

Court of Common Pleas No. 2.  
No. 652 of June Term, 1882.

IN EQUITY.

The Old Man's Home of Phila., et al.

vs.

The Pennsylvania Institution for  
the Instruction of the Blind, et al.

Indigent Widows

Refers to Ground Rents

N. S. Wood St 116<sup>th</sup> N. 13<sup>th</sup> St.

S. S. Fairmount Ave 284<sup>th</sup> E Broad St.

N. S. 9<sup>th</sup> St. bet Locust & Spruce Sts.

THE INDIGENT WIDOWS AND SINGLE  
WOMEN'S SOCIETY OF PHILADELPHIA

Court of Common Pleas, No. 2.

June Term, 1882. No. 652.

DOCKET ENTRIES.

Wm. S. Lane  
and  
Jos. B. Townsend.

John Cadwalader for Pennsylvania Institution for the Instruction of the Blind.  
See Bill.

Sharpless & Geo. Junkin for Pennsylvania Industrial Home for Blind Women.  
See Bill.

Feb. 29, 1884. Prothonotary's costs and recording paid.

Proceedings in this case recorded in Partition Docket, No. 8, W. B. M., page 48 &c.

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The Old Man's Home of Philadelphia, The City of Philadelphia, The Trustees of the Real and Personal Property of the Philadelphia Protestant Episcopal City Mission, The Contributors to the Pennsylvania Hospital, The Indigent Widows' and Single Women's Society of Philadelphia, and The Pennsylvania Institution for the Deaf and Dumb,

vs.

The Pennsylvania Institution for the Instruction of the Blind, and The Pennsylvania Industrial Home for Blind Women.

September 4, 1882, Rule to answer filed.

October 3, 1882, Demurrer of the Pennsylvania Industrial Home for Blind Women filed.

February 26, 1883, Affidavit of service of rule to answer filed.

March 29, 1883, affidavit of service of notice of decree filed

May 19, 1883, affidavit of service of notice of rule to accept or refuse, and to show cause why sale should not be ordered, filed.

June 30, 1883, Answer of the Pennsylvania Institution for the Instruction of the Blind filed.

July 7, 1883, Printed Copy of Answer of the Pennsylvania Institution for the Instruction of the Blind filed.

March 4, 1884, Notes of Testimony before Master filed.

June 12, 1885, Testimony before Master filed.

October 10, 1885, Exceptions dismissed. Decree to be drawn in accordance with opinion filed.

Bill in Equity.

Filed June 29, 1882.

Service accepted as to the Pennsylvania Institution for the Instruction of the Blind, and for the Pennsylvania Industrial Home for Blind Women.

December 18, 1882, Demurrer overruled with leave to amend.

February 26, 1883, Judgment *pro confesso* for want of an answer.

March 13, 1883, Interlocutory Decree filed. See minutes.

*Eo die*, referred to Sussex D. Davis, Esq., as Master.

May 9, 1883, Master's Interlocutory Report filed.

May 12, 1883, Rule to accept or refuse.

*Eo die*, Decree of Confirmation. See minutes, 1883.

June 15, 1883, Referred back to Master to divide property into purparts.

June 23, 1883, Rule to set aside Decree *pro confesso*.

June 30, 1883, Decree. See minutes, 1883.

November 28, 1883, Interlocutory Report of Master filed.

December 18, 1883, Case re-committed to Master.

February 27, 1884, Master's Report filed. *Eo die*, printed copy of Master's Report filed.

April 2, 1884, Decree of re-committal to Master. See minutes, 1884.

June 6, 1885, Supplemental Report of Master under order of Court of April 2, 1884, filed.

June 25, 1885, Petition and Rule to intervene and become party defendant.

July 6, 1885, Rule withdrawn.

October 17, 1885, Final Decree. See minutes, 1885.

last will and testament, dated the twenty-third day of November, A. D. 1878, duly proved and registered at Philadelphia, in will book No. 99, page 141, &c., a copy whereof is hereunto annexed, marked "Exhibit A."

2. That the said Mary Shields by her said last will did bequeath certain specific legacies to the legatees first named in said will, and in the codicil thereto, some of which said legacies are in trust, and did direct that the collateral inheritance tax upon said legacies should be paid out of her residuary estate.

3. That the said testatrix by her said last will, did appoint Samuel F. Wilson, John R. Griffith, and Harry W. Town to be the executors thereof.

4. That all the debts of the said testatrix have been paid, and that all the specific legacies given by her in her said will have also been paid and set apart, as provided and directed by her in her said will.

5. That the personal estate of the said testatrix has been fully settled, and after the payment of all debts, and all specific legacies, and the payment of the collateral inheritance tax, has been awarded and distributed by the Orphans' Court of Philadelphia County, to the parties held by said court to be entitled thereto under the said will.

6. That one sixth of the residuary personal estate of the said testatrix was awarded by the said Orphans' Court, under the said will, to the Pennsylvania Institution for the Instruction of the Blind, one of the respondents herein, as the institution intended by the said testatrix as her legatee of the said one sixth; and that the Pennsylvania Industrial Home for Blind Women, the other respondent herein, claimed to be the legatee of the said testatrix of the said one sixth, and filed exceptions to the said award and distribution made by the said Orphans' Court, which exceptions, upon hearing, were dismissed by the said court. And that your Honors may ascertain, adjudge, and decree in this proceeding, which of the said two institutions is the true and intended devisee of the said testatrix of the one sixth part

of the real estate devised by her as hereinafter mentioned, both of the said institutions so claiming are made respondents in this bill, to the end that each shall be heard and allowed and required to prove any claim it may have, or suppose it has, to the said real estate devised by the said testatrix, and may be concluded, and its rights determined, by the decision and decree of your Honorable Court.

7. That the said testatrix did further bequeath and devise as follows:

"Item. All the rest, residue, and remainder of my estate, real, personal, and mixed, wherever and whatsoever, I give, devise, and bequeath as follows: One full equal sixth part thereof unto the Deaf and Dumb Asylum of Philadelphia, absolutely. One other equal sixth part thereof unto the Institution for the Blind of Philadelphia, absolutely. One other equal sixth part thereof unto the Old Man's Home of Philadelphia, absolutely. One other equal sixth part thereof unto the House of Mercy for the care of consumptives, under the management of Episcopalians in Philadelphia, absolutely. One other equal sixth part thereof unto the Indigent Widows' and Single Woman's Asylum of Philadelphia, under the care of the protestants. One twelfth part thereof unto the Pennsylvania Hospital, to relieve and make more comfortable the sick and insane poor under their charge, and one other twelfth part thereof unto the City of Philadelphia, to relieve and make more comfortable the sick and insane poor at the Almshouse in Philadelphia."

8. The complainants further show that they are the same institutions named in the said will as residuary legatees and devisees of the said testatrix.

9. And your orators further show that no partition has been had of the said real estate of the testatrix, of which a detailed schedule or statement is hereto annexed, marked "Exhibit B"; that four of your orators, to wit, the Old Man's Home of Philadelphia, the Trustees of the Real and Personal Property of the Philadelphia Protestant Episcopal

City Mission, the Pennsylvania Institution for the Deaf and Dumb, and the Indigent Widows' and Single Women's Society of Philadelphia, are each entitled to one sixth part of the said real estate, in fee; that two of your orators, to wit, the Contributors to the Pennsylvania Hospital, and the City of Philadelphia, are each entitled to one twelfth part of the said real estate, in fee; and that one or the other of the said respondents, that is to say, either the Pennsylvania Institution for the Instruction of the Blind, or the Pennsylvania Industrial Home for Blind Women, is entitled to one sixth part of the said real estate, in fee; but which of them is so entitled, under the will of the said testatrix, your Honorable Court will adjudge, determine, and decree.

10. And your orators further show unto your Honors, that they are entitled to have a partition of the said real estate, and that the parties in interest are unable to agree upon a partition thereof, and the same cannot be made except under and by virtue of a decree and judgment of a court having jurisdiction in the premises. Your orators hence need equitable relief, as follows:

I. That it be decreed that a partition and division of the said real estate, described in the schedule hereto annexed, marked "Exhibit B," may be made, according to right, and the practice in Chancery.

II. That the share to which the said complainants are entitled in said real estate, may be set out to them respectively and in severalty, and that the share thereof to which the one or the other of the said respondents is entitled, as your Honorable Court may determine, may be set out to it in severalty.

III. That it may be decreed that all such conveyances as may be required to carry the said partition and division into effect, shall be executed by the proper parties.

IV. Such other relief as to the court may seem meet.

WILLIAM S. LANE,  
JOSEPH B. TOWNSEND,  
*Solicitors for Complainants.*

#### EXHIBIT A.

I, Mary Shields, of the City of Philadelphia, single woman, do hereby make this my last will and testament in manner following:

Imprimis, I order my just debts and funeral expenses to be paid.

Item. I give and bequeath unto the Laurel Hill Cemetery Company the sum of ten thousand dollars upon trust, to put and keep the same invested in some good lawful security, and to collect and take the interest and income thereof, and when, and as received to apply the said interest and income to the keeping of the Shields' vault in South Laurel Hill, and the ground attached to it in perfect repair and preservation from year to year, so that the said vault and ground attached thereto shall always be in perfect order and repair; and in the event that there should be in any year a surplus of such interest and income after the necessary expenditures for the purposes aforesaid, then upon this further trust, to pay over such surplus interest and income into the hands of the managers of the Foster Home Association of Philadelphia, to be applied to the purposes of said institution.

Item. I give and bequeath unto my executors hereinafter named, and the survivors and survivor of them, the sum of ten thousand dollars upon trust, to put and keep the same at interest in some good lawful security, and to collect and take the interest, and when, and as received to pay the said interest unto Cecelia Curley, who is now living with me, during all the term of her natural life, and upon her decease then I do give and bequeath the said principal sum of ten thousand dollars unto the Northern Home for Friendless Children of the City of Philadelphia, their successors and assigns absolutely.

Item. I give and bequeath unto my said executors, and the survivors and survivor of them the sum of ten thousand dollars upon trust, to put and keep the same at interest in some good lawful security, and to take and collect the interest thereof, and when, and as received to pay the said interest in equal portions and shares unto Cecelia Zeller, Eliza Zeller, and their sister Julia, all of whom are now residing at No. 847 North 10th Street, in Philadelphia, during their respective natural lives, and on the death of either of them to pay the whole of the said interest unto the survivors and survivor of them during their and her life, and upon the decease of the survivor of them, then I do give and bequeath the said principal sum of ten thousand dollars unto the Episcopal Church Home for Children of Philadelphia.

Item. I give and bequeath unto my said executors, and the survivors and survivor of them the sum of ten thousand dollars upon trust, to put and keep the same at interest in some good lawful security, and to take and collect the interest thereof, and when, and as received to pay the said interest unto Rebecca Parker, now residing at No. 447 North Second Street, in Philadelphia, for and during all the term of her natural life, and upon her decease I give and bequeath the said principal sum of ten thousand dollars unto the Orphans' Home of Philadelphia, under the management of Protestants absolutely.

Item. I give and bequeath unto the Meridian Sun Lodge of Free Masons of which my brother, James Shields was a member (the room used and called the blue room), the sum of five thousand dollars upon trust, to put and keep the same at interest in some good lawful security, and to take and collect the interest thereof, and when, and as received to apply all of said interest for such charitable purposes exclusively as said Lodge may direct; but in the event that I should give the said Lodge the sum of five thousand dollars before my decease, then this legacy shall be null and of no effect; I make this provision in accordance with the request of my late brother James Shields.

Item. I authorize and direct my executors to sell unto my friends, Samuel F. Wilson and John R. Griffith all the stock and interest of my late brother, in the firm of Shields & Bro. (which under his will is now vested in me) at such price as the same may be fairly worth, and in order to ascertain the value of said interest I direct that three disinterested persons shall be chosen as follows: one by the said Samuel F. Wilson and John R. Griffith, one by my other executors, and one by the two persons thus chosen, and the appraisement of a majority of said persons so chosen shall be final, and I do direct that the said appraisement shall be made within three months after my decease, or sooner if the same can be conveniently done, whereupon I order and direct that my said other executor shall take from the said Samuel F. Wilson and John R. Griffith in payment for said stock and interest their bond and warrant of attorney, to confess judgment for the amount of said stock and interest as appraised by the persons so selected, which bond shall be made payable in instalments of one-tenth of the amount thereof in each year from the date thereof, until the whole is paid with interest thereon, and so conditioned that if any instalment be unpaid for the space of three months after the same shall become due and payable, that then the whole amount of the said bond then unpaid, with the interest thereon shall be due and collectable; but I direct that no judgment shall be entered on said bond, unless default should be made in the payment of one of the instalments therein to be provided for.

Item. I give and bequeath unto the City of Philadelphia the sum of ten thousand dollars upon trust, to invest the same in the loan of the City of Philadelphia, and to apply the interest thereof to the purchase of coal and distribute the same in the fall and winter months to indigent widows, single women and men, without respect to color.

Item. All the rest, residue, and remainder of my estate, real, personal, and mixed, wherever and whatsoever, I give, devise, and bequeath as follows: One full equal sixth

part thereof unto the Deaf and Dumb Asylum of Philadelphia, absolutely.

One other equal sixth part thereof unto the Institution for the Blind of Philadelphia, absolutely. One other equal sixth part thereof unto the Old Man's Home of Philadelphia, absolutely.

One other equal sixth part thereof unto the House of Mercy for the care of consumptives, under the management of Episcopalians in Philadelphia, absolutely. One other equal sixth part thereof unto the Indigent Widows' and Single Woman's Asylum of Philadelphia, under the care of the protestants. One twelfth part thereof unto the Pennsylvania Hospital, to relieve and make more comfortable the sick and insane poor under their charge, and one other twelfth part thereof unto the City of Philadelphia, to relieve and make more comfortable the sick and insane poor at the Almshouse in Philadelphia.

Item. The collateral tax on all the legacies herein given I direct to be paid out of my said residuary estate.

Lastly. I appoint Samuel F. Wilson, John R. Griffith and Harry W. Town, to be the executors of this my last will and testament.

In witness whereof I have here unto set my hand and seal this twenty-third day of November, A. D., eighteen hundred and seventy-eight (1878).

MARY SHIELDS. [SEAL]

Signed, sealed, published and declared by Mary Shields the above named testatrix, as and for her last will and testament in the presence of us, who in her presence and that of each other have hereunto affixed our names as witnesses thereto, note the words "of Philadelphia" above the eighth line, and the word "sixth" above the ninth line from the bottom of the sixth page, first interlined before signing, and the letter "Z" in the names Cecelia Zeller and Eliza Zeller, also first written over an erasure.

JOHN T. SNARE,  
JACOB E. BOWERS,  
GEO. W. THORN.

I, Mary Shields, of the City of Philadelphia, single woman, do make this writing as and for a codicil to my last will dated the 23d of November, 1878, that is to say:

I do revoke and make void the bequest to the Laurel Hill Cemetery Company of ten thousand dollars in trust, to keep the Shields' vault in good order and repair as set forth in the first item of my will, and in lieu thereof I do give and bequeath the sum of twenty thousand dollars (\$20,000) unto the Fidelity Insurance Trust and Safe Deposit Company upon trust, to apply the income thereof to the keeping the Shields' vault in South Laurel Hill, and the grounds attached to it in perfect order and repair, and if there should be a surplus of such interest or income to pay over such surplus yearly to the managers of the Foster Home Association of Philadelphia for the purposes thereof.

The said lot is No. 81, Sec. 10.

Witness my hand and seal this twenty-ninth day of March, A. D., 1880.

Witnesses.

GEO. W. THORN,  
JOHN T. SNARE.

} MARY SHIELDS. [SEAL.]

I, Mary Shields, of the City of Philadelphia, single woman, do hereby make this writing as and for a codicil to my last will bearing date the twenty-third day of November, 1878, in manner following, that is to say:

1. I do revoke and make void the bequest to the Laurel Hill Cemetery of ten thousand dollars in trust, as in my will set forth for the purpose of applying the interest among other things to the keeping the Shields' vault in repair, and in lieu thereof I do give and bequeath the sum of twenty thousand dollars unto the Fidelity Insurance Trust and Safe Deposit Company of Philadelphia upon trust, to put and keep the same at interest in some good lawful security, and to collect and take the interest and income thereof, and when, and as received, to apply the said interest and income to the keeping of the Shields' vault in South Laurel Hill and the ground attached to it in perfect repair and preser-

vation from year to year, so that the said vault and ground attached thereto shall always be in perfect order and repair, and in the event that there should be in any year a surplus of such interest and income after the necessary expenditure for the purposes aforesaid, then upon this further trust to pay over such surplus interest and income into the hands of the managers of the Foster Home Association of Philadelphia, which Institution is now located at twenty-fourth and Poplar Street, in Philadelphia, to be applied to the purposes of said Institution.

2. I revoke and make void the legacy of ten thousand dollars to my executors in trust, to pay the interest to Cecelia Curley for life, and after her decease to pay the principal to the Northern Home for Friendless Children in the second item of my will contained, and in lieu thereof I do give and bequeath unto my executors and the survivor of them the sum of five thousand dollars upon trust, to put and keep the same at interest in some good lawful security, and to take and collect the interest and income thereof, and when, and as received, if the said Cecelia Curley shall be living with me at the time of my decease, but not otherwise to pay over said interest and income to her, the said Cecelia Curley for and during all the term of her natural life, and from and immediately after her decease if she shall be living with me at the time of my decease, or in the event that she shall not be living with me at the time of my decease, then as soon as conveniently may be after my decease to pay the said principal sum of five thousand dollars unto the Northern Home for Friendless Children absolutely.

3. I give and bequeath unto my executors and the survivor of them the sum of five thousand dollars upon trust, to put and keep the same at interest in some good lawful security, and to take and collect the interest and income thereof, and when and as received, if Catharine Rafferty shall be living with me at the time of my decease, but not otherwise, to pay over the said interest and income to her, the said Catharine Rafferty, for and during all the term of her natural

life, and from and immediately after the decease if she shall be living with me at the time of my decease, or in the event that she shall not be living with me at the time of my decease, then as soon as conveniently may be after my decease to pay over the said principal sum of five thousand dollars unto the Pennsylvania Society to protect children from cruelty, a corporation created by and existing under the laws of Pennsylvania, to be applied to the purposes thereof.

4. I revoke and make void the legacy in my will contained to the Meridian Sun Lodge of Free Masons, of which my brother, James Shields was a member, as I have since the making of my said will given and transferred to the said Lodge an amount equal to or in excess thereof.

5. As I have since the making of my will sold to my friends, Samuel F. Wilson and John R. Griffith, all the stock and interest of my late brother in the firm of Shields & Bro., which under his will was vested in me, the power in my will given to my executors to sell the same has become inoperative and I therefore revoke the same.

6. I direct that the collateral tax which may be payable on any of the legacies in this codicil mentioned, shall be paid out of my residuary estate.

7. I do confirm, republish and declare, my said last will and testament in all respects except so far as the same has been changed and altered by this codicil.

In witness whereof I have hereunto set my hand and seal, this twenty-seventh day of April, A. D., eighteen hundred and eighty (1880).

Witnesses.

GEO. W. THORN, }  
JOHN T. SNARE. }

MARY SHIELDS. [SEAL.]



## EXHIBIT B.

No 1. All that certain lot or piece of ground, with the three-story brick messuage or tenement thereon erected, situate on the east side of Eighteenth Street, at the distance of three hundred and ninety seven feet northward from the north side of Master Street, in the Twenty-ninth (late Twentieth) Ward of the City of Philadelphia. Containing in front or breadth on the said Eighteenth Street twenty feet, and extending of that width in length or depth eastward, between lines parallel with said Master Street, ninety four feet.

[Being the same premises which William H. Wright, Esquire, High Sheriff of Philadelphia County, by deed poll dated the nineteenth day of May, A. D. 1877, acknowledged in open Court of Common Pleas No. 3 for the said County, and entered among the records thereof, in sheriff's deed book No. 53, page 336, granted and conveyed unto the said Mary Shields, in fee.]

No. 2. All that certain lot or piece of ground, with the wharf, brick counting-house, and other improvements thereon erected, situate in the Thirtieth Ward of the City of Philadelphia (formerly in the township of Passyunk, in the County of Philadelphia), beginning at the northwest corner of Sutherland Avenue and Bainbridge (late Shippen) Street, as the same was laid out and intended to be widened and opened, thence extending westwardly along the said northern line of Bainbridge Street, five hundred and twelve feet, to the head or end of a dock or wharf intended to have been erected to project into the river Schuylkill, thence in a line along the head or end of said dock or wharf and the said river Schuylkill, north, fifty two degrees forty five minutes east, ninety four feet, to the said river, thence partly along said river and partly overland, south, seventy seven degrees east, five hundred and sixteen feet, to said Sutherland Avenue, and thence along the said avenue, south, fifty

one degrees forty five minutes west, ninety four feet six inches, to the northern line of Bainbridge Street, the place of beginning.

[Being the same premises which Morton McMichael, Esquire, High Sheriff of Philadelphia County, by deed poll dated the twenty-fourth day of February, A. D. 1844, acknowledged in open District Court for the City and County of Philadelphia, and entered among the records thereof, in sheriff's deed book R, page 4, granted and conveyed unto the said Mary Shields, in fee, subject to the payment of a yearly ground-rent or sum of four hundred and twelve dollars and fifty cents, in equal half-yearly payments, unto Charles Addams, his heirs and assigns; which said yearly ground-rent or sum of four hundred and twelve dollars and fifty cents the said Charles Addams and Sarah S., his wife, by deed poll dated the first day of December, A. D. 1838, recorded at Philadelphia, in deed book S. H. F., No. 27, page 713, &c., granted and assigned unto David C. Skerrett, trustee and guardian of the said Mary Shields, his heirs and assigns; by virtue of which said conveyance and assignment, the said yearly ground-rent or sum of four hundred and twelve dollars and fifty cents merged, and became forever thereafter extinguished.]

No. 3. All those five contiguous messuages or tenements and lot of ground thereto belonging, situate on the south side of a certain fifteen feet wide alley called Relief Alley, extending from Front Street to Second Street, and on the west side of a passage twelve feet wide, called Shields' Court, in the Fifth Ward of the City of Philadelphia. Containing in front or breadth on said Relief Alley twenty two feet six inches, and in depth southward seventy six feet, more or less; bounded northward by the said Relief Alley, eastward by the said Shields' Court, southward by a four feet wide alley, and westward by another four feet wide alley, leading from Relief Alley to South Street.

[Being part of the first described of two lots of ground which Charles Hurst, by indenture dated the first

day of October, A. D. 1784, recorded at Philadelphia, in deed book No. 19, page 398, &c., granted and conveyed unto Thomas Shields, the elder, in fee, paying therefor unto the said Charles Hurst, his heirs and assigns, the yearly rent, or sum of one hundred and sixty dollars; which said yearly rent Charles Ludlow, by indenture dated the third day of September, A. D. 1811, recorded at Philadelphia, in deed book I. C., No. 18, page 194, &c., granted and assigned unto the said Thomas Shields, the elder, in fee, whereupon the same merged, and became forever thereafter extinguished. And the said Thomas Shields, the elder, being seized in fee of the above described premises, died, having first made and published his last will and testament in writing, dated the seventeenth day of April, A. D. 1813, duly proved and registered at Philadelphia, in will book No. 7, page 86, &c., wherein and whereby he gave and devised the same, *inter alia*, in the residue of his estate, unto his four sons, Thomas Robert, John, and David Shields, in fee, in equal shares, as tenants in common; and the said David Shields and Eliza, his wife, by indenture dated the twenty-seventh day of October, A. D. 1823, recorded at Philadelphia, in deed book G. W. R., No. 3, page 78, &c., granted and released his one equal and undivided fourth part of and in, *inter alia*, the above described premises unto the said Thomas Shields, Robert Shields, and John Shields, in fee, in equal shares, as tenants in common; and the said Thomas Shields and Robert Shields, and Mary H., his wife, by indenture dated the second day of August, A. D. 1824, recorded at Philadelphia, in deed book I. H., No. 10, page 690, &c., granted and released their two equal and undivided third parts of and in, *inter alia*, the above described premises unto the said John Shields, in fee. And the said John Shields, being so seized in fee of the said premises, died, having first made and published his last will and testament in writing, dated the twenty-fourth day of December, A. D. 1829, duly proved and registered at Philadelphia, in will book No. 10, page 100, &c., wherein and

whereby he gave and devised the same, *inter alia*, unto his daughter, the said Mary Shields, in fee.]

Together with the privilege of building over the whole of the north end of the said last mentioned four feet wide alley, to extend forty feet from the said Relief Alley, so that the crown of the arch shall at least be ten feet from the surface of the ground; and together also with the free and common use, right, liberty, and privilege of all the aforesaid alleys, and of the said court, as and for passage ways and water courses, at all times hereafter forever.

No. 4. All that certain lot or piece of ground, with the two-story frame messuage or tenement thereon erected, situate on the south side of Market (formerly High) Street, at the distance of one hundred and twenty seven feet westward from the west side of Eighteenth (formerly Schuylkill Fifth) Street, in the Ninth Ward of the City of Philadelphia. Containing in front or breadth on the said Market Street twenty eight feet, and extending in length or depth southward one hundred and seventy six feet, to a twenty five feet wide alley or street, now called Barker Street; bounded northward by the said Market Street, eastward by ground now or late of William Coulton, southward by the said Barker Street, and westward by a lot of ground released to David Shields.

[Being the easternmost moiety or half part of a larger lot of ground which James Moloney and Ann, his wife, by indenture dated the twelfth day of February, A. D. 1814, recorded at Philadelphia, in Deed Book I. C., No. 28, page 276, &c., granted and conveyed unto Thomas Shields, the elder, in fee. And the said Thomas Shields, the elder, being so seized in fee of the above described lot, died, having first made and published his last will and testament in writing, dated the seventeenth day of April, A. D. 1813, duly proved and registered at Philadelphia, in will book No. 7, page 86, &c., wherein and whereby he gave and devised the same, *inter alia*, in the residue of his estate, unto his four sons, Thomas, Robert, John, and David Shields, in fee, in equal shares, as tenants in common; and the said David Shields

and Eliza, his wife, by indenture dated the twenty-seventh day of October, A. D. 1823, recorded at Philadelphia, in deed book G. W. R., No. 3, page 78, &c., granted and released his one equal and undivided fourth part of and in, *inter alia*, the above described lot unto the said Thomas Shields, Robert Shields, and John Shields, in fee, in equal shares, as tenants in common; and the said Thomas Shields and Robert Shields, and Mary H., his wife, by indenture dated the second day of August, A. D. 1824, recorded at Philadelphia, in deed book I. H., No. 10, page 690, &c., granted and released their two equal and undivided third parts of and in, *inter alia*, the above described lot unto the said John Shields, in fee. And the said John Shields, being seized in fee of the above described premises, died, having first made and published his last will and testament in writing, dated the twenty-fourth day of December, A. D. 1829, duly proved and registered at Philadelphia, in will book No. 10, page 100, &c., wherein and whereby he gave and devised the same, *inter alia*, unto his son, Edwin Shields, in fee. And the said Edwin Shields, being so seized in fee of the said premises, died, having first made and published his last will and testament in writing, dated the nineteenth day of June, A. D. 1847, duly proved and registered at Philadelphia, in will book No. 55, page 73, &c., wherein and whereby, *inter alia*, he gave and devised all his real estate unto his brother, James Shields, and his sister, the said Mary Shields, in trust for his mother, Eliza Shields, during her life, and after her decease then unto them the said James and Mary Shields, in fee, in equal shares; and the said Eliza Shields died on the twenty-fourth day of December, A. D. 1864, the said James and Mary Shields surviving her, whereby the said premises vested in them, in fee, in equal shares. And the said James Shields, being so seized in fee of an undivided moiety or half part of and in the said premises, died, having first made and published his last will and testament in writing, dated the twenty-seventh day of July, A. D. 1846, duly proved and registered at Philadelphia, in will book No. 93, page 272,

&c., wherein and whereby, *inter alia*, he gave and devised all his real estate unto his brother, the said Edwin Shields, and his sister, the said Mary Shields, in fee, in equal shares, and if either of them should die intestate and without leaving issue surviving, then the whole of his or her share, or so much thereof as should remain undisposed of, unto the survivor, in fee; subject to the payment of an annuity of two hundred dollars to his mother, the said Eliza Shields, during her life: and the said Eliza Shields and Edwin Shields having both died, as above recited, during the lifetime of the said James Shields, the said Edwin Shields leaving no issue, the entire interest of the said James Shields of and in the said above described premises, being one moiety thereof as aforesaid, vested in the said Mary Shields, in fee, she thereupon becoming seized in fee of the whole of the said premises.]

Together with the free and common use, right, liberty, and privilege of the said alley or street, now called Barker Street, as and for a passage way and water course, at all times hereafter forever.

No. 5. All that certain lot or piece of ground, with the three-story brick messuage or tenement thereon erected, situate on the west side of Dean Street, at the distance of one hundred and twenty seven feet eight inches and a quarter southward from the south side of Locust Street, in the Eighth Ward of the City of Philadelphia. Containing in front or breadth on the said Dean Street sixteen feet one inch and a quarter, and in length or depth westward sixty feet, to a five feet wide alley, leading into said Locust Street; bounded northward by a lot of ground released to Robert Shields, eastward by the said Dean Street, southward by a lot of ground released to John Shields, and westward by the said five feet wide alley.

[Being part of a larger lot of ground which The Supreme Executive Council of the Commonwealth of Pennsylvania, by patent dated the fifteenth day of June, A. D. 1782, inrolled in the Rolls Office, in city lot patent book No. 1,

page 22, granted and conveyed unto Thomas Shields, the elder, in fee. And the said Thomas Shields, the elder, being seized in fee of the above described premises, died, having first made and published his last will and testament in writing, dated the seventeenth day of April, A. D. 1813, duly proved and registered at Philadelphia, in will book No. 7, page 86, &c., wherein and whereby he gave and devised the same, *inter alia*, in the residue of his estate, unto his four sons, Thomas, Robert, John, and David Shields, in fee, in equal shares, as tenants in common; and the said David Shields and Eliza, his wife, by indenture dated the twenty-seventh day of October, A. D. 1823, recorded at Philadelphia, in deed book G. W. R., No. 3, page 78, &c., granted and released his one equal and undivided fourth part of and in, *inter alia*, the above described premises unto the said Thomas Shields, Robert Shields, and John Shields, in fee, in equal shares, as tenants in common; and the said Thomas Shields and Robert Shields, and Mary H., his wife, by indenture dated the second day of August, A. D. 1824, recorded at Philadelphia, in deed book I. H., No. 10, page 690, &c., granted and released their two equal and undivided third parts of and in, *inter alia*, the above described premises unto the said John Shields, in fee. And the said John Shields, being so seized in fee of the said premises, died, having first made and published his last will and testament in writing, dated the twenty-fourth day of December, A. D. 1829, duly proved and registered at Philadelphia, in will book No. 10, page 100, &c., wherein and whereby he gave and devised the same, *inter alia*, unto his son, James Shields, in fee. And the said James Shields, being so seized in fee of the said premises, died, having first made and published his last will and testament in writing, dated the twenty-seventh day of July, A. D. 1846, duly proved and registered at Philadelphia, in will book No. 93, page 272, &c., wherein and whereby, *inter alia*, he gave and devised all his real estate unto his brother, Edwin Shields, and his sister, the said Mary Shields, in fee, in equal shares, and if either of them should die intestate

and without leaving issue surviving, then the whole of his or her share, or so much thereof as should remain undisposed of, unto the survivor, in fee; subject to the payment of an annuity of two hundred dollars to his mother, Eliza Shields, during her life. And the said Eliza Shields and Edwin Shields having both died during the lifetime of the said James Shields, the said Eliza on the twenty-fourth day of December, A. D. 1864, and the said Edwin on the twenty-eight day of February, A. D. 1865, he leaving no issue, the said premises became vested in the said Mary Shields, in fee.]

Together with the fee and common use, right, liberty, and privilege of the said five feet wide alley, as and for a passage way and water course, at all times hereafter forever.

No. 6. All that certain lot or piece of ground situate on the west side of Seventeenth Street, at the distance of two hundred and thirty six feet northward from the north side of Oxford Street, in the Twenty-ninth (late Twentieth) Ward of the City of Philadelphia. Containing in front or breadth on the said Seventeenth Street nineteen feet, and extending of that width in length or depth westward, between lines at right angles to said Seventeenth Street, one hundred and seventy seven feet ten inches, to Bouvier Street; bounded northward and southward by ground now or late of The Farmers and Mechanics Land and Building Association, eastward by said Seventeenth Street, and westward by said Bouvier Street.

No. 7. All that certain lot or piece of ground (composed of seven contiguous pieces of ground) situate at the northwest corner of Seventeenth Street and Jefferson Street, in the Twenty ninth (late Twentieth) Ward of the City of Philadelphia. Containing in front or breadth on said Seventeenth Street one hundred and thirty three feet (that is to say, nineteen feet each lot), and extending of that width in length or depth westward, between lines parallel with said Jefferson Street, one hundred and seventy seven feet ten inches, to Bouvier Street; bounded northward by

the next described lots of ground, eastward by said Seventeenth Street, southward by said Jefferson Street, and westward by said Bouvier Street.

No. 8. All that certain lot or piece of ground (composed of eight contiguous lots or pieces of ground) situate on the west side of Seventeenth Street, at the distance of one hundred and thirty three feet northward from the north side of Jefferson Street, in the Twenty-ninth (late Twentieth) Ward of the City of Philadelphia. Containing in front or breadth on said Seventeenth Street one hundred and forty four feet (that is to say, eighteen feet each lot), and extending of that width in length or depth westward, between lines parallel with said Jefferson Street, one hundred and seventy seven feet ten inches, to Bouvier Street; bounded northward by ground now or late of The Farmers and Mechanics Land and Building Association, eastward by said Seventeenth Street, southward by the last described lots of ground, and westward by said Bouvier Street.

[Being the same three several lots or pieces of ground, the first described whereof, by indenture dated the nineteenth day of June, A. D. 1867, recorded at Philadelphia, in deed book J. T. O., No. 53, page 370; &c., and the second and third described whereof, by indenture dated the second day of December, A. D. 1865, recorded at Philadelphia, in deed book L. R. B., No. 138, page 522, &c., The Farmers and Mechanics Land and Building Association granted and conveyed unto James Shields and the said Mary Shields, in fee, in the following shares and proportions: two third parts thereof to the said James Shields, his heirs and assigns, and the remaining one third part thereof to the said Mary Shields, her heirs and assigns. Under and subject, nevertheless, to the express restriction that no court houses, carpenter, blacksmith, currier, or machine shop, livery stable, slaughter house, soap or glue boiling establishment, or factory of any kind where steam power shall be used, or any building for any offensive occupation, should at any time thereafter be erected on the said lots of ground, or any part thereof. And the said James Shields, being so seized in fee of two

undivided third parts of and in the said lots of ground, died, having first made and published his last will and testament in writing, dated the twenty-seventh day of July, A. D. 1846, duly proved and registered at Philadelphia, in will book No. 93, page 272, &c., wherein and whereby, *inter alia*, he gave and devised all his real estate unto his brother, Edwin Shields, and his sister, the said Mary Shields, in fee, in equal shares, and if either of them should die intestate and without leaving issue surviving, then the whole of his or her share, or so much thereof as should remain undisposed of, unto the survivor, in fee; subject to the payment of an annuity of two hundred dollars to his mother, Eliza Shields, during her life. And the said Eliza Shields and Edwin Shields having both died during the lifetime of the said James Shields, the said Eliza on the twenty-fourth day of December, A. D. 1864, and the said Edwin on the twenty-eighth day of February, A. D. 1865, he leaving no issue, the entire interest of the said James Shields of and in the said lots of ground vested in the said Mary Shields, in fee, she thereupon becoming seized in fee of the whole of the said lots.]

No. 9. All that certain lot or piece of ground, with the three-story brick messuage or tenement thereon erected, situate on the south side of Ellsworth Street, at the distance one hundred and forty six feet six inches westward from the west side of Sixteenth Street, in the Twenty-sixth Ward of the City of Philadelphia. Containing in front or breadth on the said Ellsworth Street sixteen feet, and extending in length or depth southward of that width seventy nine feet, to a four feet wide alley which runs westward into Seventeenth Street.

No. 10. All that certain lot or piece of ground, with the three-story brick messuage or tenement thereon erected, situate on the south side of Ellsworth Street, at the distance of one hundred and sixty two feet six inches westward from the west side of Sixteenth Street, in the Twenty-sixth Ward of the City of Philadelphia. Containing in front or breadth

on the said Ellsworth Street sixteen feet, and extending in length or depth southward of that width seventy nine feet, to a four feet wide alley which runs westward into Seventeenth Street.

No. 11. All that certain lot or piece of ground, with the three-story brick messuage or tenement thereon erected, situate on the south side of Ellsworth Steeet, at the distance of one hundred and ninety four feet six inches westward from the west side of Sixteenth Street, in the Twenty-sixth Ward of the City of Philadelphia. Containing in front or breadth on the said Ellsworth Street sixteen feet, and extending in length or depth southward of that width seventy nine feet, to a four feet wide alley which runs westward into Seventeenth Street.

No. 12. All that certain lot or piece of ground, with the three-story brick messuage or tenement thereon erected, situate on the west side of Sixteenth Street, at the distance of sixteen feet southward from the south side of Ellsworth Street, in the Twenty-sixth Ward of the City of Philadelphia. Containing in front or breadth on the said Sixteenth Street sixteen feet, and extending in length or depth westward of that width, between parallel lines at right angles with the said Sixteenth Street, eighty two feet six inches.

No. 13. All that certain lot or piece of ground, with the three-story brick messuage or tenement thereon erected, situate on the west side of Sixteenth Street, at the distance of forty eight feet southward from the south side of Ellsworth Street, in the Twenty-sixth Ward of the City of Philadelphia. Containing in front or breadth on the said Sixteenth Street sixteen feet, and extending in length or depth westward of that width, between parallel lines at right angles with the said Sixteenth Street, eighty two feet six inches, including a two feet six inches wide alley, which runs southward into another alley four feet wide, which leads into Seventeenth Street, and communicating with another alley three feet six inches wide, leading into Afton Street.

No. 14. All that certain lot or piece of ground, with the three-story brick messuage or tenement thereon erected, situate on the west side of Sixteenth Street, at the distance of sixty four feet southward from the south side of Ellsworth Street, in the Twenty-sixth Ward of the City of Philadelphia. Containing in front or breadth on the said Sixteenth Street sixteen feet, and extending in length or depth westward of that width, between parallel lines at right angles with the said Sixteenth Street, eighty two feet six inches, including a two feet six inches wide alley, which runs southward into another alley four feet wide, which leads into Seventeenth Street, and communicating with another alley three feet six inches wide, leading into Afton Street.

[Being the same premises which Andrew Johann and Maria C., his wife, by indenture dated the twenty-sixth day of December, A. D. 1867, recorded at Philadelphia, in deed book J. T. O., No. 109, page 90, &c., granted and conveyed, *inter alia*, unto James Shields, in fee. And the said James Shields, being so seized in fee of the said premises, died, having first made and published his last will and testament in writing, dated the twenty-seventh day of July, A. D. 1846, duly proved and registered at Philadelphia, in will book No. 93, page 272, &c., wherein and whereby, *inter alia*, he gave and devised all his real estate unto his brother, Edwin Shields, and his sister, the said Mary Shields, in fee, in equal shares, and if either of them should die intestate and without leaving issue surviving, then the whole of his or her share, or so much thereof as should remain undisposed of, unto the survivor, in fee; subject to the payment of an annuity of two hundred dollars to his mother, Eliza Shields, during her life. And the said Eliza Shields and Edwin Shields having both died during the lifetime of the said James Shields, the said Eliza on the twenty-fourth day of December, A. D. 1864, and the said Edwin on the twenty-eighth day of February, A. D. 1865, he leaving no issue, the said premises became vested in the said Mary Shields, in fee.]

Together with the free and common use and privilege

of the alleys bounding on said premises, and communicating therewith.

No. 15. All that certain lot or piece of ground, with the three-story brick messuage or tenement thereon erected, situate on the north side of Summer Street, at the distance of one hundred and thirty two feet six inches eastward from the east side of Twenty-first Street, in the Tenth Ward of the City of Philadelphia. Containing in front or breadth on the said Summer Street sixteen feet, and extending in length or depth northward of that width fifty one feet; bounded northward by ground now or late of Charles Harlan, eastward by ground granted to John G. Grow on ground-rent, southward by the said Summer Street, and westward by ground formerly of Andrew Johann.

[Being the same premises which Peter Lyle, Esquire, High Sheriff of Philadelphia County, by deed poll dated the fifth day of September, A. D. 1870, acknowledged in open District Court for the City and County of Philadelphia, and entered among the records thereof, in sheriff's deed book No. 71, page 440, &c., granted and conveyed unto James Shields, in fee. And the said James Shields, being so seized in fee of the said premises, died, having first made and published his last will and testament in writing, dated the twenty-seventh day of July, A. D. 1846, duly proved and registered at Philadelphia, in will book No. 93, page 272, &c., wherein and whereby, *inter alia*, he gave and devised all his real estate unto his brother, Edwin Shields, and his sister, the said Mary Shields, in fee, in equal shares, and if either of them should die intestate and without leaving issue surviving, then the whole of his or her share, or so much thereof as should remain undisposed of, unto the survivor, in fee; subject to the payment of an annuity of two hundred dollars to his mother, Eliza Shields, during her life. And the said Eliza Shields and Edwin Shields having both died during the lifetime of the said James Shields, the said Eliza on the twenty-fourth day of December, A. D. 1864, and the said Edwin on the twenty-eighth day of Feb-

ruary, A. D. 1865, he leaving no issue, the said premises became vested in the said Mary Shields, in fee.]

No. 16. All that certain lot or piece of ground situate on the north-west side of Walnut Lane, beginning at the distance of one hundred and thirty feet and three inches southward from the south-west side of Green Street, in the Twenty-second Ward of the City of Philadelphia. Containing in front or breadth on the said Walnut Lane one hundred and thirty feet and three inches, and extending in length or depth, between parallel lines at right angles with the said Walnut Lane, three hundred and thirty eight feet, more or less, to ground formerly of Justus Johnson.

No. 17. All that certain lot or piece of ground, with the messuage and buildings thereon erected, situate on the north-west side of Walnut Lane, beginning at the distance of two hundred and sixty feet and six inches southwestward from the south-west side of Green Street, in the Twenty-second Ward of the City of Philadelphia. Containing in front or breadth on the said Walnut Lane one hundred and forty feet, and extending in length or depth, between parallel lines at right angles with the said Walnut Lane, three hundred and thirty eight feet, more or less, to ground formerly of Justus Johnson.

[Being the same premises which Graham Calvert and Mary S., his wife, by indenture dated the twenty-third day of October, A. D. 1869, recorded at Philadelphia, in deed book J. A. H., No. 5, page 344, &c., granted and conveyed unto James Shields, in fee, subject as respects the lot first described, to the payment of a yearly ground-rent of sixty dollars, in half-yearly payments, on the twenty-third days of January and July, in each year, and as respects the lot second described, to the payment of a yearly ground-rent of seventy two dollars, in half-yearly payments, on the first days of February and August, in each year; and Robert B. Haines and Margaret W., his wife, by indenture dated the twenty-fourth day of August, A. D. 1877, recorded at Philadelphia, in deed book D. H. L., No. 117, page 119,

&c., granted, released, and extinguished the said first mentioned yearly ground-rent of sixty dollars unto the said James Shields, his heirs and assigns; and Thomas Bartlett and Ann, his wife, by indenture dated the thirteenth day of August, A. D. 1866, recorded at Philadelphia, in deed book L. R. B., No. 200, page 191, &c., granted and assigned the said second mentioned yearly ground-rent of seventy two dollars unto the said Mary Shields, her heirs and assigns. And the said James Shields, being so seized in fee of the said premises, died, having first made and published his last will and testament in writing, dated the twenty-seventh day of July, A. D. 1846, duly proved and registered at Philadelphia, in will book No. 93, page 272, &c., wherein and whereby, *inter alia*, he gave and devised all his real estate unto his brother, Edwin Shields, and his sister, the said Mary Shields, in fee, in equal shares, and if either of them should die intestate and without leaving issue surviving, then the whole of his or her share, or so much thereof as should remain undisposed of, unto the survivor, in fee; subject to the payment of an annuity of two hundred dollars to his mother, Eliza Shields, during her life. And the said Eliza Shields and Edwin Shields having both died during the lifetime of the said James Shields, the said Eliza on the twenty-fourth day of December, A. D. 1864, and the said Edwin on the twenty-eighth day of February, A. D. 1865, he leaving no issue, the said premises became vested in the said Mary Shields, in fee, whereupon the above mentioned yearly ground-rent of seventy two dollars merged, and became forever thereafter extinguished.]

No. 18. All that certain lot or piece of ground, with the buildings and improvements thereon erected, beginning at a point in the north-west side of Salmon Street, at the distance of three hundred and sixty four feet southwestward from the south-west side of Wheat Sheaf Lane, in the Twenty-fifth Ward of the City of Philadelphia, thence extending northwestward, at right angles to the said Salmon Street, by ground now or formerly of John S. Fitchett, one hundred and seventeen feet six inches, thence southwestward, parallel

with the said Salmon Street, by the same ground, one hundred and ninety two feet eight inches and seven eighths of an inch, to Twell's ground, thence southeastward, along said Twell's ground, one hundred and seventeen feet nine inches and one quarter of an inch, to the north-west side of the said Salmon Street, and thence northeastward, along the said street, two hundred feet nine and five eighths inches, to the place of beginning.

No. 19. All that certain lot or piece of ground, beginning at a point in the south-east side of Edgemont (formerly called Brown) Street, at the distance of three hundred and eighty five feet nine inches southwestward from the south-west side of Wheat Sheaf Lane, in the Twenty-fifth Ward of the City of Philadelphia, thence extending southeastward, at right angles to the said Edgemont Street, by ground now or formerly of John S. Fitchett, one hundred and seventeen feet six inches, thence southwestward, parallel with the said Edgemont Street, by the same ground, one hundred and ninety two feet eight inches and seven eighths of an inch, to Twell's ground, thence northwestward, along said Twell's ground, one hundred and seventeen feet nine inches and three eighths of an inch to the south-east side of the said Edgemont Street, and thence northeastward, along the said street, one hundred and eighty four feet eight inches and one quarter of an inch, to the place of beginning.

[Being the same premises which Samuel Shethar, assignee, &c., by indenture dated the thirtieth day of December, A. D. 1876, recorded at Philadelphia, in deed book D. H. L., No. 67, page 215, &c., granted and conveyed unto James Shields, in fee. And the said James Shields, being so seized in fee of the said premises, died, having first made and published his last will and testament in writing, dated the twenty-seventh day of July, A. D. 1846, duly proved and registered at Philadelphia, in will book No. 93, page 272, &c., wherein and whereby, *inter alia*, he gave and devised all his real estate unto his brother, Edwin Shields, and his sister, the said Mary Shields, in fee, in equal shares, and if either of them should die intestate and without leaving



issue surviving, then the whole of his or her share, or so much thereof as should remain undisposed of, unto the survivor, in fee; subject to the payment of an annuity of two hundred dollars to his mother, Eliza Shields, during her life. And the said Eliza Shields and Edwin Shields having both died during the lifetime of the said James Shields, the said Eliza on the twenty-fourth day of December, A. D. 1864, and the said Edwin on the twenty-eighth day of February, A. D. 1865, he leaving no issue, the said premises became vested in the said Mary Shields, in fee.]

No. 20. All that certain lot or piece of ground, beginning at a point on the north-west side of Richmond Street and in the middle of Wheat Sheaf Lane, in the Twenty-fifth Ward of the City of Philadelphia, thence extending along the middle of the said lane, north, twenty seven degrees seven minutes west, two hundred and forty one feet one and one eighth inches, to the south-east side of Salmon Street, thence southwestward, along the said Salmon Street, one hundred and eighty seven feet nine and three quarters inches, more or less, to ground formerly of John S. Fitchett, thence southeastward, by the same ground, on a line parallel with the said Wheat Sheaf Lane, two hundred and thirty nine feet eight and one quarter inches, to the north-west side of the said Richmond Street, and thence northeastward, along the said Richmond Street, one hundred and eighty seven feet nine and three quarters inches, to the middle of the said Wheat Sheaf Lane, the place of beginning.

No. 21. All that certain lot or piece of ground situate on the north-west side of Richmond Street, at the distance of three hundred and fifty six feet eight and one half inches southwestward from the south-west side of Wheat Sheaf Lane, in the Twenty-fifth Ward of the City of Philadelphia. Containing in front or breadth on the said Richmond Street one hundred and seventy four feet ten and three quarters inches, more or less, and extending of that width in length or depth northwestward, between parallel lines, on the north-east line thereof two hundred and thirty seven feet six and

seven eighths inches, and on the south-west line thereof two hundred and thirty five feet eleven inches, to the south-east side of Salmon Street; bounded northeastward by ground formerly of John S. Fitchett, southeastward by the said Richmond Street, southwestward by Twell's ground, and northwestward by the said Salmon Street.

No. 22. All that certain lot or piece of ground, beginning at a point on the north-west side of Edgemont (late Brown) Street and in the middle of Wheat Sheaf Lane, in the Twenty-fifth Ward of the City of Philadelphia, thence extending along the middle of the said lane, north, twenty seven degrees seven minutes west, one hundred and ninety two feet four and three quarters inches, to the south-east side of Thompson (late Duke) Street, thence southwestward, along the said Thompson Street, six hundred and seven feet one and three quarters inches, more or less, to Twell's ground, thence along the same, south, twenty eight degrees twenty nine minutes east, one hundred and ninety two feet and three eighths of an inch, to the north-west side of the said Edgemont Street, and thence northeastward, along the said Edgemont Street, six hundred and five feet eight and five eighths inches, more or less, to the middle of the said Wheat Sheaf Lane, the place of beginning.

No. 23. All that certain lot or piece of ground, beginning at a point on the north-west side of Thompson (late Duke) Street and in the middle of Wheat Sheaf Lane, in the Twenty-fifth Ward of the City of Philadelphia, thence extending along the middle of the said lane, north, twenty seven degrees seven minutes west, three hundred and eleven feet three and three quarters inches, to the south-east side of Almond Street, thence southwestward, along the said Almond Street, six hundred and eleven feet five and three eighths inches, more or less, to Twell's ground, thence along the same, south, twenty eight degrees twenty nine minutes east, three hundred and ten feet eight and three quarters inches, to the north-west side of the said Thompson Street, and thence northeastward, along the said Thompson Street,

six hundred and seven feet eight and one half inches, more or less, to the middle of the said Wheat Sheaf Lane, the place of beginning.

No. 24. All that certain lot or piece of ground, beginning at a point on the north-west side of Almond Street and in the middle of Wheat Sheaf Lane, in the Twenty-fifth Ward of the City of Philadelphia, thence extending along the middle of the said lane, north, twenty seven degrees seven minutes west, two hundred and seventy one feet one and three quarters inches, to the south-east side of Belgrade (late West) Street, thence southwestward, along the said Belgrade Street, six hundred and thirteen feet six and one eighth inches, more or less, to Twell's ground, thence along the same, south, twenty eight degrees twenty nine minutes east, two hundred and seventy feet seven and five eighths inches, to the north-west side of the said Almond Street, and thence northeastward, along the said Almond Street, six hundred and twelve feet and one quarter of an inch, more or less, to the middle of the said Wheat Sheaf Lane, the place of beginning.

[Being parts of a larger lot of ground which George R. Hazewell and Sarah H., his wife, by indenture dated the third day of January, A. D. 1854, recorded at Philadelphia, in deed book T. H., No. 126, page 126, &c., granted and conveyed unto Edwin Shields, in fee. And the said Edwin Shields being so seized in fee of the said premises, died, having first made and published his last will and testament in writing, dated the nineteenth day of June, A. D. 1847, duly proved and registered at Philadelphia, in will book No. 55, page 73, &c., wherein and whereby, *inter alia*, he gave and devised all his real estate unto his brother, James Shields, and his sister, the said Mary Shields, in trust for his mother, Eliza Shields, during her life, and after her decease, then unto them the said James and Mary Shields, in fee, in equal shares; and the said Eliza Shields died on the twenty-fourth day of December, A. D. 1864, the said James and Mary Shields surviving her, whereby

the said premises vested in them, in fee, in equal shares. And the said James Shields, being so seized in fee of an undivided moiety or half part of and in the said premises, died, having first made and published his last will and testament in writing, dated the twenty-seventh day of July, A. D. 1846, duly proved and registered at Philadelphia, in will book No. 93, page 272, &c., wherein and whereby, *inter alia*, he gave and devised all his real estate unto his brother, the said Edwin Shields, and his sister, the said Mary Shields, in fee, in equal shares, and if either of them should die intestate and without leaving issue surviving, then the whole of his or her share, or so much thereof as should remain undisposed of, unto the survivor, in fee; subject to the payment of an annuity of two hundred dollars to his mother, the said Eliza Shields, during her life: and the said Eliza Shields and Edwin Shields having both died, as above recited, during the lifetime of the said James Shields, the said Edwin Shields leaving no issue, the entire interest of the said James Shields of and in the said above described premises, being one moiety thereof as aforesaid, vested in the said Mary Shields, in fee, she thereupon becoming seized in fee of the whole of the said premises.]

No. 25. All that certain lot or piece of ground, with the three messuages or tenements thereon erected, situate on the North side of Fairmount Avenue (formerly called Coates Street), at the distance of two hundred and ninety eight feet eleven inches eastward from the north-east corner of the said Fairmount Avenue and Fifth Street (formerly called the Old York Road), in the Twelfth Ward of the City of Philadelphia (formerly in the Northern Liberties), marked in a certain plan of lots, No. 16, containing in breadth east and west twenty feet, and in length or depth northward, between parallel lines, one hundred and fifty feet, to a thirty feet wide street called Maria Street; bounded northward by said Maria Street, eastward by a lot marked in said plan, No. 17, granted to Abraham Bowman on ground-rent, southward by Fairmount Avenue aforesaid, and westward by a lot marked in said plan, No. 15.

[Being the same premises which John R. Neff, executor, &c., by indenture dated the first day of October, A. D. 1849, recorded at Philadelphia, in deed book G. W. C., No. 27, page 280, &c., granted and conveyed unto Edwin Shields in fee. And the said Edwin Shields, being so seized in fee of the said premises, died, having first made and published his last will and testament in writing, dated the nineteenth day of June, A. D. 1847, duly proved and registered at Philadelphia, in will book No. 55, page 73, &c., wherein and whereby, *inter alia*, he gave and devised all his real estate unto his brother, James Shields, and his sister, the said Mary Shields, in trust for his mother, Eliza Shields, during her life, and after her decease, then unto them the said James and Mary Shields, in fee, in equal shares; and the said Eliza Shields died on the twenty-fourth day of December, A. D. 1864, the said James and Mary Shields surviving her, whereby the said premises vested in them, in fee, in equal shares. And the said James Shields, being so seized in fee of an undivided moiety or half part of and in the said premises, died, having first made and published his last will and testament in writing, dated the twenty-seventh day of July, A. D. 1846, duly proved and registered at Philadelphia, in will book No. 93, page 272, &c., wherein and whereby, *inter alia*, he gave and devised all his real estate unto his brother, the said Edwin Shields, and his sister, the said Mary Shields, in fee, in equal shares, and if either of them should die intestate and without leaving issue surviving, then the whole of his or her share, or so much thereof as should remain undisposed of, unto the survivor, in fee; subject to the payment of an annuity of two hundred dollars to his mother, the said Eliza Shields, during her life: and the said Eliza Shields and Edwin Shields having both died, as above recited, during the lifetime of the said James Shields, the said Edwin Shields leaving no issue, the entire interest of the said James Shields of and in the said above described premises, being one moiety thereof as aforesaid, vested in the said Mary Shields, in fee, she thereupon becoming seized in fee of the whole of the said premises.]

No. 26. All that certain lot or piece of ground, with the three messuages or tenements thereon erected, situate on the east side of Thirteenth Street, at the distance of ninety feet northward from the north side of South (formerly Cedar) Street, in the Seventh Ward of the City of Philadelphia. Containing in breadth north and south twenty feet, and in length or depth east and west ninety feet; bounded northward by ground now or late of Daniel Clawges, eastward by ground late of John Harrison, deceased, southward by ground late of Amos Wickersham, and westward by the said Thirteenth Street.

[Being the same lot or piece of ground, which Caleb North, Esquire, High Sheriff of Philadelphia County, by deed poll dated the first day of April, A. D. 1820, acknowledged in open District Court for the City and County of Philadelphia, and entered among the records thereof, in sheriff's deed book C, page 134, &c., and also recorded in the office for recording of deeds, &c., in and for the said city and county, in deed book I. W., No. 10, page 443, &c., granted and conveyed unto John Shields (Sheilds), in fee. And the said John Shields, being seized in fee of the above described premises, died, having first made and published his last will and testament in writing, dated the twenty-fourth day of December, A. D. 1829, duly proved and registered at Philadelphia, in will book No. 10, page 100, &c., wherein and whereby he gave and devised the same, *inter alia*, unto his son, Edwin Shields, in fee. And the said Edwin Shields, being so seized in fee of the said premises, died, having first made and published his last will and testament in writing, dated the nineteenth day of June, A. D. 1847, duly proved and registered at Philadelphia, in will book No. 55, page 73, &c., wherein and whereby, *inter alia*, he gave and devised all his real estate unto his brother, James Shields, and his sister, the said Mary Shields, in trust for his mother, Eliza Shields, during her life, and after her decease, then unto them the said James and Mary Shields, in fee, in equal shares; and the said Eliza Shields died on the twenty-fourth day of December, A. D. 1864, the said James and

Mary Shields surviving her, whereby the said premises premises vested in them, in fee, in equal shares. And the said James Shields, being so seized in fee of an undivided moiety or half part of and in the said premises, died, having first made and published his last will and testament in writing, dated the twenty-seventh day of July, A. D. 1846, duly proved and registered at Philadelphia, in will book No. 93, page 272, &c., wherein and whereby, *inter alia*, he gave and devised all his real estate unto his brother, the said Edwin Shields, and his sister, the said Mary Shields, in fee, in equal shares, and if either of them should die intestate and without leaving issue surviving, then the whole of his or her share, or so much thereof as should remain undisposed of, unto the survivor, in fee; subject to the payment of an annuity of two hundred dollars to his mother, the said Eliza Shields, during her life: and the said Eliza Shields and Edwin Shields having both died, as above recited, during the lifetime of the said James Shields, the said Edwin Shields leaving no issue, the entire interest of the said James Shields of and in the said above described premises, being one moiety thereof as aforesaid, vested in the said Mary Shields, in fee, she thereupon becoming seized in fee of the whole of the said premises.]

No. 27. All that certain brick store-house (No. 119) and lot or piece of ground situate on the east side of Third Street, between Race and Arch Streets, in the Sixth Ward of the City of Philadelphia. Containing in front or breadth on said Third Street sixteen feet nine inches and a quarter, and extending in length or depth eastward one hundred and twenty eight feet, gradually narrowing to the breadth of sixteen feet six inches and three quarters on the rear or east end thereof; bounded northward by ground granted to John Philip Steiner, eastward by ground granted or intended to have been granted to John Brock and Henry Emery, southward by a lot of ground late of Thomas Mellor, and westward by Third Street aforesaid.

[Being the same premises which Thomas Mellor and Martha, his wife, by indenture dated the eighteenth day of

December, A. D. 1861, recorded at Philadelphia, in deed book A. C. H., No. 34, page 140, &c., granted and conveyed unto James Shields and Edwin Shields, in fee, in equal moieties. And the said Edwin Shields, being so seized in fee of an undivided moiety of and in the said premises, died, having first made and published his last will and testament in writing, dated the nineteenth day of June, A. D. 1847, duly proved and registered at Philadelphia in will book No. 55, page 73, &c., wherein and whereby, *inter alia*, he gave and devised all his real estate unto his brother, the said James Shields, and his sister, the said Mary Shields, in trust for his mother, Eliza Shields, during her life, and after her decease, then unto them the said James and Mary Shields, in fee, in equal shares; and the said Eliza Shields died on the twenty-fourth day of December, A. D. 1864, the said James and Mary Shields surviving her, whereby the moiety of the said Edwin Shields of and in the said premises vested in the said James and Mary Shields, in fee, in equal shares. And the said James Shields, being so seized in fee of three undivided fourth parts of and in the said premises, died, having first made and published his last will and testament in writing, dated the twenty-seventh day of July, A. D. 1846, duly proved and registered at Philadelphia, in will book No. 93, page 272, &c., wherein and whereby, *inter alia*, he gave and devised all his real estate unto his brother, the said Edwin Shields, and his sister, the said Mary Shields, in fee, in equal shares, and if either of them should die intestate and without leaving issue surviving, then the whole of his or her share, or so much thereof as should remain undisposed of, unto the survivor, in fee; subject to the payment of an annuity of two hundred dollars to his mother, the said Eliza Shields, during her life: and the said Eliza Shields and Edwin Shields having both died, as above recited, during the lifetime of the said James Shields, the said Edwin Shields leaving no issue, the entire interest of the said James Shields of and in the said above described premises, vested in the said Mary Shields, in fee, she thereupon becoming seized in fee of the whole of the said premises.]

Together with the right and privilege of using the water pipes as laid down over, through, and along the premises adjoining to the northward of the above described lot of ground, as per agreement recorded at Philadelphia, in deed book A. W. M., No. 74, page 80, &c.

No. 28. All that certain lot or piece of land situate in Cheltenham Township, in the County of Montgomery, and State of Pennsylvania, marked number four (No. 4) on a certain plan of lots, recorded or intended to have been recorded in the Recorder of Deeds' Office, at Norristown, in the county aforesaid, and bounded and described, according to a survey made thereof, as follows, to wit: Beginning at a corner of land now or late of Isaac Leech and in the line of lot No. 1 on said plan, intended to have been granted by Jacob Weaver, trustee, to Rodolphus Kent, thence extending along the said lot No. 1, south, twenty eight degrees twenty three minutes west, four hundred and fifty six feet to a stake, a corner of lot No. 5 on said plan, intended to have been granted by the said Jacob Weaver, trustee, to Henry Volkmar, thence extending along the said lot No. 5, north fifty seven degrees fifteen minutes west, four hundred and sixty one feet eleven inches, to a stake, in the line of said lot No. 5, and being also a corner of lot No. 7 on said plan, next described, thence along said lot No. 7, crossing the head of a certain twenty five feet wide lane, laid out and intended to have been opened over and across the southwesterly side of said lot No. 7 (which lane communicates with another twenty five feet wide lane, extending southerly therefrom into a thirty three feet wide road, laid out and opened for public use forever over two tracts of land conveyed by Daniel Rorer and others to the said Jacob Weaver, extending from the road leading from Myers' (formerly Shoemaker's) mill to the York turnpike road), north, thirty two degrees forty five minutes east, four hundred and fifty six feet, to a stake in the line of the said land now or late of Isaac Leech, and thence along the said land now or late of Isaac Leech, south, fifty seven degrees and a quarter east, four hundred and nineteen feet six inches, to the place

of beginning. Containing four acres and sixty two hundredths of an acre of land, be the same more or less.

No. 29. All that certain lot or piece of land situate in Cheltenham Township, in the County of Montgomery aforesaid, marked number seven (No. 7) on the aforesaid plan, and bounded and described, according to a survey made thereof, as follows, to wit: Beginning at a stake, a corner of the above described lot No. 4, and in the line of land now or late of Isaac Leech, thence extending along the said lot No. 4 above described, south, thirty two degrees forty five minutes west, four hundred and fifty six feet, to a stake in the line of lot No. 5 on said plan, intended to have been granted by the said Jacob Weaver, trustee, to Henry Volkmar, thence partly along the same, crossing the head of a certain twenty five feet wide lane, which extends into the aforesaid thirty three feet wide road, leading from the said Myers' mill to the York turnpike road, and partly by lot marked No. 8 on said plan, intended to have been granted by the said Jacob Weaver, trustee, to John Brock, north, fifty seven degrees fifteen minutes west, four hundred and fifty feet, to a stake, a corner of lot No. 9 on said plan, intended to have been granted by the said Jacob Weaver, trustee, to William P. Troth, thence along the same, north, thirty two degrees forty five minutes east, four hundred and fifty six feet, to a stake in the line of the said land now or late of Isaac Leech, and thence along the said land now or late of the said Isaac Leech, south, fifty seven degrees and a quarter east, four hundred and fifty feet, to the place of beginning. Containing four acres and seventy one hundredths of an acre of land, be the same more or less, including therein the whole of a certain twenty five feet wide lane, laid out and intended to have been opened over and across the southwesterly part thereof, for the use and accommodation of this lot, and the above described lot No. 4, and lot No. 9 on said plan.

[Being the same two several lots or pieces of land, which, by indenture dated the twenty-seventh day of March,

A. D. 1861, recorded at Norristown, in Montgomery County aforesaid, in deed book No. 124, page 173, &c., Jacob Weaver, trustee as therein mentioned, granted and conveyed unto Edwin Shields, in fee. And the said Edwin Shields, being so seized in fee of the said premises, died, having first made and published his last will and testament in writing, dated the nineteenth day of June, A. D. 1847, duly proved and registered at Philadelphia, in will book No. 55, page 73, &c., wherein and whereby, *inter alia*, he gave and devised all his real estate unto his brother, James Shields, and his sister, the said Mary Shields, in trust for his mother, Eliza Shields, during her life, and after her decease, then unto them the said James and Mary Shields, in fee, in equal shares; and the said Eliza Shields died on the twenty-fourth day of December, A. D. 1864, the said James and Mary Shields surviving her, whereby the said premises vested in them, in fee, in equal shares. And the said James Shields, being so seized in fee of an undivided moiety or half part of and in the said premises, died, having first made and published his last will and testament in writing, dated the twenty-seventh day of July, A. D. 1846, duly proved and registered at Philadelphia, in will book No. 93, page 272, &c., wherein and whereby, *inter alia*, he gave and devised all his real estate unto his brother, the said Edwin Shields, and his sister, the said Mary Shields, in fee, in equal shares, and if either of them should die intestate and without leaving issue surviving, then the whole of his or her share, or so much thereof as should remain undisposed of, unto the survivor, in fee; subject to the payment of an annuity of two hundred dollars to his mother, the said Eliza Shields, during her life: and the said Eliza Shields and Edwin Shields having both died, as above recited, during the lifetime of the said James Shields, the said Edwin Shields leaving no issue, the entire interest of the said James Shields of and in the said above described premises, being one moiety thereof as aforesaid, vested in the said Mary Shields, in fee, she thereupon becoming seized in fee of the whole of the said premises.]

Together with the free use, right, liberty, and privilege

of the above mentioned twenty five feet wide lanes, respectively, in common with the said Jacob Weaver, his heirs and assigns, owners, tenants, and occupiers of the other lots or pieces of land bounding thereon and entitled thereto, at all times hereafter, forever.

No. 30. All that certain yearly ground-rent or sum of eighty silver dollars, each weighing seventeen pennyweights and seven grains, money of the United States of America, charged on, half-yearly issuing and payable by Edward Halley and Joseph Clarke, their heirs and assigns, on the twenty-fifth day of March and the twenty-fifth day of September in every year forever, without deduction for taxes, &c., out of and for all that certain lot or piece of ground, situate in the Seventeenth Ward of the City of Philadelphia (formerly in the Northern Liberties). Beginning on the west side of Second Street, one hundred and forty feet southward from Master Street, running thence along the said Second Street, south, eleven degrees eight minutes west, forty feet, to ground intended to have been granted on ground-rent to Solomon Wieatt, thence along the said ground, north, seventy eight degrees fifty two minutes west, three hundred and seventeen feet two inches and an half inch, to Cadwalader Street, thence along the said Cadwalader Street, north, ten degrees eleven minutes west, forty two feet eleven inches and one quarter of an inch, to ground intended to have been granted on ground-rent to Jesse Saunders, thence along the said ground, south, seventy eight degrees fifty two minutes east, three hundred and thirty two feet nine inches and three quarters of an inch, to the place of beginning.

[Which said yearly ground-rent Elizabeth B. Camac and James Markoe, trustees, &c., by deed poll dated the sixth day of April, A. D. 1844, recorded at Philadelphia, in deed book R. L. Ll., No. 18, page 470, &c., granted and assigned unto the said Mary Shields, in fee.]

No. 31. All that certain yearly ground-rent or sum of forty dollars, lawful silver money of the United States of

America, each dollar weighing seventeen pennyweights and six grains at least, charged on, half-yearly issuing and payable by John Collins, his heirs and assigns, on the first days of December and June in every year forever, without deduction for taxes, &c., out of and for all that certain lot or piece of ground, situate on the east side of Eleventh Street, in the Second Ward of the City of Philadelphia (formerly in the Township of Moyamensing, in the County of Philadelphia), between Christian and Carpenter (formerly Tidmarsh) Streets. Beginning at the distance of one hundred and ninety seven feet northward from the north side of Carpenter Street, and thence extending northward, and containing in front or breadth on Eleventh Street, sixteen feet, thence extending back, eastwardly, between lines drawn parallel with Carpenter Street, eighty nine feet and two inches in depth, to a fourteen feet wide court opened into Milton Street; bounded on the north by a lot granted to Robert Buckley, on the east by the fourteen feet wide court aforesaid, on the south by a lot granted to John Murphy, and on the west by Eleventh Street aforesaid.

[Which said yearly ground-rent George McClellan and Elizabeth S., his wife, by deed poll dated the fourth day of September, A. D. 1845, recorded at Philadelphia, in deed book R. L. Ll., No. 51, page 26, &c., granted and assigned unto the said Mary Shields, in fee.]

No. 32. All that certain yearly ground-rent or sum of one hundred and twelve dollars, lawful silver money of the United States of America, each dollar weighing seventeen pennyweights and six grains at least, charged on, half-yearly issuing and payable by John Kearney, his heirs and assigns, on the first day of the months of January and July in every year forever, without deduction for taxes, &c., out of and for all that certain lot or piece of ground, situate and beginning on the north side of Wood Street, in the Fourteenth Ward of the City of Philadelphia (formerly in the District of Spring Garden, in the County of Philadelphia), at the distance of one hundred and sixteen feet westward from the west side of Thirteenth Street. Containing in

front on the said Wood Street thirty two feet, and extending northward of the same width, and at right angles with the said Wood Street, seventy one feet and three inches, to Carlton Street; bounded northward by the said Carlton Street, eastward by ground granted on ground-rent to John Gadcey, southward by the said Wood Street, and westward by ground granted to William McDewitt on ground-rent.

[Which said yearly ground-rent Elias Durand, trustee, &c., by indenture dated the thirteenth day of September, A. D. 1848, recorded at Philadelphia, in deed book A. W. M., No. 78, page 445, &c., granted and assigned unto the said Mary Shields, in fee.]

No. 33. All that certain yearly ground-rent or sum of forty two dollars and fifty cents, lawful silver money of the United States of America, charged on, half-yearly issuing and payable by Joseph Louderback, his heirs and assigns, on the first day of the months of January and July in every year forever, clear of taxes, &c., out of and for all that certain lot or piece of ground, situate on the north-east corner of Ninth and Catharine Streets, in the Third Ward of the City of Philadelphia (formerly in the Township of Moyamensing, in the County of Philadelphia), containing in front or breadth on the said Ninth Street seventeen feet, and in length or depth eastward sixty feet, more or less, to a three feet wide alley, leading into the said Catharine Street; bounded on the north by ground now or late of John W. Ashmead, on the east by the said three feet wide alley, on the south by said Catharine Street, and on the west by said Ninth Street. Together with the free use and privilege of the said three feet wide alley, in common with the owners and occupiers of the adjoining lots, and together with all and singular other the appurtenances.

[Which said yearly ground-rent Richard D. Hall and Mary D., his wife, by indenture dated the thirtieth day of September, A. D. 1848, recorded at Philadelphia, in deed book A. W. M., No. 83, page 21, &c., granted and assigned unto the said Mary Shields, in fee.]

No. 34. All that certain yearly ground-rent or sum of sixty dollars, lawful silver money of the United States of America, charged on, half-yearly issuing and payable by Cornelius Conly, his heirs and assigns, on the first day of the months of April and October in every year, without deduction for taxes, &c., out of and for all that certain lot or piece of ground, with the three-story brick messuage or tenement thereon erected, situate on the west side of Thirteenth Street, at the distance of forty eight feet southward from the south side of Parrish Street, in the Fourteenth Ward of the City of Philadelphia (formerly in the District of Spring Garden, in the County of Philadelphia). Containing in front or breadth on said Thirteenth Street sixteen feet, and extending in length or depth westward, between parallel lines, at right angles with said Thirteenth Street, on the north line thereof seventy feet eleven inches and three eighths of an inch, and on the south line thereof seventy three feet three inches and one quarter of an inch; bounded northward by ground now or late or Cornelius Conly, eastward by said Thirteenth Street, southward by ground late of Thomas H. Bancroft, and westward by a three feet wide alley, leading northward into said Parrish Street.

[Which said yearly ground-rent George H. Miller, and Emma M., his wife, by indenture dated the twelfth day of December, A. D. 1851, recorded at Philadelphia, in deed book G. W. C., No. 121, page 361, &c., granted and assigned unto the said Mary Shields, in fee.]

No. 35. All that certain yearly ground-rent or rent-charge of fourteen ounces, two pennyweights, and ten grains of fine silver, not coarser than the standard of the Kingdom of France, as existing on the seventeenth day of June, A. D. 1784, charged on, yearly issuing and payable by John Hatcher, his heirs and assigns, on the first day of January in every year forever, without deduction for taxes, &c., out of and for a lot of ground, situate on the west side of Ninth Street, between Locust and Spruce Streets, in the Eighth

Ward of the City of Philadelphia. Containing in breadth on the said Ninth Street twenty feet, and in length or depth one hundred and eighty eight feet; bounded northward by ground intended to have been granted to Mathias Valentine Keen on ground-rent, eastward by Ninth Street aforesaid, southward by ground formerly of Thomas Shields, the elder, and westward by Raspberry Alley.

[Which said described lot of ground the said Thomas Shields, the elder, and Lydia, his wife, by indenture dated the seventeenth day of June, A. D. 1784, recorded at Philadelphia, in deed book I. C., No. 25, page 334, &c., granted and conveyed unto the said John Hatcher, in fee, reserving thereout unto the said Thomas Shields, the elder, his heirs and assigns, the aforesaid yearly ground-rent or rent-charge of fourteen ounces, two pennyweights, and ten grains of fine silver. And the said Thomas Shields, the elder, being so seized in fee of the said yearly ground-rent, died, having first made and published his last will and testament in writing, dated the seventeenth day of April, A. D. 1813, duly proved and registered at Philadelphia, in will book No. 7, page 86, &c., wherein and whereby he gave and devised the same, *inter alia*, in the residue of his estate, unto his four sons, Thomas, Robert, John, and David Shields, in fee, in equal shares, as tenants in common; and the said David Shields and Eliza, his wife, by indenture dated the twenty-seventh day of October, A. D. 1823, recorded at Philadelphia, in deed book G. W. R., No. 3, page 78, &c., granted and released his one equal and undivided fourth part of and in, *inter alia*, the said yearly ground-rent unto the said Thomas Shields, Robert Shields, and John Shields, in fee, in equal shares, as tenants in common; and the said Thomas Shields and Robert Shields, and Mary H., his wife, by indenture dated the second day of August, A. D. 1824, recorded at Philadelphia, in deed book I. H., No. 10, page 690, &c., granted and released their two equal and undivided third parts of and in, *inter alia*, the said yearly ground-rent unto the said John Shields, in fee. And the said John Shields, being so seized in fee of the said yearly ground-rent, died,



having first made and published his last will and testament in writing, dated the twenty-fourth day of December, A. D. 1829, duly proved and registered at Philadelphia, in will book No. 10, page 100, &c., wherein and whereby he gave and devised the same, *inter alia*, unto his daughter, the said Mary Shields, in fee.]

No. 36 All that certain yearly ground-rent or sum of two hundred and sixty dollars, lawful money of the United States of America, charged on, half-yearly issuing and payable by Joseph Becher, his heirs and assigns, on the fifteenth day of the months of March and September in every year forever, without deduction for taxes, &c., out of and for all that certain lot or piece of ground, situate on the east side of Seventh Street, at the distance of sixty feet southward from the south-east corner of the said Seventh Street and Thompson Street, in the Twentieth Ward of the City of Philadelphia. Containing in front or breadth on the said Seventh Street twenty feet, and extending of that breadth in length or depth eastward, between parallel lines, at right angles with the said Seventh Street, one hundred and seventy four feet ten inches, to Marshall Street; bounded northward partly by ground granted to Benjamin Z. Lippincott, and partly by ground granted to Thomas T. Lea, eastward by the said Marshall Street, southward by ground granted to John P. Reifsnyder, and westward by Seventh Street aforesaid.

[Which said described lot or piece of ground James Shields and the said Mary Shields, by indenture dated the twenty-fourth day of September, A. D. 1868, recorded at Philadelphia, in deed book J. T. O., No. 185, page 249, &c., granted and conveyed unto the said Joseph Becher, in fee, reserving thereout unto the said James Shields and Mary Shields, their heirs and assigns, the aforesaid yearly ground-rent or sum of two hundred and sixty dollars. And the said James Shields, being so seized in fee of an undivided moiety of and in the said yearly ground-rent, died, having first made and published his last will and testament in writ-

ing, dated the twenty-seventh day of July, A. D. 1846, duly proved and registered at Philadelphia, in will book No. 93, page 272, &c., wherein and whereby, *inter alia*, he gave and devised all his real estate unto his brother, Edwin Shields, and his sister, the said Mary Shields, in fee, in equal shares, and if either of them should die intestate and without leaving issue surviving, then the whole of his or her share, or so much thereof as should remain undisposed of, unto the survivor, in fee; subject to the payment of an annuity of two hundred dollars to his mother, Eliza Shields, during her life. And the said Eliza Shields and Edwin Shields having both died during the lifetime of the said James Shields, the said Eliza on the twenty-fourth day of December, A. D. 1864, and the said Edwin on the twenty-eighth day of February, A. D. 1865, he leaving no issue, the entire interest of the said James Shields of and in the said yearly ground-rent vested in the said Mary Shields, in fee, she thereupon becoming seized in fee of the whole of the said yearly ground-rent.]

No. 37. All that certain yearly ground-rent or sum of forty five dollars, lawful silver money of the United States of America, each dollar weighing seventeen pennyweights and six grains at least, charged on, half-yearly issuing and payable by John Shade, his heirs and assigns, on the first day of the months of March and September in every year forever, without deduction for taxes, &c., out of and for all that certain lot or piece of ground, situate on the south side of Fairmount Avenue (formerly called Coats Street), at the distance of two hundred and eighty four feet one inch and one half of an inch eastward from the south-east corner of the said Fairmount Avenue and Broad Street, as the said Broad Street is widened or was intended to have been widened, in the Fourteenth Ward of the City of Philadelphia (formerly in the District of Spring Garden, in the County of Philadelphia). Containing in front or breadth on the said Fairmount Avenue eighteen feet, and extending in length or depth southward, between parallel lines, at right angles with the said Fairmount Avenue, one hundred feet to Potts

(formerly Penn) Street; bounded northward by the said Fairmount Avenue, eastward and westward by ground now or late of Nathan Davidson, and southward by the said Potts Street.

Together with the free and common use, right, liberty, and privilege of the said Potts Street, leading eastwardly into Thirteenth Street, at all times hereafter, forever.

[Which said yearly ground-rent David C. Skerrett, trustee, &c., by indenture dated the sixth day of July, A. D. 1852, granted and assigned unto Edwin Shields, in fee. And the said Edwin Shields, being so seized in fee of the said yearly ground-rent, died, having first made and published his last will and testament in writing, dated the nineteenth day of June, A. D. 1847, duly proved and registered at Philadelphia, in will book No. 55, page 73, &c., wherein and whereby, *inter alia*, he gave and devised all his real estate unto his brother, James Shields, and his sister, the said Mary Shields, in trust for his mother, Eliza Shields, during her life, and after her decease, then unto them the said James and Mary Shields, in fee, in equal shares, and the said Eliza Shields died on the twenty-fourth day of December, A. D. 1864, the said James and Mary Shields surviving her, whereby the said premises vested in them, in fee, in equal shares. And the said James Shields, being so seized in fee of an undivided moiety or half part of and in the said yearly ground-rent, died, having first made and published his last will and testament in writing, dated the twenty-seventh day of July, A. D. 1846, duly proved and registered at Philadelphia, in will book No. 93, page 272, &c., wherein and whereby, *inter alia*, he gave and devised all his real estate unto his brother, the said Edwin Shields, and his sister, the said Mary Shields, in fee, in equal shares, and if either of them should die intestate and without leaving issue surviving, then the whole of his or her share, or so much thereof as should remain undisposed of, unto the survivor, in fee; subject to the payment of an annuity of two hundred dollars to his mother, the said Eliza Shields, during her life: and the said Eliza Shields and Edwin Shields having both died, as

above recited, during the lifetime of the said James Shields, the said Edwin Shields leaving no issue, the entire interest of the said James Shields of and in the said yearly ground-rent vested in the said Mary Shields, in fee, she thereupon becoming seized in fee of the whole of the said yearly ground-rent.]

No. 38. All that certain yearly ground-rent or sum of one hundred and thirty two dollars, lawful money of the United States of America, charged on, half-yearly issuing and payable by Henry Krips, his heirs and assigns, on the first day of the months of January and July in every year forever, without deduction for taxes, &c., out of and for all that certain lot or piece of ground, situate on the west side of Marshall Street, at the distance of one hundred and thirty two feet two inches northward from the north side of Thompson Street, in the Twentieth Ward of the City of Philadelphia. Containing in front or breadth on the said Marshall Street eighteen feet, and extending in length or depth westward of that width, between lines at right angles with the said Marshall Street, eighty four feet ten inches, more or less, to the rear end of the Seventh Street lots; bounded northward, southward, and westward by ground granted to the said Henry Krips on ground-rent, and eastward by Marshall Street aforesaid.

No. 39. All that certain yearly ground-rent or sum of one hundred and thirty two dollars, lawful money of the United States of America, charged on, half-yearly issuing and payable by Henry Krips, his heirs and assigns, on the first day of the months of January and July in every year forever, without deduction for taxes, &c., out of and for all that certain lot or piece of ground, situate on the west side of Marshall Street, at the distance of one hundred and eighty six feet two inches northward from the north side of Thompson Street, in the Twentieth Ward of the City of Philadelphia. Containing in front or breadth on the said Marshall Street eighteen feet, and extending in length or depth westward of that width, between lines at right angles

with the said Marshall Street, eighty four feet ten inches, more or less, to the rear end of the Seventh Street lots; bounded northward, southward, and westward by ground granted to the said Henry Krips on ground-rent, and eastward by Marshall Street aforesaid.

No. 40. All that certain yearly ground-rent or sum of one hundred and thirty two dollars, lawful money of the United States of America, charged on, half-yearly issuing and payable by Henry Krips, his heirs and assigns, on the first day of the months of January and July in every year forever, without deduction for taxes, &c., out of and for all that certain lot or piece of ground, situate on the west side of Marshall Street, at the distance of two hundred and four feet two inches northward from the north side of Thompson Street, in the Twentieth Ward of the City of Philadelphia. Containing in front or breadth on the said Marshall Street eighteen feet, and extending in length or depth westward of that width, between lines at right angles with the said Marshall Street, eighty four feet ten inches, more or less, to the rear end of the Seventh Street lots; bounded northward by premises No. 1326 Marshall Street, southward and westward by ground granted to the said Henry Krips on ground-rent, and eastward by Marshall Street aforesaid.

[Which said three last described lots or pieces of ground Edwin Shields and James Shields, by three several indentures dated the seventh day of July, A.D. 1860, recorded at Philadelphia, in deed book A. D. B., No. 122, pages 329, &c., 319, &c., and 315, &c., respectively, granted and conveyed unto the said Henry Krips, in fee, reserving thereout unto the said Edwin Shields and James Shields, their heirs and assigns, in equal proportions, the aforesaid three yearly ground-rents or sums of one hundred and thirty two dollars each. And the said Edwin Shields, being so seized in fee of an undivided moiety of and in the said three yearly ground-rents, died, having first made and published his last will and testament in writing, dated the nineteenth day of June, A. D. 1847, duly proved and registered at Philadel-

phia, in will book No. 55, page 73, &c., wherein and whereby, *inter alia*, he gave and devised all his real estate unto his brother, the said James Shields, and his sister, the said Mary Shields, in trust for his mother, Eliza Shields, during her life, and after her decease, then unto them the said James and Mary Shields, in fee, in equal shares; and the said Eliza Shields died on the twenty-fourth day of December, A. D. 1864, the said James and Mary Shields surviving her, whereby the moiety of the said Edwin Shields, of and in the said three yearly ground-rents vested in the said James and Mary Shields, in fee, in equal shares. And the said James Shields being so seized in fee of three undivided fourth parts of and in the said three yearly ground rents, died, having first made and published his last will and testament in writing, dated the twenty-seventh day of July, A. D. 1846, duly proved and registered at Philadelphia, in will book No. 93, page 272, &c., wherein and whereby, *inter alia*, he gave and devised all his real estate unto his brother, the said Edwin Shields, and his sister, the said Mary Shields, in fee, in equal shares, and if either of them should die intestate and without leaving issue surviving, then the whole of his or her share, or so much thereof as should remain undisposed of, unto the survivor, in fee; subject to the payment of an annuity of two hundred dollars to his mother, the said Eliza Shields, during her life: and the said Eliza Shields and Edwin Shields having both died, as above recited, during the lifetime of the said James Shields, the said Edwin Shields leaving no issue, the entire interest of the said James Shields of and in the said three yearly ground-rents vested in the said Mary Shields, in fee, she thereupon becoming seized in fee of the whole of the said three yearly ground-rents.]

No. 41. All that certain yearly ground-rent or sum of two hundred and seventy four dollars and ninety two cents, lawful silver money of the United States of America, each dollar weighing seventeen pennyweights and six grains at least, charged on, half-yearly issuing and payable by James G. Abbott, Archilus Lawrence, and Charles Noble, their

heirs and assigns, on the first day of the months of October and April in every year forever, without deduction for taxes, &c., out of and for all that certain lot or piece of ground, beginning in the south line of Brown Street, at the distance of eighty eight feet seven inches and one half of an inch westward from the west side of Fourth Street, in the Twelfth Ward of the City of Philadelphia (formerly in the Northern Liberties), thence extending westward, along said Brown Street, thirty one feet seven inches, thence southward, at right angles with said Brown Street, by ground granted and released to Charles M. Griffiths and Mary R., his wife, ninety feet, thence, by the same, westward, parallel with said Brown street, twenty nine feet ten inches, thence by the same, southward, on a line at right angles with said Brown Street, sixty feet, to the north side of Maria Street, thence eastward, along said Maria Street, sixty five feet nine inches, thence northward, at right angles with said Maria Street, by ground granted and released to Jacob S. Miller, sixty feet, thence, by the same, westward, parallel with said Brown Street, four feet four inches, thence, by the same, northward, at right angles with said Brown Street, ninety feet, to the place of beginning.

[Which said yearly ground-rent George H. Miller and Emma M., his wife, by indenture dated the twenty-third day of September, A. D. 1857, recorded at Philadelphia, in deed book R. D. W., No. 151, page 215, &c., granted and assigned unto James Shields and Edwin Shields, in fee. And the said Edwin Shields being so seized in fee of an undivided moiety of and in the said yearly ground-rent, died, having first made and published his last will and testament in writing, dated the nineteenth day of June, A. D. 1847, duly proved and registered at Philadelphia, in will book No. 55, page 73, &c., wherein and whereby, *inter alia*, he gave and devised all his real estate unto his brother, the said James Shields, and his sister, the said Mary Shields, in trust for his mother, Eliza Shields, during her life, and after her decease, then unto them the said James and Mary Shields, in fee, in equal shares; and the said Eliza Shields died on the twenty-fourth day of

December, A. D. 1864, the said James and Mary Shields surviving her, whereby the moiety of the said Edwin Shields of and in the said yearly ground-rent vested in the said James and Mary Shields, in fee, in equal shares. And the said James Shields, being so seized in fee of three undivided fourth parts of and in the said yearly ground-rent, died, having first made and published his last will and testament in writing, dated the twenty-seventh day of July, A. D. 1846, duly proved and registered at Philadelphia, in will book No. 93, page 272, &c., wherein and whereby, *inter alia*, he gave and devised all his real estate unto his brother, the said Edwin Shields, and his sister, the said Mary Shields, in fee, in equal shares, and if either of them should die intestate and without leaving issue surviving, then the whole of his or her share, or so much thereof as should remain undisposed of, unto the survivor, in fee; subject to the payment of an annuity of two hundred dollars to his mother, the said Eliza Shields, during her life: and the said Eliza Shields and Edwin Shields having both died, as above recited, during the lifetime of the said James Shields, the said Edwin Shields leaving no issue, the entire interest of the said James Shields of and in the said yearly ground-rent vested in the said Mary Shields, in fee, she thereupon becoming seized in fee of the whole of the said yearly ground-rent.]

No. 42. All that certain yearly ground-rent or sum of fifty four dollars, lawful silver money of the United States of America, charged on, half-yearly issuing and payable by James Brown, his heirs and assigns, on the fourth day of the months of December and June in every year forever, without deduction for taxes, &c., out of and for all that certain lot or piece of ground, situate on the east side of Thirteenth Street, at the distance of ninety feet and one half of an inch southward from the south side of Locust Street, in the Eighth Ward of the City of Philadelphia. Containing in front or breadth on the said Thirteenth Street seventeen feet eleven inches, and in length or depth eastward one hundred and twenty three feet; bounded on the north by ground formerly of Robert Shields, on the east

by the five feet wide alley hereinafter mentioned, on the south by ground granted or intended to have been granted to William Morton on ground-rent, and on the west by the said Thirteenth Street. Together with the free and common use and privilege of a certain alley five feet in width, extending from the said Locust Street to the distance of one hundred and forty eight feet seven inches and an half southwardly therefrom.

No. 43. All that certain yearly ground-rent or sum of fifty four dollars, lawful silver money of the United States of America, charged on, half-yearly issuing and payable by Anthony Frazier, his heirs and assigns, on the twentieth day of the months of January and July in every year forever, without deduction for taxes, &c., out of and for all that certain lot or piece of ground, situate on the east side of Thirteenth Street, at the distance of one hundred and forty three feet nine inches and an half southward from the south side of Locust Street, in the Eighth Ward of the City of Philadelphia. Containing in front or breadth on the said Thirteenth Street seventeen feet eight inches and an half, and in length or depth eastward one hundred and twenty three feet; bounded on the north by ground granted to John Bosler on ground-rent, on the east partly by ground formerly of John Shields, and partly by the south end of the five feet wide alley hereinafter mentioned, on the south by ground formerly of Thomas Shields, and on the west by the said Thirteenth Street. Together with the free and common use and privilege of a certain alley five feet in width, extending from the said Locust Street to the distance of one hundred and forty eight feet seven inches and an half southwardly therefrom.

No. 44. All that certain yearly ground-rent or sum of two hundred and twenty dollars, lawful silver money of the United States of America, charged on, half-yearly issuing and payable by John Loud, his heirs and assigns, on the sixteenth day of the months of April and October in every year forever, without deduction for taxes, &c., out of and

for all that certain lot or piece of ground, situate on the north side of Market (formerly High) Street, at the distance of twenty two feet westward from the west side of Tenth Street, in the Ninth Ward of the City of Philadelphia. Containing in front or breadth on the said Market Street twenty two feet, and in length or depth northward sixty six feet; bounded northward and westward by ground formerly of David Shields, eastward by ground formerly of Robert Shields, and southward by the said Market Street. Together with the free use, right, and privilege of an alley, passage, and water course four feet wide, left open at the distance of sixty one feet seven inches and an half from Market Street, leading from the east line of the lot above described into the said Tenth Street, for the common use and privilege of only the owners, tenants, and occupiers of the said above described lot, and of the lot through which the said alley passes.

[Which said three last mentioned yearly ground-rents David Weatherly, acting executor, &c., by indenture dated the second day of May, A. D. 1838, recorded at Philadelphia, in deed book S. H. F., No. 23, page 543, &c., granted and assigned, *inter alia*, unto David C. Skerrett, trustee and guardian of James Shields, Edwin Shields, and the said Mary Shields, in fee; by virtue of which said conveyance, there being no active trust expressed therein, the legal title in and to the said three yearly ground-rents vested in the said James, Edwin, and Mary Shields, in fee. And the said Edwin Shields, being so seized in fee of an undivided third part of and in the said three yearly ground-rents, died, having first made his last will and testament in writing, dated the nineteenth day of June, A. D. 1847, duly proved and registered at Philadelphia, in will book No. 55, page 73, &c., wherein and whereby, *inter alia*, he gave and devised all his real estate unto his brother, the said James Shields, and his sister, the said Mary Shields, in trust for his mother, Eliza Shields, during her life, and after her decease, then unto them the said James and Mary Shields, in fee, in equal shares; and the said Eliza Shields died on the twenty-fourth

day of December, A. D. 1864, the said James and Mary Shields surviving her, whereby the interest of the said Edwin Shields of and in the said three yearly ground-rents vested in the said James and Mary Shields, in fee, in equal shares. And the said James Shields, being so seized in fee of three undivided sixth parts of and in the said three yearly ground-rents, died, having first made and published his last will and testament in writing, dated the twenty-seventh day of July, A. D. 1846, duly proved and registered at Philadelphia, in will book No. 93, page 272, &c., wherein and whereby, *inter alia*, he gave and devised all his real estate unto his brother, the said Edwin Shields, and his sister, the said Mary Shields, in fee, in equal shares, and if either of them should die intestate and without leaving issue surviving, then the whole of his or her share, or so much thereof as should remain undisposed of, unto the survivor, in fee; subject to the payment of an annuity of two hundred dollars to his mother, the said Eliza Shields, during her life: and the said Eliza Shields and Edwin Shields having both died, as above recited, during the lifetime of the said James Shields, the said Edwin Shields leaving no issue, the entire interest of the said James Shields of and in the said three yearly ground-rents vested in the said Mary Shields, in fee, she thereupon becoming seized in fee of the whole of the said three yearly ground-rents.]

I accept service of the within Bill on behalf of The Pennsylvania Institution for the Instruction of the Blind. Enter my appearance.

JOHN CADWALADER.

July 3, 1882.

We accept service for The Pennsylvania Industrial Home for Blind Women, and the Prothonotary will please enter our appearance.

N. H. SHARPLESS,  
GEO. JUNKIN.

July 3, 1882.

No. 652, June Term, 1882.

IN THE  
Court of Common Pleas No. 2,  
FOR THE  
COUNTY OF PHILADELPHIA.

IN EQUITY.

BETWEEN

THE OLD MAN'S HOME OF  
PHILADELPHIA *et al.*,  
*Complainants.*

AND

THE PENNSYLVANIA INSTITU-  
TION FOR THE INSTRUCTION  
OF THE BLIND *et al.*,  
*Respondents.*

BILL.

To the within named Respondents, the Pennsylvania Institution for the Instruction of the Blind, and the Pennsylvania Industrial Home for Blind Women :

You are hereby notified and required, within fourteen days after service hereof on you, exclusive of the day of service, to cause an appearance to be entered for you in the Court of Common Pleas for the County of Philadelphia, to the within Bill of Complaint of the within named Complainants, and to observe what the said Court shall direct.

Witness out hands at Philadelphia, the twentieth day of June, A. D. one thousand eight hundred and eighty-two.

WILLIAM S. LANE,  
719 Walnut Street,

JOSEPH B. TOWNSEND,  
709 Walnut Street.

*Solicitors for Complainants.*

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

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LAW DEPARTMENT.  
Times Printing House,  
725 Chestnut Street,  
Philadelphia.

Filed June 29, 1882.

Rule to Answer.

Filed Sept. 4, 1882.

THE OLD MAN'S HOME OF  
PHILADELPHIA *et al.*

*vs.*

THE PENNSYLVANIA INSTI-  
TUTION FOR THE INSTRU-  
TION OF THE BLIND *et al.*

C. P. No. 2.

June Term, 1882.

No. 652.

IN EQUITY.

Enter rule on defendants to plead, answer, or demur in thirty days, *sec. reg.*

WILLIAM S. LANE,  
JOS. B. TOWNSEND,

Per W. B. L.

*Solicitors for Plaintiffs.*

TO THE PROTHONOTARY  
OF SAID COURT.  
September 4, 1882.

In the Court of Common Pleas, No. 2,  
for the County of Philadelphia.

June Term, 1882. No. 652.

THE OLD MAN'S HOME OF PHILADELPHIA, et al.,

vs.

THE PENNSYLVANIA INSTITUTION FOR THE INSTRUCTION OF  
THE BLIND, et al.

Demurrer of the defendants, The Pennsylvania Industrial Home for Blind Women.

The defendants demur to the whole bill filed in the above entitled cause, and for cause of demurrer thereunto show :

1st. That the said bill not praying discovery thereof, but setting forth the title of these defendants to the one undivided sixth part of the real estate in question, neither admits nor denies the validity of said title, yet nevertheless, prays as against these defendants partition of said real estate.

2d. The said bill is an unwarranted attempt to deprive these defendants of their right of trial by jury, in an action of ejectment brought upon their title to said land.



3d. The said bill seeks a partition of land, the title to a part of which is admitted to be in doubt before the settlement of the question of title.

Wherefore, and for divers other good causes of demurrer appearing in the said bill, these defendants do demur to the said bill, and pray judgment of this Honorable Court whether they shall be compelled to make any other answer thereto, and they humbly pray to be hence dismissed with their reasonable costs in this behalf sustained.

NATHAN H. SHARPLESS,  
GEO. JUNKIN,

*Of Counsel with The Pennsylvania Industrial Home  
for Blind Women.*

CITY OF PHILADELPHIA, ss:

Levi Knowles, being duly *sworn* according to law, saith that he is the treasurer of the defendants, The Pennsylvania Industrial Home for Blind Women, and that the foregoing demurrer in this case is not interposed for delay.

LEVI KNOWLES,  
*Treasurer of Penna. Industrial Home for  
Blind Women.*

Sworn and subscribed to before me, this 3d day of October, A. D. 1882.

WM. W. DOUGHERTY,  
*Notary Public.*

[SEAL]

No. 652.

June Term, 1882.

IN THE

Court of Common Pleas,

No. 2.

The Old Man's Home of Philadelphia, *et al.*,

*vs.*

The Pennsylvania Institution for the Instruction of the Blind, *et al.*

*Demurrer of the Defendants, The Pennsylvania Industrial Home for Blind Women.*

SHARPLESS,  
JUNKIN.

*Filed October 3d, 1882.*

4

Affidavit of Service of Rule to Answer.

Filed February 26, 1883.

THE OLD MAN'S HOME OF PHILADELPHIA *et al.*

*vs.*

THE PENNSYLVANIA INSTITUTION FOR THE INSTRUCTION OF THE BLIND, AND THE PENNSYLVANIA INDUSTRIAL HOME FOR BLIND WOMEN.

C. P. No. 2.

June Term, 1882.

No. 652.

IN EQUITY. PARTITION.

William B. Lane, being duly sworn according to law, deposeth and saith, that he served the rule to answer in the above cause, on George Junkin, Esq., Solicitor of record for the Pennsylvania Industrial Home for Blind Women, on the Fourth day of September, A. D. 1882, by handing him written notice of the same; and on John Cadwalader, Esq., Solicitor of record for the Pennsylvania Institution for the Instruction of the Blind, on the same day, by leaving written notice thereof at his office, with a person in charge.

WM. B. LANE.

Sworn and subscribed before me this 26th February, 1883.

JAS. W. FLETCHER,  
*Dep. Proth'y.*

5

Order *Pro Confesso*.

Filed February 26, 1883.

THE OLD MAN'S HOME OF  
PHILADELPHIA *et al.*

*vs.*

THE PENNSYLVANIA INSTI-  
TUTION FOR THE INSTRU-  
TION OF THE BLIND *et al.*

C. P. No. 2.

June Term, 1882.

No. 652.

IN EQUITY.  
PARTITION.

And now, February 26, 1883, the Bill in the above case is taken *pro confesso* against each of the defendants for want of an answer.

JOS. B. TOWNSEND,  
WILLIAM S. LANE,

*Solicitors for Plaintiffs.*

TO THE PROTHONOTARY  
OF SAID COURT.

Interlocutory Decree.

Filed March 13, 1883.

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The Old Man's Home of  
Philadelphia, *et al.*

*vs.*

The Pennsylvania Institution  
for the Instruction of the  
Blind, *et al.*

C. P. No. 2.  
June Term, 1882.  
No. 652.

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IN EQUITY.

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And now to wit, March 13, 1883, this case coming on to be heard, and it appearing of record that the Complainants' Bill has been in due form and after due notice taken *pro confesso* as against both of the Respondents, for want of an answer, upon consideration thereof, and on motion of William S. Lane and Joseph B. Townsend, Esquires, for the complainants, it is ordered and decreed:

That partition and division be made of the lands and tenements in the said Bill mentioned and in the schedule annexed to the said Bill particularly described, into the purparts and shares, and in the manner and form, as the Complainants have prayed in their said Bill.

And thereupon it is referred to Sussex D. Davis, Esq., as

Master, to part and divide the said lands and tenements in the mode and manner aforesaid, and to value the same, and to ascertain the amounts, if any, which shall be paid or charged for owelty of partition, and to award and allot the said shares or purparts to and among the parties severally entitled thereto, according to their respective interests as aforesaid, together with or subject to any such sums as may be found payable or receivable for owelty of partition. But if the said lands and tenements, or any part or parts thereof, cannot be so divided without prejudice to or spoiling the whole thereof, then to ascertain and determine the valuation of the said lands and tenements, or of any parts or portions thereof not susceptible of division as aforesaid.

And to report to the Court for confirmation and further order.

J. T. M.

Affidavit of Service of Notice of  
Decree.

Filed March 29, 1883.

OLD MAN'S HOME, *et al.* } C. P. No. 2.  
*vs.* } June Term, 1882,  
PENN'A INSTITUTION, *et al.* } No. 652.

IN EQUITY.

CITY AND COUNTY OF PHILADELPHIA, ss.:

William B. Lane, being duly sworn according to law, deposes and says, that on the fourteenth day of March, A. D. 1883, he served a written notice of the interlocutory decree entered March 13th, 1883, in the above case, together with a copy of said decree, upon John Cadwalader, Esq., solicitor of record for the Pennsylvania Institution for the Instruction of the Blind, by handing the same to him personally, at his office; and that upon the said fourteenth day of March, A. D. 1883, deponent served a like written notice, together with a copy of said decree, upon N. H. Sharpless, Esq., solicitor of record for the Pennsylvania Industrial Home for Blind Women, by handing the same to him personally at his office.

WM. B. LANE.

Sworn and subscribed before  
me, this 29th day of March,  
A. D. 1883.

JAS. W. FLETCHER,  
*Dep. Proth'y.*

Master's Interlocutory Report.

Filed May 9, 1883.

IN THE COURT OF COMMON PLEAS No. 2, FOR  
THE COUNTY OF PHILADELPHIA.

IN EQUITY.

THE OLD MAN'S HOME OF  
PHILADELPHIA *et al.*

*vs.*

THE PENNSYLVANIA INSTI-  
TUTION FOR THE INSTRUC-  
TION OF THE BLIND *et al.*

June Term, 1882.

No. 652.

PARTITION.

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

The Master, to whom by the interlocutory decree made on the 12th day of March, 1883, the above cause was referred, respectfully reports :

That having given to the counsel of all the parties due notice of the time and place of meeting for the purpose of his appointment, he was then and there, namely, on the 21st day of March, 1883, at 12 o'clock, M., at his office, No. 213 South Sixth street, in this city, and at subsequent meetings to which adjournments were had, from time to time, attended by William S. Lane and Joseph B. Townsend, Esqs., of counsel for the plaintiffs, John Cadwalader and George

W. Thorn, Esqs., of counsel for the Pennsylvania Institution for the Instruction of the Blind, one of the defendants, and Nathan H. Sharpless, Esq., of counsel for the Pennsylvania Industrial Home for Blind Women, the other of the defendants.

An appraisal and valuation of the lands and tenements described in the schedule or exhibit marked "B," attached to the bill of complaint, was by direction of the Master, and with consent of the counsel, made by Joseph B. Barry and Henry Haines, Esqs., and after a full consideration of their testimony in regard thereto, the Master reports that he has valued and appraised the said lands and tenements as follows:

EXHIBIT B.

No. 1. Messuage and lot of ground No. 1431 North Eighteenth street, at five thousand four hundred dollars.

No. 2. Lot of ground, counting-house and wharf, at the northwest corner of Sutherland avenue and Bainbridge (late Shippen) street, known as Bainbridge Street Wharf, at ten thousand dollars.

No. 3. Five contiguous houses and lot of ground on the south side of Relief alley, between Front and Second streets, and on the west side of a passage known as Shields' court, at the sum of four thousand dollars.

No. 4. Frame messuage and lot of ground No. 1820 Market street, at the sum of fifteen thousand dollars.

No. 5. Messuage and lot of ground No. 236 Dean street, south of Locust street, at the sum of fifteen hundred dollars.

No. 6. Lot of ground No. 1616 North Seventeenth street, at the sum of three thousand dollars.

No. 7. Lot of ground at the northwest corner of Seventeenth and Jefferson streets (seven contiguous pieces of ground), at the sum of twenty-four thousand dollars.

No. 8. Lot of ground on the west side of Seventeenth

street, at the distance of one hundred and thirty-three feet northward from the north side of Jefferson street (eight contiguous pieces of ground), one hundred and forty-four feet front on said Seventeenth street, at the sum of twenty-four thousand dollars.

No. 9. Messuage and lot of ground No. 1610 Ellsworth street, at the sum of two thousand five hundred dollars.

No. 10. Messuage and lot of ground No. 1612 Ellsworth street, at the sum of two thousand five hundred dollars.

No. 11. Messuage and lot of ground No. 1616 Ellsworth street, at the sum of two thousand five hundred dollars.

No. 12. Messuage and lot of ground No. 1130 South Sixteenth street, at the sum of two thousand five hundred dollars.

No. 13. Messuage and lot of ground No. 1134 South Sixteenth street, at the sum of two thousand five hundred dollars.

No. 14. Messuage and lot of ground No. 1136 South Sixteenth street, at the sum of two thousand five hundred dollars.

No. 15. Messuage and lot of ground No. 2039 Summer street, at the sum of two thousand three hundred dollars.

No. 16. Lot of ground on the northwest side of Walnut Lane, in the twenty-second Ward (Germantown), one hundred and thirty feet and three inches southwestward from the southwest side of Green street, having a front on said Walnut Lane of one hundred and thirty feet and three inches, at the sum of ten thousand dollars.

No. 17. Messuage and lot of ground on the northwest side of Walnut Lane, in the twenty-second Ward (Germantown), two hundred and sixty feet and six inches southwestward from the southwest side of Green street, having a front on said Walnut Lane of one hundred and forty feet, at the sum of fifteen thousand dollars.



No. 18. Lot of ground with the improvements thereon on the northwest side of Salmon street, three hundred and sixty-four feet southwestward from the southwest side of Wheat Sheaf Lane, in the Twenty-fifth Ward, containing in front on said Salmon street two hundred feet nine and five-eighths inches, at the sum of one thousand dollars.

No. 19. Lot of ground on the southeast side of Edgemont (formerly called Brown) street, three hundred and eighty-five feet nine inches southwestward from the southwest side of Wheat Sheaf Lane, containing in front on said Edgemont street one hundred and eighty-four feet eight inches, at the sum of one thousand dollars.

No. 20. Lot of ground at the northwest corner of Richmond street and Wheat Sheaf Lane, in the Twenty-fifth Ward, at the sum of three thousand dollars.

No. 21. Lot of ground on the northwest side of Richmond street, three hundred and fifty-six feet eight and one-half inches southwestward from the southwest side of Wheat Sheaf Lane, in the Twenty-fifth Ward, at the sum of three thousand five hundred dollars.

No. 22. Lot of ground at the northwest corner of Edgemont (late Brown) street and Wheat Sheaf Lane, in the Twenty-fifth Ward, at the sum of four thousand dollars.

No. 23. Lot of ground at the northwest corner of Thompson (late Duke) street and Wheat Sheaf Lane, in the Twenty-fifth Ward, at the sum of five thousand dollars.

No. 24. Lot of ground at the northwest corner of Almond street and Wheat Sheaf Lane, in the Twenty-fifth Ward, at the sum of five thousand dollars.

No. 25. Three messuages and lot of ground No. 427 Fairmount Avenue (No. 424 Maria street in rear), at the sum of five thousand dollars.

No. 26. Three messuages and lot of ground No. 525 South Thirteenth street, at the sum of two thousand five hundred dollars.

No. 27. Brick store-house and lot of ground No. 119 North Third street, at the sum of sixteen thousand dollars.

No. 28. Lot of ground in Cheltenham township, in the County of Montgomery, in this State, containing four acres and sixty-two hundredths of an acre, more or less, at the sum of one thousand five hundred dollars.

No. 29. Lot of ground in Cheltenham township, in the County of Montgomery, in this State, containing four acres and seventy one-hundredths of an acre, more or less, at the sum of one thousand five hundred dollars.

No. 30. Yearly ground rent of eighty dollars, at the sum of one thousand seven hundred and seventy-seven dollars.

No. 31. Yearly ground rent of forty dollars, at the sum of eight hundred and eighty-nine dollars.

No. 32. Yearly ground rent of one hundred and twelve dollars, at the sum of two thousand four hundred and eighty-nine dollars.

No. 33. Yearly ground rent of forty-two dollars and fifty cents, at the sum of nine hundred and forty-four dollars and fifty cents.

No. 34. Yearly ground rent of sixty dollars, at the sum of one thousand three hundred and thirty-three dollars and thirty-three cents.

No. 35. Yearly ground rent of sixteen dollars, at the sum of three hundred and fifty-five dollars and fifty-five cents.

No. 36. Yearly ground rent of two hundred and sixty dollars, at the sum of four thousand eight hundred and seventy-five dollars.

No. 37. Yearly ground rent of forty-five dollars, at the sum of one thousand dollars.

No. 38. Yearly ground rent of one hundred and thirty-two dollars, at the sum of two thousand four hundred and seventy-five dollars.

No. 39. Yearly ground rent of one hundred and thirty-two dollars, at the sum of two thousand four hundred and seventy-five dollars.

No. 40. Yearly ground rent of one hundred and thirty-two dollars, at the sum of two thousand four hundred and seventy-five dollars.

No. 41. Yearly ground rent of two hundred and seventy-four dollars, at the sum of five thousand one hundred and fifty dollars.

No. 42. Yearly ground rent of fifty-four dollars, at the sum of one thousand two hundred dollars.

No. 43. Yearly ground rent of fifty-four dollars, at the sum of one thousand two hundred dollars.

No. 44. Yearly ground rent of two hundred and twenty dollars, at the sum of four thousand, eight hundred and eighty-nine dollars.

The Master further reports that the said lands and tenements cannot be parted and divided among the parties entitled thereto, without prejudice to or spoiling the whole. The said appraisement and valuation was therefore submitted to the said parties, through their respective counsel, for their acceptance or refusal of the said premises at the said valuation, and subsequently the Philadelphia Protestant Episcopal City Mission, and the Contributors to the Pennsylvania Hospital, notified to the Master their refusal to take any of said real estate, by the paper hereto annexed, signed by them.

The Master further reports that the other parties to this suit, to-wit, the Old Man's Home of Philadelphia, the City of Philadelphia, the Indigent Widows' and Single Women's Society of Philadelphia, the Pennsylvania Institution for the Deaf and Dumb, the Pennsylvania Institution for the Instruction of the Blind, and the Pennsylvania Industrial Home

for Blind Women, have failed to notify to the Master their acceptance or refusal of any of said real estate at the valuation made by the Master.

The Master further reports that he has been requested by the counsel of the several parties, except the counsel for the Pennsylvania Industrial Home for Blind Women, to ask the Honorable Court to direct in any order of sale it may make, that three-fifths (3-5ths) of the purchase money may remain on any of the messuages, tenements, and lots or pieces of ground which may be sold, secured by the bond and mortgage of the purchaser to the Master, payable at the expiration of one year from the date thereof, with interest at the rate of five *per centum per annum*; or that the whole of the purchase money may be paid in cash, at the option of the purchaser.

All of which is respectfully submitted.

SUSSEX D. DAVIS,  
*Master.*

The Master further reports that he gave due notice of the intended filing of this report to the counsel of all the parties in interest.

Respectfully submitted,  
SUSSEX D. DAVIS,  
*Master.*

We acknowledge having received due notice of the filing of the foregoing report.

JOS. B. TOWNSEND,  
WM. S. LANE,  
*Of Counsel with Plaintiffs.*

GEORGE JUNKIN,  
N. H. SHARPLESS,  
*Of Counsel with Penn'a Industrial Home for Blind Women.*

JOHN CADWALADER,  
*Of Counsel for the Penn'a Institution for the Instruction of the Blind.*

In the Court of Common Pleas, No. 2,  
for the County of Philadelphia.

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IN EQUITY.

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THE OLD MAN'S HOME OF PHILADELPHIA, *et al.*

*vs.*

THE PENNSYLVANIA INSTITUTION FOR THE  
INSTRUCTION OF THE BLIND, *et al.*

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June Term, 1882. No. 652.

PARTITION.

We, the undersigned, having considered the appraisal and valuation made by the Master of the lands and tenements mentioned and described in Exhibit "B;" annexed to the bill of complaint, and numbered therein from number one (1) to number forty-four (44) consecutively, do hereby decline and refuse to take at the valuation placed thereon, any of the several pieces of real estate particularly described in said Exhibit "B."

The Trustees of the Real and Personal Property of the Philadelphia Protestant Episcopal City Mission.

[SEAL OF THE CITY MISSION.]

By WM. BACON STEVENS,  
*President.*

For and on behalf of the Contributors to the Pennsylvania Hospital.

WM. BIDDLE,  
*President.*

[SEAL OF THE PENN'A HOSPITAL.]

Confirmation of Master's Report, and  
Rule to Accept or Refuse, &c.

Filed May 12, 1883.

THE OLD MAN'S HOME OF  
PHILADELPHIA *et al.*

*vs.*

THE PENNSYLVANIA INSTI-  
TUTION FOR THE INSTRU-  
TION OF THE BLIND *et al.*

C. P. No. 2.

June Term, 1882.

No. 652.

PARTITION IN  
EQUITY.

And now, May 12, 1883, the Master's Report having been filed, wherein he has found that the tenements, real estate, and premises described in the schedule annexed to the plaintiffs' bill (being the premises whereof partition is sought in this action) cannot be parted or divided between the parties without prejudice to or spoiling the whole, and wherein the said Master has further returned his valuation of the several parcels of such real estate, as therein expressed and contained, which report is confirmed by the Court. Thereupon, on motion of William S. Lane and J. B. Townsend for the plaintiffs, a rule is granted upon all the parties to the action to appear in Court on Saturday, the 19th day of May, 1883, and accept or refuse the said premises or any parcel or parcels thereof, at the valuations so made by the Master; and further to show cause, if any they have, why all and singular the premises not then and there accepted at the said valuation by any party in interest should not be ordered by the Court to be sold, as the Court may direct.

Affidavit of Service of Notice of Rule  
to Accept or Refuse, and to Show  
Cause Why Sale Should  
Not be Ordered.

Filed May 19, 1883.

THE OLD MAN'S HOME OF  
PHILADELPHIA, *et al.*,

*vs.*

THE PENNSYLVANIA INSTI-  
TUTION FOR THE INSTRU-  
TION OF THE BLIND, *et al.*

C. P. No. 2.

June Term, 1882.

No. 652.

IN EQUITY.

CITY AND COUNTY OF PHILADELPHIA, ss.:

Charles B. Lane, being duly sworn, deposes and says,  
that on the twelfth day of May, A. D. 1883, he served a  
written notice, of which the annexed is a true copy, upon  
all the parties to the above suit, in the manner following,  
to wit:

Upon The Old Man's Home of Philadelphia, by handing  
the same to Mrs. B. P. Williams, the First Directress

thereof, personally; upon the City of Philadelphia, by leaving the same at the residence of Alexander Biddle, President of the Board of City Trusts, with an adult member of his family; upon The Trustees of the Real and Personal Property of the Philadelphia Protestant Episcopal City Mission, by leaving the same at the residence of William Bacon Stevens, the President thereof, with an adult member of his family; upon The Contributors to the Pennsylvania Hospital, by handing the same to William Biddle, the President thereof, personally; upon The Indigent Widows' and Single Women's Society of Philadelphia, by leaving the same at the residence of Mrs. Mary Bayard, the First Directress thereof, with an adult member of her family; upon The Pennsylvania Institution for the Deaf and Dumb, by handing the same to George Sharswood, the President thereof, personally; upon The Pennsylvania Institution for the Instruction of the Blind, by leaving the same at the residence of Alfred L. Elwyn, the President thereof, with an adult member of his family; and upon The Pennsylvania Industrial Home for Blind Women, by leaving the same at the residence of James Pollock, the President thereof, with an adult member of his family.

CHAS. B. LANE.

Sworn and subscribed before me  
this 15th day of May, A. D.  
1883.

[SEAL] ORMOND RAMBO,  
*Notary Public.*

THE OLD MAN'S HOME OF  
PHILADELPHIA, *et al.*,

*vs.*

THE PENNSYLVANIA INSTI-  
TUTION FOR THE INSTRUC-  
TION OF THE BLIND, *et al.*

C. P. No. 2.

June Term, 1882.

No. 652.

IN EQUITY.

PARTITION.

You will please take notice that the Master having filed his report finding that the real estate and premises included in this proceeding cannot be divided among the parties without prejudice to or spoiling the whole, and valuing the several parcels thereof as in said report (which has been confirmed by the Court) is particularly set forth, the Court have thereupon granted a rule on all parties to the cause to come into Court on Saturday, the 19th day of May, 1883, and accept or refuse the said premises at the valuations so made thereof respectively; and further, to show cause, if any they have, why all and singular the premises not then and there accepted should not be ordered by the Court to be sold as the Court may direct.

Yours respectfully,

WM. S. LANE,  
J. B. TOWNSEND,  
*Counsel for Plaintiffs.*

Rule to Show Cause why Decree  
*Pro Confesso* should not be Set  
Aside, etc.

Filed June 23, 1883.

OLD MAN'S HOME	}	C. P. No. 2.
vs.		June Term, 1882.
PENNSYLVANIA INSTITU- TION FOR THE INSTRU- TION OF THE BLIND.	}	No. 652.

IN EQUITY.

And now, June 23, 1883, on motion of George W. Thorn and J. Sergeant Price, Esqs., solicitors for the Pennsylvania Institution for the Instruction of the Blind, defendant, rule granted to show cause why the decree *pro confesso* entered against the said defendant, should not be set aside, and leave granted for the said defendant to file an answer; returnable Saturday, June 30, 1883.

Order to Set Aside Decree *Pro*  
*Confesso*, etc.

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Filed June 30, 1883.

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OLD MAN'S HOME	}	C. P. No. 2.
<i>vs.</i>		June Term, 1882.
THE PENNSYLVANIA IN- STITUTION FOR THE INSTRUCTION OF THE BLIND, <i>et al.</i>		No. 652.

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And now, June 30, 1883, on motion of J. Sergeant Price and George W. Thorn, Esqs., solicitors for the Pennsylvania Institution for the Instruction of the Blind, it is ordered that the decree *pro confesso* entered in this cause against the said Pennsylvania Institution for the Instruction of the Blind, defendant, be opened, and the said defendant have leave to file their answer as of February twenty-fourth, 1883; and thereupon the decree and subsequent proceedings for the partition of the estates mentioned and described in the bill and the order of reference to the Master in pursuance thereof, stand and remain with the same effect as if made upon and after the answer of the said defendant had been filed.

J. T. M.



IN THE  
Court of Common Pleas No. 2, for the  
City and County of Philadelphia.

—  
SITTING IN EQUITY.  
—

*Partition between the Old  
Man's Home et al.*

vs.

*The Pennsylvania Institution  
for the Instruction of the  
Blind et al.*

*Of June Term, 1882,  
No. 652.*

The Answer of the Pennsylvania Institution for the Instruction of the Blind to the Bill of Complaint of the Old Man's Home of Philadelphia, the City of Philadelphia, the Trustees of the Real and Personal Property of the Philadelphia Protestant Episcopal City Mission, the Contributors to the Pennsylvania Hospital, the Indigent Widows' and Single Women's Society of Philadelphia, and the Pennsylvania Institution for the Deaf and Dumb.

1. We, the Pennsylvania Institution for the Instruction of the Blind, admit the allegations in the said bill contained as substantially correct except so far as modified in this answer.

We do not admit the allegations of the ninth section of the bill in the statement, and that one or the other of the said respondents, "that is to say either the Pennsylvania Institution for the Instruction of the Blind, or the Pennsylvania Industrial Home for Blind Women, is entitled to one-sixth part of the said real estate in fee," for the reason that the Pennsylvania Industrial Home for Blind Women asserted and contested their claim before the Orphans' Court, and that Court decided against their claim. On an appeal to the Supreme Court, the decision of the Court below was sustained, and thus established the fact that not only was the Pennsylvania Industrial Home for Blind Women not a legatee under Miss Mary Shields' will, but that we, your respondents, were such legatees of the said one-sixth part of the residue of the said Mary Shields' estate. Judge Penrose, in his opinion, filed in the Orphans' Court of February 17th, 1882, says, "upon the whole it is clear that the only institution of the blind entitled under the will, is that to which the award was made by the adjudication of the first account filed by the executors, viz: "The Pennsylvania Institution for the Instruction of the Blind, otherwise known, as the testatrix has called it, as 'The Institution for the Blind.'"

2. We aver that the Pennsylvania Institution for the Instruction of the Blind are the devisees to which the one undivided sixth part of the real estate in the said bill of complaint mentioned was devised, and that we are absolutely entitled to the same.

3. We deny that the said Pennsylvania Industrial Home for Blind Women, mentioned in said bill of complaint, are entitled to any part of the real estate in the said bill described.

*In Testimony Whereof*, we, the said Pennsylvania Institution for the Instruction of the Blind, have hereunto affixed

our common and corporate seal of the said corporation, this seventh day of June, A. D., 1883.

A. L. ELWYN,  
*President.*

Attest:

J. SERGEANT PRICE,  
*Secretary.*

CITY OF PHILADELPHIA, ss.

J. Sergeant Price, being duly affirmed, says, that he is secretary of the said Pennsylvania Institution for the Instruction of the Blind, and that the facts set forth in the foregoing answer, as far as they are of his own knowledge, are true, and as far as derived from information of others, he believes them to be true.

That the seal of the said corporation above affixed is the true and proper seal of the said corporation, and that signatures above written purporting to be the signatures of A. L. Elwyn, president of said corporation, and of this affiant, are the true and proper hand of the said president and of this affiant.

Affirmed and subscribed before }  
me this ninth day of June, } J. SERGEANT PRICE.  
A. D. 1883. }  
J. WILLIS MARTIN,  
*Notary Public.* }

THORN,  
J. SERGEANT PRICE,  
JOHN CADWALADER, JR.,  
*Solicitors for Defendants, P. I. B.*

No. 652.

June Term, 1882.

Common Pleas, No. 2.

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**IN EQUITY.**

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*Between*

"The Old Man's Home" *et al.*,

*and*

"The Pennsylvania Institution for  
the Instruction of the Blind."

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*Answer of "The Pennsylvania In-  
stitution for the Instruction  
of the Blind."*

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J. CADWALADER.  
J. SERGEANT PRICE,  
GEORGE W. THORN.

ALLEN, LANE & SCOTT, PRS.

*Filed July 7th, 1883.*

Master's Interlocutory Report.

Filed November 28, 1883.

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IN THE COURT OF COMMON PLEAS, No. 2,  
FOR THE COUNTY OF PHILADELPHIA.

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THE OLD MAN'S HOME OF PHILADELPHIA, *et al.*

*vs.*

THE PENNSYLVANIA INSTITUTION FOR THE  
INSTRUCTION OF THE BLIND, *et al.*

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No. 652. Of June Term, 1882.

---

IN EQUITY.

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PARTITION.

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The Master to whom under an order of Court, made March 13, 1883, was referred the above cause to part and divide the lands and tenements in the schedule annexed to the bill particularly set forth, and "to award and allot the shares or purparts" thereof "to and among the parties severally entitled thereto, according to their respective interests," makes this interlocutory report as follows :

That Mary Shields, the decedent whose real estate the

bill filed in this case prays may be parted and divided, by her will duly proved and registered in the office of the Register of Wills for this County, gave, devised, and bequeathed one equal sixth part of her residuary estate "unto the Institution for the Blind of Philadelphia."

That the "Pennsylvania Institution for the Instruction of the Blind" and the "Pennsylvania Industrial Home for Blind Women," the respondents named in the bill, each claim to be the institution intended by the said testatrix as her devisee and legatee of the said equal one-sixth part.

That at a meeting before the master, held at his office on October 19, 1883, there were present

(J. Sergeant Price and George W. Thorn, Esqs., of counsel for the "Pennsylvania Institution for the Instruction of the Blind,") and

(Nathan H. Sharpless, Esq., of counsel for the "Pennsylvania Industrial Home for Blind Women.")

At which time the following proceedings were had:

"Messrs. Price and Thorn offer in evidence the record of the Orphans' Court, for the County of Philadelphia, containing all the proceedings in that Court relative to the settlement of the first account of the executors of Mary Shields, deceased, together with the adjudication thereon, the petition for review, answer to the same, testimony taken therein, and the opinion of the Court afterwards delivered in the case, with the final decree entered thereupon. Said proceedings being of April Sessions, No. 158."

"They also offer in evidence the record of the proceedings in the same Court and the Supreme Court, relating to the settlement of the second account of the executors of Mary Shields, deceased, the adjudication thereon, and the decrees of the Orphans' Court and the Supreme Court made in the case."

"Mr. Sharpless, for Mr. Junkin and self, on behalf of the Pennsylvania Industrial Home for Blind Women, objects to the foregoing offers, on the ground that the court itself,

much less a master sitting under their authority, has no jurisdiction in this form of action to hear and determine the question of title arising between these defendants and the 'Pennsylvania Institution for the Instruction of the Blind,' as to the real estate described in the bill."

"Whereupon the master adjourned the meeting until Friday, October 26, 1883, that he might consider said offers and the objections thereto."

"When at a meeting held on said day, Messrs. Price, Thorn, Sharpless and Junkin, being present, the master announced his decision on said offers and objections thereto as follows:

"The master having considered the offers made by Messrs Price and Thorn, of counsel for the 'Pennsylvania Institution for the Instruction of the Blind,' and the objections made thereto by Mr. Sharpless for Mr. Junkin, and himself, of counsel for the 'Pennsylvania Industrial Home for Blind Women,' declines to hear said testimony, and sustains so much of said objection thereto as relates to the jurisdiction of the master, being of the opinion that the order of reference to him does not contemplate an inquiry at this time before him as to which institution was intended to be named as a devisee and legatee in the will of the testatrix, Mary Shields."

"Whereupon Messrs. Price and Thorn except to the decision of the master, particularly as to his declining to hear the testimony proposed to be offered by them, and request the master to make an interlocutory report thereon to the court"

In accordance with said request the master makes this his report.

All of which is respectfully submitted.

SUSSEX D. DAVIS,

November 22, 1883.

Master.

IN THE MATTER  
OF  
THE PARTITION OF THE ESTATE OF MARY  
SHIELDS, DECEASED.

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IN THE  
COURT OF COMMON PLEAS, No. 2,  
FOR THE  
CITY AND COUNTY OF PHILADELPHIA.

---

IN EQUITY.

---

NO. 652. JUNE TERM, 1882.

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THE OLD MAN'S HOME OF PHILADELPHIA, THE  
CITY OF PHILADELPHIA, THE TRUSTEES OF  
THE REAL AND PERSONAL PROPERTY OF  
THE PHILADELPHIA PROTESTANT EPISCOPAL  
CITY MISSION, THE CONTRIBUTORS TO THE  
PENNSYLVANIA HOSPITAL, THE INDIGENT  
WIDOWS' AND SINGLE WOMEN'S SOCIETY OF  
PHILADELPHIA, AND THE PENNSYLVANIA  
INSTITUTION FOR THE DEAF AND DUMB,

*Plaintiffs,*

vs.

THE PENNSYLVANIA INSTITUTION FOR THE  
INSTRUCTION OF THE BLIND, AND THE  
PENNSYLVANIA INDUSTRIAL HOME FOR  
BLIND WOMEN,

*Defendants.*

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MASTER'S REPORT IN PARTITION.

Q43

*Filed February 27, 1884.*

IN THE COURT OF COMMON PLEAS NO. 2,  
FOR THE CITY AND COUNTY OF PHILADELPHIA.

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IN EQUITY.

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PARTITION.

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No. 652. June Term, 1882.

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THE OLD MAN'S HOME OF PHILADELPHIA, THE  
CITY OF PHILADELPHIA, THE TRUSTEES OF  
THE REAL AND PERSONAL PROPERTY OF  
THE PHILADELPHIA PROTESTANT EPISCO-  
PAL CITY MISSION, THE CONTRIBUTORS TO  
THE PENNSYLVANIA HOSPITAL, THE INDI-  
GENT WIDOWS AND SINGLE WOMEN'S SOCI-  
ETY OF PHILADELPHIA, AND THE PENNSYL-  
VANIA INSTITUTION FOR THE DEAF AND  
DUMB,

*Plaintiffs,*

vs.

THE PENNSYLVANIA INSTITUTION FOR THE  
INSTRUCTION OF THE BLIND, AND THE  
PENNSYLVANIA INDUSTRIAL HOME FOR  
BLIND WOMEN,

*Defendants.*

*To the Honorable the Judges of said Court:*

The Master respectfully reports:

That after due notice to the counsel of the several parties, he held meetings at his office, at which he was attended by

William S. Lane and Joseph B. Townsend, Esquires, of counsel for plaintiffs.

J. Sergeant Price, John Cadwalader, and George W. Thorn, Esquires, of counsel for The Pennsylvania Institution for the Instruction of the Blind, one of the parties defendant, and

Nathan H. Sharpless and George Junkin, Esquires, of counsel for The Pennsylvania Industrial Home for Blind Women, the other of the parties defendant.

He was also attended by

George Vaux, Esq., the attorney in fact, and Alexander Henry, Esq., Solicitor of The Indigent Widows and Single Women's Society of Philadelphia, Hon. James Pollock, President, and Dr. C. W. Hornor, a member of The Board of Trustees of The Pennsylvania Industrial Home for Blind Women,

Daniel M. Fox, Esq., Solicitor, and S. Weir Lewis and W. G. Thomas, Esqs., two of the Directors of The Pennsylvania Institution for the Deaf and Dumb, and

Edwin W. Lehman, Esq., a Director of the Old Man's Home of Philadelphia.

Under the will of Mary Shields, deceased, the testatrix, The Old Man's Home of Philadelphia; the Trustees of the Real and Personal property of the Philadelphia Protestant Episcopal City Mission; the Indigent Widows and Single Women's Society of Philadelphia; the Pennsylvania Institution for the Deaf and Dumb and "The Institution for the Blind of Philadelphia," are each entitled to one equal sixth part of her residuary estate, and the City of Philadelphia and the Contributors to the Pennsylvania Hospital, each to one equal twelfth part thereof.

As stated in the first report of the Master, filed May 9, 1883, an appraisal and valuation of the lands and tenements described in the schedule or exhibit attached to the bill of complaint, was had and made, resulting in a valuation of the whole at the sum of \$211,727.38, of which one-sixth is \$35,287.90 and one-twelfth is \$17,643.95.

The Master having in his first report, found that he could not part and divide the properties among the parties without prejudice to or spoiling the whole and that report having been filed, the Court, after argument by the counsel of the several parties interested, recommitted the report to the Master that further effort might be made to accomplish a partition as nearly equal in value to their respective undivided shares as was possible, charging owelty, to adjust any inequalities.

The Master, thereupon, after further consideration and examination, parted and divided said real estate into seven several allotments, the first five of which hereinafter numbered respectively, one to five inclusive, each approximate to one-sixth of the whole valuation aforesaid, and the last two hereinafter numbered, six and seven, respectively, each approximate to one-twelfth of the whole valuation aforesaid. The said allotments and the several parcels of real estate included in each one thereof, and each numbered as above, and the amount of owelty to be paid or received by each in order to produce equality in said divisions are as stated in the following Table. The number opposite to each piece of property, being the number used in the description of the same in the Exhibit annexed to the bill of complainant.

THE INDIGENT WIDOWS AND SINGLE  
WOMEN'S SOCIETY OF PHILADELPHIA

## ALLOTMENT NO. 1.

No. 1, No. 1431 North Eighteenth Street, house and lot,	\$5,400 00
$\frac{1}{2}$ part of No. 8, Lot on west side of Seventeenth Street, 205 feet north of the north side of Jefferson Street, 72 feet front and running through to Bouvier Street,	12,000.00
No. 24. Lot of ground 612 feet $\frac{1}{4}$ inch front on Almond Street, 613 feet $6\frac{1}{8}$ inches front on Belgrade Street and 271 feet $1\frac{3}{4}$ inches front on Wheat Sheaf Lane,	5,000 00
" 25. Houses and lot, No. 427 Fairmount Avenue,	5,000 00
" 32. Irredeemable ground rent of \$112 per annum,	2,489 00
" 35. Irredeemable ground rent of \$16 per annum,	355 55
" 37. Irredeemable ground rent of \$45 per annum,	1000 00
Part of No. 7. Lot of ground, northwest corner of Seventeenth and Jefferson Streets, 19 feet front on Seventeenth Street, running through to Bouvier Street,	3,900 00
	<hr/>
	\$35,144 55
To receive,	143 35
	<hr/>
	\$35,287 90

## ALLOTMENT NO. 2.

3. Houses (five) and lot, Shield's Court,	\$4000 00
4. House and lot, Nos. 1818 and 1820 Market Street,	15,000 00
13. House and lot No. 1142 South Sixteenth Street,	2,500 00
" 23. Lot of ground, 311 feet $3\frac{3}{4}$ inches front on Wheat Sheaf Lane, 611 feet $5\frac{3}{8}$ inches front on Almond Street, and 607 feet $8\frac{1}{2}$ inches on Thompson Street,	5,000 00
" 33. Irredeemable ground rent of \$42.50 per annum,	944 50
" 40. Redeemable ground rent of \$132 per annum,	2,475 00
" 42. Irredeemable ground rent of \$54 per annum,	1,200 00
" 43. Irredeemable ground rent of \$54 per annum,	1,200.00
Part of No. 7. Lot 19 feet front on west side of Seventeenth Street, 19 feet north from north side of Jefferson Street, running through to Bouvier Street,	3,350.00
	<hr/>
	\$35,669.50
To pay,	381.60
	<hr/>
	\$35,287.90



## ALLOTMENT NO. 3.

$\frac{1}{2}$ part of No. 8. Lot of ground 72 feet front on west side of Seventeenth Street, 133 feet north of north side of Jefferson Street, running through to Bouvier Street,	\$12,000.00
No. 6. Lot No. 1616 North Seventeenth Street,	3,000.00
" 9. House and lot No. 1610 Ellsworth Street,	2,500.00
" 10. House and lot No. 1612 Ellsworth Street,	2,500.00
" 22. Ground fronting on Wheat Sheaf Lane, Thompson and Edgemont Streets,	4,000.00
" 28. Ground in Cheltenham Township, Montgomery County, containing four acres and sixty-two hundredths of an acre,	1,500.00
" 29. Ground in Cheltenham Township, Montgomery County, containing four acres and seventy-one hundredths of an acre,	1,500.00
" 31. Irredeemable ground rent of \$40 per annum,	889.00
" 34. Irredeemable ground rent of \$60 per annum,	1,333.33
" 38. Redeemable ground rent of \$132 per annum,	2,475.00
Part of No. 7. Lot 19 feet front on west side of Seventeenth Street, 38 feet north of north side of Jefferson Street, running through to Bouvier Street,	3,350.00
	<hr/>
To receive,	\$35,047.33
	240.57
	<hr/>
	\$35,287.90

## ALLOTMENT NO. 4.

No. 17. House and lot, Walnut Lane, Germantown,	\$15,000.00
" 11. House and lot, No. 1616 Ellsworth Street,	2,500.00
" 12. House and lot, No. 1138 South Sixteenth Street,	2,500.00
" 21. Ground containing in front on Richmond Street 174 feet 10 $\frac{3}{4}$ inches, running through to Salmon Street, 356 feet 8 $\frac{1}{2}$ inches southwest from southwest side of Wheat Sheaf Lane,	3,500.00
" 44. Irredeemable ground rent of \$220 per annum,	4,889.00
Part of No. 7. Lot 38 feet front on west side of Seventeenth Street, 57 feet north of north side Jefferson Street, running through to Bouvier Street,	6,700.00
	<hr/>
	\$35,089.00
To receive,	198.90
	<hr/>
	\$35,287.90

## ALLOTMENT NO. 5.

No. 15. House and lot, No. 2039 Summer Street,	\$2,300 00
" 20. Lot of ground fronting on Richmond Street, Wheat Sheaf Lane and Salmon Street,	3,000 00
" 27. Store and lot, No. 119 North Third Street,	16,000 00
" 26. Houses and lot, No. 525 South Thirteenth Street,	2,500 00
" 36. Redeemable ground rent of \$260 per annum,	4,875 00
Part of No. 7. Lot 38 feet front on west side of Seventeenth Street, 95 feet north of the north side of Jefferson Street, running through to Bouvier Street,	6,700 00
	<hr/>
	\$35,375 00
	87 10
	<hr/>
	\$35,287 90

ALLOTMENT NO. 6.

No. 2. Counting house, lot of ground and wharf at the north-west corner of Sutherland Avenue and Bainbridge Street,	\$10,000 00
“ 5. House and lot No. 236 Dean Street,	1,500 00
“ 18. Buildings and lot of ground 200 feet 9½ inches front on the northwest side of Salmon Street, 364 feet south-westward from south-west side of Wheat Sheaf Lane,	1,000 00
“ 41. Redeemable ground rent of \$274 per annum,	5,150 00
	<hr/> \$17,650 00
To pay	6 05
	<hr/> \$17,643 95

ALLOTMENT No. 7.

No. 14. House, No. 1144 South Sixteenth Street,	\$2,500 00
“ 16. Lot of ground on northwestwardly side of Walnut Lane, Germantown, 130 feet 3 inches, southwest from the southwest side of Green Street, containing in front 130 feet 3 inches, and extending in depth 338 feet,	10,000 00
“ 19. Lot of ground 184 feet 8¼ inches front on Edgemont Street at the distance of 385 feet 9 inches southwest from the south-west side of Wheat Sheaf Lane,	1,000 00
“ 30. Irredeemable ground rent of \$80 per annum,	1,777 00
“ 39. Redeemable ground rent of \$132 per annum,	2,475 00
	<hr/> \$17,752 00
	108 05
	<hr/> \$17,643 95

OWELTY.

Allotment No. 2 will pay	\$381 60
“ “ 5 “	87 10
“ “ 6 “	6 05
“ “ 7 “	108 05
	<hr/> \$582 80
<hr/>	
Allotment No. 1 will receive	\$143 33
“ “ 3 “ “	240 57
“ “ 4 “ “	198 90
	<hr/> \$582 80

The Master, having prepared the above scheme of partition and division, invited, in accordance with the provisions of Section 10 of the Act of Assembly of April 22, 1856, from the several parties, offers in writing above the valuation, for the choice of the allotments as made by him, to be opened on a day certain, to wit, on December 13, 1883, at 12 o'clock M.

Whereupon, at a meeting held for that purpose, on that day, at the hour named, the Trustees of the Real and Personal property of the Philadelphia Protestant Episcopal City Mission, one of the plaintiffs, elected to take in severally the properties enumerated in Allotment No. 5, and offered in writing to pay therefor the sum of five hundred and five dollars (\$505) above the valuation placed thereon, and that being the highest and best offer in writing therefor, the Master has awarded and allotted the real estate named in Allotment No. 5, to the said The Trustees of the Real and Personal property of the Philadelphia Protestant Episcopal City Mission, as will hereafter appear in the table of allotments, to be held and enjoyed by them in severalty in fee,

they paying to the parties to whom No. 4 is allotted and awarded the sum of \$87.10 owelty of partition.

And the Indigent Widows and Single Women's Society of Philadelphia, another of the plaintiffs elected to take in severalty the properties enumerated in Allotment No. 1, and offered in writing to pay therefor the sum of one hundred and one dollars, (\$101), above the valuation placed thereon, and that being the highest and best offer in writing therefor, the Master has awarded and allotted the real estate named in Allotment No. 1, to the said, The Indigent Widows and Single Women's Society of Philadelphia, as will hereafter appear in the table of allotments, to be held and enjoyed by them in severalty in fee, together with the sum of \$143.35, for owelty of partition, to be paid them as follows: \$141.03, to be paid by the party to whom No. 2 is allotted, and \$2.32 by the party to whom No. 6 is allotted.

And the Pennsylvania Institution for the Instruction of the Blind, one of the defendants elected to take in severalty the properties enumerated in Allotment No. 2, and offered in writing to pay therefor the sum of ninety dollars (\$90) above the valuation placed thereon, the same being the highest and best offer in writing therefor.

The Master has required the parties so bidding for a choice to pay to him in cash the amount of their respective bids, and the aggregate thereof is appropriated towards the expenses of these proceedings as will hereafter appear, except the sum of \$90 paid by the Pennsylvania Institution for the Instruction of the Blind, which the Master will hold to await the final determination of the question between that Institution and The Pennsylvania Industrial Home for Blind Women, as to which is the true devisee of the share devised to "The Institution for the Blind," that the same may be hereafter returned to the party paying the same, or distributed among the several parties as justice may require.

The remaining parties in interest, to wit:—The Old Man's Home of Philadelphia, the City of Philadelphia, the Contributors to the Pennsylvania Hospital, the Pennsylvania

Institution for the Deaf and Dumb, plaintiffs, and the Pennsylvania Industrial Home for Blind Women, defendants, declined to make any offers in writing above the valuation placed thereon for choice of any of the above Allotments.

The Master therefore, awards and allots,

1. To the Trustees of the Real and Personal property of the Philadelphia Protestant Episcopal City Mission, the properties enumerated in Allotment No. 5, they paying therefor the sum of five hundred and five dollars (\$505) above the valuation placed thereon, to be held and enjoyed by the said Trustees of the Real and Personal property of the Philadelphia Protestant Episcopal City Mission in severalty in fee, they paying to the parties to whom No. 4 is allotted, the sum of \$87.10 for owelty of partition.

2. To the Indigent Widows and Single Women's Society of Philadelphia, the properties emulated in Allotment No. 1, they paying therefor the sum of one hundred and one dollars (\$101) above the valuation placed thereon, to be held and enjoyed by the said the Indigent Widows and Single Women's Society of Philadelphia in severalty in fee, together with the sum of \$143.35, for owelty of partition, to be paid them as follows: \$141.03, to be paid by the party to whom No. 2 is allotted, and \$2.32 by the party to whom No. 6 is allotted.

3. To the Old Man's Home, of Philadelphia, the properties enumerated in Allotment No. 4, at the valuation placed thereon to be held and enjoyed by the said, The Old Man's Home of Philadelphia, in severalty in fee, together with the sum of \$198.90, for owelty of partition to be paid by the parties to whom Allotments Nos. 5, 6 and 7 are made as follows: The party to whom No. 5 is allotted, to pay \$87.10, the one to whom No. 6 is allotted to pay \$3.73, and the party to whom No. 7 is allotted to pay \$108.05.

4. To the Pennsylvania Institution for the Deaf and Dumb, the properties enumerated in Allotment No. 3, at the valuation placed thereon, to be held and enjoyed by the said, The Pennsylvania Institution for the Deaf

and Dumb, in severalty in fee, together with the sum of \$240.57 for owelty of partition to be paid by the party to whom No. 2 is allotted.

5. To the Contributors to the Pennsylvania Hospital, the properties enumerated in Allotment No. 6, at the valuation placed thereon, to be held and enjoyed by the said, the Contributors to the Pennsylvania Hospital in severalty in fee, they paying \$6.05 owelty of partition as follows: \$2.32 to be paid to the party to whom No. 1 is allotted, and \$3.73 to the party to whom No. 4 is allotted, and

6. To the City of Philadelphia the properties enumerated in Allotment No. 7, at the valuation placed thereon, to be held and enjoyed by the said City of Philadelphia in severalty in fee, they paying the sum of \$108.05 to the party to whom No. 4, is allotted for owelty of partition.

The Master further reports in respect to Allotment No. 2 as follows: By the terms of the will of the testatrix she devises one equal sixth part of her residuary estate, (including the premises which are the subject of this partition), to "The Institution for the Blind of Philadelphia, absolutely." It further appears and the Master so reports that there is no corporation or institution bearing the exact name affixed by the testatrix to the devisee of such share, and that there is an unsettled controversy between the defendants, The Pennsylvania Institution for the Instruction of the Blind, and the Pennsylvania Industrial Home for Blind Women, as to which of them is the true devisee intended by the testatrix to take that share of her estate which she disposes of by the words above quoted. And the Master having doubts as to his right or power to decide between these disputants, unless under further specific orders from the Court, or to allot to one rather than the other, awards and allots that share or portion marked Allotment No. 2 to whichever of the defendants shall hereafter be judicially and finally ascertained to be the true and proper devisee thereof under the will of the said testatrix, they paying the sum of \$381.60 owelty of partition, as follows: \$141.03 to the

party to whom No. 1 is allotted and awarded, and \$240.57 to the party to whom No. 3 is allotted and awarded.

There being no controversy in the cause between any of the parties thereto as to the rights of the several plaintiffs to the shares or portions to them respectively devised by the will of the testatrix, and the only controversy existing being that between the two parties defendants, as above stated, the Master has drafted a decree, hereto annexed, which he submits with his recommendation that it be adopted by the Court, wherein he allots to the several parties plaintiffs the allotments to them severally falling in the foregoing partition or division, and directs the award and adjudication of Allotment No. 2 to be reserved until the Court shall have ascertained and judicially determined to their satisfaction to which one of the said two parties defendant, the said Allotment No. 2 ought of right to be adjudged and awarded.

There seems to the Master no reason to doubt that this Court can in this proceeding, and as a proper branch thereof, after awarding to the parties plaintiffs the purparts, divisions, or allotments to them severally falling as aforesaid, proceed, before making an award and adjudication of said purpart or allotment No. 2, to ascertain and determine, either by awarding an issue of fact to be tried therein before a jury, or by a further report from the Master under a special order defining his powers and duties therein, which one of the two defendants ought to receive and have adjudged and allotted to them in severalty, the said Allotment No. 2 paying therefor the owelty and charges hereinbefore reported as chargeable thereon.

The payment and receipt of money for owelty of partition by the several parties will be as follows:

That Institution finally ascertained to be "The Institution for the Blind," will pay to The Indigent Widows' and Single Women's Society of Philadel- phia, the sum of	\$141 03
And to the Pennsylvania Institution for the Deaf and Dumb, the sum of	240 57
	<hr/> \$381 60
The Trustees of the Philadelphia Protest- ant Episcopal City Mission will pay to the Old Man's Home of Philadelphia, the sum of	87 10
The Contributors to the Pennsylvania Hospital will pay to The Indigent Widows and Single Women's Soci- ety of Philadelphia, the sum of	2 32
And to The Old Man's Home of Philadel- phia, the sum of	3 73
	<hr/> 6 05
And The City of Philadelphia will pay to The Old Man's Home of Philadel- phia the sum of	108 05
	<hr/> <u>\$582 80</u>

Which said lands and premises so aforesaid valued, allotted, awarded and divided to the parties respectively, and their respective successors and assigns include and make up all the lands and premises which are the subjects of this present suit, and which by the decree of the Court aforesaid, were referred to be valued, parted and divided as aforesaid, which several Allotments are rendered and made equal in value each to the other by the addition or deduction, as the case may be, of the moneys so as aforesaid, to be received or paid for owelty of the partition as hereinabove respectively stated and set out.

The Master further reports that the costs and expenses of these proceedings are as follows:

Master's fee, printing, costs and expenses,	\$2,745 32
Counsel fees,	\$2,200 00
Examination of records, surveys, searches, etc.,	300 00 2,500 00
	<hr/> \$5,245 32
Less amount received from offers for choice of allotments, except offer of Pennsylvania Insti- tution for the Instruction of the Blind,	606 00
	<hr/> <u>\$4,639 32</u>

Towards the payment of which balance of \$4,639.32 each of the several parties to this suit, will pay in proportion to their respective parts or shares, that is, those entitled to one equal sixth part or share will each pay the sum of \$773.22, and those entitled to one equal twelfth part or share will each pay the sum of \$386.61 in satisfaction of the balance due of said costs and expenses.

The Master also further reports to the court the following facts in regard to the several parcels of real estate numbered from 18 to 24, inclusive, as described in the exhibit annexed to the bill of complaint. These several lots of ground were part of a larger lot of ground purchased by Edwin Shields, a brother of Mary Shields, the testatrix (see deed from George R. Hazewell and Sarah H., his wife, to the said Edwin Shields, dated January 3, 1854, and recorded in Deed Book T H, No. 126, p. 126, etc.), and were subject to the payment of two mortgages, one given by Samuel Townsend to Nancy K. Risk, conditioned for the payment of \$5,600, dated November 6, 1851, and recorded in Mortgage Book G W C, No. 44, page 379, etc., assigned by the said Nancy K. Risk to James Shields (a brother of the testatrix), January 2, 1854, and recorded in Mortgage Book T H, No. 44, page 329, etc., and the other given by George R. Hazewell to Samuel Townsend, conditioned for the payment of

\$14,209, dated July 1, 1853, and recorded in Mortgage Book T. H., No. 32, page 199, etc., assigned by the said Samuel Townsend to the said James Shields, January 2, 1854, and recorded in Mortgage Book T. H., No. 44, page 335, etc., which said mortgages still appear unsatisfied of record. The said Edwin Shields died seized of these premises, and by his last will and testament, dated June 19, 1847, duly proved (see Will Book, No. 55, page 73), gave and devised unto his brother, the said James Shields, and his sister, Mary Shields (the testatrix), all his real estate, in fee in equal shares, after the death of his mother, Eliza Shields, who afterwards died on December 24, 1864, whereby the above-mentioned real estate passed to and became vested in the said James and Mary Shields. And the said James Shields being so seized of an undivided half part of said real estate, died, having first made his last will and testament, dated July 27, 1846, duly proved (see Will Book, No. 93, page 272,) whereby he gave, devised, and bequeathed all his personal and real estate unto his brother, Edwin Shields, and his sister, the said Mary Shields, in fee in equal shares, and in case either should die intestate, and without issue, then the whole of his or her share to the survivor in fee, subject to the payment of an annuity of \$200 per annum to his mother, the said Eliza Shields. And the said Eliza Shields and Edwin Shields having both died during the lifetime of James Shields, the entire interest of the said James Shields vested in the said Mary Shields, the testatrix, and she thereupon became seized in fee of the whole of the aforementioned real estate (being Nos. 18 to 24 on said Exhibit, annexed to the bill of complaint), whereby the two mortgages above referred to merged in her, and were thereby extinguished. As, however, they appeared of record as incumbrances against said real estate, the Master recommended that John R. Griffith, the administrator *de bonis non c. t. a.* of the said James Shields should enter satisfaction of the same on the margin of the record which accordingly has been done.

All of which is respectfully submitted.

SUSSEX D. DAVIS, *Master.*

The Master further reports that, having given all parties interested due notice of the intended filing of this report, the exceptions hereto annexed were filed thereto by counsel for The Pennsylvania Institution for the Instruction of the Blind, and, that the same having been considered by him, he finds nothing therein to cause him to change or alter his report.

Respectfully submitted,

SUSSEX D. DAVIS,

*Master.*

FORM OF DECREE.

<p>THE OLD MAN'S HOME OF PHILADELPHIA <i>et al</i></p> <p><i>vs.</i></p> <p>THE PENNSYLVANIA INSTITUTION FOR THE INSTRUCTION OF THE BLIND, <i>et al.</i></p>	}	<p>C. P. No. 2, No. 652.</p> <p>June Term, 1882,</p> <p>In Equity.</p> <p>Partition.</p>
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And now the final report of the Master in this cause having been filed, this cause came on to be heard, and was argued by counsel. And thereupon, upon consideration thereof, It is ordered adjudged and decreed that the report of the Master be confirmed, and the exceptions filed thereto be dismissed, and that the partition and division, as reported by the Master, be and remain firm and stable forever as to each and every of the allotments, severally and respectively falling, and by him awarded therein to the several and respective parties plaintiff, their several and respective successors and assigns forever, to be by them, their respective successors and assigns forever, hereafter freely held, enjoyed and disposed of in severalty in fee, together with or subject to the several sums directed by the said report, to be paid or received for owelty of par-

tion agreeably to the terms and provisions thereof, and that each one of the parties plaintiff shall pay such fractional share of the whole costs of this proceeding as shall be equal to the share or quota which they severally took under the will of the said Mary Shields, deceased, in the several pieces of real estate described in the exhibit annexed to the Bill.

And by reason of the pending controversy existing between the two parties defendant, as to which of them is entitled, as the true and lawful devisee, to have, take and receive the Allotment No. 2, under the will of the said Mary Shields, set aside and designated by the Master as the allotment which will fall and be adjudged to whichever of and defendants shall be duly and judicially ascertained to be the devisee intended by the testatrix, to take under the descriptive words in the will "to The Institution for the Blind of Philadelphia," the Court reserves the adjudication and award of said Allotment No. 2, until such ascertainment shall be made in the mode and manner the Court may hereafter appoint and direct, And it is further ordered that whichever of the two defendants shall be so judicially ascertained to be the party rightfully entitled to said allotment No. 2, shall pay one-sixth part of the whole of said costs, as well as the sums charged thereon by said report for owelty of partition.

IN THE COURT OF COMMON PLEAS NO. 2,  
FOR THE CITY AND COUNTY OF PHILADELPHIA.

—  
No. 652. June Term, 1882.  
—

OLD MAN'S HOME *et al.*

*vs.*

THE PENNSYLVANIA INSTITUTION FOR THE  
INSTRUCTION OF THE BLIND, *et al.*

—  
The Pennsylvania Institution for the Instruction of the Blind excepts to the report of the Master :

I. For that it appears by the report of the Master that the exceptant, The Pennsylvania Institution for the Instruction of the Blind, did, in pursuance of the notice from the Master, elect to take the premises mentioned and described in the report of the Master as purpart No. 2, at the price or sum of ninety dollars above the valuation fixed thereon by the Master, and the Master has refused to allot the said share, or any share of the estate mentioned in the proceedings, to the exceptant.

II. For that the Master has neglected and refused to allot one of the purparts to the exceptant.

III. For that the Master required that exceptant should pay to him the sum of ninety dollars, being the amount bid by it in writing above the valuation of the purpart designated by the Master as No. 2, and the exceptant did pay the same to the Master, as required by him, as fully appears by his report; yet the Master, though he has taken the money of the exceptant, has refused to allot that purpart, or any

purpart, to the exceptant, as he was required to do under the Act of Assembly of April 22, 1856. *Purd. Dig.*, p. 437, pl. 156.

IV. For that the Master accepted the bid and money of the exceptant for purpart No. 2, and refused to allot to it the said purpart, or any other purpart of the estate.

V. For that the Master has reported as a fact that there is an "unsettled controversy between the defendants, The Pennsylvania Institution for the Instruction of the Blind and The Pennsylvania Industrial Home for Blind Women, as to which of them is the true devisee intended by the testatrix to take that share of her estate which she disposes of by the words" of her will, when, in truth and in fact, there was no evidence or any proof to justify the report in that respect; the only evidence offered being to the effect that the Orphans' Court of the City of Philadelphia, and the Supreme Court of Pennsylvania upon appeal therefrom, had "*settled*" every controversy between the parties.

VI. For that the mere verbal statement, without any evidence or proof, made before the Master by counsel of The Pennsylvania Industrial Home for Blind Women, that it was the devisee intended, did not justify the Master in withholding from the exceptant the share of the estate to which it was entitled.

VII. For that the Master disregarded the evidence offered by the exceptant, and refused to receive the same, as appears by his Interlocutory Report made to this court in these proceedings.

VIII. For that the Master has not considered the effect of the answer of the exceptant, and has disregarded the same.

IX. For that the record and proceedings of the Supreme Court, upon the appeal of the said The Pennsylvania Industrial Home for Blind Women from the decree of the Orphans' Court, offered in evidence by the exceptant and rejected by the Master, clearly established that there was *no* "unsettled controversy," as reported by the Master, between that associa-

tion and the exceptant; the Supreme Court having affirmed the adjudication of Judge Penrose in the court below, that "it is clear that the only institution for the blind entitled under this will is that to which the award was made, namely, The Pennsylvania Institution for the Instruction of the Blind, otherwise known, as the testatrix called it, as 'The Institution for the Blind.'"

X. For that the records of the Orphans' Court, on an application to open the adjudication on the first account of the executors of Mary Shields, offered in evidence by the exceptants and rejected by the Master, show a decree not appealed from, that the exceptant was the person intended by the said testatrix in her will by the name of the "Institution for the Blind of Philadelphia" and the Master erred in not receiving said evidence, and in not reporting upon the effect of the same. In entering the said decree the court delivered the following opinion:

ESTATE OF MARY SHIELDS, DECEASED.

SUR PETITION FOR REVIEW, ETC.

"The designation used by the testatrix in her will is, as the evidence clearly shows, the ordinary and general term applied in the community to the Pennsylvania Institution for the Instruction of the Blind, incorporated January 27, 1834. It has for many years been so described in the advertisements of its exhibitions published twice a week in the daily papers of the city; in more than three-fourths of the letters addressed to the institution; and from 1869 to 1878 in the annual reports of the *petitioners*, The Pennsylvania Industrial Home for Blind Women. There is no other institution known as 'The Institution for the Blind,' and hence it would seem the case does not present a question of latent ambiguity to be solved by the introduction of parol evidence."

"If, however, it should be conceded that the words of the will were descriptive merely, the evidence leaves us in



“no doubt that the Industrial Home for Blind Women was  
 “not intended as the institution referred to. Apart from the  
 “fact that the testatrix was an occasional visitor and was in  
 “the regular receipt of its annual reports, in which the form  
 “of a bequest to it was always prominently set forth, it  
 “appeared from her private subscription book, in her own  
 “handwriting, that her contributions to this charity were  
 “entered as made to the “Industrial Home for Blind  
 “Women,” and with knowledge of the correct title, and its  
 “habitual use by her, thus demonstrated, it is inconceivable  
 “that in an instrument of the importance and solemnity of  
 “a will, this testatrix, who was a person of more than ordi-  
 “nary intelligence and capacity, and who knew of the exist-  
 “ence of the Institution for the Blind, would employ general  
 “and equivocal terms in describing her intended beneficiary.  
 “We had occasion to consider this question in the adjudica-  
 “tion of the second account filed by these accountants, and  
 “in the opinion on the exceptions thereto, and we see no  
 “reason to change the views then expressed.

“To sustain a bill of review, palpable error must be  
 “clearly shown. It is not sufficient simply to raise a doubt.  
 “The evidence in this case wholly fails to sustain the claim  
 “of the petitioners, and we need not consider, therefore,  
 “how far the fact that distribution was made before the  
 “petition was filed bars relief.”

“Petition dismissed at the cost of the petitioners.”

XI. For that it was the duty of the Master to receive  
 the evidence offered by the exceptant and to report to the  
 court the facts arising therefrom.

XII. For that the facts alleged in the answer of the  
 exceptant must be taken to be true, there being no replica-  
 tion to the said answer, or other legal denial of the truth  
 thereof.

XIII. For that it clearly appears by the record in these  
 proceedings that the exceptant is entitled to a purpart or  
 share of the estate sought to be parted and divided; yet,  
 without any evidence or proof to the contrary, the Master

has refused to report in favor of or to allot to exceptant any  
 purpart or share of said estate.

XIV. For that it was the duty of the Master to take  
 proof of the title of the exceptant, which he refused to do.

XV. For that it was the duty of the Master, under the  
 prayer of the bill, to determine the question of the validity  
 of the title of the exceptant.

XVI. For that the Master should have decided, by the  
 terms of the will, that the exceptant, was the devisee named  
 therein, as “The Institution for the Blind of Philadelphia.”

XVII. For that the title of the exceptant and of the  
 plaintiff's having been derived under the will of Mary Shields,  
 it was the duty of the Master to construe the will and by  
 its terms to find and report that parol evidence was not  
 admissible to show that the words in the will, to wit: “The  
 Institution for the Blind of Philadelphia” were intended to  
 mean the Pennsylvania Industrial Home for Blind Women.

XVIII. For that the Master erred in not reporting that  
 there was no evidence of any rightful claim of the Pennsyl-  
 vania Industrial Home for Blind Women offered before  
 him, and in not reporting against such alleged claim.

XIX. For that there was no evidence before the Master  
 of any claim of the Pennsylvania Industrial Home for Blind  
 Women, and if there were any such evidence, in the opinion  
 of the Master, he is requested to report the same to the  
 court.

XX. For that a mere verbal allegation of the Pennsyl-  
 vania Industrial Home for Blind Women, through its coun-  
 sel, in presence of the Master, that it was the Institution  
 for the Blind of Philadelphia, named in the will of the tes-  
 tatrix, without any evidence of such a claim, did not justify  
 the Master, under the pleadings in this cause, in reporting  
 that there was an unsettled controversy and in declining to  
 allot to the exceptant its share of the estate.

XXI. For that the report of the Master is in direct  
 violation of the first section of the Act of the 14th of March,

1857; Pamp. L. 97, Purd. Dig., 595, inasmuch as by the provisions of that act the *duty* of the Master is to allot the purparts to the parties entitled.

XXII. For that the court has no power under the statutes of this Commonwealth, to make any partition of real estate in such manner that some of the parties shall be allotted a share and others shall receive no share.

XXIII. For that the court and the Master acting under its directions have no lawful right to order purparts or shares of the real estate to be set aside and allotted, in severalty, to the plaintiffs, and to withhold an allotment from the exceptant.

XXIV. For that the partition reported by the Master is invalid and not warranted by law.

XXV. For that the court has no jurisdiction without the consent of the exceptant to allot purparts to the plaintiffs, and to decline to allot a purpart to the exceptant.

XXVI. For that under the statutes of this Commonwealth no incomplete or partial partition can be made unless by consent of the defendant.

THORN,  
CADWALADER,  
J. SERGEANT PRICE,  
*Solicitors for Exceptant.*

Decree of Re-committal to Master.

Filed April 2, 1884.

OLD MAN'S HOME

*vs.*

INSTITUTION FOR THE  
BLIND and INDUSTRIAL  
HOME FOR BLIND WO-  
MEN.

Court Com. Pleas, No. 2.

June Term, 1882.

No. 652.

LAW DEPARTMENT  
TIMES PRINTING HOUSE  
725 & 727 CHESTNUT ST.,  
PHILADELPHIA

And now, April second, A. D. 1884, on consideration of the report of the Master, filed February 27th, A. D. 1884, and of the exceptions thereto filed on behalf of "The Pennsylvania Institution for the Instruction of the Blind," and after argument thereof by counsel of the parties respectively, it is ordered and decreed that the said report be re-committed to the Master with instructions to ascertain and report to the Court:

First. Whether any and what litigation has been heretofore had between the two corporations named as defendants in this bill touching their respective rights and claims in the residuary estate of the said Mary Shields, deceased, wherein there was a determination or decree after issue duly formed between them by any and what court or courts of record as to which one of the said two defendants was the

devisee and legatee of that one-sixth part of the residuary estate by her will mentioned to be given to "The Institution for the Blind, of Philadelphia," and to report the details and results of such litigation, and the tenor and effect of the decree or decrees of any such court or courts of record thereupon, and also whether, in the opinion of the Master, such decree or decrees so rendered are final and conclusive upon "The Pennsylvania Industrial Home for Blind Women," and ought to preclude and estop them from further disputing the identity of "The Pennsylvania Institution for the Instruction of the Blind," as being the true and only devisee and legatee of the one-sixth of said testatrix's residuary estate by her will so mentioned to be given to "The Institution for the Blind, of Philadelphia."

Second. To which of the two corporations named in the bill as defendants the allotment or purpart No. 2, mentioned in the report so re-committed to the Master, ought in the opinion of the Master to be allotted, adjudged and assigned by the Court as and for the share or one-sixth of right coming or falling to the corporation truly designed and intended by the testatrix in and by her designation thereof by the words "The Institution for the Blind, of Philadelphia," as contained in her will, and in the disposition of said one-sixth of her residuary estate.

And the Master is further directed, after receiving such proofs as may be adduced by the respective parties upon the points above designated, and after making his supplemental report upon the matters aforesaid, to return therewith such form of decree as he may recommend in substitution for the form by him appended to the report so hereby re-committed.

J. T. M.

IN THE MATTER  
OF  
THE PARTITION OF THE ESTATE OF MARY  
SHIELDS, DECEASED.

IN THE  
COURT OF COMMON PLEAS, No. 2,  
FOR THE  
CITY AND COUNTY OF PHILADELPHIA.

IN EQUITY.

NO. 652. JUNE TERM, 1882.

THE OLD MAN'S HOME OF PHILADELPHIA, THE  
CITY OF PHILADELPHIA, THE TRUSTEES OF  
THE REAL AND PERSONAL PROPERTY OF  
THE PHILADELPHIA PROTESTANT EPISCOPAL  
CITY MISSION, THE CONTRIBUTORS TO THE  
PENNSYLVANIA HOSPITAL, THE INDIGENT  
WIDOWS' AND SINGLE WOMEN'S SOCIETY OF  
PHILADELPHIA, AND THE PENNSYLVANIA  
INSTITUTION FOR THE DEAF AND DUMB,

*Plaintiffs*

*vs.*

THE PENNSYLVANIA INSTITUTION FOR THE  
INSTRUCTION OF THE BLIND, AND THE  
PENNSYLVANIA INDUSTRIAL HOME FOR  
BLIND WOMEN,

*Defendants.*

MASTER'S SUPPLEMENTAL REPORT IN PARTITION.  
Under Order of Court of April 2, 1884.

X16

*Filed June 6, 1885.*

IN THE COURT OF COMMON PLEAS, NO. 2,  
FOR THE CITY AND COUNTY OF PHILADELPHIA.

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June Term, 1882. No. 652.

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SITTING IN EQUITY.

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PARTITION.

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BETWEEN

The Old Man's Home of Philadelphia, the City of Philadelphia, The Trustees of the Real and Personal Property of the Philadelphia Protestant Episcopal City Mission, The Contributors to The Pennsylvania Hospital, The Indigent Widows' and Single Women's Society of Philadelphia, and The Pennsylvania Institution for the Deaf and Dumb, *Complainants,*

AND

The Pennsylvania Institution for the Instruction of the Blind, and The Pennsylvania Industrial Home for Blind Women, *Respondents.*

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The Master, to whom was recommitted his Report, filed February 27, 1884, under an order of Court, dated April 2, 1884, with instructions to ascertain and report.

*To the Honorable the Judges of said Court:*

*“First.*—Whether any and what litigation has been heretofore had between the two corporations named as defendants in this bill touching their respective rights and claims in the residuary estate of the said Mary Shields, deceased, wherein there was a determination or decree after issue duly formed between them, by any and what Court or Courts of record as to which one of the said two defendants was the devisee and legatee of that one-sixth part of the residuary estate by her will mentioned to be given to ‘The Institution for the Blind of Philadelphia,’ and to report the details and results of such litigation and the tenor and effect of the decree or decrees of any such Court or Courts of record thereupon, and also whether in the opinion of the Master, such decree or decrees so rendered are final and conclusive upon ‘The Pennsylvania Industrial Home for Blind Women,’ and ought to preclude and estop them from further disputing the identity of ‘The Pennsylvania Institution for the Instruction of the Blind’ as being the true and only devisee and legatee of the one-sixth of said testatrix’s residuary estate by her will so mentioned to be given to ‘The Institution for the Blind of Philadelphia.’

*Second.*—To which of the two corporations named in the bill as defendants, the allotment or purpart No. 2, mentioned in the report so recommitted to the Master, ought, in the opinion of the Master, to be allotted, adjudged and assigned by the Court as and for the share or one-sixth of right coming or falling to the corporation, designed and intended by the testatrix, in and by her designation thereof by the words ‘The Institution for the Blind of Philadelphia,’ as contained in her will, and in the deposition of said one-sixth of her residuary estate.

And the Master is further directed, after receiving such proofs as may be adduced by the respective parties

upon the points above designated, and after making his supplemental report upon the matters aforesaid, to return therewith such form of decree as he may recommend in substitution for the form by him appended to the report so hereby recommitted.”

Respectfully reports:

That having given due notice to all parties interested, he was attended on Tuesday, April 22, 1884, and at other meetings, held from time to time, by

George Junkin and Nathan H. Sharpless, Esqs., of counsel for The Pennsylvania Industrial Home for Blind Women.

J. Sergeant Price, John Cadwalader and George W. Thorn, Esqs., of counsel for The Pennsylvania Institution for the Instruction of the Blind, and also by Francis E. Brewster, Esq., Assistant Solicitor for the Board of Directors of City Trusts.

Dr. C. W. Hornor, Hon. James Pollock and Levi Knowles, members of the Board of Council of said Industrial Home for Blind Women.

Messrs. Price and Thorn offered in evidence:

1. The record of the Orphans’ Court for the county of Philadelphia, containing all the proceedings in that Court relative to the settlement of the first account of Mary Shields, deceased, together with the adjudication thereon, the petition for review, the answer to the same, the testimony taken therein, and the opinion of the Court, afterwards delivered in the case, with the final decree entered thereupon.

The said proceedings being of April Sessions, 1881. No. 158.

They also offered in evidence the record of the proceedings in the same Court and the Supreme Court, relating to the settlement of the second account of the executors of Mary Shields, deceased, the adjudication thereon, and the opinions and decrees of the Orphans’ Court and the Supreme Court made in the case.

Included in these offers were :

1. The testimony of the witnesses examined in the proceedings in said Orphans' Court, on the petition for review of the first, and the audit of the second account, of the said executors.

2. The several exhibits referred to in said testimony, and produced and given in evidence before the Court.

It was agreed by counsel for the several parties, that Ann E. Anschutz, one of the witnesses called on behalf of The Pennsylvania Institution for the Instruction of the Blind, was in error when she testified that the name on the curtain of the store of that Institution was "Store of the Institution for the Blind," the true name thereon being "Store of The Pennsylvania Institution for the Instruction of the Blind."

Messrs. Sharpless and Junkin, counsel for The Pennsylvania Industrial Home for Blind Women, agreed that the Master might consider said evidence and exhibits as if the several witnesses had so testified before him, and the exhibits therein referred to had been produced, with the distinct understanding and proviso, however, that such agreement to admit said testimony as above should not prejudice the position heretofore taken by them, to wit: That the right to the real estate in question contested between the two defendants cannot and ought not to be determined in this proceeding.

They also, without waiving the objection to the jurisdiction heretofore made, presented in this case, called a number of witnesses before the Master.

It appeared during the taking of said evidence that John T. Snare, Esq., a lawyer, having offices with George W. Thorn, Esq., who as counsel of the testatrix drew her will, a witness called in the proceedings before the Orphans' Court, was in error when he testified that it was he who had engrossed said will. Upon the production of the will itself before the Master, it was testified by Jacob E. Bowers, Esq., a lawyer also having offices with Mr. Thorn, that the will had been engrossed by him.

This error arose from the fact that in the examination of Mr. Snare, the draft or memorandum only of the will, and not the will itself, was shown him. On the production of the will before the Master, during the examination of Mr. Bowers, it appeared that the same had been engrossed by him.

While the error made was in itself one of no moment, it is a strong illustration of the danger that may arise from depending upon the memory for past events or transactions.

The remainder of said testimony was chiefly as to what name The Pennsylvania Institution for the Instruction of the Blind was commonly and popularly known by, and the interest shown in The Pennsylvania Industrial Home for Blind Women by Miss Shields, the testatrix, as evidenced in her conversation.

From the records of the Orphans' Court offered in evidence by the counsel for The Pennsylvania Institution for the Instruction of the Blind, it appeared that the executors of the estate of the said Mary Shields, deceased, having on March 30, 1881, filed the account of their administration of said estate with the Register of Wills for this county, an adjudication thereon was made by the said Orphans' Court on May 6, 1881, by which adjudication the share given in the will of the decedent to "The Institution for the Blind of Philadelphia" was awarded to "The Pennsylvania Institution for the Instruction of the Blind," no other claimant appearing before the Auditing Judge. Subsequently, to wit, on June 18, 1881, a petition for review was filed by "The Pennsylvania Industrial Home for Blind Women," praying that the adjudication might be opened, and alleging that the testatrix intended that Institution as her legatee and devisee, and not "The Pennsylvania Institution for the Instruction of the Blind," and asking that the adjudication should be corrected.

While this proceeding was pending, the executors filed a second and final account of their administration of said estate on which an adjudication was made by said Orphans' Court, and filed February 7, 1882, making distribution of



the balance thereby shown, except as to the share given to "The Institution for the Blind of Philadelphia," which was reserved for separate consideration, Messrs. Sharpless and Junkin appearing for "The Pennsylvania Industrial Home for Blind Women," claimants as above.

After hearing evidence and arguments on the claim of The Pennsylvania Industrial Home to be the corporation intended by the testatrix when she used the words "Institution for the Blind of Philadelphia," the Court, in an opinion delivered by the Auditing Judge, Penrose, on February 9, 1882, said, "Upon the whole, it is clear that the only institution of the blind entitled under the will is that to which the award was made by the adjudication of the first account filed by the executors, namely, 'The Pennsylvania Institution for the Instruction of the Blind,' otherwise known as the testatrix has called it, as 'The Institution for the Blind,' and the share so withheld from distribution by the adjudication filed February 7, 1882, is now accordingly so awarded."

Thereupon, upon exceptions having been filed to said adjudication by counsel for said claimants, and after argument thereon, the said Court *in banc* in an opinion delivered on April 22, 1882, by President Judge Hanna said, "In the absence of any statements and declarations of testatrix, or other equally satisfactory evidence of her intention that 'The Industrial Home for Blind Women' was the charity intended by her as the object of her bounty, and instead of using its corporate title with which she was familiar, employed a name which, by common usage, had become to be generally applied to another and different institution to indicate that intention, we must reach the same conclusion as the Auditing Judge. We think the evidence fully sustains his findings; that 'The Pennsylvania Institution for the Instruction of the Blind,' was in the mind of testatrix as one of her residuary legatees, and although inaccurately described was intended by her in the use of the name 'Institution for the Blind.' After a consideration of all the testimony, including that admitted as after discovered, we see no reason to disturb the finding of the Auditing Judge. All the

facts have been carefully considered by him, and his conclusion, like the verdict of a jury, should not be set aside unless clear error be made to appear.

The exceptions are dismissed and adjudication confirmed."

Thereupon, by a writ of *certiorari*, No. 81, of July Term, 1882, the said Pennsylvania Industrial Home for Blind Women, claimants as above, took an appeal to the Supreme Court, which said Court as appears from the record remitted to the Orphans' Court made the following decree, to wit, "Decree affirmed and appeal dismissed at the costs of the appellants." The opinion *per curiam* delivered in the cause by the Supreme Court is as follows:

"While the language of the testatrix in her bequest to 'The Institution for the Blind of Philadelphia' does not correctly designate either the appellee or the appellant, yet it comes nearer the former. The appellee is correctly designated as 'Institution,' a word not found in the name of the appellant. But what we think more convincing is the Court has found as a fact that the testatrix well knew the correct name of the appellant, which she did not use, but did use the name by which the appellee was popularly and well known. If the decree which the Court made is not certainly right, there is an entire failure to prove it to be wrong."

On July 1, 1882, the petition for review of the adjudication of the first account of the executors filed on May 6, 1881, as above mentioned, was dismissed at the costs of the petitioners. In dismissing said petition, the Auditing Judge Penrose, said, "The designation used by the testatrix in her will is as the evidence clearly shows, the ordinary and general term applied in the community to The Pennsylvania Institution for the Instruction of the Blind, incorporated January 27, 1834. It has, for many years, been so described in the advertisements of its exhibitions, published twice a week in the daily papers of the city; in more than three-fourths of the letters addressed to the institution; and from 1869 to 1878, in

the annual reports of the petitioners. The Pennsylvania Industrial Home for Blind Women. There is no other institution known as 'The Institution for the Blind,' and hence, it would seem the case does not present a question of latent ambiguity to be solved by the introduction of parol evidence.

If, however, it should be conceded that the words of the will were descriptive merely, the evidence leaves us in no doubt that the Industrial Home for Blind Women was not intended as the institution referred to.

Apart from the fact that the testatrix was an occasional visitor, and was in the regular receipt of its annual reports, in which the form of a bequest to it was always prominently set forth, it appeared, from her private subscription book, in her own handwriting, that her contributions to this charity were entered as made to the 'Industrial Home for Blind Women,' and with knowledge of the correct title and its habitual use by her thus demonstrated, it is inconceivable that in an instrument of the importance and solemnity of a will, this testatrix, who was a person of more than ordinary intelligence and capacity, and who knew of the existence of the Institution for the Blind, would employ general and equivocal terms in describing her intended beneficiary. We had occasion to consider this question in the adjudication of the second account filed by these accountants, and in the opinion on the exceptions thereto, and we see no reason to change the views then expressed.

To sustain a bill of review, palpable error must be clearly shown. It is not sufficient simply to raise a doubt. The evidence in this case wholly fails to sustain the claim of the petitioners, and we need not consider, therefore, how far the fact that distribution was made before the petition was filed, bars relief."

The two questions, therefore, to be considered under the first clause of said order of reference, are:

1. Has the identity of "The Institution for the Blind of Philadelphia," the legatee and devisee named by the tes-

tatrix, with "The Pennsylvania Institution for the Instruction of the Blind," been judicially determined by a Court of competent jurisdiction, and

2. If so determined, is the decree made therein an estoppel by record.

As to the first:

The question at issue is the construction of the testatrix's will.

"The construction of a will, and its force and effect, is a proper question to be determined by a Court of Equity."

*Redfield on Wills*, 52, par. 5.

*Goblet vs. Beechy*, 3 *Simons*, 24; 6 *E. C. Rep.* 25.

*Hisford vs. Merwin*, 5 *Barb.*, 62.

*Scott vs. Guernsey*, 60 *Barb.*, 178.

The Orphans' Court of this county has definitely determined who is the legatee and devisee under the will of the testatrix.

*Est. of Mary Shields, dec'd, supra*, 39 *Leg. Int.*, 159, and *Opinion of the Supreme Court*, 39 *Leg. Int.*, 258.

"The Orphans' Court is hereby declared to be a Court of record, with all the qualities and incidents of a Court of record at common law. Its proceedings and decrees in all matters within its jurisdiction shall not be reversed or avoided collaterally in any other Court."

*Act of 29th March, 1832, Sec. 2, P. L.*

*Pur. Dig.*, 1103, *Sec. 4.*

*Herr vs. Herr*, 5 *Barr.*, 52.

*Painter vs. Henderson*, 7 *Barr.*, 48.

*Garber vs. Com.*, *Ibid.*, 265.

As to the second question:

It was held in *Westcott vs. Edmunds*, 18 *P. F. Smith*, 34, that "A final decree in equity, until set aside on appeal, is a bar to a suit at law for the same subject matter, whether

the suit be instituted before or after the effect of the decree, is the same whether offered in evidence or pleaded."

In the note to *Doe vs. Oliver*, 2 Sm., *Leading Cases*, 619, it is said that "It is thoroughly well settled that matters which have once been determined by judicial authority cannot again be drawn into controversy as between the parties and privies to the decision (see authorities there cited). As the nature of the judgment has no effect on the operation of the rule, a decree with regard to the personal status of an individual will be equally conclusive with a decision upon a right of property. Even the adjudication of a question of descent or pedigree may be binding, not only in the proceeding in which they take place, but in every other in which the same matter is agitated. It is equally well settled that the mode in which the question is brought before the Court is immaterial, if it is actually determined."

Chief Justice Gibson, in stating the ruling in *Doe vs. Oliver* to be the law of Pennsylvania, said, "The law of the case with its distinctions has been compressed into the dimensions of a nutshell by Chief Justice De Gréy in the *Duchess of Kingston's Case*, 11 St. Tr., 261, and though the passage is a trite one, yet as it could not otherwise be so well expressed, it is proper to repeat it in his own words: 'From the variety of cases in respect to judgments being given in evidence,' said the Chief Justice, 'these two distinctions seem to follow as being generally true: First, that the judgment of a Court of concurrent jurisdiction directly upon the point, is as a plea a bar, or as evidence conclusive between the same parties on the same matter directly in question in another Court; secondly, that the judgment of a Court of exclusive jurisdiction directly upon the point, is in like manner conclusive upon the same matter between the same parties coming incidentally in question in another Court for a different purpose.' This brief but comprehensive summary furnishes a rule for every case that any complication of circumstances can produce."

*Hibshman vs. Dulleban*, 4 Watts, 183, followed in *Tams vs. Lewis*, 6 Wr., 402.

It thus appears that:

*First.*—The Orphans' Court having heard evidence for and against the claim of "The Pennsylvania Industrial Home for Blind Women," to be the institution intended by the testatrix when she used the words, "The Institution for the Blind of Philadelphia," and argument thereon, held, that such claim was not well founded, and that "The Pennsylvania Institution for the Instruction of the Blind" was the only true legatee and devisee, and therefore awarded the said one-sixth share of the balance found to be in the hands of the accountants to the said "The Pennsylvania Institution for the Instruction of the Blind," and also dismissed the petition for review of the first account.

*Second.*—That on appeal the Supreme Court affirmed the decree of said Orphans' Court, made in the adjudication of the second account, and dismissed the appeal at the costs of the appellants.

The question at issue, being one of identity and not of title, and the identity of the said "Pennsylvania Institution for the Instruction of the Blind," with "The Institution for the Blind of Philadelphia," named by the testatrix as legatee and devisee of the one-sixth part of her residuary estate, having been judicially determined by the Orphan's Court, whose finding and decree was on appeal affirmed by the Supreme Court, the Master is of the opinion that said judicial determination and decree therein made, is final and conclusive upon the the said "The Pennsylvania Industrial Home for Blind Women," and ought to preclude and estop said Industrial Home from further disputing the identity of "The Pennsylvania Institution for the Instruction of the Blind," as being the true and only legatee and devisee of the one-sixth part of the residuary estate of the said Mary Shields, deceased, by her will mentioned and to be given to "The Institution for the Blind of Philadelphia." The reason paramount with the Master for holding the decree of the Orphans' Court and the Supreme Court as conclusive of the question raised here, is that not-

withstanding the difference of the two kinds of property in dispute,—one being realty, and the other personalty,—still the sole question involved was the identity of the beneficiary intended by the testatrix to take the said one-sixth part of her residuary estate,—and this has been settled adversely to the claims of “The Pennsylvania Industrial Home for Blind Women.” It would be a strange administration of the law to have the personalty awarded to the one, and the realty to the other of these two parties claimant, under the language of the will of the testatrix.

As to the second part of said order in which the Master was directed to ascertain and report “to which of the two corporations named in the bill as defendants the allotment or purpart No. 2, mentioned in the report so recommitted to the Master, ought, in the opinion of the Master, to be allotted, adjudged and assigned by the Court \* \* \*” The Master reports:

That the claim of “The Pennsylvania Industrial Home for Blind Women” to be the legatee and devisee of the one-sixth part of the residuary estate of Mary Shields now in dispute, is based

1. On the fact that the testatrix was an annual subscriber thereto.
2. That she had expressed an interest therein.
3. That she had never contributed to the support of The Pennsylvania Institution for the Instruction of the Blind, the other claimant, and
4. That said Pennsylvania Institution for the Instruction of the Blind was commonly and popularly known as the “Blind Asylum.”

The Pennsylvania Institution for the Instruction of the Blind, on the other hand, founded their right to be considered such legatee and devisee on the claim.

1. That it is an almost accurate description of their proper and legal name.

2. That they were and are popularly and usually known by the name of “The Institution for the Blind.”

3. That the testatrix was in the habit of visiting the same.

4. That The Pennsylvania Industrial Home for Blind Women has never been called or known by the name of The Institution for the Blind, but on the contrary has called said Pennsylvania Institution for the Instruction of the Blind by that very name in its reports for the years 1870, 1871, 1872 and 1873.

The evidence submitted to the Master in behalf of The Pennsylvania Industrial Home for Blind Women, in addition to that taken in the proceedings in the Orphans’ Court, was chiefly to the effect that The Pennsylvania Institution for the Instruction of the Blind was popularly and commonly known as “The Blind Asylum.”

It appeared from all the evidence, that the names of the several institutions who are the residuary legatees and devisees, were given by the testatrix herself, on a piece of paper, to the counsel who drew her will, and that the names as written on the same by her, are the same names used in the will, and that said paper and will were in the possession of the testatrix for several days before the latter was executed.

It also appeared that the existence, object and location of both institutions were well known to the testatrix, though it does not appear that she had ever expressed in conversation an intention to give anything to either of them at her death.

The testatrix was evidently a woman of orderly and methodical habits, keeping an account of all her expenditures in a memorandum book in her own handwriting. In this book are to be found eleven entries of subscriptions to said Pennsylvania Industrial Home for Blind Women, entered as “Industrial Home for Blind Women,” covering a period from the year 1868 to 1879 inclusive, except those for the years 1873 and 1874, when the entry made is “Home for Blind Women.”

It is a fact not devoid of significance, that whereas in her will executed on November 23, 1878, she designated "The Institution for the Blind of Philadelphia," as one of the objects of her bounty, on December 16, 1878, only twenty-three days thereafter, she entered on her memorandum book a subscription to "The Industrial Home for Blind Women."

These entries thus made by the testatrix would seem to show that the name of "The Industrial Home for Blind Women" was well and deeply set in her mind and memory.

In the opinion of the Master it is clear to any one who reads carefully that part of the will of the testatrix, in which she disposes of her residuary estate, that it was her intention to make what may be called the great charities of Philadelphia, her residuary legatees and devisees.

Thus omitting for the moment "The Institution for the Blind of Philadelphia," the testatrix has indicated the Pennsylvania Hospital, the Pennsylvania Institution for the Deaf and Dumb, the House of Mercy for the care of consumptives, the Old Man's Home of Philadelphia, the Indigent Widows' and Single Women's Asylum of Philadelphia, and the City of Philadelphia for the sick and insane poor at the Almshouse in Philadelphia, as the objects of her charity, and in so doing has displayed a solicitude for her fellow-beings without distinction of sex, all of them except the Indigent Widows' and Single Women's Asylum and the Old Man's Home being open to both sexes, and the gift to the former followed by the gift to the latter. No evidence has been submitted nor reason shown to the Master why an evident intention to benefit both sexes in the other gifts should have been abandoned, when the testatrix came to help and assist the blind. A gift to The Pennsylvania Institution for the Instruction of the Blind would be a clear, logical and consistent course of action, while one to The Pennsylvania Industrial Home for Blind Women, an institution in its way equally commendable and praiseworthy, would seem to be inharmonious inconsistent and partial, unless some reason for deviating from such course is shown to have existed, and this has not, in the opinion of the Master, been done.

The question at issue being simply one of description and intention, and it having been so fully and ably discussed in the opinions of the several Judges of the Orphans' Court, nothing seems to remain to be said when the views expressed therein are considered in connection with the opinion of the Supreme Court thereon, in which it was said, "If the decree which the Court made is not certainly right, there is an entire failure to prove it wrong."

The Master, therefore, reports that after a careful consideration of all the evidence, he is of the opinion, and therefore so reports as a fact, that Mary Shields, deceased, the testatrix, when she gave, devised, and bequeathed one equal sixth part of her residuary estate to "The Institution for the Blind of Philadelphia," meant and intended the charity known as "The Pennsylvania Institution for the Instruction of the Blind," to be the residuary legatee and devisee of such one-sixth part of her residuary estate.

The Master is, therefore, of the opinion and so reports, that the allotment or purpart designated as No. 2 in his report filed February 27, 1884, and recommitted to him as above, ought to be allotted, adjudged, and awarded to the said "The Pennsylvania Institution for the Instruction of the Blind," they paying to The Indigent Widows' and Single Women's Society of Philadelphia the sum of \$141.03, and to "The Pennsylvania Institution for the Deaf and Dumb" the sum of \$240.57 owelty of partition.

The Master, therefore, awards and allots the several allotments designated in his report, filed February 27, 1884, as Allotments Nos. 1, 2, 3, 4, 5, 6, and 7, as follows:

1. To The Indigent Widows' and Single Women's Society of Philadelphia the properties enumerated in Allotment No. 1, they paying therefor the sum of one hundred and one dollars (\$101) above the valuation placed thereon, in accordance with the offer made by them therefor on December 13, 1883, to be held and enjoyed by the said The Indigent Widows' and Single Women's Society of Philadelphia in severalty in fee, together with the sum of \$143.35

for owelty of partition, to be paid them as follows: \$141.03 to be paid by the party to whom No. 2 is allotted, and \$2.32 by the party to whom No. 6 is allotted.

2. To The Pennsylvania Institution for the Instruction of the Blind the properties enumerated in Allotment No. 2, they paying therefor the sum of ninety dollars (\$90) above the valuation placed thereon, in accordance with the offer made by them therefor on December 13, 1883, to be held and enjoyed by the said The Pennsylvania Institution for the Instruction of the Blind in severalty in fee, they paying the sum of \$381.60 owelty of partition as follows: \$141.03 to the party to whom No. 1 is allotted and awarded, and \$240.57 to the party to whom No. 3 is allotted and awarded.

3. To The Pennsylvania Institution for the Deaf and Dumb, the properties enumerated in Allotment No. 3, at the valuation placed thereon, to be held and enjoyed by the said, The Pennsylvania Institution for the Deaf and Dumb, in severalty in fee, together with the sum of \$240.57 for owelty of partition, to be paid by the party to whom No. 2 is allotted.

4. To The Old Man's Home of Philadelphia, the properties enumerated in Allotment No. 4, at the valuation placed thereon, to be held and enjoyed by the said, The Old Man's Home of Philadelphia, in severalty in fee, together with the sum of \$198.88 for owelty of partition, to be paid by the parties to whom Allotments Nos. 5, 6 and 7 are allotted, as follows: The party to whom No. 5 is allotted, to pay \$87.10; the party to whom No. 6 is allotted, to pay \$3.73, and the party to whom No. 7 is allotted, to pay \$108.05.

5. To the trustees of the real and personal property of the Philadelphia Protestant Episcopal City Mission, the properties enumerated in Allotment No. 5, they paying therefor the sum of five hundred and five dollars (\$505) above the valuation placed thereon, in accordance with the offer made by them therefor, on December 13, 1883, to be

held and enjoyed by the said trustees of the real and personal property of the Philadelphia Protestant Episcopal City Mission, in severalty in fee, they paying to the parties to whom No. 4 is allotted, the sum of \$87.10 for owelty of partition.

6. To the contributors to The Pennsylvania Hospital, the properties enumerated in Allotment No. 6, at the valuation placed thereon, to be held and enjoyed by the said, the contributors to The Pennsylvania Hospital, in severalty in fee, they paying \$6.05 owelty of partition, as follows: \$2.32 to be paid to the party to whom No. 1 is allotted, and \$3.73 to the party to whom No. 4 is allotted, and

7. To the City of Philadelphia, the properties enumerated in Allotment No. 7, at the valuation placed thereon, to be held and enjoyed by the said City of Philadelphia, in severalty in fee, they paying the sum of \$108.05 to the party to whom No. 4 is allotted, for owelty of partition.

Which said several allotments allotted and awarded to the several parties plaintiff as above are precisely the same as are reported by the Master in his original report, the only change hereby made is in Allotment No. 2, which, instead of being left further in doubt, is now definitively awarded to The Pennsylvania Institution for the Instruction of the Blind.

The Master further reports that the several parties plaintiff and The Pennsylvania Institution for The Instruction of the Blind, one of the said defendants, have paid their respective proportions of the costs and charges of this proceeding as ascertained in his first report, and the further costs, and expenses amounting to \$1,662.50 under the commitment alone remain to be paid, which said last costs and charges the Master is of opinion should be paid by the several parties to whom allotments have been awarded in proportion to their respective parts or shares.

And the Master in accordance with the directions contained in the order recommitting his former report, with-

draws the form of the decree heretofore recommended by him, and in lieu and substitution thereof appends the form of a final decree in this cause, which he now recommends to be made by the Court.

Respectfully submitted,

SUSSEX D. DAVIS,

*Master.*

May 20, 1885.

The Master further reports that, having given all parties interested due notice of the intended filing of this report, the exceptions hereto annexed marked "A" were filed thereto by counsel for The Pennsylvania Industrial Home for Blind Women, and those marked "B" by counsel for the plaintiffs, and the counsel for The Pennsylvania Institution for the Instruction of the Blind, one of the defendants, and that the same having been considered by him, he finds nothing therein to cause him to change or alter his report.

Respectfully submitted,

SUSSEX D. DAVIS,

*Master.*

FORM OF FINAL DECREE.

THE OLD MAN'S HOME OF  
PHILADELPHIA *et al.*

vs.

THE PENNSYLVANIA INSTITU-  
TION FOR THE INSTRUCTION  
OF THE BLIND *et al.*

C. P. No. 2.

No. 652.

June Term, 1882.

In Equity.

Partition.

And now, the supplemental report of the Master in this cause having been filed, this cause came on to be heard, and was argued by counsel. And thereupon upon consideration thereof, it is ordered, adjudged and decreed that the said supplemental report of the Master be confirmed, and the exceptions filed thereto be dismissed, and that the partition and division as reported by the Master in and by his said supplemental report, be and remain firm and stable forever as to each and every of the allotments severally and respectively falling, and by him awarded therein to the several and respective plaintiffs, and to "The Pennsylvania Institution for the Instruction of the Blind," one of the defendants, their several and respective successors and assigns forever, to be by them, their respective successors and assigns forever hereafter fully held, enjoyed and disposed of in severalty in fee, together with or subject to the several sums directed by the said supplemental report to be paid or received for owelty of partition agreeably to the terms and provisions thereof; and that each one of the parties plaintiff and The Pennsylvania Institution for the Instruction of the Blind, one of the defendants, shall pay such fractional share of the whole costs of this proceeding as shall be equal to the share or quota which they severally took under the will of the said Mary Shields, deceased, in the several pieces of real estate described in the exhibit annexed to the bill.

the principle of *res adjudicata* to a decree of the Orphans' Court between the same parties as to another subject matter, which it would not have possessed had it been made between them in a Court of common law, as to the identical subject matter here in controversy.

IN THE COURT OF COMMON PLEAS, NO. 2,

FOR THE COUNTY OF PHILADELPHIA.

THE OLD MAN'S HOME OF PHILADELPHIA <i>et al.</i>	} June Term, 1882.
<i>vs.</i>	
THE PENNSYLVANIA INSTITUTION FOR THE INSTRUCTION OF THE BLIND <i>et al.</i>	} No. 652.

Exceptions of the defendants, The Pennsylvania Industrial Home for Blind Women, to the supplemental report of Sussex D. Davis, Esq., Master, to whom this case stands referred by virtue of an order dated April 2, 1884.

These exceptants except to the said supplemental report of the said Master, for that:

1. The Master has erred in reporting a final decree in a suit in which these exceptants are parties, which makes no disposition of the same as to them.
2. He has also erred in reporting a final decree purporting to conclude the title of these exceptants to certain real estate, which title depends upon a question of fact, in a suit where there is no bill of exceptions to evidence, and in which the testimony as to the matter of fact is not itself in any manner brought before the Court.
3. He has also erred in ascribing a conclusiveness (upon

the principle of *res adjudicata*) to a decree of the Orphans' Court between the same parties as to another subject matter, which it would not have possessed had it been made between them in a Court of common law, as to the identical subject matter here in controversy.

4. The distinction sought to be drawn by the Master between a question of title and a question of identity is a nullity in a case where the whole question of title is one of identity.

5. The Master has also erred in reporting "that Mary Shields, deceased, the testatrix, when she gave, devised, and bequeathed one equal sixth part of her residuary estate to 'The Institution for the Blind of Philadelphia,' meant and intended the charity known as 'The Pennsylvania Institution for the Instruction of the Blind' to be the residuary legatee and devisee of such one-sixth part of her residuary estate," and he is respectfully requested to annex to his report the whole evidence upon which the finding of this alleged fact was founded.

6. He has also erred in reporting "that the allotment or purpart designated as Number 2 in his report filed February 22, 1884, and recommitted to him as above, ought to be allotted, adjudged, and awarded to the said 'The Pennsylvania Institution for the Instruction of the Blind,'"

They praying, etc.  
NATHAN H. SHARPLESS,  
GEORGE JUNKIN,  
*Attorneys for Exceptant.*

May 26, 1885.



"B."

THE OLD MAN'S HOME *et al.*

*vs.*

INSTITUTION FOR THE BLIND *et al.*

C. P. No. 2.

Equity.

The Old Man's Home *et al.* plaintiffs, and The Pennsylvania Institution for the Instruction of the Blind, one of the defendants, except to the Report of the Master.

1. For that the Master has not charged the costs of the last reference to him against The Pennsylvania Industrial Home for Blind Women.

2. For that it fully appears by the Report of the Master that the expenses and costs of the last reference to him <sup>were</sup> ~~was~~ occasioned solely by the contention of The Pennsylvania Industrial Home for Blind Women, and he should have charged the said Pennsylvania Home for Blind Women with all the costs and expenses occasioned thereby, which the Master has omitted to do.

Wm. S. Lane,  
*Of Counsel for Plaintiffs.*

THORN,  
J. SERGEANT PRICE,  
JOHN CADWALADER,  
For The Pennsylvania Institution for The Instruction of the Blind.

Petition of Penn Asylum for leave to  
Intervene.

Filed June 25, 1885.

IN THE COURT OF COMMON PLEAS, No. 2, IN  
AND FOR THE COUNTY OF PHILADELPHIA.

No. 652.

IN EQUITY.

THE OLD MAN'S HOME OF PHILADELPHIA, *et al.*,  
*Complainants,*

AND

THE PENNSYLVANIA INSTITUTION FOR THE  
INSTRUCTION OF THE BLIND, *et al.*,  
*Respondents.*

The petition of the Penn Asylum for Indigent Widows and Single Women of the District of Kensington in the County of Philadelphia, respectfully represents: That your petitioners are a corporation duly incorporated under the laws of Pennsylvania. That the above entitled proceedings in equity were commenced for the purpose of the partition of the real estate of Mary Shields, late of the City of Philadelphia, deceased. That the said decedent by her last will duly probated and on file in the office of the Register of Wills in and for the County of Philadelphia, has given, de-

LAW DEPARTMENT,  
TIMES PRINTING HOUSE,  
725 & 727 CHESTNUT ST.,  
PHILADELPHIA.

vised, and bequeathed one-sixth part of the residue of her estate unto "The Indigent Widows' and Single Women's Asylum of Philadelphia, under the care of the Protestants." That your petitioners believe and expect to be able to prove that they are the asylum referred to in the said will. That your petitioners having only within the past few weeks learned of their being beneficiaries under the said will, and of the pendency of the suit herein instituted. That the decedent, Mary Shields, during her lifetime was a frequent visitor at the Penn Asylum for Indigent Widows and Single Women, and contributed to its support, and frequently spoke to persons in said asylum of her intention to leave the said asylum some of her money. That your petitioners' asylum is, and always has been, under the care of the Protestants. That your petitioners have not been made parties to the suit herein, which suit is pending and undetermined.

Your petitioners therefore pray your Honorable Court that they may be permitted to intervene and become parties defendants to the suit herein instituted.

HANNAH W. EISEN,

*Secretary of the above Corporation.*

CITY AND COUNTY OF PHILADELPHIA, ss. :

Hannah W. Eisen, being duly affirmed according to law, deposes and says, that she is the Secretary of the Penn Asylum for Indigent Widows and Single Women of Philadelphia, the petitioners herein, and that the facts set forth in the above petition are just and true, to the best of her knowledge, information and belief.

HANNAH W. EISEN.

Subscribed before me this }  
25th day of June, A. D., }  
1885.

[SEAL.]

CHARLES M. LUKENS,  
*Notary Public.*

And now June 25, 1885, upon motion and consideration of the within petition, the Court grant a rule on all parties to the above entitled suit, to show cause why the Penn Asylum for Indigent Widows and Single Women of the District of Kensington in the County of Philadelphia, should not be permitted to intervene and become parties defendants to the within entitled suit, returnable Saturday next, June 27, 1885, 10 A. M.

JOSEPH ALLISON.

Court of Common Pleas, No. 2.

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OLD MAN'S HOME OF PHILADELPHIA, *et al.*,

*vs.*

PENNSYLVANIA INSTITUTION FOR THE IN-  
STRUCTION OF THE BLIND, *et al.*

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On Exceptions to Master's Report in Partition.

Opinion by MITCHELL, J. October 10, 1885.

This is a bill in equity for partition. All of the parties, complainant and respondent, claim title under Mary Shields, who by her will devised the real estate in controversy to the City of Philadelphia and to six different charitable corporations in the proportions named by her. The complainants are six of these devisees, whose titles are plain and uncontested, while the respondents are two rival claimants, each claiming to be the remaining devisee.

1. The first question that arises is upon the jurisdiction of the court to make partition in such a case. This, we think, cannot reasonably be doubted. The parties all claim under the same grantor by the same instrument. The rights of the complainants are not disputed. Why then should their property be withheld from them, and their income therefrom be embarrassed or suspended, during the pending of a troublesome and protracted litigation between the other

parties, in which they have no concern, and by which their rights are in no wise to be affected? Upon general principles we think this a clear case for equitable jurisdiction, and we are fortified by so high an authority as Chancellor Kent in *Phelps v. Green*, 3 Johns. Ch. 304, a precisely analogous case, in which the chancellor, saying "this is a peculiar case, and the (ordinary) course cannot well be pursued," decreed partition as to the undisputed shares, and held the disputed one in abeyance until the title was settled by an action at law.

Upon this view of the law, when the case was here before on the interlocutory report of the master, we decreed the partition, and the master reported a scheme of partition of the estate into seven lots, with small sums for owelty upon a few of them, and so far as equality of partition is concerned this scheme has been accepted as satisfactory by all the parties.

We have therefore no difficulty in making partition and allotting their six several purparts to the parties complainant. For the seventh purpart, however, there are two claimants, and one of them, the Pennsylvania Industrial Home for Blind Women, insists that we shall hold the bill as to this part until the respective claimants have established their title at law.

2. This brings us to the second question in the case, whether we should now proceed to determine the title of the opposing claimants, or remit them to their action at law. The latter is the usual course where the title is disputed or doubtful, and was pursued by Chancellor Kent in the case already cited. There, however, certain of the defendants were in possession under claim of title and the others were out of possession. "It is a question of legal title," says the Chancellor, "and should be decided at law."

In the case now in hand there are some peculiar difficulties. The mode of determining the title at law is by ejectment. But neither of these parties is in possession more

than the other. Upon which, therefore, shall be cast the burden of admitting itself out of possession and recovering upon the strength of its own title in a case which must at all times be open to some doubt?

Again the Master's report shows that the separate pieces of real estate are numerous, and a separate action may be brought for each. It is true that in any event the defendant should be precluded by the decree in this suit from molesting the title or possession of the complainants to the several purparts allotted to them herein, but even with this restriction there still remains nine separate items in purpart No. 2, which is the one to go finally to one or the other of the respondents. Is a separate action to be brought for each of these nine items? Certainly we cannot say there shall not, if we leave parties free by not deciding the whole controversy now. This litigation has now lasted in one form or another four years and a half. It has of necessity been expensive as well as protracted. It is the interest of all parties that it should end, and the property be applied to the charitable uses to which the testatrix devoted it. Upon the settled principles of equity, therefore, to prevent multiplicity of suits, and to make a final determination of all matters involved in a controversy which has once come within its proper jurisdiction, we think the Court should now decide finally the rights of the respondents as well as of the complainants.

3. In proceeding to the consideration of the respective rights of the respondents, we are met *in limine* by the claim that they are already *res adjudicata*.

The executors of Mary Shields having filed an account in the Orphan's Court, the two respondents made claim to a distributive share of her personal estate, and the Court decided in favor of the Institution for the Instruction of the Blind, as the legatee meant by the testatrix, and on appeal, the decision was affirmed by the Supreme Court. If this was a decision between the same parties upon the same

matter, it is, of course, conclusive in this and all other courts, and, to show that it was upon the same matter, it is argued that the question here, as well as there, is not one of title, but merely of the identity of the legatee. The argument is very fully stated by the Master in his report, and need not be enlarged upon here. We are not prepared to assent to the Master's conclusions, on this point, but in the view we take of the evidence on the merits, it becomes unnecessary to decide it.

We come, therefore, to the main question, whom did the testatrix mean should be her devisee? Her language is, "the Institution for the Blind of Philadelphia." This does not accurately express the name of either of the claimants, one of which is "the Pennsylvania Institution for the Instruction of the Blind," and the other, "the Pennsylvania Industrial Home for Blind Women." The title used is certainly much nearer to the proper name of the former than that of the latter institution, and in addition to this *prima facies*, there was evidence produced before the Master that the former is commonly known by the exact title used by the testatrix, to wit, the Institution for the Blind, and was so called in certain reports for 1870, 1871, 1872 and 1873, which the testatrix was shown to have received.

The main evidence in favor of the Industrial Home is the fact that the testatrix took an interest in the institution, was an annual subscriber for some years, and, upon the death of her brother, who had also been a subscriber, she doubled her subscription. It was also in evidence that the other claimant is popularly known as the "Blind Asylum," and that the testatrix never contributed to it or expressed any interest in it.

The fact of testatrix's knowledge of the Industrial Home, and her continued interest in it for some years to the extent of a small annual subscription, if it stood alone, would undoubtedly be strong evidence that it was the institution re-

ferred to in her will. But this inference is materially weakened, if the argument is not indeed completely reversed, by the fact that year after year, for eleven years, she methodically entered her subscription in her memorandum book, in her own handwriting, always describing it by its exact title of the Industrial Home for Blind Women. It is thus clear that she knew its proper title, and was accustomed to use it. Why, therefore, should she have departed from her custom when she came to write her will, which all testators, learned and unlearned alike, regard as a solemn instrument wherein formality of names is desirable if not necessary.

The inference that the name Institution for the Blind was not used for the Industrial Home for Blind Women, by a lapse of memory or carelessness in the use of language, is also strengthened by the connection with other institutions in the same clause of the will. All of them are large and well known charities, though it is perhaps worth noting here, that not more than half of them are named by their exact titles. The testatrix was a single woman of considerable fortune. She was apparently of economical and methodical business habits, her memorandum book in evidence showing the frequent entry of sums as small as 3 and 5 cents given to specified charities. Over a period of eleven years, this careful record by her own hand fails to show any contributions to any of the parties to this suit, except an annual subscription of two dollars to the Old Man's Home and a like amount to the Industrial Home for Blind Women. Yet, when she comes to the distribution of her estate by will, she names as her main beneficiaries, the City of Philadelphia in trust for the sick and insane poor at the Almshouse, the Pennsylvania Hospital, the Deaf and Dumb Asylum, the Indigent Widows' and Single Women's Asylum, the Old Man's Home, House of Mercy for the Care of Consumptives, and the disputed "Institution for the Blind." The inference is strong that in thus naming

some of what may be called the great charities of her native city as the objects of her bounty, she meant by the "Institution for the Blind," the old and well known Institution for the Instruction of the Blind, rather than the younger and more limited, though most excellent charity, the Industrial Home for Blind Women.

One further consideration may be added. Even if we could admit that the proper name of the Industrial Home had slipped her memory (though the evidence shows that she continually used it with accuracy, in one instance only three weeks from the date of her will), how would she be likely to describe it if that was the institution she had in mind? The evidence shows that she knew of the existence and objects of both the claimants. One of them is for "the *Blind*" generally, call it Institution or Asylum, as you will. The other is for "Blind *Women*," whether it be called Institution or Home. That is the crucial difference between them, and that is the difference which would be sure to strike and adhere in the popular mind. It is difficult to believe that if the testatrix had the latter in her mind she would not only have failed to use the word Home, as she was accustomed, in connection with it, but would also have omitted all reference to the intent to benefit her own sex, to which the Home is exclusively devoted.

As this case is of importance, not only in amount, but in the objects involved, we have given it a most careful and mature consideration upon the evidence, and while it is not, perhaps, possible to ascertain the testatrix's intention beyond all doubt, yet we think it as clear as the circumstances will ever permit it to be, that the Pennsylvania Institution for the Instruction of the Blind was the intended object of the testatrix's bounty. In reaching this conclusion for ourselves upon the evidence we are gratified to know that it is in harmony, not only with that of the learned master, but also of the deliberate and repeated opinion of the Orphans' Court, as expressed by Judges Hanna and Penrose (Shields'

Estate, 15 Phila. Rep. 542 and 561), to which we refer for confirmation of the views herein expressed.

4. There remains to be considered the question of costs. The master has divided the costs among the parties taking the estate, in proportion to their respective interests. The other parties have excepted because the costs of the second reference to the master are not charged exclusively to the Industrial Home for Blind Women, whose claim occasioned the said reference.

The Managers of the Industrial Home are trustees for a worthy charity. The testatrix, as already shown, was an annual contributor to their institution, and her intent in her will was by no means so clear in favor of the Institution for the Instruction of the Blind as to make their claim for their own *cestui que trust* factious or unreasonable. On the contrary, it was their duty to present their claim to the court, and we cannot say that they have maintained it with undue pertinacity. Under these circumstances we do not think they should be punished by the imposition of costs. The expenses are to be regretted, but they are the result of the testatrix's own unfortunate ambiguity of expression, and it is equitable that they should be borne by her estate.

The exceptions of both parties are overruled and dismissed, and a decree will be entered confirming the partition and allotments with the owelties thereon, and also the apportionment of costs as reported by the master; and further perpetually enjoining the respondent, the Pennsylvania Industrial Home for Blind Women, from the further assertion, by suit at law or in equity, of title under the will of Mary Shields, deceased, to any of the properties embraced in this bill.

Final Decree.

Filed October 17, 1885.

THE OLD MAN'S HOME OF PHILADELPHIA, <i>et al.</i> ,	}	C. P. No. 2.
<i>vs.</i>		No. 652.
THE PENNSYLVANIA INSTI- TUTION FOR THE INSTRU- TION OF THE BLIND, <i>et al.</i>	}	June Term, 1882.
		IN EQUITY. PARTITION.

And now, October 17th, 1885, the supplemental report of the Master in this cause having been filed, this cause came on to be heard, and was argued by counsel. And thereupon, upon consideration thereof, it is ordered, adjudged, and decreed, that the said supplemental report of the Master be confirmed, and the exceptions filed thereto be dismissed, and that the partition and division as reported by the Master in and by his said supplemental report, be and remain firm and stable forever as to each and every of the allotments severally and respectively falling and by him awarded therein to the several and respective plaintiffs, and to "THE PENNSYLVANIA INSTITUTION FOR THE INSTRUCTION OF THE BLIND," one of the defendants, their several and respective successors and assigns forever,



to be by them, their respective successors and assigns, forever hereafter fully held, enjoyed, and disposed of in severalty in fee, together with or subject to the several sums directed by the said supplemental report to be paid or received for owelty of partition, agreeably to the terms and provisions thereof; and that each one of the parties plaintiff, and THE PENNSYLVANIA INSTITUTION FOR THE INSTRUCTION OF THE BLIND, one of the defendants, shall pay such fractional share of the whole costs of this proceeding as shall be equal to the share or quota which they severally took under the will of the said MARY SHIELDS, deceased, in the several pieces of real estate described in the exhibit annexed to the bill. And further, that THE PENNSYLVANIA INDUSTRIAL HOME FOR BLIND WOMEN be perpetually enjoined from the further assertion by suit at law or in equity of title under the will of MARY SHIELDS, deceased, to any of the properties embraced in the bill filed in this case.

J. T. M.

