

SURROGATE UPHOLDS PROVISION FOR POTTS MEMORIAL HOSPITAL

Validity of Clause in Will of Late Ida C. Potts Providing for Construction, Equipment and Maintenance of Hospital Sustained in One of Most Important Decisions Handed Down in Surrogate's Court.

A far reaching decision and one of the most important ever handed down by the Surrogate's Court of the County was filed Thursday by Surrogate Whitbeck in which he sustains the validity of the 26th clause of the last will and testament of Ida C. Potts, thereby sustaining the charitable trust created therein which provides for the construction and maintenance of the Potts' Memorial Hospital.

This provision was attacked by some of the next of kin on the ground that the bequest for the hospital was illegal and failed as a charitable trust and that therefore the residuary estate should go to the next of kin.

This view is not concurred in by the Surrogate, who holds that the trust but whose decision gives the income, which will accumulate between the date of death of the deceased and the date of the payment to the hospital corporation which is directed to be formed under the terms of the will. Judge Whitbeck's decision, unless it is appealed and reversed by the higher courts, insures to the people of the county the fine institution which Miss Potts contemplated for the care of tuberculosis.

The attorneys who appeared in the case were: Alexander T. Selkirk, Esq., for the Attorney General of the State of New York.

McCorm and McDonald, Esqrs., of Syracuse, for Robert E. Potts, Lewis N. Crane and Ida Claffin, heirs and next of kin.

Hon. John L. Crandell for Mary Fisher, heir and next of kin. Ernest Holzberg, Esq., for S. F. Avery, Esq., sole surviving executor and trustee under the last will and testament of above named decedent.

Judge Whitbeck's decision follows: "This is a proceeding for construction to determine the validity of the will of the testatrix which reads as follows:

"I give, devise and bequeath all the residue of my estate of every description to my executors hereinafter named as trustees to take and receive the same as such trustees, holding all of said property with all accumulations thereof until there shall be organized by said trustees a corporation under and in accordance with the laws of the state of New York, the purposes and objects of which corporation shall be to construct, maintain and operate a hospital for the care and treatment of patients afflicted with tuberculosis, and to exercise power and direct the executors herein named as trustees to organize and create such a corporation as quickly as it can be done in accordance with the law and for the attainment of the objects which I have herein set forth and impress upon my executors as trustees the duty of acting expeditiously and with sound judgment and wise counsel in the creation of the institution which I desire shall receive at all times the benefit of the residuum of my estate to the end that care and relief may come to those who in their earliest stages or otherwise are threatened with tuberculosis giving to such trustees full power and authority to call to their aid such medical and medical advice as to the best methods to be pursued to establish an institution which for all time it is hoped will come to the aid and relief of suffering humanity.

I direct that this organization thus to be created shall be located within the county of Columbia, state of New York, at such place as the trustees hereinafter named may select, empowering and directing such trustees to use such portion of my residuary estate as shall seem to them proper and necessary to purchase land sufficient in area and proper in location for the creation and the establishment of the institution which is here contemplated.

I direct that such organization and institution shall be named and always known as "The Potts Memorial Hospital."

If the purpose to be attained is personal, private or selfish, it is not a charitable trust. When the purpose is to benefit the public, the usefulness unstained by personal, private or selfish considerations its charitable character insures its validity. Before we shall be able to determine whether the purpose of the trust is charitable or private, it is necessary to ascertain the character of the trust which the testatrix intended to create."

Approaching the case now under consideration in a similar manner, it seems that but one conclusion may be reached. It will be noted that testatrix impresses upon her executors and trustees to act expeditiously in "the creation of the institution which I desire shall receive at all times the benefit of the residuum of my estate to the end that care and relief may come to those who in their earliest stages or otherwise are threatened with tuberculosis, to such trustees full power and authority to call to their aid legal and medical advice as to the best methods to be pursued to establish an institution which for all time it is hoped will come to the aid and relief of suffering humanity."

Certainly, if there is this portion as well as in the whole 26th paragraph a clear intention expressed to devote her entire residuary estate for the public benevolent or charitable purposes expressed, nor is there any suggestion that such an institution so directed to be created is to be of a private, personal or selfish character. Much law has been written on the subject of charitable trusts both by text writers and by the courts, but rarely have they would seem unnecessary here the purely charitable or benevolent character of this intended gift is so evident.

Counsel for the petitioners nextcar, and the occupants being badly frightened, besides shaken up.

It has been intimated and it is my understanding that this residuary estate will represent a very considerable sum of money approaching or exceeding a million of dollars. The de-

trust an illegal accumulation of interest and income as the language of the testatrix is that her executors and trustees are to take and receive the residue of her estate "holding all of said property with all accumulations thereof until there shall be organized a corporation." Under our statutes the accumulation of income must be measured upon and may continue only during the minority of infants (section 16 Personal Property Law). Consequently the invalidity of paragraphs 26th of the will before me insofar at least as it provides for accumulations of income seems established. I have not overlooked the argument of executor's counsel that the gift of the residue in this paragraph of the will is in present and not in future. The donor planned that the gift should vest at once in the trustees and that the beneficial effect thereof should commence as soon as possible. To answer this we may turn to the words of the testatrix wherein she says:

"I give, devise and bequeath all the residue of my estate of every description, my executors hereinafter named as trustees, to take, and receive the same as such trustees, holding all of said property with all accumulations thereof until there shall be organized by said trustees a corporation—the purposes and objects of which corporation shall be to construct, maintain and operate a hospital for the care and treatment of patients afflicted with tuberculosis."

This is not a gift to vest a beneficial interest in her executors but only a legal title as trustees, until such a time as the corporation shall have been created when the legal title and the beneficial interest would unite.

However, I regard the accumulation of income during the interim between decedent's death and the creation of the corporation contemplated as incidental only to the erection of this foundation and such provision for accumulation being void may be separated from the provisions which are legal, and the accumulations paid during the interim to the next of kin of the decedent as unbeneficial assets (Heaton on Surrogate Courts, paragraph 325 and cases cited).

Petitioners' third point is that as two of the three executors and trustees named in the will are dead, that the sole surviving executor and trustee cannot administer the trust. The will is not a will of intestacy, and the intention of the testatrix, and that she contemplated the joint action of the trustees named in her will. Whether or not the testatrix gave thought to the possibility and indeed the knowledge of the death of one or more of her executors and trustees thus chosen by her, at least she did not give heed to such possibility or fact, for one of them predeceased her.

In any event the law has always authorized a surviving executor or trustee may be appointed in the place of one or two or more testamentary trustees who die, (section 168 Surrogate's Court Act) but this is not a proper consideration at this time nor can it in any manner affect the validity of this will.

Counsel may submit proposed decree in this proceeding on November 3, 1922, at which time the matter of costs and allowances will also be considered.

Dated, Oct. 24, 1922.

JOHN W. WHITEBECK, Surrogate.

MELLENVILLE

Mellenville, Nov. 7.—Mrs Chauncey Ostrander entertained Mr and Mrs John Evans, of Chatham, and Porter Cartright of Hudson to dinner Friday evening.

Mrs Floyd Vedder, of Albany, spent the week end at the home of her mother, Mrs Mary Van Buren.

Mrs Anna L. Shuts spent the past week in Mechanicville and last two weeks; he recently had a growth removed from his neck.

Mrs Anna L. Shuts is recovering slowly from a serious illness.

William Vanderpool has rented furnished room to a party from Albany who is connected with the Weiss Fibre Co.

Charles Fonda of Schenectady and Mrs. Pacific Burlingame are visiting at Mrs O. Coleman's.

Mrs Lizzie Carl has been on the sick list.

Mr and Mrs C. A. Miller and son and Mrs. Milo Miller spent the week end with relatives at Bristol, Conn.

Mr and Mrs Charles E. H. entered a company from Syracuse over Sunday.

C. A. Miller and family moved last Wednesday from Albany to New York.

Regular Grange meeting Thursday evening. The meeting will be in charge of Carles, Miss M. C. and each member may invite a friend. Refreshments will be served.

The W. C. T. U. will meet Wednesday afternoon at 2:30 at the home of Mrs. Gifford Anderson.

MARKETS

Table with columns for Butter, Eggs, and various market items with prices.

Table with columns for Eggs, Fresh gathered extras, and various market items with prices.

Table with columns for Dressed Poultry, Chickens, and various market items with prices.

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CLAVRACK

Meeting of Mother's Club. Clavrack, Nov. 6.—A meeting of the Mother's Club will be held in Memorial chapel, Tuesday afternoon at 2:30 o'clock.

Boy's Club To Meet. The Boy's Club will meet in Grange hall, Wednesday evening of this week and it is hoped all boys of the village will be present.

Officers Re-elected. The Ladies Aid Society of the Reformed church met to reorganize for the winter at the home of the president, Mrs. Harvey Kipp on Wednesday evening.

Honor Pupils of Village School. The following is the honor list of the grammar department of the village school, the pupils having been absent or tardy for the month of October.

Held Song Service. A service of song was held in Memorial chapel on Sunday evening.

Dutch Arms To Meet. A regular meeting of the Dutch Arms will be held Monday evening, Nov. 20th.

W. C. T. U. Meets Wednesday. A regular meeting of the W. C. T. U. will be held with Mrs. Rensselaer, Loucks Wednesday afternoon at 2:30 o'clock.

Were Given Surprise Party. A large number of neighbors and friends gave Mr and Mrs Edward Kipp a surprise party on Wednesday.

Mid-Week Prayer Service. The mid-week prayer service will be held Thursday evening with Mr and Mrs Robert Delamater.

To Have New Furnace. A new furnace will be installed in the Reformed church in the near future under the direction of Albert Shaw of this village who is a furnace salesman for the Frank R. Macy store of Hudson.

Entertained 500 Club. The 500 club was entertained in a delightful manner by the Misses Sagenendorp Thursday afternoon.

Attended Funeral. Mr and Mrs L. H. Bristol attended the funeral of Mrs Thomas Wilson in Hudson Friday morning.

CLAVRACK PERSONALS. Misses Nellie Tomkinson and Bertha Sagenendorp spent Friday afternoon in Kinderhook.

MISS LILLOTTE GAVE A SPLENDID PROGRAM

One of the most interesting programs ever given from the high school platform was the James Whitcomb Riley recital given last evening by Miss Lillette Lillotte.

In spite of the inclement weather a capacity audience was in attendance and was well repaid by the splendid interpretations of the works of this great American poet.

The program of poems was divided into three parts, the first was of a more serious character while the latter two were more humorous and child-like.

With a winning presence, an exceptionally pleasing personality, perfect enunciation and her clear voice, Miss Lillette delivered this varied and difficult impersonations of the Hoosier poet.

It was a task and a difficult one, too, to learn from the recitation each poem received, which were the most enjoyed.

In the first part "An Old Played Out Song" and "An Old Sweetheart of Mine" perhaps appealed most to the adults but in the latter part "Garry," "Foot Soldiers" "The Raggedy Man" and "Almost Beyond Endurance" brought forth the laughter and applause of the children.

On the whole the program was so fine that it was regretted that Miss Lillette could not be heard to interpret more of Riley's poems—especially "The Old Swamin' Hole" and the favorite "Prayer Perfect."

During the first intermission Joseph Tamir, accompanied by Miss Hood, played the piano and rendered violin solos, "Serenade," "The Bee," and "Gavotte."

Miss Hood also sang in her pleasing manner, "The Little Damsel" and "The Lilac Tree." The High School Orchestra played the overture.

Silvernails. Nov. 7.—John Palmer of Torrington, Conn., Miss Sophie Eaton of Winsted, Conn., Mr. Dodge, Mr. and Mrs. C. A. Hoysradt and daughter, Mae of Hudson, N. Y., spent Sunday at the home of Mr and Mrs J. C. Hoysradt.

Miss Mary Edgeman of Hartford, Conn., spent a few days at the home of Mr and Mrs M. J. Wheeler.

Mr and Mrs J. H. Duntz and Mr and Mrs C. S. Heavner and child spent Sunday with friends at Verbank, N. Y.

SOCIAL EVENTS AT CHURCHTOWN

C. E. Society Meeting. Churchtown, Nov. 2.—Christian Endeavor Society will meet Sunday evening at 7:10 o'clock.

Attended Halloween Party. Those from here who attended the Halloween party at the home of Mr and Mrs Boyd Dratlin at Greenport, Tuesday evening, were Zula and Edw. Brock and Decker, Mr and Mrs H. Fred and son, Peter Brock, Mr and Mrs Ernest Walker, Miss Pearl Myers, Miss Zula Kells, Mrs. Walter Mambert, Mrs. Andrew Smith, Miss Boucher and Mr and Mrs Miles Propper.

Communion Service. Communion service will be observed at the home of Mrs Robert Myers, Wednesday afternoon, Nov. 8th.

Attended Wedding. Rev. W. E. Traver attended the wedding of Orland Moore of Germantown and Miss Charabelle Shimer at Schenectady, Thursday.

CHURCHTOWN PERSONALS. Mr and Mrs Norman Passer, Mr and Mrs Lewis Marshall and Roland Marshall spent the week-end with friends at Albany.

Mrs Harry Hamm of Humphreysville and Miss Ernest Walker spent Thursday with Mrs. Miller Propper.

Mr and Mrs Emory Miller and child, Miss Myra Sheldon and Mrs Jordan Miller called at the home of Chester Sheldon, Sunday afternoon.

Mr and Mrs John Blinn and Miss Rice of Albany visited Mrs Andrew Smith, Tuesday.

Miss Sydney Coons of Germantown is spending several days with Mrs. Etta and Lucia Hamm.

Miss Lena Traver from out of town was a week-end guest of Miss Lena Woodward.

Mrs Harriet Maxwell of Hudson is visiting at the home of Mrs. E. E. Traver called at Humphreysville and at the home of Rev. Mr. Jones at Manorton, Saturday.

Miss Minnie Haughtestine spent a few days the past week with Mr. George and Mrs. E. E. Traver.

FORD CAR BADLY DAMAGED BY FIRE

The Ford touring car of George Kells was severely damaged by fire at Clavrack, Saturday night in the vicinity of the grocery store of Hyatt Burch. The engine of the car is the only remains of the Ford that can be used again.

When the gas tank was being filled some of the gas spilled over and the fumes reached the motor. The car was one of the honorary pall bearers.

Some reports claim that when the fire started it was unknown. Some reports claim that when the gas tank was being filled some of the gas spilled over and the fumes reached the motor.

His View of It. "We'd all be fine people," said Uncle Eben as he growled-up folks was as truthful, kind and polite as day expects de chitun to be.—Washington Star.

Dr. William Gardner of New York spent Sunday with Mr and Mrs Horace Brown at the Pines.

Dr. James Russell Knowles of Pittsfield, Mass., were recent guests of her parents, Mr and Mrs L. Tilden Holbrook.

Mrs James Call of Millerton visited Mr and Mrs Leon Cook, recently.

WORK AHEAD FOR NEEDLE WORK GUILD

The Needlework Guild of America is entering upon another year of usefulness in this city. The scarcity of coal makes the need for warmer garments greater this winter than ever.

After the fine record of this society in the past, it is hoped that this need will be met by a larger response. Anyone wishing to join this organization may do so by sending two or more garments to any of the directors or to the president, Mrs John W. Gillette 601 Union street.

The annual meeting will take place, November 16th.

ASKS \$25,000 FOR DEATH OF HUDSON. Poughkeepsie, Nov. 6.—A suit for \$25,000 for damages arising from the death of Russell B. Rockefeller was started yesterday by Burton H. Rockefeller as administrator.

L. K. ROCKEFELLER TO MAKE ADDRESS

A decided treat is in store for the members of the Dutch Arms of the Reformed Dutch church at Clavrack, Monday evening, Nov. 20, when Lewis K. Rockefeller, of Chatham, Deputy State Commissioner, will address the members of the organization.

Mr Rockefeller recently addressed the Hudson Rotary club and his talk was one of the most interesting and practical that the local Rotarians have listened to.

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