

important one - Is not the first Sett. from all the
Circumstances entirely at an end? It is it seems
to me that the Copies explain one

Blair's

On the 20th of March 1784 certain Marriage Articles were
made between Frederick Smyth of the first part, Margaret
Oswald of the second part and John Penn, Edward Shippen
and Thomas Parke of the third part, whereby all her estate
real and personal ~~was~~ ^{was} granted to the parties of the third
part for the use of the s. Margaret until and during her
intended Marriage with the s. Frederick and with a power
reserved by her to dispose of the same by will or by a writing
in nature thereof as she might think proper - If she should
die before her intended husband and intestate he was to
have the rents of ^{the real and} the ~~real and~~ interest of the personal estate dur-
ing his life. These Articles were never acknowledged, proved
or recorded, and there is abundant evidence to show that
they were considered as completely at an end but they
have been recently found uncancelled among the papers
of the late Judge Shippen one of the Trustees.

The Marriage took place on the 5th of July 1785
and ~~the~~ settlement (if it can with propriety be so called)
was made whereby the s. Frederick & Margaret his wife
conveyed (if they could convey what had before been con-
veyed) to the same Trustees all the real estate of her the
s. Margaret, with similar powers for her to dispose of
the same by will, or by a writing in nature thereof. These
Articles were acknowledged & recorded & they, as well as
the former ones, contain certain provisions unnecessary
to be mentioned, because they are not at all materi-
al to the question now to be considered.

On the petition of Mrs. Smyth, under the unrevoked pro-
vision that a sale of a valuable property in front
street was necessary to discharge the debts due from
the estate of Mr. Turner under whose will she desir-
ved that property, as well as much more of great va-
lue an act of the Legislature was obtained and a sale
of that property took place.

Mrs. Smyth then presented her petition to the Legis-
lature praying that an Act might be passed authorizing
a sale of a very valuable estate near the City of Phi-
ladelphia which she held under the will of Mr.
Turner & the sale of which she stated to be necessary for
the payment of his debts - This led to a full investi-
gation of facts & the report of the Committee, adopted
by the House shows how unproved the statements con-
tained in her petition were. Its prayer was refused.

It appears from a recital in Mrs Smyth's will which
(not to be mentioned) that she & her husband on the 9th of
November 1790 by their deed in deed, conveyed to Hen-
ry Hill Squire all the real estate both in Pennsylvania
and New Jersey, to which she was entitled under Mr
Turner's will under a rent reserved of \$600-^{per} An-
num during her life.

Not having seen this deed, I cannot say
whether it purports to convey an estate in fee
or only for life: nor is it material because it is
self evident that Mrs & Mrs Smyth ~~cannot~~ ^{cannot} convey
by deed any estate whatever.

Nov: 9. 1790. Will of Margaret Smyth, devising to Henry
Hill Squire all her real estate, and in case of his
death before her, then to his heir at law - his Devi-
see, or to his assigns, if he should have any.

Question for the opinion of Counsel?

Is the title of Henry Hill Squire, or those claim-
ing under him to the premises in question (not
including the front Street Estate) good, or is not the
Heir at Law of Mrs Smyth entitled to it?

I shall not give a decided answer to this question
at present not only because it is attended with some
difficulty, but because it could be hurtful to Mrs
Smyth's feelings to make any claim, and especially one
of this nature in which she might fail but at the
same time I think the Circumstances of this case are
such as to fully justify her in vindicating what may
reasonably appear to be her just & legal rights.

As I had until lately supposed the question depend-
ed on the second Articles or Instrument of writing, I
should without hesitation say that they gave to Mrs
Smyth no power to dispose of her own Estate by will,

although they might authorize her to dispose in
that way of any Estate of Mr Smyth's had any estate
belonging to him been included in the Settlement but
as this was not the case, the principle though a sound
one, and fully sanctioned by legal Authority cannot
be applied to the present case.

It follows, that if the will is good, it can only
be so considered under the first Articles, and ^{this}
in:

involves the following Considerations

1. As the Estate conveyed by the first Articles, lay in living
and not in grant, I suppose that even a conveying
of that Instrument, would not have re-vested the Estate
in Mrs Smyth, although it would I suppose have
annihilated all past powers, ^{which} ~~lay~~ ^{lay} in grant, and of
course, that the destruction of the Instrument by any acci-
dent ~~or~~ ^{or} ~~destruction~~, would destroy the Power of mes-
saging a will.
2. That in this case there is such full evidence of the
clear understanding of all parties, that there was an
end to the first Articles, as to put an end to them
completely, unless the Consent of Mrs Smyth al-
ters the case.
3. And that such Consent does not alter
the case, I am pretty well satisfied of, because
I think that ^{although} ~~under~~ her Consent she could not
alter the uses & she might deprive herself
of the power of exercising them & of course the con-
dition of use will go to the Heir at Law.
4. By her will she expressly declares, that she de-
vises ^{under} the Power (which in my opinion ~~is~~ ^{is} not
~~good~~ ^{good} ~~under~~ ^{under} the second Articles, and I very much
doubt if under the peculiar Circumstances of this
case any Court of Law or Equity will aid
the Devisee under any other supposed Power.

These hints are however suggested for the
Consideration of Mr Sturgesby his

Faithful friend &c &c

Hewitt

July 7. 1810

P.S.

A question to be deliberated & considered, and a very
im

Princeton 19 July 1810

Dear Sir

I have fully examined the books on the subject of marriage Settlements - and of the uses and powers which may be limited and reserved by such deeds - and also consulted you the result as far as was applicable to the case you submitted to me - I lament that I have not been able to offer to your consideration an opinion more conformable to your just views on the matters in question. you may be assured that I have spared no labor to discover some point from which you might successfully have attacked these proceedings - but it was to no purpose. In truth the deeds were strangely drawn if the intent was not ~~to~~ to enable Mr Smith to make full use of his Matrimonial influence - The uses executed by the marriage Settlement are uses executed by the Statute of Uses, and ~~the~~ ^{uses} remained even the legal owner by the operation of that Statute of the real Estate, the supposed trust not withstanding - he might dispose of it by deed, - and this paper gives the additional power of doing so by Will.

I have also ~~and~~ received your favor of the 16th and have carefully read the project of the proposed agreement relative to the Lumber Land Lands - On such a subject I can only say that in my opinion the circumstances in which that property is now are such as make it advisable to close with and ^{to} accept the

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Benjamin Chew Esq.

Philadelphia



Opinion of Richard Hooker on Case
Stated on the Will of the testator of
Mr Smith

Smith



offer - If I was the Proprietor I would cer-
tainly do so rather than meet the expense and
risk of recurring again to compulsory mea-
sures - There can be no doubt but that the
right of the Otho may be so disposed of as to
exempt him from future claims if such be
the contract - The terms of the new agreement
must be carefully formed with a view to bar
any such demands - and must be adapted to
the exigency apprehended - as you do not ex-
plain what claims you apprehend may be set
up, I cannot be more particular. Expecting
to be from home for some time I send on this
packet without waiting your return from Bal-
timore - The other papers will be returned by the
first private conveyance which offers - tho' from
my not being much in the village, and being
often absent at the Courts it may be some time
before you receive them in that way.

I
I would use the freedom
to suggest the propriety of
taking the opinion of some
eminent Man of your bar.
- The subject of Mrs S's estate
is very important - too much
to be influenced by any opinion
of mine.

I am dear Sir
with great respect
and esteem
Yours Otho. Jnr
Otho Jackson

Benjamin Chew Esq

Handwritten notes and scribbles on the right page, including a large 'O' and some illegible text.

Case

Joseph Turner Esq in his Life time being seized in fee of sundry Real Estates in Pennsylvania and New Jersey died in 1783 having made his last Will & Testament whereby he devised as follows

"Item I give and devise unto my said two Neices Elizabeth
" and Margaret and their Heirs on their Mother's side and Asigns
" for ever equally to be divided between them as Tenants in Common
" all my Moiety Share Interest Estate and Property of and in the several
" Tract and Tracts of Land situate in Hunterdon County West New Jersey
" called the Iron Tract or known by the Name of Union Iron Works ~~Tract~~
" containing Eleven thousand Acres ^{or thereabouts} be the same more or less which I hold
" in Partnership with my good Friend William Allen Esq and whereon
" we have erected a Furnace Horse Lifting Mill and other considerable
" Buildings - Item I give and devise unto my said two Neices Elizabeth
" and Margaret and their Heirs on their Mother's side and Asigns for ever
" equally to be divided between them as Tenants in Common all my Interest
" part and Share being five sixteenth Parts / the whole in sixteenth Parts
" being divided / of and in all the several Tracts of Land situated in the
" several Counties of Sussex and Morris in New Jersey aforesaid and
" on which are erected a Furnace &c &c

Elizabeth at the date of the Will and for a long time before that period was married to Benjamin Chew Esq

Margaret (then Margaret Oswald) some time after the death of her Uncle the Testator married a certain Frederick Smyth but previous to her Marriage executed an Instrument of writing bearing date the 20th March 1784 expressed to be an Indenture Tripartite between the Parties following viz Frederick Smyth of the State of New Jersey Esq of the first Part Margaret Oswald of the City of Philadelphia Gentlewoman of the second Part and the Honorable John Penn Edward Shippen and Dr Thomas Parke all of the said City and County of Philadelphia of the third Part, reciting that Whereas a Marriage was intended & bro't the Indenture, a Copy of which accompanies this Statement -

This Indenture or Instrument of Writing was attested in the words and manner following
Sealed & delivered in the presence of Elizabeth Lawrence & Weis -
Sealed and delivered by Edward Shippen in the presence of Sarah Shippen -

Case stated for the Opinion of R Stockton Esq

List of Papers accompanying this Statement

The Will of Joseph Turner Esq

Copy of Instrument of Writing dated 20th March 1784 signed by Mr Smyth, Margaret Oswald, John Penn Esq Shippen & the Parke - the signature of Esq & Shippen attested by one witness only
Copy of Deed dated 5th Jan 1785 between F Smyth and Margaret his wife of the one Part and John Penn Edward Shippen & the Parke of the other Part

Copy of the Will of Mrs Margaret Smyth

Copy of the second Petition or Application of Mrs Smyth to the Judge of Common Pleas dated 21st July 1789

Copy of a Report of a Comm. of the House of Representatives upon said Petition

Having a Petition had been presented in Aug 1786 praying for a Law authorizing the sale of a Real Estate in Trenton Parish and a Law was passed authorizing the same 25th Sept 1786 -

No Probate or Acknowledgment appears to have been taken of the above mentioned Indenture, of course no attempt was made to record the same - On the contrary it seems to have been considered as vacated and intended to have been cancelled - it has happened however that the Instrument having been put into the hands of one of the Trustees who is now deceased, it remains in the hands of his Executor uncancelled -

Among other circumstances indicating the clear intention of the Parties that this Instrument was ^{to be} considered ~~by the Parties~~ as cancelled and of none Effect, in an Act of the Legislature of Pennsylvania ~~entitled an Act~~ passed the 25th Sept. 1786 entitled "An Act to authorise and empower Frederick Smyth and Margaret his Wife late Margaret Oswald and the Honble John Penn Esq. & Dr. Tho Parke to sell and convey a Messuage and Lot of Ground therein described &c" it is recited as follows "And where as since the said Marriage took effect, the said Indenture (meaning the Indenture herein before referred to) was agreed to be cancelled and another Indenture was executed &c"

On the 5th Jan^y 1785 subsequent to the Marriage another Indenture was executed Between Frederick Smyth of the City of Philad and Margaret his Wife of the one Part and the Honble John Penn Esq Edward Shippen Esq and Doctor Tho Parke all of the said City of the other Part, variant from the former Instrument or Indenture - This Deed was formally acknowledged ^{immediately} and placed on Record as the effectual Instrument by which all the Proceedings of the Parties were to be governed - A Copy of this Indenture also accompanies this Statement -

Under the Power reserved by this Deed to the said Margaret Smyth in the words follow viz "That it shall and may be lawful to and for the said Margaret Smyth at any time notwithstanding her Coverture by her last will and Testament duly executed or by any writing in the Nature of a Will to dispose of the same Lands and Tenements to such Person or Persons and for such Estate &c, the said Margaret made her last will dated 9th Nov. 1790, reciting in the former

part thereof the last mentioned Indenture bearing date the 5th of Jan^y 1785 and the Power therein reserved to her by will or other writing in the Nature of a Will to dispose of her Real Estate and did devise & provide the will - Copy of which accompanies this Statement - No notice whatever is taken of the Indenture or Instrument of Writing first executed and it may be doubted whether it is now known to more than two or three Persons, that the said Instrument remains without the seals being torn off or separated but the Fact is, that the Instrument does remain in the hands of a third Person in the same state in which it was delivered over at the time of its execution -

Margaret Smyth died in the Spring of 1806 leaving Frederick Smyth her survivor -

A Question hence arises whether Margaret Smyth had a Power under the second Deed dated 5th Jan^y 1785, which was executed during her Coverture, to make a Will or Appointment of her Real Estate and whether the will resting on and reciting the Deed of 5th Jan^y 1785 as the Authority for making the same is such an Appointment as will vest ^{her} Estate in the manner she has thereby directed -

2^d If no such power could be reserved after Coverture whether the original or first Instrument dated 20th March 1784 ^{attested as it is} which seems never to have been acted under, but as is stated in the Act of the Legislature of Pennsylv. "was agreed to be cancelled" and has not been recorded, but is still in the hands of a Third Person, can be resorted to and have Effect to support the will or Appointment of the said Margaret Smyth, or has been so vacated and destroyed by the second Deed as that it may not now be resorted to, to give Effect and Support to the will and Appointment of Margaret Smyth reciting as has already been observed and resting upon a different Authority for the making such will or appointment,

Joseph Turner Esq being in his Life time seized in fee of sundry Real Estates in Pennsylvania and New Jersey died in 1783 having made his last Will and Testament whereby he devised as follows.

Item I give and devise unto my said two Nieces Elizabeth and Margaret and their Heirs on their Mother's Side and Assigns for ever All that my Messuages and Tenements and several Tracts and Parcel of Land and Meadows situate in the Township of Passyunk in the County of Philadelphia which I purchased & now called Wilton Plantation with all the Messuages Buildings & thereto belonging & To hold to my said two Nieces Elizabeth and Margaret equally to be divided between them and to their Heirs on their Mother's Side and Assigns for ever as Tenants in Common and not as Jointenants

Elizabeth at the date of the will and for a long time before that period was married to Benjamin Chew Esq

Margaret (then Margaret Oswald) some time after the death of her Uncle the Testator, married a certain Frederick Smyth but previous to her marriage executed a certain Indenture bearing date the 20th March 1784 expressed to be "Indenture Tripartite between Frederick Smyth of the first part Margaret Oswald of the second Part and the Honble John Penn Edward Shippen and Doctor Thomas Parke of the third Part reciting that "Whereas a Marriage was intended & about the Indenture a Copy of which accompanies this Statute

This Indenture or Instrument of Writing executed by the Parties was attested in the Words and Manner following

Sealed and delivered
in the Presence of
Elizabeth Lawrence
J Weiff
Sealed and delivered by Edward Shippen
in the Presence of Sarah Shippen

No Probate or Acknowledgement appears to have been taken of this Indenture, of course no attempt to ^{place it on} ~~make it~~ ^{the} ~~matter of~~ Record. On the contrary it soon appeared to be intention to vacate the same and it was intended as is now expressed by the surviving Trustee Doctor Thomas Parke that the same should have been cancelled on the execution of another Indenture now about to be mentioned, but it has happened that the first executed Instrument yet remains uncancelled in the Hands of the Executor of one other of the Trustees

P. d. 13 - not grant & a. d. in case in the testament side a particular - in case of course in my part

Let
by Mr. Chew

Among other Circumstances to shew the understanding of the Parties that the Instrument of Writing herein before mentioned as first executed, was considered by them as vacated, are the following

The surviving Trustee has believed and unless very recently otherwise informed, still believes that the first executed ^{Indenture} ~~Articles~~ were destroyed, and expresses his Idea that they were considered by the Parties and by himself as done away by the execution of a second Indenture which was formally executed acknowledged and put upon record -

In consequence of a Petition of Mrs Smyth to the Legislature for leave to sell and dispose of certain Property an Act was passed the 25 Sept 1786 entitled an Act ^{authorizing} to empower Frederick Smyth & Margaret his wife to sell & in this Act it is recited ^{as follows} "and whereas since the marriage was agreed to be cancelled ~~another Indenture was executed by~~ -

look Effect the said Indenture (meaning the Indenture before referred to) seals also the Report of Commrs of Privileges & Pensions

the Power to make a Will ^{alone} was reserved by Mrs Smyth in both Instruments but the Authority on which she rests for the sanction of her making a Will is mentioned in her Will to be derived (only) under the Articles executed ^{after} the marriage (otherwise called the second marriage Articles)

The fact is that a second Indenture was executed on 5th Jan^y 1785 By and between Frederick Smyth and Margaret his wife of the one part and ^{they} Honble John Penn Esq^r Shippen Esq^r and Doctor Thomas Parke of the other Part variant in form as well as in some respects in substance from the former Instrument - This Deed was formally acknowledged and placed upon Record.

A copy of this Deed accompanies this statement.

Under a Power reserved by this Deed ^{it} thus executed after Coverture the said Margaret Smyth made her last Will dated 9th Nov^r 1790 reciting in the former part thereof the last mentioned Indenture bearing date the 5th Jan^y 1785 and the Power therein reserved to her and did devise & grant the Will - Copy of which accompanies this statement, no notice is taken of the first mentioned Indenture and it is doubtful whether it is now known to more than two or three Persons that the said Instrument remains without the Seals being torn off or separated but the fact is that the Instrument does remain in the hands of the Executor of Mr Shippen among whose Papers it was found in the same State in which it was delivered at the time of its execution.

Margaret Smyth died in the Spring of 1806 leaving Frederick Smyth surviving her

A Question hence arises whether Margaret Smyth had a Power under the second Deed dated 5th Jan^y 1785 which was executed ^{after} her Coverture, to make a Will or Appointment of her real Estate and whether the Will resting ^{on} and reciting the said Deed as the Authority for making the same is such an Appointment as will vest her Estate in the manner she has thereby directed

2^{dly} If no such Power could be reserved after Coverture whether the first Instrument or Indenture dated 20th March 1784, attested informally as it is as to the signature of Mr Shippen having but one witness to his execution and never acknowledged ~~by~~ by him or any of the Parties and which seems never to have been acted under but as is stated in the Act of the Legislature "was agreed to be cancelled" yet is still in the hands of a third Person, can be resorted to and have Effect to support the Will or Appointment of the said Margaret Smyth, or has been so vacated ~~and destroyed~~ by the second Deed as that it may not now be resorted to to support the Will & Appointment of the said Margaret reciting and resting as has already been observed, ~~she has done~~ ^{on} a different Authority for ^{the making such Will or Appointment} ~~the purpose only~~

- List of Papers accompanying this statement
- The Will of Joseph Turner Esq^r
- Copy of Instrument of Writing dated 20 March 1784 - signed by F. Smyth Margaret Oswald John Penn Esq^r Shippen & Tho Parke - the Signature of Esq^r Shippen attested by one witness only - no acknowledgment of Copy of Deed 5th Jan^y 1785 between F. Smyth & Margaret his wife of the one Part and John Penn Esq^r Shippen & Tho Parke of the other
- Copy of Will of Margaret Smyth
- Copy of the second Petition or Application of Margaret Smyth to the Legislature of Pennsylvania dated 20 Feb^r 1789 -
- Copy of a Report of a Committee of the House of Representatives upon said Petition

Joseph Turner Esq in his life time being seized in fee
of sundry Real Estate in Pennsylvania and New Jersey died
in 1783 having made his last Will and Testament whereby
inter alia he devised as follows

"Item I give & devise unto my said two Nieces Elizabeth and
" Margaret and their Heirs on their Mother's Side and assigns for
" ever All that my Mesuages and Tenements and several Tracts
" and Parcels of Land and Meadows situate in the Township of Passyunk
" in the County of Philad^a which I purchased & now called Wilton
" Plantation with all the Mesuages Buildings Rights Members and
" Appurtenances thereto belonging & To hold to my said two Nieces
" Elizabeth and Margaret equally to be divided between them and
" to their Heirs on the Mother's Side and assigns for ever as Tenants
" in Common and not as Jointenants"

Elizabeth at the date of the Will and for a long time before that
period was married to Benjamin Chew Esq.

Margaret (then Margaret Oswald) some time after the
Death of her Uncle the Testator, married a certain Frederick
Smyth but previous to her Marriage executed an Instrument
of Writing bearing date the 20th March 1784, supposed to be
an Indenture Tripartite between the Parties following to wit
Frederick Smyth of the State of New Jersey Esquire of the first Part
Margaret Oswald of the City of Philad^a Gentlewoman of the second Part
and the Honble John Penn Edward Shippen and Doctor Thomas
Parke all of the said City and County of Philadelphia of the third
Part reciting that whereas a marriage was intended &c. &c. and
the Indenture a copy of which accompanies this —

This Indenture or Instrument of Writing executed by
the Parties ^{was} attested in the Words and manner following —

Sealed and delivered

in the Presence of

Elizabeth Lawrence

L. W. Esq

Sealed and delivered by Edward Shippen

in the Presence of Sarah Shippen

State of Pa. arising on
the will of Margaret Smyth

No Probate or acknowledgement appears to have been taken of the above mentioned indenture - of course no attempt was made to record the same - on the contrary (see margin) ~~it is~~ subsequent to the marriage viz. on the 5th day of January 1785 ~~in consequence of a defect~~ ~~of the~~ ~~and~~ ~~change~~ ~~the~~ ~~fact~~ ~~of~~ ~~the~~ ~~deed~~ ~~on~~ ~~an~~ ~~apprehended~~ ~~in~~ ~~equi~~ ~~lity~~ ~~in~~ ~~the~~ ~~fact~~ ~~of~~ ~~the~~ ~~deed~~ ~~as~~ ~~well~~ ~~as~~ ~~in~~ ~~the~~ ~~form~~ ~~of~~ ~~the~~ ~~deed~~ was executed between Frederick Smyth of the City of Philad^a Esq. and Margaret his Wife of the one part and the Honourable John Penn Esq. Edward Shippen Esq. and Doct. Thomas Parke all of the said City of the other Part - This Deed was formally acknowledged and placed on Record as the effectual Instrument by which all the proceedings of the Parties were to be governed -

The original of this Deed is now in the hands of the Clerk of the Court of Wills & Testaments in the City of Philadelphia. It is stated in an Act of Assembly passed in the year 1786 that the original of this Deed is now in the hands of the Clerk of the Court of Wills & Testaments in the City of Philadelphia.

An Act to authorize the Clerk of the Court of Wills & Testaments in the City of Philadelphia to receive and keep the original of the Deed of Gift of the said Frederick Smyth to his Wife Margaret Smyth and to certify the same to the Court of Wills & Testaments in the City of Philadelphia.

A Copy of this Deed accompanies this Statement - Under the Power reserved by this Deed to the said Margaret Smyth in the words following viz. That it shall and may be lawful to and for the said Margaret Smyth at any time notwithstanding her former by her last Will and Testament duly executed or by any Writing in the nature of a Will to dispose of the same lands and Tenements to such Person or Persons and for such Estate as the said Margaret made her last Will and Testament dated the 9th November 1790 reciting in the former part thereof the last mentioned indenture bearing date 5th Jan: 1785 and the Power therein reserved to her by Will or other Writing in the nature of a Will to dispose of her real Estate & did devise & bequeath the said Copy exhibited - No Notice appears to have been taken of the Instrument of Writing first executed and it may be doubted whether it is known to more than two or three that it still exists and the fact that Margaret Smyth died in the Spring of 1800 leaving Frederick Smyth her son - A question ^{here} arises whether Margaret Smyth had a Power under the second Deed dated 5th Jan: 1785

executed during her lifetime to make all Will or appointment of her real Estate and of the Will executed and proved in the Office for the Probate of Wills is such an appointment as will vest her Estate as well in Pennsylvania as in Jersey in the manner she has thereby directed -

2^{dly} If no such Power could be reserved after her death whether the original or first instrument dated 20th March 1784 which she never to have been acted under nor recorded but is still in the hands of a third person, can be resorted to or have effect to support the Will or appointment of the said M. Smyth ~~or~~ ~~as~~ ~~has~~ ~~been~~ ~~so~~ ~~vacated~~ and destroyed by the 2^d Deed as that it may not now be resorted to to give effect and support the Will or appointment of the said M. Smyth.

List of Papers now exhibited

- The Will of Joseph Turner dated 20th March 1784
- Copy of Instrument of Writing signed by F. Smyth, Margaret Oswald Wm Penn Edward Shippen & Tho^s Parke - ~~Signature~~ of Edw^d Shippen attested by one Witness only
- Copy of Deed between Frederick Smyth & Margaret his wife of one part & Wm Penn E. Shippen & T. Parke of the other Part dated 5th Jan: 1785 -
- Copy of the will of M^{rs} Margaret Smyth
- Copy of the Petition of M^{rs} M. Smyth to Legislature dated 20th Feb: 1789
- Copy of Report of Comm^{rs} of H^o of Represent^{ts} upon a Petition
- Note a Petition was presented in Aug: 1786 praying for Law authorizing the sale of a Real Estate in Front Street and a Law was passed authorizing the same Sept: 1786 -

List of Papers now exhibited -

The Will of Joseph Junior.

Copy of Instrument of Writing dated 20 March 1784 signed by J. Smith, Margaret Oswald, John Penn, Edward Sheppen & Thos. Park - The signature of Edward Sheppen attested by our Witness only -

Copy of Deed between J. Smith & Margaret his Wife of the one Part & J. Penn, E. Sheppen & T. Park of the other Part dated 5 January 1785 -

Copy of the Will of Margaret Smith -

Copy of the second Petition of Mrs. Smith to Legislature dated 21 July 1784 -

Copy of Report of Committee of House of Representatives upon said Petition -

Note. Petition was presented in August 1786 praying for a law authorising the sale of a Real Estate in Trust. And a law was passed authorising the same September 1786 -

Copy of the same

Joseph Junior Esq. in his life time being seized in fee of sundry Real Estates in Penns^{la} and New Jersey died in 1783. having made his last Will & Testament whereby he devised as follows.

"I Item I give and devise unto my said two Nieces Elizabeth and Margaret and their Heirs on their Mothers Side and assigns forever all that my Messuages and Coniments and several Tracts and parcels of land & Meadow situate in the Township of Pappanock in the County of Philad^a which I purchased &c. now called Wilton Plantation with all the Messuages Buildings, Rights Members, & Appurtenances thereto belonging &c. To hold to my said two Nieces Elizabeth and Margaret equally to be divided between them and to their Heirs on the Mothers Side and assigns forever as Tenants in common and not as joint Tenants -

Elizabeth at the date of the Will and for a long time before that period was married to Benjamin New Esquire -

Margaret then Margaret Oswald some time after the death of her Uncle the testator married a certain Frederick Smith but previous to her Marriage executed an Instrument of Writing bearing date the 20 March 1784 expressed to be an Indenture Copartite Between the Parties following to wit, Frederick Smith of the State of New Jersey Esq. of the first Part. Margaret Oswald of the City of Philad^a Gentlewoman of the second Part and the Honorable John Penn, Edward Sheppen and Thos. Park all of the said City and County of Philad^a of the third Part - reciting that whereas a marriage was intended &c. Doth the Indenture - a copy of which accompanies this -

This Indenture or Instrument of Writing -

Writing executed by the Parties was attested in the words and manner following-

Sealed and Delivered
in the Presence of
Elizabeth Laurence
L. Wife.

Sealed and delivered by
Edward Shippen
in the presence of
Sarah Shippen.

No. Probate or acknowledgment appears to have been taken of the above mentioned Indenture, of course no attempt was made to Record the same, on the contrary it seems to have been considered as vacated and intended to have been cancelled but it has happened that it remains in the hands of a third Person, of the Family of one of the Parties, uncancelled.

Copy of the Deed
deposited in 1785

It is stated in an Act of Assembly passed ²⁵ Sep: 1785 entitled "An Act to authorize and empower J. Smith & Mary and his Wife" that the said Indenture was agreed to be cancelled & another Indenture subsequent to the Marriage was executed viz. on 5th January 1785 Between Frederick Smyth of the City of Philad.^a Esq. and Mary and his Wife of the one part and the Honorable John Penn Esq. Edward Shippen Esq. and Gov. Thomas Parke all of the said City of the other Part - This Deed was formally acknowledged and placed on Record as the effectual Instrument by which all the Proceedings of the Parties were to be governed -

Copy of this Deed accompanies this Statement Under the Power reserved by this Deed to the said Mary and Smyth in the words following viz. "That it shall and may be lawful to and for the said Mary and Smyth at any time notwithstanding her forfeiture by her last Will & Testament duly executed or by any Writing in the nature of a Will to dispose of the same Lands and Tenements to such Person or Persons and for such Estate as the said Mary and

made her last Will and Testament dated 9th November 1790 - reciting in the former part thereof the last mentioned Indenture bearing date 5th Jan: 1785 and the Power therein reserved to her by Will or other Writing in the nature of a Will to dispose of her Real Estate & did devise &c. Pursuant the Will - No notice appears to have been taken of the Instrument of Writing first executed and it may be doubted whether it is known to more than two or three that it still ^{remains} ~~exists~~ ^{remains uncancelled} ~~is~~ but the fact is that it does remain ^{signed & sealed} ~~is~~ in the hands of a third Person -

Margaret Smyth died in the Spring of 1806 leaving Frederick Smyth her Surviver -

A question hence arises, whether Margaret Smyth had a Power under the second Deed dated 5th Jan: 1785 ^{which was} executed during her forfeiture to make a Will or appointment of her Real Estate, and ^{whether} if the Will resting on and reciting the Deed of January 1785 as the authority for making the same ~~is void and void in the Office for the Probate of Wills, is such~~ an appointment as will vest her Estate in the manner she has thereby directed -

2^dly. If such Power could be reserved after forfeiture whether the original of said instrument dated 20th March 1784 which ^{but as is stated in the Act of the Legislature was agreed to be cancelled & therefore} seems never to have been acted under ^{therefore} not recorded but is still in the hands of a third Person, can be resorted to, & have effect to support the Will or appointment of the said Mrs. Smyth - Or has been so vacated and destroyed by the second Deed as that it may not now be resorted to to give effect and support to the Will and appointment of the said Margaret Smyth -

3 That the principle is the same at Law, see, *Terrill vs Pratt*
14 East 439 - Cowp 49

Therefore if Margaret Smyth and the parties in Interest cancelled, or delivered up to be cancelled the deed of 1784 - at the time of executing or after executing the deed of 1785 - and under the mistaken impression that the objects in view were attained by the latter deed, which was counting in form and substance, - the cancelling did not change the Estate or Trusts vested and created by the deed of 1784, and by the Will of M. Smyth an Estate in fee passed to Mary Will by virtue of the power reserved in the first deed

or
The deed of 1784 enures as evidence of an agreement between F. Smyth & his intended wife, that she should have the disposition of her own Estate, which though informal and without the interposition of Trustees will be sufficient see 1 Yeates Rep. 220 Barnes See v Hart

But if it can be proved -

That the deed of 1784 was delivered up to be cancelled, or was cancelled, before the execution of the Deed of 1785 - although with intent to make a new deed then there was no mistake, and if the intent be not carried into effect according to the forms req^d by Law - the estate has been divested by cancelling or agreeing to cancel the deed of 1784. animo cancellandi - and the power of appointment is gone -

It was renewed by the deed of 1785 - as far ^{to} the Estate in Penns^a. Feme covert seized in Fee, with her husband having a right to dispose of her real Estate, by Deed thus acknowledged see Act of 24 Feb^r 1770

But acknowledged by Feme covert before a Judge of Com Pleas in Penns^a - so d not in 1785. pass Lands in N. Jersey

I have not had the opportunity of examining the New Jersey Laws prior to 1799 - but the words of the Act of 7th June in that year convince me of the accuracy of this position -

20 March
1781
Bargain
and Sale

Marynet Oswald seised in fee of real Estate in New Jersey
and Penns^a. under the Will of Jos. Turner, in consideration
of marriage &c. conveyed to John Penn Edw Sheppen
& Dr Parke in Trust, & to the use of her appointment by
Will.

Date 20th March
1784
exact date
not known

This Deed was never proved, acknowledged or recorded
but was ~~devised~~ to be cancelled - delivered up to Mr
Sheppen for that purpose and was considered and
believed to have been cancelled - but never was -
and has lately been found

5 Jan'y 1785

Another Indenture of Smyth & wife (formerly
Mary^a Oswald - was executed to John Penn
Edw. Sheppen & Dr Parke to the same uses as
the former deed - and reserving a power to
the s^d Mary^a Smyth by Will or writing in
writing thereof to dispose of the Lands so conveyed

2d. if recorded in
New Jersey -
9 Nov^r 1790

This deed was acknowledged before a Judge of Common
Pleas in Penns^a. and was recorded in Penns^a.
Mary^a Smyth reciting the last deed devised to
Henry St. de Esq. -

1805

Mary^a Smyth died leaving F. Smyth her Son-in-law
and P. Co. her Heir at Law

This case appears at first of considerable
difficulty but depends upon certain and
clear principles of Law - and a careful
examination will leave no doubt as to
their application to the Facts -

1. A deed delivered up to be cancelled is vacated in
Law - See 2 Blacks. 309 -
In Equity, if the case is in favor of opposing the deed -
there is not a doubt but, delivering a deed, animo
cancelandi, will for ever restrain its production -
see 1 Mad dock. - head - prevention of Fraud
2. But in Equity, cancelling a deed under a mistake in
Law or of Fact, as supposing the end to be attained by
another deed, will not divest any interest or change
any Estate
see 1 P. Wms 345. 2 Vern. 742 - 1 Eq. Cas. abt. 404

4
Act of 5 June
1787 -

actual possession of lands in New Jersey for
30 years are an exclusive and absolute Title
allowing 5 years after removal of disabilities.
The 5 years after removal of disabilities by Coverland
of C. C. expired in 1815. If the Real Estate
had ^{been} held in actual possession under the
deed of 1785. for 30 years, in the same year
the Title wd be clear

Act of
7 Feb^y 1799.

But held under a lease for life, of M. Smyth
and not by the deed of 1785. but adverse to it
the act of limitations can run only from the
time of her death, and 20 years ^{after that event} free from
disability are necessary to bar her heir & devisee
from his entry - or 30 years adverse actual
possession in her devisee - or appointee -
which has not been -

Upon the whole 1st Mary^e Smyth by deed of 1785. - ~~with her~~
together with her husband conveyed her Fee
simple to Trustees, acknowledged the conveyance
in proper form, as to lands in Penn^a and made
a sufficient appointment under that deed
or if the 1st deed remained in force - it was
sufficient to pass the Estate in Penn^a under
the authority of Barnes Lee vs Hart.

2^d If the deed of 1784 was delivered up to be
cancelled, before the Execution of the 2^d deed.
it was destroyed, and cannot be produced
as Evidence in Law or in Equity of the estate
conveyed by it - and the 2^d deed was
not sufficient to pass the Estate in Jersey

But if it cannot be proved that the deed of
1784 was deliv^d up to be cancelled, before
the Execution of the 2^d deed; then the
presumption is that the equivocal act of

cancellation was under mistaken notion that
the Lands in Jersey passed by the second deed, and
the Estate vested by the deed of 84 remained to
answer the appointment of M. Smyth's Will.

The case rests upon the single point of cancelling or
delivering up animo cancellandi. The deed of 84
before or after the Execution of the Deed of 85.

It may be added that M. Smyth being seized in Fee
Simple by purchase, and the present possessors,
claiming under purchase for valuable consideration
Equity will strain to support their Title - The question
of notice of former deeds will not affect them -

as decided in the case of M. Smyth's Will

S. Chew's Notes on the case
of M. Smyth's Settlement & Will -

This Indenture Tripartite made the twentieth
Day of March in the Year of our Lord One Thousand seven hundred
and Eighty four Between the Parties following to wit Frederic
Smyth of the State of New Jersey Esquire of the first Part
Margaret Oswald of the City of Philadelphia Gentlewoman
of the second part and the Honorable John Penn Esquire ~~South~~^{Edward}
~~Shippen~~^{Shippen} Esquire and Doctor Thomas Parke all of the said City and
County of Philadelphia of the third Part Whereas a Marriage
is intended by the Permission of God shortly to be had and
solemnized between the said Frederic Smyth and Margaret Oswald
and it is previously thereto by and between all the said Parties
agreed upon several Matters and things respecting the Real
and personal Estate whereof the said Margaret Oswald now is
and that of which she hereafter during the said intended Marriage
may become seized or possessed of or entitled to in Right Title
possession Remainder Reversion or other Expectancy Now
for the declaring the Substance and Meaning of these Agreements
and for the carrying the same in full and ample Execution
This Indenture witnesseth that the said Margaret
Oswald in Consideration as well of the said intended Marriage
as of the Trust and Confidence which she repositeth in the said
John Penn ^{Edward Shippen} and Thomas Parke and of the Sum of
Five Shillings unto her at or immediately before the Sealing
and Delivery hereof by them in hand paid the Receipt whereof
is hereby acknowledged Hath granted bargained and sold
enjoyed assigned and set over released and confirmed And
by these Presents doth grant bargain and sell enjoy assign
and set over release and confirm unto the John Penn ^{Edward Shippen}
and Thomas Parke their Heirs Executors and Administrators All and
every the Messuages Houses Lots of Land Tenements Hereditaments
and Real Estate whatsoever of her the said Margaret Oswald
whether the same be in Possession Remainder Reversion or other
Expectancy or in Right and Title merely in Pennsylvania New Jersey
and wheresoever the same are situate lying and being And the
Reversions and Remainders Rents Issues and Profits thereof And all
the Estate Right Title Interest Use Claim and Demand whatsoever
of her the said Margaret Oswald, and her Heirs of ⁱⁿ and to any
Lands Tenements, and Hereditaments, and every part, and






paral thereof as fully amply, and effectually, as if the same
Premises, Estate and Interest, and every Part and parcel thereof
were herein particularly mentioned and expressed. And also
all and every the Monies Goods and Chattels Rights and Credits
whatsoever of her the said Margaret Oswald now in her
Possession, or to which she has any Right Claim or Demand
whatsoever, and all and every the Legacies given her by Will
and all Bills Bonds or other Specialties accounts and Reck-
onings subsisting in support of any of her Right, Claim and
demands, of and to any Monies, Goods and Chattels
Rights and Credits, in the Hands, Custody, and Possession
of her the said Margaret Oswald, or in the Hands of any
Person or Persons, who sever keeping the same for her, and to
her use, and all the powers, Authorities, and Remedies to
recover such Legacies Rents, debts, Monies accounts, and
other claims and demands, of her the said Margaret Oswald.
To have and to hold, the Lands Tenements, and Heredita-
ments hereby granted or mentioned, or intended so to be
with the appurtenances, unto the said John Penn ^{Edward}
Shippen and Thomas Parke, their Heirs and assigns for-
ever, and the Goods, and Chattels, Rights and Credits hereby
assigned, and set over or mentioned or intended so to be unto
the said John Penn ^{Edward Shippen} and Thomas Parke, their
Executors, administrators, and assigns forever. The said
whole Real and Personal Estate of the said Margaret Oswald
In Trust, to and for the only proper use and Behoof of
the said Margaret Oswald, her Heirs, Executors, and
administrators, untill the Solemnisation of the said
intended Marriage, and from and after the solemnisation
thereof upon such further Trusts and to such Uses
as are hereinafter declared, limited, and appointed to
be executed and supported by Virtue hereof. And for

and for the declaring limiting, ^{3/} and appointing the same
Trusts, and uses, it is hereby mutually Covenanted agreed and
declared, by and between all the Parties hereto, each Party for
himself herself, and themselves, their several and respective
Heirs Executors Administrators, and assigns. That from
and after the Solemnisation of the said intended Marriage
all the said Real and Personal Estate of the said Margaret
Oswald, shall be and remain, and is hereby vested in the said
John Penn ^{Edward Shippen} and Thomas Parke, their Heirs
Executors, and administrators, still to continue, and be
continued in the same Trust, to and for the only proper
use and Behoof of the said Margaret Oswald her Heirs
Executors, administrators, and assigns, during the ^{said} ~~life~~
intended Marriage. Subject nevertheless to one annuity
of Thirty Pounds charged on the House and Lot of land
where the said Margaret Oswald now liveth, by the Test-
ament of her Uncle Joseph Turner for the support of
Mary Oswald, sister of the said Margaret Oswald
during the Natural Life of the said Mary. And also
subject to and chargeable with one half part of such
sum, and sums of Money, as may be wanted, over and
above the said sum of Thirty Pounds for the support of the
said Mary. And ~~upon~~ upon this further Trust, that they
the said John Penn ^{Edward Shippen} and Thomas Parke,
their Heirs Executors, administrators, and assigns, shall
suffer the said Frederic Smyth and Margaret Oswald
his intended Wife, during their joint Lives, (first deduct
in, the said Annuity of Thirty Pounds, and Provision
made for the said Mary Oswald) to receive and use

all the Rest and Residue ⁽⁴⁾ of the Rents Issues, and Profits of the said Margaret Oswald her Real Estate, and all the Interest, Gain, and Increase of her Personal Estate. So nevertheless that the said Margaret Oswald shall or may notwithstanding her Coverture during the Life of the said Frederic Smyth have the sole uncontrollable and exclusive Right of receiving appropriating, and laying out to any use or Purpose whatsoever at her Will and Pleasure one Moiety or half Part of the Rents Issues and Profits of all, and every her Lands Tenements, and Hereditaments, and of the Interest, and Increase of her Personal Estate, and that the said Frederic Smyth shall not, will not, and may not, intermeddle with or direct the receiving appropriating and laying out the said Margaret Oswald her Moiety, in the Residue of all the Rents Issues Profits, Interest, and Increase of all her Real and Personal Estate and upon this further Trust and Confidence, and the said Parties do hereby mutually Covenant, promise and agree each one with the other or others of them, That it shall and may be lawful to, and for the said Margaret Oswald at any Time hereafter notwithstanding her Coverture by her Last Will and Testament duly executed, or by ^{any} Writing in the nature of a Will to dispose of all her ~~Real Estate and Personal Estate~~ ^{Real and Personal Estate} to such Person and Persons, and for such Estate and Estates, as she may think right and proper. Provided always that the said Margaret Oswald, shall not have Power by any such disposition or Writing to deprive the said Frederic Smyth of more than One half part of the Rents and profits of her Real Estate during his natural Life, if he shall

shall survive her. ⁽⁵⁾ And the said John Penn ^{Edward Shippen} and Thomas Parke their Heirs, Executors, and Administrators shall and will stand seised and possessed of all and every the Lands Tenements, and Hereditaments, Goods and Chattels of the said Margaret Oswald to the use and in Trust for such Person and Persons, to whom she by her Last Will and Testament, or other writing in the nature of a Will shall give or devise any Lands Tenements Goods and Chattels according to the Estate and Interest to them respectively given limited, and declared by such Will or Writing as aforesaid. And the said Frederic Smyth shall ~~not~~ ^{and} will not oppose, or use any means to prevent the Probate and due Execution of a Testament or Last Will and one or more Codicil or Codicils to be made as aforesaid, by the said Margaret Oswald, and upon this further Trust and Confidence, That upon the Event of the said Margaret Oswald dying in state before the said Frederic Smyth, That then the said John Penn ^{Edward Shippen} and Thomas Parke their Heirs, Executors, and Administrators, shall stand seised and possessed of the Lands Tenements, Goods, and Chattels rights, and Credits of the said Margaret Oswald in Trust to suffer the said Frederic Smyth and his assigns to take, and receive to his own use all the Rents Issues and Profits of such Lands Tenements and Hereditaments, and ~~to~~ the Interest of the Personal Estate, during his natural Life, always saving the annuity, and Provision made for the said Mary Oswald, and it is hereby further agreed declared and

(6)
 Covenanted by, and between all the Parties hereto
 That in Case any Part of the Real Estate of the said Mar-
 -garet Oswald, should be sold during the said intended
 Marriage; then the money arising from such sale shall
 be considered as Land; and vested in the said John Penn
 Edward Shippen and Thomas Parke, their Heirs, and Assigns
 Subject to the same uses as hereinbefore limited, and
 declared, concerning all the Lands, and Tenements of the
 said Margaret Oswald, and the said John Penn ^{Edward}
 Shippen and Thomas Parke, for themselves respectively
 and not jointly, do Covenant, and agree for themselves
 their several and respective Heirs Executors, and Admin-
 -istrators, to and with the said Frederic Smyth his Heirs
 Executors, and Administrators, and to and with said
 Margaret Oswald, her Heirs, Executors, and Adminis-
 -trators, That they the said John Penn ^{Edw^d Shippen} and
 Thomas Parke their Heirs Executors, and Administrators
 shall and will, well, and faithfully execute, and perform
 all the uses, and Trusts hereinbefore mentioned, and
 declared to be performed on their part In Witness
 whereof the said Parties have interchangeably set their
 Hands & seals hereunto, dated the day and Year first above
 written.

Frederick Smyth 
 Margaret Oswald - 
 John Penn - 
 Edw^d. Shippen - 
 Thomas Parke - 

Sealed & Delivered
 The name of Tench Francis one of
 the Trustees had been obliterated instead
 thereof the name of Edward Shippen inserted
 before the Sealing and Delivery
 in the Presence of
 Elizabeth Lawrence
 L. Weiss
 Sealed & delivered by Edw^d Shippen
 in the Presence of Sarah Shippen

Copy of a Writing executed
by Frederick Smyth
Margaret Oswald
John Penn
Edward Chubbuck
Thomas Park
dated 20th March 1784
not proved or acknowledged

This Indenture Made the fifth day of January in
the year of our Lord One thousand Seven hundred Eighty
five Between Frederic Smyth of the City of Philadelphia
Esquire and Margaret his Wife of the one part and the
Honorable John Penn Esquire Edward Shippen Esquire and
Doctor Thomas Parke all of the said City of the other part
Witnesseth that for the vesting settling conveying & securing
the Lands Tenements and Hereditaments of the said
Margaret Smyth herein after mentioned in upon and unto the
said John Penn Edward Shippen and Thomas Parke and their
heirs To and for such Uses as are herein after declared
limited and appointed in Consideration of the Trust and
Confidence which the said Frederic Smyth and Margaret
his Wife repose in the said John Penn Edward Shippen &
Thomas Parke and of the Sum of five Shillings by the said
John Penn Edward Shippen and Thomas Parke to the said
Frederic Smyth & Margaret his Wife at or immediately
before the Sealing and Delivery hereof in hand paid the
receipt whereof is hereby acknowledged They the said Frederic
Smyth and Margaret his Wife Have granted bargained &
sold enfeoffed released and Confirmed And by these presents
Do grant bargain and sell enfeoff release and confirm
unto the said John Penn Edward Shippen and Thomas Parke
their heirs and assigns All that Messuage or Tenement &
Lot of Land Situate on the West side of Front Street in the

Square between High Street and Chestnut Street in the
said City of Philadelphia containing in Breadth North
and South thirty six feet and in Length or Depth one
hundred feet Bounded Eastward with Front Street aforesaid
South Southward with a certain eight foot wide Alley
commonly called Blackhorse Alley Westward & Northward
with Ground of Benjamin Chew Esquire and Elizabeth his
Wife (All which Lot of Land William Fishbourn late
of the said City Merchant and Jane his Wife by Indenture
of Lease and Release under their hands and Seals bearing
date respectively the third and fourth days of September
One thousand Seven hundred and thirty (Recorded at
Philadelphia in Book F. Vol. 5. page 115. &c) granted and
conveyed unto Joseph Turner of the said City of Philadel-
phia Merchant the Uncle of the said Margaret Smyth in
fee And the said Joseph Turner by his last Will & Testa-
ment devised the same unto the said Margaret Smyth in
fee Subject to and attendant on the Estate for life of her
Mother Mary Oswald and Charged with an Annuity of
Thirty pounds to her Sister Mary And also ^{all} the said Marga-
ret Smyth her one equal Moiety of that Messuage or Ten-
ement and several Tracts or parcels of land called Wilton
Plantation Situate in Passyunk township in the County of
Philadelphia Computed in the whole to contain about
three hundred and fifty Acres And all and every the Lands

Tenements Hereditaments and real Estate whatsoever
rights to Lands Tenements Hereditaments and real
Estate situate in East and West New Jersey or either
of them of her the said Margaret Smyth of which
she is seized or to which she hath right under the Testa-
ment and last Will of her late Uncle the said Joseph
Turner as fully and amply as if the same were herein
particularly mentioned set forth and described (Which
whole plantation and Jersey Estate the said Joseph Turner
by his said Will devised to his two Nieces Elizabeth Chew
and Margaret Smyth and their heirs of their Mothers
side and assigns forever equally to be divided between
them) Together with all the Rights Members & Appur-
tenances whatsoever thereunto respectively belonging And
the Reversions and Remainders Rents Issues & profits
thereof To have and to hold all and singular the
Messuages Lands Tenements and Hereditaments hereby
granted with the respective appurtenances unto the
said John Penn Edward Shippen and Thomas Parke
their heirs and assigns to the only proper Use and Behoof
of the said John Penn Edward Shippen and Thomas Parke
their heirs and assigns forever The said House and Lot
in Front Street Subject to the Estate for life of the said
Mary Oswald the Elder and the Annuity of the said Mary
Oswald the younger In trust nevertheless that they the
said John Penn Edward Shippen and Thomas Parke &
the Survivors and Survivor of them and the heirs of such
Survivor shall suffer the said Frederic Smyth and
Margaret his Wife during their joint lives (First deduc-
ting the said Annuity of Thirty pounds for the life of
the said Mary Oswald the younger) the receive the Rents
Issues and profits of the said hereby granted Messuages
Lands and Tenements So nevertheless that the said Mar-
garet Smyth notwithstanding her Coverture shall or
may have the sole uncontrollable and exclusive Right
of receiving appropriating and laying out to any Use or
purpose whatsoever at her will and pleasure One moiety
or half part of the Rents Issues and Profits of the said

Messuages Lands and Tenements And so that the
said Frederic Smyth shall not will not and may
not intermeddle with or direct the receiving appro-
priating and laying out the said Margaret Smyth
her said Moiety of the Rents Issues and Profits
aforesaid And upon this further Trust & Confid-
ence That it shall and may be lawful to and for
the said Margaret Smyth at any time notwith-
standing her Coverture by her Last Will & Testa-
ment duly Executed or by any Writing in the Nature
of a Will to dispose of the same Lands & Tenements
to such Person or Persons and for such Estate
and Estates as she may think right and proper
Provided that the said Margaret Smyth shall not
have power by any such disposition or Writing to
deprive the said Frederic Smyth of more than one
half part of the Rents and Profits of the same Estate
during his natural life if he shall survive her And that
in case the said Margaret Smyth shall die intestate before
the said Frederic Smyth then the said John Penn Edward
Shippen and Thomas Parke and their heirs shall suffer
the said Frederic Smyth to take and receive to his own
Use the Rents Issues and Profits of the same Lands
Tenements and Hereditaments during the term of his
natural life always saving the Annuity and Provision
by the said Testator Joseph Turner made for the
said Mary Oswald the Younger And that in case
of the Death of the said Frederic Smyth if she
the said Margaret survive him the Lands & Tene-
ments aforesaid shall immediately revert to the said
Margaret Smyth and be at her absolute disposal Pro-
vided always and upon this further Trust and
Confidence that the said John Penn Edward Shippen
and Thomas Parke and their heirs shall suffer
the said Frederic Smyth and Margaret his Wife from
time to time to raise on the said House and Lot
in Front Street by Mortgage the sum of three thou,

and pounds lawful Money of Pennsylvania Specie
 in the Quotas and proportions following that is to
 say the sum of One thousand pounds immediate-
 ly and the further sum of Two thousand pounds
 after the Expiration of one Year from the Date
 hereof at any time or times during their joint
 lives so as not more than five hundred pounds be
 raised thereon in any one Year And Concerning the
 Lands Tenements and Hereditaments of the said
 Margaret Smyth in New Jersey it is hereby declared &
 Witnessed that the same are hereby granted to the said
 John Penn Edward Shippen and Thomas Parke and
 their heirs Upon this further Trust and special Confidence
 that they the said John Penn Edward Shippen and
 Thomas Parke or any two of them and the survivor
 and the survivor of them and the heirs of such survivor
 shall or may at any time hereafter whenever they think
 proper sell and dispose of the same or any part thereof
 for the purpose to raise the said sum of three thousand
 pounds lawful Money of Pennsylvania in Specie with
 Interest thereof and therewith discharge the Mortgage
 or Mortgages of the said Frederic Smyth and Margaret
 his Wife on the said House and Lot in Philadelphia
~~which was made and doth have full power & Authority~~
 by Deed or Deeds under their hands and Seals to grant
 and convey the fee Simple and Inheritance of the same
 Lands and Tenements and Rights to Lands & Tenements
 in New Jersey or any part thereof under the purchaser or
 purchasers of the same And the Surplus arising from
 such sale or sales beyond what shall be sufficient to
 discharge all such Mortgages on the House and Lot
 aforesaid to pay to the said Margaret Smyth her Executors
 Administrators or assigns And the said Frederic Smyth
 doth Covenant promise and agree to and with the said
 John Penn Edward Shippen and Thomas Parke their
 heirs Executors and Administrators that he the

Frederic Smyth shall and will not oppose or use
any means to prevent the probate and due execution
of such Testament Last Will Codicil or Codicils
as the said Margaret Smyth shall make in manner
and form aforesaid And the said ^{John Penn} Edward Shippen and
Thomas Parke severally each for himself his heirs
Executors and Administrators Do Covenant promise &
agree to and with the said Frederic Smyth & Margaret
his Wife and each of them That they and their heirs
shall and will stand seised of the Lands Tenements
and Hereditaments hereby conveyed to them in Trust
for such Use and Uses as are herein before limited
declared and appointed and shall and will not
do or willingly or wittingly suffer to be done by
others any Act Matter or Thing whatsoever by reason
or Means whereof the same Trust and Uses shall
or may be defeated or derogated from In Witness
whereof the said Parties have interchangeably set
their hands and Seals hereunto Dated the Day and
Year first above written.

Frederic Smyth
Margaret Smyth
Edw Shippen
Thomas Parke
Sealed & Delivered in the presence of us ^{the words} any two of them between the thirty fifth & thirty sixth lines being first interlined
William Adcock Peter Miller.

The sixth day of January in the Year of our
Lord 1785 Before me William Adcock Esquire
One of the Justices of the Court of Common
pleas of the City & County of Philadelphia
Came the above named Frederic Smyth and
Margaret his Wife and acknowledged the above

written Indenture to be their Act and Deed the said
Margaret and desired that the same may be recorded
as their Act and Deed the said Margaret thereunto
voluntarily consenting she being of full age secretly
and apart examined and the Contents of the same
Indenture being first made known unto her And
at the same time also appeared the above named
John Penn Edward Shippen and Thomas Parke and
also acknowledged the same Indenture to be their
Act and Deed and desired that the same may be
recorded as their Act and Deed Witness my hand &
Seal the Day and Year abovesaid.

William Adcock

Recorded the 10th January 1785

Matthew Irwin Esquire Recorder of Deeds &
for me by a county of Pennsylvania do Certify
the preceding Writing to be a true Copy (or Exam-
plication) of Deeds recorded in my Office in
Deeds 12. page 17. &



Witness my hand & Seal of Office
the 23 day of February 1789.
Math. Irwin
Recd

Memor on my aunt's will &c

- who is Sarah Shippen written to E. Shippen's signature of
the daughter of E. Shippen - after death of
married to Thos - the paper of 20th March 1784

- Is not the trust executed to certain you trust by that paper

- See my uncle's will - has it 3 witnesses

- In of any deed of bargain & sale written to H. Hill
dated abt 9th Nov 1790

- what is the effect of the limitation to the heirs by the
see like limitation
these words must be
rejected - however they
may make the testator's meaning -
modern side in my uncle's will

- can a will be made to the heirs or devisees of a
who is living but dies before testator, be carried into
effect

- Do (Mr Powell) or Mr Penn know any thing of
Mr Penn may
the rest do not
this affair - or Mr Penn - or Mr Bond or Mrs Mc
Swaine, or who does

- The act of fraudulently authorizing the sale of the land that
property was founded upon false representations, is it not
therefore void? - What evidence remains on file in
the records of the house on this subject

- As to the 2nd deed of Jan'y 5th 1785 - it is acknow-
ledged before a Justice of the Court of Common Pleas
who is not competent by the law of N Jersey to take
the acknowledgment of a feme covert, & believe
and the form of the acknowledgment is not
sufficient - see the law of N Jersey, prior to that
date

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See also if the 1st conveyance be valid
in N Jersey - I am very sure of this see the law
of N Jersey

It being neither recorded nor even acknowledged - under these circumstances it is simply void - at all events it is voided by any new deed according to the law of these States - beyond all doubt - then the will must stand in full on the 2nd deed

The case of De also required recording otherwise any other conveyance might be made of the estate - the 2nd deed is then a revocation of the 1st

It is true I may declare myself trustee for A & Chancery perhaps will not suffer me to eliminate contrary to my declaration but it would by consent of certain judges & every testimony of that consent is here given

But if I declare to my trustee, I may make with consent of A and certainly, if I give a declaration in trust to A for me, I may make by another deed - The deed is good for nothing as a deed because not recorded & as a declaration in trust for some reason - & because Mrs S. rebuffed by

consent of the trustees

If it be said that the deed is a conveyance in trust, I reply it is a deed of bargain & sale in nothing, because if the legal estate be given in the persons named they had no right to consent or to allow any thing, in other words had no estate in the property. But to bargain & sale in De & conveyance is indispensable - it may come here as a declaration in trust but I have never before that I may make a trust for myself wh I create

- 1 First Settlement & all Circumstances attending it,
- 2 The second D^o - & how brought about,
- 3 What happened between this & the Petition to the Assembly about the Sale of the House -
- 4 Falshoods in Petition wth the House adopted without inquiring into the Truth &c
- 5 The Suppression of these Facts in the present Petition
- 6 Their present Income adequate & no Necessity to increase it but to answer the ~~interest~~ Views of an unprincipled S. d. l & to subvert & reverse the Settlements made & determined ~~in~~ before Marriage
- 7 Such Contracts held sacred