctf. No. 13 for 2 shares Ctf. No. 13 n/o Richard Stevens (N. J. Corp.)	200.	
6	Bonds Pine Creek Railway Co. First Mortgage 6s due 1932, Nos. 2626/31 regd. n/o Richard Stevens with various bond powers (various old dates)	6,000.	30
	Bonds Duplex Governor Company, Series A 4% bonds (no due date given, bonds not seen)	1,253.45	
	\$12 in cash received from Mr. Stevens.		40

Exhibit C-29

Additional securities found in the office safe in the compartment marked Richard Stevens of the Hoboken Land & Improvement Company.

Shares			
80	Acme Whitelead & Color Wks., Pfd.	Mich.	\$2000
1	Alumini House Ass'n, St. Paul School	N. Hamp.	-0-
300	American Quartz Mining Co.	Cal.	1500
10	American Rust Proof Co.	N. J.	-0-
2	Essex Fox Hounds Realty Co.	N. J.	200
80	First National Bank Hoboken	N. J.	2000
500	Golden Return Mining Co.	Ariz.	5000
28 ³ / ₄	Grafton Mica Co. Pfd.	N. J.	2875
28 ³ / ₄	" " " Com.	"	2875
900	Hackensack Water Company	"	22,500
10	Hexamer Riding Academy Pfd.	"	1000
50	Hoboken Bldg. & Loan Ass'n 24th Ser. 1921.	"	
6	Hoboken Paper Mill Co.	"	600
410	" " " "	"	41,000
1216	Hoboken Land & Imp. Co.	"	121,600
168	Hoboken R.R. Warehouse & S.S. Co.	"	16,800
10	Hoboken Trust Co. of N. J.	"	1000
10	Highland Trust Co. of N. J.	"	1000
7500	Ideal Mining & Development Co	Ariz.	7500
0062			
102	International Curtiss Marine Turbine Co.	W. Va.	102
10000			
1	New Jersey Fire Insurance Co.	N. J.	25
25	New York Container Co.	Del.	3500
25	" " " "	"	2500
20	Roselawn Development Co.	"	2000
30	Sacred & Historical Film Co.	"	
	Call note \$300, Feb. 20, 1915, Ed. H. Coffey.)		
10	St. Nicholas Skating & Ice Co.	N. J.	1000
1	The Service Inc.	N. Y.	100
50	Superior Steel Co. 1st pfd.	Va.	5000
5	United Shirt & Collar Co. 1st Pfd.	N. Y.	500
100	United States Steel Pfd.	N. J.	10,000
500	Umbi Dredging Co.	D. C.	500
6	Water Shed Land Co.	N. J.	600
Bonds. 5000 5th Victory 4 ³ / ₄ cpns.			
10	@ 25 Hoboken Tennis Club, 3rd. Mtge.		
	6s. due 1947—Jan. July.		
9	War Saving Ctfs. 1919 issue.		

Held in office safe in the compartment marked Richard Stevens of the Hoboken Land & Improvement Company at Hoboken, N. J.

Stipulation.

(Filed April 15, 1921.)

Between

J. W. RUFUS BESSON *et als*, Ex-
ECUTORS, ETC., OF RICHARD STEV-
ENS, DECEASED,

Complainants,

and

ELIZABETH C. STEVENS, JR., *et al.*,
Defendant.

On Bill **10**
etc.
Stipulation.

It is hereby stipulated and agreed that securi-
ties belonging to Richard Stevens, deceased, were
found at his death in the compartment bearing
his name in the office safe of the Hoboken Land
and Improvement Company and in his safe-deposit
box in the Hudson Trust Company; that the
total value of the securities found in the com-
partment marked "Richard Stevens" in the said
office safe (excluding the securities in question
in this cause); was considered greater than the to-
tal value of the securities found in the safe de-
posit box in the Hudson Trust Company; that
the papers found in the said compartment marked
"Richard Stevens," in the said office safe of the
Hoboken Land and Improvement Company con-
sisted principally of certificates of corporate stock,
policies of insurance, bonds mortgages and deeds
and included a certificate for 1216 shares of the
capital stock of the Hoboken Land and Improve-
ment Company, which stock was the property
of testator and stood on the books of the Com-
pany in his name at the time of his death; that
the securities found in the safe-deposit box of
the Hudson Trust Company included negotiable
bonds of 23 corporations, United States Liberty
Bonds and certificates of stock in 23 different

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Stipulation

corporations.

This stipulation is to be considered in question with Exhibit C-29; said Exhibit C-29 consisting of two lists of the respective securities of the said Richard Stevens in the box in the Hudson Trust Company and the safe of the Hoboken Land And Improvement Company

10

M. T. R. Sol. of R. S. Adminst. etc.,

H. J. C. Sol. of D. P. S.

M. J. Sol. C. B. S. & R. S. J.

B. A. S. Sol. of Complt.

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Stipulation.**IN CHANCERY OF NEW JERSEY.**

(Filed April 4, 1922.)

Between
 J. W. R. BESSON, *et als.*,
Complainants,
 and
 ELIZABETH C. STEVENS, JR., *et als.*,
Defendants.

10

It is hereby stipulated and agreed by and between the solicitors of the respective parties hereto that the four hundred and ten (410) shares of stock of the Hoboken Paper Mill Company mentioned on sheet dated June 12, 1919 (Exhibit C-29) are the four hundred and ten (410) shares of Hoboken Paper Mill Company stock evidenced by certificate No. 36, issued in the name of Elizabeth C. Stevens, Jr., that said last mentioned certificate of stock is the certificate referred to on sheet dated June 16, 1919 (Exhibit C-29) as having been contained in one of seven envelopes removed from the office of the Hoboken Land and Improvement Company endorsed, "Hoboken Land and Improvement Company—Elizabeth C. Stevens, Jr.," and having been found after the death of Richard Stevens in compartment of safe marked "Richard Stevens", the only stock in the Hoboken Paper Mill Company standing in the name of Richard Stevens on the books of said Company, at the time of his death was the six (6) shares of common stock of said Company, mentioned on sheet dated June 12, 1919 (Exhibit C-29)

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, The total outstanding common stock of the Ho-

Stipulation

boken Land and Improvement Company on the date of the death of the said Richard Stevens was fourteen thousand seven hundred and thirty-nine (14739) shares.

10 All the securities listed in C-29, were found in the compartment of Richard Stevens, in the office safe of the Hoboken Land and Improvement Company after Mr. Stevens' death.

B. A. & S.

Sol. for Complts.

M. T. R.

Sol. for def.

H. J. C.

Sol. D. P. S.

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M. J. T.

Sol. C. B. S. & R. S., Jr.

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New Jersey Court of Errors and Appeals.

Between

J. W. RUFUS BESSON, *et als.*, Executors
and Trustees of Richard Stevens,
Deceased,

Complainants and Respondents,
and

THEODOSIUS STEVENS, Administrator of
the Estate of Elizabeth C. Stevens,
Jr., *et als.*,

Defendants and Appellants.

On Bill, etc.
Appeal from
Chancery.

Between

J. W. RUFUS BESSON, *et als.*, Executors
and Trustees of Richard Stevens,
Deceased,

Complainants and Respondents,
and

DOROTHY P. STEVENS, *et al.*,
Defendants and Appellants.

On Bill, etc.
Appeal from
Chancery.

BRIEF FOR RESPONDENTS.

I.

Statement of Facts.

In order that no misapprehension of the facts may exist and no unwarranted inferences be drawn from the statement of facts contained in the appellants' brief, the following statement of facts concerning the history of the transactions which gave rise to the litigation in these cases is herewith given.

In the case first above mentioned Elizabeth C.

Stevens, Jr., was originally the principal defendant. She died intestate during the pendency of the case and Theodosius Stevens, her Administrator has been substituted as the defendant. This case involves the title to 600 shares of stock of the Hoboken Land & Improvement Company, 410 shares of common stock of the Hoboken Paper Mill Company and 1,161 shares of preferred stock of the latter company, all of which stock stands on the books of the respective companies in the name of Elizabeth C. Stevens, Jr.

The case in which Dorothy P. Stevens is the principal defendant involves the title to 700 shares of stock of the Hoboken Land & Improvement Company standing on the books of the company in the name of Dorothy P. Stevens.

The evidence and admissions made in the pleadings show that the 600 shares of Hoboken Land & Improvement Company stock and the 410 shares of Hoboken Paper Mill Company stock above mentioned were, prior to the transfers to Elizabeth C. Stevens, the property of the testator. Some time prior to February 14, 1917, this stock was transferred by the testator to his sister, Caroline B. Wittpenn, in trust for certain purposes, one of which was to transfer the stock upon demand of the testator to any person named by him. Mrs. Wittpenn had no interest whatever in the stock (see paragraph 7, Bill of Complaint, Case, pp. 5 and 6; Answer of Theodosius Stevens, Administrator, Case, p. 21, lines 19 and 20).

On October 1, 1918, the testator caused the 600 shares of Hoboken Land & Improvement Company stock above mentioned, to be transferred on the books of the company from the name of Caroline B. Wittpenn to the name of Elizabeth C. Stevens, Jr. (Case, p. 60, line 39, Exhibit C-2, p. 190). Either at this time or later a certificate was issued by the company for said 600 shares of stock in the name

of Elizabeth C. Stevens, Jr. This certificate was not, however, delivered to the said Elizabeth C. Stevens, Jr., but was placed, by the secretary of the company at the direction of the testator, in the private compartment of the testator in the safe of the company (Case, p. 70, line 41; p. 114, line 30, etc.).

On the 2nd day of October, 1918, a similar transfer was made from Mrs. Wittpenn to Elizabeth C. Stevens, Jr., of 410 shares of the common capital stock of the Hoboken Paper Mill Company. On this date or later, certificate number 36 for said shares, was issued in the name of Elizabeth C. Stevens, Jr. This certificate was not delivered to Miss Stevens but was placed, by the secretary of the Hoboken Land & Improvement Company, at the direction of the testator, in the above mentioned private compartment of the testator in the safe of the Hoboken Land & Improvement Company (Case, p. 74, line 27, p. 118, line 2, etc.). Both of these transfers were made without consideration and in neither case was the certificate of stock delivered to Elizabeth C. Stevens, Jr., either at the time of the transfer or at any other time (Case, p. 94, line 2).

The 1,161 shares of preferred stock of the Hoboken Paper Mill Company were issued in the following manner: On November 1, 1918, the Hoboken Paper Mill Company, of which the testator was then president, passed a resolution authorizing its president and secretary to issue to Elsie C. Stevens (the name by which Elizabeth C. Stevens was commonly known) a certificate for 1,161 shares of new preferred stock of the company in exchange for \$90,000 par value of bonds of the company and a nine-tenths interest in a bond and mortgage of the company amounting to \$29,728.23. The resolution recites that the bonds and the bond and mortgage in question were then owned by Elsie C. Stevens (Case, p. 85, line 10, etc.). It is admitted that

the bonds and the bond and mortgage mentioned in this resolution were in fact then owned by Richard Stevens and that Elsie C. Stevens had no interest therein (Bill of Complaint, paragraph 21, Case, p. 11; Answer of Theodosius Stevens, paragraph 21, Case, p. 21).

The preferred stock in question was duly issued in the name of Elizabeth C. Stevens, Jr., but the certificate was delivered by the Paper Mill Company to Richard Stevens the testator who in turn delivered it to Mr. Brown, secretary of the Hoboken Land & Improvement Company directing him to put it in the safe in the office of that company apparently without specifying the particular compartment in such safe in which it should be placed. Mr. Brown placed the certificate in the safe of the Hoboken Land & Improvement Company in a file marked "Elsie Stevens, Jr." (Case, p. 127, line 26, etc.). This file was a thin paperoid box which contained securities which were the property of Elizabeth C. Stevens, Jr., under the will of her grandmother. She had had access to the file since her twenty-first birthday (Case, p. 69, line 22). While the file contained her property she did not have the combination of the safe in which it was kept and was therefor obliged to secure access to it either through the testator who was then the president of the Hoboken Land & Improvement Company and had the combination of the safe, or through some other officer of the company who knew such combination (Case, p. 80, line 40).

Some time between the 1st day of October, 1918, and the 29th day of January, 1919, Elizabeth C. Stevens, Jr., acting at the request of the testator, executed and delivered an assignment of the said 600 shares of stock of the Hoboken Land & Improvement Company to the testator and also an irrevocable Power of Attorney authorizing the transfer of said stock on the books of said com-

pany to said Richard Stevens or his nominee (Exhibit C-16, pp. 212 and 213). This assignment was fastened by the testator to the certificate of stock issued in the name of Elizabeth C. Stevens, Jr., above referred to and was kept with such certificate by him in his private compartment marked "Richard Stevens" in the safe of the Hoboken Land & Improvement Company and was found there by his executors after his death (Case, p. 70, line 41, p. 71, line 32, etc.; p. 92, line 10; p. 114, line 42, etc.).

A similar assignment and Power of Attorney was executed in blank by Elizabeth C. Stevens, Jr., on the reverse side of the certificate for 410 shares of the common stock of the Hoboken Paper Mill Company. This certificate was also kept in the above mentioned private compartment of the testator and was found there after his death (Case, p. 73, line 36; p. 74, line 14; Exhibit C-17, Case, pp. 213 and 214).

An assignment with irrevocable Power of Attorney of the 1,161 shares of preferred stock of the Hoboken Paper Mill Company was also executed by the said Elizabeth C. Stevens, Jr., at the request of the testator some time between the first day of November, 1918, and the 29th day of January, 1919, delivered to the testator and attached by him to the certificate of preferred stock.

Since attaining her majority Elizabeth C. Stevens, Jr., had had an account on the books of the Hoboken Land & Improvement Company. This account was credited with the income of the securities which came to her from her grandmother's estate and the income so credited was expended by her (Case, p. 69, line 25; p. 77, line 20). The dividends from the stock in question which were paid prior to December 6, 1918, were collected by the Hoboken Land & Improvement Company and credited to this account (Case, pp. 63 and 64). On the

date last mentioned, however, the testator gave to the Secretary of the Hoboken Land & Improvement Company the following directions in writing with regard to dividends on said stock:

“December 6, 1918, H. L. & I. Co., Please open new account under following name, ‘Elsie Stevens, Jr., Special.’ In this account deposit monthly dividends paid to Elizabeth C. Stevens, Jr. on the following stock; 600 shs. Hoboken Land & Impt. Co., 410 shs. *common stock* of Hoboken Paper Mill Co., 1161 shs *preferred stock* of Hoboken Paper Mill Co.

(signed) RICHARD STEVENS.”

(Case, p. 65; Ex. C-4, Case, p. 191.)

On the same date the testator gave the following directions with regard to dividends on the stock in question which had previously been credited to the account of Elsie Stevens, Jr.:

“December 6, 1918, H. L. & I. Co., Please transfer from the account of Elsie Stevens, Jr. to the account of Elsie Stevens, Jr. Special, the sum of \$3220. This amount represents the following payments that were deposited to the credit of Elsie Stevens, Jr. account, viz: October, 1918 dividend of 1% on 410 shs. of Hoboken Paper Mill, \$410.00; November, 1918, ditto on 600 shs. of H. L. & I. Co., \$900.00; ditto 1918, interest due on old bonds of Hoboken Paper Mill, \$1500.00; ditto 1918 div. on 410 shs. Hoboken Paper Mill Co., \$410.00; \$3220.00.

(signed) RICHARD STEVENS.”

(Case, p. 66; Ex. C-5, Case, p. 192.)

These directions were followed by the Hoboken Land & Improvement Company and thereafter all dividends on the stock in question were credited to the name of Elsie Stevens, Jr. Special. No money was drawn from this account by any one other than Richard Stevens (Case, p. 79, line 30 *et seq.*; p. 80, line 1 *et seq.*).

This account appears in the Case as Exhibit C-6

(Case, p. 193). On the debit side of the account appear two entries, one under date of February 28th "To Sundry Creditors 2638.20", the other under date of March 31st "To Sundry Creditors 607.75". By referring to Exhibits C-25, Case, p. 220; C-27, Case, pp. 221 and 222 and C-28, Case, p. 223, it appears that the item of \$2638.20 was in payment for some wines and liquors (principally whiskey) purchased by Richard Stevens in the name of Elizabeth Stevens but obviously not for her use. The item of \$607.75 was made up of a similar purchase of whiskey similarly made, amounting to \$578. and one-quarter of the annual income tax for the year 1918 paid in the name of Elizabeth C. Stevens, Jr. on the dividends in question. This tax was paid pursuant to an order sent by Richard Stevens to the Hoboken Land & Improvement Company, which appears as Ex. C-25 and reads as follows:

"Mch. 12, 1919. H. L. & I. Co. Pay 25% of the income tax on the income of Elizabeth C. Stevens, Jr. and charge to account of Elsie Stevens, Jr., Special, and pay 25% of my tax and charge to me

(signed) RICHARD STEVENS".

(Case, p. 220.)

No attempt was made to show that the liquors in question were actually purchased for Elizabeth C. Stevens, Jr. or that they were not purchased by the testator for his own use. In fact, Elizabeth had no knowledge of such purchase until after the testator's death (Case, p. 95, line 23 *et seq.*; p. 96).

Elizabeth testified at page 95, line 42, that a part of this money was withdrawn from the account for her expenses, but admitted later (p. 96, line 10) that this was only surmise on her part and that her father never consulted her before drawing on this account. It is clearly established that none of the dividends in question were ever used for Elizabeth's

benefit and that they were at all times treated by the testator as his property.

There is practically no evidence concerning the purpose of the testator in making the transfer in question except the testimony of Elizabeth C. Stevens, Jr. and of Dorothy P. Stevens and the fact that prior to the transfers to Elizabeth the stock in the Hoboken Land & Improvement Company and the common stock in the Hoboken Paper Mill Company had been on the books of the respective companies in the name of Mrs. Whittpenn.

Elizabeth testified that during the Fall of 1918 her father told her that he was going to "transfer some stock to her name". He mentioned the Paper Mill stock, but did not mention the Land & Improvement Company stock which was by far the more valuable of the two issues (Case, p. 88, line 25 *et seq.*; p. 89).

This interview occurred in September, 1918. Some two or three months later she went to her father's office at his request and there signed some papers, one of which concerned the Paper Mill Company stock. She did not remember to what the other papers referred. She testified that her father told her that in case of his death he wanted the money (evidently meaning the stock) to "go back to the estate" so that it would be divided equally between his four children (Case, p. 89, line 25). In response to questions asked by the court she repeated the testimony as follows:

"Q. Won't you tell me again what it was he said he wanted to have happen to this stock in case of his death?

A. In case of his death he wanted it to go back to the rest of his money, of the whole thing, so it would be divided equally. He wanted it arranged so it would be divided equally into fourths.

Q. In case of your death?

A. He wanted me to make a will so it would

go back to him, and I refused to make a will, and he said he wanted me to sign something so it would go back to him."

(Case, p. 91, line 25 *et seq.*).

The testimony with regard to the stock transferred to the name of Dorothy P. Stevens shows that in April, 1919, the testator directed Mr. Brown, the Secretary of the Hoboken Land & Improvement Company, to transfer 700 shares of the stock of that company standing in the name of the testator to Dorothy P. Stevens; that the transfer should be made before the dividend payable on May 1st should be declared; and that the transfer was made in accordance with these instructions and a certificate issued in the name of Dorothy P. Stevens for the stock (Case, pp. 103 and 104). This certificate was delivered to the testator who signed the stub of the stock certificate book with the name of Dorothy P. Stevens (Case, p. 116, line 10, line 20). An assignment of the stock to the testator, together with an irrevocable power of attorney, was executed by Dorothy at the request of the testator on the date on which the certificate was issued and the certificate of stock, together with the assignment, were placed by the testator in his private box in the safe of the Hoboken Land & Improvement Company (Case, p. 104, line 38; p. 116, line 10).

Pursuant to directions given by the testator an account was opened on the books of the Hoboken Land & Improvement Company in the name of Dorothy P. Stevens, Richard Stevens, Guardian, and directions were given to credit the dividends on the 700 shares of stock in question to that account. The dividends were so credited, the first dividend having been payable on May 1st as above stated. The testator having died, as above stated, on May 18, 1919, there were no withdrawals from this account (Case, p. 106, line 32).

Dorothy Stevens was examined as a witness. She

testified that her father had told her that he was going to turn over some stock to her name; *that she wouldn't have anything to do with it, except it would just be in her name and that he wanted her to sign a paper, which she did.* In case she should die the stock would go back to him and in case he died it would be divided equally between her sisters and brother and herself; that he either said he had given Elsie some stock or that he was going to (Case, p. 100, line 26).

ARGUMENT.

The Court of Chancery correctly decided that the testator did not make a valid gift of any of the stock either to Elizabeth C. Stevens, Jr. or to Dorothy P. Stevens.

It is well established in this State that there can be no valid gift *inter vivos* without the presence of three essential requirements:

- 1—a donative intention on the part of the donor;
- 2—an actual delivery of the subject-matter of the gift;
- 3—the complete stripping of the donor of all *ownership of or dominion over* the subject-matter of the gift.

In *Swayze v. Huntington*, 82 N. J. Eq. 127, 133; *affd.* on opinion below, 83 N. J. Eq. 335, the rule was stated by Vice Chancellor Howell as follows:

“The general subject of gifts has been dealt with by the courts of this state, including the court of last resort, so many times and under so many circumstances that there can be no ques-

tion about the rule which prevails in this jurisdiction, I adopt in its entirety the conclusion reached by Vice-Chancellor Bergen in his opinion in *Taylor v. Coriell*, 66 N. J. Eq. 262, which holds that in order to establish a gift *inter vivos* the following factors must appear—first, *a donative intention on the part of the donor; second, an actual delivery of the subject-matter of the gift except in cases where it is a chose in action, like a certificate of shares of stock or evidence of indebtedness, in which case the delivery must be of that variety of which it is most capable (Matthews v. Hoagland, 48 N. J. Eq. 455); third; the donor must strip himself of all ownership and dominion over the subject-matter of the gift. These requisites appear in all our cases.*”

In that case the alleged donor gave to his sister who lived with him as a member of his family, a large envelope containing eight small ones and directed that the small envelopes should be delivered by her to the various parties to whom they were addressed. He asked her to take charge of them and deliver them to the parties, but stated that he would like to have it done quietly as he did not feel able to bear a great deal of excitement. His sister placed the package in a safe which belonged to the donor and which stood in his house in a small room sometimes called the “office”. This safe was used by both the donor and his sister. The donor had a private compartment in the safe to which he only had a key. His sister also had a private compartment to which she only had a key. Subsequently the donor requested his sister to deliver to him the large envelope containing the eight small ones, which he took and retained until several weeks later, on which occasion he gave her another large envelope containing smaller envelopes each of which contained certificates of stock in the H. W. Merriam Shoe Company, and was endorsed with the name of a person. She was again directed to take

charge of the envelopes and deliver them at her discretion. She was told that there was an envelope with her name on and that she might receive that now. She opened the one containing her name and found a certificate of the Shoe Company's stock for 568 shares, which her brother said he hoped she would live to enjoy. She, however, returned this envelope to the larger one and deposited the large envelope in her private drawer in the donor's safe, locked the same and retained the key in her possession. Several years later her brother died and the envelope was delivered by the sister to the executors of the estate. Each of the envelopes contained certificates of stock in the Shoe Company, with assignments and powers of attorney endorsed thereon in blank and duly executed.

The court found that the donor undoubtedly had a donative intention but that there had been no delivery of the gift, the certificates having been held by the sister as the agent of the donor, and that the donor had not stripped himself of all dominion and control over the subject-matter of the gift inasmuch as the donor received the dividends on the stock up to the time of his death. It was, therefore, held that no valid gift had been made.

The court said in part:

"In addition to the non-delivery during his lifetime the circumstances show that he not only intended to but did retain control of the shares in question. He voted on them at the annual meetings of the company; he received the dividends and accounted to no one therefor; he continued in control of the company in the same manner in which he had controlled it for many years previously. * * *

"It will therefore be seen that the donee in this case, even though there were a donative intention and a symbolical delivery, did not strip himself of all dominion and control over the subject-matter of the gift, nor indeed do I think that he meant to do so."

In *Matthews v. Hoagland*, 48 N. J. Eq. 455, Vice Chancellor Green, stating the law on the subject of gifts *inter vivos*, said:

“To constitute a valid gift *inter vivos*, there must be such a transfer of the subject-matter as will pass the donor’s title at once to the donee, absolutely and irrevocably, divesting the former of, and investing the latter with, all of the donor’s right or title therein, and control and dominion thereof.” (citing) “Blacks. Com. 441; 2 Kent Com. *438, *439; May Fraud. Conv. (T. B. Series) *403; *Jackson v. Twenty-third Street Railway*, 88 N. Y. 520, 526; *Young v. Young*, 80 N. Y. 422.”

In the above case it was claimed that a gift of some shares of stock of the Camden & Amboy R. R. Co. had been made by complainant’s intestate to his son. The evidence was that the deceased had taken the certificate of stock from a box and delivered it to the son stating that life was uncertain and that he wished the son to have the certificate. No assignment or power of attorney was either endorsed on the certificate or in any way executed by the deceased.

The court held that because of the absence of this assignment the deceased intended to retain some control and dominion over the certificate and that under those circumstances no valid gift *inter vivos* had been made. The court said, in part:

“If the decisions in this state did not seem to require an assignment in writing, I would be satisfied that the failure of Henry Matthews to execute the transfer and power of attorney on the back of the certificate, was conclusive evidence that he did not intend to make a present gift of the stock, and to divest himself of all control and dominion over it or its proceeds. There was no haste in the matter; he had taken the time to execute the deed to John Matthews with all formality; he, it must be assumed, knew that the company would re-

quire his assignment in writing to transfer the stock, and notwithstanding anything he may have said indicating an intention to give it, the fact of his not making the paper effective shows that he intended to retain some dominion over the property. If so, it is fatal to the transaction as a gift *inter vivos*. The stock of the Camden and Amboy railroad I am of the opinion was not effectually given by the intestate, and belonged at his death to his estate."

In *Smith v. Burnet*, 35 N. J. Eq. 314, Stephen O. Smith claimed that his father, Oliver Smith, who died prior to the institution of the suit, had given him 101 shares of stock of the Newark Mutual Fire Insurance Company. The son proved that he had had possession of the stock for some time prior to the death of the father and offered in evidence the following paper signed by the father:

"I hereby appoint Stephen O. Smith my attorney, to receive and assign any scrip or dividends due, or belonging to me, in the Newark Mutual Fire Insurance Company, and to receive the interest thereon.

OLIVER SMITH"

It appeared that the son drew the dividends which accrued subsequent to the receipt of the power of attorney but that out of the proceeds thereof he paid the interest upon a mortgage which his father owed to the Insurance Company. After referring to this fact the court said, in part:

"What became of the remainder of that dividend does not appear, after it came to the hands of Stephen. This act standing unexplained implies that Oliver still controlled the proceeds of this stock, and such control is fatal to any claim that the transfer of possession was by way of a gift."

In *Provident Institution for Savings v. Sisters of St. Francis*, 87 N. J. Eq. 424, at 429; *affd.* on

opinion below, 88 N. J. Eq. 349, this court, speaking by Vice Chancellor Stevenson, said:

“The fundamental principle of the law of gifts is that the gift to be effective must place the thing donated beyond the control of the donor.”

See also

Nicklas v. Parker, 71 N. J. Eq. 780;

Stevenson v. Earl, 65 N. J. Eq. 721, at p. 725;

Cook v. Lum, 55 N. J. L. 373 at p. 375;

Schick v. Grote, 42 N. J. Eq. 352;

Bailey v. Orange Memorial Hospital, 102 A. Rep. 7.

In the case at bar not only one but in fact all of the essentials of a valid gift are absent.

I.

The testator had no donative intention.

The intention of the testator must be gathered from the whole transaction—from what he did as well as from what he said. We submit that the undisputed evidence in the case clearly shows that the testator had no intention of making an absolute gift of any of the stock to either of the two principal defendants. As has been stated in the recital of facts, the Hoboken Land & Improvement Company stock and the Hoboken Paper Mill Company common stock which was transferred to Elizabeth C. Stevens, Jr., had prior to the assignment stood on the books of the respective companies in the name of Mrs. Wittpenn, the testator's sister (the Hoboken Land & Improvement Com-

pany stock in the name of Mrs. Wittpenn, Trustee, and the Paper Mill Company common stock in the name of Mrs. Wittpenn). As to each of these stocks Mrs. Wittpenn was a trustee for purposes which do not appear except that she had no individual interest in the stock and was obligated to assign it upon demand of Richard Stevens to anyone whom he might name. This fact is admitted in the pleadings (Case, pp. 5 and 6, Par. 7, and p. 21, lines 19 and 20). Presumably the testator intended Elizabeth to act in the same capacity in which Mrs. Wittpenn had previously acted and to hold the bare legal title, if in fact she ever acquired the legal title to the stock, for him. The fact that the purpose of this arrangement does not appear is immaterial so long as it does appear that a donative intention was lacking. The maxim of the law is *nemo præsumitur donare*.

Elizabeth was permitted to testify freely as to conversations with the testator and in fact her evidence clearly shows the absence of a donative intention. It appears therefrom that the testator never told her that he was making a *gift* to her of stock. He told her that he was going "*to transfer some stock to her name*", mentioning only the Paper Mill stock, although the stock in the Hoboken Land & Improvement Company was by far the more valuable (Case, p. 88, line 25, *et seq.*, p. 89). This conversation occurred in September, and although the stock was actually transferred on the books of the company in one case on October 1st and in the other on October 2nd, the certificate was never delivered to her and in fact no mention of the matter was made to her until two or three months after the conversation, when by the testator's request she went to the office of the Hoboken Land & Improvement Company and signed some papers which were evidently the assignments and powers of attorney of the Hoboken Land & Improvement Company

stock and of the Paper Mill stock, although the only thing which Miss Stevens remembers is the Paper Mill stock (Case, p. 90, line 26). This perhaps is because of the fact that the assignment and power of attorney in the case of the Paper Mill stock was endorsed on the certificate, while in the case of the Land & Improvement Co. stock it was on a separate piece of paper. It is apparent that Miss Stevens never saw the certificate for the Land & Improvement Company stock, and that the only occasion on which she saw the Paper Mill Company stock certificate was when it was produced by the testator and at his request she signed the power of attorney and assignment.

The statements made by the testator to Elizabeth with regard to this stock are significant. It will be noted (Case, p. 89, line 20, *et seq.*) that he said that in case of his death he wanted the money (evidently meaning the stock) "to go back to the estate". On page 91 this was repeated, namely, that in case of his death he wanted it to go back to the rest of his money, of the whole thing, so it would be divided equally. This clearly shows an intention on the part of the testator to have the stock treated as a part of his estate in the event of his death.

It is obvious that if he had intended to make a gift of the stock to Elizabeth this could not be done. There is here no intention to have the stock retained by Elizabeth in ademption of the legacy in the will of the testator, but the plainly expressed intention that the stock, notwithstanding the fact that it stood on the books of the company in the name of Elizabeth, should be a part of the testator's estate at the time of his death.

It appears that in this conversation with Elizabeth the testator also considered the possibility of Elizabeth's predeceasing him and of a claim by her estate to the stock, for he told her that in case of her death he wanted the stock to go to him. This, we

submit, clearly shows that the testator merely intended to have Elizabeth's name appear on the books of the company as the owner of the stock; that he intended that the stock should always belong to him; that at his death it should be considered as a part of his estate and that at her death it should *not* be considered as a part of her estate.

It is significant that the testator told his daughter, Elizabeth, that he was doing the same thing for Dorothy, *i. e.*, that he was transferring stock to her under the same conditions that he was to Elizabeth (Case, p. 93, line 20). In view of this, Dorothy's testimony as to these conditions is very significant. She testified, as above stated, as follows:

“He said he was going to turn over some stock in my name, and that I wouldn't have anything to do with it, except it would just be in my name, and that he wanted me to sign a paper which I did, in case that I should die, this stock would come back to him. And in case he died it would be divided equally between my sisters and brother and myself.”

She also testified that he further said that he had given Elsie some stock or that he was going to.

The acts of the testator were consistent with his intention to retain the ownership of the stock and inconsistent with any other intention. He never delivered any of the certificates to either of his alleged donees. He not only retained physical possession of the certificates but he had his alleged donees execute and deliver to him assignments and irrevocable powers of attorney for the transfer of the stock. With regard to the Hoboken Paper Mill stock he also had Elsie execute and deliver to him a proxy to vote the stock.

He exercised control over the dividends paid on the stock transferred to Elizabeth. As has above been stated, these dividends were originally credited to “Elsie Stevens, Jr.” account. As suggested in

the opinion of the learned Vice-Chancellor (Case, p. 143), this was not done by reason of any instructions from Elizabeth but merely as a matter of usual routine in the office of the Hoboken Land & Improvement Company. The testator, however, on December 6th, without consulting Elizabeth, ordered the company to open a new account in the name of "Elsie Stevens, Jr., Special," and to credit all of the dividends on the stock in question which had previously been credited to the "Elsie Stevens, Jr." account to the new account. He also ordered that all subsequent dividends on the stock standing in the name of Elizabeth C. Stevens should be credited to the "Elsie Stevens Jr. Special" account. This account the testator at all times treated as his own. The only withdrawals from it were to pay for wines and whiskey purchased by him and to pay the income tax on the dividends in question. It is significant that one item of \$1,500, namely, the interest due on the old bonds of the Hoboken Paper Mill Company which was originally credited to the Elsie Stevens, Jr., account and which was transferred pursuant to the order of the testator to the "Elsie Stevens, Jr., Special" account was concededly money of the testator which had not been given to his daughter.

Speaking of the stock transferred to the name of Dorothy Stevens, the learned Vice-Chancellor well says:

"In the present case, as to 'Dorothy's stock', we need go no further than the first of these elements. There was no donative intent, either specific or general. The inherent probability is against it, in the first place,—against his giving away to a girl of fifteen or sixteen (even though one of his daughters), such a block of stock in this particular company, depriving himself (in connection with the assumed gift of 600 shares to Elsie) of *over* half of his holdings in the company. In the second place neither his statements nor his acts indicate

any such intent. He did not say to Dorothy or to Elsie, that he was 'giving', or going to give, the stock to Dorothy. He said he was going to transfer it to Dorothy, to 'turn it over to her name'—and (still more cogent) that she wouldn't have anything to do with it except it would just be in her name. And his further explanation that at her death it was to come back to him, and at his death it was to be divided equally among the four children, shows conclusively that the stock was not intended by him to be hers to do with as she pleased—but at most to be hers only as an agent or trustee for him. The only colorable evidence to the contrary, *i. e.*, the statement to Brown, that he wanted the May 1 dividend to go to the holder, Dorothy, does not in fact militate against what I have said, because the dividends were not to go, and did not go, to Dorothy herself, but to him, though nominally, as her guardian. His actions likewise correspond (without reciting them again in detail)—particularly the simultaneous taking back of an assignment from her to himself. True, if the stock were hers the assignment from a minor would be legally valueless,—but it was undated and was at least a precautionary measure good on its face after she came of age. Moreover, under all the evidence, I have no doubt whatever that at his direction, the company would have acted on that assignment even before she came of age."

(Case, pp. 148-149.)

Counsel for appellants criticize these remarks of the Vice-Chancellor upon the ground that he misstated Dorothy's age at the time of the transfer. This we regard as immaterial. However, Mrs. Stevens testified at the hearing, which occurred more than one year after the date of the transfer of the stock, that Dorothy was then seventeen years of age (Case, p. 61, line 20).

The Vice-Chancellor, after reviewing the evi-

dence referring to the transfer of stock to Elizabeth, says:

“I think it is clear from all this testimony,—quite as clear as in Dorothy’s case,—that he had no intent to make an absolute gift of the stock to Elsie. Why should he? Why should he give away a third of his total wealth? Why should he give it to two only of his four children, when everything else shows that he intended to treat them all alike? What reason was there to induce him to deprive himself of ownership over half his Land Company stock and practically all of his Paper Company stock,—to deprive himself of control over the two companies, which were, so to speak, his own companies,—he being vigorous and active and still in the prime of life? There is no reason suggested and I can conceive of none. He intended simply to put it in Elsie’s name, but himself to have the beneficial interest; he still regarded it as under his control and so spoke and acted afterwards. I think if any disinterested person,—nay, even any one of counsel for the two girls,—considering all the testimony, will suppose that Elsie, at the time of the transfer had said to her father,—‘Do you mean that this stock is to be absolutely mine? that I am to have the right to dispose of it absolutely as I wish? Of course, under all ordinary circumstances I would follow your requests or desires, but if any extraordinary occasion should arise, have I the right to deal with it irrespective of or contrary to what you wish?’ there can be no doubt that the father would have answered, ‘no.’

“And his and her actions, or practically all of them, corroborate this conclusion. The non-delivery of the certificates to Elsie; the retention thereof in his safe, and of all but the preferred stock, which had no voting power, in his own file or box; the taking back of assignments and proxies; the exercise of authority over dividends; the opening of the special account for the dividends separate from the moneys which were really hers absolutely; the lack of knowledge, or even interest, by Elsie as to the whole matter; her lack of exercise or of at-

tempt to exercise any control or authority or act of ownership as to stock or dividends; the use by him of the dividends to buy his liquors (without her authority), and for no other purposes except to pay the income tax on such dividends (Elsie's other income was insufficient to be subject to tax), although he during the whole six months paid all her expenses except for clothing, just as he had before,—and other acts which I need not reiterate. Some of these acts by themselves would of course not be conclusive,—some would by themselves, be not inconsistent with, or unexplainable from the standpoint of, the view that he had made a gift; but taken collectively they are incompatible with any such theory.”

(Case, pp. 152-153.)

The appellants argue that a donative intention should be inferred from the relationship of the alleged donees to the testator. The difficulty, however, with this argument is that both the declarations and the conduct of the testator clearly show that he had no such intention. Neither these declarations nor his conduct to which reference has above been made can be reconciled with the existence of intent to make a present absolute gift of the stock to his daughters.

Appellants have referred to the will of the testator as supporting in some way a donative intention on his part in making the transfers to his daughter Elizabeth. We submit that if the provisions of the will shed any light upon the testator's intention they tend to support the opposite view. The will is printed as Exhibit C-1, case, page 184, etc. It will be observed that the bulk of the testator's estate was to be divided into four equal parts each of which was to constitute a trust fund for the benefit of one of testator's children. None of the children was to receive the principal of the fund until he or she reached the age of forty years. In Elsie's case, because of her serious illness the principal was

to continue in trust during her life and at her death was to go to the issue of testator. The will also contained a specific bequest of \$28,000 to each of the two younger children stating that this bequest was made in order to place them on the same financial footing with the two older children who received a bequest of a similar sum each from their grandmother. The will also contained a specific bequest of \$50,000 to be paid to each of testator's children when he or she attained the age of twenty-four years.

It would be strange indeed if the testator, after deliberately planning in his will not to give any of his children control over any considerable portion of his estate until such child should reach the mature age of forty, should without any necessity or occasion for such a change in purpose, give absolutely to Elizabeth who was then twenty-three years of age, more than one-fourth of his entire estate, and stranger still, that he should give to Dorothy, who was then but sixteen years old, a block of stock which represented more than her share of the estate. That he did not intend so to do appears from his statements to his daughters made both prior and subsequent to the transfers. The absence of such intention is, we submit, supported by the careful provisions made in his will.

Appellants refer to the testimony of Mrs. Stevens as supporting their claim that the transfers were intended as gifts. We submit that this testimony cannot be so construed and that if any such inference could be drawn from it, it would be met and overthrown by the testimony of Elizabeth and by the acts of the testator.

Counsel quote Mrs. Stevens as saying that the testator told her: "that he had not changed his will yet but that he had transferred a lump of stock in Elsie's name." A reading of the testimony will disclose that Mrs. Stevens said nothing of the kind.

She did say that in the Spring of 1919 her husband told her that he had transferred a lump of stock to Elsie (Case, p. 101, line 13, etc.), without telling her what stock, how much or for what purpose (Case, p. 102, line 30, etc.). She also testified that in April, 1918, the testator told her that by his will he had left Elizabeth's money in trust because of her illness and that he then expressed the intention of changing his will. She said that some time after this conversation she asked him if he had changed his will, and he replied that he had not but that he intended to do so (Case, p. 102, line 10). Particular reference is made to the portion of her testimony on page 101, line 24, etc., in which she was questioned by the court as to the time when these conversations occurred. In reply to these questions she was unable to show that the conversation with regard to the transfer of stock had any connection whatever with the conversation with regard to the contemplated change in testator's will.

We submit that there is nothing in Mrs. Stevens' testimony which tends to show that the transfer of stock was made to Elizabeth in lieu of a change in testator's will. The only inference that can be drawn from the testimony is that Mr. Stevens intended to change his will so that Elizabeth would receive the same benefits thereunder as the other children. Moreover, it is fair to assume from all the testimony that Mr. Stevens had the same object in transferring stock to Elizabeth that he had in making the transfer to Dorothy, and it is obvious that the transfer to Dorothy had no relation to the provisions of his will.

Appellants' argument that the change which testator contemplated making in his will was necessitated by the transfers of the stock, finds no support in the evidence.

Counsel further contend that a donative intention must be inferred from the fact that (as they

say) Elizabeth collected the dividends on the stock and paid the income tax thereon. It is absurd to say that Elizabeth collected these dividends when as a matter of fact they were withdrawn from her account by her father's order and deposited in a separate account upon which he, and he alone, made drafts for his own purposes and without her knowledge or consent (see Case, p. 79, line 30; p. 80, line 1, and Exs. C-6, p. 193; C-25, p. 220; C-27, p. 221, and C-28, p. 223).

It is begging the question to say that Elizabeth paid the income tax on these dividends. This tax was actually paid out of the Elsie Stevens special account. No moneys in this account belonged to Elsie unless the stock belonged to her. The tax was a tax on the dividends. It was paid out of the dividends and therefore necessarily by the owner of the dividends.

Counsel further insist that a donative intention must be inferred from the fact that (as they say) the testator in making up Elizabeth's income tax included in it the dividends paid on the stock; they argue that to hold otherwise would be to fasten deliberate tax evasion upon the complainants' testator. In considering this argument it should be borne in mind that at the time this income tax return was made the testator not only had possession of the certificates but had legal title thereto under Sec. 1 of the Act to make uniform the law of transfer of shares of stocks in corporations (P. L. 1916, p. 398); and that previous to making this return he had exercised complete control over the dividends in question and had used a considerable portion of them in payment of a bill incurred by him for wines and liquors.

The learned Vice-Chancellor, in dealing with this contention, well said:

“There is, too, a Scylla to companion defendants' Charybdis,—for if it be assumed that

he had made an absolute and complete gift of the stock and dividends, then it was unlawful for him to take from his daughter's funds some \$3000.00 for his own individual purposes."

The appellants seek to minimize the effect of this conduct by intimating that the testator intended to account to his daughter for the moneys so expended. This, however, is pure supposition. If the dividends were in fact the property of Elizabeth, he had no more right to use them for his purposes than he would to so use the property of any other person, and the fact that he was able to account for the moneys so used would not make the use thereof lawful.

The appellants also claim that the time which elapsed between the transfer of the stock on the books of the company to the name of Elizabeth C. Stephens, Jr., and the execution of the assignments by her is significant. We do not believe that this claim has any force. In the first place the testimony of the alleged donee shows the absence of a donative intention at the time the transfers were made. The act of the testator in securing assignments was inconsistent with any intention on his part to make a gift. Furthermore, as has above been stated, it is clear from Elizabeth's testimony that she did not know that the transfer had been made until she executed the assignments and powers of attorney and that she did not learn even then of the transfer of the Hoboken Land & Improvement Company stock or the issuance of the Hoboken Paper Mill preferred, for although she executed assignments and powers of attorney she did it at her father's direction and without paying any particular attention to what she was doing (Case, p. 92, line 10). There never was a time in the course of the entire transaction when Elizabeth had dominion over the subject matter of the alleged gift. The testator never even for an in-

stant relinquished his control thereof. The lapse of time, therefore, which occurred between the transfer on the books of the company and the procuring of the execution and delivery of the assignment by him does not show that the testator ever had any donative intention with regard to the stock.

Counsel insist that the assignments of the stock from Elizabeth to the testator are void as an attempted testamentary disposition. We respectfully submit that these re-assignments do not come within the rule invoked by defendants for whatever title the assignors had was immediately divested by the assignments which were delivered at once. No act which divests the grantor of his property in his lifetime is testamentary in character within this rule.

See

Robeson v. Duncan, 74 N. J. Eq. 745, 750;
Sibley v. Somers, 62 N. J. Eq. 595, 600;
Smith v. Baxter, 62 N. J. Eq. 209; affd. on
 opinion below; 64 N. J. Eq. 793.

Furthermore the legal title to the stock had never vested in the assignors for the certificates had not been delivered (see P. L. 1916, p. 398), and they had no equitable title, for the assignment to them was made without consideration and without donative intent. While it seems clear that the assignments from Elsie passed any title which she had to the stock we submit that the fact that assignments from both children were executed and delivered, strongly supports the view that the testator never intended to make a gift.

The defendants contend, however, that the assignments were intended to take effect only in the event of the death of the assignors. This contention has not been established by proof. They were unquestionably a part of the testator's scheme and were intended to enable him to retain complete

control over the stock. That such was his intention appears from his statement to each daughter that upon his death the stock was to be a part of his estate and that upon her death it would be his.

It is further insisted by appellants that the conversation between the testator and Elizabeth in which he requested her to make a will supports the claim that the testator intended to make a gift of the stock to Elizabeth. Referring to this contention, the learned Vice-Chancellor said:

“To this it may be said, that it by no means appears that the request as to the will was made after the transfers; moreover the insistence upon a will or in lieu thereof upon a re-assignment, proves that his intent was that the stock should remain subject to the final disposition that he desired; and finally a will would operate upon the bare legal title of a trustee to carry it back to the *cestui* just as efficaciously as upon a complete beneficial title.”

In *Moore vs. Moore* (Sup. Ct. of Pa.), 1895, 30 Atl. 932, the alleged donor requested his wife to make a will in his favor. The court held that this request was a fact in the case which rebutted the presumption of a gift of the land to the wife.

The Vice-Chancellor found that the testator did not have donative intent in making the transfers and counsel attack this finding because he did not determine just what the testator intended to accomplish by the transfers. In this respect the Vice-Chancellor's conclusions closely follow the evidence in the case. *If the testator had a donative intent it was his purpose when he transferred this stock that the transferees should thereupon become the sole and absolute owners thereof and that he, the testator, should thereafter have no interest in or control over it. If this was his intention why did he insist that upon his death the stock should be a part of his estate and should be divided equally among his four*

children? Why did he insist that upon the transferees' death the stock should belong to him? Why did he fail to tell his daughters what stock he had transferred to them? Why did he retain the certificates of stock? Why did he secure assignments of the stock to him? Why did he use money from the dividends for his own purposes? If these things which the testator said and did show that he had no donative intent, can it be possible that the transfers so made should be sustained as gifts simply because the evidence does not disclose the motive which actuated the testator?

He evidently regarded the stock as his and considered the motives which prompted its transfer as his private business. He was careful to show by his statements and his actions that he had no donative intent and was not making gifts. He did not regard it as necessary to further disclose his purpose.

We respectfully submit therefore that all of the evidence in the case points conclusively to the fact that the testator had no intention to make a gift of any of the stock in question to either of his daughters, that this fact being established is dispositive of the case, for it is entirely immaterial what purpose the testator had in mind if in fact he had no donative intent. We submit that the absence of this intent is so clear and unmistakable that speculation as to the motives which actuated the testation is entirely unnecessary. If he did not intend to make a gift, it is entirely immaterial what he may have intended to do.

II.**There was no delivery of the alleged gift.**

In view of all the facts in the case it clearly appears that the subject matter of the gift was never delivered. Neither of the donees ever had possession of any of the certificates of stock. Neither of them ever had the possession or disposition of any dividends from the stock. Neither of them had any knowledge of the actual transfer of the stock except such knowledge as they gained from executing the assignments and powers of attorney to the testator.

In fact, there is no claim that either of the alleged donees ever accepted any gift of the stock. As has above been stated, they did not even know that a transfer had actually been made.

In *Swayze v. Huntington, supra*, Vice Chancellor Howell said, speaking of the alleged gift by the testator to his sister:

“But it may be said that Mrs. Huntington’s certificate stands on a different basis from that on which the others stand. She testified that when the nine envelopes were laid out before her by her brother, and she found that one was addressed to her, he said to her ‘there is an envelope with your name on, and you can receive it now,’ and that she then opened it and thanked him for what she found therein, namely, a certificate of the stock in the shoe company for five hundred and sixty-eight shares. Perhaps if this fact stood alone, and it were supported by competent legal evidence, it might be sufficient to carry title, upon the ground that there was a delivery to her at that time. She could then have taken the certificate and had the shares transferred on the books of the company and she would have been the undisputed owner. But instead of accepting the intended gift, she treated her own certificate in the same manner in which she treated

all the others. Having destroyed the envelope in which Mr. Merriam had enclosed it, she on that day or on the next day, re-enclosed it in another envelope which she provided herself, endorsed her name on it in her own handwriting, laid it away with the other envelopes, and after Mr. Merriam's death delivered it to the executors without making any special claim for it. These acts seem to me to negative the idea that she considered that there was at that time a delivery to her."

The appellants, however, insist that the transfer of the stock on the books of the company vested legal title thereto in them and that this was a complete delivery thereof, and cite in support of this contention *In re Roberts*, 85 Pa. 84, decided in 1877, as the latest case on the subject of gifts. This case is readily distinguishable from the case at bar on the ground that transfers of stock in Pennsylvania at the time it was decided were not governed by any statutory provision similar to the uniform stock transfer Act of 1916 (P. L. p. 398) which was in effect in this State at the time of the transfers of the stock in question. This Act makes delivery of the certificate essential to the passage of title. Inasmuch as the certificates of stock were never delivered either to Elizabeth or Dorothy, they did not acquire legal title (see the remarks of the Vice-Chancellor on this question, at p. 156 *et seq.*).

The appellants never acquired full dominion or control over the subject matter of the gift because without the certificates they could not convey a title to any one else. The *Roberts* case is based upon the assumption that a transfer of stock on the books of the company vests the transferee with complete legal title to the stock. Whether this case was well decided or not, we submit that, since the enactment of the Act of 1916 above referred to, such a transfer does not vest the transferee with complete legal title

to the stock unless the certificate is delivered to him.

Furthermore, in the *Roberts* case the certificates of stock had not been re-assigned to the donor, and the court, as appears from the extract of the opinion quoted in the defendants' brief, relied upon the fact that the donor could not have used the certificates nor could any one have used them except the donee. Possession of the certificates by the donor, under the circumstances of that case, gave him no title to or control over the shares of stock while in the case at bar the possession of the certificates with the assignments and powers of attorney endorsed thereon, gave the donor not only the legal title to the stock but complete dominion and control thereof.

The *Roberts* case is at variance with cases decided in other jurisdictions, among which are the following:

Jackson v. Twenty-third St. Railway Co., 88 N. Y. 520, is a case closely in point. In that case S purchased and paid for 30 shares of defendant's stock directing the treasurer at the time to set it aside in the name of Y, plaintiff's testator, and that he, S, would let him know whether to deliver it to Y, and what to do with it at some future time. The treasurer issued a receipt stating that he had received the purchase price from Y which receipt came into the possession of the latter, in what way it did not appear. Y had married a niece of S, lived in his family and had adopted a child in which he took a special interest. No certificate of the stock was ever issued. Y received the dividends at S's suggestion for the support of the child. Held that this was no valid gift.

The court said in part:

"Delivery is essential to constitute a valid gift. The delivery must be such as to vest the donee with the control and dominion over the

property, and to absolutely divest the donor of his dominion and control, and the delivery must be made with the intent to vest the title of the property in the donee. The intent is a necessary element of the transaction. Delivery, without intent to vest the title in the donee, could pass no title to him. Here it may be admitted that the payment of the money by Sharp, the entry of the stock on the books of the company in the name of Youmans, and the delivery to him of the receipt of July 11, 1892, would have been sufficient to constitute a delivery of the stock to Youmans, and sufficient to make a valid gift thereof to him, if such had been the intention of Sharp; but it is clear that such was not the intention. He did not, in any event, intend to vest the title in Youmans for himself; his intention was to create a trust for the benefit of the child, in whom he took the special interest. He did not intend that Youmans should control the shares of stock; he directed that they should be retained by the treasurer of the company, subject to his future control and direction. Youmans drew the dividends by his special direction and consent, for the support of the child. *It may be true, in a legal sense, that it was not necessary for Youmans to have the certificate of stock in order to constitute him a stockholder but among business men the certificate of stock is regarded as representing the stock and the title thereto. Such is the common understanding, and Sharp undoubtedly supposed when he retained the certificate that the stock remained subject to his control.* The fact that Youmans did not, during his life, nearly seven years, call for the certificate of stock shows quite clearly that he did not regard himself as the owner of the stock; and that Sharp claimed to have the control and disposition thereof appears from the fact that he assumed to dispose of three shares thereof, after the certificate for the thirty shares had been executed. *It is true that he applied to Youmans for an order to transfer these three shares, but that was merely a matter of form, because Youmans held the*

receipt and the shares appeared upon the books of the company in his name. That was a mere matter of bookkeeping. Therefore, I conclude that there was no delivery of the stock, within the meaning of the law, to Youmans, with the intent to vest the title in him and give him the control thereof, and hence there is no reason, in law or justice, why the plaintiff in this action should recover, and thus probably defeat the benevolent purpose which actuated Sharp when he caused this stock to be set apart."

This case was cited with approval by Vice Chancellor Green in *Matthews v. Hoagland*, 48 N. J. Eq. 486, and has been frequently cited by the Courts of New York. It will be noted that the case cited is a stronger case for the donee than the case at bar for in the case cited the donee held the receipt which was issued by the company at the time the subscription price of the stock was paid and received the dividends on the stock. The stock stood on the books of the company in his name and all that he lacked was the physical possession of the certificate, while in the case at bar the alleged donee never had physical possession of anything representing the stock and never received or exercised control over any of the dividends, and the alleged donor had the certificates of stock with the assignments and powers of attorney thereof duly executed by the donees.

In *Getchell v. Biddeford Savings Bank*, 47 Atl. 895, it was held that where a husband with his own money buys corporate stock and has the certificates made out in his wife's name and holds them without delivering them to her or expressly declaring a trust in her favor, the stock so purchased does not vest in the wife.

The court said in part:

"That such ownership was not transferred to Mrs. Moore must be apparent. There was no gift completed by delivery, nor was there

any complete declaration of trust in her favor, one or the other of which was essential to vest the property in her. * * *

"The plaintiff urges that, as between husband and wife, it should be presumed that a gift was intended. That relationship is a circumstance, but not a controlling one. Even if a gift was intended, it was not perfected."

In *Bauernschmidt v. Bauernschmidt* (Ct. of Appeals of Md.), 54 Atl., at p. 643, the court said:

"There can be no gift which the law will recognize where there is reserved to the donor, either expressly or as a result of the circumstances and conditions attending the transaction, a power of revocation or a dominion over the subject of the gift. There must be no *locus penitentiae*, and there is always a *locus penitentiae* when the supposed donor may at any moment undo what he has done (citing cases). If the donor retains dominion over the thing given, precisely as he had control of it before the alleged gift was made, there is obviously no perfected gift, because there has been no change of possession, and there is still an opportunity to recant."

In this case the securities given were kept in a safe deposit box rented in the joint name of the donor and donee who were husband and wife, each of whom had keys thereto.

The court held that by this scheme the husband retained dominion over the gift.

See also

In re Turner's Estate, 90 Atl. 917 (Sup. Ct. of Pa.);

Cummings v. Bramhall, 120 Mass. 552, pp. 563, 564.

Matter of Crawford, 113 N. Y. 560:

In this case the alleged donor purchased negotiable bonds with the intention of giving them to his daughter. He then delivered them to the bank

to have them registered in the name of his daughter which was done by the bank. The purchaser, however, cashed the coupons and retained the proceeds and also retained the bonds in his possession.

It was held that there was no valid gift of the bonds to the daughter, because there had been no delivery. The court said in part:

“If an owner of shares of stock in a corporation, intending to give them to A., should take the scrip to the office of the company and surrender it and receive new scrip in the name of A., has he by this mere change of title on the books of the company, while retaining the entire possession and control of the scrip, and without any delivery thereof to A., accomplished a valid executed gift of the ownership of the shares to his intended donee? We should say clearly not. In this case the bonds belonged to the donor, as all agree, up to the time of the delivery for registry. After that, even if it be assumed that they were in consequence thereof rendered non-negotiable, how does that change the title? How does it divest the original owner of his right to the bond and to its possession and control? *Could the intended donee maintain an action against the donor to obtain its possession? We think not, and for the very good reason that it would not belong to him.* * * *

“* * * We are of the opinion, however, that if it be conceded that the donor intended to give these bonds away, he never accomplished such purpose by any valid delivery thereof, and they remained his property at the time of his death.”

In *Walker v. Walker et al.* (Sup. Ct. of N. H.), 31 Atl. 14, a father assigned to his children certain shares of railroad stock, giving up his own certificates and taking certificates, some in the name of Charles, and some in the name of Edward. He took powers of attorney from the boys, to enable him to collect the dividends, but made no delivery

or change of possession of the stock and bonds at that time, informing them, in a general way, without specifying the securities, that he had given them, or proposed to give them, certain property of that kind, without specifying the amount. The father retained the possession of this property, collecting the interest upon the bonds and the dividends upon the stocks, as upon his own property, sending Charles and Edward certain sums, as their needs required, and using the balance for his own personal and other expenses, until about the 1st of November, 1887, the transfer having occurred in 1883, when he went to Worcester, and at the office of one, Mellen, delivered to him a tin box containing bonds and certificates, and requested Mellen to keep it for his sons Charles and Edward; saying that the securities belonged to them, and that he had powers of attorney from them to manage the property and collect the income. Mellen told him he would take the securities, and hold them as he might direct. Mellen found in the box a large amount of corporate stock and bonds, with two lists, written upon a small piece of paper, enumerating the property,—one list having the name "Charles H. Walker" and the other the name of "Edward J. Walker" written over it in the father's handwriting. Mellen collected the interest on the bonds and dividends upon the stock, some of which he paid to Charles and some to Edward, either with or without express directions from the father and sent the balance to the father, always accounting to the father for all collections and payments. It appeared that in 1883, when the transfer was made, the father had had a disagreement with his wife which led to an estrangement. It appeared further that neither of the sons knew the amount or kind of these securities until after their father's death.

The court held that if it were to be assumed in

that case that the father intended to make a gift to his sons, the gift nevertheless was not a valid one, saying, in part:

“The gift was not perfected. It was not valid as a gift *inter vivos*, for that goes into absolute and immediate effect,—the donor parting not only with the possession, but with the dominion of the property; nor as a *donatio causa mortis*, for the securities were not delivered by the deceased in his last sickness, nor when in any particular peril of death, or under any special apprehension of such peril.”

Counsel also cite the case of *East Rutherford B. & L. Ass'n. v. McKenzie*, 87 N. J. Eq. 375, in support of their claim that delivery was made. In this case shares were issued in the joint names of Mr. and Mrs. McKenzie. The certificates were delivered to and held by the husband. The court said:

“A delivery to one of two joint tenants must, in the nature of things, be a delivery to both. This would, undoubtedly, be true of tenants in common, where it is the undoubted rule that the possession of one is the possession of all. That is, undoubtedly, the rule with respect to real estate.”

In the above case there was evidence that the shares in question were in Mrs. McKenzie's possession at the time of her husband's death and the court assumed that such possession was lawful. The court, however, dealing with the objection that the husband had not renounced all control over the property, said:

“It is undoubtedly true that the changing of the title to the shares from individual ownership to joint ownership effected no change whatever in the manner in which the parties to the transaction dealt with the shares. Mr. McKenzie remained president of the building

and loan association, and to all outward appearance there was no change. Even supposing that there had been no actual physical delivery of the evidence of the property to Mrs. McKenzie, Mr. McKenzie as *joint tenant* with the *right of survivorship* had such an interest in his right of survivorship as permitted him to hold and manage the joint property to the best advantage of all concerned."

In the case cited the thing given was a joint interest with right of survivorship while a similar interest was retained by the donor. Because of the retention of this interest the donor was permitted to retain possession and control over the subject-matter of the gift. There is no claim in the case at bar that the testator became a joint owner of the stock with either of his daughters. Either there was a gift of stock which placed the entire and absolute ownership thereof, together with the complete dominion and control over the same in the child or the testator remained the absolute and sole owner of the stock. We are not, therefore, concerned with any rule of law which applies only to the right of survivorship among joint owners, whether such joint ownership was created by gift or otherwise.

Appellants further argue that the certificates of stock were not in the testator's sole possession when they were in his private compartment marked with his name in the safe of the Hoboken Land & Improvement Company and intimate that if he had intended to retain possession of them he would have placed them in his box in the Hudson Trust Company vault. They call attention to the fact that Mr. Brown testified that Elizabeth could procure access to this private compartment. The testimony shows, however, that the testator had the combination of the safe in which this private compartment was located and that Elizabeth did not have this combination (Case, p. 80, line 40), and she therefore had no opportunity for access to the safe except

through the testator or some other officers of the Hoboken Land & Improvement Company while the testator had free access to the safe and to Elizabeth's file as well as to his private compartment.

Furthermore, it does not appear that Elizabeth ever actually put anything in or took anything from the safe except the file which bore her name, while it is shown in the evidence that the testator took the certificate for 1,161 shares of Hoboken Paper Mill Company preferred stock from Elizabeth's file whenever it was needed for his purposes.

Exhibit C-29 shows the securities which were found in testator's private compartment in the safe of the Hoboken Land & Improvement Company after his death. These securities are listed on page 238 of the State of the Case and on pages 223 to 231, to line 32. As shown in the stipulation appearing on page 239 they comprised the more valuable portion of testator's securities and included the certificate for the 1,216 shares of stock of the Hoboken Land & Improvement Company which was not only testator's property but which stood on the books of the company in his name.

The fact that this compartment in addition to containing these securities and valuable papers also contained some property of small value belonging to testator's minor children is, in our judgment, without importance except for the significant fact that the envelopes containing this property were distinctly marked in the handwriting of the testator "property of _____" (naming) the child. The markings on the envelopes containing the stock in question appear in Exhibits C-16, Case, page 213, line 20; Exhibit C-17, Case, page 214, line 39; C-18, Case, page 215, line 32; C-19, Case, page 216, line 38. In no case did the testator in designating these envelopes use language indicating that the contents were the *property* of the transferees. In fact the alleged quotations from the

marking on the envelope containing the assignment of the stock from Dorothy P. Stevens to the testator as stated on page 14 of appellants' brief is inaccurate as will appear from an examination of Exhibit C-19, page 216, line 38. We submit that the Vice-Chancellor correctly decided that no delivery was made by the testator to the transferees of any of the shares of stock in question.

III.

The testator did not divest himself of all dominion or control over stock.

It is so clear from the evidence in this case that the testator at all times controlled the subject-matter of the alleged gift, that argument on this point would seem to be unnecessary. The certificates of stock never left his possession. The certificates for the 600 shares of Hoboken Land & Improvement Company stock and the 410 shares of Hoboken Paper Mill Company common stock both standing in the name of Elizabeth C. Stevens, Jr., and the certificate for the 700 shares of Hoboken Land & Improvement Company stock in the name of Dorothy P. Stevens were found, at his death, in his private compartment in the safe of the Hoboken Land & Improvement Company in which compartment was also found the most valuable securities of his estate including the certificate for 1,216 shares of Hoboken Land & Improvement Company stock issued in his name. He had the combination of the safe in which this compartment was kept and no one else, except officers of the Hoboken Land & Improvement Company, had this combination.

There is no evidence that any one other than he ever used the private compartment in this safe

marked with his name or ever actually had access thereto although the compartment was not locked. He not only retained the certificates but he required his daughters to reassign them to him so that at any time he could have surrendered the certificates and had the stock transferred on the books of the company to himself or his nominee.

He not only controlled the certificates of stock; he also controlled the dividends. He directed the accounts to which they should be deposited, controlled all of the drafts which were made upon that account and expended money therefrom for his own purposes.

After the assignments were made to him he not only had control over the stock but had the legal title thereto as well.

Reilly vs. Absecon Land Co., 75 N. J. E. 73;

Farrell vs. Passaic Water Co., 82 N. J. E. 97;

Fidelity Trust Co. vs. Newark Milk & Cream Co., 108 Atl. 55, N. J. E.

He required his daughter, Elizabeth, to give him a proxy to vote the Paper Mill Company common stock so that he not only had title to the stock by virtue of his possession of the certificate and the assignment with power of attorney therein but he exercised all the rights of a stockholder even to voting on the stock. There was not even a moment that he did not entirely control the subject-matter of the alleged gift.

It has been suggested that the testator did not retain control of the 1,161 shares of preferred stock of the Hoboken Paper Mill Company. This suggestion is based upon the fact that this stock, at testator's death, was found in the safe of the Hoboken Land & Improvement Company in the file marked "Elsie Stevens". We submit, however, that

this fact is immaterial. Mr. Brown, the secretary of the Hoboken Land & Improvement Company testified that he received the certificate for this stock from the testator and placed it in the safe (Case, p. 127, line 30). Elsie Stevens never had anything to do with this certificate. While in the file marked "Elsie Stevens" it was at all times under his control as he had the combination of the safe as president of the Hoboken Land & Improvement Company and had free access to the file marked "Elsie Stevens". This appears not only from direct testimony but also from the fact that when he procured the assignment of the stock from his daughter Elizabeth he fastened it to the stock certificate and returned it to the file. Elizabeth never had anything to do with the certificate (Case, p. 92 and p. 127, line 30), and so far as the proof goes never saw it and the dividends were credited to the Elsie Stevens special account over which the testator exercised control for his own purposes.

We submit therefore that under no possible view of the facts can it be said that the testator divested himself of all dominion or control over the stock.

IV.

Referring to the Assignments.

Concerning the assignments, counsel insist that if testator did not intend to make a valid gift of the stock in question the transactions were designed for the purpose of defeating the Federal Internal Revenue Laws and that therefore the complainants are not entitled to the aid of a Court of Equity.

Two answers may be made to this insistence. First. Assuming that the testator did not intend to make gifts of the stock in question to the transferee,

there is no proof from which it may be inferred that he intended to defraud the government. The situation presented by the record is simply that a transfer was made which clearly was not intended as a gift. This, however, does not support the assumption that the purpose was unlawful.

Second. The complainants have the legal title to the stock.

See

Reilley v. Absecon Land Co., 75 N. J. Eq. 73;

Farrell v. Passaic Water Co., 82 N. J. Eq. 97;

Matthews v. Hoagland, 48 N. J. Eq. 486;

Fidelity Trust Co. v. Newark Milk & Cream Co., 108 Atl. 55.

Even though the transfers to Elizabeth and Dorothy were made for an illegal purpose, the executors are not claiming under them.

See

Gray v. Graham (Conn. Sup. Ct. of Errors), 89 Atl. 262;

Commonwealth v. Camp, 102 Atl. 205, at p. 207 (Pa.);

Crenshaw v. Columbian Min. Co. (Mo.), 86 S. W. 260;

Railroad Co. v. Durant, 95 U. S. 578.

Conclusion.

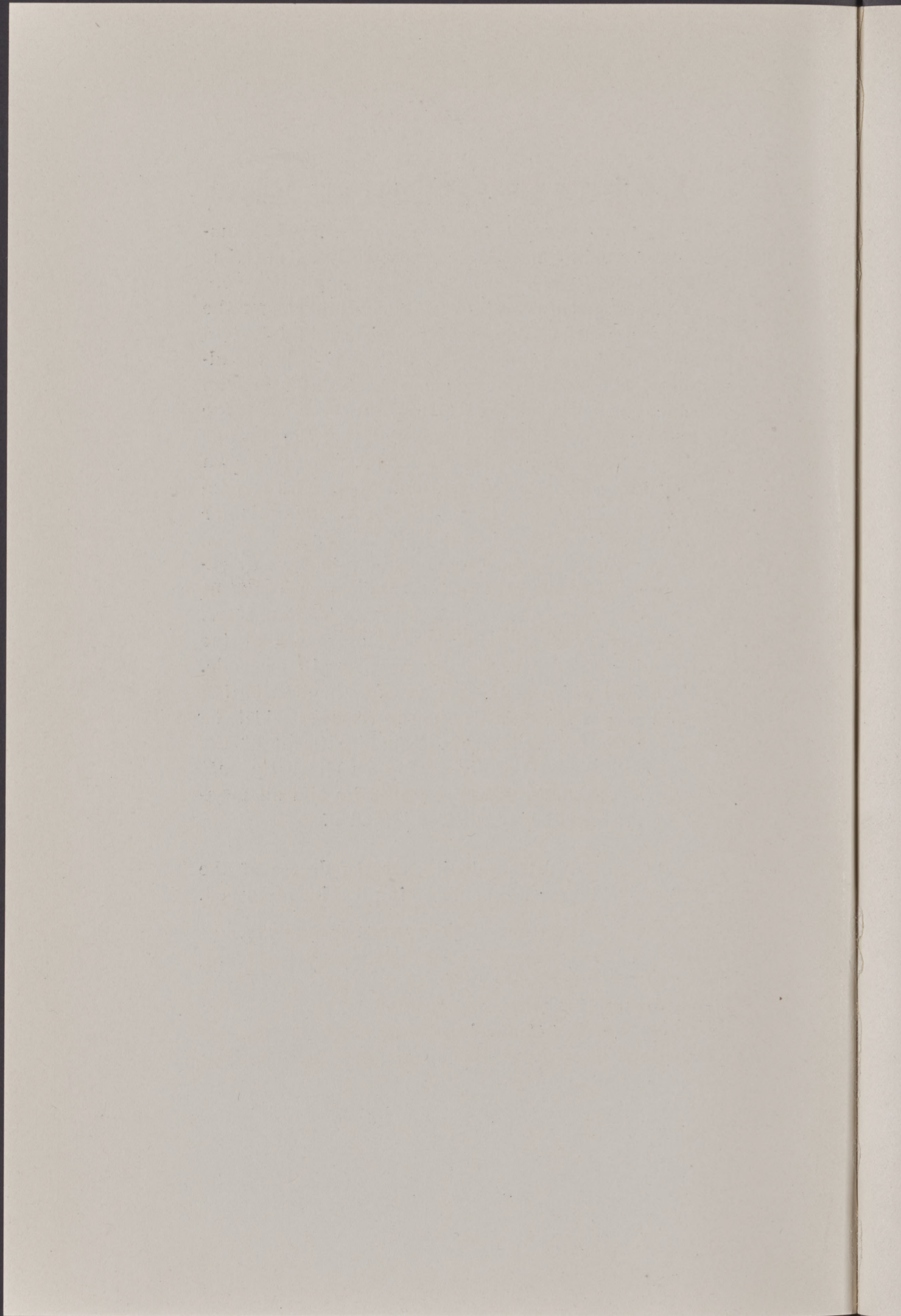
Although the facts in this case are somewhat complicated and unusual, we respectfully submit that it clearly appears not only that no valid gifts were made because the testator retained control over the subject matter of the alleged gifts and failed to make delivery thereof so as to vest title in the alleged donee but also because the testator had no donative intention. It clearly appears, and the learned Vice-Chancellor so found, that the testator in making these transfers was serving his own purpose without any intention to part with any interest in his property or surrender any dominion or control thereof to either of his children.

The record may be scanned in vain for any expression or act of the testator indicating a present intent to make a gift of the stock to his daughters. There was nothing in the circumstances of the daughters which would make such a gift probable. The plan which he had evolved for the distribution of his estate at his death, the remarks which he made to his daughters and his treatment of the certificates and the dividends as well as the fact that re-assignments were secured by him all negative the idea that a gift was intended.

We respectfully submit that the decree of the Court of Chancery should be in all things affirmed.

BESSON, ALEXANDER & STEVENS,
Solicitors for Respondents.

JOSIAH STRYKER,
of Counsel.



New Jersey Court of Errors and Appeals

Between

J. W. RUFUS BESSON, *et als.*, Executors
and Trustees of RICHARD STEVENS,
Deceased,

Complainants and Respondents,
and

THEODOSIUS STEVENS, Administrator of
the Estate of ELIZABETH C. STEVENS,
Jr., *et als.*,

Defendants and Appellants.

On Bill, etc.

Appeal from
Chancery.

Between

J. W. RUFUS BESSON, *et als.*, Executors
and Trustees of RICHARD STEVENS,
deceased,

Complainants and Respondents,
and

DOROTHY P. STEVENS, *et al.*,
Defendants and Appellants.

On Bill, etc.

Appeal from
Chancery.

BRIEF FOR APPELLANTS.

I.

Statement of Facts.

These are two appeals in two actions which were tried together. The complainants as executors of the Estate of Richard Stevens brought one action against Elizabeth C. Stevens, Jr. (Elsie Stevens, Jr.), who died *pendente lite*, the action being revived against her administrator, the appellant Theodosius Stevens, and others, praying

for a decree that three lots of securities standing in her name were in reality owned by their testator at the time of his death, should now form part of his estate and that the respective companies issuing them should be directed to transfer them to the complainants. These three lots of securities are as follows:

- (a) 600 shares capital stock of the Hoboken Land and Improvement Company, evidenced by Certificate #334. (Exhibit C-16, page 212.)
- (b) 410 shares of the common stock of the Hoboken Paper Mill Company evidenced by Certificate #36. (Exhibit C-17, page 213.)
- (c) 1161 shares of the preferred stock of the Hoboken Paper Mill Company evidenced by Certificate #1. (Exhibit C-11, page 202.)

The complainants as such executors brought the other action against the appellant, Dorothy Stevens, an infant, asking the court likewise to decree that one lot of stock standing in her name was also owned by their testator at the time of his death and that transfer to them should also be directed. This lot of stock is—

- (a) 700 shares of the capital stock of the Hoboken Land and Improvement Company, evidenced by Certificate #336. (Exhibit C-18, page 215.)

The Court below sustained the complainants' contentions in each action as appears from the final decrees entered respectively at pages 163 and 168.

As there are four different claims and four lots of securities as the subject matter of the two litigations, a chart was prepared showing the parties

and their respective interests, and the subject matter of the claims and where found. This chart is submitted for the court's convenience, a copy having been given the opposing counsel.

With this chart of the claims before us, we state the salient facts, which were not disputed, in their chronological order.

Richard Stevens, a lawyer and prominent and respected resident of Castle Point, Hoboken, died after a very brief illness on May 18th, 1919, in the fifty-first year of his age, leaving a will which was admitted to probate in Hudson County June 5th, 1919. He left him surviving his widow Elsie S. Stevens and four children, namely (p. 61):

Elsie Stevens, Jr., age 24.

Caroline B. Stevens, age 21.

Dorothy P. Stevens, age 17.

Richard Stevens, Jr., age 14 (p. 61).

The substance of his will (Exhibit C-1) was as follows (pp. 184-189):

He gave his two younger children \$28,000 each, to put them on the same financial footing with the two eldest children who had received like amounts from their grandmother, who had died prior to the birth of the two younger children. He gave specific legacies to friends, employees and charities; then he provided that \$50,000 should be paid to each of the four children upon their respectively attaining the age of twenty-four years. The residue and bulk of his estate was to go to four testamentary trustees (named also as executors) to divide the same into as many equal trusts as there were surviving children. In the case of the eldest daughter, Elsie (now deceased), the income from the trust created for her benefit was to be paid to her for life, and at her death the principal was to go to the *testator's* issue her sur-

viving. In the case of the trusts for the benefit of the other three children they were each to receive the principal when they had reached forty years of age respectively. In case any of them died before reaching forty years their share was to go to the issue of such deceased child and *only* to go to the testator's surviving issue in default of such deceased child having issue, but the share of Elsie in such case was to go into the trust created for her and over which she had no power of appointment.

Two things should be noted about this will:

First.—The testator made a discrimination against his daughter Elsie, because her share was in trust for her life. And at her death the principal would go not as she might wish but to the testator's issue then surviving, whereas in the case of *all the other children* the principal went to them outright when they reached the age of forty years, but if they died before, their share would go to their children if they had any.

Second.—The document itself at the time of testator's death was found in a pigeon hole in his open roll top desk at his office. (Testimony of Brown, p. 81.)

This will was made in March, 1917. At that time Elsie, the eldest daughter, was dangerously ill. She was at death's door for several months, and did not get perfectly well until six months afterward. This condition of Elsie was in the testator's mind when he made his will (Testimony of her mother, Mrs. Stevens, pp. 97-98).

This conversation with her husband, to which Mrs. Stevens testified, was *after* Elsie had recovered her health, but he explained to his wife that while he had put Elsie's share in trust in his will, *he was going to change it*. He recognized that

she had recovered her health (p. 98). Some months thereafter, he had another conversation with his wife, in which she reminded him that he had not changed his will, but again he said that he was going to do it. In this conversation, which was brought out in detail on an examination by the Court, Mrs. Stevens testified that he said that he had not changed his will yet, but that he had had transferred a lump of stock in Elsie's name (p. 101). The witness could not recall whether the interview at which he told her he was going to change his will was prior or subsequent to the interview in which he told her that he had transferred his stock to Elsie, but that is not important, as we shall later demonstrate, because prior thereto the testator undoubtedly had in mind a change of his will.

The testimony, as we shall argue, shows that he meant to change his will to fit the changed facts after April 30th, 1919, which was the date of the transfer to Dorothy, rather than to attempt to change the facts to fit the will.

Richard Stevens was a member of the New Jersey bar, and engaged to some extent at least in active practice, a man of sound mind, conversant with large business transactions, and undoubtedly knew what he was doing and what he intended to do. He was a philanthropist, serving for many years prior to his death as Probation Officer of the County of Hudson. He was, as is well known, a director and treasurer of a number of local charities, a citizen of high standing (pp. 139, 140).

The two corporations whose stock is in question in this matter were both of them corporations which were closely held. The Hoboken Land and Improvement Company, being the Stevens family corporation, organized many years ago, to take

over the Stevens real estate holdings, and operated and owned exclusively by the Stevens family.

The vast majority of the stock of the Hoboken Paper Mill Company was held by Richard Stevens and the Gould family (Conclusions of Vice Chancellor, pp. 139, 140).

With these facts before us, we will take up chronologically the acts of Richard Stevens with reference to the securities in question.

THE HISTORY OF THE STOCKS.

The 600 Shares of Stock of the Hoboken Land and Improvement Company.

On February 14th, 1917, Richard Stevens caused to be transferred to Caroline B. Wittpenn, Trustee, 600 shares of his holdings of the Hoboken Land and Improvement Company (Testimony of Brown, p. 63; Exhibit C-2, p. 190).

On October 1, 1918, Mrs. Wittpenn, at the request of the testator, transferred this stock to Elizabeth C. Stevens, Jr., which transfer was entered on the books of the Hoboken Land and Improvement Company, and a certificate of stock therefor issued October 3rd, 1918, to Elizabeth C. Stevens, Jr., who styled herself Elsie Stevens, Jr. (Exhibit C-2).

The checks (Exhibit C-3) for the dividends on that stock were made out to Elsie Stevens, Jr., stamped for her by the Hoboken Land and Improvement Company, which attended to the banking business of the Stevens family, and credited to the account of Elsie Stevens, Jr.

The first dividend was for \$900 on November 1, 1918, and a second dividend, for the same amount, on December 2nd, 1918. Both of these dividends were credited to Elsie Stevens, Jr., personal account.

On December 6th, 1918, by written order (Ex-

hibit C-4, p. 191), Richard Stevens directed the Hoboken Land and Improvement Company (Testimony of Brown, p. 65) to open a new account in the name of "Elsie Stevens, Jr. Special," and these two dividends were then transferred to this new account, and the subsequent dividends on the Hoboken Land and Improvement Company stock, down to the death of Richard Stevens, all of them made payable to Elsie Stevens, Jr., were deposited in this account of "Elsie Stevens, Jr. Special."

The family banking, as we have seen, was all done through the Hoboken Land and Improvement Company.

The pertinent language of the memorandum order directing the opening of this new account is:

"In this account deposit monthly dividends paid to Elsie C. Stevens on the following stocks,"

mentioning all three stocks in question in this suit.

The previous dividends, *i. e.*, the dividends that had already been paid her, were also ordered transferred from the Elsie Stevens, Jr., account to the Elsie Stevens, Jr., Special Account (Testimony; Brown, p. 66), by direction signed by the testator (Exhibit C-5).

The 410 Shares Common Stock Hoboken Paper Mill Company.

On October 2nd, 1918, 410 shares of the common stock of the Hoboken Paper Mill Company were transferred from Caroline B. Wittpenn to Elizabeth C. Stevens, Jr. It appears from the stock book, which is in evidence (Exhibit C-12a), that these 410 shares were originally stock of Richard Stevens, transferred to Caroline B. Wittpenn. Admittedly this stock had been owned by Richard Stevens and transferred to Caroline B. Wittpenn on or about December 11, 1916.

The dividends on this stock, November 2, 1918, \$410; December 2, 1918, \$410, were paid into the account of Elsie Stevens, Jr., and afterwards transferred, under Exhibit C-5, to the account of Elsie Stevens, Jr., Special.

The subsequent dividends down to the date of the testator's death were paid into the account of "Elsie Stevens, Jr. Special" by the Hoboken Land and Improvement Company under the authority of Exhibit C-4.

The 1161 Shares Preferred Stock Hoboken Paper Mill Company.

The issuance of these 1,161 shares of preferred stock came about in this manner:

There were outstanding bonds of \$100,000 and outstanding mortgage indebtedness of some \$129,000 against the Company, owned by Richard Stevens and Palmer Campbell, in the proportion of nine to one. In consideration of the surrender of this indebtedness, preferred stock was issued. The preferred stock issued of 1,161 shares represented Richard Stevens' nine-tenths' interest in the bonds and mortgage indebtedness held against the Hoboken Paper Mill Company. Instead, however, of having this 1,161 shares issued in his own name, it was issued in the name of his daughter, Elsie. This appears by the minutes of the meeting of the Hoboken Paper Mill Company, held November 1st, 1918, Exhibit C-14, page 207, particularly at page 208, at which were present *Richard Stevens*, Palmer Campbell, William H. Gould and Walter B. Wilson, being all the directors of the Company (p. 54). Richard Stevens was the president of the Company, and was not only present at the meeting, but also *personally signed as president the stock certificate issued to his daughter* (Exhibit C-11).

The dividends on this 1,161 shares were dealt with *in the same manner as the other dividends* (Testimony of Brown, p. 65). In Exhibit C-5, appears the fact that there was also transferred from the account of Elsie Stevens, Jr., to Elsie Stevens, Jr., Special, the interest due on the old bonds of the Hoboken Paper Mill Company for \$1,500, which were replaced by this preferred stock (p. 66).

The Transfers.

In the month of September or thereabouts, Richard Stevens had the first of his conversations with his daughter, Elsie (Testimony of Elsie Stevens, p. 88). She at first fixed it in the fall of 1918, and says:

“He said he was going to transfer some stock to my name.”

“He said he was going to transfer some stock to my name, and that I remember his mentioning the paper mill stock, but he didn’t mention the other stock” (p. 88).

“He said it wasn’t ready at that time. He didn’t do it just then. That was in September. the September before he died” (p. 88).

“We had several conversations all about the same thing. He just explained to me that he was going to sign this stock over to me” (p. 89).

And on page 89, she testifies:

“Yes, he asked me to make a will. I said I didn’t want to at the time. He said in case of his death he wanted the money to go back to the estate or go back so we would each get an equal one-quarter, because the stock he signed over to me was more than an equal quarter.”

No date was fixed by the witness, but it appears by a later question that this latter conversation

was in the month of December in Richard Stevens' office (p. 91)—two months after the transfers.

It was at that time—sometime in December—that she signed the receipt on the stub on the stock certificate of the 410 shares of the Hoboken Paper Mill Company. She says with reference to the conversation then, on page 91:

“Well, my father asked me to make a will, and I said I wouldn't. He said he would fix something for me to sign in place of a will, more or less, so that the stocks would go back to him in case I died.

“In case of his death he wanted it to go back to the rest of his money, of the whole thing, so it would be divided equally. He wanted it arranged so it would be divided equally into fourths.”

And on page 91:

“He wanted me to make a will so it would go back to him, and I refused to make a will, and he said he wanted me to sign something so it would go back to him.

“Q. Did you know what this Exhibit C-12 was? Did you understand what that was at the time you signed it?

“A. No, I don't think so.

“Q. Except that it was something to put it back into your father's power in case of the death of yourself?

“A. Yes, like a will.”

And on Page 94:

“Q. Your father didn't tell you why he was transferring the stock to your name?

“A. I can't remember.

“Q. Either at the time he did it or afterwards?

“A. No, I can't exactly remember.

“Q. Did you know anything about his transferring stock to your sister?

"A. Yes, he mentioned that at the time he transferred it to me.

"Q. What did he say about that?

"A. He said he was doing the same thing to her. He was transferring stock to her under the same conditions that he was to me."

And on page 95, while under examination by the Court, she says:

"Q. Did you know from the time that these stocks were transferred to you, did you know you were receiving dividends from them?

"A. Yes.

"Q. How did you know that?

"A. Because my father told me he was opening an account in Elsie Stevens Special, which would be a separate account from the money I would receive when I came of age, which was just Elsie Stevens, Jr., and the money he transferred to me last year.

"Q. The money he transferred to you last year?

"A. I mean the money he transferred to me.

"Q. You mean the dividends from these stocks?

"A. Yes, put in a separate account.

"Q. He told you he was going to do that?

"A. Yes."

As a result of the requests of Richard Stevens made in December, 1918, at the earliest, the assignment of the Hoboken Land and Improvement Company stock (Exhibit C-12), and the endorsements on the certificates of the Paper Mill stock, were signed. The assignment of the 600 shares of the Hoboken Land and Improvement Company is dated January 29th, 1919; the assignment of the 410 shares of the Hoboken Paper Mill Company from Elsie Stevens, Jr., to Richard Stevens is undated, and the assignment of the preferred stock is dated January 29th, 1919.

We think the testimony of Elsie Stevens makes

it clear that these assignments were all signed on the same day, *almost four months after the first issuance of stock to her, and almost three months after the issuance of the last certificate of stock.*

It should here be noted that at her father's request Elsie signed a proxy running in favor of Richard Stevens, Palmer Campbell and Walter B. Wilson to vote the stock of the Hoboken Paper Mill Company standing in her name. This proxy was put in evidence as Exhibit C-24 and bears date December 9, 1918.

It is undisputed that the income tax return on these dividends for the year 1918 was prepared under the direction of Richard Stevens, and signed and sworn to by Elsie, in March, 1919 (Exhibits C-7 and C-8), and the income tax paid out of the Elsie Stevens, Jr., Special account by the Hoboken Land and Improvement Company upon the order of Richard Stevens (Testimony of Brown, p. 126; Exhibit C-25).

The stock certificate for the 600 shares of the Hoboken Land and Improvement Company, with the assignment, and of the 410 shares of the common stock of the Hoboken Paper Mill Company, with the assignment endorsed on it, were found in the compartment of Richard Stevens in the safe of the Hoboken Land and Improvement Company, but that compartment, however, was accessible to Elsie Stevens at any time (Testimony of Brown, p. 8). The testimony on this point is:

“Q. What access had she to Richard Stevens' file in that safe?

“A. If she wished to make use of it, she could draw out this file—no protection whatever.

“Q. As a practical matter, then she could have had just as free access to the Richard Stevens' file as to her own file?

“A. Yes, sir.”

The 1161 shares, with the assignment endorsed thereon, were found after Richard's death in Elsie Stevens' own box in the same safe, and not in the box of Richard Stevens.

Dorothy Stevens' 700 Shares of Stock Hoboken Land and Improvement Company.

This was caused to be issued to her by Richard Stevens out of his own holdings on April 30th, 1919, and an oral request was made to Brown

“that the account (in the Hoboken Land and Improvement Company) he opened in that way ‘Dorothy P. Stevens, Richard Stevens, Guardian,’ and that the dividends on the (700) shares of stock of the Hoboken Land and Improvement Company be credited to that account” (Testimony of Brown, p. 104).

This certificate was found in the box of Richard Stevens, together with some Liberty Bonds of Dorothy and Richard, Jr., and an endowment policy of insurance on her life. There were no withdrawals from this account. Mr. Stevens died about three weeks after this transaction.

We have already recited the testimony of Elsie Stevens as to what her father said with reference to his proposed transfer to Dorothy. The testimony of Dorothy Stevens on the subject of this transfer to her is found on page 100. She testified that in January, 1919, he said he intended to turn over some stock to her, and that

“he wanted me to sign a paper which I did, in case that I should die, this stock would come back to him.”

In a separate envelope in the same compartment was found an undated, unwitnessed form of transfer signed “Dorothy P. Stevens,” and this so-called assignment enclosed in an envelope en-

dorsed in pencil, in the testator's handwriting "R. Stevens, 700 shares box Dorothy Stevens' shares of H. L. & I. Co. stock" (p. 216).

It might here be well to state that in Richard Stevens' box in the Hoboken Land and Improvement Company safe were not only the certificates and assignments which we have specifically mentioned as being there, but also a life insurance policy on the life of Dorothy Stevens, also Liberty Bonds, which admittedly belonged to the testator's son, Richard Stevens, Jr., and to his daughter, Dorothy.

II.

Specifications of Grounds of Appeal.

The Court of Chancery decreed that these stocks were the property of Richard Stevens at the time of his death, whereas it should have decreed that they were property of the donees respectively.

III.

Some Suggestions as to the Conclusions of the Vice-Chancellor.

Before elaborating our argument, we think that a few suggestions as to the Conclusions of the Vice-Chancellor may not be out of place.

On page 148 the Vice-Chancellor says:

"As to Dorothy's Stock, * * * there was no donative intent, either specific or general. The inherent probability is against it, * * * against his giving away to a girl of 15 or 16 (even though one of his daughters) such a block of stock, in this particular company, depriving himself (in connection with the assumed gift to Elsie of 600 shares) of

over one-half of his holdings in the Company."

Here please recall that Dorothy was 17 at that time, and not 15 or 16 (Testimony of Mrs. Stevens, p. 61); but, with due respect to the learned Vice-Chancellor, why the inherent probability? There is nothing in the case to show such inherent probability, and the Vice-Chancellor himself concedes (on page 155) that the transfers were probably made by the testator for the purpose of lightening the burden of the income tax. He says (p. 155):

"My honest belief is that the transfers were made by him for the purpose of lightening the burden of the income tax, since I can conceive of no other reason or fact, under the evidence."

The learned Vice-Chancellor on page 155 also and very properly states that such a purpose did not involve any criminal intent or moral turpitude, so where is the inherent probability? The inherent probability is the other way. As it is a well-settled principle of the law that in the case of a transaction between a father and child, the law will presume an absolute gift, and not the reservation of any trust for the donor (*Read v. Huff*, 40 N. J. Equity, 229 to 234).

The learned Vice-Chancellor lays much stress on the use of the word "transfer" (p. 148, line 16 ff to page 151, line 31 ff) instead of the word "gift." We respectfully urge that this is carrying the argument to a straining point. There is no set form of words necessary to create a gift. *Ridden v. Thrall*, 125 N. Y., 577, and cases there cited. The transfer makes a gift in the case of stock, and transfer, would certainly be a proper word to use.

The learned Vice-Chancellor also stresses the fact that the May dividends which the testator

directed were to go to Dorothy, went to him *as her guardian*. Of course, Dorothy, being an infant, where else could those dividends go? Who else could collect them? Further the Vice-Chancellor, commenting on the assignment from Dorothy which he concedes would be legally valueless, concludes that it was a precautionary measure, good on its face, after she became of age, because it was undated; and then uses this language (p. 149):

“Moveover under all the evidence, I have no doubt whatever, that at his direction, the Company would have acted upon that assignment, even before she became of age.”

May we respectfully suggest, that we cannot see where the evidence on this point is to be found, and the Vice-Chancellor assumes that Richard Stevens would have deliberately committed a fraud on the Hoboken Land & Improvement Company, and that the Hoboken Land & Improvement Company, would, at Richard Stevens' dictation, have done an unlawful act. Again, the learned Vice-Chancellor, in commenting upon the use of the word “transfer” (p. 151, line 38) upon which he rests so much of his argument, is forced to admit that there is evidence from Dorothy, that the testator said “he had or was about to give some stock to Elsie,” and urges that it is entirely without weight because of the leading form of the question, but we urge with all respect to the Court below that that was an unwarranted statement, and we may remark that in connection herewith that Dorothy was later recalled by the complainants for examination, by the Vice-Chancellor, and examined by him. She was, however, not examined on this point.

On page 153 the Court, in going over the ele-

ments on which it finds that there were no gifts, states:

“* * * the opening of the special account for the dividends separate from the moneys which were really hers absolutely.”

But was that not a proper, business-like and prudent thing for the testator to do *for Elsie's own protection* and convenience so that the moneys which were due *her* from the two different sources could be more readily followed and accounted for? The testator did not open the Special Account in his own or even in a non-personal name but in hers. In Dorothy's case as she had no other source of income his opening the account “Dorothy P. Stevens, Richard Stevens, guardian” was all that was necessary.

The Vice-Chancellor then goes on to state that there was a lack of knowledge by Elsie, as to the whole matter. The evidence discloses just the contrary; that Elsie did know about it.

That Elsie *did* know about the Special Account in her name is shown by the following excerpt of her testimony when she was on the stand (Testimony, p. 95):

“By the Court:

“Q. Did you know from the time that these stocks were transferred to you, did you know you were receiving dividends from them?

“A. Yes.

“Q. How did you know that?

“A. Because my father told me he was opening an account in Elsie Stevens Special, which would be a separate account from the money I would receive when I came of age, which was just Elsie Stevens, Jr., and the money he transferred to me last year—

“Q. The money he transferred to you last year?

"A. I mean the money he transferred to me.

"Q. You mean the dividends from these stocks?

"A. Yes, put in a separate account.

"Q. He told you he was going to do that?

"A. Yes."

On page 160 the Court says, "No one can become a stockholder of a Company without his knowledge or consent." The only authority which his Honor cited is a case which he, himself, has decided and in which no authorities are given. It is true that one cannot become an **organizer** of a corporation without his knowledge or consent, but **where is there any authority that shares of stock CANNOT be given to an infant, even to an infant of such tender years that he could not know what stock meant.** But again, as we shall show in the argument, there WAS knowledge and consent in this particular case.

On page 159 the Court also says (referring to Elsie), "The transferee could not sell or transfer the stock to anyone else." Why not?

The Vice-Chancellor in summing up the question of donative intent (on p. 155), says these words:

"I can readily conceive an *honest* belief on his part that he had made a legal gift, notwithstanding his intent and purpose was to avoid the taxing provisions, and not to strip himself absolutely of all interest in the stock in favor of his daughters."

If that is true, if the testator had an honest belief that he had made a legal gift, where is there any room for the contention that he had not donative intent.

The moment the Vice-Chancellor reaches the conclusion that Richard Stevens intended to make

a legal gift it follows that he must have had a donative intent.

“There is, too, a Scylla to companion defendants’ Charybdis—for if it be assumed that he had made an absolute and complete gift of the stock and dividends, then it was unlawful for him to take from his daughter’s funds some \$3,000 for his own individual purposes.”

There is no evidence that the testator took the money for his “own individual purposes.” Turning to Exhibit C-6, at page 193, which is the account of Elsie Stevens, Special, Hoboken Land Improvement Company, we find the total withdrawals amounted to \$3,245.95. Of this, \$2,638.20 was a single item for wines (Exhibit C-27, p. 222); \$578 was another single item for wines (Exhibit C-28, page 223), and the third item, making up the total of \$3,245.95 was the income tax payment of \$29.75. The simple fact (which is all we have on this point) that Richard, Elsie’s father, ordered the Company to pay these three items from her account is evidence only that he, in so doing, constituted himself her *de facto* agent, and liable to account to her should she ever wish it, and is far from establishing a criminal or unlawful intent, whereas if he did *not* regard the money as Elsie’s, his representation to the Federal Government in making out *her* return that she was the owner would have shown that he intended the transfer to Elsie as a mere subterfuge to avoid taxation.

On the question of delivery the Vice-Chancellor makes the statement in the course of his opinion at page 158 as follows:

“yet since he conceived (as in my view) that he had accomplished the transfer, he *must* have looked upon some other act as a delivery.”

But why the occasion for him to look upon another act as delivery if he had no donative intent?

On the same page (158) the Vice-Chancellor continues his line of reasoning by the following argument:

“And as to the other transfer, his actions and statements to Mr. Brown on the transfer to Dorothy, indicate that he thought the transfer would be incomplete *until the actual issuance of the new stock in her name.*

“I think, then, that he intended the issuance of the new certificates as the act of delivery.”

Of course the transfer and gift would be incomplete until the actual issuance of new stock in her name, but, again, why should he *intend* such issuance *as the act of delivery* unless he had a donative intent in his mind. Dorothy was under age. There could be no reasonable object in his mind of having a certificate issued in her name, and considering the question of delivery at all, *if he had not intended a gift.*

IV.

ARGUMENT.

We think the evidence is clear that the testator had gifts in mind at the time of the transfers of those securities to his daughters.

The test of a valid gift *inter vivos*, as laid down by Vice-Chancellor Green, in the case of *Matthews v. Hoagland, et al.*, 48 N. J. Eq., 455, 485, is

“such a transfer of the subject-matter as will pass the donor’s title at once to the donee, absolutely and irrevocably, divesting the former of, and investing the latter with, all of the

donor's right or title therein, and control and dominion thereof." (Citing cases.)

There must be present, therefore, the "donative intent."

The intent is gathered from the facts which show that the donor made such a transfer as Vice-Chancellor Green indicated in that opinion.

That Richard Stevens must have intended to do something—must have had some object in his mind—at the time of these transfers needs no argument. He was a lawyer, a person of sound mind, accustomed to the care of his own and other persons' property, and must have had some sane intention.

The entire case depends upon a series of transactions and conversations running from September, 1918, the time when he first spoke to his daughter, Elsie, about transfers he then contemplated making, up to May 1, 1919, when the stock to Dorothy was transferred, and three weeks prior to his death.

The conclusions of the learned Vice-Chancellor are in effect an argument *in extenso* to show what he thought Richard Stevens did *not* intend to do when he did what he did and said what he said. He does not, however, tell us, or even indicate, what otherwise must have been in the mind of Richard Stevens, and what otherwise he intended to accomplish. In other words, the Vice-Chancellor's arguments while seeking to break down the hypothesis of two gifts, substitute nothing in its place. Indeed, with the knowledge that Richard Stevens was a sane and honorable man, we have not been able to reach any conclusion which would fit the facts except what to our mind is the inescapable conclusion that he meant to part with

the complete and absolute ownership of the securities in question and put such ownership absolutely in his daughters and beyond his control.

It may be, and in all likelihood was, an element in his mind that by doing so, he would reduce the amount that he would have to pay to the United States Government yearly.

There is little or no dispute about the actual facts themselves, that is, what Richard Stevens did and what he said. There is no conflict in the testimony of the witnesses, that is, the testimony of one witness is not contradicted by the testimony of another witness as to any conversations had with the testator. There are, however, two very divergent views as to the legal effect of Richard Stevens' statements and actions. That taken by the Vice-Chancellor that Richard Stevens never made actual and effective gifts of the stocks in question to his daughters Elsie and Dorothy, respectively, and the contrary view taken by the appellants that the transfers he made to his daughters were gifts to them.

The complainants, as executors, in the endeavor to sustain their contentions virtually were obliged to take the position, *FIRST*, that the transfers their own testator made were not transfers at all but owing to an alleged lack of "donative intent" were senseless jugglery. *SECOND*, that it should be held that the gifts presumptively made were actually made, their testator had been successful in nullifying them. In that case his words to his daughters, particularly to Elsie, were either meaningless or said purposely to cause them, under misapprehension, to sign the assignments he placed before them. We do not think Richard Stevens' acts, extending over a period of six months, were no acts at all or that his words meant nothing at

all, nor do we impugn his motives. Let us see what were his acts? What were his words?

In order to ascertain what Richard Stevens did we have first to ascertain from the testimony what were his intentions. What did he intend to do when he had the 600 shares of stock of the Hoboken Land and Improvement Company transferred to his daughter, Elsie? What did he intend to accomplish when he asked her some months after that to execute to him an assignment of that stock? What was his intention when he caused the 410 shares of the common stock of the Hoboken Paper Mill Company to be transferred to Elsie Stevens? And what, when he asked her for an assignment thereof back to him? What, when he had transferred to her the 1,161 shares of the preferred stock of the Hoboken Paper Mill Company? And what, when he asked her for an assignment back to him of that stock? What was his intention when he assigned 700 shares of the Hoboken Land and Improvement Company to his daughter, Dorothy? And what, when he asked Dorothy, an infant, to assign those 700 shares back to him?

We concede that there must be some form of delivery, be it actual or constructive.

The language of Chancellor Kent which is cited by the Vice-Chancellor in *Matthews v. Hoagland*, at page 489, is:

“A gift *inter vivos* must be complete *in presenti*; it has no reference to the future; there must be a delivery, and it must be an actual one, ‘so far as the subject is capable of delivery.’”

The Court in *Matthews v. Hoagland*, recognizes the difference in the character of property—in shares of stock and in that of money obligations. The Court, however, then goes on to consider the

question as to whether a delivery merely of a certificate of stock without a written assignment or power will make a complete gift, which is not at all the question here.

Taking up the *Elsie Stevens* case, we have actually an assignment of the stock from Richard Stevens to his daughter, with a transfer on the books of the corporation.

In *Swayze v. Huntington*, 82 N. J. Eq., 127, 133, it is said:

“The general subject of gifts has been dealt with by the courts of this state, including the court of last resort, so many times and under so many circumstances, that there can be no question about the rule which prevails in this jurisdiction. I adopt in its entirety the conclusion reached by Vice-Chancellor Bergen in his opinion in *Taylor v. Coriell*, 66 N. J. Eq. (21 Dick.) 262, which holds that in order to establish a gift *inter vivos* the following factors must appear—*first*, a donative intention on the part of the donor; *second*, an actual delivery of the subject-matter of the gift except in cases *where it is a chose in action, like a certificate of shares of stock or evidence of indebtedness*, in which case the delivery must be of that variety of which it is most capable (*Matthews v. Hoagland*, 48 N. J. Eq. (3 Dick.) 455); *third*, the donor must strip himself of all ownership and dominion over the subject-matter of the gift. Those requisites appear in all our cases. *Stevenson v. Earl* (Court of Errors and Appeals), 65 N. J. Eq. (20 Dick.) 721.”

We call particular attention to the language of Vice-Chancellor Howell, where he says that in the case of a certificate of shares of stock the delivery must be of that variety of which it is most capable, citing *Matthews v. Hoagland*.

In his opinion the Vice-Chancellor states:

“The question of the legal sufficiency as an act of delivery of the issuance by the company of a new stock certificate without delivery thereof to transferee seems never to have been decided heretofore in this state.”

In this case it is not a question of the mere issuance of the certificate in the new name, standing alone and unsupported by other facts, which is urged as constituting delivery, but such issuance coupled with and supported by other facts which we have before enumerated, and which are undisputed, such as the testator's relationship to the transferees, and his acts, statements and representations.

We have no case in the State of New Jersey which decides as to what in the way of delivery is necessary to make a complete gift of shares of stock. The one case, which seems to be the latest case on the subject, which we have found in another jurisdiction, is *In re Roberts*, 85 *Pennsylvania*, 84. The syllabus in that case is as follows:

“T. transferred stock to F., a niece of his wife, but retained the certificates in his possession, and after his death they were found in an envelope with his own name and that of F. endorsed thereon. F. had no knowledge of the transfer. She lived in the family of T. and was in all respects treated and regarded as his daughter. *Held* (affirming the Court below) that the transfer on the books of the corporation vested in F. the legal title to the stock, and that she was entitled to the same.”

The Court says:

“The question to be decided is whether the mortgage bonds into which the shares of the Pennsylvania Company were converted belong to the plaintiff or to the estate of Mr. Thompson. Of course, the ownership of the

bonds follows the ownership of the shares. If the shares were the property of the plaintiff, the bonds unquestionably belong to her, and she is entitled to the relief prayed for.

"It is to be observed at the outset that here was a complete, perfect and absolute transfer of the legal title to Miss Foster. The shares were transferred to her on the books of the company by direction of the owner, and new certificates taken out in her name. * * *

It is not the case of an incomplete, voluntary gift or of a merely equitable title to a chose in action, which remains in the possession of the assignor. * * * If Mr. Thompson had suffered these shares to stand in his own name and had executed to Miss Foster an assignment of them, and had retained that assignment in his own possession until his death, never having delivered it to her, there would seem to be no doubt that no property in the shares would have passed to her. * * *

But here the gift is complete by delivery of the thing itself, for transferring these shares to her on the books of the Company is putting her in complete possession of the thing assigned and clothing her with the complete legal title.

"It stands in the place of a delivery. Such an act performs precisely the office which an actual delivery would perform if it were a chattel.

"It is as complete a delivery as the nature of the thing will admit of.

"There can be no clearer evidence of a design to part with the right of property in favor of another than the absolute transfer of the legal title to her for her own use. Retaining in his possession the certificates which are in her name and which he could not use without her consent, cannot undo or qualify the decisive ownership with which he had invested her by the actual transfer on the books of the company.

"The certificates were but secondary evi-

dence of her ownership, and only useful for purposes of transfer. They were nothing more than the official declaration by the company of what already appeared on their books. There was here no *locus penitentiae*. He could not have used the certificates nor could any one have used them except Miss Foster.

"We are, therefore, of opinion that the cases relied on by defendants' counsel upon the subject of incomplete gifts of chattels and of undelivered assignments of choses in action have no application to the circumstances of the present case, for here was a complete divestiture of his own title and a complete investiture of title in her, so complete that he had no further control over the legal title and no power without her consent to undo or disturb it. Decree affirmed."

The case in New York of *Jackson v. 23rd Street Railway Company*, 88 N. Y., 520, was referred to on the argument below, and may be cited as authority against us, but that does not measure up to the facts in this case. In that case Sharp, the testator, told the Treasurer of the Street Railway Company, to set aside 30 shares in the name of a man named Youmans, *and he would let him know what to do with them*. Sharp told Youmans that he had set aside 30 shares which he intended to be used for the adopted child of Youmans. The stock remained in the office of the Street Railway Company, and was never delivered to the Trustee. Sharp actually directed the disposition of the dividends not for Youmans but for the support of the adopted child. The Court refused to consider this a completed gift in favor of Youmans, and very properly for the reasons stated by the Court, because such disposition would defeat the benevolent object which Sharp had when he caused this stock to be set aside—

in other words, that there was no donative intention *in Youman's favor*.

It should be noted in the Pennsylvania case, which is well considered, and the reasoning of which is very satisfactory, that the donee did not even know until after the death of the donor that this stock had been given to her, and the Court holds that the transfer on the books of the corporation was all the delivery which was necessary to make a completed gift.

The learned Vice-Chancellor states that he has not examined this case (p. 154).

When the courts and text-writers use the word "delivery" it is very evident that no manual delivery is intended. It is an everyday matter to give gifts of money in bank to infant children, who are not capable of accepting an actual delivery. What is meant by delivery is the putting it under the control of the donee, and stripping the donor of all dominion over the subject matter of the gift.

In the case of *East Rutherford Building, Saving and Loan Association v. McKenzie*, 87 N. J. Eq., 375 (a case in this court), Vice-Chancellor Howell found a completed gift by the husband to the wife to have existed. In that case there was no evidence of any actual delivery to the wife. It was held that the surrender of the old certificates of stock and the issuance of a new one in the joint names of the donor and his wife made a complete delivery within the requirements of the law on that subject, giving a gift in survivorship to the wife. The decree was affirmed by this Court on the opinion of the Vice-Chancellor.

The fact that *some* of these certificates of stock were found in the box of Richard Stevens at the time of his death does not support at all complainant's contention of an uncompleted gift.

In *Matthews v. Hoagland*, Vice-Chancellor Green laid down the doctrine in this language:

“If the gift is complete, the whole title of the donor has passed from him to the donee, and the subsequent re-delivery of the subject-matter of the gift to the donor, to keep for the donee, will not disturb the title of the latter in the thing given” (citing a number of cases in Massachusetts and other States).

In addition to the cases cited by the Vice-Chancellor there are two other recent cases in New York and Massachusetts, namely: *Gannon v. McGuire*, 160 N. Y., 476, and *Holmes v. Bone*, 195 Mass., 495.

We have also the fact that in this case Richard Stevens told his daughter that he had transferred this stock to her. In effect, that it was her stock. What more could have been required? He was going to take care of it, for her. It would have been a palpable absurdity for him to hand her the certificates of stock and in the next moment to have her hand them back to him for safekeeping. Instead of that he put the stock in safekeeping for her at once, informing her that he had done so and having her, with his knowledge, exercise those acts which were incident to her ownership—the making of her income tax return and the paying of the income tax.

Much stress was laid by the complainants and by the Vice-Chancellor on the location where *some* of the securities were found. We concede, of course, that there may be cases of disputed gifts where the location of the securities may play an important, perhaps deciding, part. Not so here. In the first place, the testator had a private safe deposit box in the Hudson Trust Company, accessible to himself alone, in which he kept papers all concededly his, title to most of which would

pass by delivery. Besides this he had a compartment accessible to others besides himself where he kept securities—non-negotiable for the most part (Exhibit C-29 and stipulation) not only of his own but also some securities which, it must be admitted, were his children's. This latter compartment we go so far as to say was the natural place for the securities in question to have been found—assignments or no assignments. Why? Because when Richard Stevens transferred the stocks to Elsie and Dorothy he did not cease to be their father and their natural business mentor and guide. He by no means ceased to have their interests at heart. His children were unversed in business and in the custody of valuable papers. Dorothy was not even of age and had no compartment in the safe and even as to Elsie it would be natural for him to take pains to minimize the chance of the certificates being mislaid or misused.

The preferred Hoboken Paper Mill stock was found in Elsie's own box.

The donative intent in Richard Stevens' mind is shown by the testimony, not only of Elsie, but of Mrs. Stevens (pp. 97, 98) (who at the time her testimony was given was entirely disinterested, Elsie being still alive), and by the testimony of Gould, page 87.

Testimony of Mrs. Stevens, above recited (pp. 97, 98).

Testimony of Elsie (p. 88 *et seq.*), also above recited.

He stripped himself of the ownership and control of the stock.

The certificate was in Elsie's name and only by her endorsement could it be transferred.

And in this condition the stock remained for months.

We have here just so much more than in the Pennsylvania case:

- (a) Elsie knew of the transfer to her.
- (b) The dividends were credited to her.
- (c) She made the income tax return and paid the tax.

The Hoboken Land and Improvement Company stock and the Paper Mill common stock were in Richard Stevens' box, but this was open to Elsie at any time—the Paper Mill preferred was in her own box.

And it will be noted that there was nowhere any reservation of any interest in Richard Stevens such as was present in the case of *Bailey, et al., v. Orange Memorial Hospital, et al.*, 102 Atl. Rep., 7, or in the other cases of the same nature, in which it was held that there was no completed gift.

Richard Stevens in making up Elsie's income tax return *included* in it the dividends. Could anything show more clearly that in March, 1919, Richard Stevens believed that he *had* donative intent in the autumn preceding when he made the transfers. To hold otherwise would be to fasten deliberate tax evasion upon the complainant's own testator. If so, is equity to be asked to restore to the testator as not having been given away that which he represented to the Federal Government in effect that he had given away? We think not.

But the Vice-Chancellor argued because testator caused two substantial sums to be drawn from this Elsie Stevens Special account to pay bills for wines and liquors, therefore the account was his. Suppose Richard Stevens drove a motor car which he himself had represented (to his pecuniary profit) to be his daughter's, could his executors

argue that the car was his *because* he used it? Richard believed that the income on the Elsie Stevens Special account was hers, not his, if his income tax representations amount to anything. In the face of that it doesn't make a particle of difference whether he obtained his daughter's consent or whether he didn't, whether she knew about the purchases either before or after they were made or whether she didn't, whether she approved or whether she didn't. The record is silent on all these things. They are quite immaterial. The expenditures on their face were not for ordinary living expenses but obviously to take advantage of the times in which they were made for war time prohibition was scheduled to be effective on July 1st, 1919. That a part of the account was used for the purchase of wines does not at all affect the situation.

After Richard Stevens had parted with this large interest in his securities to his daughters it was nothing more than natural that he was desirous of keeping an eye on them, and seeing that his daughters would not unwisely dispose of it. But it will be noted that he was careful to have the income from these securities not only set up in his daughters' names respectively, but did this through the Hoboken Land and Improvement Company, so that he would be responsible for and accountable to his daughters for any withdrawals which he might deem it wise to make.

The transaction of the wine bills, on which the Vice-Chancellor lays considerable stress, indicates this position clearly. There was no concealment whatever; the entire transactions were made a matter of record on the books of the Hoboken Land and Improvement Company as in a bank or trust company by the testator's own direction.

If there was any question of any misappropria-

tion of funds, the testator was unquestionably ready to account to his daughters at any time.

If Richard Stevens chose to take his daughter's money and apply it to expenditures of which she knew nothing, that does not indicate that he did not recognize her right to have him account to her, and it does not imply, as the Vice-Chancellor argues that he regarded the principal from which the income was derived as his own. On the contrary, he takes pains to establish records showing conclusively that it is not his own. Even going to the length of writing to the wine merchant (Exhibit C-27) and again putting himself on record as her *de facto* agent.

Richard Stevens did not use these accounts in his daughters' names indiscriminately for miscellaneous expenditures, although the credit to the account in Elsie's name had been swelling for a number of months, reaching a credit balance on May 1, 1919, of approximately \$15,000. (See Exhibit C-6, p. 193.)

We then come to the assignments.

At some time (evidently a little while) after these transfers to Elsie were made, Richard Stevens asked her to make a will (p. 91).

Should she die before him he wanted to be in a position to protect his other children; should he die first he wanted her to provide for this equality (p. 91).

In December therefore he asked her to make a will. She refused (for what reason does not appear, possibly superstition), and then he arranged for these assignments.

That the testator did not intend that these assignments from his daughter vested in him the immediate absolute title is apparent from his language that if anything happened to her the prop-

erty would *go back* to him. (Testimony, Elsie Stevens, page 91.)

He did not have the stock transferred back to him. He left it with the assignments in the box with no notice to the companies.

He exercised no dominion over it. The dividends were credited to Elsie; Elsie made out the income tax return, swore to it and paid the tax.

With her father's knowledge and consent, she acted as the owner; she considered herself as the owner.

That the assignments were not intended to vest any immediate interest in Richard Stevens is manifested by the circumstance in Dorothy's case, where he took an assignment from an infant which could not be ratified by her or become valid until after four years.

The Court's attention is particularly directed to the fact that in the case of one of the assignments (of the 410 Hoboken Paper Mill common) there was no assignee named. How can the complainants account for this significant omission on any theory that Elsie and her father when the paper was signed by her intended its effect to be immediate? By inadvertence? But there is not a scintilla of evidence in the case upon which inadvertence could be inferred. There is ample evidence that Richard regarded the paper as testamentary on Elsie's part, and the plain inference is that he must have intended later and before her death to have filled out the names of one or more persons as her beneficiaries.

What was in Richard Stevens' mind was to take a substantial part out of his estate and give it to Elsie absolutely. If she died before him, he desired her to dispose of it so as to protect his other children. Much was said, both in the testimony and upon argument about the testator's having in

mind a "change in his will." Of course. For not only had he made the will BEFORE the transfers, but he recognized that the provisions he had made for Elsie, proper in 1917, became unjust upon her recovery (Testimony of Mrs. Stevens, pp. 72, 75 and 76). There were just two ways in which he could remedy this—either by making a new will, putting her on the same footing with the other children or by giving her an advance and *then* changing his will to avoid injustice to his other children. We do not claim that the first way was not the most simple and ordinary, but it was a way Richard Stevens did *not* adopt, and it would not have saved some of the income tax, and we are not concerned with what he might have done but what he did do.

What he did was to make the transfers with the manifest intention of deferring a change of his will until after he had effectuated the transfers he had in mind. But within three weeks from April 30th, 1911, when he transferred the stock to Dorothy, and with his will in his open desk, he was stricken with his last illness.

He wanted a will from Elsie; she refused. He thought he could achieve the same results from the assignments.

But, not being executed as a will, the assignments are void.

Romer v. Benedict, 81 N. J. Eq., 222.

As to the Gift to Dorothy Stevens.

The argument above made and the facts above cited apply to the case of the gift to Dorothy as well.

There is the additional circumstance, however, that Dorothy was an infant, and that the assignment from her was invalid and could by no possi-

bility be made valid until she arrived at the age of twenty-one years. He must have considered that it could be used as a testamentary disposition. Why, otherwise, would he have explained to Dorothy with such care that the paper he was asking her to sign was to take care of the property on her death?

The delivery to Dorothy was by having the stock transferred to her on the books of the company; having an account made for her with himself as guardian upon which to credit the dividends; placing the stock certificates which he himself signed as president of the company in his compartment (Dorothy did not have a separate one) with other papers he was keeping for her. She thereby became the owner.

We respectfully urge that the decree of the Court of Chancery in the particulars appealed from should be reversed.

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