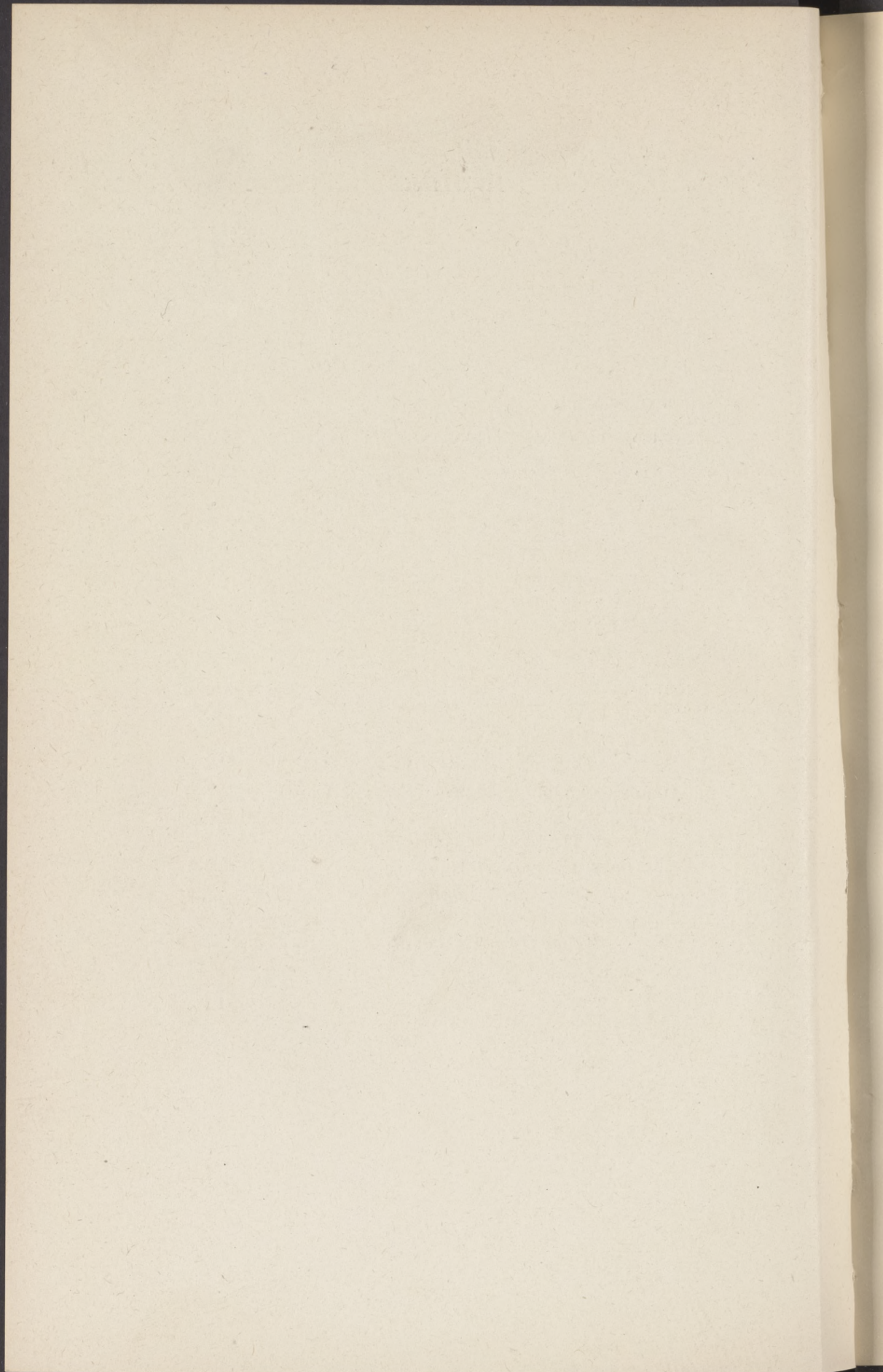


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New Jersey Prerogative Court

Notice of Appeal

(Filed February 16, 1932)

In the Matter of the Estate of
WILLIAM J. PINCKNEY,

Deceased.

MARIE M. PINCKNEY and THE
CATHEDRAL OF ST. JOHN THE
DIVINE,

Petitioners-Appellants,

vs.

HUDSON COUNTY NATIONAL BANK,
as Executors of and Trustees
under the Last Will and Testa-
ment of WILLIAM J. PINCKNEY,
deceased,

Respondent-Appellee.

On Account- 10
ing, etc.
On Motion
and Rule to
Show Cause
to open, va-
cate and set
aside decrees
and for
rehearing. 20

The Petitioners-Appellants above named, Marie M. Pinckney and The Cathedral of St. John the Divine, appeal from the order of the Prerogative Court made in the above entitled matter on January 11, 1932, denying the motion of the petitioners therein and the order to show cause made thereon, seeking to open, vacate and set aside, and for a rehearing upon, two certain decrees of the Prerogative Court, each dated December 22nd, 1930, fixing the commissions of the Executor and Trustee, and making allowances for counsel fees, and denying the motion of the peti- 30

Notice of Appeal

tioners therein, to the Court of Errors and Appeals in the Last Resort for all Causes.

Dated, February 15, 1932.

10

WM. C. KRONMEYER,
*Proctor for and of Counsel with
the Petitioners above named,
Marie M. Pinckney and The
Cathedral of St. John the Di-
vine.*

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

20

FREDERICK S. TAGGART,
*Of Counsel with the Petition-
ers, Marie M. Pinckney and
The Cathedral of St. John the
Divine.*

30

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Petition of Appeal

(Filed March 1, 1932)

NEW JERSEY COURT OF ERRORS AND APPEALS

In the Matter of the Estate of
WILLIAM J. PINCKNEY,
Deceased.

MARIE M. PINCKNEY and THE
CATHEDRAL OF ST. JOHN THE
DIVINE,

Petitioners-Appellants,

vs.

HUDSON COUNTY NATIONAL BANK,
as Executors of and Trustees
under the Last Will and Testa-
ment of WILLIAM J. PINCKNEY,
deceased,

Respondent-Appellee.

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On Appeal
from the
Prerogative
Court.

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To the Honorable, the Court of Errors and Ap-
peals in the Last Resort in All Causes:

The Petition of Marie M. Pinckney and The
Cathedral of St. John the Divine, the appellants
in the above entitled cause, respectfully shows
that:—

30

1. Petitioners find themselves aggrieved by
an order made in the Prerogative Court by His
Honor Edwin Robert Walker, Ordinary of the said
Prerogative Court, bearing date the 11th day of
January, 1932, in a certain accounting proceed-
ings in the above entitled estate, wherein the said
Marie M. Pinckney and The Cathedral of St. John
the Divine were the Petitioners and the Hudson

40

Petition of Appeal

County National Bank, as Executors of and Trustees under the Last Will and Testament of William J. Pinckney deceased, were the respondents, in this respect, to wit; that the said order denied the motion of the petitioners to open, vacate and set aside two certain decrees of accounting in the Prerogative Court, each dated December 22, 1930, and for a rehearing thereon, and that the said order dismissed the petition and the order to show cause of the petitioners thereon and therefor.

Your petitioners appeal from the said order of the Ordinary dated January 11, 1932, which so orders and directs as aforesaid, upon the grounds that the same is erroneous, in that:—

1. That the said order of January 11, 1932, denied the motion of the petitioners and denied to them a rehearing upon the decree of December 22, 1930, allowing a counsel fee to the proctors of the respondents and to their associate counsel in the sum of \$1500 and denied to petitioners the presentation of facts upon a rehearing showing that the same was improper, illegal, excessive and without justification.

2. That the said order of January 11, 1932, denied the motion of the petitioners and denied to them a rehearing upon the decree of December 22, 1930, allowing to the respondent as such trustee, upon the income of the estate a commission of \$1773.08 and upon the corpus of the estate, a commission of \$4008.30, and denied to the petitioners the presentation of facts upon a rehearing showing that the same was improper, illegal, excessive and without justification.

3. That the said order of January 11, 1932, denied the motion of the petitioners and denied

Petition of Appeal

to them a rehearing upon the decree of December 22, 1930, allowing a counsel fee to the proctors of the trustee as respondent and to their associate counsel the sum of \$10,000 and denied to the petitioners the presentation of facts upon a rehearing showing that the same is improper, illegal, excessive and without justification. 10

4. That the Ordinary, by the said order of January 11, 1932, precluded the petitioners from having their day in court and denied them the right to be heard upon such applications for commissions, allowances and counsel fees.

5. Because the said commissions, allowances and counsel fees are illegal, excessive and not within the statutes in such made and provided.

6. In that the order of January 11, 1932, should not have been made, but that the Ordinary should have granted the said motion and permitted a rehearing upon all of the facts and determined the matter with the petitioners' participation in such hearing and upon the presentation of facts, and not on affidavits. 20

Petitioners therefore pray that the said order of January 11, 1932, of the said Ordinary, may be, in the particulars aforesaid, wholly reversed, set aside and for nothing holden, and that the petitioners may have such relief in the premises as to this court may seem proper. 30

WM. C. KRONMEYER,
*Proctor for and of Counsel
with Appellants.*

Notice of Hearing

(Filed April 15, 1932)

NEW JERSEY COURT OF ERRORS AND APPEALS

10 In the Matter of the Estate of
WILLIAM J. PINCKNEY,
Deceased.

MARIE M. PINCKNEY and THE
CATHEDRAL OF ST. JOHN THE
DIVINE,

Petitioners-Appellants,

vs.

20 HUDSON COUNTY NATIONAL BANK,
as Executor of and Trustee
under the Last Will and Testa-
ment of WILLIAM J. PINCKNEY,
deceased,

Respondent-Appellee.

On Appeal
from the
Prerogative
Court.

To the Appellee, The Hudson County National
Bank, as Executor of and Trus-
tee under the Last Will and
Testament of William J. Pinck-
ney, deceased.

30

TAKE NOTICE: that the argument of the appeal
in the above entitled cause will be brought on at
the next term of the Court of Errors and Ap-
peals, to be heard at the State House, at Tren-
ton, on May seventeenth, 1932, at the hour of
eleven o'clock in the forenoon, or as soon there-
after as counsel can be heard.

WM. C. KRONMEYER,

*Proctor for and of Counsel
with the Appellants.*

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Order of Prerogative Court Appealed From

(Filed January 11, 1932)

NEW JERSEY PREROGATIVE COURT

In the Matter of the Estate of WILLIAM J. PINCKNEY, De- ceased.	}	Order.	10
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The Court having considered this matter on the return of the order to show cause, made January 13, 1931, upon the filing of the petition of Marie M. Pinckney, Florence Palmer, Emma Davidson, Madge Davidson and The Cathedral of St. John the Divine, and having examined and considered the affidavit of Howard C. Gilmour of the law firm of McDermott, Enright & Carpenter, Proctors for the Accountant, and also affidavit of Herbert J. Hannoeh, of the law firm of Stein, McGlynn & Hannoeh, associate counsel in the matter, with respect to legal services rendered said accountant, and the affidavit of Morris Bernhard, Trust Officer of said accountant, with respect to services performed by said accountant, and having also examined and considered the affidavits annexed to the aforesaid petition, and being of the opinion that the relief prayed should be denied,

It IS on this 11th day of January, 1932, ORDERED that the motion of the petitioners be and hereby is denied and the petition and order to show cause thereon dismissed.

E. R. WALKER,	C.
VIVIAN M. LEWIS,	
V. O.	

Order to Show Cause

(Filed January 13, 1931)

NEW JERSEY PREROGATIVE COURT

10	In the Matter of the Estate of WILLIAM J. PINCKNEY, De- ceased.	} On Accounting.
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A petition, duly verified, having been presented
 herein by Marie M. Pinckney, Florence Palmer,
 Emma Davidson, Madge Davidson and The Ca-
 thedral of St. John the Divine, being all of the
 persons interested in the above estate either as
 life tenants and beneficiaries therein or as re-
 mainderman thereof, praying that two decrees
 made in the above matter on the twenty-second
 day of December, 1930, allowing and settling the
 accounts of the Executor and Trustee, and fixing
 and allowing commissions and counsel fees, may
 be opened, vacated and set aside, to the end that
 a rehearing may be had and the questions of the
 amounts of such allowances and counsel fees be
 again considered by this Court, because the same
 are excessive and beyond the amounts to which
 the Executor, Trustee and counsel, respectively,
 are entitled;

IT IS, on this 13th day of January, 1931,

ORDERED, that the Hudson County National
 Bank, as Executor, and as Trustee, of the Last
 Will and Testament of William J. Pinckney, de-
 ceased, show cause before Honorable Vivian M.
 Lewis, Vice Ordinary of this Court, on the 26th
 day of January, 1931, at ten o'clock in the fore-
 noon of that day, or as soon thereafter as counsel

Order to Show Cause

can be heard, at the Chancery Chambers in the City of Jersey City, why the two decrees made in this matter the 22nd day of December, 1930, should not be opened, vacated and set aside, to the end that a rehearing may be had on the application of the said Executor and Trustee, respectively, for the allowance of commissions and counsel fees, and that the petitioners may have an opportunity to be heard therein and thereon.

10

IT IS FURTHER ORDERED, that no further proceedings upon said two decrees of December 22nd, 1930, be had pending the further order of this Court, and that a true but uncertified copy of this order, and of the petition and affidavits upon which the same is founded, be served on the said Hudson County National Bank, as Executor and Trustee, as aforesaid, within five days after the date hereof.

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Respectfully advised,

EDWIN ROBERT WALKER,

a.

VIVIAN M. LEWIS,

V. a.

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Petition to Open Decree and for Rehearing

(Filed January 13, 1931)

NEW JERSEY PREROGATIVE COURT

10	In the Matter of the Estate of WILLIAM J. PINCKNEY, De- ceased.	} On Accounting.
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To Honorable Edwin Robert Walker, Ordinary of the State of New Jersey:—

20 The petition of Marie M. Pinckney, of the City of Jersey City, in the County of Hudson and State of New Jersey; Florence Palmer, Emma Davidson and Madge Davidson, all of whom reside in the Borough of Brooklyn, County of Kings and State of New York; and The Cathedral of St. John the Divine, in the City, County and State of New York, respectfully shows as follows:—

30 1. That the petitioners are all those interested in the above entitled estate, named in the petitions of account filed by the Hudson County National Bank, as Executor and as Trustee herein, and are entitled respectively to the life interest in the trusts held by the said trustee under the Last Will and Testament of William J. Pinckney, deceased, or as remainderman of the corpus of the said trust estate.

2. That heretofore and prior to December 22nd, 1930, the said Hudson County National Bank as Executor and Trustee of and under the Last Will and Testament of William J. Pinckney, deceased, filed their petitions on accounting with the Register of this Court.

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Petition to Open Decree and for Rehearing

3. That Marie M. Pinckney received a notice by mail, forwarded to her in California, where she now is, from her residence in Jersey City, of the filing of the said accounts, and communicated such facts to her attorney, Arthur G. H. Power, Jr., who thereupon communicated with the office of Howard C. Gilmour, who represented the Executor and Trustee, and Mr. Power requested copies of such accounts, which were furnished. No affidavit as to services stated to have been performed by the attorneys for the Executor and Trustee was furnished and no intimation given as to the amount of commissions the Executor and Trustee would ask or what the attorneys would ask as counsel fees. That the affidavit of Howard C. Gilmour, verified December 20, 1930, is believed to have been filed at or on the return of the notice, and a copy was not shown or furnished to Mr. Power prior to filing.

4. That Marie M. Pinckney, through her attorney, advised Mr. Gilmour for the Executor and Trustee that he would not attend the hearing unless it was advisable and desirable, and that no objection was found to the items of account. No statement was made by Mr. Gilmour of the amount of commissions or counsel fees that would be asked and it was assumed that only reasonable amounts, under the circumstances, would be asked.

5. That it was not until copies of the decrees as entered were received that these amounts became known and authority was received by Mr. Power from Marie M. Pinckney to take the necessary steps in the manner provided for the opening of the decree and a hearing.

Petition to Open Decree and for Rehearing

6. That Florence Palmer, Emma Davidson and Madge Davidson, petitioners herein, are interested as annuitants in the trust fund held under the said will by the Trustee; that Florence Palmer is of advanced age, and Emma Davidson and
10 Madge Davidson are elderly and invalid.

7. That the said petitioners were represented in the proceedings in the Surrogate's Court of Rockland County, New York, in the matter of the Estate of Kate E. Lyon, by King, Lane and Barr, of which firm William G. Barr was in active charge of petitioners' interest.

8. That these petitioners received notice of the filing of the said accounts and that applications would be made for commissions and counsel fees.
20 That copies of the accounts were obtained, examined and one or two small matters called to the attention of Mr. Power, who was in communication with the attorneys for the Executor and Trustee.

9. That these petitioners, through their attorney, communicated with attorneys for the Executor and Trustees prior to hearing, asking about commissions and allowances and what would be applied for and was told that decision had not
30 been made on the amount, but no intimation that large or exorbitant commissions and counsel fees, as allowed, would be asked for.

10. That on receiving copies of the decrees of December 22, 1930, the petitioners by attorney communicated to the attorneys for the Executor and Trustee their surprise and their intention to move to bring the question before the Court for a rehearing.

Petition to Open Decree and for Rehearing

11. That The Cathedral of St. John the Divine was represented in the above recited proceedings in the Surrogate's Court of Rockland County by Zabriskie, Sage, Gray and Todd, who have had charge of its legal matters herein at all times. That this petitioner herein is the remainderman of the corpus of the trust estate in the hands of the Trustee herein.

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12. That on December 23, 1930, this petitioner, through its said attorneys, received copies of the decree allowing the accounts of the Executor and Trustee herein, with the amounts of commissions and counsel fees, therein, which was the first notice that had been received by The Cathedral of St. John the Divine or its attorneys of the proceedings. That no notice or record of any notice of the proceedings appears to have been received by the Cathedral or its attorneys.

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13. That by reason of lack of notice no intimation was received of the amount of the commission asked for or allowed to the Executor or Trustee, and of the amount of counsel fees, asked for and allowed to the attorneys for the Executor and Trustee, until after the decree was entered.

14. That by reason of the decrees allowing the accounts of the Executor and Trustee herein, and the allowance of commissions to such Executor and Trustee and counsel fees, the petitioners, and all of them, have been aggrieved, prejudiced and injured; that they had no real or honest notice of the applications in these respects and no notice of the intended amounts or affidavits in support thereof were given or indicated to them, and that they had no reason to anticipate such allowances, and no opportunity to oppose the same.

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Petition to Open Decree and for Rehearing

15. That none of the petitioners herein filed exceptions to the accounts as such.

10 16. That the said petitions of account contained simply the usual statement, praying for the allowance of the account and "also for the allowance of commissions and counsel fees," but the said Executor, Trustee and their attorneys did not comply with the spirit and intent of the rule that in applications where the sums coming into the hands of the representative exceed \$50,000 that the account shall be accompanied by an affidavit, stating fully the pains, trouble and risk of such applicant in settling such estate. That had such accounts been accompanied by the affidavit of Howard C. Gilmour, verified December
20 20th, 1930, and not filed until the return day of the notice, all of the petitioners herein would have been advised of the amounts to be asked of the court and would have been present to oppose the same.

17. That the amounts allowed as commissions to the Executor and Trustee are excessive, and a rehearing should be had in which the petitioners may be present and oppose the same. That the allowances of counsel fees in this estate are
30 greatly in excess of the amounts which should have been allowed to counsel, are greater than have been allowed in other cases, and, in view of the facts, shock all sense of reason and propriety; that the allowances seriously affect the amounts which the petitioners herein will receive from this estate in the future and are being paid out of petitioners' moneys.

Petitioners therefore pray that the said decrees may be opened, set aside and vacated, to the end

Petition to Open Decree and for Rehearing

that a full and complete rehearing on the merits of such commissions and counsel fees may be had by this Honorable Court, and that your petitioners may be present thereat, and that no further proceedings upon the said decrees of this Court made and entered herein on December 22nd, 1930, be had until the further order of this Court. 10

WILLIAM C. KRONMEYER, Esq.,
Proctor for the Petitioners,
309 Central Avenue,
Union City, N. J.

FREDERICK S. TAGGART,
Of Counsel with Petitioners.

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Petition to Open Decree and for Rehearing

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

ARTHUR G. H. POWER, Jr., of full age, being
 duly sworn according to law, upon his oath, de-
 poses and says:

10

1. I am the attorney for Marie M. Pinckney,
 one of the petitioners herein and have had per-
 sonal charge of the matters and affairs respecting
 such petitioner arising out of the estates of Kate
 E. Lyon and William J. Pinckney and that the
 matters and things contained in said petition so
 far as they apply to this petitioner, are true.

20

2. That this verification to the above petition
 is made by me and not by the petitioner herself
 for the reason that Marie M. Pinckney is now in
 California and because I have personal knowledge
 of the facts and circumstances therein stated, and
 have represented the said petition in all of said
 proceedings.

30

3. In support of this petition, and in more de-
 tail, I have made an affidavit which is attached
 thereto and which sets forth the facts and cir-
 cumstances upon which the statements and allega-
 tions in the petition are based.

ARTHUR G. H. POWER, Jr.

Sworn to and subscribed
 before me, this 12 day of
 January, 1931.

J. WALTER ROBERTSON,

Notary Public, Westchester County

Certificate filed in New York County.

Petition to Open Decree and for Rehearing

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

WILLIAM G. BARR, of full age, being duly sworn according to law, upon his oath deposes and says:

1. I am one of the attorneys for the petitioners, Florence Palmer, Emma Davidson and Madge Davidson herein and a member of the firm of King, Lane and Barr. I have had personal charge of the matters and affairs respecting these petitioners arising out of the estates of Kate E. Lyon and William J. Pinckney, and that the matters and things in said petition contained so far as they apply to these petitioners, are true.

2. That this verification to the above petition is made by me and not by the petitioners as they are elderly and invalid women without personal knowledge of the facts and circumstances therein stated, and because, representing them, I have personal knowledge of the matters and things therein stated as applying to these petitioners.

3. In support of this petition, and in more detail, I have made an affidavit which is attached thereto and which sets forth the facts and circumstances upon which the statements and allegations in the petition are based.

WILLIAM G. BARR.

Sworn to and subscribed
before me, this 12th day of
January, 1931.

LOUIS A. KLIPP,
Notary Public Kings County

Certificate filed in New York County.

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Petition to Open Decree and for Rehearing

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

10 GEORGE GRAY ZABRISKIE, of full age, being duly sworn according to law, upon his oath deposes and says:

1. I am one of the attorneys for the petitioner herein, Cathedral Church of St. John the Divine in the City and Diocese of New York, and have had charge of its matters and affairs arising out of the respective wills of Kate E. Lyon and William J. Pinckney, and that the matters and things in said petition contained as applied to this petitioner, are true.

20 2. That this verification to the above petition is made by me and not by the petitioner because the petitioner is a corporation, and because I have personal knowledge of the matters and things therein stated as applied to this petitioner.

3. In support of this petition, and in more detail, I have made an affidavit which is attached thereto and sets forth the facts and circumstances upon which the statements and allegations in the petitions are based.

30 GEORGE GRAY ZABRISKIE.

Sworn to and subscribed
 before me, this 12th day of
 January, 1931.

(Seal) ARTHUR W. CLAUSEN,
Notary Public Kings County
 New York County Clerk's Certificate.

Petition to Open Decree and for Rehearing

NEW JERSEY PREROGATIVE COURT

In the Matter of the Estate of WILLIAM J. PINCKNEY, Deceased.
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STATE OF NEW YORK, } COUNTY OF NEW YORK }	ss.
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ARTHUR G. H. POWER, Jr., being duly sworn,
deposes and says:

(1) That he is an attorney and counselor at law, duly admitted to practice before the Courts of the State of New York; that he has been the personal attorney of Marie M. Pinckney, the widow of the decedent herein, for the past two years and is fully familiar with the matters pertaining to the administration of the above named estate; that the facts relating to said administration are more familiar to deponent than to his said client; that said Marie M. Pinckney is now in the State of California and that this affidavit is therefore made by deponent instead of by said Marie M. Pinckney.

20

(2) That deponent received a letter from his said client stating that she had received a notice that the accounts of the Executor and Trustee herein would be filed in the above Court and a hearing had thereon on December 22, 1930. That upon receipt of said letter deponent 'phoned the office of Mr. Gilmour, associated with the firm of McDermott, Enright & Carpenter, and requested a copy of the accounts of said Executor and said

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Petition to Open Decree and for Rehearing

Trustee; that he was thereafter furnished with a copy of the same, examined the same and made certain suggestions to Mr. Gilmour in reference thereto. That at said time no affidavit was furnished deponent of the services alleged to have been performed by the attorneys for said Executor and said Trustee, and no intimation of any kind was given deponent of the amount of fees that were to be asked by said attorneys. Upon information and belief that the affidavit as to services performed by said attorneys was not filed until the hearing on December 22nd; that on the day prior thereto deponent informed Mr. Gilmour that he would not attend upon said hearing unless it seemed desirable; that there were no items in the accounts as filed to which deponent desired to offer objection. That deponent was very much shocked upon receiving a copy of the decrees entered upon the allowance of said accounts at the amount of counsel fees allowed and the proportion of commissions taken by the Trustee for receiving the corpus of the estate. That upon receipt of the same deponent corresponded with his client and immediately received an authorization from her to take such steps as might be advisable to secure a reconsideration of those parts of the decrees which fixed the counsel fees and the commissions.

(3) That no objection is taken to either of the accounts as such, but objection is made to that part of the decrees which fixes attorneys' fees and commissions. That it appears to deponent that such fees and commissions are far too high for the work performed and the responsibility assumed; that the allowances to counsel are out of all pro-

Petition to Open Decree and for Rehearing

portion to the amount of work properly devolving upon them; that they have been compensated for ministerial duties devolving upon the Trustee; that they have charged for services rendered by New York attorneys in the New York matter, in which it is believed that they already have been amply compensated, and that the duties alleged to have been performed, for which a proper charge might have been made and allowed, do not justify an allowance of \$10,500, and further, that for most of these services they have already been compensated in the amount received from the New York attorneys. 10

(4) That William J. Pinckney died a resident of the State of New Jersey on May 25, 1928, leaving a Last Will and Testament which was admitted to probate by the Prerogative Court of Hudson County, N. J., on June 7, 1928 and Letters were issued to the Hudson County National Bank as Executor and Trustee thereunder. 20

(5) That for the purpose of ascertaining and appraising the legal work performed by the attorneys for said Executor and Trustee, the estate of said William J. Pinckney may be divided into two parts,

(a) The assets of which the decedent died seized and possessed in New Jersey, amounting to about \$27,000.00, of which \$1,096.50 came from New York, and 30

(b) Thirty (30) shares of the capital stock of the Himrod Manufacturing Company, of which he had the life use and a power of appointment under the will of his mother, Kate E. Lyon.

(6) That Kate E. Lyon died a resident of Rockland County, New York, leaving a Last Will 40

Petition to Open Decree and for Rehearing

and Testament which was admitted to probate by the Surrogate's Court of said County on March 9, 1914. The portions of said will pertinent to this estate are as follows:

10 “SEVENTH: I bequeath unto my Trustees hereinafter mentioned, the sixty (60) shares of Capital Stock of the HIMROD MANUFACTURING COMPANY owned by me in Trust nevertheless, for the following purposes:

20 “To set aside such share or shares or fraction of a share thereof as may in their judgment, yield an income sufficient to pay the annuity of my husband, EDWARD D. LYON, as heretofore specified in Article ‘THIRD’ of this instrument.

30 “To set aside such share or shares or fraction of a share as may in the judgment of my Trustees, yield an income sufficient to aggregate from the date of my death to the date of her arriving at the age of twenty-one (21) years, the amount of the legacy of Four Thousand (\$4,000) Dollars bequeathed to my grand-daughter, KATHARINE MENZIES PINCKNEY, as specified in Article ‘FIFTH’ of this instrument, in case my said Executors and Trustees shall not have paid my said grand-daughter said sum of Four thousand (\$4,000.) Dollars as hereinbefore provided.

40 “All the remaining shares shall then be divided into two equal portions respectively; one portion of which shall be set aside for the benefit of my son, WILLIAM J.

Petition to Open Decree and for Rehearing

PINCKNEY, and the other portion shall be set aside for the benefit of my son, ORIENT CHESTER PINCKNEY.

“After making all the segregations from the sixty (60) shares of stock placed in Trust as hereinbefore specified, I direct my Trustees to collect and receive all the proceeds, income and dividends from each of said segregated portions set aside as directed, and to pay therefrom respectively, the annuity mentioned in Article ‘THIRD’ of this instrument and the legacy mentioned in Article ‘FIFTH.’ Then the remaining portion heretofore in this Article directed to be set aside for the benefit of my son, WILLIAM J. PINCKNEY, shall be charged with the weekly compensation of Fifty (\$50) Dollars to my son, ORIENT CHESTER PINCKNEY, as specified in Article ‘SIXTH’ of this instrument, and upon the two portions herein set aside for my two said sons, I hereby charge all necessary expenses incident to each and all of the Trusts herein created share and share alike; then the income from said two portions remaining after payment of all the above charges shall be paid monthly to each of my two respective sons, for and during his natural life.”

“ELEVENTH: I give and grant unto each of my said sons full power and authority to dispose of in any way consistent herewith by his last Will and Testament, thirty (30) shares of stock in said HIM-

Petition to Open Decree and for Rehearing

10 ROD MANUFACTURING COMPANY,
together with either the whole or residue of
the income therefrom in accordance here-
with, but such share or shares or fraction
thereof as have been charged with payments
in accordance with Articles 'THIRD,'
'FIFTH' and 'SIXTH' hereof, shall re-
main after the death of either son, sub-
ject to such charges unless and until such
charges shall have ceased as hereinbefore
provided.

20 "I direct my Trustees and the survivors
of them and their successors to carry out
and effectuate any such disposition by either
of my sons so made. If either of my said
sons should die intestate, then I direct that
all the shares at the time of his death held
in Trust for his benefit shall become the
absolute property of the survivor of my two
said sons, and the shares of the proceeds
thereof heretofore charged, shall, at the
termination of said charges, pass in the
same manner."

30 (7) That the will of William J. Pinckney at-
tempted to exercise the power of appointment
given him under the will of his mother. That
the surviving trustees of said Lyon Estate, of
which Orient Chester Pinckney, brother of Wil-
liam J. Pinckney, was one, maintained that the
attempted exercise was invalid as it violated the
New York rule against perpetuities and refused
to turn over the said stock or accumulated in-
come thereon until so ordered by a New York
Court of competent jurisdiction.

Petition to Open Decree and for Rehearing

(8) That the firm of Wise & Seligsberg, New York attorneys, was employed to represent the Executor and Trustee herein for the purpose of securing said stock and income. A petition was filed by said firm requesting a citation requiring the surviving trustees of the Lyon Estate to account. Thereafter said trustees filed an account and had a citation issued for a voluntary accounting. On May 17, 1929, said proceedings were consolidated. Exceptions were filed to said account. A supplemental account was thereafter filed and further objections were filed. The objections came on to be heard and instructions were then asked for. The surviving trustees argued that the attempted exercise of the power of appointment was invalid so far as 15 shares were concerned; that as to such shares William J. Pinckney died intestate, and that under the will of Kate E. Lyon they passed to Orient Chester Pinckney; the remainderman named in the will of William J. Pinckney claimed the shares by reason of acceleration; the attorneys for the Hudson County National Bank maintained the exercise was good under the laws of New Jersey and that as the trust was to be administered there, the Courts of New York should order it transferred. The attorneys for the cousins joined in this contention. The attorney for Marie M. Pinckney made the same contention and further, that the power had been fully exercised by reason of the residuary clause in said will of said William J. Pinckney. A full hearing was had and extended briefs submitted by all parties; in the briefs the attorneys for the Bank accepted the argument in regard to the residuary clause. The Surrogate, after de-

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Petition to Open Decree and for Rehearing

liberation, handed down a written decision holding that the power had been invalidly exercised, that there was no acceleration but that the shares passed under the residuary clause.

10 (9) The cousins, the Cathedral and Orient Chester Pinckney, announced that they would appeal from said decision. The attorney for Marie M. Pinckney then suggested a compromise. Subsequently various conferences were had and an agreement was finally reached, said agreement providing in part as follows:

20 “(a) To sell such number of shares therefrom, at a price of Three thousand, six hundred and twenty-two dollars (\$3,622) per share, as may be necessary to pay the executors’ commissions, the Transfer Taxes due the State of New York, if any, counsel fees, if any, and such other expenses as may be fixed by the decree to be entered herein;

30 “(b) to pay to Marie M. Pinckney for life the entire net income received from one-half of the shares that shall remain after the sale, as herein provided for, of a part of said shares;

“(c) to pay to Florence Palmer for life out of the net income received from the other half of said shares the sum of Fifteen hundred dollars (\$1,500) per year during the term of her natural life;

40 “(d) to pay to Emma Davidson for life out of the net income received from said other half of said shares the sum of Fifteen hundred dollars (\$1,500) per year during the term of her natural life;

Petition to Open Decree and for Rehearing

“(e) to pay to Madge Davidson for life out of the net income received from said other half of said shares the sum of Fifteen hundred dollars (\$1,500) per year during the term of her natural life;

“(f) to pay to said Marie M. Pinckney for life out of the net income received from said other half of said shares all the rest of said net income; 10

“(g) upon the death of the first of said three persons, Florence Palmer, Emma Davidson and Madge Davidson, the income provided to be paid to such person shall be paid to The Cathedral of St. John the Divine;

“(h) upon the death of the second of said three persons, Florence Palmer, Emma Davidson and Madge Davidson, the income provided to be paid to such person shall be divided in such manner that The Cathedral of St. John the Divine and Marie M. Pinckney shall each receive an equal amount from the net income derived from said share; 20

“(i) upon the death of the third of said three persons, Florence Palmer, Emma Davidson and Madge Davidson, the income formerly paid to such person shall be divided equally and paid to The Cathedral of St. John the Divine and Marie M. Pinckney; 20

“(j) upon the death of Marie M. Pinckney, the entire corpus of both halves of said shares shall be delivered to The Cathedral of St. John the Divine.” 10

Petition to Open Decree and for Rehearing

In the meanwhile the attorney for Marie M. Pinckney made a motion requiring the surviving trustees to immediately turn over fifteen of said shares and one-half of the accumulated income, which motion was granted. It was the contention of said Marie M. Pinckney that this income should be paid directly to her, but the Bank asked that it be paid through it and this was done, and the Trustee herein took full commissions upon this amount—some \$11,758.66. For the purpose of fixing commissions it became necessary to place a value upon said stock; this was done by consent of the parties and the value of \$3,622. per share was arrived at, thus an estate of \$108,660., less commissions and attorneys' fees, was secured. A further supplemental account was then filed and a decree on consent was entered.

To pay commissions and attorneys' fees some of the stock had to be sold and the attorney for Marie M. Pinckney persuaded his client to purchase two shares and Orient Chester Pinckney to purchase one. Out of the sum thus secured, \$1,096.50 was paid to the Executor herein as commissions earned by William J. Pinckney as Trustee for receiving the corpus of said Lyon Estate; Wise & Seligsberg received \$2,337.00 fees and disbursements, of which, upon information and belief, \$700.00 was paid to Messrs. McDermott, Enright & Carpenter. The other attorneys were paid as follows:

	Howard Humiston, attorney	
	for said surviving trustees	\$800.00
	Beckman, Boque & Clark, at-	
	torneys for Orient Chester	
40	Pinckney	81.60

Petition to Open Decree and for Rehearing

King, Lane & Barr, attorneys for the cousins.....	250.00	
Zabriskie, Sage, Gray & Todd, attorneys for the Cathedral	777.00 and	
Arthur G. H. Power, Jr., at- torney for Marie M. Pinck- ney	250.00	10

Thus the New Jersey estate became possessed of 27 shares of stock, valued at \$3,622. per share, or \$97,794., accumulated income of \$11,758.66, \$2,130. which was reserved to pay any New York transfer tax and \$1,096.50 commissions due William J. Pinckney, or a grand total of \$112,779.16 upon all of which the Executor or Trustee has taken full commissions and which came to it through the sole efforts of New York attorneys. The final decree was entered early in January, 1930, and the property was finally turned over to the Trustee herein so that from June 7, 1928, to January, 1930, all legal services pertaining to this trust were rendered by New York attorneys alone—the total fees and disbursements paid in New York, in securing what is practically the entire trust estate herein, were only \$4,495.60.

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ASSETS AS TO WHICH WILLIAM J. PINCKNEY DIED SEIZED AND POSSESSED
IN NEW JERSEY:

(10) That the decedent's personal estate in New Jersey, which includes everything except that received in New York from the estate of Kate

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Petition to Open Decree and for Rehearing

E. Lyon, consisted of bonds of various New Jersey Municipalities, a small amount of silverware, one parcel of unimproved real estate, two actions at law which were pending at the time of his death and one claim which was subsequently put in suit. The entire estate was appraised at \$26,109.07; including the agreement of O. C. Pinckney the estate is about \$30,000.00. That in connection with the administration of this estate there was nothing difficult. It involved only the probate of the will, the collection and appraisal of assets and the payment of an inheritance tax. The settlement of the three suits was not difficult; that one such suit was settled on the day Letters Testamentary were issued; that the attorneys having charge of this presented and had paid a bill for \$515.00, which must have included all, or practically all, the services required in this matter.

(11) That an analysis of the affidavits filed in support of services discloses the following purely ministerial work, for which the Executor receives commissions:

	1928	
	May 25	W. J. Pinckney died.
30	June 5	Conference with Hannock (who had had Pinckney's matters in charge before his death) Carpenter and Gilmour (1) Conference with widow and Fielding (a lawyer), regarding estate (2) (28 lines)
	June 6	Phone about probate and proceedings and routine matters covering probate (3#) (17 lines)

Petition to Open Decree and for Rehearing

June 8	Letter to Fielding (4)	
June 11	Conference with Enright, Ferguson, president of bank and Ackerson regarding estate (4)	
June 12	Phone to Hannock and Mrs. Pinckney (4)	10
June 18	Notice to limit creditors (4)	
June 21	Affidavit regarding jewelry (4)	
June 22	Phone regarding stock transfers, conference with Fielding at his NY office (5)	
June 25	Appointment of appraisers (5)	
June 27	Conference with Ackerson regarding lease 630 Bergen Avenue	
July 3	Phone to Bernhard trust officer (6)	20
July 5	Conference with McNulty regarding lease (6)	
July 6	Letter to McNulty (6)	
July 9-11	Conference with Daniel Loeb and Mrs. Pinckney regarding estate (7)	
July 12-13	Conference with law student as to examination of law (7)	
July 18	Phone to Mrs. Pinckney, instructions to appraisers (7)	30
July 30	Examined some law (7)	
Aug. 6	Conference Trust officer	
Aug. 7	Conference trust officer	
Aug. 15	Conference trust officer re transfer tax (7)	
Aug. 28	Examined copy of tax return	
Aug. 30	Conference appraiser	
Oct. 11	Conference trust officer estate matters	40

Petition to Open Decree and for Rehearing

- Oct. 16 Conference trust officer estate matters (9)
 Oct. 19 Conference trust officer estate matters
 Oct. 20 Execution tax return
 10 Nov. 26 Letter from David F. Edward transfer tax supervisors
 Dec. 1 Phone call from trust officer
 Dec. 4 Conference with T. O. regarding letter from Edwards
 Dec. 7 Letter to Edward regard tax enclosing copies of wills
 Dec. 18 Edwards asks for further information (11)
 Dec. 20 Talked with Hannock about conference with Davidson-Palmer interests
 20 Dec. 21 Conference with above, T. O. and Mr. Barr.
 1929
 Mar. 19 Conference with T. O.
 Mar. 20 Conference regarding Printing Co. claim
 Mar. 28 Conference with T. O.
 30 Apr. 17 S and C. of Jersey City Printing Company served
 Apr. 22 Conference with T. O. and mailed answer to Printing Co. suit
 May 10 Approved Hannock's bill for service prior to Pinckney's death of \$515.00
 May 14 Conference with T. O. regarding inheritance tax
 May 15 Coombs to Trenton and copied transfer tax papers.
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Petition to Open Decree and for Rehearing

May 17	Conference with Bernhard. Mr. Dee of office in Court re Printing Company answer	
May 22	Received receipted tax bills and waivers	
Nov. 7 1930	Letter from bank January 28 1930	10
Jan. 28	Conference with T. O.	
Feb. 24	Worked on Federal Tax return	
Mar. 7	Conference with T. O. regarding Federal tax return	
Mar. 10	Preliminary notice of filing	
Mar. 11	Dictated affidavit regarding values	
Mar. 13	Sent preliminary tax notice to Collector	20
Mar. 17-18	Conference T. O. worked on Federal	
Apr. 1	Made claim for refund	
Apr. 7	Filed Federal Estate Tax return	
Apr. 24	Received refund check of \$40 from Comptroller of Treasury	
Sept. 12	Received from bank copies of account figures	
Sept. 16	Conferred re account with T. O.	
July 30	Conferred re account with T. O.	30
Oct. 6	Conferred re account with T. O.	
Nov. 18	Examined account of bank as executor and trustee and conference with T. O.	
Nov. 20	Rechecked account	
Nov. 21	Tel. to Register of Prerogative Court regarding advertising and posting, etc.	
Nov. 28	Phone from Mr. Powers regarding account	40

Petition to Open Decree and for Rehearing

- Dec. 2 Phone with Mr. Powers and conference with T. O. and prepared the 29 page affidavit
- Dec. 17 Procured proof of advertising and mailed same
- 10 Conference with Mr. Barr's office conference with T. O.
- Dec. 22 Hearing before V. C. and decrees entered.
- Dec. 19 Forms of decrees prepared.

20 That the rule is well established that commissions are for the risk, trouble and duties in the administration of the estate; that an Executor is not permitted to charge for special services unless they require skill which it does not possess. That the administration of an estate by a large financial institution presumes, and it so maintains, ability, experience and expert knowledge of routine administration; their trust and other officers are presumed qualified for these duties, and they are not allowed to retain expensive counsel to do this work for them unless they choose, themselves, to pay for the same.

30 (12) That the affidavit of services lists the following items in reference to the piece of real property:

- Procured deed from Hannock. (3)
- June 26-28 Conference with Ackerson, V. P. of bank, searches (5)
- June 28 Studied abstract (5)
- July 7 Received deeds from Hannock and recorded same (6)
- Aug. 28 Continuation searches (7)

Petition to Open Decree and for Rehearing

Sept. 20	Instructed searcher regarding title (8) Also letters.	
Oct. 4	Telephones regarding property (9)	
Oct. 8	Conference with searcher (9)	
Oct. 25	Communication (9)	10
Nov. 9	Letter to Martin (10).	

This discloses that most of the work was done by the searcher and his bill was paid.

(13) That the work done in connection with the suit against one Applegate, which was settled the day Letters were issued, are listed as follows:

1928

June 7	Advised by Hannock that he was settling estate and note for \$2500 (3)	20
Sept. 13	Phoned Applegate (8)	
Sept. 14	Phone to Applegate	
Nov. 8	Letters to Pease & Applegate	
Dec. 8	Letter Carpenter to Pease, and	
Dec. 18	Letter to Pease and Applegate (11)	

1929

Jan. 5	Letters to Applegate and Pease	
Feb. 20	Drew S. and C. against Pease and Applegate(13)	30
Mar. 27	Check from Applegate (15)	
May 18	Letter to Pease (17)	
Oct. 23	Conference Bernhard with regard to claim and wrote letters (21)	
Nov. 19	Payment of \$50 from Applegate	
1930		
Jan. 25	Letters to Pease and Applegate (23)	40

Petition to Open Decree and for Rehearing

Mar. 27 Letters to Pease and Applegate
(24)

10 That, as already stated, most of the legal work in connection with said suit was performed before the decedent's death and must have been included in the \$515.00 paid the attorneys handling the same.

(14) That the work performed in connection with the claim pending at decedent's death and compromised at \$4800, is set forth as follows:

Dec. 29 Mr. Hannock keeping him informed as to progress of the O. C. Pinckney suit (12)

1929

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Feb. 15 Conference at Hannock's office
(12)

Mar. 13 Hannock advised offer of \$4,000
in settlement
Conference with Bernhard and
wrote Hannock (14)

Apr. 17 Letter from Hannock

Sept. 26 Conference with Hannock (20)

Oct. 21 Conference with Hannock (20)

Oct. 23 Conference with Hannock (21)

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Nov. 19 Drew stipulation re settlement of
claim

Nov. 22 Redictated agreement (22)

Dec. 5-6 Letter from O. C. Pinckney's N.
Y. attorney (22)

Dec. 18 Letter to Hannock (23)

Feb. 13 Claim (23)

May 9 Letter from N. Y. attorney en-
closing draft of agreement and

Petition to Open Decree and for Rehearing

	examination of same. Wrote letters regarding it (25)	
July 18	4 copies of agreement received (25) had it executed, prepared petition to Chancery for approval V. C. Bigelow	10
Sept. 19	Copies of agreement sent to attorneys with notice of application to Chancery (26)	
Sept. 29	Appeared before V. C. on return of motion	
Oct. 16	Communications with Hannock regarding entry of rule of discontinuance (27)	
Oct. 30	Bill of Bindsell for Master's fee presented (28)	20
Oct. 31	Letter to Hannock.	

(15) That the claim against Burton L. R. Hare, which netted the estate nothing, is stated as follows:

1929		
Apr. 4	Conference with Bernhard and phoned Hannock	
Apr. 5	Wrote Hare	
June 6	Conferred with Hannock (18) (14 lines) Drafting S. and C.	20
June 11	Hare confers with Coombs and Gilmour (18) (8 lines)	
Oct. 24	Letter to Hare threatening suit (21)	
Nov. 12	Redrew S. and C. (21)	

Petition to Open Decree and for Rehearing

1930

Mar. 19 Talked with Hannock on phone
and authorized execution mutual
releases (24)

Mar. 21 Prepared release (24).

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WHEREFORE deponent asks that an order may be made herein opening up said decrees and vacating the same so far as the award of counsel fees and commissions is concerned; that a rehearing be granted upon the question as to the amount of counsel fees and commissions; that the default of deponent's client in appearing on the return day be opened, and that she have such other and further or different relief as to the

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Court may seem just and proper in the premises.

ARTHUR G. H. POWER, Jr.

Sworn to before me this 12th day of January,
1930.

J. W. ROBERTSON,

Notary Public, Westchester County.
Certificates filed in New York County.
N. Y. Co. Cl'k No. 792, Reg. No. 2R514.
Commission expires Mar. 30, 1932.

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(Seal) New York County Clerk's certificate.

Affidavit in Support of Petition

NEW JERSEY PREROGATIVE COURT

In the matter of the estate of WILLIAM J. PINCKNEY, deceased.

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STATE OF NEW YORK	{	ss:
COUNTY OF NEW YORK		

WILLIAM G. BARR, being duly sworn, deposes and says:

1. That he is an attorney and counsellor at law of the State of New York, and is a member of the firm of King, Lane & Barr, having law offices at 24 Broad Street, Manhattan Borough, New York City, and deponent has been engaged in the practice of the law continuously for over twenty-five years. 20

2. That deponent is attorney for Florence Palmer, Emma Davidson and Madge Davidson, three persons interested as annuitants in a trust fund now held under the will of William J. Pinckney, in respect to which the Hudson County National Bank is trustee.

3. That the said Florence Palmer is of advanced age and that the said Emma Davidson and Madge Davidson are elderly and are invalids. 30

4. That in proceedings in the Surrogate's Court in Rockland County, New York, relating to the estate of Kate E. Lyon, deponent's firm appeared and acted for said Florence Palmer, Emma Davidson and Madge Davidson, and deponent was in active charge of such matters for them and is

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Affidavit in Support of Petition

familiar with the details and results of such proceedings.

10 5. That as a result of such judicial proceedings in the Surrogate's Court, Rockland County, New York, followed by protracted negotiations, which finally resulted in a settlement, a formal
20 settlement agreement dated December 31, 1929, was executed by Marie M. Pinckney, Florence Palmer, Emma Davidson, Madge Davidson and The Cathedral Church of St. John the Divine, in the City and Diocese of New York, and a decree was entered disposing of the controverted matters in said accounting and as a result of said settlement arrangement and said decree, the three ladies represented by deponent became entitled, subject
20 to the terms of such agreement and decree, to receive certain annuities from income of part of the trust res which passed to the Hudson County National Bank, as executor or trustee under the will of William J. Pinckney, which was a party to the proceeding and was bound by said decree, which decree was later amended in a minor respect on consent.

30 6. That on November 28, 1930, there was referred to deponent by Mrs. Palmer and the Misses Davidson three typewritten papers giving notice that the account of the Hudson County National Bank, as executor, and the account of the Hudson County National Bank, as trustee, would be audited and stated by the Register of the Prerogative Court of New Jersey, and reported for settlement to said Court at Chancery Chambers, 1 Exchange Place, Jersey City, New Jersey, on Monday, December 22, 1930, at 10:00 A. M., or as soon thereafter as counsel could be heard, and that an ap-

Affidavit in Support of Petition

plication would be made for the allowance of commissions and counsel fees at that time.

7. That acting for the said three ladies deponent, through an attorney in his office, obtained a copy of the said executor's account and a copy of the said trustee's account and deponent carefully examined and analyzed the accounts as they affected the three ladies for whom deponent is acting, and having noted a small matter requiring adjustment between Mrs. Pinckney and the said three ladies in respect to certain income payments and having called such matter to the attention of Mrs. Pinckney's attorney with the intention of leaving it for future adjustment with him, deponent found the account otherwise acceptable and decided that no question as to the accounts need be raised in the said pending proceeding. 10 20

8. That deponent, desiring to feel assured that it would not be necessary for these three ladies to incur additional expense of retaining counsel in New Jersey, conferred by telephone on December 18, 1930, with Mr. Gilmour, representing Messrs. McDermott, Enright & Carpenter, the attorneys for the accounting Hudson County National Bank, to inquire whether any issue on the accounts would come up in the proceeding. That on the occasion of such conversation on the telephone, the deponent asked Mr. Gilmour about commissions and allowances and asked what amount he intended to apply for, and he answered in substance that he had not decided the amount for which he would ask and that he was then engaged in preparing his affidavit. That no suggestion was given at that time by Mr. Gilmour that aggregate attorney's allowances of \$11,500 would be asked for. 30 40

Affidavit in Support of Petition

9. On December 23, 1930, deponent received from Messrs. McDermott, Enright & Carpenter two documents purporting to be copies of decrees entered in the New Jersey proceedings and on receiving such decrees, after conferring on
10 the telephone with lawyers in New York interested in the matter, deponent wrote to said attorneys a letter which referred to such decrees and contained the following statement:

“* * * Our reaction to the same is that the amounts allowed are unfair and excessive and that by assuming that it was unnecessary to incur the expense of Jersey counsel to appear in the matter, the persons
20 interested have been prejudiced. We understand that this is also the view of the counsel for Mrs. Pinckney and the Cathedral. Therefore, in receiving these copies of decrees we expressly disclaim the intention of acquiescing in the same and reserve whatever rights our clients have in the matter to open or review the decree.”

10. That based upon all the circumstances with which deponent is familiar, including the
30 circumstance that the greater part of the trust fund represents a fund which was originally a part of the Estate of Kate E. Lyon and that such part passed to the trustee in New Jersey under a court decree leaving nothing to be done except to administer the trust, deponent considers that the award of \$10,000 in the decree to counsel in the New Jersey proceeding from the trust fund, in addition to the award of \$1,500 from the fund in

Affidavit in Support of Petition

the hands of the executor, is excessive. That deponent also considers that under the circumstances of this case where double commissions are allowed, an award of more than half commissions to the trustee at this stage of the administration results in an unfair burden on the trust fund, and that the two decrees result in an unfair and excessive reduction of the income which, under the terms of the court decree and Mr. Pinckney's will, must be devoted to the support of his widow, subject to the annuity arrangements involved in the settlement agreement. 10

WILLIAM G. BARR.

Sworn to before me this 9th day of January, 1931. 20

LOUIS A. KLIPP,

Notary Public, Kings County 398.
 Certificate filed New York County 201.
 Reg'srs. Cert. N. Y. Co. 1-K-176, Kings
 Co. 1050. Bronx County. Bronx Reg'srs.
 Commission expires March 30, 1931.
 New York County Clerk's Certificate.

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Affidavit in Support of Petition

NEW JERSEY PREROGATIVE COURT

10 In the matter of the estate of
 WILLIAM J. PINCKNEY,
 Deceased.

STATE OF NEW YORK, {
 COUNTY OF NEW YORK. { ss:

GEORGE GRAY ZABRISKIE being duly sworn, says:

20 I am a member of the firm of Zabriskie, Sage, Gray & Todd, attorneys at 49 Wall Street, New York. My firm represents The Cathedral Church of St. John the Divine, in the City and Diocese of New York, the legatee of the remainder in this estate, in all its legal matters, and have heretofore represented it in proceedings relating to this estate and to that of Kate E. Lyon, the decedent's mother.

30 The first notice I or my firm had of any accounting proceedings in this estate was on December 23, 1930, when in the morning mail we received from Messrs. McDermott, Enright & Carpenter copies of the decrees of this Court on the accountings of the Hudson County National Bank as Executor and also as Trustee of the estate of William J. Pinckney, with a letter stating that these decrees had been signed the previous day. The decree on the executor's accounting showed a balance in the executor's hands of \$20,304.32 and that the attorneys for the executor had been allowed a counsel fee of \$1,500. The decree on the

Affidavit in Support of Petition

trustee's accounting recited that the corpus of the trust amounted to \$100,207.50 and also showed an allowance of counsel fees of \$10,000, or 10% of the fund, as well as a commission to the trustee of \$4,008.30, or 4% of the corpus.

These counsel fees seem to a New York attorney exorbitant and unconscionable. Had I received any notice of the proceedings, or had any idea that such allowance would be asked for, I should have taken steps to oppose it strenuously. I have been informed that notice of the accounting proceedings was mailed to the Cathedral at its address, Amsterdam Avenue and 110th Street, New York City, on November 21, 1930, and I presume that such is the fact, though it is always possible that a mistake may have been made by the person who was in charge of the mailing of the notices. When legal notices are received at the Cathedral, the routine is always immediately to send them either to my office or to the Chairman of the Law Committee of the Board of Trustees of the Cathedral for his information, if he is in town and has had anything to do with the matter previously. He is Mr. Justice Edward R. Finch, of the Appellate Division of the Supreme Court of New York, and his practice in turn is to send such notices immediately to my firm. I have inquired of Justice Finch and his secretary, and also at the office of the Cathedral, and have not been able to ascertain that any notice of these proceedings was ever received at the Cathedral or by anyone on its behalf.

As Chairman of the Law Committee, Mr. Justice Finch has particularly instructed me, in accounting proceedings involving any considerable

Affidavit in Support of Petition

amounts, always to scrutinize carefully the counsel fees, since he has told me that applications for allowances in amounts which are astonishing and shocking sometimes come before his court for review. Not long ago he said to me in substance:

10 "You would hardly believe it, but we sometimes have to pass on applications for counsel fees as high as 10% of the estate." Upon learning of the amounts of the allowances in this case, he instructed me to do my best to have the matter reopened and the allowances greatly reduced.

From my experience as a member of the bar for sixteen years, I can state that the usual allowance in New York City estates to counsel who have not had to do any more work than is shown

20 in the affidavit of services filed in these proceedings is from 2% to 2½% of the estate, and that 3% would ordinarily be considered high and is the maximum allowed as a deduction in transfer tax proceedings. The accounts in this estate show that the executor handled a gross estate of \$27,205.57, and that the estate it has received as trustee is, as above stated, \$100,207.50. In my opinion, if this were a New York estate, the attorneys

30 would not have been allowed more than \$3,000 altogether for their services to the executor and to the trustee. The bulk of the legal work which had to be done in connection with the trust estate took place in New York, before it was turned over to this trustee, on the accounting proceedings in the estate of Kate E. Lyon; the facts in regard to which I understand are being more fully set forth in an affidavit by Mr. Arthur G. H. Power, Jr., and of which I had charge on behalf of the Cathedral. The New York attorneys who

Affidavit in Support of Petition

represented the estate of William J. Pinckney in those proceedings were fully paid out of the estate, and I am informed that Messrs. McDermott, Enright & Carpenter received one-third of their fee, or about \$700.

Accordingly it is respectfully submitted that a fair and reasonable allowance to the New Jersey attorneys for their services to the executor and to the trustee in this estate would be \$2,500. 10

In addition it is submitted that no reason exists why the trustee should receive a 4% commission upon the corpus of the trust estate at this time. I am advised that under the law of New Jersey the court may allow a trustee a total of 5% for receiving and paying out, but that trustees are frequently allowed less than that; and no reason appears why the court should exercise its discretion to award this trustee commissions at the highest possible rate. The estate consists of a block of stock in a single corporation, which by agreement among all the interested parties is to be held and not sold or reinvested. Consequently, as far as the corpus is concerned, this is a uniquely simple estate to handle, the trustee having nothing whatever to do but keep the certificates in a safe place. It is hard to see why it should be allowed any more than the minimum rate of commissions upon the corpus. In this case moreover, it is submitted that the trustee should receive at this time not more than half commissions at the outside for receiving, and the balance, if the court should hereafter see fit to allow further commissions at the termination of the trust when the corpus is turned over to the remaindermen. Otherwise the fund upon the income of which the life 20 20

Affidavit in Support of Petition

beneficiaries, who I am informed are in very reduced circumstances, have to live, will be unnecessarily and unfairly depleted. In this state a trustee is only entitled to 2% commissions upon the bulk of the estate for receiving and paying out together.

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GEORGE GRAY ZABRISKIE.

Sworn to before me this 9th day of January, 1931.

(Seal)

ARTHUR W. CLAUSEN,

Notary Public, New York County.

Clerk's No. 94. Register's No. 2C-85.

Bronx Co. Clk's. No. 4 Reg. No. 3204.

Commission expires March 30, 1932.

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Executor's Account

(Filed November 22, 1930)

NEW JERSEY PREROGATIVE COURT

In the matter of the estate of
WILLIAM J. PINCKNEY,
Deceased.

On Ac-
counting:
Petition.

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TO EDWIN ROBERT WALKER, ORDINARY
OF THE STATE OF NEW JERSEY.

The petition of Hudson County National Bank, a national banking association organized under the laws of the United States of America having an office at 75 Montgomery Street, Jersey City, Hudson County, New Jersey, respectfully shows as follows:

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1. Your petitioner is the executor of the last will and testament of William J. Pinckney, deceased, and herewith presents its account of its administration of the aforesaid estate.

2. The names and addresses of all persons interested in said accounting are as follows:

Marie M. Pinckney, widow, who resides at 630 Bergen Avenue, in the City of Jersey City in the County of Hudson and State of New Jersey.

30

Florence Palmer, cousin, who resides at 1755 Ocean Parkway, in the Borough of Brooklyn, in the County of Queens and State of New York.

Emma Davidson, cousin, who resides at 1755 Ocean Parkway, in the Borough of Brooklyn, in the County of Queens and State of New York.

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Executor's Account

Madge Davidson, cousin, who resides at 1755 Ocean Parkway, in the Borough of Brooklyn, in the County of Queens and State of New York.

10 Orient C. Pinckney, brother, who resides at Hopewell Junction, Dutchess County, New York.

Cathedral of St. John the Divine, Amsterdam Avenue and 110th Street, New York City, in the County of New York and State of New York.

Jersey City Printing Company, 160 Maple Street, in the City of Jersey City, County of Hudson and State of New Jersey.

20 so far as your petitioner has been informed.

3. The following is a summary of its afore-said account:

Accountant charges itself as follows:

To amount of inventory..... \$24,617.90

To amount collected in addition to inventory 2,587.67

Total charges..... \$27,205.57

Accountant prays allowance as follows:

30 Amount of expenditures..... \$6,901.25

Balance in hands of accountant..... \$20,304.32

Your petitioner therefore prays that said account may be allowed, and also for the allowance of commissions and counsel fees.

HUDSON COUNTY NATIONAL BANK,

By Morris Bernhard,

Trust Officer,

Executor.

40 Dated Jersey City, N. J.
November 6, 1930.

Executor's Account

STATE OF NEW JERSEY }
COUNTY OF HUDSON } ss.

MORRIS BERNHARD, of full age, being duly sworn according to law upon his oath deposes and says that he is the Trust Officer of Hudson County National Bank, the petitioner in the foregoing petition named; that he has complete charge for and acts in behalf of said Hudson County National Bank in the performance of its duties as executor of the last will and testament of William J. Pinckney, deceased, and that the matters and things contained in the foregoing petition are true to the best of his knowledge and belief. 10

MORRIS BERNHARD. 20

Sworn and subscribed to before me this 17th day of November, 1930.

HENRY A. OETJEN,
(Seal) A Notary Public of New Jersey.

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Executor's Account

NEW JERSEY PREROGATIVE COURT

10	In the matter of the estate of WILLIAM J. PINCKNEY, Deceased.	On Ac- counting: Account.
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The account of Hudson County National Bank, the executor of the last will and testament of William J. Pinckney, deceased, shows as follows:

FIRST

This accountant charges itself as follows:

1928		
20	Aug. 29 To amount of inventory and appraisement \$24,617.90 To amount of two checks of Himrod Manufacturing Company to William J. Pinckney found after the filing of inventory and appraisement, one for \$75 and one for \$200..... 275.00	
1929		
	Feb. 15 Received on sale of desk in office of decedent 15.00	
	Apr. 9 Received on sale of 85 rights of Bankers Indemnity Company stock..... 581.17	
	Oct. 23 Commission received as Executor of Estate of Kate E. Lyon, deceased.... 1,096.50	
30	Dec. 23 Received on sale of typewriter..... 20.00	
1930		
	Nov. 6 Received on account of claim of the estate against Orient C. Pinckney compromised at \$4,500 and payable in instalments as per agreement dated June 25, 1930, approved by order of the Prerogative Court dated September 29, 1930..... 600.00	
		\$27,205.57

Executor's Account

This accountant prays allowance as follows:

1928		Voucher No.		
June 28	Jeremiah J. Dwyer, for search of Plainfield property.....	1	\$40.00	
28	Evening Journal, newspaper advertisement	2	23.46	
Sept. 6	Protest fees on note of Daniel W. Applegate	3	2.48	10
Oct. 15	Jeremiah J. Dwyer, expenses to Plainfield, North Plainfield, Somerville, and Newark, drawing and recording deed.....	4	56.85	
18	H. R. Linbarger, for appraisal of Plainfield Property.....	5	25.00	
Nov. 21	William J. Rurode, for appraisal of estate	6	75.00	
30	George E. Ramsey, undertaker.....	7	904.40	
Dec. 3	Borough of North Plainfield, taxes for second half year 1928 on property at Washington Avenue and Park Place, North Plainfield, N. J.	8	77.22	20
1929				
Feb. 20	Morris Bernhard, reimbursement for payment of collection of coupon	9	.15	
Mar. 1	Dr. C. H. Randall, medical services	10	237.00	
1	J. Odenheimer, butcher.....	11	17.28	
1	Fred Warnicke, druggist supplies..	12	7.58	
1	Joseph Asurowitz, newspapers.....	13	3.19	
1	Dominick Ercole, fruiterer.....	14	8.04	
1	Dr. Louis A. Pyle, medical services	15	39.00	
1	Dr. Howard S. Forman, medical services	16	80.00	30
1	Wah Sing Laundry.....	17	4.50	
1	Rolle & Co., bakery supplies.....	18	4.45	
1	Hospital & Surgical Supply Co., invalid chair rental for two weeks	19	5.00	
1	Public Service Electric & Gas Co.	20	18.22	
1	J. Ebb Weir & Co., flowers on grave	21	7.00	
1	W. H. Archibald, groceries.....	22	9.92	
1	Mrs. A. H. Slater, interior decorating	23	411.00	
1	P. J. McNulty, back rent.....	24	640.00	

Executor's Account

		Voucher No.	
Feb.	16	Loss on sale of bonds:	
		\$3,000 City of Elizabeth 4½ %	
		1951,	
		Inventoried at.....\$3,022.50	
		Sold at..... 2,890.31	
			25 132.19
10	16	\$2,000, Town of Montclair 4½ %	
		1948,	
		Inventoried at.....\$2,030.00	
		Sold at..... 1,993.93	
			25 36.07
Mar.	1	May Pearson, housekeeper.....	26 130.00
	15	Collector of Internal Revenue, ad-	
		ditional income tax for 1928....	27 1.35
	18	Herring, Hall & Marvin, locksmiths	28 10.75
April	9	Register of Prerogative Court, cer-	
		tificate of letters.....	29 6.00
May	10	Register of Prerogative Court, cer-	
		tified copy of will of William J.	
20		Pinckney	30 3.00
	11	Stein, McGlynn & Hannoeh, legal	
		services	31 515.00
	16	Collector of Internal Revenue, ad-	
		ditional income tax for 1928....	32 2.54
	17	Treasurer of State of New Jersey,	
		inheritance taxes for Cathedral	
		St. John the Divine.....	33 338.59
	28	Clerk of Somerset County, recording	
		deed	34 2.00
June	4	Borough of North Plainfield, taxes	
		for 1929 on property at Washing-	
30		ton Avenue and Park Place, North	
		Plainfield, N. J.....	35 167.70
	5	Loss on sale of stocks:	
		150 shares Bankers Indemnity Co.	
		Common stock inventoried	
		at\$3,300.00	
		Sold at..... 3,262.34	
			36 37.66
		85 shares National Commercial Title	
		& Guaranty Co.	
		Inventoried at\$2,847.50	
		Sold at..... 2,124.82	
40			37 722.68

Executor's Account

		Voucher No.		
June 10	Register of Hudson County, registration of assignment of mortgage	38	2.00	
21	Sheffield Farms.....	39	2.34	
Sept. 23	Harry Mabel, notarial services....	40	17.50	
Nov. 13	Loss on sale of jewelry and silver-ware:			10
	Inventoried at.....\$1,175.30			
	Sold at..... 910.00	41	265.30	
1930				
Feb. 5	Fred W. Fielding, legal services...	42	250.00	
13	Secretary of State, certificates....	43	6.00	
Mar. 5	Susie Sterling, legacy.....	44	100.00	
5	Orient C. Pinckney, legacy.....	45	100.00	
17	New York County Surrogate, Certified copy of will of Kate E. Lyon	46	1.10	
April 11	Borough of North Plainfield, taxes for 1930 on property at Washington Avenue and Park Place, North Plainfield, N. J.....	47	165.36	50
29	Greenwood Cemetery, legacy.....	48	500.00	
July 28	Loss on sale of bonds:			
	\$2,000 City of Plainfield 5% 1933			
	Inventoried at.....\$2,040.00			
	Sold at..... 2,010.00			
	\$2,000 Boro. of Edgewater 5% 1941			
	Inventoried at.....\$2,090.00			
	Sold at..... 1,980.00			
		50	110.00	
	\$1,000 Town of Kearny 5% 1936			
	Inventoried at.....\$1,020.00			50
	Sold at..... 1,000.00			
		50	20.00	
	\$1,000 Town of Guttenberg 5% 1942			
	Inventoried at.....\$1,045.00			
	Sold at..... 990.00			
		50	55.00	
	\$1,000 Town of Irvington 4½% 1958			
	Inventoried at.....\$1,025.00			
	Sold at..... 1,005.00			
		50	20.00	10

Executor's Account

			Voucher No.	
10	July 30	Henry A. Oetjen, for appraisal of estate	51	75.00
	Oct. 15	McDermott, Enright & Carpenter, disbursements advanced up to and including October 14, 1930.....	52	59.32
	Nov. 6	Nicholas W. Bindsell, service as Referee in the matter of claim of William J. Pinckney vs. Orient C. Pinckney	53	300.00
	6	Stein, McGlynn & Hannotch, disbursements in the matter of claim of William J. Pinckney vs. Orient C. Pinckney.....	54	20.06
SUMMARY				
This accountant charges itself with.....			\$27,205.57	
This accountant prays allowance of.....			6,901.25	
				\$20,304.32

Dated Jersey City, N. J.
November 6, 1930.

HUDSON COUNTY NATIONAL BANK,
By Morris Bernhard,
Trust Officer,
Executor.

Statement of Assets

The following is a full statement, or list, of the securities, investments and assets of which the balance of the aforesaid estate of William J. Pinckney, deceased, in the hands of said Hudson County National Bank, executor as aforesaid, consists, and a statement of all changes made in the securities of the said estate since the filing of the inventory: 10

Securities now in the hands of Accountant:

Union Hudson Securities Company

Mortgage Participation Certificate.. \$10,000.00

Amount still uncollected on note of

Daniel W. Applegate dated May 1,

1928 300.00

Cash on deposit in Hudson County Na-

tional Bank..... 10,004.32 20

\$20,304.32

The following changes in the investments have been made by accountant since the filing of the inventory.

All the securities held by Hudson County National Bank, as executor of William J. Pinckney, deceased, have been sold and \$10,000 of the proceeds thereof were invested in a mortgage of \$10,000 made by Charles Wogish on premises 5243 Boulevard, North Bergen, New Jersey. Said mortgage was sold on August 1, 1930, for \$10,000 and the proceeds thereof were invested on said day in a \$10,000 Union Hudson Securities Company Mortgage Participation Certificate. 30

HUDSON COUNTY NATIONAL BANK,

By Morris Bernhard,

Trust Officer,

Executor. 40

Dated Jersey City, N. J.

November 6, 1930.

Statement of Assets

STATE OF NEW JERSEY }
COUNTY OF HUDSON } ss.

10 MORRIS BERNHARD, of full age, being duly sworn according to law, upon his oath deposes and says that he is the Trust Officer of Hudson County National Bank, the executor of the last will and testament of William J. Pinckney, deceased; that he has complete charge for and acts in behalf of said Hudson County National Bank in the performance of its duties as such executor and that the said account is in all things just and true, both as to the charges and discharges thereof, according to the best of his knowledge and belief.

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MORRIS BERNHARD.

Sworn and subscribed to before me this 17th day of November, 1930.

HENRY A. OETJEN,
(Seal) A Notary Public of New Jersey.

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Trustee's Account

(Filed November 22, 1930)

NEW JERSEY PREROGATIVE COURT

In the matter of the estate of
WILLIAM J. PINCKNEY,
Deceased.

On Ac-
counting:
Petition.

10

TO EDWIN ROBERT WALKER, ORDINARY OF THE STATE OF NEW JERSEY.

The petition of Hudson County National Bank, a national banking association organized under the laws of the United States of America, having an office at 75 Montgomery Street, Jersey City, Hudson County, New Jersey, respectfully shows as follows:

20

1. Your petitioner is the trustee under the last will and testament of William J. Pinckney, deceased, and herewith presents its account of its administration of the aforesaid estate.

2. The names and addresses of all persons interested in said accounting are as follows:

Marie M. Pinckney, widow, who resides at 630 Bergen Avenue, in the City of Jersey City in the County of Hudson and State of New Jersey.

30

Florence Palmer, cousin, who resides at 1755 Ocean Parkway, in the Borough of Brooklyn in the County of Queens and State of New York.

Emma Davidson, cousin, who resides at 1755 Ocean Parkway, in the Borough of Brooklyn in the County of Queens and State of New York.

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Trustee's Account

Madge Davidson, cousin, who resides at 1755 Ocean Parkway, in the Borough of Brooklyn in the County of Queens and State of New York.

10 Orient C. Pinckney, brother, who resides at Hopewell Junction, Dutchess County, New York.

Cathedral of St. John the Divine of New York City, in the County and State of New York, Amsterdam Avenue and 110th Street.

Dr. Edward D. Lyon, stepfather, who resides at 6333 Walnut Street, East Liberty, Pittsburgh, Pennsylvania.

20 3. The following is a summary of its afore-said account:

AS TO CORPUS

This account charges itself with. \$100,207.50

This accountant prays allowance for.

Balance of corpus in hands of trustee. \$100,207.50

AS TO INCOME

This accountant charges itself with. . . \$35,461.58

This accountant prays allowance for. . . 32,402.67

30 Balance of income in hands of trustee \$3,058.91

Your petitioner therefore prays that said account may be allowed, and also for the allowance of commissions and counsel fees.

HUDSON COUNTY NATIONAL BANK,

By Morris Bernhard,

Trust Officer,

Trustee.

Dated Jersey City, N. J.

40 November 6, 1930.

Trustee's Account

STATE OF NEW JERSEY }
COUNTY OF HUDSON } ss:

MORRIS BERNHARD, of full age, being duly sworn according to law upon his oath deposes and says that he is the Trust Officer of Hudson County National Bank, the petitioner in the foregoing petition named; that he has complete charge for and acts in behalf of said Hudson County National Bank in the performance of its duties as trustee under the last will and testament of William J. Pinckney, deceased, and that the matters and things therein contained are true to the best of his knowledge and belief. 610

MORRIS BERNHARD.

Sworn and subscribed to before me this 17th day of November, 1930. 20

HENRY A. OETJEN,
(Seal) A Notary Public of New Jersey.

Trustee's Account

NEW JERSEY PREROGATIVE COURT

In the matter of the estate of WILLIAM J. PINCKNEY, Deceased.	}	Account.
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The account of Hudson County National Bank, trustee of the trusts created in and by the last will and testament of William J. Pinckney, late of the County of Hudson, deceased, shows as follows:

FIRST—AS TO CORPUS

This accountant charges itself as follows:

1930

20	Jan. 21	Received 13½ shares of Himrod Manufacturing Company as Trustees for Marie M. Pinckney at \$3,632.50 per share	\$49,038.75
	21	Received 13½ shares of Himrod Manufacturing Company as Trustee under the will of William J. Pinckney.....	49,038.75
	Oct. 17	Received Certificate of Deposit of Central Hanover Bank & Trust Company	2,130.00

 \$100,207.50

SUMMARY AS TO CORPUS

30	This accountant charges itself with...	\$100,207.50
	This accountant prays allowance for...	000.00
	Balance of corpus in hands of trustee...	\$100,207.50

SECOND—AS TO INCOME

This accountant charges itself as follows:

1928

40	July 2	Received dividend on 85 shares of National Commercial Title & Guaranty Co.	\$17.00
	18	Interest on \$1,000 Town of Guttenberg 5% Bond, due 1942, from May 25, 1928, to July 1, 1928.....	4.87

Trustee's Account

July	18	Interest on \$1,000 Town of Irvington 4½% bond, due 1958, from May 25, 1928, to July 1, 1928.....	4.38	
	18	Interest on \$2,000 Borough of Edge- water 5% bond, due 1941, interest from May 25, 1928, to June 30, 1928..	1.39	
	18	Interest on \$2,000 City of Plainfield 5% bond, due 1948, from May 25, 1928 to June 1, 1928.....	1.39	10
	18	Interest on \$2,000 Town of Montclair 4½% bond, due 1933, from May 25, 1928, to June 1, 1930.....	1.25	
Aug.	30	Interest on \$3,000 City of Elizabeth 4¼% bond, due 1951, from May 25, 1928, to July 1, 1928.....	23.04	
Sept.	28	Rent from Marie M. Pinckney at \$50 per month for unexpired term of lease, June 1, 1928 to September 1, 1928....	150.00	
Oct.	1	Dividend on 85 shares of National Com- mercial Title & Guaranty Co.....	17.00	20
	9	Interest on note of Daniel W. Applegate from May 25, 1928, to September 4, 1928	40.80	
1929				
Jan.	5	Dividend on 85 shares of National Com- mercial Title & Guaranty Co.....	34.00	
Feb.	5	Interest on \$1,000 Town of Guttenberg 5%, due 1942, from July 1, 1928, to January 1, 1929.....	25.00	
	5	Interest on \$1,000 Town of Irvington 4½%, due 1958, from July 1, 1928, to January 1, 1929.....	22.50	30
	5	Interest on \$3,000 City of Elizabeth 4½%, due 1951, from August 1, 1928, to February 1, 1929.....	63.75	
	5	Interest on \$1,000 Town of Kearny 5%, due 1933, from April 1, 1928 to Octo- ber 1, 1928.....	25.00	
	5	Interest on \$2,000 Borough of Edge- water 5%, due 1941, from June 30, 1928 to December 30, 1928.....	50.00	
	5	Interest on \$2,000 Town of Montclair 4½%, due 1933, from June 1, 1928, to December 1, 1928.....	45.00	40

Trustee's Account

10	Feb.	5	Interest on \$2,000 City of Plainfield 5%, due 1933, from June 1, 1928 to December 1, 1928.....	50.00
		16	Interest on \$3,000 City of Elizabeth 4½%, due 1951, from February 1, 1928 to February 8, 1929.....	2.12
		16	Interest on \$2,000 Town of Montclair 4½%, due 1933, from December 1, 1928 to February 8, 1929.....	16.50
	April	2	Dividend on 85 shares of National Commercial Title & Guaranty Co.....	17.00
	May	25	Interest on funds on deposit in Hudson County National Bank.....	21.37
	July	2	Interest on \$1,000 Town of Irvington 4½%, due 1958, from January 1, 1929 to July 1, 1929.....	22.50
		2	Interest on \$1,000 Town of Kearny 5% due 1933, from October 1, 1928, to April 1, 1929.....	25.00
20		2	Interest on \$2,000 Borough of Edgewater 5%, due 1941, from December 30, 1928 to June 30, 1929.....	50.00
		2	Interest on \$2,000 City of Plainfield 5%, due 1933, from December 1, 1928 to June 1, 1929.....	50.00
		5	Accrued interest on mortgage of \$10,000 of Charles Wogish, on premises 4253 Boulevard, North Bergen, N. J., from June 7, 1929 to July 1, 1929.....	38.33
30	Oct.	4	Accrued interest on mortgage of \$10,000 of Charles Wogish, on premises 4253 Boulevard, North Bergen, N. J., from July 1, 1929 to October 1, 1929.....	150.00
		18	Dividend on fifteen shares of Himrod Manufacturing Company from June 1, 1928 to October 1, 1929.....	10,350.93
	Nov.	7	Dividend on fifteen shares of Himrod Manufacturing Company for November, 1929.....	450.00
	Dec.	2	Interest on \$2,000 City of Plainfield 5%, due 1933, from June 1, 1929 to December 1, 1929.....	50.00
40		5	Dividend on fifteen shares of Himrod Manufacturing Company for December, 1929.....	600.00

Trustee's Account

Dec. 30	Interest on \$2,000 Borough of Edgewater 5%, due 1941, from June 30, 1929 to December 30, 1929.....	50.00	
1930			
Jan. 2	Interest on \$1,000 Town of Irvington 4½%, due 1958, from July 1, 1929 to January 1, 1930.....	22.50	10
2	Interest on \$1,000 Town of Guttenberg 5%, due 1942, from January 1, 1929 to July 1, 1929.....	24.85	
3	Accrued interest on mortgage of \$10,000 of Charles Wogish, on premises 4253 Boulevard, North Bergen, N. J., from October 1, 1929 to January 1, 1930..	150.00	
3	Dividend on fifteen shares of Himrod Manufacturing Company for January, 1930	600.00	
*18	Dividends accumulated from June 1, 1928 to January 1, 1930, on balance of fifteen shares of Himrod Manufacturing Company	11,758.66	20
Feb. 7	Dividend on Himrod Manufacturing Company stock.....	607.50	
7	Dividend on Himrod Manufacturing Company stock.....	607.50	
27	Interest on \$1,000 Town of Guttenberg 5%, due 1942, from July 1, 1929 to January 1, 1930.....	25.00	
Mar. 4	Dividend on Himrod Manufacturing Company stock.....	540.00	
4	Dividend on Himrod Manufacturing Company stock.....	540.00	30
April 1	Interest on \$1,000 Town of Kearny 5%, due 1933, from April 1, 1929 to October 1, 1929.....	25.00	
1	Interest on \$1,000 Town of Kearny 5%, due 1933, from October 1, 1929 to April 1, 1930.....	25.00	
2	Dividend on Himrod Manufacturing Company stock.....	472.50	
2	Dividend on Himrod Manufacturing Company stock.....	472.50	
4	Accrued interest on mortgage of \$10,000 of Charles Wogish, on premises 4253		40

Trustee's Account

		Boulevard, North Bergen, N. J., from January 1, 1930 to April 1, 1930...	150.00
April	21	Refund of interest on 1930 taxes on property in the Borough of North Plainfield, N. J.....	.82
May	7	Dividend on Himrod Manufacturing Company stock.....	607.50
10	7	Dividend on Himrod Manufacturing Company stock.....	607.50
June	2	Interest on \$2,000 City of Plainfield 5%, due 1933, from December 1, 1929 to June 1, 1930.....	50.00
	2	Interest on \$2,000 City of Edgewater 5%, due 1941, from December 30, 1929 to June 30, 1930.....	50.00
	5	Dividend on Himrod Manufacturing Company stock.....	675.00
	5	Dividend on Himrod Manufacturing Company stock.....	675.00
20	July 1	Interest on \$1,000 Town of Guttenberg 5%, due 1942, from January 1, 1930 to July 1, 1930.....	25.00
	1	Interest on \$1,000 Town of Irvington 4½%, due 1958, from January 1, 1930 to July 1, 1930.....	22.50
	2	Dividend on Himrod Manufacturing Company stock.....	675.00
	2	Dividend on Himrod Manufacturing Company stock.....	675.00
	2	Interest on mortgage of \$10,000 of Charles Wogish, on premises 4253 Boulevard, North Bergen, N. J., from April 1, 1930 to July 1, 1930.....	150.00
30	28	Interest on \$2,000 City of Plainfield 5%, due 1933, from June 1, 1930 to July 27, 1930.....	15.83
	28	Interest on \$2,000 Borough of Edgewater 5%, due 1941, from June 30, 1930 to July 27, 1930.....	7.78
	28	Interest on \$1,000 Town of Irvington 4½%, due 1958, from July 1, 1930 to July 27, 1930.....	3.38
	28	Interest on \$1,000 Town of Kearny 5%, due 1933, from April 1, 1930 to July 27, 1930.....	16.25
40			

Trustee's Account

July 28	Interest on \$1,000 Town of Guttenberg 5%, due 1942, from July 1, 1930 to July 27, 1930.....	3.75	
Aug. 2	Accrued interest on mortgage of \$10,000 of Charles Wogish, on premises 4253 Boulevard, North Bergen, N. J., from July 1, 1930 to August 1, 1930.....	50.00	10
7	Dividend on Himrod Manufacturing Company stock.....	337.50	
7	Dividend on Himrod Manufacturing Company stock.....	337.50	
Sept. 2	Interest on Union Hudson Securities Company Mortgage Participation Cer- tificate	44.30	
3	Dividend on Himrod Manufacturing Company stock.....	607.50	
3	Dividend on Himrod Manufacturing Company stock.....	607.50	
Oct. 1	Dividend on Himrod Manufacturing Company stock.....	337.50	20
1	Dividend on Himrod Manufacturing Company stock.....	337.50	
17	Interest on certificate of deposit of Central Hanover Bank & Trust Com- pany	50.84	
		\$35,461.58	

This accountant prays allowance as follows:

1928		Voucher No.			
July 2	Marie M. Pinckney, on account of income	1	\$100.00		
Sept. 4	Marie M. Pinckney, on account of income	2	50.00	30	
26	Marie M. Pinckney, on account of income	3	150.00		
Nov. 26	Marie M. Pinckney, on account of income	4	100.00		
May 17	Treasurer of State of New Jersey, inheritance taxes for Marie M. Pinckney	5a	139.52		
Aug. 1	Marie M. Pinckney, on account of income	5	75.00		
Oct. 18	Marie M. Pinckney, on account of income	6	9,000.00	40	

Trustee's Account

			Voucher No.	
	Nov. 16	Marie M. Pinckney, on account of income	7	403.75
	Dec. 18	Marie M. Pinckney, on account of income	8	570.00
	1930			
10	Jan. 15	Marie M. Pinckney, on account of income	9	570.00
	17	Marie M. Pinckney, on account of income	10	7,244.00
	27	Marie M. Pinckney, on account of income	11	1,000.00
	27	Marie M. Pinckney, on account of income	12	1,000.00
	27	Marie M. Pinckney, on account of income	13	1,000.00
	27	Marie M. Pinckney, on account of income	14	1,758.82
20	Feb. 15	Marie M. Pinckney, on account of income	15	564.62
	15	Marie M. Pinckney, on account of income	16	189.62
	15	Emma Davidson, on account of income	17	125.00
	15	Madge Davidson, on account of income	18	125.00
	15	Florence Palmer, on account of income	19	125.00
	15	Dr. Edward D. Lyon, on account of income	20	25.00
	Mar. 15	Marie M. Pinckney, on account of income	21	500.50
30	15	Marie M. Pinckney, on account of income	22	125.00
	15	Emma Davidson, on account of income	23	125.00
	15	Madge Davidson, on account of income	24	125.00
	15	Florence Palmer, on account of income	25	125.00
	15	Dr. Edward D. Lyon, on account of income	26	25.00
	April 15	Marie M. Pinckney, on account of income	27	436.37

Trustee's Account

1930		Voucher No.		
April	15	Marie M. Pinckney, on account of income	28	88.85
	15	Emma Davidson, on account of income	29	115.84
	15	Madge Davidson, on account of income	30	115.84
	15	Florence Palmer, on account of income	31	115.84
	15	Dr. Edward D. Lyon, on account of income	32	25.00
	16	Marie M. Pinckney, on account of income	33	564.62
May	16	Marie M. Pinckney, on account of income	34	189.62
	16	Emma Davidson, on account of income	35	125.00
	16	Madge Davidson, on account of income	36	125.00
	16	Florence Palmer, on account of income	37	125.00
	16	Dr. Edward D. Lyon, on account of income	38	25.00
	14	Marie M. Pinckney, on account of income	39	628.75
June	14	Marie M. Pinckney, on account of income	40	253.75
	14	Emma Davidson, on account of income	41	125.00
	14	Madge Davidson, on account of income	42	125.00
	14	Florence Palmer, on account of income	43	125.00
	14	Dr. Edward D. Lyon, on account of income	44	25.00
	16	Marie M. Pinckney, on account of income	45	628.75
July	16	Marie M. Pinckney, on account of income	46	253.75
	16	Emma Davidson, on account of income	47	125.00
	16	Madge Davidson, on account of income	48	125.00
	16	Florence Palmer, on account of income	49	125.00

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Trustee's Account

1930		Voucher No.	
July	16	Dr. Edward D. Lyon, on account of income	50 25.00
	30	Adjustment of accrued interest on \$1,000 Town of Kearny bond....	.. 7.64
	Aug. 15	Marie M. Pinckney, on account of income	51 308.12
10	15	Marie M. Pinckney, on account of income	52 95.60
	15	Emma Davidson, on account of income	53 70.84
	15	Madge Davidson, on account of income	54 70.84
	15	Florence Palmer, on account of income	55 70.84
	15	Dr. Edward D. Lyon, on account of income	56 25.00
Sept.	15	Marie M. Pinckney, on account of income	57 564.62
	20	15 Marie M. Pinckney, on account of income	58 189.62
	15	Emma Davidson, on account of income	59 125.00
	15	Madge Davidson, on account of income	60 125.00
	15	Florence Palmer, on account of income	61 125.00
	15	Dr. Edward D. Lyon, on account of income	62 25.00
	Oct. 16	Marie M. Pinckney, on account of income	63 308.12
30	16	Marie M. Pinckney, on account of income	64 95.60
	16	Emma Davidson, on account of income	65 70.84
	16	Madge Davidson, on account of income	66 70.84
	16	Florence Palmer, on account of income	67 70.84
	16	Dr. Edward D. Lyon, on account of income	68 25.00
			\$32,402.67

Trustee's Account

SUMMARY AS TO INCOME

This accountant charges itself with.....\$35,461.58
 This accountant prays allowance of..... 32,402.67

Balance of income in hands of trustee..... \$3,058.91
 Dated Jersey City, N. J.
 November 6, 1930.

HUDSON COUNTY NATIONAL BANK.

By MORRIS BERNHARD,

Trust Officer,
Trustee.

10

STATEMENT OF ASSETS

The following is a full statement, or list, of the securities, investments and assets of which the balance of the aforesaid estate of William J. Pinckney, deceased, in the hands of said Hudson County National Bank, trustee as aforesaid, consists, and a statement of all changes made in the securities of the said estate since the filing of the inventory:

Securities Now in the Hands of Accountant:

13½ shares of Himrod Manufacturing Company
 as trustee for Marie M. Pinckney at \$3,-
 632.50 per share..... \$49,038.75
 13½ shares of Himrod Manufacturing Company
 as trustee under the will of William J.
 Pinckney 49,038.75
 Certificate of Deposit of Central Hanover
 Bank & Trust Company..... 2,130.00
 Cash on deposit in Hudson County National
 Bank 3,058.91

 \$103,266.41

Dated Jersey City, N. J.
 November 6, 1930.

HUDSON COUNTY NATIONAL BANK,

By MORRIS BERNHARD,

Trust Officer,
Trustee.

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Trustee's Account

STATE OF NEW JERSEY }
COUNTY OF HUDSON } ss:

10 MORRIS BERNHARD, of full age, being duly sworn according to law upon his oath deposes and says that he is the Trust Officer of Hudson County National Bank, the trustee of the last will and testament of William J. Pinckney, deceased; that he has complete charge for and acts in behalf of said Hudson County National Bank in the performance of its duties as such trustee and that the said account is in all things just and true, both as to the charges and discharges thereof, according to the best of his knowledge and belief.

MORRIS BERNHARD.

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Sworn and subscribed to before me this 17th day of November, 1930.

HENRY A. OETJEN,

(Seal) A Notary Public of New Jersey.

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Proctor's Affidavit of Services

(Filed December 18, 1930)

NEW JERSEY PREROGATIVE COURT

In the matter of the estate of
WILLIAM J. PINCKNEY,
Deceased.

On Ac-
counting:
Affidavit of
Services.

10

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

HOWARD C. GILMOUR, of full age, being
duly sworn according to law, upon his oath deposes
and says:

I am a member of the law firm of McDermott,
Enright & Carpenter, proctors for the Hudson
County National Bank, as executor of and trustee
under the last will and testament of William J.
Pinckney, deceased, and personally had complete
charge of the matter for said law firm.

20

Mr. William J. Pinckney, the above named de-
cedent, died on May 25, 1928, leaving a will in
which the Union Trust and Hudson County Na-
tional Bank, now by change of name known as
Hudson County National Bank, was named ex-
ecutor and trustee.

30

Mr. Herbert J. Hannoch, of the law firm of
Stein, McGlynn & Hannoch, of Newark, New Jer-
sey, had been attorney for Mr. Pinckney prior to
his death and, under date of May 30, 1928, by tele-
gram requested an appointment with us, and on
June 5, 1928, Mr. Hannoch, Mr. Carpenter, one
of my partners, and I had a long conference to-
gether concerning offering the will for probate

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Proctor's Affidavit of Services

and the administration of the estate. At that conference it was disclosed that at the time of death several matters of his were pending and undetermined of which Mr. Hannotch had had charge and it was then arranged that he should act as
10 co-counsel with my aforesaid firm for the bank in the administration of the estate, and through subsequent arrangements he took care of the various matters which are referred to in his affidavit of services and had been pending at the time of Mr. Pinckney's death.

Later on the same day, June 5, 1928, Mrs. Marie M. Pinckney, the widow of said decedent, and Mr. Frederick W. Fielding, an attorney of New York who was then with her, conferred with Mr. Han-
20 notch, Mr. Carpenter and myself concerning the various phases of the matter and I think that at that conference a question was raised by Mrs. Pinckney with respect to a will which she thought had been executed by Mr. Pinckney subsequent to the one afterwards offered for probate. She mentioned this fact to me on several occasions thereafter but no subsequent will was ever found.

At that conference I endeavored to ascertain from Mrs. Pinckney the names of all the next of
30 kin and heirs at law of the decedent for use in drawing the petition for probate. My recollection is that she was not sure of all the names and addresses of the heirs at law and next of kin, but Mr. Frederick W. Fielding afterwards furnished me with those names and addresses in his letter dated June 6, 1928.

On June 6, 1928, after having phone conferences with Mrs. Pinckney, Mr. Hannotch and Mr. Field-
40 ing, I conferred with Mr. Ackerson, then Vice

Proctor's Affidavit of Services

President of the bank, and prepared and attended to the execution of the petition for probate, also prepared and procured from the Surrogate of Hudson County the certificate that no caveat had been filed and prepared depositions for the three witnesses to the will and the executor's oath, as well as the form of order for probate. I also, on that day, prepared a rule to limit creditors and appeared before Vice Ordinary Bentley at the Chancery Chambers, Jersey City, and applied for the probate of the will. The matter was adjourned to the following day, June 7, 1928, at 2 P. M., at which time I appeared before the said Vice Ordinary with the necessary witnesses to prove the will, procured the order for probate and the rule to limit creditors and mailed the same for filing to the Register of the Prerogative Court with letter of instructions.

Under date of June 7, 1928, I was advised by Mr. Hannoeh that he had settled the matter of Pinckney against Applegate which had been pending. He at the same time sent me a \$2500 note which had been made by Daniel W. Applegate and endorsed by Frederic M. P. Pearse, which had been given in settlement. I turned this note over to the bank with instructions to see that the note was duly presented at maturity and if not paid protested and notice thereof sent to the endorser.

At the time of death Mr. Pinckney owned a piece of unimproved property at North Plainfield, New Jersey, and I subsequently secured from Mr. Hannoeh the deed therefor which had been in his possession. He had no search showing the condition of the title and I subsequently arranged for

Proctor's Affidavit of Services

and had a search made which disclosed that there had been several tax sales of the property.

10 Mr. Fielding had raised a question as to the validity of Mr. Pinckney's exercise of his power of appointment contained in the will of his mother, Kate E. Lyon, she having died a resident of New York State. On June 8, 1928, I wrote him my views concerning that matter.

On June 11 my partner, Mr. Enright, Mr. Ferguson, president of the bank, and Mr. Ackerson and I had a long conference concerning the administration of the estate and also, on that day had two phone conferences with Mr. Charles Harden, a lawyer in Newark who, on that day, had phoned to me in Mrs. Pinckney's behalf. As I recollect,
20 this conversation dealt with claiming that there was a later will.

On June 12, I had phone conferences with both Mrs. Pinckney and Mr. Hannoeh.

On June 18, I prepared a notice of the order limiting creditors and sent the same to the Jersey Journal for publication with a letter of instructions and on June 19th, I conferred with and advised Mr. Ackerson concerning various matters of the estate and on June 20th I attended to having
30 said notice duly posted. On the latter day, I carefully studied the will of Mrs. Kate E. Lyon which gave her son, William J. Pinckney, power of appointment and also studied the provisions of Mr. Pinckney's will and had a conference with the searcher of the said North Plainfield property and gave him instructions.

As I recollect, Mrs. Pinckney had informed Mr. Ackerson and myself that during his lifetime, her

Proctor's Affidavit of Services

husband gave her certain jewelry which was found in his safe deposit box and on June 21st, I prepared and attended to the execution of an affidavit concerning that jewelry and discussed various estate matters with Mr. Ackerson.

On June 22, 1928, I had a phone conference with Mr. Ackerson and phoned Mr. Fielding's office regarding stock transfer matters and on the following day, conferred with Mr. Fielding at his office in New York, he having, as I recall, been an attorney for the trustees of the Kate E. Lyon estate, of which Mr. William J. Pinckney was one to the time of his death, and was conversant with the status of and details concerning Mrs. Lyon's estate. 10

On June 25, 1928, I prepared and had executed and sent to the Register of the Prerogative Court for approval appointment of appraisers, and again conferred with Mr. Fielding at his office in New York concerning various phases of the estate. 20

On June 26, 1928, I conferred with Mr. Ackerson and also with the aforesaid searcher of the North Plainfield property and wrote for Trenton search and also prepared and sent a requisition for tax search to the Collector of Taxes of North Plainfield, and on the following day I conferred with and advised Mr. Ackerson concerning the disposition of the lease which Mr. Pinckney had of his apartment at 630 Bergen Avenue, Jersey City, and arranged for the appraisers to appraise decedent's personal property at that apartment, which was where he had lived. 30

On June 28, 1928, I carefully examined and studied the abstract of title to the North Plain- 40

Proctor's Affidavit of Services

field property and which said abstract showed the record title to be in Daniel W. Applegate and not in Mr. Pinckney, and I subsequently advised Mr. Hannoeh of that fact and he stated that he recalled seeing the deeds and that he would have a search made in his office for them. On the following day I looked up authorities concerning widow's right of quarentine and afterward conferred by phone with Mr. Ackerson concerning the said apartment lease.

On July 3, 1928, I had a phone conference with Mr. Bernhard, trust officer of the bank, concerning the estate.

On July 5, 1928, I had a long phone conference with Mr. Patrick J. McNulty regarding the remainder of the period of decedent's lease at 630 Bergen Avenue and asked him if he would release the estate from the balance of the lease which had two more months to run, but he was unwilling to do so but stated that he would consent to allow the bank to sub-let the apartment to Mrs. Pinckney for the balance of the term.

On July 6th I wrote to Mr. McNulty for written confirmation of his consent to allow the bank to sub-let to Mrs. Pinckney.

On July 7th I received from Mr. Hannoeh two unrecorded deeds for the North Plainfield property, one of Daniel W. Applegate and wife to Edward D. Lyon dated May 19, 1919, and another from Edward D. Lyon to William J. Pinckney, dated June 5, 1919, and on the same day sent said deeds to the Clerk of Somerset County for recordation and ordered Trenton searches against the said Edward D. Lyon and William J. Pinckney.

Proctor's Affidavit of Services

On both July 9th and July 11th, I had conferences concerning different phases of the estate with Mr. Daniel Loeb, an attorney in Jersey, who told me that Mrs. Pinckney had asked him to represent her.

On July 12th and 14th I had conferences with Mr. Collins, then a law student in our office, with respect to his examination of authorities at my request concerning the rule against perpetuities and the exercise of powers of appointment and on the latter day prepared a lease to Mrs. Pinckney of the decedent's said apartment at 630 Bergen Avenue, Jersey City. 10

On July 18th I had a long phone conference with Mrs. Pinckney and on July 23rd gave instructions to Mr. Oetjen, one of the appraisers re completing his appraisal and also had a short conference with Mr. Ackerson concerning estate matters. 20

On July 30th I examined authorities regarding the questions which had been raised by Mr. Fielding.

On both August 6th and 7th, I had short conferences with Mr. Bernhard. On August 15th, I conferred with Mr. Bernhard regarding transfer inheritance tax return and gave him instructions concerning same. 30

On or previous to August 28th, I had received the continuation of title search of the North Plainfield property showing record title in William J. Pinckney but subject to outstanding certificate of tax sale and on that day examined the same and also examined copy of draft of inheritance tax return and made certain suggestions

Proctor's Affidavit of Services

with respect thereto and attended to the preparation of inventory and appraisal of the estate.

10 On August 30, 1928, I conferred with Mr. Ru-
rode, the other appraiser, and Mr. Bernhard, con-
cerning the inventory and also concerning the
inheritance tax return.

On September 13, 1928, I phoned Mr. Applegate concerning his note which had matured, but had not been paid and at that time, as I recall, Mr. Applegate asked if the bank would accept a renewal note if some payment on account of principal were made. I then conferred with and advised Mr. Ferguson regarding the matter.

20 On September 14th, I conferred with Mr. Bernhard about estate matters and on September 15th, I again had a long telephone conference with Mr. Applegate advising and informing him that the bank would rather not renew the note and arranged with him to make payments on account from time to time. I also, on the same day, had a long conference with the searcher of the said North Plainfield property regarding the condition of title and gave him instructions to try to purchase the outstanding tax lien, which he afterwards did.

30 On September 20th, I again conferred with the searcher and instructed and arranged with him about clearing the record of the tax sales and wrote a letter to Mr. Pearse and Mr. Applegate and also prepared and delivered to the aforesaid searcher in letter form a petition to the Mayor and Common Council of North Plainfield for the passage of a resolution authorizing the execution

Proctor's Affidavit of Services

of a deed of that municipality to the bank as executor so that the tax sales might be cleared of record. I also, on the same day, wrote a letter to the attorneys for the holders of another tax sale certificate requesting delivery of said certificate to us duly signed for cancellation of record. 10

On September 21st, I conferred with Mr. Bernhard regarding the filed claim of the Jersey City Printing Company and after looking into the matter advised against payment without further investigation. On the same day, I accompanied Mr. Bernhard to Mr. Fielding's office in New York, where we conferred with both Mr. Fielding and a Mr. Kelly, with respect to the Lyon estate trustees turning over the Himrod Manufacturing Company stock to the bank. On September 22nd, I had a long office conference with Mr. Bernhard regarding the probabilities of securing the Himrod stock and other phases of the administration. 20

On October 4th, I phoned to the searcher of the North Plainfield property and also to Mr. Hanoeh in connection with having the outstanding tax sale certificate endorsed for cancellation and wrote a letter to Mr. Pearse concerning the said note upon which he was endorser. On October 5th, I had two phone conferences with Mr. Hanoeh's office. 30

On October 8th, I again conferred with the searcher regarding his report on clearing title of the North Plainfield property of the tax liens, also regarding a perspective offer to purchase the property for the sum of \$7,000 and also regarding certain phases of the continuation search. 40

Proctor's Affidavit of Services

On October 11th and 16th, I had conferences with Mr. Bernhard about estate matters, and on October 18th, also conferred and advised with him regarding North Plainfield property and gave him instructions regarding the transfer inheritance tax return. On the following day, Mr. Bernhard further conferred with me regarding the said inheritance tax return and on October 20th, Mr. Bernhard executed said return, which I examined and which was then filed.

Under date of October 25th, 1928, I received a communication from Frederick A. Martin Company inquiring about the Plainfield property and whether it could be purchased for \$40 per front foot, which letter I referred to the bank.

On November 1st, Mr. Bernhard conferred with me concerning estate matters. On November 8th, I again wrote letters to Mr. Pearse and Mr. Applegate regarding payment on their aforesaid note.

On November 9th, after first conferring with Mr. Bernhard, I wrote to the said Frederick A. Martin Company asking whether their client would not pay a larger sum for the North Plainfield property, but received no reply thereto.

On the same day, Mr. Bernhard accompanied me to New York to the office of Messrs. Wise & Seligsberg, who were the New York attorneys for the bank in connection with the accounting proceedings in New York upon the Kate E. Lyon estate, and we had a long conference with Mr. Winn, of that office.

On November 13th, I had conferences with Mr. Bernhard, prepared certain waivers of citation,

Proctor's Affidavit of Services

etc., in connection with the accounting proceedings of the Kate E. Lyon estate, in accordance with the previous suggestion of Messrs. Wise & Seligsberg. I also had a phone conference with Mr. Fielding on that day.

On November 14th, I had a phone conference with Mr. Winn regarding the changed form of waivers, had the waivers redrawn and conferred with Mr. Bernhard about the same. I also conferred with him on November 22nd and November 23rd concerning estate matters and had a phone conference with Mr. Hannoeh on the latter day.

Under date of November 26th, I received a letter from Mr. David F. Edwards, District Supervisor and Appraiser of the Inheritance Tax Department, requesting certain information respecting decedent's assets and certain debts listed in the Inheritance Tax Return and requesting a copy of the will of Kate E. Lyon.

On December 1st, I had a phone conference with Mr. Bernhard, and on December 4th, further conferred with him regarding the additional information requested by Mr. Edwards. On December 7th, I wrote a long letter to David F. Edwards enclosing a copy of the will of Kate E. Lyon and explaining and giving him the information desired in his said letter of November 26th.

On December 8th, Mr. Carpenter wrote to Mr. Pearse concerning payment of the aforesaid note, and on the same day I conferred with Mr. Bernhard, and on December 18th I also wrote letters to both Mr. Pearse and Mr. Applegate regarding payment of their note. I had from time to time received telephone messages and letters from both Mr. Pearse and Mr. Applegate regarding

Proctor's Affidavit of Services

the matter and a payment of \$500 was sent on account with Mr. Applegate's letter of December 4, 1928.

10 Under date of December 18th, Mr. David F. Edwards, District Supervisor and Appraiser, asked for further information regarding the estate, which I supplied in my letter of December 27th.

On December 20th, I advised Mr. Hannotch of an important conference at our office with the attorney for Emma Davidson, Madge Davidson and Florence Palmer, mentioned in Mr. Pinckney's will, to be held the following day.

20 On December 21st, I conferred with Mr. Bernhard and Mr. Barr, an attorney of New York, representing the aforementioned sisters, at which was discussed the likelihood of success of the then anticipated attack in the New York accounting proceedings of the Kate E. Lyon estate of the exercise by William J. Pinckney of his power of appointment, which it had been suggested violated the New York State rule against perpetuities. At that meeting, as I recall, Mr. Barr stated that he would attempt to draw an agreement for execution by all of the interested parties to amicably
30 dispose of the matter.

Prior to December 29th, Mr. Hannotch had kept me informed from time to time of the status of the action which he was handling against Mr. Orient C. Pinckney, a brother of the decedent, and on the latter day I wrote him my suggestions concerning the matter and also conferred with Mr. Bernhard.

40 On January 5, 1929, I wrote to both Mr. Applegate and Mr. Pearse with respect to paying

Proctor's Affidavit of Services

off the balance of the aforesaid note, and again, on January 23, wrote them each further letters with respect thereto. On the same day, I hastily examined the form of proposed settlement agreement submitted by Mr. Barr, and on January 30, I carefully studied said agreement and worked upon a revision thereof.

10

On February 15, 1929, I had a long conference at Mr. Hannoch's office in Newark regarding the estate claim against Orient C. Pinckney and urged immediate pressing of the matter and discussed with Mr. Hannoch other phases of the estate.

On February 19th, I conferred with Mr. Bernhard and with Mr. Carpenter regarding the validity under the New York law of the exercise of the power of appointment and wrote a very long letter to Messrs. Wise & Seligsberg, requesting them to look after the bank's interest in the New York litigation and cited to them various pertinent New York cases which we had found, and examined, concerning the matter, which they acknowledged under date of February 20th.

20

On February 20th, 1929, I dictated a summons and complaint against Mr. Applegate and Mr. Pearse for the balance due on the aforesaid note and wrote Mr. Pearse. On the following day, I conferred with Mr. Bernhard and prepared and had affidavit executed by him and mailed to Mr. Hannoch for use in bringing on his suit against Orient C. Pinckney.

30

On February 23rd, I had a phone conference with Mr. Bernhard and wrote letter giving further information requested to Messrs. Wise & Seligsberg. Under date of February 28th, I received

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Proctor's Affidavit of Services

and studied a long letter from Messrs. Wise & Seligsberg, setting forth their opinion and citations regarding the power of appointment in Mr. Pinckney's will, and on March 1st phoned their office with reference thereto.

10

On March 5th, I had a conference with Mr. Bernhard and a phone conference with Messrs. Wise & Seligsberg, requesting exemplified copies of certain papers which I had prepared and sent to the Register of the Prerogative Court for exemplification. I also had a phone conference with the said law firm and wrote a letter to Mrs. Pinckney concerning her authorizing some New York attorney to appear and represent her in the New York accounting proceedings. I also on said day prepared and mailed to the Register of the Prerogative Court for entry a decree barring creditors and also sent therewith proof of publication and posting notice to limit creditors.

20

Messrs. Wise & Seligsberg had theretofore asked us for the period covered by the last intermediate accounting of the estate of Kate E. Lyon trustees and after procuring that information I so informed them under date of May 5, 1929.

30

On March 7th, I received back the exemplified copies of the aforesaid papers and sent same to Messrs. Wise & Seligsberg.

On the same day, I received a letter from the State Supervisor of Transfer and Inheritance Tax requesting information regarding the aforesaid claim of the Jersey City Printing Company and certain other data requested, and to which I replied under date of April 5th, after first securing the desired information.

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Proctor's Affidavit of Services

Under date of March 13th, I received a letter from Mr. Hannoeh to the effect that Mr. Orient C. Pinckney's attorney had recommended settling the matter for \$4,000, payable in monthly installments of \$100, and I thereafter, on March 15th, conferred with Mr. Bernhard regarding the matter, and on the following day wrote to Mr. Hannoeh my suggestions with respect thereto. On March 19th, I conferred with Mr. Bernhard regarding estate matters, and on March 20th conferred with him regarding the Jersey City Printing Company's claim and phoned to Mr. Conway, of the bank, with respect thereto. 10

On March 21st and 22nd, I conferred with Mr. Enright regarding the aforesaid New York accounting proceedings of the Kate E. Lyon estate. 20

On or about March 27th, I received Mr. Applegate's letter dated March 26th, enclosing check for \$1,000 as further payment on account of the aforesaid note and which check I acknowledged and turned over to the bank.

On March 28th, I had a conference with Mr. Bernhard about estate matters.

On April 4th, I also conferred with him both with respect to the estate claim against Burton L. R. Hare and the claim of the Jersey City Printing Company. On the same day I phoned Mr. Hannoeh regarding the claim against Mr. Hare and wrote to Messrs. Wise & Seligsberg regarding the New York proceedings and at the request of the executor notified the Jersey City Printing Company's attorneys of the disallowance in part of their filed claim and also advised Messrs. Wise & Seligsberg of our information that Mrs. Pinck- 30

Proctor's Affidavit of Services

ney would be represented in the New York proceedings by Mr. Arthur G. H. Power.

Under date of April 5th, I wrote to Mr. Hare concerning the claim against him, in reply to his letter dated April 3rd.

10 On or about April 17th, the bank had referred to me the summons and complaint of the Jersey City Printing Company based on its aforesaid claim, and on said day, after first looking up authorities, I prepared an answer thereto. I also received under that date and considered a letter from Mr. Hannoeh concerning the estate claim against Mr. Orient C. Pinckney and after first looking up authorities replied thereto under date of May 31, 1929.

20 On April 22nd, I conferred with Mr. Bernhard regarding the New York accounting proceedings and mailed the aforesaid answer to the Jersey City Printing Company's complaint to the Clerk for filing. I also sent a copy of said answer to the attorneys of Jersey City Printing Company.

On April 25th, Messrs. Wise & Seligsberg phoned me for additional information, which I procured from Mr. Bernhard and advised them accordingly. I also, on the same day, wrote to
30 the Register of the Prerogative Court for an exemplified copy of the will of William J. Pinckney.

On April 26th, I conferred with Mr. Bernhard concerning estate matters and had a phone conference with Messrs. Wise & Seligsberg, and on the 27th mailed them said exemplified copy of the will of William J. Pinckney.

Under date of April 30, 1929, I received from Messrs. Wise & Seligsberg form of petition to

Proctor's Affidavit of Services

compel the executors of the Kate E. Lyon estate to account, and, after examining the same, had it executed by Mr. Ferguson, procured and had attached thereto County Clerk's certificate and sent same to Messrs. Wise & Seligsberg on May 1st by messenger. On the same day I also wrote to Mr. Applegate, requesting check for balance of his aforesaid note.

10

On or about May 10th, I examined and approved of the claim for services filed by Mr. Hannoeh for work performed prior to the date of death, and had also on that day or theretofore, examined the other filed claims and reported to the bank with respect thereto.

On May 14th, I conferred with Mr. Bernhard regarding the inheritance tax bill which had been received, also with Mr. Coombs, who is associated with our office, and phoned Messrs. Wise & Seligsberg regarding the New York accounting proceedings.

20

On the following day, Mr. Coombs, at my request, went to Trenton to the office of the Transfer Inheritance Tax Bureau and made a transcript of the inheritance tax papers. Thereafter, having examined the transcript, on May 17th, I conferred with Mr. Bernhard and wrote to the Comptroller, forwarding checks of the bank in payment of the tax bill, stating therein that payment was made under protest, because of the Department allowing only certain deductions on Schedule "D" of the return.

30

On the same day, Mr. Dee, an attorney associated with our office, attended at the Court House in Jersey City and moved to strike plaintiff's reply to the bank's answer to the complaint of

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Proctor's Affidavit of Services

the Jersey City Printing Company. The motion was subsequently withdrawn by consent. On the same day I also wrote to Mr. Hannoch regarding the estate claim against Mr. Hare.

10 On May 18th, I wrote to Mr. Pearse for the balance of the note, and on May 18th and 20th conferred with Mr. Bernhard regarding the estate.

On May 22nd, I received and turned over to the bank with instructions receipted inheritance tax bill and five waivers.

On June 4th, I had a phone conference with Messrs. Wise & Seligsberg and pursuant to their request attended to the execution by Mr. Bernhard of a certain written consent in connection with the New York proceedings.

20 On June 5th, I had another phone conference with said firm and also conferred with Mr. Bernhard and examined and revised petition of the bank of its objections to the New York accounting proceedings; conferred with Mr. Ferguson and attended to the execution of said petition.

30 On June 6th, I conferred with Mr. Hannoch in Newark regarding action against Mr. Hare. Prior to my conference, there had been discovered among Mr. Pinckney's effects several promissory notes made by Mr. Hare, but Mr. Hare had claimed that Mr. Pinckney was indebted to him for legal services which he had performed. Neither Mr. Hannoch nor I, though we made diligent efforts, ever succeeded in getting Mr. Hare to furnish us with a statement of Mr. Pinckney's indebtedness to him, and the only way to bring the matter to a head seemed to start suit. On the following day, June 7th, I conferred with Mr.

Proctor's Affidavit of Services

Coombs regarding such suit and thereafter, on June 8th, summons and complaint was drafted in our office against Mr. Hare, and we so advised Mr. Hannoch.

On June 11th, Mr. Hare, presumably at Mr. Hannoch's solicitation, conferred with Mr. Coombs and myself regarding settlement of the claim, stating, as I recollect, that Mr. Pinckney was indebted to him in a larger sum than the aggregate of the said notes. The result was that further time was given to Mr. Hare to prepare his statement of claim. On the same day I conferred with Mr. Bernhard and again conferred with Mr. Hare on June 13th. 10

On June 20th, I had a phone conference with Messrs. Wise & Seligsberg concerning the New York proceedings. 20

On June 28th, I received a letter from Messrs. Wise & Seligsberg quoting the New York Statute with respect to the bank's appointing the Superintendent of Banking of the State of New York as its agent for the service of process. I carefully studied and conferred with Mr. Enright regarding the same, and we concluded that the statute was not binding on the bank under the circumstances. On June 29th, I wrote Messrs. Wise & Seligsberg my views with reference thereto. 30

On July 3rd, I received a further letter from Messrs. Wise & Seligsberg regarding said designation and had authorities looked up concerning the matter and also with respect to the necessity of qualifying the bank as executor in New York State. I thereafter conferred with Mr. Collins concerning the same.

Proctor's Affidavit of Services

On July 5th, I further studied the wills of Kate E. Lyon and William J. Pinckney in connection with the power of appointment, and on July 8th looked up authorities as to the rule against perpetuities in the State of Delaware and also further studied said wills.

10 On July 9th, I further conferred with Mr. Enright regarding the matter and he wrote Messrs. Wise & Seligsberg a letter in regard thereto. On July 22nd, I attended in New York in the office of Messrs. Wise & Seligsberg and had a long conference regarding the accounting proceedings.

On July 31st and August 8th, Mr. Collins looked up authorities for me regarding jurisdiction of the New York Courts of accounting under the will of William J. Pinckney, and on said latter day I conferred with Mr. Collins and examined the authorities.

20 On August 19th, Mr. Collins attended at the New York Law Institute in New York City and looked up further authorities concerning the New York proceedings.

On September 11th, I wrote letters to Mr. Pearse and Mr. Applegate for payment of the balance of the aforesaid note.

30 On September 17th, I had a phone conference with Messrs. Wise & Seligsberg and an office conference with Mr. Bernhard.

Under date of September 18th, I received a long letter from Messrs. Wise & Seligsberg enclosing Surrogate Patterson's decision in the Kate E. Lyon estate with their comments and which decision and comments I carefully studied and digested.

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On September 20th, I conferred with Mr. Bernhard about the aforesaid decision and on September 25th, I conferred with Mr. Enright and also had a phone conference with Messrs. Wise & Seligsberg regarding the said decision.

On September 26th, I had a short conference with Mr. Hannoeh regarding the status of the case in his charge. On October 2nd, I conferred with Mr. Bernhard regarding estate matters.

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On October 9th, I had a phone conference with Mr. Winn, of Wise & Seligsberg, regarding the New York proceedings, and on October 10th, I conferred with Mr. Bernhard and Mr. Winn at the latter's office in New York.

On October 15th, I conferred with Mr. Bernhard and also on October 21st, at which latter date I had a phone conference with Messrs. Wise & Seligsberg.

20

On October 21st, I conferred with Mr. Hannoeh and on the 22nd wrote him a letter regarding conference to be held at the bank with Mr. Orient C. Pinckney to try to settle the estate claim against him.

On October 23rd, I conferred with Mr. Bernhard, wrote letters to Mr. Applegate and Mr. Pearse demanding payment of the balance due on the note and on the same day conferred with Mr. Bernhard, Mr. Hannoeh and Mr. Orient C. Pinckney regarding settlement of the claim against the latter. This conference later resulted in a settlement agreement for said claim against Orient C. Pinckney.

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On October 24th, I advised Mr. Hare by letter that if the case was not settled, suit would be brought.

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Proctor's Affidavit of Services

On November 7th, I received a letter from the bank requesting certain information desired by Mrs. Pinckney regarding the status of certain phases of the estate and advised Mr. Bernhard accordingly.

10 On November 12th, I had summons and complaint against Mr. Hare redrawn and sent to the Sheriff of Essex County for service.

Under date of November 13th, I received from Messrs. Wise & Seligsberg proposed form of decree in the New York accounting proceedings which I carefully studied.

20 With his letter of November 19th, I received a further payment of \$50 from Mr. Applegate on account of the aforesaid note, and on the following day turned the same over to the bank.

On November 19th and 20th, I dictated a long stipulation and agreement regarding the settlement of the aforesaid claim against Orient C. Pinckney and partially revised same on November 21st when I had a phone conference with Wise & Seligsberg and sent the agreement by messenger to them for their examination and approval.

30 On November 22nd, I conferred with Mr. Orient C. Pinckney and Mr. Bernhard and redictated the agreement.

On November 25th, I examined the petition for allowance in New York to Messrs. Wise & Seligsberg and attended to having the same executed by Mr. Bernhard and examined and carefully studied proposed form of final decree and dictated long letter to Wise & Seligsberg commenting on and making suggestions re same.

40 On December 6th and 9th, I conferred with Mr. Bernhard and on the latter day examined

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form of stipulation submitted by Messrs. Wise & Seligsberg concerning the decree in the New York accounting proceedings. Meanwhile, I had received a letter from Mr. William L. Bainton, attorney in New York of Mr. Orient C. Pinckney, regarding his ideas of the settlement agreement of the claim against his client and which were entirely different from the plan outlined with his client when he was last in conference with me. Mr. Bernhard afterwards conferred with me over the phone about this proposed form of agreement.

10

Mr. Bainton then conferred with me over the telephone about his proposed form of agreement and I told him that if the agreement was drawn in the form proposed by him all parties interested in the estate should consent thereto. That was subsequently done and the agreement was pursuant to its terms presented to this Court and approved thereby.

20

On December 10th, I conferred with Mr. Winn and Mr. Dankowitz, of Messrs. Wise & Seligsberg, at their office in New York, regarding the form of final decree and proposed stipulation, and gave them my suggestions regarding the same.

On December 18th, I wrote a letter to Mr. Hanoeh regarding progress towards settlement of the claim against Orient C. Pinckney.

30

On January 25, 1930, I again wrote letters to Mr. Pearse and Mr. Applegate, demanding payment of the balance of the aforesaid note.

On January 25, 1930, I had received and studied form of stipulation and final decree submitted by Messrs. Wise & Seligsberg and wrote to them regarding the matter, suggesting the change of one

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of the items of the decree, which was thereafter modified accordingly.

On January 28, 1930, I conferred with Mr. Bernhard about estate matters, also on February 7, 1930.

10 On February 13, 1930, I wrote to Mr. Hannoch concerning the status of the attempt to settle the claim against Orient C. Pinckney. I also on said day further studied decree in New York accounting proceedings, looked up authorities regarding necessity of filing Federal Estate Tax Return and on the following day wrote for return forms and considered the said New York decree and authorities with respect to filing Federal Estate Tax Return and liability for any tax.

20 Under date of February 19th, 1930, I received a letter from Messrs. Zabriskie, Sage, Gray & Todd, attorneys in New York for The Cathedral of St. John the Divine, and replied thereto on February 20th and on the same day wrote to Mr. Hannoch for certain information.

On February 24th, I worked a short while on the Federal Estate Tax Return.

30 On March 7th, I had a long conference with Mr. Bernhard regarding the Federal Estate Tax Return and other matters pertaining to the administration.

On March 10th, I prepared preliminary notice for filing with the Estate Tax Department.

40 On March 11th, I dictated affidavit re value of stock for use in Federal Estate Tax Return and revised the same on March 12th, and on said latter day examined the modifying decree in the New York proceedings and wrote to Messrs. Wise & Seligsberg regarding the same.

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On March 13th, I sent the preliminary estate tax notice to the Collector of Internal Revenue.

On March 17th and 18th, I conferred with Mr. Bernhard and worked further upon the Federal Estate Tax Return and on the latter day also prepared refunding bond and release for the Greenwood Cemetery and studied bill of particulars which had been served re counterclaim of Burton L. R. Hare. 10

On March 19th, I had a phone conference with Mr. Hannoeh regarding the Hare case and recommended discontinuing the action and exchanging mutual releases and a letter was written to Mr. Weinberg, the attorney for Mr. Hare.

On March 21st, I prepared the release from the bank to Mr. Hare, and on the 25th conferred with Mr. Coombs and attended to execution of the aforesaid release. 20

On March 27th, I again wrote to Mr. Pearse and Mr. Applegate concerning the balance of indebtedness on their note.

Prior to April 1st, upon a decision which we cited to the Inheritance Tax Department, we had made claim for the refund of part of the tax which had been assessed against the estate and under date of April 1st was informed that the same would be given due consideration upon the filing of sworn proof of claim. 30

On April 7th, I filed the decedent's Federal Estate Tax Return.

On April 24th, I received from the Comptroller of the Treasury and turned over to the bank refund check of \$40 on account of inheritance tax paid, which refund was made pursuant to our application as aforesaid. 40

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Under date of May 9, 1930, I received a letter from Mr. Bainton, New York attorney of Mr. Orient C. Pinckney, enclosing his draft of the agreement for the settlement of the claim against his client, which I studied and made certain suggestions with respect thereto, and concerning which
10 agreement I wrote to Mr. Bainton under date of May 22nd and requested further data from him which I afterwards received in his letter dated May 27, 1930. I further wrote to him concerning the same matter on June 7, 1930, and under date of June 10th, I received from him a letter enclosing form of settlement agreement with the advice that the same was being sent to The Cathedral of St. John the Divine and to the attorney of Mrs.
20 Pinckney for signature. I carefully studied the agreement as redrawn and under date of June 16th wrote to Mr. Bainton, requesting certain minor changes, which were complied with by him. Thereafter I received Mr. Bainton's letter dated July 18, enclosing four copies of the agreement executed by all of the interested parties, except the executor. I thereafter, on July 23rd, attended to having the agreement executed by the bank and prepared petition to be presented to the Court
30 for approval of said agreement and appeared before and filed with this Court on July 28, 1930, at the Chancery Chambers, Jersey City. At that time, Vice Ordinary Bigelow was sitting and suggested that I bring the matter on upon notice to all of the interested parties, even though they had actually signed the agreement, which I afterwards did as hereinbelow mentioned.

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On September 2, I wrote to Mr. Pearse for a substantial payment on account of the aforesaid note, and on September 6th received his check in the sum of \$100, which I turned over to the bank on September 8.

On September 11th, I requested the Register of this Court to forward to the Sergeant-at-Arms at Jersey City the petition for approval of the aforesaid settlement agreement for use in Court. 10

On or about September 12th, I received from the bank a draft of its account figures and gave instructions concerning the same, and on September 16th I conferred with Mr. Bernhard regarding the accounting.

On September 19th, I forwarded the executed copies of the settlement agreement to the various attorneys of the parties interested therein, and on the same day prepared and forwarded therewith notice of application returnable September 29th for approval by the Court thereof. I afterwards had said notice personally served on The Cathedral of St. John the Divine and after trying to make service on Mrs. Pinckney found she was out of the State and service was made upon her attorney, as appears by the acknowledgment of such service filed with this Court. Mr. Orient C. Pinckney also acknowledged service thereof. I also on said day delivered a copy of said notice to the bank. 20 30

On September 29, 1930, I appeared before the Court and presented the aforesaid petition and secured an order thereon approving the agreement for settlement of the claim against Orient C. Pinckney and on the same day sent copies of 40

Proctor's Affidavit of Services

the order to counsel of the interested parties, and I also had a conference on that day with Mr. Bernhard.

10 On July 30th, I conferred and advised with Mr. Bernhard concerning the work on the accounting and on October 6th, I conferred and advised with him concerning the same.

20 On October 11th, I wrote to Messrs. Wise & Seligsberg for their advice as to the propriety of cashing at that time the Certificate of Deposit of \$2130 in the Central Hanover Bank & Trust Company, dated January 22, 1930, payable to the estate of William J. Pinckney, which sum of money, through agreement with counsel in the New York proceedings, had been allowed to remain on deposit in New York to answer any tax which might be levied in New York on the transfer of the Himrod stock to the bank and was advised by said law firm under date of October 14th that in their opinion the certificate could then be cashed. I so notified the bank and this was done and credited to the Trustee's account under date of October 17, 1930.

30 Prior to October 16, 1930, several communications passed between Mr. Hannoeh and me concerning the entry of a rule for discontinuance of the action at law against Mr. Orient C. Pinckney. It developed that Messrs. McKirgan & Gilson, attorneys of record of Mr. Pinckney, were unwilling to stipulate for the discontinuance until after their fee had been paid by Mr. Pinckney. On the last mentioned date, I wrote to Mr. Bainton, Mr. Pinckney's New York attorney, and asked him to endeavor to have his client take the matter up

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and on the same day had a phone conference with and wrote to Mr. Hannoeh concerning the matter.

On or about October 30th, I received from Mr. Hannoeh a bill of Mr. Nicholas Bindsell for his services as Master in the aforesaid action at law against Mr. Orient C. Pinckney, and on that day wrote to Mr. Hannoeh, who had entirely handled the matter, for his view as to whether the bill should be approved. Mr. Hannoeh approved the bill and it was thereafter paid.

10

On October 31st, I wrote further letters to both Mr. Hannoeh and Mr. Bainton concerning the discontinuance of the law action, and subsequently received replies from each of them.

On November 18th, I examined the accounts of the bank, both as executor and trustee, and on the following day conferred at length with Mr. Bernhard regarding the same, and again on November 20th rechecked the two accounts.

20

On November 21, after first having a long telephone conference with the office of the Register of the Prerogative Court and obtaining permission for personally attending to the advertising and posting of notice of settlement, I prepared notice of settlement, gave instructions for the posting thereof in six public places and arranged for the advertising thereof in the Jersey Journal and had notices of such settlement mailed to all interested parties. The said notices were posted and mailed the same day and an affidavit of mailing and posting was duly prepared and executed, and forwarded the same and the original accounts, and vouchers to the Register of this Court together with a letter of instructions.

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Proctor's Affidavit of Services

On November 28th, I had a phone conference with Mr. Powers concerning the accounts and mailed him copies thereof.

10 On December 2nd, I had a phone conference with Mr. Powers and also conferred with Mr. Bernhard and on the following day, after further conferring with the latter, prepared and had executed and filed an explanatory affidavit.

20 On December 17th, I sent a representative to the Jersey Journal to, and who did, procure an affidavit of publication which had not yet been sent to us, and on the same day I mailed said affidavit to the Register of this Court for filing. I also, on that day, had a short conference with Mr. Graves at Mr. Barr's office, who is attorney for Emma Davidson, Madge Davidson and Florence Palmer. I also had phone conferences with Mr. Barr on said day. I also conferred with Mr. Bernhard, and examined the file in preparation for the hearing on December 22nd.

30 On December 19th, I prepared forms of decree for allowance of executor's account and also for allowance of trustee's account and had a phone conference with Mr. Hannoeh and also wrote a letter to him concerning the discontinuance of the action at law against Mr. Orient C. Pinckney.

HOWARD C. GILMOUR.

Sworn and subscribed to before me this 20th day of December, 1930.

ALICE M. BOYLE,
(Seal) A Notary Public of New Jersey.

Proctor's Affidavit of Services

In the matter of the estate of WILLIAM J. PINCKNEY, Deceased.
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STATE OF NEW JERSEY	} ss:
COUNTY OF ESSEX	

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HERBERT J. HANNOCH, being duly sworn according to law upon his oath deposes and says:

1. I am a member of the firm of Stein, McGlynn & Hannoeh, practicing members of the bar with offices at 17 Academy Street, Newark, N. J.

2. For some years prior to the death of the above named decedent, I acted as counsel for him, and subsequent to his death, I assisted the law firm of Messrs. McDermott, Enright & Carpenter, proctors for the executor in the administration of the estate.

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3. The services rendered by us since the death of Mr. Pinckney are as follows:

(a) Upon the probate of Mr. Pinckney's will, question was raised by his widow with respect to a will alleged to have been executed by Mr. Pinckney subsequent to the one offered for probate. Numerous conferences were had by me with various counsel retained from time to time by Mrs. Pinckney who were investigating into the question as to whether or not a subsequent will had been executed. Among these counsel were William E. Decker, of the law firm of Insley, Vreeland & Decker, and Charles R. Hardin, of Pitney, Hardin & Skinner. I conferred with each of these

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Proctor's Affidavit of Services

attorneys and exhibited to them my files respecting the preparation and execution of Mr. Pinckney's will, disclosing a draft of a proposed new will which had never been executed. I also had conferences with Mrs. Pinckney respecting the matter.

10 (b) During Mr. Pinckney's lifetime, a dispute existed between himself and one Bertram L. Hare, his former attorney, respecting various sums of money aggregating \$5,000 owing to Mr. Pinckney by Mr. Hare. As against this item, Mr. Hare had a claim for legal services rendered to Mr. Pinckney. Mr. Pinckney did not dispute the fact that services had been rendered, but he had never been able to procure a bill from Mr. Hare setting
20 forth the nature of the services and the amount which he claimed to be entitled, because of his rendition thereof. I had numerous conferences with Mr. Hare after Mr. Pinckney's death respecting the matter, and being unable to reach a conclusion, finally furnished Messrs. McDermott, Enright & Carpenter with the details of the claim so that suit could be instituted by them on the claim. Such a suit was instituted and the claim
30 was subsequently adjusted, as will appear from their affidavit.

(c) Mr. Pinckney, in his lifetime, held a mortgage to certain property located in Plainfield, N. J. During his lifetime I had arranged to procure deeds for the equity of redemption in this property. I completed this transaction after Mr. Pinckney's death, and delivered the instruments therefor to Messrs. McDermott, Enright & Carpenter. I arranged for an appraisal of the prop-

Proctor's Affidavit of Services

erty for the purpose of inheritance tax reports.

(d) Question was raised as to whether or not Pinckney's will was violative of the rule against perpetuities, insofar as it contained a power of disposition over the estate of Kate Lyon, a resident of New York. An examination of the law was made on the subject, and an opinion submitted to Messrs. McDermott, Enright & Carpenter. 10

(e) During Mr. Pinckney's lifetime, proceedings had been instituted by me in the New Jersey Supreme Court against his brother, O. C. Pinckney, to recover upwards of \$ advanced by Mr. Pinckney to his brother during his lifetime. A counterclaim had been filed to this suit, one of the items of the counterclaim being a claim for damages due to an alleged breach by the decedent of an agreement to pay premiums on life insurance policies of the brother, which policies had become lapsed due to the decedent's failure to pay the premiums. An accounting was required and the matter was referred to a Referee. A hearing had been held before the Referee prior to the decedent's death, and the decedent had testified on the main case. The decedent was taken ill during cross-examination. The hearing was adjourned and was never completed, due to Mr. Pinckney's death. Subsequent to his death, I arranged to have the executors of the estate substituted as parties plaintiff and arranged for several hearings in connection with the completion of the trial. Question of law was raised as to the right to use the testimony of the decedent, due to the fact that he had not been subject to cross-examination. The law on this point was examined. Several days 20 25 30 40

Proctor's Affidavit of Services

were fixed for the hearing, but all were required to be adjourned due to the absence or inability of the defendant to attend the hearings due to his own illness.

10 Conferences were had between Mr. Gilmour, of the law firm of McDermott, Enright & Carpenter, Mr. Bernhard, trust officer of the executor and with the defendant, and there was reported to me the results of the conferences which Mr. Gilmour had had with the defendant's New York counsel. As a result of this matter, the case was eventually settled for the sum of \$4,500.

20 (f) From time to time I have conferred with Mr. Gilmour respecting the status of the New York proceedings involving the construction of the power of disposition insofar as it related to Kate Lyon's estate.

4. All our disbursements in connection with the above matter have been paid by the executor.

HERBERT J. HANNOCH.

Sworn to and subscribed before me this 14th day of November, 1930.

30 EDWARD SCHWARTZ,
A Notary Public of New Jersey.

Trustee's Affidavit of Service

(Filed December 22, 1930)

NEW JERSEY PREROGATIVE COURT

In the matter of the estate of WILLIAM J. PINCKNEY, Deceased.	}	On Ac- counting: Affidavit of Services	10
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STATE OF NEW JERSEY	}	ss.:
COUNTY OF HUDSON		

MORRIS BERNHARD, of full age, being duly sworn according to law, upon his oath deposes and says:

I am Trust Officer of the Hudson County National Bank, Executor of and Trustee under the last Will and Testament of William J. Pinckney, deceased, and personally had complete charge of the administration of the said estate. 20

Mr. William J. Pinckney, the above named decedent, died on May 25, 1928, leaving a will in which the Union Trust and Hudson County National Bank, now by change of name known as Hudson County National Bank, was named Executor and Trustee. 30

The Will was offered for probate on June 7, 1928, which of course was attended to by the Bank.

On June 8th I arranged with the local representative of the Inheritance Tax Department, Mrs. Pinckney the widow of the deceased and Mr. Pitney, one of her attorneys, to open and did open in their presence the safe deposit box. The securities found therein were immediately clas-

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sified and the estate set up on our Trust Department books.

At the same time I arranged with Mr. William S. Rurode and Mr. Henry A. Oetjen, as appraisers, to proceed with the preparation of the necessary inventory and appraisal.

10 A number of personal papers were found in the safe deposit box requiring careful examination on my part, which examination extended over a period of one week.

The deceased was a Director of the Himrod Manufacturing Company over a long period of years.

I conferred with Mr. A. C. Valeur, the General Manager of the Himrod Manufacturing Company on several occasions in regards to the affairs of the deceased.

20 Mr. Valeur called my attention to a number of matters concerning the personal interest of the deceased, and among others there was a safe which was locked.

I arranged to have the safe opened. It contained numerous personal reports, books showing obligations owing to the deceased, etc.

Careful examination of the contents of the safe required the attention of two employees in the Trust Department for a period of about two weeks.

30 The deceased had a leasehold on his residence at 630 Bergen Avenue, Jersey City, N. J. expiring September 1, 1928.

I arranged with the landlord to sub-let this property to Mrs. Pinckney, the widow of the deceased, and instructed our attorneys to prepare

Trustee's Affidavit of Service

the necessary agreement with her providing for the payment of rent to us as Lessor.

On June 28th, I conferred with Mr. Gilmour, of the firm of McDermott, Enright & Carpenter, attorneys for the estate, concerning the title to the real property located at North Plainfield, and after it was found that the title was not in the name of the deceased, Mr. Gilmour was instructed to proceed to clear the title on the property. This was done.

10

During the month of June, 1928, I had a number of conferences with Mrs. Pinckney and her attorneys with reference to matters concerning the estate.

On July 3rd, I conferred with Mr. Gilmour in connection with certain shares of stock of the Himrod Manufacturing Company, to which the estate was entitled as Trustee under a Power of Appointment exercised in the will of the deceased.

20

On the same day I called at the office of Mr. Frederick W. Fielding, an attorney representing one of the Executors of the Estate of Kate E. Lyon, who were holding the stock to which we considered the estate entitled under the Power of Appointment of the deceased.

Mr. Fielding informed me that the Executors of the Estate of Kate E. Lyon had examined the will of the deceased and that in their opinion one of the trusts set up was in violation of the rule against perpetuities. At any rate he intimated that the Executors would not surrender the stock under any circumstances without an order of the court.

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On July 11th, I instructed Mr. Gilmour to take such steps as he deemed necessary to obtain the Himrod Manufacturing Company stock for us.

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Trustee's Affidavit of Service

On July 18th, I conferred with Mr. Oetjen and Mr. Rurode in regards to the appraisal.

On July 23rd, I examined all bills submitted by creditors of the estate and instructed Mr. Gilmour to prepare the necessary Proofs of Claim.

10 The bill of the Jersey City Printing Company against the estate was examined and upon the submission of a detailed statement from the company, I secured the appraisal of the services set forth to have been rendered in the said bill, which was found to be entirely excessive. I conferred with Mr. Gilmour and rejected the bill on the ground that it was excessive.

20 On August 30th, I completed and signed the Inventory and Appraisal of the estate, submitting it to Mr. Gilmour for filing with the Prerogative Court.

On September 4th, I protested a note made by Daniel W. Applegate for \$2,500, payable to the estate and instructed Mr. Gilmour on September 7th to demand payment from Mr. Applegate and institute legal action if necessary to recover.

30 On September 21st, I conferred with Mr. Gilmour at the office of Mr. Fielding, in New York, in connection with the Himrod Manufacturing Company stock due from the Estate of Kate E. Lyon.

The next day I discussed with Mr. Gilmour the steps to be taken to obtain the stock with the least possible delay.

On October 16th, I completed the Inheritance Tax report and conferred with Mr. Gilmour in regards to several items in the report, and on October 20th the Inheritance Tax report was completed and filed.

Trustee's Affidavit of Service

On October 25th, I discussed an offer made by the Consolidated Corporation for the purchase of the real property at North Plainfield and negotiated with them for several days, but was unable to complete the sale because of a wide difference between their bid and our offer.

10

On October 29th, I communicated with the Cathedral of St. John the Divine, one of the beneficiaries under the last will of the deceased, to ascertain from them the name of their attorneys. This information was received and communicated to Mr. Gilmour.

On October 30th and 31st, I conferred with Mr. Fielding about the matter of settling the question of the Himrod Manufacturing Company stock by obtaining waivers from all parties interested, avoiding thereby long and drawn-out litigation concerning the validity of the trust which was questioned by the Executors of the Grantor of the Power of Appointment exercised by the deceased.

20

I instructed Mr. Gilmour to prepare the necessary waivers and procure the signature thereto of Mrs. Pinckney at my office.

I personally called at the home of the three cousins mentioned in the will of the deceased, namely, Florence Palmer, Emma Davidson and Madge Davidson in Brooklyn, and secured a Notary Public, and in whose presence the signatures of the said cousins were affixed to the waivers. The waivers signed by the cousins, were at their request submitted to their attorney, Mr. William G. Barr for examination and approval.

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On the same day waivers were also forwarded to the attorneys for the Cathedral of St. John the

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Divine, Messrs. Zabriskie, Sage, Gray & Todd for execution by the Cathedral.

10 From November 1st to November 5th I examined the final accounting set up by the Executors of the Estate of Kate E. Lyon, in which the estate of the deceased was interested, because the deceased was one of the Executors of the Lyon Estate. I conferred several times with Mr. Fielding in connection with numerous items on the accounting.

20 On November 9th, I called with Mr. Gilmour at the office of Messrs. Wise & Seligsberg, who were designated as the New York attorneys for the Bank, in connection with the accounting proceedings in New York upon the Estate of Kate E. Lyon, and spent an entire afternoon with Mr. Winn of that office.

On November 17th, the Cathedral of St. John the Divine requested a number of documents and an answer to a number of questions which was promptly taken care of.

I again conferred with Mr. Winn on November 22nd and 23rd in connection with the waivers and citations in the proceedings on the accounting in New York.

30 On November 26th, I supplied Mr. Gilmour with information on questions raised by David F. Edwards, District Supervisor and Appraiser of the Inheritance Tax Department.

On December 11th, I answered a letter of Mr. Henry P. Bedford, one of Mrs. Pinckney's attorneys in connection with a number of matters concerning the estate, including the matter of the account to be brought on in New York.

Trustee's Affidavit of Service

On December 21st, I conferred with Mr. Gilmour and Mr. Barr, and discussed the anticipated attack in the New York accounting proceedings of the Estate of Kate E. Lyon in so far as they concerned the trusts set up by the deceased. It was decided to have Mr. Barr attempt to re-draw an agree-
ment for execution by the parties in order to
dispose of the matter amicably once and for all. 10

On January 4th, 1929, I instructed Mr. Gilmour to institute proceedings on the Applegate note because he had not lived up to his promise to pay in full.

On February 23rd, I conferred with Mr. Gilmour in connection with the New York accounting proceedings, and again on March 5th I conferred with Mr. Gilmour and Mr. Winn in connection
with the matter in their hands. 20

I again conferred with Mr. Gilmour on March 13th in connection with a proposed settlement of a claim by the estate against Orient C. Pinckney, which settlement was recommended by Mr. Pinckney's attorney.

On April 4th, I conferred with Mr. Gilmour with respect to a claim by the estate against Burton L. R. Hare on a number of notes made by Mr. Hare, payable to the deceased. 30

On April 6th, I sold securities for the account of the estate and procured the necessary papers to complete the transfer.

On April 19th, I conferred with Mr. Louis N. Creighton, a real estate agent, in regards to the sale of the property at North Plainfield.

On April 22nd, I conferred with Mr. Gilmour in connection with the New York accounting proceedings and the complaint served upon me by the
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Trustee's Affidavit of Service

Jersey City Printing Company whose claim I rejected.

On May 6th, I paid all of the debts of the estate and invested the balance in a first mortgage.

10 On May 14th, I conferred with Mr. Gilmour in connection with the compromise taxes suggested by the Inheritance Tax Bureau, and instructed Mr. Gilmour to pay the taxes under protest because the department disallowed certain deductions.

On May 18th, I again instructed Mr. Gilmour to go after Mr. Applegate on the unpaid balance of his note.

On May 27th, I sold some more securities for the estate.

20 On June 4th, I executed a written consent in connection with the New York accounting proceedings presented to us by our New York counsel.

On June 5th, I conferred with Mr. Gilmour about the accounting proceedings and discussed with him certain objections in the accounting.

30 On June 11th, I conferred with Mr. Coombs and Mr. Hannoeh, an attorney representing the deceased prior to his death, in connection with the claim against Mr. Hare.

On July 3rd, I conferred with Mr. Gilmour and Mr. Enright in connection with matters concerning the proceedings in New York.

On September 10th, I instructed Mr. Gilmour to follow up Mr. Applegate and secure from him the payment of the unpaid balance on his note.

On September 17th, I conferred with Mr. Gilmour on estate matters.

Trustee's Affidavit of Service

On September 20th, I discussed with Mr. Gilmour the decision handed down by Surrogate Patterson in the Kate E. Lyon accounting.

On October 9th, I visited with Mr. Gilmour the office of Messrs. Wise & Seligsberg, and discussed with Mr. Winn the decision of Surrogate Patterson. 10

On October 15th, I again discussed with Mr. Gilmour estate matters.

On October 21st, I discussed with Mr. Gilmour the advisability of settling the claim of the estate against Orient C. Pinckney and arranged for a conference between Mr. Pinckney, Mr. Gilmour, Mr. Hannoeh and myself at my office, which conference resulted in a settlement on October 23rd.

On November 6th, I sold the silverware and jewelry in the estate to Mrs. Pinckney, after first securing a bid therefor from an independent dealer in New York City. 20

On November 13th, I supplied Mrs. Pinckney with certain information in writing concerning some phases of the estate.

On November 21st, I distributed some of the legacies set forth in the last Will and Testament of the deceased.

On November 25th, I attended to the execution of a proposed decree for the final settlement of the dispute with the Executors of the Estate of Kate E. Lyon. 30

On December 6th and 9th, I conferred with Mr. Gilmour in connection with this decree and also discussed with him the terms of the settlement of the claim against Orient C. Pinckney and the method of payment provided therein.

Trustee's Affidavit of Service

On December 18th, I called on the Executors of the Estate of Kate E. Lyon, and obtained from them 15 shares of the Himrod Manufacturing Company stock. I then attended to the transfer of the stock to us as Trustee.

- 10 On January 22, 1930, I obtained an additional number of Himrod Manufacturing Company stock and attended to the sale of some of the stock for purposes of commission.

On January 23rd, I instructed Mr. Gilmour in re unpaid balance on Applegate note.

- 20 On January 27th, I discussed provisions in consent decree entered in New York concerning the payments to be made to Florence Palmer, Emma Davidson and Madge Davidson, and instructed Mr. Gilmour to have the decree withdrawn because of ambiguity.

On January 28th, I supplied the Central Hanover Bank and Trust Company with certain papers in connection with a Certificate of Deposit placed with them by ourselves and the Executors of the Estate of Kate E. Lyon, pending the settlement of certain tax questions.

- 30 On February 6th, I conferred with Mr. Gilmour in connection with the necessity of filing a Federal Estate Tax return and instructed him to secure the necessary forms.

On March 7th, I presented to Mr. Gilmour the preliminary figures in the Federal Estate Tax return and discussed with him the advisability of filing same.

On March 10th, I executed a preliminary notice for filing with the Estate Tax Department.

On March 17th, and 18th, I again conferred with Mr. Gilmour in connection with the Federal

Trustee's Affidavit of Service

Estate Tax return and discussed with him the counterclaim presented by Mr. Hare in connection with the demand which had been made by him in the Estate.

On March 21st, I discussed with Mr. Gilmour the advisability of settling the claim against Mr. Hare by change of mutual releases and we agreed upon this action. 10

On April 1st, I requested Mr. Gilmour to obtain a refund of part of the inheritance taxes paid on the legacy to the Greenwood Cemetery in Brooklyn.

On April 6th, I executed the Federal Estate Tax return.

On the same day I obtained from Dr. Lyon, one of the beneficiaries under the will of the deceased, proof of payment of a note of \$300, made by him payable to the deceased. 20

From September 2nd to September 9th, I worked on the accounting as Executor and Trustee, and submitted the preliminary figures to Mr. Gilmour on September 12th.

On September 19th, I presented to Mr. Gilmour for approval by the Prerogative Court, an agreement made with Orient C. Pinckney.

On October 6th, I conferred with Mr. Gilmour with respect to the accounting. 30

On October 11th, I collected Certificate of Deposit from the Central Hanover Bank and Trust Company.

On October 30th, I discussed with Mr. Gilmour a bill rendered by Mr. Nicholas Bindsell, for services as special Master and upon approval of bill by Mr. Gilmour, paid the same.

On November 21st, I executed the accounting as Executor and Trustee. 40

Trustee's Affidavit of Service

On November 28th, I discussed the accounting with Mr. Powers, attorney for Mrs. Pinckney.

On December 22nd, I discussed with Mr. Gilmour the conference with Mr. Powers, and executed an explanatory affidavit for the accounting.

10 On December 17th, I discussed with Mr. Graves, of the office of Mr. Barr, representing Florence Palmer, Emma Davidson and Madge Davidson, the accounting.

20 In addition to the various matters set forth herein, the Bank attended to the various duties incumbent upon an Executor and Trustee concerning the location and collection of assets, payment of claims, investment and reinvestment of securities and other such sundry acts as are involved in the administration of an estate. In order to protect the interests of the beneficiaries, I secured the appointment as director of the Himrod Manufacturing Company and have attended meetings regularly for over a year.

MORRIS BERNHARD.

Sworn and subscribed to before me this 22nd day of December, 1930.

30 HENRY A. OETJEN,
(Seal) Notary Public of New Jersey.

Trustee's Affidavit

(Filed December 4, 1930)

NEW JERSEY PREROGATIVE COURT

In the matter of the estate of WILLIAM J. PINCKNEY, Deceased.	}	On Accounting of Executor and Trustee: Affidavit.	10
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STATE OF NEW JERSEY	}	ss.:
COUNTY OF HUDSON		

MORRIS BERNHARD, of full age, being duly sworn according to law, upon his oath says:

I am Trust Officer of Hudson County National Bank, the executor of and trustee under the last will and testament of William J. Pinckney, deceased, and in such capacity am familiar with the matters and things hereinafter set forth. 20

To obviate double handling and additional expense to the estate, the Hudson County National Bank, which as executor held the securities listed in the filed inventory, credited to and disbursed from its account as Trustee all income received on said securities. Said securities, as shown by the statement of assets in its account as executor, have all been disposed of. 30

With reference to the charge item in the executor's account dated November 6, 1930, the executor is in possession of an agreement made with it by Orient C. Pinckney and consented to and approved in writing by all parties interested in the executor's account, which agreement was approved by order of the Prerogative Court dated September

Affidavit of Mailing

29, 1930 for a settlement of a claim of the above estate against the said Orient C. Pinckney for a sum of \$4500 payable in instalments as therein provided. Instalments aggregating \$600 on account of said settlement have been received by said executor up to the date of its accounting as shown therein.

MORRIS BERNHARD.

Sworn and subscribed to before me this 3rd day of December, 1930.

ALICE M. BOYLE,
(Seal) A Notary Public of New Jersey.

20 **Affidavit of Mailing**

(Filed November 22, 1930)

NEW JERSEY PREROGATIVE COURT

In the matter of the estate of WILLIAM J. PINCKNEY, Deceased.	}	Affidavit of Mailing
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30 STATE OF NEW JERSEY }
 COUNTY OF HUDSON } ss.:

GERTRUDE KANTOFF, being duly sworn according to law, upon her oath says:

I am employed in the office of McDermott, Enright & Carpenter, proctors of Hudson County National Bank, executor of and trustee under the will of William J. Pinckney, deceased.

40

Affidavit of Mailing

On Friday, November 21, 1930, I mailed the notice, of which the annexed is a true copy, addressed as follows:

Marie M. Pinckney, 630 Bergen Avenue,
 Jersey City, N. J.; Florence Palmer, 1755
 Ocean Parkway, Brooklyn, New York; Emma 10
 Davidson, 1755 Ocean Parkway, Brooklyn,
 New York; Madge Davidson, 1755 Ocean Park-
 way, Brooklyn, New York; Orient C. Pinck-
 ney, Hopewell Junction, Dutchess County,
 New York; Cathedral of St. John the Divine,
 Amsterdam Avenue and 110th Street, New
 York City, N. Y.; Jersey City Printing Com-
 pany, 160 Maple Street, Jersey City, N. J.;
 Dr. Edward D. Lyon, 6333 Walnut Street, 20
 East Liberty, Pittsburg, Pennsylvania.

by depositing the same, each in a separate securely sealed post paid wrapper in the United States Mail Chute at 75 Montgomery Street, Jersey City, New Jersey, the aforesaid address in each case being the last known residence of the person so addressed, to the best of my knowledge.

GERTRUDE KANTOFF.

Subscribed and sworn to before me this 21st day 30
 of November, 1930.

ALICE M. BOYLE,
 (Seal) A Notary Public of New Jersey.

Affidavit of Posting

(Filed November 22, 1930)

NEW JERSEY PREROGATIVE COURT

10	In the matter of the estate of WILLIAM J. PINCKNEY, Deceased.	} Affidavit of Posting
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STATE OF NEW JERSEY	}	ss.:
COUNTY OF HUDSON	}	

CHARLES B. COLLINS, of full age, being duly sworn according to law, upon his oath says:

I am employed in the office of McDermott, Enright & Carpenter, proctors of Hudson County National Bank, executor of and trustee under the will of William J. Pinckney, deceased.

On Friday, November 21, 1930, I posted the notice, of which the annexed is a true copy, in six of the most public places in the County of Hudson, on the bulletin boards in each of the following places, to wit:

Surrogate's office (Court House) Jersey City, N. J. City Hall, Jersey City, N. J. Chancery Chambers, Jersey City, N. J. Hudson County National Bank Building, 75 Montgomery Street, Jersey City, N. J. Commercial Trust Company Building, 15 Exchange Place, Jersey City, N. J. Trust Company of New Jersey Building, 921 Bergen Avenue, Jersey City, N. J.

CHARLES B. COLLINS.

Sworn and subscribed to before me this 21st day of November, 1930.

40 ALICE M. BOYLE,
 (Seal) A Notary Public of New Jersey.

Public Notice Annexed to Foregoing Affidavit

Notice is hereby given that the account of the subscriber, as executor of and also the account of the subscriber as trustee under the will of William J. Pinckney, late of Jersey City, New Jersey, deceased, will be audited and stated by the Register of the Prerogative Court of New Jersey, and reported for settlement to the said Court at the Chancery Chambers, 1 Exchange Place, Jersey City, New Jersey, on Monday, the twenty-second day of December, nineteen hundred and thirty, at ten o'clock A. M. or as soon thereafter as counsel can be heard, at which time application will be made for the allowance of commissions and counsel fees. 10

Dated, Jersey City, New Jersey,
November 21, 1930. 20

HUDSON COUNTY NATIONAL BANK,
*Executor of and trustee under the Will of
William J. Pinckney, deceased.*

McDERMOTT, ENRIGHT & CARPENTER,
*Proctors, 75 Montgomery Street, Jersey
City, N. J.*

30

40

Affidavit of Publication

(Filed December 18, 1930)

NEW JERSEY PREROGATIVE COURT

10	In the matter of the estate of WILLIAM J. PINCKNEY, Deceased.	}	Proof of Publication
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STATE OF NEW JERSEY	}	ss.:
COUNTY OF HUDSON		

ELIZABETH M. SOLT, being duly sworn according to law, upon her oath saith that she is the Bookkeeper of The Jersey Journal, a newspaper printed and published in Jersey City,
 20 County and State aforesaid, and that a notice, of which the annexed is a true copy, was published in the said newspaper for four weeks, four times, successively, at least once in each week, the first publication being on the 22nd day of November, 1930, and continued thereafter on November 29th—December 6th-13th, 1930.

ELIZABETH M. SOLT.

Sworn and subscribed before me this 16th day
 30 of December, 1930.

ANNA E. BEAL,
 Notary Public, N. J.

NOTICE annexed to above affidavit, same as printed on page 123.

Decree Fixing Executor's Commissions and Allowances

(Filed December 29, 1930)

NEW JERSEY PREROGATIVE COURT

In the matter of the estate of WILLIAM J. PINCKNEY, Deceased.	}	On Ac- counting: Decree Allowing Account.	10
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The Register having audited and stated the final account of Hudson County National Bank, the executor of the last will and testament of William J. Pinckney, deceased, and placed the same on the files of his office twenty days previous to the twenty-second day of December, A. D. Nineteen hundred and thirty, and having on the day last aforesaid reported the same to this Court for allowance and settlement, and it having been proved to the satisfaction of the Court that notice of its intention to settle the said account on said twenty-second day of December, A. D. Nineteen hundred and thirty, in this Court was given by said accountant according to law;

And the Court having examined the said account and the vouchers and receipts for payments and disbursements claimed therein, and having found the same to be correct in all particulars, and no exceptions being made thereto,

IT IS, on this 22nd day of December, A. D. One Thousand Nine Hundred and Thirty,

ORDERED, ADJUDGED and DECREED, that the said account be in all things allowed as re-

*Decree Fixing Executor's Commissions
and Allowances*

ported, and that there is a balance remaining in the hands of said accountant amounting to the sum of Twenty thousand three hundred and four dollars and thirty-two cents (\$20,304.32) to be disposed of according to law.

10 IT IS FURTHER ORDERED that from the aforesaid balance the said accountant be allowed the sum of Seven hundred and twenty-four dollars and eleven cents (\$724.11) as and for its commissions, and that a counsel fee of Fifteen hundred dollars (\$1500.00) be allowed to McDermott, Enright & Carpenter, proctors for said accountant, for their services and those of Stein, McGlynn & Hannoeh, associate counsel.

20 And it having been stated to the Court that the executor disputed the filed claim of the Jersey City Printing Company in the amount of Thirty-one hundred dollars (\$3100) with interest, and that an action at law is pending for establishing said claim,

IT IS FURTHER ORDERED that the executor hold in its hands from the aforesaid balance and keep intact sufficient funds to pay the amount of said claim when established by any judgment upon said claim.

30 Respectfully advised:

E. R. WALKER,
O.
VIVIAN M. LEWIS,
V. O.

Decree Fixing Trustee's Commissions and Allowances

(Filed December 26, 1930)

NEW JERSEY PREROGATIVE COURT

In the matter of the estate of WILLIAM J. PINCKNEY, Deceased.	On Ac- counting: Decree Allowing Account.	10
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The Register having audited and stated the account of Hudson County National Bank, the trustee under the last will and testament of William J. Pinckney, deceased, and placed the same on the files of his office twenty days previous to the twenty-second day of December, A. D. Nineteen hundred and thirty, and having on the day last aforesaid reported the same to this Court for allowance and settlement, and it having been proved to the satisfaction of the Court that notice of its intention to settle the said accounts on said twenty-second day of December, A. D. Nineteen hundred and thirty, in this Court was given by said accountant according to law,

And the Court having examined the said account and the vouchers and receipts for payments and disbursements claimed therein, and having found the same to be correct in all particulars, and no exceptions being made thereto,

And the said accountant having also filed its account as executor of the last will and testament of the above named decedent which was on the date hereof duly allowed and settled by decree of this Court; and it appearing from the last will

*Decree Fixing Trustee's Commissions
and Allowances*

and testament of the above named decedent, William J. Pinckney, deceased, that the balance in the executor's hands after payment of allowances and the retention of a sufficient sum to satisfy
 10 any judgment which may be obtained by the Jersey City Printing Company should be turned over by the executor to itself as trustee under said will,

IT IS, on this Twenty-second day of December, A. D. Nineteen hundred and thirty,

ORDERED, ADJUDGED and DECREED that the said account of the Hudson County National Bank as trustee of the last will and testament of
 20 William J. Pinckney, deceased, be in all things allowed as reported and that there is a balance of corpus amounting to the sum of One hundred thousand two hundred and seven dollars and fifty cents (\$100,207.50) and a balance of income amounting to the sum of Three thousand fifty-eight dollars and ninety-one cents (\$3,058.91) remaining in the hands of said accountant to be disposed of according to law.

IT IS FURTHER ORDERED that the said accountant be allowed the sum of Seventeen hundred and seventy-three dollars and eight cents
 30 (\$1773.08) as and for its commissions on the sum of Thirty-five thousand four hundred and sixty-one dollars and fifty-eight cents (\$35,461.58) of income collected by it, and that said accountant be allowed the further sum of Four thousand and eight dollars and thirty cents (\$4,008.30) as and for its commissions on the corpus of said estate, and that a counsel fee of ten thousand dollars

~~111~~ 129

*Decree Fixing Trustee's Commissions
and Allowances*

(\$10,000.00) be allowed to McDermott, Enright & Carpenter, proctors for said accountant, for their services and those of Stein, McGlynn & Hannoch, associate counsel.

Respectfully advised:

E. R. WALKER,

10

VIVIAN M. LEWIS,

O.

V. O.

20

30

40

Opinion

(Filed May 18, 1932)

NEW JERSEY PREROGATIVE COURT

May 13, 1932.

10

In the matter of the estate of
WILLIAM J. PINCKNEY,
Deceased.

Opinion

FREDERICK S. TAGGART, ESQ., for Marie
M. Pinckney.

MESSRS. McDERMOTT, ENRIGHT & CAR-
PENTER, for Executor.

20

LEWIS, V. O.

This is an application to open decrees for the purpose of reconsidering the amounts allowed the Executor, the Trustee, and Counsel. A petition was filed and a rule to show cause was allowed for this purpose.

30

On December 22, 1930 the final account of Hudson County National Bank, Executor, and the first account of said bank as Trustee under the will of said Pinckney, regularly came on for settlement before me in the Prerogative Court. The account of the bank as Executor shows that there had come into its hands total assets of \$27,205.57 and its account as Trustee showed total assets of corpus of \$100,207.50 and total assets of income of \$35,461.58 or a total in both accountings, including income, of \$162,874.65. Proof of due posting, publishing and mailing notices of

40

Opinion

settlement of the accounts and of applications for counsel fees and commissions were presented and filed. No one appeared to object.

Counsel for the Executor and Trustee in open Court stated what work they had done and filed affidavits concerning the same, and I thereupon allowed as fees to McDermott, Enright & Carpenter as counsel for the Executor to include their services, as well as those of Stein, McGlynn & Hannoeh of Newark, the sum of \$1,500.00, and as counsel for the Trustee the sum of \$10,000.00, and I also allowed the Bank the statutory fees as Executor, and as Trustee commissions at the rate of four per cent on corpus and five per cent on income. My reasons for allowing these commissions were that the hardest part of the work of the Executor and the Trustee had been done. I also took into account the fact that the largest asset of the estate is stock in the Himrod Manufacturing Company, which makes a proprietary medicine for the relief of asthma, and pays large dividends monthly as shown by the Trustee's account. The Trustee had one of its officers elected a director of the Company and has been engaged in closely watching the active management. Such services can only be paid for in commissions allowed.

Stein, McGlynn & Hannoeh had been the decedent's attorneys during his life and in his behalf had brought an action at law against his brother, O. C. Pinckney, who filed a counterclaim. The action had been referred and only partially tried when the plaintiff, William J. Pinckney, died. Stein, McGlynn & Hannoeh were associated with the Bank's counsel, McDermott, Enright & Carpenter, in representing the estate. Through

Opinion

the efforts of counsel the action was compromised in favor of the estate for \$4,500.00, which the defendant paid in installments pursuant to a settlement agreement approved by this Court on September 29, 1930.

10 Under the will of his mother, Kate Lyon, who died a resident of New York State, decedent had power of appointment over thirty shares of stock of the said Himrod Manufacturing Company. In exercising the power he appointed the stock unto his Trustee for certain purposes. The representatives of the Kate Lyon estate claimed that the exercise violated the New York rule against perpetuities and refused to turn over the stock. Counsel determined it advisable to litigate the matter
20 and caused an action to be brought in New York by the accounting Bank, which ultimately resulted in the recovery by the Trustee of twenty seven shares of the Himrod Manufacturing Company valued according to the account at \$98,077.50. This litigation, I understand, not only involved the construction of the wills of Mr. Pinckney and his mother, but also whether the New York or New Jersey rule against perpetuities applied. Accounting proceedings in New York were also in-
30 stituted against the representatives of the Kate Lyon estate. Other litigation was conducted resulting in the settlement of substantial claims.

Filed affidavits disclose that McDermott, Enright & Carpenter alone had one hundred or more conferences regarding the estate matters and that work was performed by them on one hundred and eighty-five different days, to say nothing of substantial services by Stein, McGlynn & Hannoeh.

40 Counsel fees were allowed by me with reference to the actual work performed, the diligence with

Opinion

which the work was performed and the success achieved.

Another matter making the handling of this estate more difficult than usual was the fact that Mrs. Pinckney had on a number of occasions after the death of her husband engaged different counsel to look after her interests, resulting necessarily in the duties of the Trustee and its counsel being largely increased through having to negotiate with different sets of counsel at different times, no one of whom was familiar with what had taken place before. 10

No new affidavits were filed by either party on the return of the order to show cause. Neither McDermott, Enright & Carpenter nor Stein, McGlynn & Hannoeh were made parties respondent to the order to show cause. The matter was duly argued. I have given consideration to the arguments of counsel, the accounts, the affidavits and the petition submitted and conclude that the allowances made were fair and proper. 20

To open the final decree both surprise and merit must be shown.

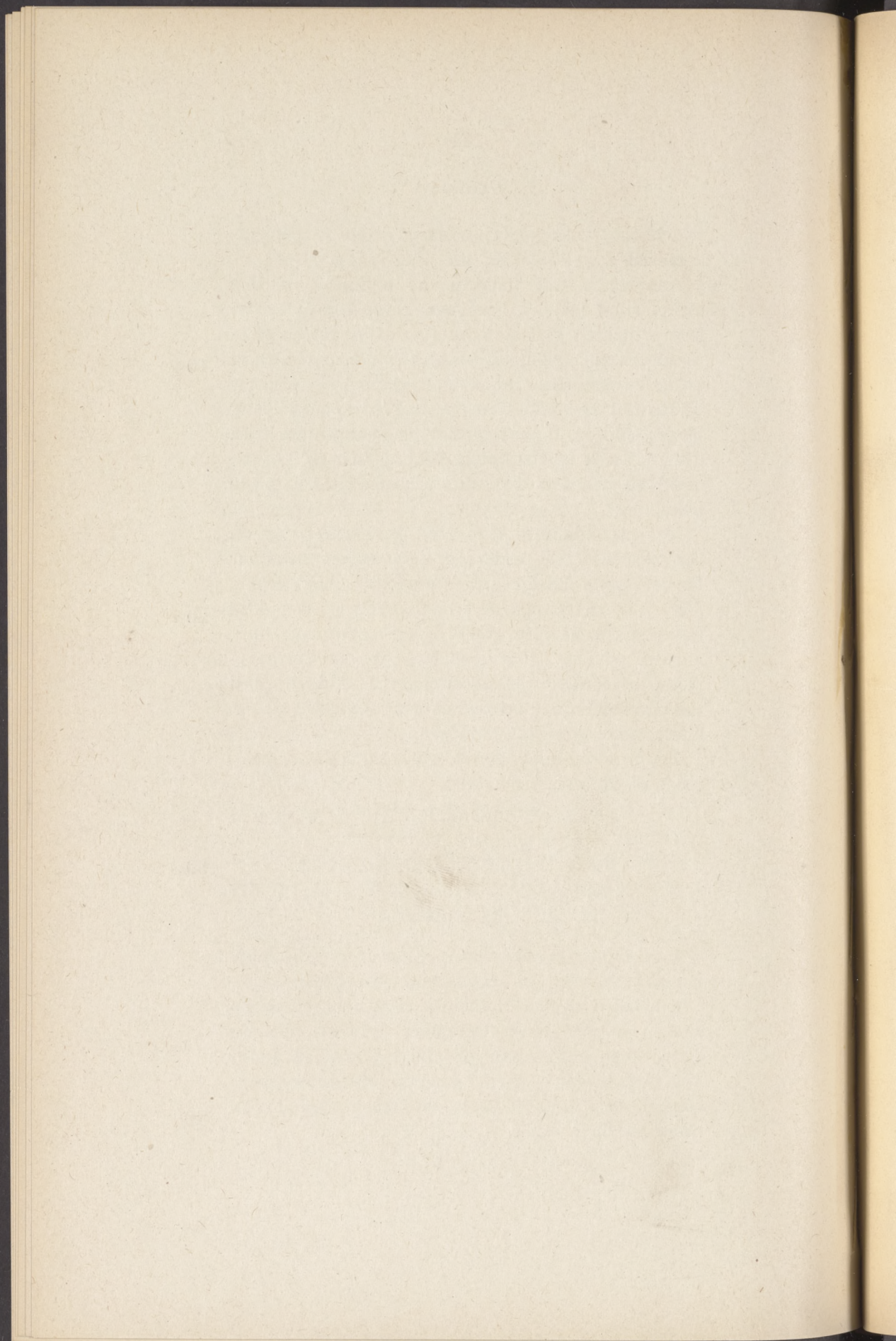
Avidan v. Kaplan, 150 Atl. p. 3, opinion by the Chancellor;

Miller v. Hild, 11 N. J. Eq., p. 25; 30

Sandford v. Wellborn, 85 N. J. Eq., p. 577 (Errors and Appeals).

Finding neither surprise nor merit in this application, the order to show cause was dismissed.

I notified counsel on both sides of my conclusion by letter dated December 9, 1931, but the form of the order was not settled until January 11, 1932 when it was signed in the presence of counsel for the petitioners and respondent on the order to show cause. 40



New Jersey Court of Errors and Appeals

In the Matter of the Estate of
WILLIAM J. PINCKNEY,
Deceased,
MARIE M. PINCKNEY and THE CATHE-
DRAL OF ST. JOHN THE DIVINE,
Petitioners-Appellants,
HUDSON COUNTY NATIONAL BANK, as
Executor of and Trustee under the
Last Will and Testament of WIL-
LIAM J. PINCKNEY, deceased,
Respondent-Appellee.

ON APPEAL FROM THE PREROGA- TIVE COURT.

APPELLANTS' BRIEF.

Statement.

This is an appeal from an order of the Prerogative Court made January 11th, 1932, denying the motion and petition of the appellants, petitioners below, and dismissing an order to show cause, why two certain decrees of that court made December 22nd, 1930, allowing certain commissions to the appellee, Hudson County National Bank, as executor and trustee of the estate of William

J. Pinckney, and making allowances to proctors, should not be opened, vacated and set aside and a rehearing had, on the ground that the commissions and allowances were excessive, illegal and beyond the amount which should have been fixed and allowed.

The Facts.

The Hudson County National Bank, as executor and as trustee of the estate of Pinckney, filed its accounts in the Prerogative Court on November 22nd, 1930, praying for their allowance and for commissions to themselves and counsel fees to its proctors, McDermott, Enright and Carpenter and associate counsel, Stein, McGlynn and Hannock.

Copies of these accounts were furnished New York attorneys who had represented the respective interests and been concerned in the matters in New York respecting this and the Kate E. Lyon estate, but no attorney was furnished with any affidavit of services nor given an intimation of the commissions or allowances to be asked of the court (pp. 11, 20, 41).

Nothing appearing in the account to object to, New York counsel saw no necessity of employing New Jersey counsel to attend at the hearing, and stated that they would not attend unless it was advisable. They were told that it would not be necessary for them to appear (pp. 11, 12). The remainderman, Cathedral of St. John the Divine, appears to have received no notice of the accounting at all, and knew nothing of the application for allowances and counsel fees, until copies of the decrees were received (p. 44).

On the return day the applications were made to the Vice Ordinary ex-parte and the executor ap-

plied for and received a commission of \$724.11 for its services as such at the legal rates, on a corpus of \$27,205.57 (pp. 52, 130). The proctors for the executor applied for and were allowed \$1,500 or *five and one half per cent* of the net estate (pp. 126, 131). The trustees received upon the income of the trust for a period of two years and a half (pp. 62-67, 128) on \$35,461.58 the sum of \$1,773.08, being at the full rate of *five per cent*. The trustees also received a commission on the corpus of the trust of \$100,207.50 for holding it a period of *ten months* (p. 62) the sum of \$4,008.30 or *four per cent*. And the proctors for the trustees, for their alleged services over a period of less than two years (most of which was performed in New York and by New York counsel) an allowance of \$10,000 or *ten per cent* of the corpus of the trust. The total allowances and commissions, for services of all kinds, for about two and one half years, consumes *ten per cent* of the estate, principal and income (Opinion, p. 130).

No intimation of the amounts to be asked was made to the representatives of the interests whose moneys were being appropriated to pay them. Had the *facts* been known and the amounts suggested to New York counsel they would undoubtedly have been represented at the hearing. We have no knowledge of what representations were made at that time, and possibly opposition might not have changed the result, in view of the denial of the motion to have the amounts reconsidered (Opinion, p. 133).

Copies of the decrees carrying the allowances and commissions were mailed to the counsel for the interested parties and protests and objections arose. A petition, supported by affidavits (p. 10)

was presented to the Vice Ordinary, an order to show cause was made (p. 8) and there was an argument on the return day.

The matter was held a year and on January 11, 1932, an order was made denying relief. From this order the appeal is taken.

No opinion was written or filed until after the appeal was perfected.

POINT I.

The allowance of \$1,500 to the procutors for the executor was, in view of the services rendered, excessive.

The allowances of \$1,500 in the decree (p. 126) for counsel fees to McDermott, Enright and Carpenter and associate counsel Stein, McGlynn and Hannock is greatly excessive. The measure to be applied to allowances to counsel is the work "necessarily" requiring the services of attorneys; that which the representative cannot himself do, or, is not expected in law, to do. The executor is allowed fixed commissions by statute for the "actual pains, trouble and risk in settling such estate" (Sec. 128, Orphans Court Act) and the courts have held to this rule.

Lyon v. Bird, 79 N. J. Eq. 157;

In re Larrabee, 98 N. J. Eq. 655;

Re Wileys Estate, 30 N. J. Law Journal 118;

Metcalf v. Colles, 43 N. J. Eq. 148;

Re Walsh's Estate, 80 N. J. Eq. 565;

Re N. J. T. G. and T. Co., 76 N. J. Eq. 293;

Conover v. Ellis, 49 N. J. Eq. 549;

Runkle v. Smith, 90 N. J. Eq. 478.

Certainly if the individual is required to perform these duties for those fees, acting perhaps once or twice in his lifetime, large corporations who aggressively advertise for business and assert their unusual facilities, experience and judgment, are also so required.

In the employment of counsel the corporation, as well as the individual is well within the rule stated *In re Turnbull* (1 N. J. Misc. 41) that, if the fiduciary sees fit to employ counsel to do what he himself as a layman is competent to do and what it is his duty to do, such services should be paid for by the fiduciary out of his commissions.

"No allowance will at any time be made for work which does not require professional skill and which the executor, administrator or trustee, as laymen, might have done themselves. * * *"

See also:

In re Larrabee, supra;
In re Walsh's Estate, supra;
Dey v. Codman, 39 N. J. Eq. 258;
Kingsland v. Scudder, 36 N. J. Eq. 284;
Hurlbut v. Hutton, 44 N. J. Eq. 308;
In re Wolf, 34 N. J. Eq. 223.

Applying this rule to the services set forth in Mr. Gilmour's affidavit (p. 73) it appears that nearly all are routine and administrative work which any layman could perform. That a large and well equipped financial institution handling hundreds of estates a year cannot perform them as a part of its statutory duty for its statutory fee is absurd. To admit lack of ability and turn them over to counsel, expecting not only to be absolved of the duty but to have counsel paid,

negatives the confidence that testators have placed in such corporations anticipating an economical administration of their estates.

The Trust Officer (p. 107) says that *he* had complete charge, and his affidavit shows that some of the routine administration work was done by him. No reason appears why the rest of it was done by a lawyer, instead in the office of the bank by its own employees.

This was a small estate of \$27,000, and was of the simplest type, consisting of bonds, silverware and a few personal belongings (pp. 30, 52, 56). The executor sold the bonds (at a loss), paid debts and other items of disbursement amounting to \$6,901.25 and had a net estate of \$20,304.32.

The allowance to counsel of \$1,500 was about seven and one half per cent of the net estate. Of the items in the affidavit of services (pp. 30-38) there are innumerable "conferences" with officers of the bank, letters and routine matters, all of which the executor itself should have performed (pp. 30-34). The real estate of the testator did not require any extended services (p. 34) and the suits (pp. 36, 37, 38) certainly did not justify any such allowance.

It may be noted that the executor paid to Stein, McGlynn and Hannock, who were the attorneys for the deceased, for services performed *before* his death \$515 (pp. 32, 54). Certainly the major work was done before testator's death and no allowance can be justified for "associate" counsel after his death. In such a small estate there was no justification for two large law firms, one in Newark and the other in Jersey City. We submit that Stein, McGlynn and Hannock are not entitled to anything, for which they did should have been and could have been done by McDermott,

Enright and Carpenter. The legal matters were three simple law suits; thirteen days after Mr. Pinckney died the Appelgate suit was settled (p. 35). There was pending a law suit with the testator's brother and this was settled (p. 52). In the *Hare* matters nothing was done except exchange mutual releases (p. 37). Could not *one* counsel have done all this?

The comment in *Re Larrabee*, supra, might be applied here, for the Court there said:

"By his own testimony it appears that he never represented the (testator) in his lifetime; the testator was represented by other counsel who had already been paid for his services."

The appellants think that under all the circumstances, an allowance of \$500 for the counsel of the executor would have been sufficient.

Why should Mr. Hannock consult with various lawyers (p. 103) about another will? Why did not McDermott, Enright and Carpenter do this? Could they not handle three simple law suits without a high priced Newark firm to assist them? If the executor may delegate his work to counsel and counsel may employ other counsel to do their work, where is the chain to end? Why did Stein, McGlynn and Hannock write a brief on New York law in the Lyon estate? New York counsel was retained for this proceeding and it may be assumed that they could write their own briefs without the assistance of *two* New Jersey law firms, the work in which is now at a ground for added charges against this estate. Incidentally, McDermott, Enright and Carpenter were paid \$700 from the \$2,100 fee of Wise and Seligsberg, for anything that they did in New Jersey.

POINT II.

The commission of \$1,773.08 to the trustees upon income was, in view of the circumstances, excessive.

The trustee charges itself with income from July 2, 1928, to October 16, 1930, of \$35,461.58. It may be noted that the income to October 18, 1929, was dividends and interest on securities held in the executor's account. Thereafter it consisted largely of dividends on the stock of the Himrod Manufacturing Company received from the Kate E. Lyon estate (pp. 65, 132). On this item the trustees received a full five per cent.

The statute (Sec. 130, Orphans' Court Act) permits commission on income and the court is required to "consider the actual pains, trouble and risk of such accountant." As the income in this case was entirely from securities, the accountant had nothing to do but receive and pay out. We think that the spirit and intent of the statute, as interpreted by the courts, has not been observed in this case. It may be noted that about \$22,000 of this \$35,000 of income is a mere bookkeeping entry and that the lifetenant, Mrs. Pinckney is required to pay to the trustee the sum of \$1,100 for the privilege of having that sum *pass through* the trustee's hands. \$10,350.93 of this amount was credited on October 18, 1929, as a dividend on the Himrod stock from June 1 to October 1 (p. 64) and \$11,758.66 was credited on January 18, 1930 (p. 65) as the dividend accumulated from June 1 to January 1. This income came from the New York executor of the Kate E. Lyon estate, and should have been paid direct to Mrs. Pinckney

(pp. 26, 28). The accountant demanded that it pass through its hands and Mrs. Pinckney was not in a position to object.

The trustee is entitled to *some* commission on the income, but not the maximum that the law permits. In *Re N. J. Title Guarantee and Trust Co.*, supra, where five per cent on the income was allowed another corporate trustee, Mr. Justice Swayze said:

“as not to be understood as approving the custom, if it be a custom, as suggested, of allowing a trustee five per cent on the income in all cases. It is quite evident that a different test of the propriety of the allowances is prescribed by Sec. 130, Orphans Court Act. No doubt in the case of estates where the income is *small* five per cent may be properly allowed in order to give the trustee compensation sufficient to induce proper men to assume the responsibility, but in a case like this where the annual income is large it must require unusual circumstances to justify the allowance of the full rate of commission.”

In *Re Hibblers Estate*, 78 N. J. Eq. 217, the executor and trustee was allowed three per cent on income over a period of twelve years.

The Vice Ordinary in his opinion, refers (p. 131) to the “hardest” part of the work having been done as a justification for the extraordinary commissions and allowances. If receiving a dividend check each month, and paying it out is “hard” work and justifies *these* allowances, it would be interesting to know what allowances the same Vice Ordinary would make in a really difficult and intricate estate.

The trustee had nothing to do here but receive and pay out. There was no trouble or risk. Maximum commissions on income should not have been allowed.

See

Lyon v. Bird, supra;
In re Walsh's estate, 80 N. J. Eq. 565;
Gilligan v. Daly, 79 N. J. Eq. 37;
Andress v. Andress, 46 N. J. Eq. 529.

We think that had the trustee been allowed \$1,000 it would have been ample.

POINT III.

That the commissions of \$4,008.30 to the trustee upon the corpus of the estate was improper, excessive and without justification.

The corpus of the estate consisted of 27 shares of stock of the Himrod Manufacturing Company (p. 62), a close family corporation in which the Kate E. Lyon estate was largely interested (pp. 21, 22, 23, 131) and to certain stock in which the decedent Pinckney had the power of appointment (p. 23, Opinion, p. 132). The certificates of these shares were delivered by the executor of the Lyon estate in New York to the trustee in New Jersey on January 21, 1930 (p. 62). The trustee filed its account November 22, 1930. For its trusteeship for *ten months* it was allowed *four* per cent on a corpus of \$100,207.50 or \$4,008.30.

This corpus came as a result of litigation in *New York* for the interpretation of the Kate E. Lyon will before the Surrogate of Rockland County (p. 25). The Hudson County National

Bank, as trustee of the Pinckney estate, was represented in New York by Wise and Seligsberg (p. 25) and the entire work involved in securing the corpus was done in that state (pp. 25-27, 40, 46).

The maximum that may be allowed is five per cent, in payment for the *maximum* of time, effort and responsibility. The trustee was allowed four per cent for ten months' service without regard to the duration of this trust which continues during the life of the widow, Marie D. Pinckney.

In making allowances, the courts have rather consistently considered as an element, the *time* during which the trustee has acted. In no reported case has any such commission been allowed to a trustee for *ten months*. In *Re N. J. Title Guarantee and Trust Company*, *supra*, the Court said:

"As to the allowance of a commission upon the corpus of the estate, we think that the trustee has administered the trust for so short a time * * * that *no commission* on the corpus ought to have been allowed * * * to a trustee who has served some *seven years* only."

In *Lyon v. Bird*, *supra*, commissions were not allowed after *eleven years*.

In *Re Hibbler's Estate*, *supra*, the executor was allowed no additional commissions as a trustee, after *twelve years*.

In *Re Larrabee*, *supra*, no commission was allowed after *seven years*.

Another element considered by the courts has been the amount of "*pain, trouble and risk*," rather than the quantum of the estate. What trouble or

risk did the trustee here have. It had but one duty, to hold 27 shares of stock and receive the dividends. It put the certificates in a safe deposit box, the dividends were mailed to it and by it deposited (pp. 62-71, Opinion, p. 131).

On this point, the Court in *Re N. J. Title Guarantee and Trust Co.*, supra, in addition to the element of time, said, "and (the trustee) has had *so little to do, with making or changing investments,*" that *no commissions* ought to be allowed a trustee who, "*has practically done nothing but receive and disburse the income of investments already made.*" In this case the Judge of the Morris County Orphans Court (32 N. J. Law Journal, 137) wrote a lengthy opinion justifying an allowance of *five per cent*. The allowance was affirmed by the Prerogative Court without opinion, but the Court of Errors in a *short* opinion allowed the trustee *nothing*.

In *Lyon v. Bird*, supra, in an estate of \$81,000 a commission of five per cent was held "excessive" where they simply charged themselves as trustees with the securities which had come to their hands. If trustees administer an estate for a quarter of a century, investing and reinvesting, perhaps over and over again, the securities of the estate, and in the end, are entitled to no more than five per cent, upon what theory can the maximum allowance to these executors, whose duties with reference to the corpus of the estate *were more or less perfunctory*, be possibly justified.

In *Re Walsh's Estate*, supra, there was slight trouble and risk, the moneys were well invested and the entire duty (as here)

"consisted in keeping the estate intact, *in collecting the income*, in attending to the few matters required by law to be done."

In *Gilligan v. Daly*, supra, a large estate easily managed, the securities continued, a five per cent allowance was reduced to *one* per cent.

In *Andress v. Andress*, 46 N. J. Eq. 529, the Court remarked that the only "trouble" was *to keep the securities in a safe place and collect the income.*

In *Re Smith*, 107 N. J. Eq. 607, a most recent case Vice Ordinary Buchanan had to consider the demands of another corporate representative. He comments on an allowance of five per cent or \$16,306 on an alleged corpus. He finds the true corpus much less, about \$140,000 and on that that five per cent would be \$7,016.61. He says:

"This would be the maximum sum which could be allowed *if* the administration of the estate had been attended with the utmost possible amount of work, time, trouble and risk. It is obvious that this administration was in nowise of that kind—on the contrary it was of the simplest kind and moreover it has not yet been completed. How the executor could have the *temerity to ask*, and the court below the improvidence to grant, commissions at the maximum rate, is difficult of comprehension. He cut the rate to *one and a half per cent*, or \$2,100."

Another element considered by the courts is the size of the estate and the responsibility. Yet by this yardstick, no case has been found in which a representative has been allowed *four* per cent for *ten months'* service.

In *Weeks v. Selby*, 61 N. J. Eq. 668, on an estate of \$1,000,000 *one* per cent was held to be enough.

In *Van Riper's Estate*, 90 N. J. Eq. 217, an estate of \$50,000 only \$2,000 was allowed after a period of years.

In *Runkle v. Smith*, 90 N. J. Eq. 478, where the estate was large (\$2,000,000) two years' litigation, eminent counsel concerned, ten suits involved in settling it, the commissions were \$75,000 or three and three-quarters per cent.

In *Re Larrabee*, supra, there was an allowance of commissions for eight years' service in a \$200,000 estate, and an allowance of \$8,000 was asked for and held to be excessive and cut to \$3,000 or one and a half per cent.

In *Gilligan v. Daly*, supra, five per cent was asked for and one per cent allowed.

In *Rogers v. Hand*, 39 N. J. Eq. 270, on an estate of \$289,000 an allowance of three and a half per cent was approved, where there was litigation, construction of a testamentary power of sale and other unusual features.

In *Pomeroy v. Mills*, 37 N. J. Eq. 578, commissions of three per cent were cut to two, the Court of Errors saying:

"In the present case the estate was almost entirely made up of securities readily salable in the New York market, which were later sold there—or transferred by the executors to the legatees in specie."

In *Re Wolfe's case*, 34 N. J. Eq. 223, one per cent was allowed.

In *Lyon v. Bird*, supra, an \$81,000 estate, a commission of five per cent was cut to one per cent.

In *Re New Jersey Title Guarantee and Trust Co.*, supra, no allowance was made.

In *Marsh v. Marsh*, 82 N. J. Eq. 176, where the executors devoted their entire time to the estate for several years, only *two and a half* per cent was allowed.

In *Andress v. Andress*, *supra*, *three* per cent was allowed on \$107,000 at *completion* of trust.

In *Metcalf v. Colles*, *supra*, *two* per cent was allowed.

In *Re Steelman's Estate*, 87 N. J. Eq. 270, the allowance was cut to *two* per cent.

Another element that does not appear to have been considered by the Vice Ordinary is that the trust *may run for several years*. If the maximum to all trustees is to be five per cent and four per cent is allowed to *this* trustee after ten months, what is reserved for future periods or successor trustees? There is nothing in the record to show Mrs. Pinckney's age nor her normal expectancy of life, but we may be permitted to suggest that she is young enough to enjoy many years of the income of this trust. This fact was commented on in *Re N. J. Title Guarantee and Trust Co.*, *supra*. The Court should reserve commissions until the "completion" of the trust.

This is an important element to any cestui que trust for the interest on this item of \$4,000 is \$200 a year to Mrs. Pinckney, who enjoys the life estate. Over many years it will run into thousands of dollars.

Against the demands of executors and trustees the courts should stand as a shield and see that no more than a fair amount is permitted to be taken.

"Exorbitant allowances to executors and their proctors, which in effect make them

legatees or distributees of the estate, are frowned upon by the courts. They are entitled to *reasonable* compensation for their services and no more." *In Re Larrabee*, *supra*.

The Vice Ordinary, in his opinion (p. 131) suggests that the trustee had one of its officers (the Trust Officer, p. 118) elected a director of the corporation and has been engaged in closely watching its active management, saying, "such service can only be paid for in commissions allowed." Aside from the fact that this is a duty, included with other duties in its activities as trustee, the Vice Ordinary may not have known the *fact* that this director who is so praised for his zeal, *has been regularly paid a substantial director's fee for each meeting that he attended*, and there were many. Assuredly "such services," *for which payment is not disclosed in the accounting, have already been compensated for*.

The appellants respectfully submit that under all of the facts that no allowance at all should have been made at this time upon the corpus of the trust.

On this point it may be said that the allowances to corporate executors and trustees and to their counsel are usually far beyond those that an individual representative would dare to ask or would be allowed. In view of the extensive advertising of these corporations, in which they assure prospective testators of their experience, knowledge and expert ability to handle all the affairs of his estate in a prudent, safe and simple manner—that they have experts in all lines in their employ and their handling of so many estates makes the administration inexpensive—one thing that they would be ashamed to ask for, or be

permitted to ask for, is excessive sums. It is safe to say that if Mr. Pinckney had known that within three years after his death his widow would lose the income from *one-tenth* of his estate, appropriated to pay for its administration and that the remainderman would lose that much of the principal, he would have thought twice before he made such an expensive appointment. And the courts in making these allowances should protect the estate and those interested from such demands.

POINT IV.

The allowance of \$10,000 to the proctors of the trustee, was excessive, unjust and beyond reason.

This brings us to the most shocking of all of the items. Counsel to the trustee was allowed \$10,000 on a corpus of \$100,000 or *ten per cent* of the principal fund (p. 129).

This allowance was for their alleged services to the trustee *only*. They had been allowed \$1,500 as counsel to the executor, and they had received \$700, or one-third of the Wise and Seligsberg fee in New York of \$2,100 (pp. 28, 47).

A reading of the Gilmour (p. 73) and Bernhard (p. 107) affidavits disclose that nearly all that was done was for the executor in the routine administration of the estate for which they were allowed \$1,500. That little or none of it (except the New York litigation) was alleged to be for the *trustee*.

The Plainfield real estate (p. 34) was a very small matter and was for the executor.

The suits were small and easily handled and were for the executor.

The Vice Ordinary attempts to justify the allowances by saying that McDermott, Enright and Carpenter alone had more than 100 *conferences*, and that work was performed on 185 different days.

This Court will not analyze the affidavits but they were analyzed in the petition (pp. 30-38) and a glance will show that nearly all are for the *executor*, supposedly included in the allowance of \$1,500. That practically *none* of them were for the trustee and cannot be advanced to support an allowance of \$10,000.

If the measure is "conferences," the allowances were at the rate of \$100 each, and many of them were telephone conference; if the measure is days, on which some item of work was done, they were paid \$50.00 for each day listed in the schedule. We have rechecked the dates on which *anything* was done and find 141. Of these 44 are for matters which might have been for the trustee. Of the 137, those were compensated in the \$1,500 allowance to counsel for the executor. For work on 44 days, some of which were mere telephone calls or letters, an allowance of \$10,000 was made or \$250 a day.

When the Vice Ordinary refers in his opinion (p. 132) to the services in New York he seems to have overlooked the fact that the New York Court, with full knowledge of the details of the entire litigation, awarded to Wise and Seligsberg, counsel there for the bank, the sum of \$2,100 in full for all services there performed. It might be suggested that the Surrogate of Rockland County knew what he was doing and that the allowance was proper. If McDermott, Enright and Carpenter (and Stein, McGlynn and Hannock) contributed any efforts in that court, they were

fully compensated there by receiving from Wise and Seligsberg (p. 28) \$700 or one-third of the fee. It might be suggested that they do not need further generous compensation at the hands of the courts in *this* state for work done by someone else elsewhere in the allowances for which they have participated.

When it is considered that the entire corpus of this trust was recovered in the New York courts, and that the total allowances to *all* counsel there, in the forum in which the real litigation took place was only \$4,495.60 (of which \$700 went to McDermott, Enright and Carpenter) we can appreciate what a disproportionate allowance in New Jersey is twice that amount to New Jersey counsel *alone*.

There is nothing shown that justified the appropriation of one-tenth of this estate to the use of the proctors. No case has been found where any such allowance has been sustained.

In *Van Riper's Estate*, 90 N. J. Eq. 217, \$2,000 or four per cent was allowed on a \$50,000 estate.

In *Hurlburt v. Hutton*, 44 N. J. Eq. 302, an allowance of \$3,500 for proceedings in *New York and New Jersey* was said to be "extravagant and excessive."

In *Wolfe's case*, *supra*, the estate was \$1,350,000 and there were two counsel, one asked \$2,500 and was allowed \$1,000, and the other asked \$5,000 and was allowed \$2,500 or a total of *one-quarter of one per cent*.

In *Re Steelman's Estate*, *supra*, on an estate of \$120,000 the proctor was allowed \$650.

Even in *Runkle v. Smith*, a large estate with much litigation, counsel was allowed but \$35,000 or *one and three-quarters per cent*.

In *Parker v. Wright* (103 N. J. Eq. 535) on a half million estate, with litigation only \$10,000 was allowed two counsel, or *two per cent*.

In *Re Larrabee*, *supra*, the allowance was cut from \$8,000 to \$2,000 on an \$85,000 estate, or *two and a half per cent*.

It is true that each case stands on its own merits and is determined on its facts, but even in cases where counsel was employed actively in New Jersey in litigation beneficial to the estate, no such allowances have been sustained.

The *real* injury in this allowance is that it takes *one-tenth of the corpus* from the remainderman, and deprives Mrs. Pinckney of the income on that amount, or \$500 a year for the rest of her life. Coupled with the allowance of \$4,000 to the trustee on corpus, fourteen percent thereof representing about \$700 of yearly income has been taken from Mrs. Pinckney as life tenant.

It is safe to say that if her husband had known, that over ten per cent of his estate would be taken for administration, he would have considered the price too high for corporate "management." And it is also safe to say that no individual that he might have named would have had the temerity to ask for such fees nor had they been asked, would an individual been allowed such fees.

POINT VI.**There was merit shown on the application.**

The Vice Ordinary, reviewing the facts, states that on them he still concludes the allowances fair and proper, and decides our petition adversely on the ground that there was neither surprise nor merit. The cases cited in the opinion, and the other cases in the books, apply to the opening of *final* decrees to let in defenses after default in answering. This is not a *final* decree. It is but an interlocutory accounting and the passing of the accounts is the primary object of the decree—allowances being incidental (or should be).

What the decision means is that had the appellants been present or represented at the application for the allowances and filed their present affidavits, still the same allowances would have been made. If that is what the opinion means, and it is so stated in the finding of lack of "merit" then why is the lack of "surprise" a factor?

If the same set of facts as now before the court were present on the original application, and from the decree thereon we could appeal from the allowances, why does the application to review this *ex parte* order meet with the challenge that it lacks "merit."

If the judge below was wrong in the *ex parte* allowances he is just as wrong to refuse to open and review them. And from his refusal to correct his error, an appeal lies.

The facts show that the remainderman never did receive the notice of the accounting (p. 44).

It was certainly "surprised" when it received a copy of the decree on the accounting containing the allowances. So far as the widow, the life tenant, is concerned, why should she be penalized \$700 a year in income, because her New York attorney relied too much on representations of counsel regarding attending on the application.

In *Gropp v. Freedman*, 157 Atl. Rep. 837, it was said that a decree may be opened for the negligence of an attorney in failing to take proper steps to protect his client's interests.

The real question here is, were the allowances fair and proper, and, if the Vice Ordinary allowed too much, will this Court review the facts and correct such allowances as it has in other cases. This right should not be defeated by technicalities, nor by a denial of "merit."

In view of the facts in this case, and upon the action of the courts upon review of allowances in other cases cited, the appellants respectfully request this court to pass upon and fix such allowances as in its opinion should have been fixed below.

Respectfully submitted,

WILLIAM C. KRONMEYER,
Proctor for and of
Counsel with Appellants.

FREDERICK S. TAGGART,
Of Counsel.

31
39 OCT. 1. 1932

New Jersey Court of Errors and Appeals.

In the Matter of the Estate of
WILLIAM J. PINCKNEY,
Deceased,

MARIE M. PINCKNEY and THE
CATHEDRAL OF ST. JOHN THE
DIVINE,
Petitioners-Appellants,

HUDSON COUNTY NATIONAL BANK,
as Executor of and Trustee
under the Last Will and
Testament of William J.
Pinckney, deceased,
Respondent-Appellee.

On Appeal
from the Pre-
rogative
Court.

Brief of Hudson County National Bank as Executor of and Trustee Under the Last Will and Testament of William J. Pinck- ney, Deceased, Respondent-Appellee.

This is an appeal from a discretionary order of the Prerogative Court denying an application, because neither surprise nor merit was shown, to open, vacate and set aside decrees respectively allowing accounts of Hudson County National Bank as executor of and as trustee under the last will and testament of William J. Pinckney, deceased, in so far as they fix commissions and counsel fees.

The executor's and trustee's accounts were filed with the Register November 22, 1930 (pp. 49 and 59) and notice of settlement thereof returnable December 22, 1930 (p. 123) was duly posted (p. 122), published (p. 123), and mailed to all par-

ties in interest (pp. 120-121). The notice stated that on its return day "application will be made for the allowance of commissions and counsel fees."

On December 22, 1930 upon the return of the notice of settlement, the accounts were presented and allowed by the Court's decrees of that day which allowed commissions to the accountant and counsel fees to its proctors. No one appeared and objected (p. 131, ll. 1-5).

On January 13, 1931 an order was made upon the filing of the petition of the appellants and others, directing the Hudson County National Bank as executor and as trustee of the last will and testament of William J. Pinckney, deceased, to show cause on January 26, 1931 why the two decrees should not be opened, vacated and set aside, to the end that a rehearing might be had on the application of the executor and trustee respectively for the allowance of commissions and counsel fees, and that petitioners might have opportunity to be heard thereon (pp. 8 and 9). The proctors to whom counsel fees had been awarded were not made parties respondent to the show cause order.

On January 26, 1931 upon the return of said order the matter was extensively argued by counsel for petitioners and respondent. Under date of December 9, 1931 (p. 133, ll. 35-36) the Court by letter notified counsel of its conclusions, but the form of order was not agreed upon nor settled until January 11, 1932 when it was signed in the presence of counsel for the petitioners and respondent.

Notice of the appeal to this Court was filed on February 16, 1932 (p. 1) within the forty day statutory appeal period, but was not served until

after that period had expired nor until after the filing of the petition of appeal and was then served therewith on March 3, 1932.

POINT I.

The appeal should be dismissed for failure to serve the notice of appeal within the forty day period limited for taking such appeal, or within ten days after the filing thereof.

The practice with respect to appeals from the Prerogative Court is similar to that on appeals from the Court of Chancery. Chancery Rule 161 (old Rule 151) provides for service of the notice of appeal on the solicitor of the adverse party. The practice with respect to such service is set forth in Dickinson's Chancery Precedents (Rev. Ed.) at page 189, note (a) as follows:

"It is the practice to procure a copy from the Clerk, and to make service of the notice of appeal within ten days after the filing thereof."

Copy of the Notice of Appeal was not served in this case until March 3, 1932 or sixteen days after the filing of the notice (see proof of service on file).

POINT II.

Finding neither surprise nor merit, the Court properly refused to vacate the decrees.

(a) *There Was No Surprise.*

On page two of the appellants' brief it is stated that the Cathedral of St. John the Divine appears

to have received no notice of the accounting and knew nothing of the application for allowances and counsel fees until copies of the decrees were received, and refers to page 44 of the State of Case where the affidavit of Mr. Zabriskie, New York Counsel for the Cathedral, states that the first notice he or his firm had of any accounting proceedings was when they received in the mail copies of the decrees on the accounts. Further on in the same affidavit (p. 45, ll. 15-22) Mr. Zabriskie says, "I have been informed that notice of the accounting proceedings was mailed to the Cathedral at its address, Amsterdam Avenue and 110th Street, New York City, on November 21, 1930, and I presume such is the fact, though it is always possible that a mistake may have been made by the person who was in charge of the mailing of the notices."

The fact is that said notice of settlement of the account was duly mailed to the Cathedral of St. John the Divine at Amsterdam Avenue and 110th Street, New York City, N. Y., as appears by the affidavit of mailing (pp. 120-123, particularly ll. 15-17 on p. 121). Whether the appellant mislaid and failed to refer the notice to its counsel or even whether the notice went astray in the mail (it was not sent back to McDermott, Enright & Carpenter whose name and address appeared on the mailing envelope), the statute or rule of Court was complied with and the appellant cannot successfully claim surprise.

In *Avidan v. Kaplan*, 106 N. J. Eq. 43, service of a subpoena to answer was made upon the wife of the defendant who lived with her husband, but the latter claimed that his wife never handed the

subpoena to him. Chancellor Walker, at page 46, says:

“To hold that this service was not conclusive would be to practically nullify the provision of the statute providing for service, ‘by leaving a copy thereof (subpoena) at his (defendant’s) dwelling house or usual place of abode.’ I believe that Kaplan received the copy of subpoena from his wife, but perhaps, in the multiplicity of his business and confusion in getting away overlooked it and therefore neglected to instruct his solicitor to defend, if, in fact, he has a defense; and I have not looked into that, as I deem it unnecessary for the reason that he is concluded by the service and his default.”

In the same case the following pertinent language is used at page 46 of the opinion:

“It is a settled principle of jurisprudence that in order to open a decree or judgment entered by default, the party applying must show both surprise and merits. As there was no surprise in this case—although it might have been actual, it was not legal, and, therefore, inexcusable—I have concluded that this application must be denied. This makes it quite unnecessary to consider the question of merits.

“In *Miller v. Hild*, 11 N. J. Eq. 25, it was held that this court will open a decree obtained by surprise, but not where a party has had notice of the suit and has had an opportunity of making a defense and has neglected to do so.

“In *Carpenter v. Muchmore*, 15 N. J. Eq.

123, it was held that where the defendant in some way got the impression that he would have further time to answer, it was not a sufficient cause of surprise; that it was his duty to inquire as to his rights; that if he negligently relied upon his mistaken impression he incurred the hazard of his default in not answering.

"And in *Sandford v. Wellborn*, 85 N. J. Eq. 577, the court of errors and appeals held that the opening of a decree in chancery entered by default rests in the discretion of the chancellor, and a refusal to open such decree will not be reviewed by that court where there is no abuse of such discretion shown and it is not the result of mistake or imposition practiced on this court, citing *Miller v. Hild* with approval (at page 588)."

All of the petitioners except the Cathedral admitted in their moving papers receipt of the notice of settlement stating commissions and counsel fees would be applied for. No proof is submitted by the Cathedral that it did not receive the notice, its attorney's affidavit being in effect that he had been unable to ascertain that it had received any such notice. Whether it did or not, the notice was duly mailed to the Cathedral at its proper address in the manner provided for by the rules of the Prerogative Court and under which rules and practice such mailing is sufficient.

(b) *There Was No Merit.*

After hearing argument on the order to show cause and reconsidering the affidavits of services filed, and considering the affidavits submitted by

the petitioners (some statements in which, incidentally, violate the rules of evidence—Zabriskie affidavit, p. 45, last three lines; p. 46, ll. 1-15), the Court concluded that the allowances were not excessive but proper.

The filed affidavits disclose a vast amount of work performed by the accountant Bank and its counsel, including the successful conclusion of litigations instigated by the Bank under counsel's advice, resulting in collection from the Trustees of the Kate Lyon Estate in New York of twenty-seven shares of Himrod Manufacturing Company stock at an agreed valuation of \$3622.00 per share (p. 28, ll. 14-20) or \$98,077.50, also \$2130.00 cash (p. 62, ll. 20-28) and dividends accumulated on fifteen shares of said stock from June 1, 1928 to October 1, 1929 in the amount of \$10,350.93 (p. 64, ll. 30-33) and dividends accumulated on fifteen more shares of Himrod Manufacturing Company stock from June 1, 1928 to January 1, 1930 in the amount of \$11,758.66 (p. 65, ll. 18-21).

The Jersey City Printing Company filed a claim for \$3100.00, with interest from January 21, 1923, for the printing of a State of Case for the decedent during his lifetime. The claim was disallowed by the accountant. Suit was brought by claimant and was settled before trial, resulting in a saving by the estate of over \$2000.00. The affidavit of services treats this item as a minor matter, showing that the affidavit understates the services actually rendered.

During his lifetime the decedent had commenced an action in an accounting proceeding against his brother, Orient C. Pinckney, and, after the case had been partially tried, died while the action was pending and before being cross-examined. This action was successfully settled under an agreement submitted to and approved by the

Court on notice to the parties interested in the estate. Mr. Orient C. Pinckney has been making payments by virtue of that settlement agreement the first \$600.00 of which was paid to the executor on November 6, 1930 (p. 52, ll. 30-38), and has since been making payments thereunder to the Bank as Trustee.

The Hare litigation, to which reference is made on page seven of the appellants' brief, was instigated by the Bank upon certain notes made by Mr. Hare. Mr. Hare admitted the indebtedness, but claimed the decedent was indebted to him in a very much larger amount for legal services performed. He promised to render a statement but never did so until the Bank brought an action at law against him on the notes. After the suit had been commenced and summons served, Mr. Hare produced a verified statement of services, on which he based his claim against Mr. Pinckney and which, after investigation, appeared to support his claim considerably in excess of that of the executor against him. Counsel then effected a settlement and mutual releases were exchanged at a savings to the estate of \$10,098.35 if the Hare claim had been sustained as it was feared it would have been had the action proceeded.

At the time of his death the decedent was reputed to have owned certain real estate and upon counsel's examination into the title, it was ascertained that certain interests therein were outstanding and that in addition the property had been sold for taxes. After considerable investigation and research, counsel located and recorded a theretofore unrecorded deed which disposed of the outstanding interests, and through taking appropriate proceedings had the tax sales cancelled and the title cleared.

Mrs. Pinckney, the widow of decedent and life beneficiary under the will, complicated the handling and administration of the estate through having different attorneys represent her from time to time, resulting necessarily in increasing the labors of the Bank and its counsel through having to negotiate with different sets of counsel, largely unfamiliar with what had taken place before. A Mr. Fielding, who was a New York lawyer, first appeared with Mrs. Pinckney and conferred with the Bank and its counsel concerning the estate. Shortly thereafter Mr. William Decker, of Messrs. Insley, Vreeland & Decker of Jersey City, appeared as counsel for Mrs. Pinckney and conferred with the Bank and its counsel; thereafter Mrs. Pinckney changed to Judge Bedford of Irvington, New Jersey. She then retained Messrs. Pitney, Hardin & Skinner of Newark, N. J., and thereafter consulted Mr. Daniel Loeb of Jersey City. Mrs. Pinckney again engaged Messrs. Pitney, Hardin & Skinner, and finally ended up with Mr. Arthur Powers of the New York Bar. On this appeal she is represented by Mr. William C. Kronmeyer and Mr. Frederick S. Taggart (Opinion of Vice Ordinary, p. 133, ll. 7-16; also Proctor's affidavit of services, pp. 73-102, and Trustee's affidavit of services, pp. 107-120).

It is true, as pointed out in the appellants' brief, that New Jersey counsel for the Bank received a small forwarding commission in connection with the New York litigation which, though handled by Messrs. Wise & Seligsberg of the New York Bar, was actually initiated upon the advice of, and proceeded under the direction of New Jersey counsel who conferred, advised at length, and from time to time furnished their New York correspondents with memoranda of law in con-

nection with the matter. This litigation involved the rule against perpetuities in the States of New York and New Jersey and, the question as to which law governed in that case, and resulted in the collection by the trustee of not only twenty-seven shares of Himrod Manufacturing Company stock at an agreed valuation of \$98,077.50 and cash of \$2130.00, but also large dividends of Himrod Manufacturing Company stock which up to November 6, 1930 (the date of the account) were as follows:

1929	Oct. 18—On 15 shares from June 1, 1928 to October 1, 1929 (p. 64, ll. 30-34)	\$10,350.93
	Nov. 7—On 15 shares for November, 1929 (p. 64, ll. 34-37)	450.00
	Dec. 5—On 15 shares for December, 1929 (p. 64, ll. 37-40)	600.00
1930	Jan. 3—On 15 shares for January, 1930 (p. 65, ll. 16-18)	600.00
	Jan. 18—Dividends accumulated from June 1, 1928 to January 1, 1930, on balance of fifteen shares of Himrod Manufac- turing Company stock (p. 65, ll. 18-21)	11,758.66
	Feb. 7—Dividend (p. 65, ll. 22-25)	1,215.00
	Mar. 4—Dividend (p. 65, ll. 26-30)	1,080.00
	Apr. 2—Dividend (p. 65, ll. 34-37)	945.00
	May 7—Dividend (p. 66, ll. 8-11)	1,215.00

June 5—Dividend	1,350.00
(p. 66, ll. 16-19)	
July 2—Dividend	1,350.00
(p. 66, ll. 23-26)	
Aug. 7—Dividend	675.00
(p. 67, ll. 10-13)	
Sept. 3—Dividend	1,215.00
(p. 67, ll. 15-18)	
Oct. 1—Dividend	675.00
(p. 67, ll. 19-22)	

\$33,479.59

This corporation paid dividends of from 25% to 100% per month.

The services performed by both the Bank and its counsel in administering the estate were very extensive. In the opinion of the Vice Ordinary it is stated: "Filed affidavits disclose that McDermott, Enright & Carpenter had one hundred or more conferences regarding the estate matters and that work was performed by them on one hundred and eighty-five different days, to say nothing of substantial services by Stein, McGlynn & Hannoch." Counsel for the appellants at page eighteen of their brief state that they have rechecked the dates on which anything was done and find one hundred and forty-one. Incidentally that figure is not true. The affidavit of Howard C. Gilmour (pp. 73-102) shows that services were performed on one hundred and ninety-five or more different days.

In estates of over Fifty thousand Dollars (\$50,000.00) pains, trouble and risk are the criterion for measuring executor's and trustee's allowances and which are limited to five per cent. on both corpus and income (P. L. 1898, Chapter 234 at p. 762, Sec. 128-130 (3 C. S., pp. 3858-

3861)). The affidavit of the Trust Officer of the Bank (pp. 107-120), as well as the affidavits of counsel's services show the enormity of work, pains, trouble and risk incurred by the Bank in the administration of this estate. The Bank was successful in having its Trust Officer appointed as a director of the Himrod Manufacturing Company in order to watch, safeguard and protect the estate's interests, the most valuable asset of which consists of stock in that Company, which paid large monthly dividends as stated above.

The appellants contend in their brief that the director's fees paid at director's meetings compensate for that service, a contention which is absurd. Moreover, it is unsupported by evidence. Nothing but substantial allowances can compensate a Bank for its skill, risks and responsibility in such a case.

If ever there was a case which warrants the granting of maximum allowances to the administering fiduciary, this is one. As stated in the Vice Ordinary's opinion, the hardest part of the work has been performed.

We submit that the Vice Ordinary was justified in sustaining the allowances as made, as there was neither surprise nor merit shown on the petitioner's application. Whether the Prerogative Court should open its decrees or not was discretionary. The appellants have neither alleged as a ground of appeal nor shown any abuse of discretion, nor that the allowances granted were the result of mistake nor of imposition on the Court. In *Williams, Jr. v. Lowe*, 79 N. J. Eq. 173, this Court, speaking through Mr. Justice Garrison, at page 175 said:

"The order refusing to open the decree was neither an abuse of discretion by the

Court below nor the result of mistake or of any imposition practiced upon it. Assuming that this Court will review a discretionary order in these respects, as was done in *Day v. Allair*, 31 N. J. Eq. (4 Stew.) 303, it will not do so for the mere purpose of substituting its discretion for that of the Court of Chancery."

We respectfully submit that there was neither surprise nor merit on the petitioner's application and that their appeal should be dismissed.

McDERMOTT, ENRIGHT & CARPENTER,
*Solicitors for Hudson County National
Bank as executor of and trustee
under the last will and testament of
William J. Pinckney, deceased, Re-
spondent-Appellee.*

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