IN THE

SUPREME COURT OF PENNSYLVANIA.

EASTERN DISTRICT.

JANUARY TERM, 1894.

APPEAL FROM THE ORPHANS' COURT OF LANCASTER COUNTY.

ESTATE OF THADDEUS STEVENS, Deceased.

Appeals of Thaddeus J. B. Stevens and others, Heirs-at-law of Thaddeus Stevens, deceased.

AND

J. M. Wiesling, Esq., Administrator of Alanson Stevens, deceased.

H. M. NORTH, D. G. ESHLEMAN, } *Attorneys for Thaddeus J. B. Stevens et al.*

A. C. REINOEHL, { *Attorney for J. M. Wiesling, Esq., Administrator of Alanson Stevens, deceased.*

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HISTORY OF THE CASE.

IN THE APPEAL OF THE HEIRS OF THADDEUS STEVENS, DECEASED.

Thaddeus Stevens, late of the city of Lancaster, deceased, died at Washington, D. C., on the 12th day of August, 1868. He left a will, written by himself, dated the 30th day of July, 1867, and a codicil thereto, the body of which is not in his handwriting, dated the 11th day of November, 1867, both of which were duly proven at Lancaster on the 21st of September, 1868.

By his said will, after giving divers legacies, he devised and bequeathed the remainder of his estate to his nephew, Captain Thaddeus Stevens, upon certain conditions, and then provided as follows, viz:

"If the life estate of my nephew, or rather the annuity of the said Capt. Thaddeus Stevens of Pennsylvania, should expire before he has enabled himself to become entitled to the corpus or fee simple of my estate, *then* I dispose of whatever shall remain as follows: If the aggregate sum shall amount to fifty thousand dollars, *without which no further disposition thereof can be made*, I give it all to my trustees to erect, establish and endow a house of refuge for the relief of homeless indigent orphans."

The parts of the above extract that are italicised are not so in the will.

Captain Thaddeus Stevens died on or about June 1st, 1874, before he had enabled himself to become entitled to the corpus or fee simple of the estate. At that time there were no accumulations (Auditor's Rep. p. 39.)

The Auditors find (page 29 Auditor's Report) that the estate of Thaddeus Stevens, deceased, does not "aggregate" and did not at any time "aggregate" fifty thousand dollars

exclusive of accumulations and after payment of debts and liabilities, necessary expenses of settlement, general legacies and collateral inheritance tax.

The final account of the estate was filed by Edward McPherson, surviving executor, on the 9th of May, 1891.

At that time, with all accumulations the "aggregate" of the remainder of the estate was only $50,687.90. (Auditor's Rep., p. 41.)

The estate could not be settled any sooner because the executor did not receive the purchase money for the real estate sold before the 1st of May, 1889. Auditor's Rep., p. 7.)

The heirs of Mr. Stevens claim that according to the rules applied to the construction of wills, there is an intestacy so far as the remainder of his estate is concerned, because *at the time* of the death of Capt. Thaddeus Stevens the "aggregate" sum of the estate did not amount to fifty thousand dollars, and that being the case no further disposition thereof could be made.

H. M. NORTH,
D. G. ESHLEMAN,
Attorneys for Thaddeus J. B. Stevens, et al., Appellant.

HISTORY OF THE CASE.

IN THE APPEAL OF J. M. WIESTLING, ADMINISTRATOR OF ALANSON J. STEVENS, DECEASED.

Hon. Thaddeus Stevens had two nephews, Alanson J. and Thaddeus, who were the sons of Morrill Stevens, a

deceased brother of Hon. Thaddeus Stevens. These boys were the objects of their uncle's love and bounty, and they made their home with their Uncle Thaddeus, at Lancaster, and the Furnace at Caledonia, Franklin County. Alanson and young Thaddeus had $3,391.20 to receive from their father's estate in Vermont, and the guardian, Moses Kittridge, becoming old and feeble, desired to be released of the trust. On the 30th of June, 1858, the two nephews executed a power of attorney to the uncle, Thaddeus Stevens, who received the money. Of this fund $2,461 belonged to Alanson J. Stevens. Of this amount Mr. Stevens kept $2,400, and gave to Alanson J. Stevens a note for $2,400 as follows:

"LANCASTER, JULY 12TH, 1858.

On demand, I promise to pay Alanson J. Stevens, or order, two thousand four hundred dollars, with interest.

$2,400.00. THADDEUS STEVENS.

Attest: THADDEUS STEVENS, JR.

This note Alanson J. Stevens always kept in his possession. He was employed as clerk and manager at the Caledonia Iron Works of his uncle, in Franklin County, and on the 21st day of October, 1859, he was married to a young lady named Mary J. Prim, by whom he had two children now dead. He lived at the Iron Works until the war of the Rebellion broke out, when he enlisted in the three months' service. He subsequently recruited a battery, and entered the three years' service, served with a gallantry worthy of his name, and died by his guns at Chickamauga, September 21st, 1863. The note he held against his uncle was among his papers in his army trunk, and was found by his brother, Thaddeus Stevens, who went to recover his brother's body and brought his personal effects home. Major Thaddeus Stevens took out letters of administration and collected the back pay, but did not do anything with the $2,400 note. He died November 1st, 1874, and his

papers passed to his administrator, R. W. Shenk, who died September 26th, 1880. This note was among Shenk's effects, and passed into the hands of William Leaman, Esq., counsel of his estate. The widow of Capt. Alanson J. Stevens was unable to obtain possession of the note until 1886, when she employed Mr. Wiestling, who took out letters of administration and obtained the possession of the note from Mr. Leaman, and presented his claim before the auditors of the estate of Thaddeus Stevens. No part of the principal or interest was ever paid to Alanson J. Stevens in his life time, or to any of his legal representatives since his death. The knowledge of the whereabouts of the note was withheld by Major Thaddeus Stevens until, after his death, the widow of his brother succeeded in tracing its existence and through counsel had claim made upon the estate of Mr. Stevens. Mr. Stevens, a short time before his death, in a conversation with his cousin, Simon Stevens (page 44, notes of testimony) said: "Simon, you know all about this note, that I hold it in a fiduciary capacity, and if it is ever presented, you can explain that it must be paid to the legal holder."

A. C. REINOEHL,

Att'y for J. M. Wiestling, A'd'm of Alanson Stevens, Dec'd.

OPINION OF THE COURT.

Having examined the testimony presented to and passed upon by the Auditors upon each point raised, the authorities referred to, and the well considered, exhaustive and able report of the learned Auditors, we have found nothing to satisfy us that they have erred with referenee to the matters complained of by the exceptants; we, therefore, dismiss all the exceptions, and confirm the report of the Auditors absolutely.

Exceptions dismissed and report confirmed absolutely.

By the Court.

J. B. LIVINGSTON, P. J.

January 11, 1894.

ERRORS ASSIGNED.

IN APPEAL OF HEIRS OF T. STEVENS, DEC'D.

1. The Court erred in overruling the first exception of Thaddeus J. B. Stevens and others to the report of the Auditors, to wit: "1st. The Auditors erred in awarding the balance of the estate ($50,687.90) to Edward McPherson, surviving executor and trustee, for the charitable uses and purposes ordered, directed and provided for by the testator in the residuary clause of his said will." Overrulled.

2. The Court erred in overruling the second exception of Thaddeus J. B. Stevens and others to the report of the Auditors, to wit: "2d. The Auditors having found that the corpus of the estate is less than $50,000, erred in not awarding the whole of the estate to the heirs of the testator, Thaddeus Stevens, deceased." Overruled.

3. The Court erred in overruling the third exception of Thaddeus J. B. Stevens and others to the report of the

Auditors, to wit: "3d. The Auditors erred in their construction of the will of testator, allowing the accumulations since the death of testator, to make up the minimum of $50,000, without which there was not to be a charitable use." Overruled.

4. The Court erred in dismissing all the exceptions, and confirming the report of the Auditors absolutely.

H. M. NORTH.
D. G. ESHLEMAN.
Attorneys for Thaddeus J. B. Stevens and others, Appellants.

ASSIGNMENT OF ERRORS.

IN THE APPEAL OF J. M. WIESTLING, ADMINISTRATOR OF ALANSON J. STEVENS, DECEASED.

1. The Court erred in overruling the first exception of J. M. Wiestling, administrator, to the report of the auditors, to wit: "1st. The auditors erred in not allowing the claim of J. M. Wiestling, Esq., administrator of estate of Alanson J. Stevens, deceased, for $2400 with interest from July 12, 1858, being trust money held by Hon. Thaddeus Stevens at the time of the death of Alanson J. Stevens and in possession of Hon. Thaddeus Stevens at his death, of which the note produced was evidence."

2. The Court erred in overruling the second exception of J. M. Wiestling, administrator, to the report of the auditors, to wit: "2nd. The auditors erred in deciding that the relation of debtor and creditor existed between Thaddeus Stevens and Alanson J. Stevens and that the statute of lim-

itations was applicable to the note as a debt, instead of being an evidence of money held in trust by Thaddeus Stevens for his nephew."

3. The Court erred in overruling the third exception to the report of the auditors, to wit: "3d. The auditors erred in not allowing the claim of J. M. Wiestling, administrator, for trust money held by Hon. Thaddeus Stevens, in not holding that the relations of trustee and *cestui qui* trust existed between Thaddeus Stevens and his nephew."

4. The Court erred in overruling the fourth exception to the report of the auditors to wit: "4th. The auditors erred in not holding that the $2400 given to Thaddeus Stevens by his nephew was trust money against which the statute of limitations could not be invoked."

5. The Court erred in overruling the fifth exception to the report of the auditors to wit: "5th. The auditors erred in not allowing the claim of J. M. Wiestling, administrator, for $2400 with interest from July 12, 1858."

6. The Court erred in overruling the exceptions and confirming the report of auditors absolutely.

A. C. REINOEHL,
Attorney for J. M. Wiestling, Administrator.

ARGUMENT OF COUNSEL FOR THADDEUS J. B. STEVENS, ET AL., APPELLANT.

Thaddeus Stevens, late of the city of Lancaster, deceased, died on the 12th day of August, 1868.

He left a will, written by himself, dated the 30th day of

July, 1867, to which he added a codicil, the body of which is not in his handwriting, dated the 11th day of November, 1867.

The said will and codicil were admitted to probate at Lancaster on the 21st day of September, 1867, and on the same day letters testamentary thereon were granted to Anthony E. Roberts, O. J. Dickey and Edward McPherson, the executors named therein.

By his said will, the testator bequeaths to divers persons legacies and annuities; upon which no questions have arisen.

He then provides as follows, to wit:

"I give my nephew, Capt. Thaddeus Stevens, now at Caledonia, my gold watch; I give to my nephew, Capt. Thaddeus Stevens, eight hundred dollars a year, to be paid half yearly. If, by reason of sickness, he may need more, he is to have it, at the discretion of the trustees.

"None of the legacies, except the annuities, will be paid for three years, during which time the house I now live in, and furniture and books, will remain as they are, except the miscellaneous books, which may be sold at any time. Mrs. Smith may occupy the house the first year, and if Thaddeus Stevens (son of Morrill) prefers to keep house to boarding, he may keep house there with her or with any one else, during the three years or any part thereof. If, at the end of three years, Thaddeus Stevens prefers some other mode of living, then the trustees shall dispose of said property as they deem best. While it is occupied by my nephew he shall be charged three hundred dollars per annum rent for it; the property occupied by Mrs. Effinger, after adding two feet of the lot in width to the other lot, may be sold; as five thousand have been offered for it, it should not go for less.

"The furnace and all other real estate may be rented or sold. The furnace must not be worked longer than to consume the stock on hand.

"If at the end of five years Thaddeus (nephew) shall have shown that he has totally abstained from all intoxicating drinks during that time, the trustees may convey to him one fourth of all the property; and if at the end of the next successive five years, he shall have totally abstained from all intoxicating drinks, they may convey to him another fourth, being one-half of the property; if at the end of another five years, he shall show that he has abstained from all intoxicating drink, they may convey the whole to him in fee simple; if he should get married before the house I live in is sold, he may receive the same, and occupy it without sale.

"If the life estate of my nephew, or rather the annuity of the said Capt. Thaddeus Stevens, of Pennsylvania, should expire before he has enabled himself to become entitled to the corpus, or fee simple of my estate, then I dispose of whatever may remain, as follows: If the aggregate shall then amount to fifty thousand dollars, without which no further disposition can be made, I give it all to my trustees to erect, establish and endow a house of refuge for the relief of the homeless and indigent orphans. Those shall be deemed orphans who have lost either parent. I desire twenty thousand dollars to be expended in erecting suitable buildings, the residue to be secured in goverment securities, bearing not less than six per cent. per annum interest." * * *

The third item of the codicil provides as follows, viz.:

"If my nephew, Major Thaddeus Stevens, should get married before my decease, he will be at liberty to take possession and hold in fee the house in which I now dwell, with the furniture thereof, and I, in that event, remove all

the restrictions which I place upon the devise of that property in the body of my will. I hereby exclude the corner property now occupied by Effinger from this provision." (Auditor's Rep. pp. 23, 24, 25.)

The estate of Thaddeus Stevens, deceased, does not "aggregate," and did not at any time "aggregate" fifty thousand dollars, exclusive of accumulations, and after payment of debts and liabilities, necessary expenses of settlement, general legacies and collateral inheritance tax, the "aggregate" sum was only $47,595.77. (Auditor's Rep., p. 29.)

Deduct the collateral inheritance tax from this sum, we have ($47,595.77—$2,379.75=$45,216.02) forty-five thousand two hundred and sixteen $\frac{02}{100}$ Dollars.

"If the life estate of my nephew, or rather the annuity of the said Capt. Thaddeus Stevens of Pennsylvania should expire before he has enabled himself to become entitled to the corpus or fee simple of my estate, *then* I dispose of whatever may remain as follows: If the aggregate shall *then* amount to fifty thousand dollars, *without which no further disposition thereof can be made*, I give it all to my trustees to erect, establish and endow a house of refuge for the relief of the homeless indigent orphans."

The learned Auditors have properly construed a portion of this clause to mean: "Without fifty thousand dollars *no further disposition of whatever may remain can be made*" (p 30). And then they proceed to show that when one of the greatest lawyers of his time said "*no further disposition can be made*," he did not know what he was saying—that he really intended to make a further disposition, the disposition which he so distinctly said could not be made.

They ought to have construed the whole clause. It undoubtedly means, "If the aggregate sum of whatever re-

mains *when* the life estate, or rather the annuity of Capt. Thaddeus Stevens expires, and he has not enabled himself to become entitled to the corpus or fee simple of my estate, *no further disposition thereof can be made*."

Mr. Stevens died August 12, 1868. At the end of eight years after his death, in 1876, Thaddeus Stevens, Jr., was dead. The Auditors find that at that time there were no accumulations (page 39).

On the 1st of December, 1884, the net accumulations were $1,130.70. With that sum and the subsequent accumulations to 1891, which, as appears from Mr. McPherson's 2d and 3d accounts, were over $10,000, the whole estate at that date was only $50,687.90, an excess of only $687.90 over and above the sum of $50,000.

It follows, therefore, that *then*, that is when the life estate or annuity of Capt. Thaddeus Stevens expired before he enabled himself to become entitled to the corpus or fee simple of the estate, the aggregate sum remaining did not amount to $50,000, and in the words of the testator, *no further disposition could be made*.

The main intent of the testator very evidently was to provide for Capt. Thaddeus Stevens, and to recall him from his bad habits. With that object in view he placed before him the chance of inheriting the whole residue of his estate. Capt., afterwards Major, Stevens was his favorite nephew. The whole will is redolent of that dear name. After the will was finished other plans for the benefit of the Major suggested themselves, and a codicil was made in which he is the most conspicuous figure. The provision for the relief of indigent orphans was a secondary consideration. If his beloved nephew should fail to qualify himself to take the estate, and the aggregate of his estate *then* amounted to fifty thousand dollars, it should go for the relief of indigent or-

phans. His excellent judgment told him that less than that sum would not suffice to establish and maintain a charitable institution. If the aggregate balance did not reach the sum, therefore, "*no further disposition thereof could be made.*" He did not make any. He did not propose to make any. He was no illiterate man, who was ignorant of the force and effect of words. He was a great lawyer, and knew exactly what he was saying, and what was the effect of what he said. He knew that those words, as he used them, would give the balance, of which he spoke, to his heirs at law.

He did not intimate, in any way, that if the aggregate balance did not amount to fifty thousand dollars at the time specified, his executors and trustees should hold it fifteen years, or any number of years, so that the accumulations of interest would bring it up to that sum, and then establish a charitable institution.

With all due deference to the learned Auditors, who are all lawyers of great ability and deserved distinction, Mr. Stevens, at the time in which he wrote his will, was as well versed in the English language, and was as able to express his will and intention as they are. It is hardly to be supposed that when the man, who was at the time leader of the House of Representatives of the United States, used the words "without which no further disposition can be made," he meant to direct the executors and trustees to make the disposition, which, he said, could not be made.

The Auditors, in the face of the declaration of the testator that no further disposition can be made, undertake to prove that he did not mean what he said, and that a further disposition can be made.

They do not follow the Rules of Construction of Wills, and by that means ascertain what doubtful words mean, if

there are any such. They overlook the fact that there is nothing doubtful in this will.

With the inspiration of a strong charitable sentiment, the writer of the report, perhaps unconsciously, became imbued with the idea that the proper thing for Mr. Stevens to do, was to organize and endow an institution for the relief of orphans, and therefore assumed that was one of the chief objects of the will. On that assumption he built a very strong and plausible argument in favor of his theory.

If the Court will join us in laying aside sentiment, and in endeavoring to construe the testator's will, if there be anything doubtful in it, in accordance with law, we hope to be able to convince them that the able argument of the Auditors is entirely and thoroughly wrong.

Let us, with that in view, ascertain, first, the erroneous deduction of the Auditors; and, secondly, whether under the Rules of Construction of Wills, there can be any doubt of the testator's intention, that the residuum of his estate at the time indicated by him, if under fifty thousand dollars, should pass to his heirs at law.

1. "At the very outset the testator, in his will, vests the entire corpus of his estate in his executors and trustees" (p. 30).

There is certainly no significance whatever in this clause. It is the form which he adopts for the distribution of his estate according to his wishes. When he comes to speak of the residuum, it is thus: "If the aggregate sum shall then amount to fifty thousand dollars, without which no further disposition can be made, *I give it all to my Trustees* to erect," etc. He simply gives his estate to the executors for the purpose of distribution.

"If the testator directed an intestacy in the contingency

mentioned, then a collision with an important provision in the will might result, as will now be pointed out" (p. 31).

It is pointed out that under the construction claimed of an intestacy, Thaddeus Stevens, Jr., might have formed a scheme to forfeit the advantages provided for him in the will, in order that he take his share of the residuum as an heir at law—that a construction which should allow Major Stevens to obtain a portion of the residuum by violating a condition precedent is an absurdity.

The *argumentum ad absurdum* is not often conclusive. If there is an absurdity in the construction, the testator is responsible for it. He, Mr. Stevens, must be presumed to have seen the absurdity, and known the effect of it. Great men as well as inferior men are sometimes guilty of absurdities. Great men are often guilty of absurdities in favor of favorite nephews, children and grand-children. Everybody who knew Mr. Stevens observed his almost ridiculous fondness for this nephew, Major Stevens, and nearly every line of his will shows it; and indeed it is no wonder, for with all his faults he was exceedingly lovable. Inasmuch as Mr. Stevens wrote the words upon which the claim of intestacy is based, it must be supposed that he had no objection to the result which is pronounced ridiculous.

It is difficult to see any absurdity in the action of John D. Skiles, administrator d. b. n. of the estate of Thaddeus Stevens, Jr., deceased, claiming for the estate of his intestate what so clearly belongs to it.

In Hancock's Appeal, 112 Pa. St, 532, it is said that the question in expounding a will, *is not what the testator meant*, but *what is the meaning of his words.*

In that case a testator gave and bequeathed to A, "son of my sister B, *only* one-sixth of such portion as the law would

give to said B, and the remaining five-sixths to be divided among my other five sisters and brothers, and their heirs." It was *held* that he died testate as to the portion of his estate which his sister B would have taken, had she survived him, under the intestate law, and intestate as to the remainder of his estate; that as to the remainder thereof A took, with the other heirs at law, his proportionate share under the intestate law.

See also to the same effect Rupp *vs.* Eberly, 79 Pa. St., 141.

"Another interpretation involving no absurdity and in harmony with the other provisions of the will can be put upon the clause, which has given rise to the contention before the Auditors" (p. 33).

The executors are to put the net proceeds of the estate at interest, by investing the same in government securities at not less than six per cent. per annum. * * * The real meaning and intention of the testator, as understood by the Auditors, would be conveyed more distinctly if written thus, (pp, 34, 35):

"If the life estate of my nephew, or rather the annuity of the said Capt. Thaddeus Stevens, of Pennsylvania, should expire before he has enabled himself to become entitled to the corpus or fee simple of my estate, then I dispose of whatever may remain as follows: I give it all to my Trustees to erect, establish and endow a house of refuge for the relief of homeless, indigent orphans."

"If the aggregate sum of the residue of my estate when first ascertained should be found to be less than fifty thousand dollars, *I then direct that* no further disposition thereof can be made, *or trust executed until the funds in the hands of the trustees shall have reached the sum of fifty thousand dollars by accumulation*" (p. 35).

That is not a construction of the will. It is making a new one; it omits some important words in the old and inserts new words.

The executors were to put the proceeds at interest from time to time, until the time should expire at which the Major might enable himself to acquire the corpus of the estate.

If *at that time* the aggregate sum of the residue should not amount to fifty thousand dollars, *no further disposition could be made.*

In order to support his theory, the learned writer of the report finds it necessary to make the testator say: "*I then direct* that no further disposition can be made, or *trust executed until the fund in the hands of the Trustees shall have reached the sum of fifty thousand dollars by accumulations.*"

The rules of construction of wills permit when necessary to carry out the evident intention of the testator to change the word *or* to *and*, and vice versa.

Kelso *vs.* Dickey, 7 W. & S., 279.
Betzhoover *vs.* Costen, 7 Pa. St., 13.

In the last case, Betzhoover *vs.* Costen, Rogers, J., (page 17) says: "The will is most inartificially drawn, and I am much inclined to the opinion that to carry out his intention we are at liberty to add the word 'aforesaid' after the words 'my surviving children or their lawful heirs.' This alteration or addition would remove all doubt. Nor is it without precedent as is shown in the case cited, when necessary to carry out the manifest intention of the testator."

It will be observed that in that case the will was inartificially drawn; that Judge Rogers was only *inclined* to add the word "aforesaid," and that the intention of the testator

was carried out, not by adding the word "aforesaid," but by changing the word "or" into "and."

The Auditors were not so cautious in construing the will before them as the Supreme Court was. The will before them was not inartificially drawn. It was written by one of the most skillful masters of the English language; and yet they dared, in order to carry out their construction, to strike out the words "without which," and add the words "I direct that" no further disposition can be made, "or trust *executed until the fund in the hands of the Trustees shall have reached the sum of fifty thousand dollars by accumulations.*"

No doubt Mr. Stevens might, under the laws of Pennsylvania, have directed the residuum found to be in the hands of the Executors at the time fixed by him, to be held for accumulation until it would amount to fifty thousand dollars; but he did not do so. But the Auditors say that "they have found that the testator so ordered and directed" (page 36).

Now if there is anything certain in Mr. Stevens' will it is that within the whole four corners of it there is not a word, not an intimation even, from which an inference can be drawn that he intended that the "aggregate" balance, if it amounted to less than fifty thousand dollars, should be held for accumulation.

In Varner's Appeal, 87 Pa. St., 422, the testator gave all his estate to trustees to pay over the income of one-half thereof to his grand-daughter, until she attained the age of twenty-five years, and then to convey to her in fee one-half of the estate, "subject to the payment of its pro rata share of the annuities hereinafter charged on my said estate." The income of the other half he directed to be paid to his two nephews and a niece in equal shares, "subject * *" as

above. He then granted annuities and made them an express charge upon the shares of the nephews and niece, but made no mention of the grand-daughter in either of the clauses. It was *held*, reversing the Court below, that the name of the grand-daughter could not be thus supplied, and that her share was not subject to the burden of the annuities.

On page 427 the Court say, "It is true words may, in some cases, be supplied to carry out a defectively expressed intent, but not to create another intent, when one is distinctly expressed as here by the language of the will. They can be supplied only in cases necessary to give effect to the most unquestionable purposes of the testator. 1 Redfield on Wills, 470. Hence if a doubt arises that the change would advance the real intent of the testator, it cannot be made. Annable *vs.* Patch, 3 Pick, 360. Besides, in a doubtful case, we should adhere, as closely as the language will permit, to the general rules of inheritance. France's Estate, 25 P. F. S., 220. The appellant being the heir at law, every fair intendment should be made in her favor. Bender *vs.* Dieterick, 7 W. & S., 284; Cowles *vs.* Cowles, 3 P. F. S, 175. The learned judge therefore erred in holding the language of the first item to be sufficient to justify the addition by the Court of the name of the appellant to the third and fourth devising clauses, and thereby imposing an additional liability upon her."

In Hoffer *vs.* Wynkoop, 97 Pa. St., 184, Trunkey, J., says: "The testator provided that part of his real estate might be converted in the discretion of his widow, and another part on the agreement of the widow, sister and children, whom he named, *but was silent as to its disposition*, whether converted or not. It is impossible to hold that he intended to dispose of the remainder of his estate, *for there is no expression from which such intent may be inferred.* It therefore passes under the intestate law."

In McKeehan *vs.* Wilson, 53 Pa. St., 76, Thompson, J., says: "But it has been most honestly insisted upon that there has been an accidental omission of the words 'without leaving children' or their equivalent after the word 'die,' in the second of the above cited clauses and then the provision would read, 'if all my children should die before my wife *without leaving children* (or issue) I allow my wife,' etc.

This would undoubtedly make out the plaintiff's case. But the difficulty is in finding any evidence that this was what the testator meant to do with his property. He certainly has not said so, and left no signs that he intended so. * * * We must not disturb the sanctity of wills because we could wish them otherwise than they are. *Sic voluit dixit* must control in a case like this."

II. Under the rules for construing wills there can be no doubt that the heirs at law are entitled to the residuum under Mr. Stevens' will.

The question in expounding a will is not what the testator meant, but what is the meaning of his words.

2 Williams on Ex'ors, 1078.
Martindale *vs.* Warner, 15 Pa. St., 480.
Weidman's Appeal, 42 Leg. Int., 338.
Hancock's Appeal, 112 Pa. St., 532, 541, 544.

In construing wills the terms that are used therein are to be construed according to the ordinary acceptation of language in the transactions of mankind.

2 Williams on Executors, 1080.

Effect must be given to every word in the will without change or rejection provided an effect can be given to it not inconsistent with the general intent.

1 Jarman on Wills, 415–416, 456.
Mütter's Estate, 38 Pa., 314, 321.
Shreiner's Appeal, 53 Pa., 106, 108.

Smith on Executory Int., p. 26, sec., 78, and page 111, section 247.

If the construction of a will be doubtful, the law leans in favor of a distribution as comformably to the general rule of inheritance as possible.

France's Estate, 75 Pa., 220, 225.

Where a provision in a will becomes inoperative, there is a lapse to that extent, and in the absence of a residuary clause, that amount passes under the intestate law.

Joyce Est., 13 W. N. C., 520.
Grim's Appeal, 89 Pa., 333, 334–5.
Hoffner *vs.* Wynkoop, 97 Pa., 130, 134.
Fitzwater's Appeal, 98 Pa., 141, 146.

An heir at law can be disinherited only by express devise, or necessary implication; hence in the construction of a will of doubtful meaning, every fair intendment is to be made in favor of the heir at law.

Bender *vs.* Derrick, 7 W. & S., 284.
Hitchcock *vs.* Hitchcock, 35 Pa., 141, 144.
Rupp *vs.* Eberly, 79 Pa., 141, 144.
Howe's Appeal, 126 Pa., 233, 241.
Weber's Appeal, 17 Pa., 474, 479.

The estate devised to the trustees for a home for the relief of orphans, was limited upon the contingency that at the time when Major Stevens' opportunity to take expired, the aggregate balance of the estate should amount to fifty thousand dollars. The Auditors have found the fact that

the residue did not at that time amount to that sum. That being the case, the fund descended to his heirs at law. That principle of law must have been in Mr. Stevens' mind when he wrote the words, "without which no further disposition thereof can be made."

2 Bl. Com., 151.
1 Jarman on Wills, 744.
Rupp *vs.* Eberly, 79 Pa., 141, 145.

H. M. NORTH,
D. G. ESHLEMAN,
Attorneys for Thaddeus J. B. Stevens and other Appellants.

ARGUMENT OF APPELLANT.

IN THE APPEAL OF J. M. WIESTLING, ADMINISTRATOR OF CAPTAIN ALANSON J. STEVENS.

In the protracted contest which has followed the presentation of this claim and in the stubborn objection to its payment by the executor, it has never been denied that Hon. Thaddeus Stevens in 1858, as attorney in fact, received into his hands over $2,400 belonging to his nephew Alanson J. Stevens. It never passed out of his hands. From the well-known relations existing between the Old Commoner and his spirited nephews, who were careless in money affairs, it was natural that he should consider it best to keep the money "in a fiduciary capacity" for Alanson, and give him some sort of note to show that he had the custody of the fund. Alanson did not need the principal as long as he was clerk for his uncle at the furnace, and had

all he wanted and all a generous, wealthy and indulgent uncle allowed him. In three years from the time he left his patrimony in his uncle's hands to take care for him, he entered the army, and two years later died at the front. If the position of the auditors is correct that the relation of debtor and creditor existed and the note is evidence of a loan, and, therefore, barred by the statute of limitations, then it would be useless to argue further. But the claim is pressed on the ground that the money was held as a trust by the uncle, who knew how careless his nephew was with money, and the note was not given to secure a loan, but was given by Mr. Stevens as an evidence that the money received by him as attorney, in fact and retained in his custody, was to be held indefinitely "for a rainy day" for Alanson. This is evidenced by the fact that the note was made on demand so that he could settle any time.

The fact that a note was given does not conflict with the evidence that it was given as evidence of money held in trust. For years its existence was suppressed by Major Thad. Stevens, its custodian from 1863 to the time of his death in 1874. Whether he thought it was barred by the statute, or whether antagonistic to the claims of his brother's wife to recognition, we do not know; but up to 1886 it slumbered in the vaults of Bair & Shenk's Bank, until long after the death of Mr. Stevens.

That this fund of $2,400 was held by Mr. Stevens as a trust, and so regarded by him and his nephew, is shown by the testimony of Simon Stevens, a relative very close to the Old Commoner, and intimate in his family, and enjoying his confidence to a full degree. On page 43 of Notes of Audit, Simon Stevens, after reciting the history of the inheritance of Morrill's sons, Thad. and Alanson, says:

" Mr. Stevens received the draft, and my recollection is, deposited it in the Lancaster County Bank, and in settling with Alanson and Thaddeus, Alanson insisted that his uncle should keep the money, and invest it for him, or hold it in trust. As evidence to Alanson that he, Thaddeus Stevens, had the money, he wrote out a promissory note for $2,400 or $2,500 on demand. I did not recollect the precise amount until I saw the note to-day. I recognize this note (holding the instrument in his hand) as the document which Mr. Stevens wrote in my presence, and Thaddeus Stevens, Jr., witnessed. I recognize this note as being in the handwriting of Thaddeus Stevens. The note was then handed to Alanson J. Stevens. * * * * * Mr. Stevens, on several occasions, while speaking of Alanson and other family relations, expressed surprise that the note had never been presented for payment, because Alanson left a widow and a child. He made inquiries for it, once, of Mr. Sweney in my presence. Mr. Stevens expressed himself then as believing that the note was lost when Alanson was killed. The last time he spoke of it to me was about a month or two before he died, remarking substantially in these words: " Simon, you know all about this note, that I hold the money in a fiduciary capacity, and if it is ever presented you can explain that it must be paid to the legal holder." * * * * *

On page 45 of Notes of Audit, Simon Stevens, on cross-examination, testified that, " On one occasion, when Mr. Dickey was present, Mr. Stevens turned to Thad., whom he called Major, and said : ' Major, it is strange that that note of mine never turned up.' The Major replied, ' Maybe the Rebs may present it to you.' " * * * *

What the motives of Major Stevens were for suppressing the existence of this note, we cannot say. It may have been that as he alone knew where it was, he kept silent to

prevent his brother's widow, for whom he had no sympathy, from reaping any benefit; or he may have been in such a chronic condition from his habits as to have been irresponsible for any acts of omission or commission. From this testimony we say a trust is fully established.

Here, we say, the Auditors erred when they treated the note as a promissory note for money loaned, when the evidence of Simon Stevens is clear that it never was loaned, but was held in trust. So the entire argument of the auditors in discussing the question of the statute of limitations on a note does not apply here, and is error. The fact that Mr. Stevens gave his nephew a note does not change the transaction from a trust to a loan.

In Rupp's appeal, 100 Penna., page 537, Justice Gordon, quoting Justice Strong, says: "Nor did the fact of his giving a note for the money, and subsequently a judgment, convert his situation as a trustee into that of a mere debtor." Also, Harrold *vs.* Lane, 53 Pa., 270.

If appellant was seeking to recover on the note as a creditor, the argument of the auditors might have force. But the note is only evidence of a trust and is supported by evidence of a trust; and we challenge the counsel of the executor to cite the testimony of a single witness to establish the relation of debtor and creditor between Mr. Stevens and his nephew.

Lewin on Trusts, foot page 1200, says: "If a trustee pay trust money into a bank to the account of himself, not in any way ear-marked with the trust, and also keep private moneys of his own to the same account, the Court will disentangle the account, and separate the trust from the private moneys, and award the former specifically to the *cestui qui trust.*

II. Having established, as we think, the fact that the fund of $2400 was held by Mr. Stevens as a trust and was not borrowed on a note, for Mr. Stevens did not need to borrow money, we argue that the statute of limitations will not apply.

In Lewin on Trusts, foot page 1170, Lord Alvanley said: "If from the plaintiffs lying by it is impossible for the defendants to render the accounts he calls for, or it will subject them to great inconveniences, he must suffer, or the Court will oppose, what I think the best ground, *public convenience*. The plaintiffs are so conscious of this that they do not call on the trustees to account for what has been disbursed before any demand made. It appears that the trustees, who by their conduct have done themselves great credit, have kept such accounts that there is no difficulty in finding the personal estate at the death of the testator. Therefore, desiring to be understood by no means to give any countenance to these stale demands, but upon the circumstances that there is nothing inducing great public or private inconvenience, that the accounts are found, and that the trustees are not called on to account for what has been disbursed, I am bound to decide in favor of plaintiffs," etc.

The case in this estate is analagous to the case referred to above. This claim was presented to the executor long before any final distribution was made—eight years ago, before the estate was converted into money; no rights are invaded, and the claim was presented in time to cause no embarrassment of any vested rights.

By 36 and 37 Vict. Lewin on Trusts, foot page 1187, it was enacted, "that no claim of a *cestui qui trust* against his trustee for any property held on an express trust or in respect of any breach of such trust, shall be held to be barred by any statute of limitations."

Until the time of York's appeal there was no limit to any claim presented in the Orphans' Court. The rule laid down in York's appeal, where applied to cases which where barred in Common Pleas and were switched off to the Orphans' Court to avoid the bar, is not we think intended to rule out meritorious cases like the one considered.

Price's Appeal, 54 Pa., 472.

In York's Appeal, 110 Pa., the Court, in deciding that the statute of limitations, was applicable between debtor estates and creditors, gave as a good reason, "that estates are settled and assets distributed," and hardships arise from allowing stale claims years after distribution. We think the present case falls within those trusts to which the statute of limitations does not apply:

1. Direct and continuing.
2. Exclusively cognizable in equity.
3. Arising between trustee and *cestui qui trust.*

(York's Appeal, 110 Pa., page 79.)

This is not an attempt to recover on a note, but is a demand on the estate of a trustee to pay the funds belonging to a *cestui qui trust* which it is not attempted to deny has not been paid.

On page 82 of York's Appeal, the Court says: "In cases of trusts and fraud peculiarly, appropriately and exclusively the objects of equity jurisdiction, according to the established doctrine, the statute cannot be pleaded."

What reason can the executor of this estate give for resisting this claim? Mr. Stevens held this money in trust by agreement with his nephew. It was never paid to him or his legal representatives. The evidence of the trust, the note, was suppressed, by the first incompetent or designing

administrator of Alanson J. Stevens. When discovered, payment was at once demanded from the executor. The last words almost of Mr. Stevens to his trusted friend and kinsman, were that the claim should be paid when properly presented. No heirs oppose the payment. Why the stakeholder of this estate? Does the surviving executor, by the technicalities of the law, wish to defeat the payment of a just claim, which his honest testator, had he lived, would have promptly paid? Does he by the jugglery of the law seek to appropriate this trust money so that he may barely accumulate a fund of fifty thousand dollars of which he shall be the custodian, to build an asylum for one German, one Irish and one Mohammedan boy? Mr. Stevens had integrity as well as charity, and were he here to-day, would, in the vigorous language characteristic of him, rebuke the zeal of the representative of his estate, who would seek to build up a charity at the expense of justice.

A. C. REINOEHL,

Attorney for J. M. Wiestling, Administrator of Alanson J. Stevens, deceased.

IN THE

Supreme Court of Pennsylvania.

EASTERN DISTRICT.

January Term, 1894.

APPEALS FROM THE ORPHANS' COURT OF LANCASTER COUNTY.

Estate of Thaddeus Stevens, Dec'd.

Argument of Appellee.

ARGUMENT FOR APPELLEE.

But two questions are presented for the consideration of the Court in these appeals.

In that of *Thaddeus J. B. Stevens and others, heirs at law of Thaddeus Stevens, deceased*, the single question involved is whether the bequest to the trustees who were also the executors "to erect, establish and endow a house of refuge for the relief of the homeless and indigent orphans" has failed, and of the fund so bequeathed Mr. Stevens has died intestate.

In that of J. M. Wiesling, administrator of Alanson J. Stevens, deceased, whether a certain note of Mr. Stevens, dated "Lancaster, July 12, 1858," attested by Thaddeus Stevens, Jr., and which reads as follows: "On demand I promise to pay to Alanson J. Stevens or order, two thousand four hundred dollars with interest" is barred by the Statute of Limitations.

In the *Wiesling appeal*, in addition to what has been said by the learned auditors in dismissing this claim I have but little to add to the argument of the auditors, except to refer to a few facts in regard to Simon Stevens' remarkable testimony. Of the existence of this gentleman Mr. Stevens is studiously oblivious, except as being the father of George Thaddeus Stevens, to whom a small legacy is given.

Witness says, these conversations with Mr. Stevens occurred several times in the presence of Mr. Dickey, Major Thaddeus Stevens and Mr. Sweeny.

Mr. Dickey is dead, Major Stevens is dead, and the only

living witness, Mr. Sweeney, upon examination, having read to him witness' testimony, says, p. 50 notes: "Hon. Thaddeus Stevens never intimated to me, directly or indirectly, that Alanson J. Stevens held a note against him."

In the Thaddeus J. B. Stevens' appeal the able auditors, in construing the will of the Hon. Thaddeus Stevens, have omitted no fact or circumstance that could aid the Court in the final distribution of Mr. Stevens' estate, and in an exhaustive argument have denied the contention of the collateral heirs of the testator of any interest in this estate on the ground of intestacy.

In addition to the cogent argument of the able auditors, the surviving representative of Mr. Stevens submits the following thoughts:

That, on the thirtieth day of July, 1867, when, after a long, eventful and notable career, Mr. Stevens, with the shadows fast gathering around him, determined to settle his worldly affairs, he proposed to dispose of all of his estate. To this end in the opening of his will, in his own peculiar handwriting, he says:

"1. I give all my estate, real and personal, to my trustees and executors herein named, to them and their heirs, on condition, nevertheless, that they will dispose of it, as herein directed, by the payment of the several sums mentioned."

Then, after giving directions as to the reducing the estate into cash, investing the same in government securities, and directing the payment at different periods of certain pecuniary legacies, he comes to the ultimate distribution of his estate. The auditors have fully and in detail set this forth in their report:

He provides for his nephew Thaddeus, better known as Major Stevens—

1. For an annuity of eight hundred dollars, and for the use for a limited period, at a rental of $300, of his mansion house.

2. At the end of five years, "if Thaddeus (nephew) has totally abstained from all intoxicating drinks," the trustees may convey to him one-fourth of the *whole property;*" "if at the end of the next successive five years" he has totally abstained "they may convey to him another fourth, being one-half of the property," and "if at the end of another five years he shall show that he has abstained from all intoxicating drinks they may convey the whole to him, in fee simple."

Thus he has disposed of his entire estate. But here were contingences which a prudent man like Mr. Stevens made provisions to meet. By adding a residuary clause, whereby he gave to his *trustees*, on the failure of his nephew, Capt. Thaddeus Stevens, of Pennsylvania, "to become entitled to the corpus or fee simple of his [my] estate," all to erect, establish and endow a house of refuge for the relief of homeless, indigent orphans. Those shall be deemed orphans who shall have lost either parent.

"If the life estate of my nephew or rather annuity of the said Capt. Thaddeus Stevens, of Pennsylvania, should expire before he has enabled himself to become entitled to the corpus or fee simple of my estate, then I dispose of whatever remains as follows: If the aggregate sum shall then amount to fifty thousand dollars without which no further disposition thereof can be made, I give it all to my trustees to erect, establish and endow a house of refuge for the relief of the homeless, indigent orphans," with directions

in detail, as to place, as to persons, as to education; "no preference shall be shown on account of race or color in the admission or treatment, neither poor Germans, Irish or Mahommedans, nor any others on account of their race, or the religion of their parents must be excluded," with *final* clause in his will, that "the trustees should procure an act of incorporation at some convenient time."

His codicil of date Sept. 26, 1868, does not change any part of his will, only adding a few legacies.

Thus it will be seen that after the payment of debts, legacies, collateral inheritance tax, the balance of Mr. Stevens estate in the hands of the surviving executor and trustee, Mr. McPherson, is specifically devoted—

1. To his nephew Thaddeus, upon compliance with the stipulations of testator's will. These failing, substitutionally.

2. To a charity, a house of refuge for homeless, indigent orphans.

As the auditors have correctly found, Thaddeus never complied with the stipulations that gave him the entire estate.

Then the next or substitutionary object of the testator's bounty comes into view—the house of refuge for homeless and indigent orphans.

If Thaddeus by his conduct failed to get what his uncle desired and was anxious he should have, in that event the charity steps in line of succession, and the testator gives "whatever may remain" to his trustees to establish and endow his charity.

Now, when the surviving executor and trustee, Edward McPherson, exhibited his final account, which was referred

July 9, 1891, to the auditors for examination and distribution, the report of the auditors showed a balance of $56,-064.83. After deducting costs of audit, claim of John Sweeny, balance of collateral inheritance tax and legacy to Pennsylvania College, at Gettysburg, a balance of $50,867.-90 remained, which was awarded to Edward McPherson, surviving trustee, in trust for the charitable uses and purposes directed by the testator in the residuary clauses of his will. (See pp. 40 and 41.)

Have the auditors and the Court below correctly construed testator's will?

Charities are favorites of the law and the Courts of Pennsylvania; and have been so from the earliest legislation and by a long line of judicial decision. Contrary to some of our neighboring States, notably, the State of New York, where the magnificent gift of Governor Tilden was sacrificed to a line of contrary opinions. The shock of the decision in that case, by the Court of Appeals, drove the Legislature of New York to the enactment of a law which places that State now on the same plane which for years has been occupied by our Legislature and our courts.

Mr. Stevens had two main objects of his bounty: first, his nephew, Thaddeus; this failing, second, the trust for this noble charity, in the residuary clause of his will. Then he completed his life work—his doctrine and belief of the equality of man before his Maker without regard to race, color or condition.

A few authorities are here added on the question of intestacy, etc.:

A restricted meaning cannot be given where the effect would be to lead to an intestacy.

Stivers' Est. Orphans' Ct., Penrose, J., 21 Weekly Notes of Cases, 335.

No presumption of an intent to die intestate as to any part of the estate is to be made, where the words of the testator will carry the whole.

Stehman vs. Stehman, 1 Watts, 466–475.

Miller's Appeal, 113 P. S. Rep., 459.

It is never presumed that a testator intended to die intestate as to any part of his estate if a contrary intent can be fairly deduced from the language of the will.

Roland vs. Miller, 100 P. S. Rep., 50.

Ferry's Appeal, 102 P. S. Rep., 207.

As to the construction of wills.

The cardinal canon for the construction of wills is that which requires us to ascertain and give effect to the intent of the testator, or as it is stated by our brother, Mr. Justice Mercur, in the case of Middlewarths Adm'r vs. Blackmore 24 P. F. Smith, 415, regard must be had to whole scheme of the will, and if it is fonnd that a particular intent is inconsistent with the general intent, the former must give way to the latter. Another rule is that cited in the brief and able opinion of the Court below from the case of Earl vs. Cook, 2 Ves. Sr., 30, that is to say we are not to consider exactly the order in which the words are placed, if a different arrangement will better answer the apparent intent of the testator. A third rule is, that no presumption of an intent on the part of the testator to die intestate of any part of his property is to be made when his words as found in the will can fairly be construed to dispose of the whole of it.

Gordon J. Ferry's Appeal, 102 P. S. R., 207.

Appeal of the Board of Missions, 91 P. S. Rep., 514.

To effectuate, therefore, the clear intention as apparent upon the whole will, words and limitations may be transposed, supplied or rejected, and to advance the apparent intention of the testator "or" may be construed "and," so, "if" may be construed "when," for the same purpose, etc.

Williams on Executors, Vol. 2, t. p. 1162–63–64, bottom p., pp. 1085–6–7.

6th Amer., Ed., Notes by Perkins.

Now it is manifest that the testator in his residuary clause creating the charity, intended that it should take *all* that his nephew Thaddeus Stevens would have taken by his will. It is also clear that Mr. Stevens did not intend to die intestate. What then is meant by the parenthetical clause, "without which no further disposition thereof can be made." Is it anything but a direction to his trustees not to proceed with the execution of this charitable bequest until it has reached by accumulations the maximum sum of $50,000. That this is the plain intent of the testator is further evident from the fact there is no bequest over. Why should not the introductory word "if" be read "when?" thus reading, "when the aggregate sum shall then amount to $50,000, etc." (a conjunction, meaning in that event, referring to his nephew's failure,) placing the residuary clause in harmony with the whole scheme of testator's will. As is said in Busby's Appeal, 61 P. S. R., 116: "Obviously the word then is not used as an adverb of time, but as a conjunction signifying in that case, in that event or contingency."

GEO. M. KLINE,
Att'y. for Estate of Hon. Thaddeus Stevens, dec'd.

IN THE

COURT OF COMMON PLEAS OF LANCASTER CO.

SITTING IN EQUITY.

BETWEEN

DR. THADDEUS M. STEVENS, Plaintiff;

AND

ANTHONY E. ROBERTS and EDWARD McPHERSON, Executors of the Will of THADDEUS STEVENS, late of the City of Lancaster, deceased, Defendants.

To the Honorable the Judges of said Court:

Your orator complains and says:

1. That your orator and his sister, Margaret Coffman, are the sole heirs-at-law of the said Thaddeus Stevens, deceased, and that he has purchased from his said sister all her interest in the estate of said deceased.

2. That the said Thaddeus Stevens died on the — day of September, A. D. 1868, leaving a last will and testament, dated the 30th day of July, 1867, and a codicil thereto, dated the 11th day of November, 1867, both of which were duly proven on the 21st day of September, A. D. 1868, and remain filed of record in the Register's office at Lancaster; that the said testator appointed by his said will Anthony E. Roberts, O. J. Dickey and Edward McPherson the executors thereof; that O. J. Dickey subsequently died, leaving the said Anthony E. Roberts and Edward McPherson as surviving exec-

utors, and that they have since been and are now the sole executors of said will.

3. That by his said will, a copy of which is hereto annexed and marked "Exhibit A" and made part of this bill, the said testator, after giving divers legacies, devised and bequeathed the remainder of his estate to his nephew, Captain Thaddeus Stevens, upon certain conditions, and then provided as follows, viz.: "If the life estate of my nephew, or rather the annuity of the said Capt. Thaddeus Stevens, of Pennsylvania, should require, before he has enabled himself to become entitled to the corpus or fee simple of my estate, then I dispose of whatever may remain as follows: If the aggregate sum shall amount to fifty thousand dollars, without which no further disposition thereof can be made, I give it all to my trustees to erect, establish and endow a house of refuge for the relief of homeless, indigent orphans."

4. That the said Captain Thaddeus Stevens died before he enabled himself to become entitled to the corpus or fee simple of the testator's estate, and that the said estate remaining, after the payment of the legacies, consists of a small balance of money and a tract of land in Adams and Franklin counties, containing about —— acres, with a charcoal furnace and other buildings thereon erected, the whole being worth about thirty thousand dollars, which the executors after several efforts made have not hitherto been able to dispose of and cannot now sell for that price.

5. That the said estate in the hands of the said executors does not amount in the aggregate to fifty thousand dollars; that it therefore cannot be invested in a house of refuge under the provisions of the will; that the provisions of the said will in reference to said charity are void; that the said estate cannot be disposed of in any way under he will; that it descends to the heirs-at-law of the testator; that, under the provisions of the intestate laws of Pennsylvania, it descended to your orator and his sister, Mrs. Coffman, and by virtue of her conveyance the same now belongs to your orator; and that your orator has requested the defendants to deliver to him the said estate by a notice in writing, a copy of which is hereto annexed and marked "Exhibit B," and that he has never received any answer thereto from defendants, but their counsel have verbally reported that they had no answer to make.

6. That the facts hereinbefore stated are material to your orator's case; that those facts are with the knowledge of defendants; and that the discovery of them by the defendants is indispensable as proof.

Your orator therefore needs discovery and equitable relief and prays:

I. That the said Anthony E. Roberts and Edward McPherson, defendants, may answer the premises and state specifically, what amount of personal property belonging to the estate is now in their hands, or in the hands of any other person for them, and if any part thereof is in the hands of any other person or persons, who are those persons; also how much of said personal property is made up of interest on money and rents, and profits of real estate accrued since the death of Mr. Stevens; and also what real estate belongs to the estate of their testator, where the same is situate, and what price can now be obtained for the same.

II. That in case the said estate, in the hands of said executors, is found to be of less value than fifty thousand dollars, your Honorable Court will decree that the said trust is void and cannot be executed and that the said Anthony E. Roberts and Edward McPherson be ordered and directed by the Court to convey the same to your orator.

III. Such further and other relief as under the circumstances of the case may seem to yonr Honors to be necessary and proper.

THADDEUS M. STEVENS.

D. G. ESHLEMAN,
H. M. NORTH,
Solicitors for Complainant.

STATE OF INDIANA,)
CITY OF INDIANAPOLIS,) SS.

Thaddeus M. Stevens, the above named complainant, having been duly affirmed, deposes and says that the facts set forth in the above

bill are true, so far as stated from his own knowledge, and so far as stated from information of others he believes them to be true.

THADDEUS M. STEVENS.

Affirmed and subscribed the day of February, A. D. 1882, Coram,

Notary Public.

Exhibit A.

LAST WILL AND TESTAMENT OF THADDEUS STEVENS OF LANCASTER, PENNA.

1. I give all my estate, real and personal, to my trustees and executors herein named, to them and their heirs, on condition, nevertheless, that they will dispose of it as herein directed, by the payment of the several sums mentioned.

They will reduce such of the property as they deem proper to cash and put the net proceeds at interest, investing the same in Government securities at not less than six per cent. per annum interest.

I direct them to pay to the town of Peacham, State of Vermont, one thousand dollars, the interest thereof (at six per cent.) to be applied in aid of the Juvenile Library Association, which was formed at the Caledonia County Academy, if the same is still in existence, and continue to pay the same so long as the same continues in active operation.

I give and bequeath to the trustees or title-holders of the graveyard in which my mother and brother Alansom are buried, in the town of Peacham, Vermont, five hundred dollars, to be put at interest perpetually, and the interest be annually paid to the sexton, on condition that he keeps the graves in good order and plant roses and other cheerful flowers at each of the four corners of said graves every spring.

2. If either of said legacies should lapse the sum shall go to the support of the Baptist church or meeting nearest to Danville Centre, my native town in Vermont

I direct one hundred dollars to be put at compound interest and the aggregate amount to be paid to Thaddeus Stevens Brown, son of John E. Brown, of Philadelphia, at age.

I give two thousand dollars to my nephew, Dr. Thaddeus M.

Stevens, of Indianapolis; I give to his sister, Mrs. Cauffman, one thousand dollars.

I give to George Thaddeus Stevens, son of Simon Stevens, one thousand dollars, to be put at interest and paid to him by his father, when he arrives at age.

I give to Mrs. Lydia Smith, my housekeeper, five hundred dollars a year during her natural life, to be paid semi-annually, or at her option she may receive five thousand dollars; she may make her selection and then release all further claim on my estate.

Mrs. Smith had some furniture of her own, used in common with mine, some bought with her own money, as well as others, which would be difficult to distinguish; now she must be trustee on honor to take such as she claims without further proof.

I give to my nephew, Capt. Thaddeus Ttevens, now at Caledonia, my gold watch; I give to my nephew, Capt. Thaddeus Stevens, eight hundred dollars a year, to be paid half yearly. If by reason of sickness he may need more, he is to have it at the discretion of the trustees.

None of the legacies except the annuities will be paid for three years, during which time the house I now live in and furniture and books will remain as they are, except the miscellaneous books which may be sold at any time. Mrs. Smith may occupy the house the first year, and if Thaddeus Stevens, (son of Morrill), prefers to keep house to boarding, he may keep house there with her or with any one else during the three years or any part thereof. If at the end of three years Thaddeus Stevens prefers some other mode of living, then the trustees shall dispose of said property as they deem best. While it is occupied by my nephew he shall be charged three hundred dollars per annum rent for it; the property occupied by Mrs. Effinger, after adding two feet of the lot in width to the other lot may be sold. As five thousand have been offered for it it should not go for less.

The furnace and all other real estate may be rented or sold. The furnace must not be worked longer than to consume the stock on hand.

If at the end of any five years Thaddeus (nephew) shall have shown that he has totally abstained from all intoxicating drinks during that time the trustees may convey to him one fourth of the whole property; if at the end of the next successive five years he shall show that he has totally abstained from all intoxicating drinks they may convey to him another fourth, being one-half of the property; if at the end of another consecutive five years he shall show that he has abstained from all intoxicating drink they may convey the whole to him in fee simple; if he should get married before the house I live in is sold he may receive the same and occupy it without sale.

If the life estate of my nephew or rather the annuity of the said Capt. Thaddeus Stevens of Pennsylvania, should expire before he

has enabled himself to become entitled to the corpus, or fee simple of my estate, then I dispose of whatever may remain, as follows; If the aggregate sum shall amount to fifty thousand dollars, without which no further disposition thereof can be made, I give it all to my trustees to erect, establish and endow a house of refuge for the relief of homeless indigent orphans. Those shall be deemed orphans who shall have lost either parent. I desire twenty thousand dollars to be expended in erecting suitable buildings, the residue to be secured in Government securities, bearing not less than six per cent. per annum interest. I wish the building to be erected in the city of Lancaster, south of East King street, provided sufficient ground, not less than two acres, shall be donated therefore, if not, then on the west side of said street, on the same condition. If sufficient should not be gratuitously offered than I desire it to be built at Columbia. The orphans who cannot be bound out may remain in the institution until the age of fifteen years, and longer if infirm, at the discretion of the authorities. They shall all be carefully educated in the various branches of English education, and all industrial trades and pursuits. This must be left to the dircretion of the authorities. No preference shall be shown on account of race or color, in the admission or treatment; neither poor Germans, Irish or Mohammedans, nor any others on account of their race; or the religion of their parents, must be excluded. All the immates shall be educated in the same classes and manner, without regard to color. They shall be fed at the same table. The dormitories to be under the direction of the authorities. The trustees should procure an act of incorporation at some convenient time.

This I declare to be my last will and testament, and name as my executors and trustees Anthony E. Roberts, O. J. Dickey and Edward McPherson, this (30) thirtieth day of July, one thousand eight hundred and sixty-seven (1867).

THADDEUS STEVENS.

Signed in the presence of
EDWARD REILY,
CHRISTOPHER DAISZ.

I, Thaddeus Stevens, of Lancaster, make and declare this a codicil to my last will and testament.

Item. I bought Jno. Shertz's property at sheriff's sale at much below its value. I only want my own, all except three hundred dollars, the proceeds of it and the interest I direct shall be returned to the estate.

Item. If within five years after my death the Baptist brethern should build a house of public worship in the city of Lancaster for the purpose of worshipping according to their creed, I direct one thousand dollars to be paid towards its cost. I do this out of respect for the memory of my mother, to whom I owe what little

prosperity I have had on earth, and which, small as it is, I desire emphatically to acknowledge.

Item. If my nephew, Major Thaddeus Stevens, should get married before my decease, he will be at liberty to take possession and hold in fee the house in which I now dwell, with the furniture thereof, and I, in that event, remove all the restrictions which I place upon the devise of that property, in the body of my will. I hereby exclude the corner property now occupied by Effinger from this provision.

Item. In eight years after my decease if my estate shall have sufficiently accumulated to do it without embarrasment, I direct one thousand dollars to be paid to the Pennsylvania College, at Gettysburg, for the use of Stevens Hall.

I hereby request O. J. Dickey, Esq., to act as executor to this codicil.

In witness whereof I have hereunto set my hand and seal, this eleventh day of November, in the year of our Lord, one thousand eight hundred and sixty-seven.

THADDEUS STEVENS. [L. S.]

Signed, sealed, published and declared by the said Thaddeus Stevens as, and for a codicil to his last will and testament, in the presence of us, who, in his presence and in the presence of each other, have, at his request, subscribed our names as witnesses thereto.

WALTER G. EVANS,
JAS. P. BOYD.

LANCASTER COUNTY, SS.

I certify the preceding to be a true copy of the original will and codicil of Thaddeus Stevens, deceased, as duly proven according to law, on the 21st day of September, A. D. 1868, and remaining filed of record in the register's office of the said county.

Given under my hand and seal of office, at the city of Lancaster, on the 26th day of September, A. D. 1868.

LUTHER RICHARDS.

Exhibit B.

HON. EDW'D MCPHERSON,

HON. A. E. ROBERTS,

Surviving Executors of the Will of Thaddeus Stevens, late of the City of Lancaster, deceased:

GENTLEMEN:—

That part of the will of your testator which provides for the endownment of a charity, likewise provides that unless the estate

amounts to the sum of fifty thousand dollars, you can make no further disposition thereof. It is now evident that the aggregate of the estate in your hands does not amount to fifty thousand dollars, and the provisions in the will in regard to the said charity are void for that reason, as well as divers other reasons. We therefore hereby notify you that the balance of the estate now in your hands and under your control, belongs to Dr. Thaddeus M. Stevens, as heir-at-law of one-half thereof, and as assignee of his sister, Mrs. Coffman, heir-at-law of the other half thereof; and we ask that the same be placed in our possession for the use of the said Dr. Thaddeus M. Stevens.

D. G. ESHLEMAN,
H. M. NORTH,
Attorneys for Dr. Thad. M. Stevens.

LANCASTER, Nov. 23, 1881.

We accept service of the above and have received copy.

GEO. M. KLINE,
DANIEL G. BAKER,
Atty's for Executors.

Jan'y 18, 1882.

Eq. Doc. No. , page .

IN THE COURT of COMMON PLEA

OF LANCASTER COUNTY

In Equity.

DR. THADDEUS M. STEVENS
Plaintiff;

vs.

ANTHONY E. ROBERTS and EDWARD McPHERSON, Executors of the Will of THADDEUS STEVENS, late of the City of Lancaster, dec'd, *Defendants.*

BILL IN EQUITY.

Filed ..... *A.D. 188*

To the within named defendants, A. E. ROBERTS and EDW. McPHERSON

You are hereby notified and required within fourte days after service hereof on you, exclusive of the day such service, to cause an appearance to be entered f you in the Court of Common Pleas (Sitting in Equity) Lancaster County, to the within bill of complaint of t within named Dr. Thaddeus M. Stevens, and to obser what the said Court shall direct.

WITNESS my hand at Lancaster City, Lancaster Pennsylvania, this day of February, A. D. 1882

D. G. ESHLEMAN,
H. M. NORTH,
Solicitors for Plaintiff.

NOTE.—If you fail to comply with the above directio by entering an appearance in the Prothonotary's Offi within fourteen days, you will be liable to have the b taken *pro confesso*, and a decree made against you your absence

LANCASTER BAR PRINT.

IN THE

COURT OF COMMON PLEAS OF LANCASTER CO.

SITTING IN EQUITY,

BETWEEN

DR. THADDEUS M. STEVENS, *Plaintiff;*

AND

ANTHONY E. ROBERTS and EDWARD McPHERSON, Executors of the will of THADDEUS STEVENS, late of the City of Lancaster, deceased, *Defendants.*

To the Honorable Judges of said Court:

The defendants, for answer to the plaintiff's bill, say:

1. That we are not prepared either to admit or deny the truth of the statements set forth in the *first* paragraph of plaintiff's bill, having no such knowledge, information or belief as to justify such admission or denial.

2. We admit the statements set forth in paragraph *second*, with these corrections:

1st. Thaddeus Stevens died at Washington, D. C., on the 11th day of August, 1868.

2d. That O. J. Dickey was appointed sole executor of the codicil.

3. We admit the statements in paragraph *third.*

4. That Captain Thaddeus Stevens died on or about June 1, 1874, before he enabled himself to become entitled to the *corpus* or fee simple of the estate; that thereby the provisions of said will "to erect, establish and endow a house of refuge for the relief of homeless indigent orphans" came into effect and operation.

That all the debts of said testator, so far as we know, have been paid, and all the legacies except one given under the following clause in the codicil to testator's will (See p. 7):

"ITEM. In *eight* years after my decease, if my estate shall have sufficiently accumulated to do it without embarrassment, I direct *one thousand dollars* to be paid to the Pennsylvania College, at Gettysburg, for the use of Stevens Hall."

And another (p. 4) as follows:

"I direct one hundred dollars to be put at compound interest and the aggregate amount to be paid to Thaddeus Stevens Brown, son of John E. Brown, of Philadelphia, at age."

That the estate remaining consists of money and securities, amounting to from twenty-three to twenty-five thousand dollars, of which nearly six thousand dollars are in the hands of A. E. Roberts, and the balance, in Government bonds, mortgages, notes and cash, in the hands of Edward McPherson.

Of real estate, a tract of land in Adams and Franklin counties, containing about 15,000 acres, with furnace and other buildings upon it and deposits of ore.

We admit our inability up to this point of time to sell the entire tract as a whole, but have sold from time to time detached portions, and during the year 1881 have effected sales, public and private, of 1040 acres for $5,609.46, being

an average of about $5.50 per acre, and within a few months have made another small sale as the same price. We have also made a survey of about a thousand acres with view to a sale this Fall.

It is manifest from these figures that if the executors sell the remaining real estate at a price much below that at which they have heretofore made sales, the fund of fifty thousand dollars for testator's charity will be more than realized. We are selling the property as rapidly as the market will permit.

5. As to the value of testator's estate we refer to the foregoing answer. We deny that the provisions of said will in reference to said charity are void, and that the estate descends to the heirs at law, if any, of the testator. We deny plaintiff's interpretation of this will. We hold that testator intended, after the failure of his nephew Thaddeus to enable himself to receive the estate, the executors should hold the estate and devote it to the second object of his bounty, the orphan asylum, whenever the fund had accumulated to the sum of fifty thousand dollars.

For further answer we say that the funds in hand are made up of the balance remaining from sales of real estate and interest on investments.

And we submit to this Honorable Court that all and every matter in the said complainant's bill mentioned and complained of are matters which may be tried and determined at law, and in respect to which the said complainant is not entitled to any relief from a Court of Equity, and these defendants hope and pray that they shall have the benefit of this defence as if they had demurred to the said complainant's bill.

And the defendants deny that there is any matter or thing in the said complainant's bill of complaint contained material or necessary for these defendants to make answer

unto and not herein and hereby answered, confessed, traversed, avoided or denied, all which matters and things these defendants are ready and willing to aver, maintain and prove, as the Honorable Court shall direct, and humbly pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

A. E. ROBERTS,
EDW. McPHERSON.

LANCASTER COUNTY, SS.

Anthony E. Roberts and Edward McPherson, the above named defendants, having been duly affirmed, depose and say that the facts set forth in the above answer are true, so far as stated from their own knowledge, and so far as stated from information of others they believe them to be true.

A. E. ROBERTS,
EDW. McPHERSON.

Affirmed and subscribed this 26th day of September, A. D. 1882, before W. E. KREIDER, *for Proth'y.*

GEORGE M. KLINE,
DANIEL G. BAKER,
Solicitors for Defendants.

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IN THE COURT of COMMON PLEAS

OF LANCASTER COUNTY

In Equity.

Dr. THADDEUS M. STEVENS

vs.

ANTHONY E. ROBERTS and EDWARD McPHERSON, Executors of the will of Thaddeus Stevens, late of the City of Lancaster, deceased.

ANSWERS OF DEFENDANTS.

Filed Sept. 26, 1882.

LANCASTER BAR PRINT.