

IN THE

# Supreme Court of Pennsylvania

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**EASTERN DISTRICT.**

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January Term, 1901. No. 72.

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Appeal of The Lancaster Trust Company, Trustee  
under the Will of the Late Thaddeus Stevens,  
Deceased, from the Decree of the Or-  
phans' Court of Lancaster County.

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CHAS. R. KLINE, } For Appellant.  
W. U. HENSEL, }

APPEL & APPEL, } For Appellee.  
H. R. FULTON, }

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## APPELLANTS' PAPER BOOK.

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LANCASTER, PA.:  
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1901.

LancasterHistory

### DOCKET ENTRIES.

ESTATE OF THADDEUS STEVENS, Deceased.	{	Appeal from the Orphans' Court of Lancaster County.
APPEAL OF THE LANCASTER TRUST COMPANY, TRUSTEE.	{	In the Supreme Court of Pennsylvania (E. D.), January Term, 1901, No. 72.

December 31, A. D. 1898, Petition of George D. Sprecher, President; Charles M. Howell, Secretary; Hugh R. Fulton, Treasurer, of "The Stevens Orphans' Home of Lancaster City" *et. al.*, with leave granted by Henry C. McCormick, Attorney General of the Commonwealth of Pennsylvania, filed in the Orphans' Court of Lancaster County.

January 14, A. D. 1899, Prayer of the Petitioners granted by the Court as to organization, etc., decree to be prepared and presented.

January 21, A. D. 1899, Decree filed, to wit: "And now, January 21st, 1899, the petition in the above case having been presented, read and filed, upon due consideration thereof, it is ordered, adjudged and decreed that petitioners have leave to form an organization for the purposes proposed, namely, for the purpose of erecting, establishing and endowing a house of refuge for the relief of the homeless, indigent orphans, according to the provisions of the will of the Hon. Thaddeus Stevens, late of said City of Lancaster, Pa., deceased, and the orders and directions of this Court; and to become incorporated for the purposes aforesaid."

July 5, A. D. 1900, Return or Suggestion as to Organization and Petition filed.

October 26, A. D. 1900, Rule granted on The Lancaster Trust Company, Trustee, to show cause why it should not pay over trust funds to the petitioners.

November 7, A. D. 1900, Answer of The Lancaster Trust Company, respondent, filed.

January 19th, A. D. 1901, Opinion of the Court filed, to wit: "Rule made absolute."

February 9, A. D. 1901, Appeal of The Lancaster Trust Company to the Supreme Court of Pennsylvania filed.

Attest: C. G. STRICKLER,  
*Deputy Clerk of the Orphans' Court of the  
County of Lancaster.*

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### STATEMENT OF THE QUESTION INVOLVED.

The question involved in this appeal is whether the Stevens Orphans' Home—a corporation chartered by the Court of Lancaster County, to establish a house of refuge for homeless and indigent orphans—is such an institution as was intended by the will of the late Hon. Thaddeus Stevens, deceased, to be the object of his residuary bequest; and whether the Court properly made a decree directing the trustee under his will to pay over the funds in its hands to this corporation. The appeal is taken for the purpose of having the decree considered and passed upon by the appellate jurisdiction.

### HISTORY OF THE CASE.

Hon. Thaddeus Stevens died August 12, 1868, testate. He gave his estate to his trustees and executors, to dispose of it as directed by his will. He made various charitable and personal bequests, and disposed of the residue in these terms :

" 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 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. 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 therefor, if not, on the north side of said street, on the same condition. If sufficient should not be gratuitously offered then 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 discretion 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 inmates 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."

After various litigation, which need not be considered in this case—except that the integrity of the trust was established in Stevens' Appeal, 164 Pa., 209—the residue of his estate, now amounting to over \$55,000, lodged in the hands of the Lancaster Trust Company, for the purposes of this bequest—it having been appointed trustee to succeed the last of his executors, all now deceased.

This trustee has acted merely as custodian of the fund and has taken no steps to erect, establish or endow the house of refuge or orphans' asylum provided for and contemplated by the testator. No ground for that purpose has ever been donated or offered to it, either in Lancaster or in Columbia. The Home for Friendless Children in the City and County of Lancaster was established before the death of Mr. Stevens, and had grounds "south of East King street," and there is every reason to believe that he contemplated some arrangement by which it might avail itself of the provisions of his bounty, by enlarging its scope and widening the doors through which inmates were admitted to it. In any event, a number of prominent and most excellent citizens of Lancaster, including, substantially, the same ladies and gentle-

men who are interested in the Home for Friendless Children, have decided to avail themselves of the provisions of his will and to establish the beneficent institution contemplated by the testator. They, therefore, organized "The Stevens Orphans' Home of Lancaster city," and petitioned the Court for such decree and for such direction and control of The Lancaster Trust Company, trustee, as would result in the establishment of a home that could receive and make available the bequest of Mr. Stevens. The Attorney General concurred in the petition.

After full consideration, the Court gave the petitioners leave to form their organization; whereupon a charter was obtained, in accordance with the avowed purposes; and, The Home for Friendless Children for the City and County of Lancaster has donated to The Stevens Orphans' Home two acres of ground in the City of Lancaster, south of East King street, in order to meet the requirements of said will; and has, by deed, conveyed the same to said Stevens Orphans' Home.

A further petition, return or suggestion was then made, asking the Court to make further order in the premises.

To this The Lancaster Trust Company, trustee, made answer, admitting all the material facts and avowing its willingness and desire to have the intent of the testator, so far as the same could be ascertained and carried into effect, executed, but raising simply the legal question whether or not the proposed institution was such a trustee as was contemplated by the testator to carry out the trust which he created, and to erect, maintain and establish the home or asylum provided for by his will. Upon this petition and answer, the Court filed an opinion and made a decree, directing the Trust Company to file an account of its trust, to pay over the balance to The Stevens Orphans' Home, and to be discharged as trustee.

From this decree the appeal is taken, not because the present trustee is desirous of further tying up the fund nor longer delaying the consummation of the testator's beneficent plan, but simply that all parties concerned may have it finally, judicially, determined that the scheme proposed be sanctioned by law.

### WILL OF THADDEUS STEVENS.

"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, <sup>by</sup> 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 Alanson 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 plants 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 <sup>same</sup> 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 claims 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 trusted on honor to take such as she claims without further proof.

"I give to 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. \*

"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 ab-

stained 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 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. 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 therefor. If not, <sup>then</sup> on the <sup>west</sup> north side of said street, on the same condition. If sufficient <sup>ground</sup> should not be gratuitously offered then 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 discretion 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 inmates 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.

\* "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 <sup>may</sup> deem best. While it is occupied by my nephew, he shall be charged three hundred <sup>dollars</sup> 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."

"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 REILLY,

"CHRISTOPHER DAISZ."

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

"Item. I bought John 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 Brethren 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 embarrassment, 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, &c.  
in the presence of  
Walter & Evans, Jas. P. Boyd.*

# **PETITION OF STEVENS ORPHANS' HOME.**

IN THE ESTATE OF THADDEUS { In the Orphans' Court of  
STEVENS, DECEASED. { Lancaster County.

*To the Honorable, the Judges of said Court :*

Your petitioners, by leave of <sup>1</sup>H. C. McCormick, Attorney General of the Commonwealth of Pennsylvania, on the relation of your petitioners, associated together and known as "The Stevens Orphans' Home of Lancaster City," respectfully represent :

Your petitioners are residents of the City of Lancaster, Pa., and have associated themselves together under the name of "The Stevens Orphans' Home of Lancaster City," for the purpose of erecting, establishing and endowing a house of refuge for the relief of the homeless, indigent orphans, according to the provisions of the will of the Hon. Thaddeus Stevens, late of said Lancaster City, deceased.

Hon. Thaddeus Stevens, of the City of Lancaster, Pa., died on the 12th day of August, 1868, leaving a last will and testament, which provides, *inter alia*, as follows :

"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 then amount to fifty thousand dollars, without which no further disposition whereof 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. 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 inter-

est. 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 therefor; if not, on the north side of said street, on the the same conditions. If sufficient shall not be gratuitously offered, then 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 discretion 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 inmates 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."

Anthony F. Roberts, O. J. Dickey and Edward McPherson were appointed executors and trustees under said will. O. J. Dickey died on the        day of April, 1876; Anthony F. Roberts died on the        day of January, 1885; and Edward McPherson died on the 14th day of December, 1895. Prior to the death of said Edward McPherson, executor and testamentary trustee aforesaid, he filed a third account of the surviving executors of said Thaddeus Stevens, deceased, which was referred to auditors for distribution, who awarded the sum of \$50,687.90 to Edward McPherson, surviving executor and trustee, in trust for the charitable uses and

purposes ordered, directed and provided for by the testator in the clause of said will hereinabove set forth. On appeal to the Supreme Court the report of said auditors was confirmed, and the said fund, with its increment, remained in the hands of said Edward McPherson until he died as aforesaid.

On the death of said Edward McPherson his administrators filed an account of said trust funds, showing a balance in their hands of \$55,686.05. On the petition of John B. McPherson and Donald P. McPherson, administrators c. t. a. of Edward McPherson, deceased, on February 17, 1896, the Orphans' Court of Lancaster County appointed The Lancaster Trust Company trustee under the will of said Thaddeus Stevens, deceased, and said sum of \$55,686.05 was paid over to said Trust Company, trustee as aforesaid, and the estate of Edward McPherson was discharged from said trust.

That said Trust Company has been in the possession of said trust fund from the time it received the same until the present time, and now has in its possession said fund of \$55,686.05, together with the interest and accumulations thereon.

The said Trust Company has acted merely as the custodian of said funds, and has taken no steps to erect, establish and endow a house of refuge for the relief of the homeless, indigent orphans, or to carry out the terms of said trust in accordance with the will of said Thaddeus Stevens, deceased.

Your petitioners have organized an association, called The Stevens Orphans' Home of Lancaster City for the purpose of carrying out said trust in accordance with the provisions of the will of said Thaddeus Stevens, deceased; and if the said fund be paid to them they are ready and willing to carry out said trust and to erect, establish and endow a house of refuge for the relief of the homeless, indigent or-

phans, according to the provisions of said will and to manage and conduct the same in compliance with the terms of said will and according to such orders and directions as the Orphans' Court shall make in reference thereto. Their organization is such as they believe is contemplated by the will of said Thaddeus Stevens.

They have only organized said association, and have elected George D. Sprecher, President; Charles M. Howell, Secretary, and Hugh R. Fulton, Treasurer; and the following persons have been elected a Board of Trustees, namely:

George D. Sprecher,	Charles M. Howell,
W. F. Hambright,	James Shand,
John P. Kevinski,	John W. Appel,
Dr. George R. Welchans,	Hugh R. Fulton,
Jacob Rathfon,	H. E. Slaymaker,
Michael Haberbush,	Charles F. Miller.

And the following persons have been elected Board of Managers, namely:

Mrs. Sarah M. Kramph,	Mrs. Dr. Chas. A. Heinitsh,
Miss Emily B. Sprecher,	Mrs. Angelica B. Young,
Mrs. S. A. Cox,	Mrs. Esther R. Houston,
Mrs. M. E. Shirk,	Mrs. Catherine F. Mayer,
Mrs. Anna P. Cochran,	Mrs. Maria C. Heinitsh,
Miss Alice Nevin,	Miss Anna E. Hartman,
Miss Anna E. Erwin,	Mrs. Clara Fahnestock,
Mrs. Mary E. Heitshu,	Mrs. Sarah M. Franklin,
Mrs. Susan M. Brinton,	Mrs. C. K. Peacock,
Mrs. S. A. Gibbs,	Mrs. Elizabeth Fahnestock,
Mrs. Clara Brown,	Mrs. M. G. Myers,
Miss Ida Sprecher,	Miss Kate E. Worrest.

They have adopted a Constitution and By-Laws, copies of all of which are hereto attached and made part hereof.

They have secured from The Home for Friendless Children for the City and County of Lancaster, an agreement to donate to them two acres of ground in said City of Lancaster, south of East King Street, fronting on South Ann Street, a part of the premises now occupied by said Home for Friendless Children, where they propose to erect a building to cost twenty thousand dollars, and to conform to the provisions of said will of Thaddeus Stevens, deceased, for the purpose of carrying out the provisions of said trust according to said will.

Your petitioners are informed and believe that the foregoing trust created by the will of said Thaddeus Stevens, deceased, is such a charitable use as is contemplated by the provisions of the Act of Assembly of May 23, 1895, P. L., 114 *et seq.*, which provides as follows:

"That no disposition of property heretofor or hereafter made for any religious, charitable, literary or scientific use, shall fail for want of a trustee, or by reason of the objects being indefinite, uncertain or ceasing, or depending upon the discretion of a last trustee, or being in perpetuity or in excess of the annual value hereinabove limited, but it shall be the duty of any Orphans' Court, or court having equity jurisdiction in the proper county, to supply a trustee, and by its decrees to carry into effect the intent of the donor or testator, so far as the same can be ascertained and carried into effect consistently with law and equity; for which purpose the proceedings shall be instituted by leave of the Attorney General of the Commonwealth, on relation of any institution, association, corporation, not for profit or individual, desirous of carrying such disposition into effect, and willing to become responsible for the costs thereof, subject to an appeal, etc."

The Home for Friendless Children for the City and County of Lancaster, prior to 1885 (in the year     ), offered to donate to said executors of the will of said Thaddeus Stevens,

and testamentary trustees aforesaid, two acres of ground, in the City of Lancaster, south of East King Street, for the purpose of carrying out the terms of said trust and to secure said home for Lancaster City, but said offer was rejected as it was held the time had not arrived for the establishment of said home. The said Home for Friendless Children have also offered to donate to said Lancaster Trust Company two acres of ground as aforesaid for the purpose of locating said Orphans' Home in said Lancaster City, but said offer has not been accepted.

Your petitioners further say that said The Lancaster Trust Company, the present custodians of said trust fund as aforesaid, have not filed an account, showing what said fund, with accumulations, now amounts to.

Wherefore, your petitioners, willing to become responsible for the costs of the proceeding, pray :

FIRST. That your Honorable Court by its decrees carry into effect the intent of the testator, so far as the same can be ascertained, and carried into effect consistently with law or equity.

SECOND. That your Honorable Court order and direct The Lancaster Trust Company, trustee aforesaid, to account for the trust funds aforesaid now in its hands, and to pay over the same, together with all interest and accumulations thereon, to your petitioners, The Stevens Orphans' Home of Lancaster, for the purpose of carrying out the provisions of the will of said Thaddeus Stevens, deceased, in reference to said trust.

THIRD. That your Honorable Court remove said Lancaster Trust Company as trustee aforesaid, and discharge it from said trust upon the payment to your petitioners, The Stevens Orphans' Home of Lancaster City, the said trust funds and all interest and accumulations thereon.

FOURTH. That your Honorable Court decree that said trust fund be paid to your petitioners, The Stevens Orphans' Home of Lancaster City, as the persons entitled thereto, to erect, establish and endow a house of refuge for the relief of the homeless, indigent orphans, and to carry out the purposes of said trust according to the provisions of the will of said Thaddeus Stevens, deceased.

FIFTH. Such general relief in the premises as to your Honors may appear necessary and expedient.

And they will ever pray, etc., etc.

CHARLES M. HOWELL,  
 SIMON SHISSLER,  
 GEORGE D. SPRECHER,  
 J. ROHRER,  
 M. HABERBUSH,  
 W. F. HAMBRIGHT,  
 CHARLES F. MILLER,  
 THOS. B. COCHRAN,  
 HUGH R. FULTON,  
 EDW. P. BRINTON,  
 GEO. R. WELCHANS,  
 JAMES SHAND,  
 MRS. W. A. HEITSHU,  
 ESTHER R. HOUSTON,  
 ANGELICA F. YOUNG,  
 A. E. IRVIN,  
 MRS. ANNA P. COCHRAN,  
 H. IDA SPRECHER,  
 ALICE NEVIN,  
 S. A. COX,  
 S. A. GIBBS,  
 EMILY B. SPRECHER,  
 SARAH M. KRAMPH,  
 S. M. FRANKLIN,  
 ELIZABETH DICKEY FAHNESTOCK,  
 CLARA FAHNESTOCK.

Leave is hereby granted to present the above petition to the Orphans' Court of Lancaster County, Pa.

HENRY C. McCORMICK,

December 30, 1898.

*Attorney General.*

LANCASTER COUNTY, ss :

George D. Sprecher, one of the signers to the foregoing petition, being duly affirmed, says that the facts set forth in said petition are true and correct to the best of his knowledge and belief.

GEORGE D. SPRECHER.

Affirmed and subscribed this 31st day of December, A. D. 1898. *Coram.*

DANIEL KACHEL,

*Deputy C. O. C.*

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## CONSTITUTION OF THE STEVENS ORPHANS' HOME OF LANCASTER CITY.

### ARTICLE I.

The object and design of The Stevens Orphans' Home of Lancaster, Pa., shall be to "erect, establish and endow a house of refuge for the relief of the homeless, indigent orphans," in accordance with the provisions of the will of the late Honorable Thaddeus Stevens, deceased.

### ARTICLE II.

Any person who shall annually pay a sum not less than one dollar, before the first of May, shall be a member of this Society ; and any person who shall pay, at one time, the sum of ten dollars, shall be a member for life.

## ARTICLE III.

The Society shall meet annually, on the first Tuesday in May, public notice of which meeting shall be given at least one week previous in <sup>one</sup> ~~three~~ or more newspapers; at which meetings there shall be elected <sup>nine</sup> ~~sixteen~~ gentlemen, as Trustees, ~~and twenty-four ladies, as Managers,~~ in the manner and for the terms hereinafter provided, and until others are chosen. At all meetings of the Society the officers of the Board of Trustees shall preside, to wit: the President, Vice Presidents. In their absence, such other members as may be designated.

## ARTICLE IV.

Special meetings of the Society shall be held at the request, in writing, of <sup>three</sup> ~~five~~ members, to be called by the President, or in his absence by one of the Vice Presidents.

## ARTICLE V.

~~The government of The Stevens Orphans' Home shall be entrusted, in conjunction with a Board of Trustees hereinafter provided for, to a Board of Managers, to consist of twenty-four ladies, chosen at the meeting of the corporators, in May, 1899, in the manner following, to wit.~~

~~Six Managers to serve for one year,~~

~~Six Managers to serve for two years,~~

~~Six Managers to serve for three years,~~

~~Six Managers to serve for four years;~~

~~And at every succeeding annual meeting, the members of the said Association, in pursuance to said charter, shall elect six Managers to serve for four years.~~

~~The Board of Managers shall have power to choose their own officers, to fill all vacancies in their own Board, until~~

the next annual election; and to make such By-Laws as they may deem fit and proper, not repugnant to this Constitution; and five Managers shall form a quorum for business at their stated meetings.

#### ARTICLE VI.—BOARD OF TRUSTEES.

The Board of Trustees shall consist of <sup>nine</sup> ~~sixteen~~ gentlemen, chosen by the association at their meeting, held in May, 1899, as follows:

~~Three~~ Four to serve for one year,

~~Three~~ Four to serve for two years,

~~Three~~ Four to serve for three years,

Four to serve for four years;

And at every succeeding annual meeting the Society shall elect <sup>three</sup> ~~four~~ Trustees to serve for <sup>three</sup> ~~four~~ years.

The Board of Trustees shall choose their own officers, fill all vacancies that may occur in their own body, until the next annual election, and make all needful By-Laws and Regulations not repugnant to this Constitution; and five members shall be a quorum for the transaction of business at their stated meetings.

#### ARTICLE VII.

The Board of Trustees shall meet statedly, on the second Tuesday in May, second Tuesday in August, and quarterly thereafter. They shall have the control and management of the real estate, investments, personal securities and <sup>all</sup> ~~all~~ funds of the Society, except such as are collected by the Managers for the current expenses of the said Stevens Orphans' Home. They shall <sup>manage</sup> ~~superintend~~ the indenturing of the inmates and afford advice to the Managers when requested. <sup>to effect these purposes they may</sup> ~~to effect these purposes they may~~ from time to time make such rules as they think proper,

## ARTICLE VIII.

At every stated meeting of the Trustees the Managers shall make a written report of their transactions, and shall make and receive such suggestions as the interests of the institution may require.

V/1A

## ARTICLE IX.

This Constitution shall not be altered except at an annual or special meeting of the Society, at which not less than ten members shall be present.

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*Justice*

**BY-LAWS—BOARD OF MANAGERS.**

## ARTICLE I.

Stated meetings of the Managers shall be held on the third Tuesday of each month, at 10 o'clock a. m.

## ARTICLE II.

At a special meeting, to be held within one week after the annual meeting of the Society, the Managers shall elect, from their own number, the following officers, viz :

A President.

A Vice President.

A Secretary.

A Treasurer.

And the following Standing Committees :

A Committee on Admission and Dismission.

A Household Committee.

A Purchasing Committee.

A Committe on Education.

They shall also, at this meeting, elect a Matron, Teacher, and such other officers and caretakers as may be necessary.

### ARTICLE III.—DUTIES OF THE MANAGERS AND OFFICERS.

The President or, in her absence, the Vice President shall, at the time appointed, take the chair, call for the minutes of the previous meeting, preserve order, appoint all committees, unless otherwise provided for, give a casting vote in case of a tie, and shall be, *ex officio*, member of all committees.

### ARTICLE IV.—OF THE SECRETARY.

The Secretary shall keep a fair minute of all meetings of the Board, issue all notices, make all written communications directed by the Board, and have charge of all documents and records not connected with the office of the Treasurer.

### ARTICLE V.—OF THE TREASURER.

The Treasurer shall receive all moneys collected by the Managers for the current expenses of the said Orphans' Home, make no payments except upon a written order of the President, and keep a fair account of receipts and expenditures, which shall at all times be open to the inspection of the Managers. She shall make a monthly summary of her receipts and expenditures to the Board, and an annual report to the Society.

### ARTICLE VI.

These By-Laws may be altered at any stated meeting by a vote of two-thirds of the members present, notice having been given at a previous meeting.

**BY-LAWS—BOARD OF TRUSTEES.****ARTICLE I.**

The officers of the Board shall consist of one President, two Vice Presidents, one Secretary, one Treasurer and one Solicitor. All officers to be elected for the term of one year, or until the next annual election.

Stated meetings of the Board shall be held quarterly, on the second Tuesday in May, Second Tuesday in August, and quarterly thereafter.

Special meetings may be called by the President or, in his absence, by one of the Vice Presidents, at the written request of three members; and at all meetings five members shall constitute a quorum; *provided*, notice of special meeting be given to the members of the Board the day previous.

**ARTICLE II.**

The order of business shall be as follows :

1. Roll Called.
2. Minutes Read and Approved.
3. Reports of Committees.
4. Treasurer's Report.
5. Deferred and Unfinished Business.
6. New Business.

**ARTICLE III.**

The President, Vice Presidents and Secretary shall constitute an Executive Committee, to assist the Managers in providing suitable places for the children and indenturing them when places are so found, and do such other business of the said Stevens Orphans' Home as would be proper for an Executive Committee, not inconsistent with the action

of the Board of Managers and in accordance with any regulation or resolution which may be adopted by this Board.

#### ARTICLE IV.

The Treasurer shall have charge of all evidence and proofs of property. He shall receive all moneys that may be collected for the Society. He shall deposit the same in such bank or institution as may be designated by the Executive Committee, pay all orders drawn upon him under a resolution of the Board or by the Executive Committee. He shall keep an accurate account of his receipts and payments in a book for that purpose, which shall be at all times open for the inspection of the Trustees, and shall submit a written report to the Trustees at every stated meeting of the Board, and at the annual meeting of the Society.

#### ARTICLE V.

The Secretary shall keep a fair record of the proceedings of the Board of Trustees and report the same at their several meetings. He shall also give notice, in writing, of all stated and special meetings of the Trustees.

#### ARTICLE VI.

No alteration in these By-Laws shall be made, except notice is given at a previous meeting of such proposed alteration.

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#### DECREE OF COURT.

IN THE ESTATE OF THADDEUS  
STEVENS, DECEASED.

{ In the Orphans' Court of  
Lancaster County, Pa.  
{ In re-Petition of The Ste-  
vens Orphans' Home of  
Lancaster City.

And now, January 21, 1899, the petition in the above

case having been presented, read and filed, upon due consideration thereof, it is ordered, adjudged and decreed that petitioners have leave to form an organization or association for the purposes proposed, namely, for the purpose of erecting, establishing and endowing a house of refuge for the relief of the homeless, indigent orphans, according to the provisions of the will of the Hon. Thaddeus Stevens, late of said City of Lancaster, Pa., deceased, and the orders and directions of this Court; and to become incorporated for the purposes aforesaid.

BY THE COURT.

*Attest:* C. G. STRICKLER,  
Deputy Clerk O. C.

### PETITION OF INCORPORATED HOME.

IN THE ESTATE OF THADDEUS STEVENS, DECEASED.	{	<p>In the Orphans' Court of Lancaster County, Pa.</p> <p>In re-Petition of The Stevens Orphans' Home of Lancaster City for an order directing the Stevens trust fund to be paid to it, etc.</p>
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*To the Honorable, the Judges of said Court:*

And now, July 5, 1900, the undersigned, The Stevens Orphans' Home of Lancaster City, respectfully returns and suggests:

In pursuance of the interlocutory order of the Court made January 21, 1899, requiring petitioners in the proceedings in the above matter to perfect their organization if they desired the Court to act on their petition, the said The Stevens Orphans' Home of Lancaster City was, on the 11th day

of March, 1899, duly incorporated as a corporation of the first class under the laws of the Commonwealth of Pennsylvania, for the purpose of establishing a home for homeless, indigent orphans, etc., as set forth in the articles of incorporation, a copy of which is hereto attached and made part hereof. The said charter is recorded in the office for the recording of deeds in and for Lancaster County, Pennsylvania, in Record Book of Charters, Vol. 2, p. 93, etc.

That said corporation has been duly organized in accordance with the terms of said charter, and the constitution and by-laws attached to the original petition and made part thereof, and is ready to carry on the business for which it was organized.

It is also suggested that The Home for Friendless Children for the City and County of Lancaster has donated to The Stevens Orphans' Home of Lancaster City two acres of ground in the City of Lancaster, County of Lancaster and State of Pennsylvania, south of East King Street in said city, in order to meet the requirements of said will; and has by deed, dated 1900, conveyed the same to said Stevens Orphans' Home, as by reference to said deed, profert of which is herewith made to the Court, will more fully and at large appear.

The two acres described in said deed are as follows: All that certain piece or parcel of land, situated in the City and County of Lancaster, State of Pennsylvania, south of East King Street, bounded and described as follows:

Beginning at the northwest corner of Dauphin and Marshall Streets and running thence northerly along the west side of said Marshall Street two hundred eighty-four feet eight and one-half inches to a point; thence westerly three hundred and six feet to an alley; thence southerly along said alley two hundred eighty-four feet eight and one-half

inches to Dauphin Street; thence easterly three hundred and six feet to place of beginning. Bounded on the north by other land of said Home for Friendless Children, on the east by Marshall Street, on the south by Dauphin Street and on the west by an alley; containing two acres.

Wherefore, your petitioner, having complied with the requirements of the Court in the premises, and being ever ready to do whatever the Court may further direct, prays that the Court may make such further order in answer to the prayers contained in the original petition filed in the above matter as to it may seem fit and proper.

And it will ever pray, etc.

THE STEVENS ORPHANS' HOME  
OF LANCASTER CITY.



GEORGE D. SPRECHER,  
*President.*

*Attest:* CHARLES M. HOWELL,  
*Secretary.*

STATE OF PENNSYLVANIA, }  
COUNTY OF LANCASTER, } ss:

Before me personally appeared George D. Sprecher, President of The Stevens Orphans' Home of Lancaster City, who being duly affirmed, says that the facts and statements contained in the foregoing petition are true and correct to the best of his knowledge, information and belief.

GEORGE D. SPRECHER.

Subscribed and affirmed before me this 5th day of July, 1900.

C. G. STRICKLER,  
*Deputy Clerk O. C.*

**CHARTER OF THE STEVENS ORPHANS' HOME  
OF LANCASTER CITY.**

*To the Honorable, the Judges of the Court of Common Pleas of  
Lancaster County, Pennsylvania :*

The undersigned, all of whom are citizens of Pennsylvania, have associated themselves together for the purpose of erecting, establishing and endowing a house of refuge or orphans' home, according to the provisions of the last will and testament of the late Hon. Thaddeus Stevens, of Lancaster, Pennsylvania, deceased, and being desirous of becoming incorporated agreeably to the provisions of the Act of Assembly, entitled, "An act to provide for the incorporation and regulation of certain corporations," approved April 29, 1874, and the supplements thereto, do hereby certify :

1. The name of the proposed corporation is The Stevens Orphans' Home of Lancaster City.

2. The said corporation is formed for the purpose of erecting, establishing and endowing a house of refuge for the relief of homeless, indigent orphans, according to the following provisions of the last will and testament of said Thaddeus Stevens, deceased, namely :

"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. 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 discretion 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 race or the religion of their parents, must be excluded. All the inmates 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."

3. The business of the said corporation is to be transacted at the City of Lancaster, Pennsylvania.

4. The said corporation is to exist perpetually.

5. The names and residences of the subscribers are as follows :

— George D. Sprecher, . . . . .	Lancaster, Pa.
— Charles M. Howell, . . . . .	Lancaster, Pa.
W. F. Hambright, . . . . .	Lancaster, Pa.
James Shand, . . . . .	Lancaster, Pa.
— John B. Kevinski, . . . . .	Lancaster, Pa.
Michael Haberbush, . . . . .	Lancaster, Pa.
John W. Appel, . . . . .	Lancaster, Pa.
— Henry F. Slaymaker, . . . . .	Lancaster, Pa.
George R. Welchans, M. D., . . . . .	Lancaster, Pa.
— Jacob Rathfon, . . . . .	Lancaster, Pa.
Hugh R. Fulton, . . . . .	Lancaster, Pa.
Charles F. Miller, . . . . .	Lancaster, Pa.
Jeremiah Rohrer, . . . . .	Lancaster, Pa.
H. S. Williamson, . . . . .	Lancaster, Pa.

6. The said corporation is to be managed by a Board of Trustees, consisting of <sup>nine</sup> ~~sixteen~~ members, ~~and a Board of Lady Managers, consisting of twenty-four members.~~ The names and residences of the Trustees chosen for the first year are :

George D. Sprecher, . . . . .	Lancaster, Pa.
Charles M. Howell, . . . . .	Lancaster, Pa.
W. F. Hambright, . . . . .	Lancaster, Pa.
James Shand, . . . . .	Lancaster, Pa.
John B. Kevinski, . . . . .	Lancaster, Pa.
John W. Appel, . . . . .	Lancaster, Pa.
Dr. George R. Welchans, . . . . .	Lancaster, Pa.
Hugh R. Fulton, . . . . .	Lancaster, Pa.
Jacob Rathfon, . . . . .	Lancaster, Pa.
H. E. Slaymaker, . . . . .	Lancaster, Pa.
Michael Haberbush, . . . . .	Lancaster, Pa.
Charles F. Miller, . . . . .	Lancaster, Pa.
Jeremiah Rohrer, . . . . .	Lancaster, Pa.
H. S. Williamson, . . . . .	Lancaster, Pa.

The names and residences of the members of the Board of Lady Managers chosen for the first year are as follows :

Mrs. Sarah M. Kramph, . . . . .	Lancaster, Pa.
Mrs. Dr. Charles A. Heinitsh, . . . . .	Lancaster, Pa.
Mrs. Emily B. Sprecher, . . . . .	Lancaster, Pa.
Mrs. Angelica B. Young, . . . . .	Lancaster, Pa.
Mrs. S. A. Cox, . . . . .	Lancaster, Pa.
Mrs. Esther B. Houston, . . . . .	Lancaster, Pa.
Mrs. M. E. Shirk, . . . . .	Lancaster, Pa.
Mrs. Catharine F. Mayer, . . . . .	Lancaster, Pa.
Mrs. Annie P. Cochran, . . . . .	Lancaster, Pa.
Miss Alice Nevin, . . . . .	Lancaster, Pa.
Miss Anna E. Hartman, . . . . .	Lancaster, Pa.
Miss Anna E. Irwin, . . . . .	Lancaster, Pa.
Mrs. Clara Fahnestock, . . . . .	Lancaster, Pa.
Mrs. Mary E. Heitshu, . . . . .	Lancaster, Pa.
Mrs. Sarah M. Franklin, . . . . .	Lancaster, Pa.
Mrs. Susan M. Brinton, . . . . .	Lancaster, Pa.

Mrs. C. K. Peacock, . . . . . Lancaster, Pa.  
 Mrs. S. A. Gibbs, . . . . . Lancaster, Pa.  
 Mrs. Elizabeth Fahnestock, . . Lancaster, Pa.  
 Mrs. Clara Brown, . . . . . Lancaster, Pa.  
 Mrs. M. G. Myers, . . . . . Lancaster, Pa.  
 Miss Ida Sprecher, . . . . . Lancaster, Pa.  
 Miss Kate E. Worrest, . . . . Lancaster, Pa.

7. The said corporation has no capital stock.

Witness our hands and seals this 30th day of January,  
 A. D. 1899.

GEORGE D. SPRECHER, [SEAL.]  
 CHARLES M. HOWELL, [SEAL.]  
 GEO. R. WELCHANS, [SEAL.]  
 H. S. WILLIAMSON, [SEAL.]  
 W. F. HAMBRIGHT, [SEAL.]  
 JOHN W. APPEL, [SEAL.]  
 J. ROHRER, [SEAL.]  
 JAMES SHAND, [SEAL.]  
 JACOB RATHFON, [SEAL.]  
 CHARLES F. MILLER, [SEAL.]  
 JOHN B. KEVINSKI, [SEAL.]  
 HUGH R. FULTON, [SEAL.]  
 MICHAEL HABERBUSH. [SEAL.]

LANCASTER COUNTY, ss:

Personally appeared before me, the Recorder of Deeds in and for Lancaster County aforesaid, George D. Sprecher, Charles M. Howell, W. F. Hambright, James Shand and John B. Kevinski, all of whom are subscribers to the above and foregoing certificate of incorporation, and in due form of law severally acknowledged the same to be their act and deed.

Witness my hand and official seal this 30th day of January, A. D. 1899.

B. S. McLANE,  
*Deputy Recorder.*

Entered and filed February 4, A. D. 1899.

JNO. B. MILLER,  
*Deputy Prothonotary.*

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### DECREE OF INCORPORATION.

IN THE COURT OF COMMON PLEAS OF LANCASTER COUNTY.

And now, March 11th, A. D. 1899, the within certificate of incorporation having remained on file in the office of the Prothonotary of this Court since the 4th day of February last, being the day on which publication of notice of intended application was first made, as appears by the record, and due proof of said publication having been made, I do hereby certify that I have examined said instrument and find the same to be in proper form and within the purposes named in the first class of corporations, specified in Section 2 of Act of Assembly of April 29, 1874, and that said purposes are lawful and not injurious to the community.

It is therefore ordered and decreed that said charter be and the same is hereby approved, and upon the recording of the same and its indorsements, and this order in the office of the Recorder of Deeds in and for the said County of Lancaster, the subscribers thereto and their associates shall thenceforth be a corporation for the purposes and upon the terms and under the name therein stated.

JOHN B. LIVINGSTON, LL. D.,  
*President Judge.*

Attest : W. D. STAUFFER,  
*Prothonotary.*

Recorded in the office for Recording of Deeds in and for Lancaster County, Pennsylvania, in Record Book of Charters, Volume 2, page 93, etc. Witness my hand and seal of office this 13th day of March, A. D. 1899.



J. H. HOOBER,  
*Recorder.*

### ANSWER OF THE LANCASTER TRUST COMPANY, TRUSTEE.

IN THE ESTATE OF THADDEUS STEVENS, DECEASED.	{	In the Orphans' Court of Lancaster County. In re-Petition of The Stevens Orphans' Home of Lancaster City.
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And now, November 7, 1900, comes The Lancaster Trust Company, trustee under the will of Thaddeus Stevens, late of Lancaster City, deceased, and, for answer to the petition of The Stevens Orphans' Home of Lancaster City and to the rule granted on respondent, October 26, 1900, to show cause why it should not pay over to the petitioners the fund in its hands, as prayed for, respectfully sheweth :

It admits the organization and incorporation of The Stevens Orphans' Home of Lancaster, as set forth in the petition and suggestion.

It admits the provisions of the will of the late Thaddeus Stevens, as set forth in said petition.

It admits that the original executors and testamentary trustees of said testator are all dead, and that the balance in the hands of the survivor of them, as found by the final confirmation of the auditors' report, and as increased after said absolute confirmation, amounting to \$55,686.05, less

fees and expenses, \$101.50, equals \$55,584.55, has been paid over to it, and that said fund has increased in its hands by careful and judicious investments of the same.

It admits that it has acted merely as custodian of said fund and has taken no steps to erect, establish and endow a house of refuge, as provided by the will of the said Thaddeus Stevens, deceased, because it was advised that it had not the right nor authority to do so, and that it was not expedient for the trust established by his will that it should begin or undertake such erection ; and it further avers that no ground, as prescribed by the will of testator, for the purpose of the trust which he created, has ever been donated or offered to it, either in Lancaster or in Columbia.

It avers that the sum now in its hands is not sufficient to successfully establish and maintain the home or asylum contemplated by the testator, and that it is impossible to secure and invest the same in Government securities, bearing not less than six per cent. per annum interest, as directed by his will.

It is advised, and therefore avers, that the corporation-petitioner in this case is not such a trustee as is contemplated by the testator to carry out the trust which he created, and to erect, maintain and establish the home or asylum provided for by his will.

It avers its entire willingness to have the intent of the testator, so far as the same can be ascertained and carried into effect, consistently with law or equity, executed and carried into effect, and to that end it is willing, whenever your Honorable Court may so order and direct, to account for the trust funds aforesaid, now in hands, and to pay over the same, together with all interest and accumulations thereon, to any persons or corporation whom your Honorable Court may decide to be duly authorized, qualified and entitled to

carry out the provisions of the will of said testator in reference to said trust.

Wherefore, submitting itself to the investigation of your Honorable Court, and avowing its willingness to submit to any final and ultimate decree of the Courts of the Commonwealth with regard to the questions here involved, it prays that the petition of the petitioners may be dismissed and the rule granted in this case may be discharged.

And it will ever pray, etc.

THE LANCASTER TRUST CO.

By JNO. HERTZLER,

*President.*

LANCASTER COUNTY, ss :

John Hertzler, being duly affirmed according to law, deposes and says that he is the President of The Lancaster Trust Company, the above respondent, and that the facts contained in the foregoing answer are true and correct, to the best of his knowledge and belief.

JNO. HERTZLER.

Affirmed and subscribed before me November 7, 1900.

EDW. R. HEITSHU,

*Notary Public.*

### OPINION OF THE COURT.

ESTATE OF HON. THADDEUS  
STEVENS, DECEASED.

In the Orphans' Court of  
Lancaster County.

Rule to show cause why  
The Lancaster Trust  
Co., Trustee, should not  
pay over the trust fund  
in its possession to The  
Stevens Orphans' Home  
of Lancaster City.

Thaddeus Stevens died August 14, 1868. By his will he provided that, "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 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. 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 therefor; if not, on the north side of said street on the same conditions. If sufficient shall not be gratuitously offered, then 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 discretion of the authorities. No preference shall be shown on account of race or color in the admission or treatment. Neither poor German, Irish or Mohammedans, nor any others on account of their race, or the religion of their parents, must be excluded. All the inmates 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."

The testator appointed Anthony F. Roberts, O. J. Dickey and Edward McPherson his executors and trustees. All of these gentlemen are dead, and, upon the death of Mr. McPherson, the survivor, viz., on February 17, 1896, The Lancaster Trust Company was appointed trustee under said will. Upon his decease, his administrators filed an account of the trust fund, and the balance, as then ascertained and paid over to the new trustee, was \$55,686.05, less costs. This principal, with its accumulations, is now in the hands of said Trust Company, neither the executors, during their lives, nor The Lancaster Trust Company, since its appointment as trustee, having taken any measures towards carrying out the above recited provision of testator's will, although The Home for Friendless Children of the City and County of Lancaster, prior to 1885, offered to donate to the said executors two acres of ground in the City of Lancaster, south of East King Street, to carry out the terms of said trust, and the same offer was subsequently made to The Lancaster Trust Company as trustee.

Anticipating the granting of their charter, and in accordance with the Act of Assembly, certain citizens, on December 31, 1898, by leave of Henry C. McCormick, Attorney General of the Commonwealth, presented their petition to this Court, setting forth all of the above facts, and praying, first, "that the Court, by its decrees, should carry into effect the intent of the testator so far as the same could be ascertained and carried into effect consistent with law or equity; second, that the Court should order and direct The Lancaster Trust Company, trustee, to account for the trust funds and to pay over the same, together with all interest and accumulations thereon, to The Stevens Orphans' Home of Lancaster City, for the purpose of carrying out the provisions of the will of the deceased in reference to said trust; third, that The Lan-

caster Trust Company should be removed and discharged from the trust upon payment to said Stevens Orphans' Home of the trust fund and interest; and fourth, that a decree be entered that said trust fund be paid to The Stevens Orphans' Home as the persons entitled thereto, to erect, establish and endow a house of refuge for the relief of the homeless, indigent orphans, and to carry out the purposes of said trust, according to the provisions of the will of said deceased." A rule was thereupon granted to show cause why the prayers of the petitioners should not be granted. On January 21, 1899, leave was given to the said petitioners to form an organization or association for the purposes proposed, and to become incorporated as aforesaid. On March 11, 1899, The Stevens Orphans' Home of Lancaster City was duly incorporated. It is not a corporation for profit. Its purposes, as set forth in its charter, are the "erecting; establishing and endowing a house of refuge for the relief of homeless, indigent orphans," according to the provisions of the will of the testator.

On July 5, 1900, the said The Stevens Orphans' Home of Lancaster City presented its petition to the Court, in which it suggested its incorporation, accompanied by a copy of its charter, and also, that The Home for Friendless Children for the City and County of Lancaster had donated to it two acres of ground in the City of Lancaster, south of East King Street, to meet the requirements of testator's will, a full description of said land, by metes and bounds, being set forth therein; and, on November 7, 1900, The Lancaster Trust Company, as trustee, made answer to the said petition and rule.

Admitting the organization and incorporation of The Stevens Orphans' Home, as set forth in the petition and suggestion, and also the provisions of the will of the testator,

and that the original executors and testamentary trustees are all dead, it states that there was paid over to it the sum of \$55,686.05, less fees and expenses of \$101.50, leaving \$55,584.55, and that said fund has increased in its hands by careful and judicious investment. It also admits that it has merely acted as custodian of the fund, and has taken no steps to erect, establish and endow a house of refuge as provided by said will, because it was advised that it had no right or authority to do so, and because it was not expedient for the trust that it should begin or undertake such erection, and it also avers that the sum in its hands was not sufficient to successfully establish and maintain the home contemplated by the testator, and that it is impossible to secure or invest the same in Government securities bearing not less than six per cent. per annum. It also avers that it is advised that it is not such a trustee as is contemplated by the testator to carry out the trust, but it expresses an entire willingness to have the intent of the testator, so far as it can be ascertained, carried into effect consistently with law and equity, and to that end, that it is willing, whenever the Court shall so order and direct, to account for the trust funds and to pay over the same to any person or corporation whom the Court may decide to be fully authorized, qualified and entitled to carry out the provisions of testator's will in reference to the said trust.

Upon this presentation of fact and pleadings, is this Court authorized to make the orders which are prayed for? The integrity of the trust has already been established by the Supreme Court in Stevens' Appeal, 164 Pa., 209, and the only point open for settlement is the manner in which it is to be carried out to effectuate the purposes and intentions of the testator.

The Courts of Pennsylvania have looked with favor upon charities and the law of the state, as administered from the

beginning of the province, has always been broad enough to discern the objects of every charity and to preserve and enforce it, notwithstanding any defect, such as want of power in the trustees or otherwise. The Apprentices' Fund Case, 13 C. C. R., 241. Therefore, when a charity is established in any manner, such a slight impediment as a defect or want of power in the trustee to execute it does not stand in the way; the charity remain; the trustee is declared incapable of acting, and a competent trustee is appointed in his place. Chancery here steps in to enforce it and commits it to some one who may lawfully administer it. *Frazer v. St. Luke's Church*, 147 Pa., 256. While the statute of 43d Elizabeth is not here in force, the principles which the English chancery had adopted obtained with us as part of the common law. Before the year 1855 it was a clear and well settled rule that, even when the objects of the charity were uncertain, there must be held somewhere, in a competent trustee or trustees, the discretion absolutely necessary to carry them into effect by selecting those objects. *Mann v. Muller*, 84 Pa., 297. But, by the provisions of the tenth section of that act, viz., the Act of April 25, 1855, P. L., 331, entitled, "An act relating to corporations and to estates held for corporate, religious and charitable uses," a remedy was supplied for future cases in which the donor or testator had omitted to vest such a discretion in a trustee or trustees, or it had failed to be effectual by the death or other disability of the person or persons whom he may have appointed. This act was amended by the Act of May 23, 1895, P. L. 114, which act is an exact copy of the act of 1855, except that the words, "corporations not for profit," are inserted in the body of the act, and the proviso is entirely new. The portion of the act which it is now important to consider reads: "That no disposition of property, heretofore or hereafter made for any religious, charitable, literary or

scientific use shall fail for want of a trustee, or by reason of the objects being indefinite, uncertain or ceasing, or depending upon the discretion of a last trustee, or by giving in perpetuity or in excess of the annual value heretofore limited; but it shall be the duty of any Orphans' Court, or Courts having equity jurisdiction in the proper county, to supply a trustee, and, by its decrees, to carry into effect the intent of the donor or testator, so far as the same can be ascertained and carried into effect consistently with law or equity, for which purpose the proceedings shall be instituted by leave of the Attorney General of the Commonwealth, on the relation of any institution, association, corporation not for profit, or individual, desirous of carrying such disposition into effect and willing to become responsible for the costs thereof, etc."

All of the cases, therefore, involving the construction of the act of 1855, are equally applicable to the act of 1895. Under these cases and the Act of Assembly, there would seem to be no doubt as to the power of the Court, "by its decree, to carry into effect the intent of the donor or testator, so far as the same can be ascertained and carried into effect, consistently with law or equity."

In *Croxall's Estate*, 162 Pa., 579, a testatrix, by her will, gave "one thousand dollars to any institution in Philadelphia that would give shelter to homeless people at night, irrespective of creed, color or condition." The only claimant for the fund was the Philadelphia Society for Organizing Charity. The evidence showed that this society had established wayfarers' lodges, at which shelter had been provided and would continue to be provided, for homeless people at night, irrespective of creed, color or condition, and it was held that the claimant was entitled to the fund.

In *Pepper's Estate*, 154 Pa., 331, a testator gave "to the

trustees of such free library which may be established in the City of Philadelphia, east of the River Schuylkill and south of Market Street, \$150,000." The executors paid over the money to a corporation formed after testator's death; although, at the time of the payment, it was not the owner of a library; and the Court concluded that the fund had been properly distributed. And in *City of Philadelphia v. Girard Heirs*, 45 Pa., 9, and in other cases arising out of the same estate, both in our Supreme Court and the Supreme Court of the United States, every one is aware that the devise of the residue of his real and personal estate by Stephen Girard to the City of Philadelphia, in trust, to construct, constitute and maintain the institution known as Girard College, and then for certain municipal purposes, was sustained by all the Courts of last resort.

In *Murphy's Estate*, 184 Pa., 310, the testator directed "the balance of my estate, after payment of the above legacies and collateral inheritance taxes on them, to be divided among such benevolent, charitable and religious institutions and associations as shall be selected by my executors or their successors." It was held that this bequest was good, and that the sole surviving executor had the power to designate the beneficiaries under it. Many other cases might be cited, but these we deem sufficient.

Another principle which has been finally established is, that where a trustee refuses to act, chancery will remove him and appoint another. *McGill v. Brown*, *Brightley's Reports*, 408. These are principles of equity which the Supreme Court, in *Witman v. Lex*, 17 S. & R., 91, declared to be the common law of the state, and which have been universally applied as far as the Courts could be extended to the exercise of chancery jurisdiction. *Wright v. Linn*, 9 Barr, 433.

Therefore, under the facts of this case, all of the original trustees being dead, having failed and refused to carry out

the purposes of the trust, and the new trustee, under the impression that it had no such power, having also failed to execute it, we are of the opinion that we have the power to discharge The Lancaster Trust Company from the trusteeship and order it to pay the fund to The Stevens Orphans' Home of Lancaster City, which we are of the opinion is such a corporation as was intended by the testator to carry out his beneficent wishes.

Over thirty years have elapsed since this distinguished fellow citizen was consigned to his last resting-place. In his love for humanity, without distinction of creed or color, he, under certain conditions, provided that this bequest should be made. Those conditions which were to render it effective have occurred, and the fund is now held for the uses which he so humanely designated. We think it is time that they be put into effect, and the persons whose names are inscribed upon the charter as corporators of The Stevens Orphans' Home of Lancaster City are sufficient guaranty that the trust will be honestly, prudently and faithfully executed.

We, therefore, order and decree that The Lancaster Trust Company be discharged as trustee under the will of Thaddeus Stevens, deceased ; that it do file an account of its said trust, and that it do pay over the balance as ascertained by the said account to The Stevens Orphans' Home of Lancaster City, to be used for the erection and maintenance of a home in accordance with the provisions of the will of the said testator, and the rule to show cause is, therefore, made absolute.

Rule made absolute.

CHAS. I. LANDIS,  
*Judge.*

*Attest :* C. G. STRICKLER,  
*Deputy Clerk O. C.*

### ASSIGNMENTS OF ERROR.

1. The learned Court erred in making the following decree :

"We, therefore, order and decree that The Lancaster Trust Company be discharged as trustee under the will of Thaddeus Stevens, deceased, ; that it do file an account of its said trust, and that it do pay over the balance as ascertained by the said account to The Stevens Orphans' Home of Lancaster City, to be used for the erection and maintenance of a home in accordance with the provisions of the will of the said testator, and the rule to show cause is, therefore, made absolute.

"Rule made absolute."

2. The learned Court erred in holding, in its opinion, as follows :

"We are of the opinion that we have the power to discharge The Lancaster Trust Company from the trusteeship and order it to pay the fund to The Stevens Orphans' Home of Lancaster City, which we are of the opinion is such a corporation as was intended by the testator to carry out his beneficent wishes."

CHAS. R. KLINE,  
W. U. HENSEL,  
*For Appellants.*

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### APPELLANT'S ARGUMENT.

As stated in the "question involved," and also in our "history of the case," this appeal has been taken solely with the purpose of having the appellate judicatory determine the legality of transferring a large fund, devised by an eminent man, for a specific purpose, to a corporation claiming to be organized to carry out the trust he contemplated.

The late Hon. Thaddeus Stevens died in 1868 and left the residue of his estate—upon certain conditions, long since ful-

filled—to establish and endow a house of refuge for the relief of homeless and indigent orphans. He contemplated that his executors and testamentary trustees should carry out this scheme; but varied and protracted litigation, the shrinkage of the residue of his estate below the amount he fixed as the minimum for his purpose, the deaths of all his executors and other circumstances have delayed the execution of his scheme. The money is at last available if a proper trustee is presented to receive the fund and to execute the trust.

Its conditions are :

First. The investment of \$50,000 for an orphans' house of refuge—\$20,000 to be expended in buildings.

Second. The institution to be located south of East King street, Lancaster City, on not less than two acres of ground, donated for the purpose.

Third. The inmates, if not bound out, to remain until fifteen years of age, or longer if infirm, and to be educated in English and handicraft.

Fourth. No preference in exclusion or admission nor distinction to be made for race, creed or color.

Fifth. The trustees to procure an act of incorporation at some convenient time.

The present trustee, considering itself simply the custodian of the fund—unwilling to venture upon the establishment and management of such an institution as the testator contemplated—has awaited the fulfillment of the conditions upon which his bounty was to become effective.

The appellee, a corporation not procured by, nor consisting of, his executors or testamentary trustees or their successors, presents itself as claimant for the fund, and

its charter and constitution as compliance with the testator's conditions.

Its charter is in strict accordance with the terms of Mr. Stevens' will and avows precisely the purposes he expressed.

Its management is vested in sixteen male trustees and twenty-four lady managers, to none of whom any objection is made.

The "Home for Friendless Children for the City and County of Lancaster," which is an institution located in the section designated by testator's preference, and which is in many respects closely akin to the purposes he expressed, has donated two acres of ground south of East King street for the proposed institution.

There is nothing in the constitution and by-laws submitted repugnant to the scheme as outlined by testator.

Before the appellee was incorporated its plan, constitution and by-laws were submitted to and approved by the Court.

Under the act of April 25, 1855 (P. L., 331), amended by the act of May 23, 1895 (P. L., 114); and upon the authority of such cases as

Frazier *vs.* St. Luke's Church, 147 Pa., 256,

Croxall's Estate, 162 Pa., 579,

Pepper's Estate, 154 Pa., 331,

the learned Court below held that, as no trust shall fail for lack of a trustee who can be supplied by the Court, and as the corporation appellee was fully and especially qualified for this particular trust, the fund should be awarded to it.

It is frankly admitted these authorities and the well settled law of Pennsylvania sustain the contention of the petitioners and the decree of the Court below; and unless the Appellate Court can find some reasonable ground upon

which to reverse the same this appellant submits itself to whatever decree may be finally entered in the premises.

It has been felt, however, in view of the large trust fund involved and there being no private nor interested party defending, the decree below should be submitted to this Court before it becomes effective.

CHAS. R. KLINE,  
W. U. HENSEL,  
*for Appellant.*