

COSTENS' APPEAL.

HENRY REED'S ESTATE.

STATEMENT OF APPELLEE.

1842, Dec. 16. Report of auditor upon the accounts of William Reed, adm. d. b. n. c. t. a. to the estate of Henry Reed, deceased, filed, distributing the balance in his hands as administrator.

The following decree was made upon the exceptions to said report:

April 18, 1845. It is ordered and decreed by the court that the report of the auditor, filed in the above matter, on the 26th of December, 1842, be duly confirmed, except so much thereof as refers to the claim of Zerah H. Costen and wife on the share of Robert Reed, deceased, upon which claim the auditor has filed a supplementary report: that William Reed, the administrator, retain one thousand dollars out of the share reported as due and payable to the administrator of Robert Reed, to be invested and await the decision of the court on the said claim of Zerah H. Costen and wife, and on the supplementary report aforesaid, and that the residue of the estate of Henry Reed be distributed in conformity with the said first report hereby confirmed.

1845, April 18. Supplemental report of auditor filed upon said claim of Zerah H. Costen and wife, and deciding against it.

1846, June 16. Exceptions to said report overruled and report confirmed.

Henry Reed, by his will, dated 1793, devised as follows: "And the other like fourth part thereof (of all his estate) unto my son, Robert Reed, by Elizabeth Wise, his heirs, &c., &c."

"And I further will and direct that all my houses, lots, lands, tenements and hereditaments whatsoever and wheresoever, shall be sold by my executors as aforesaid, or the survivor of them, and the executors

and administrators of such survivor, &c., &c.," with power to lease until sale.

On the 3d of September, 1812, Robert Reed, the son, executed the alleged power of attorney to Francis Pumroy, as *the exemplification thereof* is set forth on page 10 of appellant's paper book.

On the 24th of December, 1812, the said Robert Reed, by his said attorney, Francis Pumroy, executed to George Wallace the deed (set forth in appellant's paper book, pp. 7, 8,) reciting the will of Henry Reed, the death of his surviving executor, George Wallace, and that George Wallace, the grantee, is the son and one of the executors of George Wallace, senior, deceased, and that the said parties have compromised as follows, to wit., "the said Francis Pumroy, by virtue of the powers vested in him by the above recited letter of attorney, hath agreed for and on behalf of his constituent, to take in lieu of the said one equal undivided fourth part of the said described property, the sum of seven hundred and fifty dollars;" and in consideration thereof granting, bargaining, selling, aliening, enfeoffing, releasing, and confirming to the said George Wallace, his heirs and assigns, "all that the one full, equal, and undivided fourth part of the said described lots," &c., &c.

In 1831, the administrator d. b. n. of Henry Reed brought an action of ejectment against Jane Wallace, devisee of George Wallace, the above grantee, for her alleged interest under the above-mentioned deed, in the property therein described.

Judgment was entered for plaintiff, and in 1834 a writ of *habere* was issued, and plaintiff put in possession.

In 1835, the premises in question were sold by the administrator d. b. n. c. t. a. of the estate of Henry Reed, deceased, under the said power in the will of Henry Reed, deceased.

The proceeds of said sale were part of the funds to be divided by the auditor's report as aforesaid.

To the above title of the appellants the following objections were made before the auditor, and the claim made by the appellant was rejected, which report of the auditor was sustained by the court.

I. The power of attorney by Robert Reed to Francis Pumroy, dated September 3, 1812, was not proved.

1. Because the original power of attorney was not produced. The paper produced was only an exemplification. There was no proof of the loss of the original power of attorney, which ought to have been given.

2. Because the acknowledgment does not state that Robert Reed per-

sonally appeared before the justices, and acknowledged the power of attorney to be his, and that he desired to have it recorded.

3. Because the power of attorney was only acknowledged before justices of the peace.

4. The subsequent certificate in 1841, by the prothonotary, is not evidence, because it certifies matters which ought to be in the original certificate of the justices, and not in that of the clerk of the court, and which are not matters of *certificate* by the clerk, but of *proof* by legal evidence, with an opportunity of cross-examination by the appellee.

5. Because the certificate in 1841 only states that, on the 3d day of September, 1812, Gabriel J. Johnston and James Ferguson, the justices, were ex officio judges of the county court, but does not *identify* in any way the power of attorney, nor the signatures of the justices.

II. The exemplification was not evidence, because the interest of Robert Reed, upon which the power of attorney was to act, was personal and not real estate.

III. At the time of the execution of the said deed of December 24th, 1812, under the said power of attorney by Robert Reed, he had no interest in said real estate that he could convey by it. The executors of Henry Reed were *directed* to sell the said premises, and the title was in them for that purpose.

ARGUMENT FOR APPELLEE.

I. The exemplification of the power of attorney was not evidence :

1. Because the original was not produced, nor its loss accounted for.

2. Because the acknowledgment does not state that Robert Reed *personally* appeared before the justices, and acknowledged the power of attorney to be his act and deed, and desired to have it recorded.

3. Because an acknowledgment was only made before two justices of the peace of Kentucky.

The second section of act 1705, (Smith Laws, vol. i. p. 70,) declares that letters of attorney, the execution whereof shall have been *proved* by two of the witnesses thereto, before any mayor or chief magistrate, or officer of the cities, towns, and places where such letter of attorney, &c., shall be made or executed, and certified under the common seal of the said cities, towns and places, shall be taken and adjudged as sufficient in law, as if the witnesses therein named had

been present; and such certification shall be evidence to the court and jury for the proof thereof.

The power of attorney of Robert Reed was only *acknowledged* not *proved*. *Milligan v. Dickson*, 1 Peters, C. C. R. p. 433, in note, is cited by the appellant as authority to show that *acknowledgment* and *proof* amount to the same thing.

But that was a nisi prius case, the judges equally divided upon the point, and the evidence only admitted because the court was divided.

The case of *M'Intire v. Ward*, 3 Yeates 424, cited by the appellant, arose under the act of 1770, which authorized an *acknowledgment* by husband and wife out of the state.

There is no other authority to sustain the position of the appellant. The acts of 23d March, 1819, and 16th January, 1827, (Stroud's Digest, pp. 300, 302,) have now by legislative enactment made an acknowledgment equivalent to proof, so as to entitle the instruments named on the acts to record.

The power of attorney of Robert Reed therefore not being proved according to law, was not entitled to be recorded, and the exemplification was not evidence.

4 and 5. If the court should think that acknowledgment and proof are equivalent, the act nowhere authorizes the acknowledgment or proof to be made before one or more *justices of the peace*, of another state.

The certificate made in 1841, that the said justices were ex officio judges, does not cure the defects of the proof. That certificate was made in view of the act of 23d March, 1819, authorizing an acknowledgment passed six years *after* the power of attorney was executed.

Moreover, the certificate of 1841 does not certify to the genuineness of the *signatures* of the justices, nor does it *identify* the original power of attorney; it *certifies* what ought to be matter of *proof*, and open to cross-examination by the opposing party.

A certificate in 1841 cannot cure a defect in a certificate made in 1812; it must be done by *legal proof*.

II. The exemplification was not evidence, because the letter of attorney, relating to what was personal estate only, could not be recorded under the act of 1715.

That the interest of Robert Reed in the premises, mentioned in the will of Henry Reed, was personal estate, will be shown in the latter part of this argument.

If so shown, the exemplification of the power of attorney is not evidence.

Hellman v. Hellman, 4 Rawle, 440.

"A release of a legacy charged on the land, is not such a deed, conveyance, or writing as passes or creates any right or interest in or to the land on which it is charged, and consequently is not embraced by any acts of Assembly provided for the recording of deeds and conveyances, or other writings made of and concerning lands," &c.

A bill of sale or other writing respecting personal property, is not within the recording acts, and an exemplification is not evidence. *Fitler v. Shotwell*, 7 Watts & S. 14.

III. The deed was not effective to convey Robert Reed's interest in the estate of his father, Henry Reed, that interest being personal estate, and the deed conveying real estate.

1. That the interest of Robert Reed was personal estate, the following cases are directly in point. "Where a deviser directs his lands to be sold, and the produce divided between A. and B., the obvious purpose of the testator is that there shall be a sale for the convenience of division, and A. and B. take their several interests as *money*, not *land*." *Leigh v. Dalzel*, on Equitable Conversion, p. 138, (5 vol. Law Library, p. 69, 70.)

In *Bartholomew v. Meredith*, 1 Vernon, 176; J. S., by will, devised lands to be sold for payment of portions to his younger children. One of the children died after the portion became payable, but before the land was sold; this interest in land was accordingly held to go to the *administrator* of the deceased child.

In *Dougherty v. Eull*, 2 P. Wms. 230, lands were devised to be sold for the *purpose of a division* amongst his children, the eldest of whom attained the age of twenty-one, and died, leaving a widow. *Held*, that the share was personalty, and that his widow would be entitled to a moiety of the proceeds of the lands when sold.

2. Story's Equity, Sec. 790, and note. Land articed or devised to be sold and turned into money is money.

Hewitt v. Wright, 1 Bro. Ch. Cases, 86.

A conveyance by W. to trustees to sell and pay debts; out of residue to raise £1500, and pay the interest to D. till marriage; within twelve months after marriage, to pay the principal of the £1500 to D., and to divide the residue in shares among the plaintiffs. W. gave by will, out of other lands, a charge for another daughter, the residue to plaintiffs. D. died unmarried. The £1500 was a resulting trust to the settler, but in his hands was personal estate, and passed as part of the residue thereof under the will.

Fletcher v. Ashburner, 1 Bro. Ch. Cases 497. Where real estate is ordered to be sold and is blended with personal property, it becomes personalty, and shall go accordingly.

The general rule is well settled by the above cases and those cited in the notes in the American Editions of Vesey, Jr. and Brown Ch. Cases. These cases apply particularly to the will now before the court.

1. Because the testator, Henry Reed, wills and "directs" the sale of his real estate.

2. Because the testator directs the sale for the "more easy distribution" of his estate among his residuary legatees and devisees. This object being set forth in the paragraph of the will immediately preceding the direction to sell, and clearly to be read with it.

3. Because the real and personal estate is blended, (Fletcher v. Ashburner, supra,) the testator clearly intending, by the devise and bequest of all the rest, residue, and remainder of his estate, real and personal, and the direction to collect the personal and sell the real estate, and to divide it together.

This will and the authorities cited above are entirely clear of the cases cited by the appellant, where the object of conversion fails; or where a part or the whole is undisposed of after conversion; or where the purposes of conversion are satisfied without conversion or having recourse to the real estate, as the payment of debts; or for unlawful purposes; in which cases the estate will go to the heir, and not to personal representatives. The following additional cases are cited on this point.

An interest in lands devised to be sold cannot be bound by a judgment or sold under a levy and sale as real estate. *Morrow v. Brenizer*, 2 Rawle, 185.

Testator orders his executors, after the death of his widow, to sell his real and personal estate and divide the money among his four children. On the sale of the land by an administrator, *de bonis non*, after the death of the widow, such administrator is entitled to receive the money, and not a creditor who had obtained judgment against a son before the sale. *Alison v. Wilson's Ex'rs*, 13 S. & R. 330.

A testator directs the residue of his estate, real and personal, to be sold by his executors, and the proceeds divided between his sons. *Held*, that there was not such an estate in the residue of the lands as was the

subject of levy and sale for the payment of the debts of the son. *Alexander v. M'Murry*, 8 Watts, 506-508.

A sale by an heir of his interest in all the real estate of the ancestor, will not pass his interest in lands agreed to be sold by the ancestor in his lifetime; but which sale is perfected by the administrators, under a decree of the court, after the death of the ancestor. *Foster v. Harris*, 10 Barr, 457.

The consequences of the doctrine contended for by the appellant are obvious. If the heir can dispose of his interest in lands, devised to be sold, it takes away the responsibility of the proceeds of the land in the hands of the executors of the decedent for debts, legacies, or any other charges that may legally be made against them in the hands of the executors.

Henry Reed disposed of his whole real estate after conversion, for an object which did not fail and was not unlawful, and, until sale, he directs his executors to let and demise the same, and to pay the rents over to his sons respectively; the share of any son is personal estate.

2. The interest of Robert Reed in said real estate would not pass by the deed in question.

We have shown that the interest of Robert Reed was personal estate.

In *Craft v. Webster*, 4 Rawle 242, it was decided as follows:—

"A deed purporting to convey all the right and title of the grantor to land of which he had previously parted with the fee simple, reserving only a right to a portion of the purchase-money charged upon the land, does not pass his interest in the money so charged."

An assignment of the interest of a mortgagee in the land, without an assignment of the debt, is considered to be without meaning or use. 4 Kent's Comm. 186.

A conveyance of a house and lot by the first builder does not pass the right to compensation to be made for the party wall (a personal right) to the second builder. 10 Barr, 219.

Same point, *Todd v. Stokes*, 10 Barr, 155; *Dauids v. Harris*, 9 Barr, 501.

It is against every rule of construction relative to deeds, that a personal interest should pass by a grant of real estate. If the doctrine is once established, a grant, bargain, and sale, purporting to be of real estate, may be a trap to pass personal estate without notice.

IV. The appellants claim as the representatives of George Wallace, one of the executors of George Wallace, deceased, the surviving executor of Henry Reed. The grantee at the time represented the estate of Henry Reed. His purchase was a dealing with the trust funds, which is against the whole policy of the law.

The deed recites that the said Francis Pumroy, attorney in fact of Robert Reed, hath "agreed to take, in lieu of said undivided fourth part of the said described property, the sum of seven hundred and fifty dollars." To take from whom? From George Wallace, the then trustee of the estate. Can such an agreement or transaction be set up by the trustee against the administrator of Robert Reed, who alone was entitled to receive the proceeds of Robert Reed's share?

If the trustee has purchased a bad title, or no title at all, it is at his own risk. *Dorsey v. Jackson*, 1 S. & R. 42.

Such a payment, if made, would be considered in equity as a payment by Wallace on account of Robert Reed's share, and would be settled in the accounts of Wallace as executor of the surviving executor, he being entitled to receive all the rents.

But under no circumstances can the representatives of Wallace set up a sale to him against the administrators of Robert Reed.

The award made by the auditor to the administrator of Robert Reed, and the payments made by the administrator of Henry Reed to the administrator of Robert Reed, under the decree of the court, were right.

EMLÉN,

For Administrator of Robert Reed, dec'd.

PAPER BOOK.

STATEMENT.

It is submitted—

1. That William Reed has a right to show that the title of Costen and wife is fraudulent from facts, which although stated in the former Auditor's report, are neither presented fully or accurately, and are not made in any way the ground of the decision of the Auditor or Orphans' Court.

2. That many of the facts and points presented have not been previously in any way before the Court—and present an equitable ground for relief against payment to Costen and wife, who have been guilty of gross laches. These facts are fully set forth in the report of the Master. They may be succinctly stated as follows:

A suit in Equity was commenced in the Circuit of the United States, at Pittsburg, May Term, 1829, by one branch of the devisees of Henry Reed, against George Wallace, jun., for an account of the income, rents, &c., of the property of Henry Reed, in his possession and control as executor. An answer was filed to this bill in which no specific claim is made to the purchase of the said one-fourth of the Pittsburg house and lot, by the respondent. In one of the schedules annexed to the answer is a charge for \$750, for a payment made to Robert Reed, without date; and in another schedule is an apparent addition to it as originally filed in the handwriting of Mr. Biddle, counsel of the complainant, making this charge of \$750 against the respondent for money advanced to Robert Reed, with interest from December 24, 1812, the very day of the date of the deed by Robert Reed to George Wallace, jun., and for the very amount of the consideration money (\$750) alleged to have been paid for the said interest. In another schedule the respondent only charges himself with three-fourths of the rents of the house and lot in Pittsburg. By a bill of revivor and an agreement, Mrs. Costen, after the death of George Wallace, jun., and Robert Reed, are made parties to the proceeding, and a decree was made in favor of the complainants for \$2,900.

The following facts are reported by the Master, as the history of the proceedings, after the report of the auditor on the accounts of the administrator of Henry Reed, was filed.

June 16, 1846.—Exception to Auditor's report overruled and report confirmed.

December 26, 1846.—An affidavit for an appeal was made by J. H. Sewall, agent for Costen and wife. This appeal is not indexed. A signature under a blank was placed at the bottom of the page for a bond—which blank was not filled up until March, 1848.

A paper headed "Estate for Reed, deceased," filled up, "security for costs," was the only evidence on record to show that security had been entered. This was not indexed, nor was there anything on record to show that the security had been approved by the Court or by a Judge, as provided by law. The facts relative to the state of the record are fully set forth on page , and show gross laches on the part of the appellant, Costen and wife.

No certiorari was issued until March 22, 1848.

The money from the Pittsburg house was brought to Philadelphia by one Thomas Joyes, representing claimants on portions of it, and was put into the hands of Henry Chester and Joseph A. Clay, Esquires, and by them deposited in bank. Mr. Chester being the legal adviser of Mr. William Reed, and Mr. Clay of some of the other parties.

This deposit in the names of Chester and Clay, Trustees, was made because Joyes representing one-half of the estate having possession, was afraid the estate might not be settled as soon as he wished, if the money was paid to William Reed, the administrator, and although the administrator never agreed to such deposit, and thought he was entitled to the possession of the money, yet the arrangement seems to have been made by his counsel, Mr. Chester, to satisfy Joyes, and to get the money out of his hands.

In January, 1848, under the award of the Auditor, and decree thereon of the Orphans' Court, they paid over to Philip M. Price, administrator, the one-fourth of the proceeds of the Pittsburg house and lot, now claimed by Costen and wife. The money was never actually in the possession of William Reed—and previous to its payment an accurate search was made by Mr. Clay, having much experience in the Orphans' Court—to see if an appeal was taken by Costen and wife—he could find none; and upon his report, and with the consent and advice of Mr. Chester, the counsel of William Reed, the money was paid to P. M. Price, administrator.

The facts relative to the payment are fully set forth in the Master's Report, on pages

The following exceptions to the Master's Report was filed:

I. Because, upon the facts presented, the Master did not report that William Reed, the appellee, should be discharged from the payment of any sum of money to Costen and wife, the appellants, for their interest in the Pittsburg house, for the following reasons:

1. Because the record of the suit in Equity in Pittsburg, shewed that the sum of \$750, the alleged amount of the purchase money of

the said interest of Costen and wife in the house claimed by said Costen and wife as a credit for paid to Robert Reed, and not as purchase money interest.

2. Because, neither George Wallace, jr., nor ten in their respective answers to the bills filed in Pittsburg, set up any claim to the said one-fourth except so far as the same may be gathered from the report.

3. Because, if the Court are of opinion that (through whom Costen and wife claim,) by Robert one—the sum of \$750 was not deducted from the the Master; it having been paid out of the fund.

4. Because the payment made by William Reed Philip M. Price, administrator of Robert Reed amount now claimed by Costen and wife, was made Counsel, under a decree of the Orphans' Court of Philadelphia.

5. Because the appellants, Costen and wife, appeal as provided by law, and being guilty of perfecting it, the loss must fall upon themselves.

6. Because William Reed, administrator, never the money claimed by appellants, Costen and wife deposited in bank, in the joint names of the courtor, William Reed, and the counsel for Thomas other claimants; and was paid out by them with consent after due diligence had been used in examining Orphans' Court for an appeal.

II. Because the Master reports a balance of said William Reed, administrator.

the said interest of Costen and wife in the house at Pittsburg, was claimed by said Costen and wife as a credit for monies advanced or paid to Robert Reed, and not as purchase money for the said interest.

2. Because, neither George Wallace, jr., nor the wife of said Costen in their respective answers to the bills filed in the Equity suit at Pittsburg, set up any claim to the said one-fourth of the Pittsburg house, except so far as the same may be gathered from the schedules annexed to said report.

3. Because, if the Court are of opinion that the sale to Wallace, (through whom Costen and wife claim,) by Robert Reed was a valid one—the sum of \$750 was not deducted from the amount reported by the Master; it having been paid out of the funds of Robert Reed.

4. Because the payment made by William Reed, administrator to Philip M. Price, administrator of Robert Reed, deceased, being the amount now claimed by Costen and wife, was made under the advice of Counsel, under a decree of the Orphans' Court for the City and County of Philadelphia.

5. Because the appellants, Costen and wife, did not enter their appeal as provided by law, and being guilty of gross laches in not perfecting it, the loss must fall upon themselves.

6. Because William Reed, administrator, never had possession of the money claimed by appellants, Costen and wife, but the sum was deposited in bank, in the joint names of the counsel for the administrator, William Reed, and the counsel for Thomas Joyes, one of the other claimants; and was paid out by them with their advice and consent after due diligence had been used in examining the record of the Orphans' Court for an appeal.

II. Because the Master reports a balance of _____ against the said William Reed, administrator.

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ARGUMENT ON BEHALF OF WILLIAM REED,
ADMINISTRATOR.

I. The said William Reed claims to be discharged from payment to Costen and wife.

1. Because the record of the suit in Equity, at Pittsburg, showed that the sum of \$750, the alleged amount of the purchase money paid by Costen and wife, was claimed by said Costen and wife as a credit for monies advanced to Robert Reed, and not as purchase money; and

II. Because the said respective parties in their several answers to the bill in Equity, at Pittsburg, make no specific to the said one-fourth of the Pittsburg house, except as the same may be gathered from the schedules annexed to the bill.

The above two specifications may be considered together. The one shows conclusively that the \$750 was paid to Robert Reed, out of his own monies; and in the account Costen and wife claimed a credit for that amount. If they received such a credit, they have had their money back again, and Robert Reed is entitled to the one-fourth interest back also. By claiming the credit, they repudiate the sale. This item of \$750 appears clearly in one schedule, without date. In the other it is added in the handwriting of the counsel of complainants, and bearing interest from the very day of the date of the deed by Robert Reed to George Wallace, jun., December 24, 1812.

This last entry on the record was no doubt made when the bill of revivor against Mrs. Costen was filed, or when the consent decree of \$2,900 in favor of the complainants was made. It is on the record made in the handwriting of counsel of high standing. It is as much a part of the record as other papers in the cause in the handwriting of counsel—and in the face of it Mrs. Costen cannot claim the interest of which it is the alleged purchase money.

Moreover, neither she nor her former husband, George Wallace, jun., in their respective answers make any specific claim to the said interest in the Pittsburg house. This omission is very suspicious. It would not have been accidentally omitted. But it is said that William Reed cannot set up these matters.

1. Because of the former decree in this cause.

2. Because of the decree at Pittsburg.

1. Now the former decree in this cause could have been made on one point above, that was, the invalidity of the power of attorney by Robert Reed, and the deed made under it. It was really the point upon which the auditor below decided the case. Although referring to the record of the suit at Pittsburg, he neither states it accurately

nor rests on it at all as a reason for his decree. He Robert Reed was no party to that bill. He of revivor making Mrs. Costen a party. Will to require the auditor to put all the reasons the record, if one was sufficient.

This case occurs daily—a cause is ruled comes up on error—it is reversed and a verdict and on the new trial any new matter going be presented. Why should William Reed be of these reasons which the auditor did present.

2. The decree in the Pittsburg cause did tion into the situation of the parties there. was partly founded on the repayment to with interest paid to Robert Reed, on the cannot possibly claim the interest in the house after the original schedules were filed fourths of the rents. It is clear, that the Mrs. Costen and the title cannot both be in The Master, therefore, ought to have taken consideration in his report. If sustained, the account.

III. But if the Court should think the defeat Costen's title, still Robert Reed is \$750, in this account. It is claimed as taken back in making the decree at Pitt Reed received payment for his interest trustee alleges he bought it, but it is shown The Master should have allowed this credit

IV and VI. The fourth and sixth read together, because the payment was made of claimants under a decree of the Orphans' Court—the money being in the hands of An attachment might have issued to enforce

An appeal is not a supersedeas. A within twenty-one days, by statute, *provis costs is given*: Act 16th June, 1836—December, 1832—Dunlop, p. 482-3. An appeal only requires a supersedeas.

No payment can be made by an executor *security* is required from an appellant, error. An executor could have no answer case, but payment. The possibility of a

nor rests on it at all as a reason for his decision. He supposed that Robert Reed was no party to that bill. He states nothing of the bill of revivor making Mrs. Costen a party. William Reed was not bound to require the auditor to put all the reasons against Costen's title on the record, if one was sufficient.

This case occurs daily—a cause is ruled below on *one point*—it comes up on error—it is reversed and a venire de novo is awarded, and on the new trial any new matter going to defeat the action may be presented. Why should William Reed be deprived of the benefit of these reasons which the auditor did not think it requisite to present.

2. The decree in the Pittsburg cause did not preclude an examination into the situation of the parties there. If the decree of \$2,900 was partly founded on the repayment to Mrs. Costen of the \$750 with interest paid to Robert Reed, on the 24th December, 1812, they cannot possibly claim the interest in the house too. This decree was made after the original schedules were filed, accounting for three-fourths of the rents. It is clear, that the credit of \$750 claimed by Mrs. Costen and the title cannot both be right.

The Master, therefore, ought to have taken these matters into consideration in his report. If sustained, they defeat all claim to an account.

III. But if the Court should think these matters not sufficient to defeat Costen's title, still Robert Reed is entitled to a credit for the \$750, in this account. It is claimed as a payment to him, and it is taken back in making the decree at Pittsburg. Where has Robert Reed received payment for his interest in the Pittsburg lot? His trustee alleges he bought it, but it is shown that he never paid for it. The Master should have allowed this credit.

IV and VI. The fourth and sixth reasons may be considered together, because the payment was made of this money to the opposing claimants under a decree of the Orphans' Court, and by advice of counsel—the money being in the hands of counsel.

An attachment might have issued to enforce the decree of the Orphans' Court.

An appeal is not a supersedeas. A writ of error is, if entered within twenty-one days, by statute, *provided bail for debt, interest and costs is given*: Act 16th June, 1836—Dunlop, p. 721—not otherwise a supersedeas. An appeal only requires security for costs: Act 29th March, 1832—Dunlop, p. 482-3.

No payment can be made by an executor for three years—and no security is required from an appelliant, as in the case of a writ of error. An executor could have no answer to an attachment in such case, but payment. The possibility of an appeal is no answer.

JAM REED,

argued from payment

Pittsburg, showed purchase money paid and wife as a credit purchase money; and

several answers to the said one—may be gathered

together. The one to Reed, out of his claim a credit for they have had their the one-fourth in—repudiate the sale. In without date. In counsel of complain—date of the deed 24, 1812.

when the bill of consent decree of is on the record. It is as much the handwriting not claim the inte-

George Wallace, claim to the said y suspicious. It said that William

was made on one of attorney by really the point though referring es it accurately

The right of appeal does not prevent distribution during three years, without security to refund in case of reversal.—Koch's Appeal, 4 Rawle, 272.

Nothing but bringing up the record by certiorari can stay the proceedings below.—Walker's Appeal, 2 Dall, 190.

Even after certiorari issued and affidavit made for an appeal—the record remains with the Court below, and the appeal is not perfected. Chew's Appeal, 9 Watts & S., 151.

Even upon the reversal of a writ of error, restitution in Equity is not matter of right, but of discretion.—Fitzalden vs. Lee, 2 Dall., 205; 1 Yeates, 160, 207.

The Court is not bound ex. deb't to justitizæ to award restitution.

Where the Court reversed a judgment on a sci. fa., under which defendant's land was sold, and a part of the money paid to other judgment creditors, and part to plaintiff, the Court refused to award restitution, but ordered the money brought into Court to await further order.—Kirk vs. Eaton, 10 S. & R., 103; Baker vs. Smith, 4 Yeates, 185.

On reversal the law raises an obligation on the party receiving the benefit of the judgment to make restitution. And an action may be sustained against such party to recover it back.—(6 Cowen, 297.)—Bank U. S. vs. Bank of Wash., 6 Peters, p. 8.

Here Philip M. Price, administrator, received the money and the benefit of the decree below, and he is the proper party to look to for the money.

Whatever is done under a judgment in force is valid and binding, even though notice of a writ of error is binding—otherwise money is tied up for seven years.—Bank U. S. vs. Bank of Wash., 6 Peters, p. 8.

Whatever is done, even under a void assignment, without fraud, is valid.—Weber vs. Samuel, 7 Barr., 499; Stewart vs. M'Ninn, 5 W. & S., 100.

This payment to Price was not only under a decree of the Orphans' Court, but by advice of counsel also.

The money was actually deposited in the name of the counsel of William Reed, and the former Auditor. It was paid after a full examination of the record by the latter—which examination was reported to the counsel of William Reed, and was the foundation of his advice. He could have given no other advice to his client, William Reed, but to pay it. Reed rather objected to the haste, but his counsel said all was right.

There is no fraud alleged. The counsel was of high standing, and reputed a cautious and a well trained lawyer, accustomed to business of that character.

The client placed implicit confidence in him.

The payment was a matter of legal discretion entirely. The client could know nothing of his rights or his risk in making payment.

The best proof of the sincerity of the counsel, as one of the Trustees, for the administrator.

This doctrine has recently received a thorough support.—Miller's Appeal, December, 1849.

It is submitted that the doctrine laid down in that case, rules this, and protects William Reed.

V. The money was paid in consequence of the costs and wife, in not perfecting their appeal, and the consequences. The affidavit for a proposed payment, and twenty-one months after decree.

No bond given, nothing on record to show error.

To bind third persons, the record must show that the lien of a judgment will claim from the execution if it appear on the docket—otherwise the term of the judgment.—Black vs. Dobson.

Third persons are not bound to look beyond the Prothonotary has made a mistake in payment of damages—the plaintiff is bound as although the paper filed is correct.—Crutcher vs. Wharton, 340.

Surety for stay of execution must be approved, and filed, and an entry made on the docket.

Eichman vs. Belvidere Bank, 3 Wharton, 68. The entry of the name of a defendant in a judgment is not sufficient to affect third persons—although notice is given.

Zimmerman vs. Briggins, 5 Watts, 186.

It is the duty of a plaintiff to see his judgment is correct, and if a distinguishing initial letter is omitted, he is liable.

Wood vs. Reynolds, 7 W. & S., 400.

The Costs took no trouble at all about their affidavit, not indexed—they had not the approval of the docket—they entered no bond before they took out no certiorari—and when the examination for an appeal, and none found—should be paid by an administrator a second time.

It never would have been paid if the appeal had been entered by them, and if the Court refuse the payment only be in consequence of their gross laches.

distribution during three
 reversal.—Koch's Appeal,
 190.

certiorari can stay the pro-
 ceedings for an appeal—the
 appeal is not perfected.

restitution in Equity is
 granted vs. Lee, 2 Dall.,

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The best proof of the sincerity of the counsel is the payment by
 him, as one of the Trustees, for the administrator, William Reed.

This doctrine has recently received a thorough examination in this
 Court.—Miller's Appeal, December, 1849.

It is submitted that the doctrine laid down by the Chief Justice in
 that case, rules this, and protects William Reed from a second pay-
 ment.

V. The money was paid in consequence of the gross laches of
 Costen and wife, in not perfecting their appeal, and they must bear
 the consequences. The affidavit for a proposed appeal, as it reads,
 was made six months after decree—not perfected till two months after
 payment, and twenty-one months after decree.

No bond given, nothing on record to shew appeal.

To bind third persons, the record must shew the right claimed.
 The lien of a judgment will claim from the expiration of a stay of
 execution if it appear on the docket—otherwise from the first day of
 the term of the judgment.—Black vs. Dobson, 11 S. & R., 94.

Third persons are not bound to look beyond the entry on the docket.
 If the Prothonotary has made a mistake in putting down an assess-
 ment of damages—the plaintiff is bound as respects third persons,
 although the paper filed is correct.—Crutcher vs. Commonwealth, 6
 Wharton, 340.

Surety for stay of execution must be approved by a Judge in writ-
 ing, and filed, and an entry made on the docket—otherwise it is void.
 Eichman vs. Belvidere Bank, 3 Wharton, 68.

The entry of the name of a defendant in a judgment is not amend-
 able to affect third persons—although notice not of record was given.
 Zimmerman vs. Briggins, 5 Watts, 186.

It is the duty of a plaintiff to see his judgment rightly entered—
 if a distinguishing initial letter is omitted, it is no notice to third
 persons.—Wood vs. Reynolds, 7 W. & S., 406.

The Costens took no trouble at all about their appeal. They made an
 affidavit, not indexed—they had not the approval of the security en-
 tered on the docket—they entered no bond before payment by Reed—
 they took out no certiorari—and when the money was paid after
 examination for an appeal, and none found—they ask that this money
 should be paid by an administrator a second time.

It never would have been paid if the appeal had been properly en-
 tered by them, and if the Court refuse the payment to them, it will
 only be in consequence of their gross laches.

EMLEN, for Wm. Reed.

handwriting of the late Mr. Richard Biddle, who was the counsel of the complainants:

Add this sum charged to him by Geo. W. jr.,	\$750 00
Land taken by him at	1250 00

Interest on the two last items, viz.: on \$750 from	
24th December, 1812, and on \$1250, from 1st	
July, 1813,	1693 37

This date, *December 24th*, 1812, from which interest is calculated, and the sum of \$750, it will be remembered, are the exact date and sum mentioned in the deed from the devisee Robert Reed to this same George Wallace; and hence Mr. Emlen raises an argument that Wallace paid Reed with his own moneys, or that Reed still remained equitable owner of the land. On the other hand, it appears by other schedules, of charge, not necessary to be annexed, that Wallace nowhere charges himself with more than three quarters of the rent of this house; and it does not appear when, or under what authority, impression or circumstance this entry was made by Mr. Biddle, who, as I have stated, was the counsel of the party making the charge, and not of Wallace's representatives. The suit itself ended in an amicable decree, the basis of which can't now be discovered, by which Mrs. Costin paid to the complainants about \$2900.

Another part of the case which, as I understand it better, and as it has not been presented or adjudged in any form before, I bring with less reluctance before the Court, is this:

With the exception of about \$2800 which had been received by the administrator, and was invested in stocks bearing interest, the money for which the administrator sold the house and lot in Pittsburgh was received there, with the administrator's assent, by a lawyer of Louisville, Kentucky, named Joyes, who represented certain distributees of old Reed in the west, entitled to about half of the whole distributee-fund. Among these distributees were the representatives of *Robert Reed*, the person who had sold the one-fourth part of the house to George Wallace; and of whom Mr. P. M. Price, of this city, had become the administrator. Joyes came on here, stopping at Pittsburgh, where he received the money, and bringing it on with him to this city. When he got here he applied to Mr. J. A. Clay, who had previously been the auditor in the case, and as such was thoroughly acquainted with the whole matter, to become his counsel, and Mr. Clay became so. Joyes, the testimony informs us, when he got here, was very unwilling to pay the money in his hands to the administrator, who he said would 'delay it a couple of years—would fight it out;' whereas, he wanted his share at once, in order that he might take it and go

home. The administrator was anxious that he should not. It was finally counsel that the money should be deposited with Mr. Joyes, and Mr. Chester, so that "neither party could be injured." The administrator was highly indignant at his feeling more than once, said to one of his friends—"that for the first time I have been impeached—that he always had been impeached—and thought he still was, and that Mr. Reed, and thought he still was, and that Mr. Joyes, the testator, was a very pertinacious man," he "was his money, urging and urging, and was having the money in his hands and in Mr. Joyes' hands, Mr. Chester said last persuaded him to have it deposited with Mr. Joyes and Mr. Clay. The administrator, so that neither party could be injured." The administrator spoke of the matter to Mr. Joyes, and Mr. Clay, who said he knew it was "for the sake of harmony." The administrator, who was apparently a person of great age, and apparently a person of great intelligence, seems to have relied on his memory especially, and personally, to have a good deal of the same thing in a less degree. The purchaser paid the money to Mr. Joyes and Mr. Clay. The administrator said it ought to have been deposited with Mr. Joyes and Mr. Clay. I made no part in the matter. They would deposit it to such time as they would see fit. It was deposited in the name of "Joyes and Mr. Chester." It does not appear to have been deposited with Mr. Joyes's trustee with Mr. Joyes's counsel, "to the advantage of the other."

The money being thus in the hands of Mr. Joyes and Mr. Chester, and most of the distributees very greedy in his single person represented one half of the money, he was very speedily set on foot by Joyes to get the money in January, 1848, at Mr. Chester's auditor, rejecting Mrs. Costin's claim, and phans' Court, in June, 1846, and not in Pittsburgh, where she lived; her counsel

Biddle, who was the counsel of

eo. W. jr., . . . \$750 00
. 1250 00

: on \$750 from
\$1250, from 1st

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which interest is calculated, are the exact date and see Robert Reed to this same a raises an argument that or that Reed still remained er hand, it appears by other e annexed, that Wallace no hree quarters of the rent of n, or under what authority, e made by Mr. Biddle, who, e party making the charge, The suit itself ended in an ow be discovered, by which t \$2900.

understand it better, and as ay form before, I bring with

h had been received by the earing interest, the money and lot in Pittsburgh was ent, by a lawyer of Louis- nted certain distributees of of the whole distributee- representatives of Robert urch part of the house to Price, of this city, had be- re, stopping at Pittsburgh, it on with him to this city. Clay, who had previously as thoroughly acquainted sel, and Mr. Clay became an he got here, was very the administrator, who he ld fight it out; whereas, t he might take it and go

home. The administrator was anxious to have it, and Joyes as anxious that he should not. It was finally proposed by Joyes or his counsel that the money should be deposited in the joint names of Mr. Clay, Joyes' counsel, and Mr. Chester, the counsel of the administrator, so that "neither party could take advantage of the other." The administrator was highly indignant at the proposition; expressed his feeling more than once, said to one person that it was "a slur on him"—to another, "that for the first time in his life his integrity had been impeached—that he always had been the administrator of old Mr. Reed, and thought he still was, and did not understand why the money was taken out of his hands and deposited in the names of other persons." Mr. Joyes, the testimony of his counsel states, was "a very pertinacious man," he "was here," "very urgent, wanting his money, urging and urging, and wanting to go home." Joyes thus having the money in his hands and unwilling to pay it over to the administrator, and the administrator, in his turn, unwilling to have it in Mr. Joyes' hands, Mr. Chester smoothed the matter down and at last persuaded him to have it deposited in the joint names of Messrs. Clay and Chester. "I," says Mr. Clay, "being considered as representing Joyes, and Mr. Chester as representing Reed, (the administrator,) so that neither party could take advantage of the other." The administrator spoke of the matter with dissatisfaction to Mr. Chester, who said he knew it was "wrong," but that it was done for the sake of "harmony." The administrator, who is seventy-four years old, and apparently a person of very formal but rather unintelligent probity, seems to have relied implicitly on Mr. Chester. His faculties, and his memory especially, seemed to me, as I examined him, personally, to have a good deal failed. The written testimony shows the same thing in a less degree. However, he says about this transaction: The purchaser paid me for the land: "It was rather paid to Mr. Joyes and Mr. Clay. They were not acting for me. Mr. Chester said it ought to have been paid into my hands, but that it was the same thing. I made no particular objection to it. They said they would deposit it to such time as it was paid off." The money was deposited in the name of "Joseph A. Clay and Henry Chester, Trustees." It does not appear to have come into the administrator's hand at all, nor into his counsel's hands in any way except as a co-trustee with Mr. Joyes's counsel, "where neither party could take advantage of the other."

The money being thus in the hands of Messrs. Clay and Chester, and most of the distributees very greedy, Mr. Joyes especially, who in his single person represented one half of them, arrangements were speedily set on foot by Joyes to get his money. A meeting was fixed in January, 1848, at Mr. Chester's office. Mr. Clay's report, as auditor, rejecting Mrs. Costin's claim, had been approved by the Orphans' Court, in June, 1846, and notice of it given to her counsel at Pittsburgh, where she lived; her counsel here having died just about

the time of the confirmation. Whether Mr. Chester, who is dead, examined the records of the Orphans' Court to see if an appeal had been made by Mrs. Costin, don't appear. Mr. Clay, who had been the auditor, who is intimately acquainted with proceedings in the Orphans' Court, and who from his former position in the case, unconsciously to himself, seems to have brought into it, in the estimation of the administrator especially, the lingering odour of judicial impartiality—undoubtedly did examine them. He went to the clerk's office, and looked at its docket, a book which I have, myself, looked at just now, and which appears to be a large formal minute book, recording in more or less detail all proceedings of every sort which take place in the Orphans' Court. (The Court had best see this book.) Under the date of November 20th, 1846, Mr. Clay found this entry:

“138. *In the matter of the estate of ——— Reed, deceased,*”

and nothing else. The entry is obviously an entry begun and not finished, and looks like either an entry not yet perfected, or like a blundering entry put there by mistake and intended to be scratched out. Not far from it is, however, a similar imperfect entry. Mr. Clay looked at the paper on file, No. “138,” and found a piece of paper in a handwriting unknown to him, with these words:

“*In the matter of Reed's estate, security for costs.*”

He then asked the deputy clerk, who had made the entry on the docket, what it and the paper meant. The clerk said that he did not know; and as there was, at this same time, the estate of another Henry Reed in process of settlement, Mr. Clay concluded that there was nothing showing an appeal in the case, and that the entry related to the estate of the other Reed. Mr. Clay did not look at the “Miscellaneous Bond Book,” as it is called, where there stood in the “*Estate of Henry Reed, deceased,*” an affirmation by J. Harrison Sewall, signing himself “*agent for H. Costin and ux.*,” “*that the appeal proposed to be taken in this matter is not intended for delay.*” Below which affidavit and at the bottom of a page, with the exception of the affidavit, entirely blank, was a simple signature, “J. Harrison Sewall;” no obligation, nor any thing of any sort being then written above it, though about fifteen months afterwards, when the money had all been paid over to the distributees a bond was put there.

Mr. Clay, after this examination, went down to Mr. Chester's office, a place which had been appointed for a general meeting of all parties, and where, with Mr. Chester, he found Mr. Eli K. Price of this bar, representing Philip M. Price, the administrator of *Robert Reed*, the vendor of the fourth to Wallace. Mr. Chester inquired fully about the appeal. Mr. Clay told him that he could find no trace of an ap-

peal; but stated exactly all he had seen, which he could not explain. “Mr. Reed, very unwilling to settle. He asked decide was safe. Mr. Chester assured him he was him that he ran no risk. Joyes was her money, urging and urging and wanting to vice of Mr. Chester, he settled and the m-

The administrator's son expressly says his father, told Mr. Chester when the payment thought there was too much precipitation tioned this claim of Costin's as the ground 'pression' was Mr. Chester thought so for thing about a refunding bond or bond of administrator's son said he would like to s which, if it was ever taken is not now to b it should be. Mr. Chester saying that t the witness “felt easier.” The administ his payments: “They were all paid under my counsel. I never made any payment was made by Mr. Chester's advice. I alv counsel. The payment stated in the ac Philip M. Price, administrator of the es made under Mr. Chester's advice. All distributed and paid by me. I don't ren under a decree of the Orphans' Court, but vice of my counsel, Mr. Chester.” The sale of the house, and which, as I have in the names of “Joseph A. Clay and was paid directly to the distributees on t “Joseph A. Clay and Henry Chester, I administrator not being on any one of which was paid to him for himself and as tributees.

Among these payments, as the Court to Philip M. Price, the administrator of R conveyed this quarter part of the house t this payment was included the fourth part administrator *de bonis non* of old Reed, house and lot, and to which the Court I wife are entitled. Price handed it over to

The whole amount paid by the Trusti butees was \$3,164 15; and the amount pa ministrator in his distributory and administ All parties, the administrator as well as the checks, endorsed them, and were pai derable amount in stocks held in the ad interest, the proceeds of this house, paid

either Mr. Chester, who is dead, or Mr. Price, who is in the Court to see if an appeal had appeared. Mr. Clay, who had been appointed with proceedings in the Orphan's Court, was in the former position in the case, unconcerned with it, in the estimation of the Orphan's Court, and was not suffering odour of judicial impartiality. He went to the clerk's book which I have, myself, looked at, and found a large formal minute book, recording every sort which take place in the Orphan's Court. (See book.) Mr. Clay found this entry:

of ——— *Reed, deceased,*

an entry begun and not yet perfected, or like a similar imperfect entry. Mr. Price, "138," and found a piece of paper, with these words:

Rate, security for costs."

who had made the entry on the day. The clerk said that he did not know the time, the estate of another Orphan's Court. Mr. Clay concluded that there was a case, and that the entry related to the Orphan's Court. Mr. Clay did not look at the "Miscellaneous" book, where there stood in the Orphan's Court an affirmation by J. Harrison *H. Costin and ux.*, "that the entry is not intended for delay." The Orphan's Court is a simple signature, "J. Harrison," and nothing of any sort being then entered in the Orphan's Court months afterwards, when the Orphan's Court distributees a bond was put

down to Mr. Chester's office, and a general meeting of all parties, was held. Mr. Eli K. Price of this bar, Orphan's Court administrator of *Robert Reed*, the Orphan's Court administrator, inquired fully about the Orphan's Court and could find no trace of an ap-

peal; but stated exactly all he had seen, and particularly the entry which he could not explain. "Mr. Reed," says Mr. Clay, "seemed very unwilling to settle. He asked decidedly, more than once, if he was safe. Mr. Chester assured him he was. I believe we all assured him that he ran no risk. Joyes was here very urgent, wanting his money, urging and urging and wanting to go home. Under the advice of Mr. Chester, he settled and the money was paid."

The administrator's son expressly says that *he*, in the presence of his father, told Mr. Chester when the payment was proposed that he thought there was too much precipitation in the matter; and mentioned this claim of Costin's as the ground of his fear. His 'impression' was Mr. Chester thought so too. Mr. Chester said something about a refunding bond or bond of indemnification, which the administrator's son said he would like to see; but never did see, and which, if it was ever taken is not now to be found in the office where it should be. Mr. Chester saying that this bond would be sufficient the witness "felt easier." The administrator, himself says, of all his payments: "They were all paid under the advice of Mr. Chester, my counsel. I never made any payment to any body but such as was made by Mr. Chester's advice. I always acted by the advice of my counsel. The payment stated in the account to have been made to Philip M. Price, administrator of the estate of Robert Reed, was made under Mr. Chester's advice. All this \$4,000 or \$5,000 was distributed and paid by me. I don't remember whether it was paid under a decree of the Orphan's Court, but it was paid under the advice of my counsel, Mr. Chester." The money, derived from the sale of the house, and which, as I have said, was deposited in bank in the names of "Joseph A. Clay and Henry Chester, Trustees," was paid directly to the distributees on the joint checks of the same "Joseph A. Clay and Henry Chester, Trustees;" the name of the administrator not being on any one of the checks except on one which was paid to him for himself and as administrator of other distributees.

Among these payments, as the Court will gather, was a payment to Philip M. Price, the administrator of Robert Reed, the person who conveyed this quarter part of the house to George Wallace; and in this payment was included the fourth part of the sum received by the administrator *de bonis non* of old Reed, on the second sale of the house and lot, and to which the Court has decided that Costin and wife are entitled. Price handed it over to Joyes.

The whole amount paid by the Trustees to Joyes for his distributees was \$3,164 15; and the amount paid by the Trustees to the administrator in his distributory and administrative relation, \$2,154 ⁶⁰/₁₀₀. All parties, the administrator as well as the other distributees, took the checks, endorsed them, and were paid. There was also a considerable amount in stocks held in the administrator's name, drawing interest, the proceeds of this house, paid over at the same time.

On the 18th March, 1848, two months and more, after all the money had been thus paid over, a certiorari, at Mrs. Costin's instance, came from this Court, the record was taken up, the case argued, and the decree made under which the matter comes to me.

I have in my report under the decree, merely reported the amount produced by the fourth part of the sale of the house and lot; without charging interest on any part of it. About \$700 of the \$2,007 01, the one-fourth paid away by the administrator, was invested and drawing interest. On this part Mr. McMurtrie asks interest.

The fourth part of the proceeds of the house and lot is \$2,007 01
Interest on \$700 from say July 1, 1846, when the decree
of the Orphans' Court was made, to this date, is . . . 157 50

The total, \$2,164 51

The Court has thus the means of making their final decree, on such principle as they deem just; either giving interest on the \$700 or not, as they think just.

I do not form any opinion how far the facts I have thus stated ought to free the administrator from paying either the principal of this money, or the interest on the \$700 to Mrs. Costin. But as it is a hard case upon the administrator, who is an old man, I have not felt at liberty to decline complying with the request of his counsel, and of reporting a case that he may have the judgment of the Court upon it. I have done it also, in order to save the Court the trouble of picking it out from the evidence taken before me, and which, I suppose, I was bound to take down.

JOHN WILLIAM WALLACE,

Master for the Supreme Court of Pennsylvania.

April 8th, 1850.

communications from Dunlop afterwards, through Mr. Sewell, I believe. I can't tell why the certiorari was not taken out until March, 1848, except that I expected Mr. Dunlop himself, and didn't know enough about the estate.

Re-examined.—At the time the affidavit was made, I was not a member of the bar of the Supreme Court.

Sworn, &c. (Signed) D. W. C. MORRIS.

Argument of the Appellee, on the Motion to quash the Appeal.

The Act of Assembly of March 29th, 1832, Sec. 59 Purdon's Dig., p. 896, is as follows :

“ Any person aggrieved by the definitive sentence or decree of the Orphans' Court, may appeal from the same to the Supreme Court, provided that the party appealing shall give security, by recognizance, with sufficient security, in the Orphans' Court, or before one of the Judges thereof, conditioned to prosecute such appeal with effect, and to pay all costs that may be adjudged against him, and shall make oath, or affirmation, that the appeal is not intended for delay ; which appeal thenceforth shall stay all proceeding in the Orphans' Court, until the same be determined in the Supreme Court, and the record be returned to the Orphans' Court. No appeal shall be allowed, unless the same be entered, and security given within three years after the final decree of the Orphans' Court.”

The appeal entered in the Orphans' Court was never completed, inasmuch as the Bond was not filled up for more than fifteen months after its signature, and then filled up in the absence of the *surety*.

It may be well enough to fill up blank printed official Bonds a day day or two after their signature, when busy in the office, as alleged in excuse by the Clerk of the Court.

This Court is now asked to approve of a recognizance not printed, but entirely blank, and filled up in the blank fifteen months after its signature.

If this be done, it would be better to have no security at all.

No suit could be maintained on a recognizance so executed, because it is not the deed of the recognizar.

The certiorari was not taken out until March, 1848, and the administrator had, in the meantime, paid under the decree of the Orphans' Court.

HENRY REED'S ESTATE.

COSTEN'S APPEAL.

MOTION TO QUASH THE APPEAL.

Statement.

June 16, 1846.—Exceptions to the Report of the Auditor overruled, and report confirmed.

December 26, 1846.—An affidavit for an appeal made, and bond signed as stated below.

January, 1848.—The appellee paid over to P. M. Price, Auditor, the amount awarded to him under the decree in the Orphans' Court.

March 22, 1848.—Certiorari issued to the Orphans' Court.

The following is a copy of the affidavit and recognizance upon the appeal.

ESTATE OF HENRY REED, DECEASED.

J. Harrison Sewell, being duly affirmed according to law, saith, that the appeal proposed to be taken in the matter, is not intended for delay.

J. HARRISON SEWELL,
Agent for J. H. Costen, et. ux.

Sworn and subscribed to, before }
me, December 26th, 1846. }

Jno. A. J. LEWIS.

J. Harrison Sewell, agent for J. H. Costen, et. ux., having appealed from the final decision of the Orphans' Court of Philadelphia County, in the matter of the estate of Henry Reed, deceased, and who acknowledges himself indebted unto the Commonwealth of Pennsylvania in the sum of one hundred dollars, to be levied of his property, rent, and personal, to be paid said Commonwealth, the certain attorney or assigns,

Upon this condition, that if the said J. Harrison Sewell, agent as aforesaid, shall prosecute his said appeal with effect, and to pay all costs that may be adjudged against him in the Supreme Court of the

State of Pennsylvania, then this obligation to be void, or else to be and remain in full force and virtue.

Witness our hands and seals this 26th day of December, A. D. 1846.

J. HARRISON SEWELL.

*Sealed and delivered in }
presence of }*

Jno. A. J. Lewis.

The part in italics was filled up in March, 1848, in the absence of J. Harrison Sewell.

The following depositions have been taken for the appellee.

Henry Reed's Estate.—Costen's Appeal.

Depositions of witnesses in the above case, taken before Thomas D. Smith, an Alderman, &c., on the 25th day of January, 1850, at five o'clock, P. M. George Emlen, Jr., Esq., and R. C. McMurtrie, Esq., attending as counsel.

Andrew J. Lewis being duly sworn says:—I was the Deputy Clerk in the Orphans' Court office, in the year 1846. I recollect the circumstance of a gentleman coming there who was an agent for one of the parties in Reed's Estate. He signed his name J. Harrison Sewell, to a blank sheet of paper in the Miscellaneous Bond Book. I should suppose this was signed the day the affidavit for an appeal in Henry Reed's estate was made, which was about the 26th of December, 1846. From a date on that same paper, which I made, the body of the bond was not filled up until sometime in March, 1848. I am not certain, but from my own handwriting on the margin of the bond, it appears to have been filled up in March, 1848. I have no particular recollection apart from that memorandum. I don't know that I had any conversation with any gentleman in reference to filling up that bond. I think the reason why the bond was not filled up on the day the affidavit for an appeal was made, was because the security was not approved—and all I recollect about the approval of the security was that Mr. Morris brought a small piece of paper, about the size of my hand, with these words on it, as near as I can recollect: "Security for costs." I think it may have been headed, "estate of Henry Reed—security for costs." Nothing else on that memorandum that I recollect. According to my recollection the bond was signed before the security was approved.

Cross-examined by Mr. McMurtrie.—When I filled up that bond, I was Deputy Clerk. I performed all the business of the office. I was in the habit of filling up the bonds. In other instances in that office, I have had blank bonds signed to be filled up afterwards, in cases where securities were approved—as in Court days when we were busy, the bonds have been signed and I have filled them up afterwards—those were printed bonds—blank printed bonds. I understood that he was to sign the bond, and on the approval of the security, I was to fill up the bond.

JNO. A. J. LEWIS.

Sworn and subscribed before }
me, January 25, 1850. }

THOMAS D. SMITH, Alderman.

Deposition taken on behalf of the Appellant.

De Witt C. Morris, Esq., being duly affirmed, says:—I was acting in 1846, at the request of James Dunlop, of Pittsburgh, as counsel for the appellants. I saw the bail approved in this case by the Court—Judge King presiding. I was at the Clerk's office when the bail signed the bond in blank: I think it was done at the suggestion of Mr. Lewis, the Clerk, who said that he frequently had them signed, and filled them up at his leisure. The bail told him to fill it up in whatever way it was required to be done by the law, and he was content, and for whatever amount was necessary. Mr. Lewis said he would do so.—My impression is, that Mr. Sewell, the bail, was going to leave town that day, and it was done in a good deal of a hurry. I do not remember when he was approved by the Court. It seems to me as one transaction. The reason why the bail was entered, and the certiorari not issued at that time, was because the bail was about to leave town, and I was unwilling to issue the certiorari without instructions on the subject from Mr. Dunlop; but I wanted the bail and everything ready for issuing it. Mr. Robert Hare, Jr., had been the counsel for the parties, who was then dead.

Cross-examined by Mr. Emlen.—The bail was entered either under Mr. Sewell's or Mr. Dunlop's instructions. I had not been at the bar very long. I didn't know anything about the case. I didn't know for whom the appeal was to be taken; neither did Mr. Sewell; but he said that Mr. Dunlop would give me full information on the subject.—Mr. Dunlop finally issued the certiorari in my name. I had several

Harry or Henry Reed made his will in
Philadelphia 11th Sept. 1793. Recorded in Cincinnati
Probate No. 4.

He devises $\frac{1}{4}$ of his estate to his Bro. James
of Dury, with the provision that if James
die before he, then he devises to his own children.

He devises \$100. to Eleanor Elliott Martha
Patten & Elizabeth Wife, each, tho he

devises $\frac{1}{4}$ of his estate to his son James
Reed, by Eleanor Elliott $\frac{1}{4}$ to his son
Henry Reed by Martha & $\frac{1}{4}$ to his son
Robert Reed by Elizabeth Wife.

He appoints George Wallace of Philadelphia
& Andrew Kennedy of Philadelphia his
Executors with power to collect his debts,
sell his houses lands, & to place each
child's share of money at Int. and
that interest appropriated for his education
till he can receive his legacy &c.

There is I am informed a valuable
piece of property in Cincinnati, near
the Canal Landing which belongs to
the Estate of Henry Reed, it has been
claimed perhaps by some of the legates
& used to the entire exclusion of the
others. Mr. Wright an ally of that
Man made inquiry into it some 3 or 4
years since, & then manifested some
dilemma to find out Reed's heirs. they are
now anxious to enquire into, & some
search to be made. Mr. Wright, perhaps
can give the information; or refer to a
case which depended in Court in Cincinnati
on the subject. Please find it out.

J. J.

53 X 33

Receipt for
Search in Cincinnati
July Term 1822 - Lot
Wood & no 37
 } Debris
Starbuck & Co. in Hamilton
Co. Ohio.
What claim had Reed to this
Lot? & nothing!

The Filson Historical Society

Know all men by these presents, that William Henry Reed who formerly resided in Fort Pitt in the State of Pennsylvania, but lastly of Louisville in the State of Kentucky in North America deceased,

by his last Will and Testament in writing and duly executed as a reference thereto had well fully shew, did leave allow and bequeath the one fourth part of all his Estate, Goods and chattels real and personal

which he did possessed of to James Reed late of Ballykelly in the Parish of Jamlaughtfinlagan in the County of Londonderry in Ireland his lawful Brother (now deceased) to be disposed of by him as he thought proper. And Whereas, he the aforesaid James Reed late of Ballykelly by his last Will and Testament made in writing bearing date the fifth day of October One thousand eight hundred and six, and to which he constituted Thomas Mitchell of Drumacanny Robert Morrison of Barnakelly and his oldest son Arch^d. Reed his Executors, as by said Will may appear did give and bequeath all his right, title and interest in and to the Estate, Goods and chattels of the said Henry Reed formerly of Fort Pitt and Kentucky aforesaid, his Brother, deceased, to be equally divided share and share alike, between his four sons, viz: Archibald, Henry, James and William Reed and his Daughter Mary Reed otherwise Wark, and her son James Wark. And in case of the death of either of said persons without lawful heirs, then and in such case all such parts to return to the surviving legatees to be divided in like manner amongst them their heirs and assigns, for their proper use and behoof. And Whereas, the said Arch^d. and James Reed two of the above named legatees having since died intestate without heirs and their property or claims to the said legacies returning to the survivors. Now Know Ye, that we the said Mary Reed otherwise Wark, William Wark her husband, & James Wark their son, (the latter with the consent of his Father and Mother the said William and Mary Wark,) all of Ballykelly in the Parish of



Samlaughtfinlagan in the County of Londonderry in the United Kingdom of Ireland, Have made, ordained, constituted and appointed, and by these presents, Do make, ordain, constitute and appoint Henry Reed now of Glaprey in the Parish of Samlaughtfinlagan and County of Londonderry aforesaid: one of the above named Legates and administrator to the last Will and Testament of said James Reed his Father deceased, our true and lawful attorney for us and in our names, and for our proper uses and benefits, to ask, demand, sue for, recover and receive of and from all and every such person or persons residing in any of the United States of America, as may now or hereafter have hold occupy, possess or enjoy any sum or sums of money, Estate, goods or chattels belonging to the said Henry Reed formerly of Fort Pitt and Kentucky in North America deceased, to which we are for our parts lawfully entitled to by the last Will & Testament of the aforesaid James Reed late of Ballykelly deceased, and our said attorney to have use and take all lawful ways and means in our names or otherwise for the recovery of said legacy or estate goods and chattels, by attachment, arrest, distress or otherwise and for him to settle and agree for the same with all persons concerned (as the case may be) and acquittances & other discharges regularly for the same, for us and in our names to make, sign, seal and deliver and to do all other lawful and reasonable acts and things whatsoever of and concerning the said Legacy, as full and in every respect as we ourselves might or could do were we personally there present at the doing thereof. Ratifying and confirming and by these presents fully allowing whatsoever our said attorney (Henry Reed) shall in our names lawfully do or cause to be done in and about the premises by virtue of these presents. In Witness Whereof, we have hereunto set our hands and seals, this twelfth day of May One thousand eight hundred and fifteen, and in the fifty fourth year of the Reign of our Sovereign Lord

George the Third
Kingdoms of Great Britain
of the faith and
Signed, Sealed
in the presence of
William Ellis M^r

City and Liberties
of
Londonderry



many Mark, My
executing parties
McKim subscribed
well as this aff
of his handwriting
John McKim





Allegheny County
I.
De
ce
con
of attorney of Mary
Recorded 19th July
In Testimony Whereof
my Official seal.


George the Third by the Grace of God King of the United Kingdoms of Great Britain and Ireland. Defender of the faith and so forth.

Signed, Sealed and Delivered in the presence of, John McKim.

William Ellis M^cK. corner of the City of S. Derry

Mary ^{her} ~~mark~~ ^{mark} 

William Mark. 

James ^{his} ~~mark~~ ^{mark} 

City and Liberties of Londonderry.



John McKim, of the City of Londonderry maketh oath, and saith he is a subscribing witness to the foregoing Letter of Attorney, and that he saw the same duly executed by Mary Mark, William Mark, and James Mark the executing parties thereto, and that the name John McKim subscribed to the said Letter of Attorney as well as this affiat is this Depts proper name and of his handwriting.

John McKim



Sworn before me at the City of Londonderry this twelfth day of May 1815. In Testimony Whereof I have hereunto subscribed my name and affixed my seal of Office M. S. Hill. Mayor.

Allegheny County, S.S.

J. Samuel Roseburgh Recorder of Deeds for and for said County. Sincerely certify, that the above is a true and correct copy from the Record of a Power of attorney of Mary Reed or Mark et al. to Henry Reed Recorded 19th July 1821. in Deed Book C. 2nd Vol 28. page 347. In Testimony Whereof I have hereunto set my hand & affixed my Official seal. this 20th November 1847

Samuel Roseburgh
Recorder

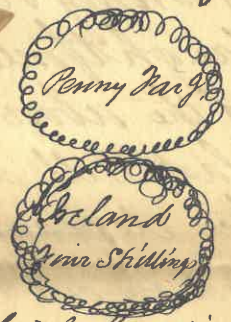
This is the Power which Henry Reed, Son of James in Ireland, & nephew of Testator, acted about Pittsburgh, after the death of George Wallace j^r, who succeed his father Geo. Wallace Sen^r as Ex^r. or adm^r. of Henry Reed Testator, And this Henry, & his lawyer Selden of Pittsburgh embrogged & wasted of Henry Reed's estate, most that Wallace left undestroyed & recovered & embrogged about \$2900 or \$3100 which the received from Wallace on the compromise, or Compounding a Lien which this Henry instituted ag^t. Wallace j^r. which amt. seems to have been settled by Wallace's wife as executrix. She married Rev. Cotten Methodist minister, & she set up a claim in the probate court in Phila. to Robert Reed's interest in the lot & house on 2^d Street in Pittsburgh which had been sold by William Reed of Phila. adm^r. de bonis non to Wallace the silver smith, for \$10,000, & which constituted the main portion of the fund in that adm^r's hands, after the depreciation of the stocks of the Bank. U. States, & Girard bank. She set up this claim to that interest in this lot upon the ground of \$750. having been paid by Geo. Wallace j^r to Francis Donneroy who pretends to act as atty in fact for Robert Reed, the father of Robert H. Reed, & with which \$750 Robert was charged by Wallace, as part of his legacy, & of course it could not be made to cover his interest in the lot & house even if he had had a regular interest

and title to it. But they always in all other cases went upon the principle that these legates had no direct interest in the real estate under their ancestor's will, that they were only entitled to money! So however the case fell before the probate court in Phila. under the management of E. K. Price for me as the Rep^r = = executor of R. H. Reed, and the Auditor Joseph A. Clay in Dec. 1847. made his final report for the moneys in the hands of Phil: M. Price adm^r. of Robt. Reed, & in the hands of James R. Reed adm^r. of James Reed, grandfather of Sarah Ellen Kingsuff to be declared to be paid to them, then to me as above authorized, as I had been pursuing the investigation and suits from Nov. 1840 when I engaged E. K. Price as counsel. The case upon their orders lay over till 7th Jan^y 1848 for Exceptions, & none being taken it was ordered to be paid to me upon my giving a refunding bond to each adm^r. which I did. I rec^d. from James R. Reed adm^r. of James Reed \$ Penn^a five percent. stock & \$ in money. I sent to Geo. W. Kingsuff in Canal Dover Tuscarawas County Ohio. the father & Guardian of Sarah Ellen Kingsuff grand daughter of S^r. James & the Mrs. Pons called Warner wife of Mr. Warner & widow of said James, their proportions of the stocks & money, retaining my own. And I paid to & invested for Robert H. Reed & Elizabeth Ann Adams his mother widow of Robert Reed, their proportions of the stocks & moneys. As well as to both their parties their portions of the proceeds of an annuity being compounded with Nicholas Longworth.

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Certified Copy
 Given of Attorney
 Mary Reed or Mark of Mark
 Mary Reed

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 the State of New York
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 returning to the
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 consent of his Pa
 Mary Mark,)



EX 35

Att. Robert Henry Reid

To Thomas Joyce

Dr

1840 July 9th To Cash to bear of my mothers expenses to Evansville \$5.00x
weeks remaining at our house.

Oct. " " weeks remaining at our house after
" return from Evansville.

" Cash for marketing 75^{cts} do \$1. 1.75x

" so much for Dutchman for load wood " 75x

" Cash to pay wages to move you
" to Thomas Johnson in Ind. } 2.00x

" 1 month rent of house 10th & Melrose

" Cash for Postage on Sundry letters
" to Evansville, Vincennes, Cincinnati 25 } 5.30x

" Phil^{as} J. Pittsburgh. 50^{cts} up to 9th Dec. /40

" trip & 8 days expenses to, at, & from
" Cincinnati in Aug. } 16.00x

1841 " 2 County Seals Certificates do to Powers 3.00x

Aug. Sept. Oct. " expenses to & from Phil^{as} & at Pittsburgh

" Sundry postage to & from E. W. Price &

1844 45 " expenses to & from Cincinnati

1846 Oct. " Sundry postage, Copies &
" Expenses to, at & from Cincinnati \$10 10.00x

1847 " Copy of Deed to Culver at Cincinnati 75
" Cash to Robert to go to Danvers, Ind. 75. Cash to him to } 2.75x
" to advertisements in journals Purching Powers 1.25 }

April " expenses to at & from Cincinnati papers & 5 days
" there. \$2.50 up expenses at Hotel \$7.50 papers & news 2.50 } 12.50x

June 16 not ch. to Robt. " Cash for Cornwall & Pro^m on communication to County
" Derry in Ireland, for charged by James Torbit. on acct. } 38.72

Sept. 3. " of L. M. Wynne Esq. Derry for £8. Sterling

" Cash to Robt. H. Reid for newspaper for mother (redman J. J. J.) 2.00x
" Cash expenses to, at & from Cincinnati the other day. 7.50x

53 x 33

1840
To Cash for ...
1.50
1.50
2.00
2.30
16.00

Mem^o of disbursements

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To Cash for ...

19 Mar. 1840

I Robert H. Reed son and one of the children and heirs of Robert Reed, who was the son of Henry Reed and Elizabeth Wise. Having this day engaged Thomas Joyce of the City of Louisville to prosecute my claims to and interest in the estate of the said Henry Reed, deceased through my said father Robert Reed, and for that purpose have this day given & executed to the said Joyce a full and ample power and letter of attorney. Now therefore be it known, that in consequence of the said Joyce undertaking & entering the said prosecution & investigation of my said interest in & claim to said estate at his own expense and hazard, and having further to contend with a contract which was imposed on me about the 1st day of December 1837. I do hereby covenant and agree, to give and transfer to the said Joyce his heirs or assigns the one half of all money lands, lots, hereditaments or monies which he may recover or obtain for me from the said estate or by reason thereof. I hereby promise & oblig myself to convey or transfer to the said Joyce his heirs or assigns by proper instrument in writing the one half of such recoveries or interests which he may be able to procure for me whenever the thing or a sum of money shall be ascertained, and in an situation to convey or transfer & I further hereby give the said Joyce or his or their said one half of what may be recovered whether lands, lots, hereditaments or money.

In witness whereof I Robert H. Reed have hereunto set my hand & seal the 19th day of March 1840

Robert H. Reed 

Witness
 J. C. Gwaltney
 W. J. Strickland
 B. J. Harrison. J. J. Thurston

64x7

State of Indiana
Vanderburgh County, *Ind.*

I Elisha Embree, Presiding Judge
of the fourth Judicial Circuit within & for said
State, do hereby certify that the within named
Robert H. Reed, that day personally appeared
before me & acknowledged that he executed
the foregoing agreement as his voluntary
act & deed.

Witness my hand & seal the 31st day of
March A.D. 1840

Elisha Embree
Presiding Judge of the 4th
Judicial Cir. in the State of Indiana

State of Indiana
Vanderburgh County, *Ind.*

I Charles D. Mourne, Clerk of the
Vanderburgh Circuit Court do hereby certify
that the above Elisha Embree, whose name appears
in the foregoing certificate, was at the time of making
the same Presiding Judge of the 4th Judicial
Circuit within & for said State, duly commissioned
& qualified as appears of Record in our said Court.

In testimony whereof I have hereunto
set my hand & the Seal of said Court
at Evansville the 31st day of March
A.D. 1840

C. D. Mourne Clerk
by J. Davis, A. J.

State of Indiana }
Vanderburgh County } SS

J. John English
C. Master in Chancery, duly Com. resp.

19 March 1840

Know all men by these presents that I Robert H. Reed
son of Robert Reed ^{and} who was the son of Henry Reed &
Elizabeth Wise, formerly of the County of Jefferson and
State of Kentucky, and of the State of Indiana
for divers good Causes and therewith moving, do
hereby nominate constitute and appoint and
have by these presents nominated constituted and
appointed Thomas Joyce of the City of Louisville
in the said State of Kentucky my true and lawful
attorney for me and in my name and for my own
proper use and benefit to enter into and upon, and
to take possession of all lands tenements, lots or
hereditaments, lying and being in the said States of
Kentucky or Indiana, or in the States of Ohio or
Pennsylvania, or any or either of the said States, which here-
fore belonged to the said Henry Reed deceased, and
devised by him to the said Robert Reed and the son of
the said Elizabeth or which may have been devised
by the said Henry Reed to either of his other sons, or
to his brother and descended to me through my father
the said Robert Reed as devisee, and heir in remainder
or reversion, of the said Henry Reed, or either of his said sons
or brother, or any other property thing, or interest belong-
ing to me through the said Estate of Henry Reed deceased,
either jointly or severally, with any other devisee, heir
or claimant. And the same to rent out, lease, grant
bargain, sell, dispose of or convey to such person
or persons, and for such sum or sum of money, or consideration
as to him the said Thomas Joyce may seem most to our
benefit or advantage, and upon such sale or sales demur

or demise, proper deeds, conveyances or leases to make, with such Covenant or Covenants general or special, or quit claim to make and give, as to my said attorney may seem expedient, and the same to seal acknowledge and deliver, as if for my act and deed. And for me and in my name to demand and receive, sue for and recover all and every sum or sums of money or other consideration or considerations which may or shall be due or coming to me, on account of the said estate or otherwise in any or either of the said States or elsewhere. And upon the receipt or recovery thereof to cause receipts or receipts, acquitances or acquitances to be made in my name & stead to make seal and deliver.

And also giving and granting to my said attorney full power and authority, for me and in my name to commence and prosecute to final judgment and execution, any action or actions real personal or mixed in any Court or Courts having jurisdiction, against the purchaser or purchasers, lessee or lessees, tenants or tenants of the aforementioned lands, tenements or hereditaments, with the appurtenances thereto belonging, or any part or parcel thereof, under ^{any} pretence, and against all or any person or persons whatever for and concerning the wrongful withholding, detaining or occupying the said lands tenements or hereditaments or any part or parcel thereof and against or for the nonpayment of the rents or nonperformance of the covenants which may be agreed upon and reserved. And generally giving to my said attorney full power and authority in the premises: Hereby ratifying and confirming whatsoever my said attorney may lawfully do by virtue thereof, as fully as though I were personally present to do and perform the same. hereby revoking all former powers.

In testimony whereof the said Robert H. Reed hath hereunto set his hand and seal this 19th day of March 1840.

Robert H Reed

Witness My hand
Wm. J. Postwell
B. J. Harrison J. G. Thurston

State of
Vanderburgh

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State of Indiana }
Vanderburgh County } ss

I John Ingle
a Master in Chancery duly sworn and duly authorized by the
Laws of Indiana to take acknowledgments
of Deeds Letters of Attorney &c do
Certify that on this 31st day of March
AD 1840 Robert H. Reed personally
came before me and acknowledged
that he signed ^{and sealed} the annexed Letter of attorney
for the uses & purposes therein mentioned
from under my hand & seal this 31st
day of March 1840 John Ingle Master in
Chancery

John Ingle

State of Indiana }
Vanderburgh County } ss

I Charles D. Boarum Clerk of the Vanderburgh
Circuit Court do hereby certify that John
Ingle was at the time of taking the above
acknowledgment was, and now is a Master
in Chancery and that full faith and credit
are due and ought to be given to all his
official acts as such In Testimony

thereof I have hereunto set my hand
& fixed the seal of the Vanderburgh
Circuit Court at the Clerk's
Office in Evansville this
31st day of March AD 1840
Chas. D. Boarum, Clk.
by J. Davis, apt.



Fourth Judicial Circuit }
In and for the State of Indiana } 13

I Elisha Embury President Judge of
the fourth Judicial ^{Circuit} in and for the
State of Indiana do hereby Certify that
Charles D Bourne was at the time
at the time the within authentications
were made and now is Clerk of
the Vanderburgh Circuit Court and
that his Certificate and attestation
is in due form of Law Given
Under My hand at Evansville this
31st day of March 1840

Elisha Embury

The Filson Historical Society

Filed
May 19. 1840.

Know all men
that I Elizabeth
State of the
for divers
herby man
have by the
appointed
in the said
attorney for
proper to
to take prop
hereditame
Kentucky
Pennsylvan
fore held
devised by
the said E
by the said
to his M
the said R
or reversion
or Brother
ing to one
either joint
or claiman
bargain, Si
or purchase
as to him the
benefit or a

20 March 1840

Whereas I have this day empowered Thomas Joy of the City of Louisville Kentucky to recover and obtain for me and for my use and benefit all or any claims, debts, dues, legacy or legacies, whether lands, lots, tenements, hereditaments or monies which may be due or coming to me from the estate of Henry Reed deceased, by virtue of any devise to me, or to which I may be entitled by descent or otherwise, and whereas the said Joy undertakes & enters upon the said recovery & investigation upon his own risk and at his own expense, Now therefore I Elizabeth Parroy do hereby Covenant and promise to give and transfer to the said Joy, the one half of all that he may recover for me from the estate aforesaid whether the recovery be in lands, tenements, lots or hereditaments, or money, & I agree & bind myself my heirs & to transfer & set over by proper instrument of writing whenever the same shall be necessary ^{the said one half} or required. I further declare that this writing shall be & operate as a lien, on the said one half of what may or shall be recovered by the said Joy for my benefit, from the said Estate, till the proper or regular transfer can be made.

In witness whereof I have hereunto set my hand & seal this 20th March 1840.

Jacob Shanks
Peter Ammer

Elizabeth Parroy
Mark

64x7

I Curran & Rose clerk of the County Court of Jefferson County
in the State of Kentucky do certify that on this day the within deed
was produced to me in my office and proved to be the act & deed of
Elizabeth Pomroy a party thereto by the oath of Jacob Shunk &
Peter Ammer subscribing witnesses thereto; and that I have
read & am in my said office.

Witness my hand this 25th day of April 1840
Curran & Rose

\$16.95

Elizabeth Pomroy

 Mary

Thomas J. Jeyes.

1840. April 25. proved



Recorded Bond

& Power Attorney

Book No 12 page

572

The Historical Society

31 March 1840

State of Indiana
Vanderburgh County

I Elisha Embrey, Presiding Judge
of the fourth Judicial Circuit within & for said State
do hereby certify that on the 31st day of March
A.D. 1840 the within named Robert H. Reed, personally
appeared before me and acknowledged that he signed
& delivered the foregoing Power of attorney freely
& voluntarily as his act & deed for the purposes therein
mentioned & expressed.

Witness my hand & Seal the date last above
written.

Elisha Embrey
Pres. Judge 4th Judicial
Cir. in the State of Indiana

State of Indiana
Vanderburgh County

I Charles D. Bourne, Clerk of
the Vanderburgh Circuit Court do hereby certify
that the above Elisha Embrey whose name appears
in the foregoing certificate, was at the time of making
the same Presiding Judge of the 4th Judicial Circuit
in & for said State, duly commissioned & qualified
as the same appears of Record in our said Court.

In testimony whereof I have hereunto set
my hand & affixed the Seal of said Court
at Evansville the 31st day of March
A.D. 1840

Charles D. Bourne Clerk,
by J. Davis, Aft.

64x7

R. H. Reed
with [unclear] agreement
This day
19 March 1840

The Filson Historical Society

I Robert H. Reid Brother and ^{sole} Heir of Colbert Reid dec. who ^{21 July 1840} was the son of Robert Reid, son of Henry Reid dec. & Elizabeth (Wife). Having heretofore engaged Thomas Loyer of Louisville Kentucky to prosecute my claims to, and interest in, the estate of the said Henry Reid, derived through my said Father Robert Reid, and for that purpose have given and executed to the said Loyer a power of attorney bearing date the 19th March 1840, & have entered into an agreement with said Loyer as to the compensation which he is to have for his services trouble and labours in the prosecution of the said claims, & the investigation of the said estate. And my said brother Colbert Reid having since the giving the said power & the agreement then entered into, and his the said Colberts interest in said estate having fallen or descended to me to controul & manage which I have also given the said Loyer another power of attorney bearing equal date with those presents. Now therefore be it known that in consequence of the said Loyer entering into, and undertaking the investigation & prosecution of my said interest in the said estate as derived through my said dec. brother, at his the said Loyer's own expense & hazard I do hereby enter into this additional agreement & covenant and agree to give and transfer to the said Loyer his heirs or assigns, by proper instrument in writing the one half of such recoveries or interests which he may be able to secure for me or in my name, whether the same be in money or money's worth, lots, or hereditaments, from the said estate, by reason of the inheritance from my said brother, and I hereby covenant and promise to assign or convey the said one half of such recoveries or recoveries to the said Loyer in proper form, whenever called upon for that purpose and the thing or amount is ascertained. and I hereby further covenant, and give the said Loyer a lien on the said one half of the said estate or recovery, whether it be money, lands, lots, or hereditaments, so expected to be recovered, the better to secure the same. In Witness

CAX

Whereof I Robert H. Reed have thereto set my hand
and seal this 7th day of July 1840.

Robert Henry Reed Seal

Test
W. J. McConigale
J. C. Cochran
B. H. Dupuy
W. R. McCallister
Fred Turner

The Filson Historical Society

R. H. Reed
To E. agent.
Thos. Loyer. 17 July 1840
after Colhats death

The Filson Historical Society

7 July 1890

Whereas heretofore on the 19th day of March 1840 I Robert H
Reid of Evansville In^a Snow of Louisville Ky gave & executed a
power of attorney to Thomas Loyer of the city of Louisville State of
Kentucky to transact my business generally, & particularly in relation
to my interest in the Estate of my Grandfather Henry Reid, as derived
through my father Robert Reid son of the said Henry & Elizabeth (Mc) Reid
and which may have descended to me from the said Estate by reason of
the death of any of the devisees of the said Henry Reid, or by reason of their
inability to inherit, and whereas since the giving & date of the said
power of attorney to the said Loyer my only Brother Gilbert Reid has died
and the interest of the said Gilbert in the said Estate, thereby passed to me.

Therefore know all men by these presents, that I do hereby nominate
constitute and appoint, I have by these presents nominated constituted &
appointed the said Thomas Loyer my true & lawful attorney for me and
in my name and for my own proper use & benefit to enter into and
upon & to take possession of all lots lands tenements or hereditaments
in either of the States of this Republic which may have fallen or
passed or descended to me by reason of the death of my said Brother Gilbert
Reid, Coextensive with the said power of the 19th of March 1840 and the
same to rent out lease grant bargain sell dispose of or convey to
such person or persons for such sum or sums of money or consideration
as to him the said Thomas Loyer may seem most to my benefit or advantage
and upon such sale or sales demise or demises proper deed conveyance
or leases to make with such covenant or covenants general or special
or quit claim to make & give as to my said attorney may seem exped-
-ient and the same to seal acknowledge and deliver as if for my
act and deed & for me & in my name to demand receive sue for &
recover all and every sum or sums of money or other consideration
or considerations which may or shall be due or coming to me on account
of the said Estate or otherwise, in any or either of the said States. And
upon the receipt or recovery thereof suitable receipt or receipts acquittance
or acquittances to give & in my name & seal to make seal & deliver.
And also giving & granting to my said atty full power & authority for
me & in my name to commence and prosecute to final judgment
and execution any action or actions Real Person or mixed, in any
Court or Courts having jurisdiction, against the Person or Persons
Seignior or Seigniors tenant or tenants of the aforesaid lands tenements or
hereditaments with the appurtenances thereto belonging, or any part or
parcel thereof under any pretence & against all or any person
or persons whatever, for and concerning the wrongful withholding detaining
or occupying the said lands tenements or hereditaments or any part or parcel
thereof, and against or for the non-payment of the rents, or non-performance
of the covenants which may be agreed upon & reserved. And generally giving
to my said atty full power & authority in the premises with power to
nominate & appoint one or more attorneys under him, with power

Caeciliene with those herein given, & the same to revoke at his pleasure
Hereby ratifying & confirming whatsoever my said ally may lawfully do
or cause to be done in the premises by virtue hereof, as fully as
though I was personally present to do & perform the same. Hereby
revoking all former powers made by me to all or any other person
or persons whatever.

In testimony whereof the said Robert M. Reed hath hereto set
his hand & seal this 7th day of July 1840.

Tellh (Signed) Robert M. Reed

- Mr. J. M. Sample
- Edm. Cochran jr
- B. F. Saffrey
- Mr. R. M. Callister
- Fred. Turner

Acknowled before Court. Deckerlow. J. P. & cetera
= paid by him 8th July '40.

And Certified by Amos Pope, Clerk of the Jefferson County
Court, with Seal of the Court. That J. Deckerlow is duly
qualified &c. on 22nd Sept. 1840.

The Filson Historical Society

Knowall
in the County of Tusca
Sarah Ellen Ste
Red the said Proc
interest in the Est
former husband of
Do hereby appear
Sommerville of K
Guardian to the
demand due of
property in the
Henry Reed dec'd. &
in my name as
thereof by attach
agreed for the sa
Guardian as app
and to do all o
premises as fu
were I personally
under him for
to revoke ratify
my said attorney
to be done in &
In witness
Sept. 1843.
Signed sealed & del
Mr. Marmar. Caro

My Witness
Certified
27th Sep
Certif

20
19
18
17
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11
10
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2
1

at his pleasure
lawfully do
as fully as
me. Hereby
any other person
to hereto let

I. P. Scott
Jefferson County
is duly

Knowall men by these presents that I George W. Shinguff of Dover
in the County of Tuscarawas State of Ohio Guardian of Ellen Shinguff the daughter of
Larah Ellen Shinguff formerly Sarah E. Reed daughter of James & Priscilla
Reed the said Priscilla Reed now the wife of Wright Warner, who has an
interest in the Estate of Henry Reed who was father of aforesaid James Reed, the
former husband of the said Priscilla who is now the wife of the S. W. Warner
do hereby appoint make ordain authorize & nominate Thomas Loyer of
Lounsville of Ky my true & lawful attorney for me & in my name as
Guardian to the said Ellen & for her own proper use & benefit to ask
demand sue for & recover of & from all such as are indebted or have
property in their hands that in any shape belongs to the estate of said
Henry Reed due & to have use & take all lawful ways & proper means
in my name as Guardian of the said Ellen or otherwise for the recovery
thereof by attachment arrest distress or otherwise. It is commanded and
agreed for the same & acquiesces or other sufficient discharges for me as
Guardian as aforesaid & in my name as aforesaid to make seal & deliver
and to do all other lawful acts & things whatsoever concerning the
premises as fully and in every respect as I myself might or could do
were I personally present at the doing thereof & attorney one or more
under him for the purposes aforesaid to make & appear at his pleasure
to make ratifying & confirming & by these presents allowing whatsoever
my said attorney shall in my name as aforesaid lawfully do or cause
to be done in & about the premises by virtue of these presents.

In witness whereof I have hereunto set my hand & that the 27. day of
Sept. 1843. (Signed) G. W. Shinguff
Signed sealed & del. in presence of us
Mr. Warner, Caroline E. Shain

State of Ohio }
Tuscarawas County }
My Wright Warner J. P. 27. Sept. 1843
Certified by Chas. H. Stobbe Clerk J. Court. Plus. Seal affixed
27. Sept. '43.
Certified by G. M. Balden Presb. Ind. 27. Sept. '43 as the clerk.

Know all men by these presents that I, Geo. M. Shinguff of the County of
 Linnear State of Ohio having heretofore authorized & empowered
 Thomas Lops of Louisville Ky to demand receive see for receive any or
 all interests claims or demands which my daughter Sarah Ellen may
 or might have in the estate of her Great Grandfather Henry Reid (who
 died of yellow fever in 1793 in the City of Phil^a) in right of her grandfathers
 James Reid the father of my said wife who was Sarah Ellen Reid, with
 whom I intermarried & who became the mother of my said daughter Sarah
 Ellen Shinguff, do hereby extend the said power & authority to the said
 Lops and authorize him to ask demand receive see for receive
 collect receipt for in my name for any monies goods chattels or
 interests which I may have in the said State, to any administrator
 Executor Commissioner or Court in whose possession or under
 whose control the said interests or claim may rest, or be legally
 deposited whether separately in my own right, or as connected with
 the rights & interests of my said daughter Sarah Ellen, Provided that
 I am in no wise to be involved or rendered liable or responsible for
 any costs, charges damages or legal oblige or encumbrances.
 Herely ratifying & confirming whatever my said ally may legally do
 or cause to be done in the premises.

In witness whereof I have hereunto set my hand & seal this third
 day of December 1847.

(Signed)

Geo. M. Shinguff

Original of this copy is
 the office of the probate
 Court in Philadelphia
 where the matter between
 the representatives of Henry
 Reid & the owners of
 a parcel of land of his estate
 = Ten acres class. Jan'y
 1848.

Whereas heretofore on the 19th day of March 1840, I, Robert M. Reed of Covansville
 Va and now of Louisville Ky gave and executed a power of attorney to Thomas
 Joyes and state of Kentucky to transact my business generally and particularly
 and particularly in relation to my interest in the estate of my grand father Henry Reed
 as derived through my father Robert Reed son of said Henry & Elizabeth Wise and
 which may have descended to me, from the said estate by reason of the death of
 any of the devisees of the said Henry Reed, or by reason of their inability to inherit.
 And whereas since the giving & date of the said power of atty to the said Joyes,
 my only brother Colbert Reed has died, and the interest of the said Colbert in
 the said estate thereby passed to me. Now therefore know all men by these
 presents that I do hereby nominate, constitute and appoint and have
 by these presents constituted and appointed the said Thomas Joyes my
 true and lawful attorney for me and in my name and for my own proper use
 and benefit to enter into and upon, and to take possession of all lots lands, tenements
 or hereditaments in either of the States of this Republic which may have fallen or
 passed or descended to me, by reason of the death of my said brother Colbert Reed
 coextensive with the said power of the 19th of March 1840 and the same to rent,
 lease, grant, bargain, sell, dispose of or convey, to such person or persons for such
 sum or sums of money, or consideration as to him the said Thomas Joyes may seem most
 to my ^{benefit} interest or advantage and upon such sale or sales demise or demises, proper deeds
 conveyances or leases to make, with such covenant or covenants general or special or
 quiet claim to make and give, as to my said attorney may seem expedient, and the same
 to seal acknowledge and deliver as and for my act and deed, and for me and in my name
 to demand and receive sue for and recover all and every sum or sums of money or other
 considerations or considerations which may or shall which may or shall be due or coming
 to me, on account of the said estate, or otherwise, in any or either of the States.
 and upon the receipt or recovery suitable receipt or receipts acquittance or acquittances
 to give, and in my name & stead to make seal and deliver. And also giving & granting
 to my said attorney full power and authority for me and in my name to commence
 and prosecute to final Judgment and execution any action or actions real personal
 or mixed in any court or courts having Jurisdiction against the purchaser or
 purchasers, Lessee or Lessees, tenant or tenants of the aforementioned lands, tenements,
 or hereditaments with the appurtenances thereto belonging, or any part or parcel thereof
 under any pretence, and against all or any person or persons whatever for and concerning
 the wrongful withholding, detaining, or occupying the said land, tenements, or hereditaments

M
E
X
C
S

or any part or parcel thereof and against or for the nonpayments of the rents or nonperformance of the covenants which may be agreed upon and reserved - and generally giving to my said attorney full power and authority in the premises with power to nominate and appoint one or more attorneys under him with powers coextensive with those herein given, and the same to revoke at his pleasure, hereby ratifying and confirming whatsoever my said attorney may lawfully do or cause to be done in the premises by virtue hereof as fully as though I was personally present to do and perform the same, hereby revoking all former powers made by me to all or any other person or persons whatever -

In testimony whereof the said Robert H Reed hath hereto set his hand and seal this 7th day of July 1840

Test

W J McConigale

Jno Cochran Jr

B J Dupuy

W R McCallister

Fred Turner

Robert Henry Reed

State of Kentucky
Jefferson County

This day Robert Henry Reed came personally before me a Justice of the peace for said County, and acknowledged the foregoing power of attorney to be his act and deed

Given under my hand this 8th day of July 1840

Saml Dickinson J.P.

for the county of
certificate is
County of
due to all his

The Filson Historical Society

7.7.1869
Commonwealth of Kentucky }
Jefferson County } Act

I Curran Pope clerk of the County Court
for the County aforesaid do certify that Saml Dickinson the subscriber to the foregoing
certificate is and was at the date thereof an acting Justice of the Peace in and for the
County aforesaid duly commissioned and sworn and that full faith and credit are
due to all his official acts as such

In Testimony whereof I have hereunto set my
hand and affixed the seal of said County this
22^d day of September 1840 and in the 49th
year of the Commonwealth

Curran Pope

The Filson Historical Society

Callis H. Reed
To E. K. Davis
Two copies
Copy
E. K. Davis, Phila

Exhibit ~~to~~ 26 Nov 42

The Filson Historical Society

8 July 1840

Know all men by these presents, that I Robert
H. Reed do hereby revoke a power of attorney
given by me to James Lockhart, and a
power of attorney also given by me to Amos
Clark, and that I hereby declare to all
whom it may concern that I will ratify
nothing that may be done or transacted under
or by virtue of either of the said powers and
the said Lockhart and Clark are hereby
directed to return the said powers to me.

Given under my hand at Louisaville Ky
this 8th day of July 1840 Robert H Reed

Witness

Henry A Gilpin

Sw. J. Moore

The Filson Historical Society

62x7

9-25-1841

Whereas Ohio Wallace Reid son of James Reid, who
was the son of Eleanor Elliott late of Pittsburgh, &
Henry Reid formerly of the City of Louisville, is
entitled to certain interests and legacies coming
from the estate of the said Henry Reid by virtue
of the devise made by the said Henry Reid to
his son the said James, as set forth in his last
will and testament made in 1793 in Philadelphia
where the said Henry died. Now know ye that the
said O. W. Reid by his attorney in fact John Bell hath
this day empowered Thomas Loyce of Louisville Kentucky
to collect the said interests and legacies so due & coming
to the said O. W. Reid, and to investigate the said estate
& to sue for, compromise & recover any or all
interests whatsoever, to which the said O. W. Reid may
be entitled from the said estate, and the said Loyce
is to be entitled to one half of all the money
or monies, lands lots or hereditaments which he
may be able to collect reclaim or recover from
the said estate, provided the amount so recovered or
recovered does not exceed two thousand dollars,
and in case the said recoveries should exceed
the sum of two thousand ^{dollars}, then the said Loyce
is to have hold and retain one third part
of whatever may be so recovered or recovered, said
Loyce to incur and advance all expenses, and
~~upon a recovery of monies lands tenements or~~
~~hereditaments, to deduct the expenses from the~~

53x33

~~the sum or sums, or lands or lots or hereditaments~~
~~recorded~~ I pay over to the said O. W. Reed the
proceeds in the proportion mentioned within.
In witness whereof the said Ohio Wallace Reed
by John Bell his attorney ^{in fact} ~~in fact~~ ^{Thomas Joyce} ~~Thomas Joyce~~
at his hands shall this 25th Sept. 1841

test.
James Gray Esq.
Jacob Gebhart Jr

Ohio Wallace Reed
By his attorney in fact
John Bell
Thos. Joyce

The Filson Historical Society

Memorandum
Power of atty
Town & Co
Kennedy & Co
Robt. Christ
Ohio Wallace
attly to Thomas
Gray 4th Mr.
Power of atty
wife, who w
date 28th Sept.
New Phil^a
the place. Co
of Common
G. W. Belden
on 29th Sept
Henry Reed
Sarah E
Sarah E

Memorandum of Papers Sent to E. K. Price of Phil^a my atty
Power of atty Ohio Wallace Reid to John Bell of Allegheny
Town & County Pen^a dated 21st July 1830 witnessed by John
Kenny & Robt. Christy & acknowledged before Alderman
Robt. Christy 19th July 1831.

Ohio Wallace Reid by his atty in fact John Bell power of
atty to Thomas Loyd. dated 25th Sept. 1841. witnessed by James
Gray 4th Mr. & Jacob Gebhart.

Power of atty Wright Warner & Priscilla Warner his
wife, who was wife & widow of James Reid to Thomas Loyd
dated 28th Sept. 1841. Witnessed by John Gray & John Butt at
New Phil^a Ohio. acknowledged before John Butt Justice of
the Peace. Certified by John English Dep. clk of the Court
of Common Pleas. Tuscawawas County, Ohio & Certified by
G. W. Belden Pres. Judge of the 5th Judicial District.
on 29th Sept. 1841.

Henry Reid born 1811

Sarah Ellen Reid born 1813 married Geo. Minsluff. issue,
Sarah Ellen Minsluff.

John Deane at Myinkok

for

Shoo Prilla co

To

Mo. Jeyes

The Filson Historical Society

28 Sept. 1844

Whereas Priscilla Warner, formerly Priscilla Reed, widow
of James Reed deceased, is entitled to an interest in
the estate of her said former husband James Reed, who
has an interest in the estate of Henry Reed, his
father, which interests should consist of monies
arising from real estate which belonged to the estate
of the said Henry, & monies arising from the sale of
personal property, made by Wallace, Reed & Co. who
acted as Executors & administrators of said estate, which
monies & property are now in the hands of
different persons, and uncertainly scattered abroad,
and whereas Mr Wright Warner & Priscilla his
wife, have this day empowered Thomas Joy of
Lancaster Ky to investigate recover & collect what-
ever interest the said Priscilla may have in the
said estate & monies. Now therefore this agreement
made between Wright Warner and Priscilla Warner
of the first part and Thomas Joy of the second
part, to wit. It is agreed that the said Joy shall
proceed to collect and recover all the money or
monies or property or interest, which may be due
or coming to the said Priscilla ~~from~~ the said
estate, at his own expense, and that he shall
be entitled to the one half of all that he
can collect or recover, provided the amount
so received or collected or recovered shall not exceed
two thousand dollars, and in case the sum
so to be received or collected, shall exceed the
said sum of two thousand dollars, that then
the said Joy shall be entitled to the one
third part thereof, and he is hereby authorized to
retain in such proportions and to pay over to the
said ^{Warner} Wright & wife, in the same proportions.
In witness whereof the said Wright Warner
and the said Priscilla Warner and

The said Thomas Joyce have hereto set their
hands & seals this 28th Sept. 1841.

Attest

Wright Warner

(Seal)

Pissell Warner

(Seal)

Tho: Joyce

(Seal)

Wright Warner & wife
with
Tho: Joyce

The Filson Historical Society

24 Nov. 1842

I Henry C. Carter of Missouri being
 now at Louisville, Do for value
 Rec'd here a copy of a conveyance to Robert
 H. Reed of Floyd County, Mo.
 One hundred and fifty acres of
 good land, in the state of Missouri
 or Illinois, whichever the said Reed may
 hereafter choose to have it in - And
 Fluency shall be made and
 reasonable notice, by deed in
 full compliance with several manfully
 covenants - Witness my hand and seal
 this 24. Nov. 1842 -

Whyp

Henry Carter
 Esq.

Ch. M. Stewart
 In Equite

The Filson Historical Society

64x7

Mr Henry & John

I Bonds

to Read

The Filson Historical Society

15. Dec^r 1842.

Audit of the accounts of W^m Reed, Adm^r of Henry
Reed del^d? before Orphans Court Philadelphia

J. W. Clay Auditor

Present

Henry Chestnut	Atty for	W ^m Reed the Accountant
Eli R. Price	" "	Philip M. Price Adm of Robt Reed (a legator) & Elizabeth Price (a legator)
James Bayard	" "	for Henry Hall of W. H. Reed
Robt Hall Jr and M. Price	" "	Jerah M. Boston & James his wife Ex. of George Wallaw son of Geo Wallaw del ^d on 17 th Aug 1817 W ^m Reed, ap ^t & Jas. H. Reed Adm ^r of James Reed del ^d , a legator

Assets

1. Pittsburgh mortgage	\$ 7000.00
2. State stock (51)	5687.93
3 " " (6)	154.00
4 cash	<u>2390.71</u>

Total for Britⁿ \$ 15232.64

Liabilities

1. P. M. Price, A. Reed's adm ^r .	4458.16
2. J. R. Reed J. Reed "	3758.16
3. E. Price	100.00
4. W. Reed	3338.76
5. M. Walk	1788.77
6. Jas Walk (son)	<u>1788.77</u>

Total del^d \$ 15232.34

Henry Reed Estate papers.
acct. of Administrators
auditors report.

Contracts of Lease premises
& bond to S. Co. Kingsuff
Robert H. Reed's evidence of the
brands of J. D. Reed & H. Culver
E. K. Orice's important letters

One of H. Hall's letters
proposing to give 25 pt. as
of the fund in Philadelphia
to surrender the land, &c.

This bundle contains miscellaneous papers as
to Robt. H. Reed's & Kingsuff's business
Letters of E. K. Orice, Hall, Decker
Reed, Miteal, Chester &c.
and acct. statements &c.

The Filson Historical Society
Reed Case

checked by
Wallace
with to some extent

~~been~~
~~the~~
 Copy of Audit in the matter of Henry Reed Dec.
 To the Hon'ble the Judges of the Orphan's Court
 for the City and County of Philad^a. Estate of
 Henry Reed dec'd. Sum. acc. de cum test-annex
 The Auditor app'd by the Honorable Court to audit,
 settle and adjust the accounts of William Reed adm^r
~~de bonis~~ ^{non} cum testamento annexo, of Henry Reed dec'd
 and to make distribution

Respectfully reports that having given due notice of
 the time and place of meeting, by advertisement in two
 daily papers of the city of Philad^a, and having been
 duly sworn, he was attended by Henry Chester of counsel
 for the accountant, and Eli K. Price Esq^r of counsel
 or Philip M. Price & adm^r of Robt. Reed a legatee
 and Elizabeth Wise a legatee

James Bayard Esq^r of counsel or Harvey Hall -
 a signer of Robert H Reed. Robert Ham^r Esq^r of
 counsel for Jerah M. Costen and Jane his wife
 executrix of George Wallace, the son of Geo Wallace
 dec'd one of the executors of Henry Reed, William Reed
 the accountant and James R Reed, adm^r of James
 Reed Dec'd. a legatee, Mr Price also represented this
 Interest both as atty for the adm^r and as counsel
 for Thomas Joyes atty in fact of some of the heirs
 of James Reed

The account of Administration was exhibited
 and vouchers produced, which sufficiently established
 the payments of the sums claimed as credits
 Exception was made to the allowance of \$60 for Int.
 and advance to an heir of one of the legatees in Ireland
 as the adm^r does not charge himself with Interest
 in his receipts, he cannot claim it on his payments,
 The \$60 are consequently to be added to the Balance
 of his accounts, in making up this bal. the sums
 paid for investments, and the advances to the party

in Ireland, are also to be added to in the first instance, and the amount allowed for losses, adjusted and deducted

These losses arise from the investment of \$2995.47 of the funds of the Estate in 24 shares of U.S. Bk Stock and of 2686.68 in 50 shares of Gir'd Bk Stock, losses will also occur of the Loan of the State of Penna in which two investments have been made should be sold. These first appear however to have been made under an order of Court. The bank Stocks, are now of little or no worth, no question was raised, nor does any doubt exist as to the good faith of these transactions. The allowance of credit for the full price of the stocks, was opposed, but not harshly, nor was a charge at cost demanded. The rate of charge indeed was left very much to the discretion of the Auditor who has been very much influenced by very obvious considerations in making the purchase of Bank Stock the sanction of the Court was not asked nor could it have been legally given. The accountant therefore assumed the responsibility, and in strict justice should not complain even of an absolute charge, on the other hand the entire ruin of the Banks was never fully anticipated and a purchase in prosperous times with fair intentions, is entitled to much allowance if like too many others, he held his stocks too long. He was however warned by one of his counsel at a meeting held when the shares of the U.S. Bank were at \$68. and requested to make sale, but refused, taking all these things into view, the Auditor has voted the stock at 20 per cent on the par value, as the Court authorized the purchase of State Loan, No responsibility for loss can be incurred by Mr Reed, the legatus must bear the loss jointly if sale be made or share the loan specifically, if as the Auditor thinks more advisable. It be retained and divided as it at par.

The true balance of the account presented is \$220.98

To which add.

Payments to Mrs Wark in Ireland on	
May 15 th 1834 and May 7. 1834	600.00
Ints claimed as their payments	60.00

Sal be made or share the loan specifically, if as the Auditor thinks more advisable. It be retained and divided as if at par.

The true balance of the account presented is page 3
 ----- \$220.98

To which add.

Payments to Mrs Wark in Ireland on May 15 th 1834 and May 7. 1834 -----	600.00
Ints claimed as their payments -----	60.00
Investments in 24 Sh. U. S. Bk. Stock -----	2995.47
----- " " 50 " Gir. Bk. Do -----	2686.68
----- " " State Loan -----	4987.93
Mortgage on Premises in Pitts'g. -----	7000.00
	18557.06

The items of receipt since filling the Acct are contained in the statement annexed marked deducting the regular credits only and charging the payments to Mrs Wark and the investments, there results a bal of \$1426.85

Consisting of cash -----	572.85	
Investments in State S ^t -----	700.00	
State Scrip in Lieu of Int. -----	154.00	1426.85
		19977.91

Deduct

Expenses of Audit - viz Auditor's fee. \$75.00	
Exp amt. paid and credited in the Supplemental Acct. 40.00 and 35.00	

Advertising -----	3.00
Clerk of Orphan's Court certifi and copy of acct 5.12	43.12
Loss allowed on U. S. Bk Shares 24 shs charged at \$2995.47	
Adm ^r charged absolutely with 20 p ^{ct} on 24 shs	480.00 - 2515.47
Loss allowed on Girard Stock 50 shs (par \$50)	
Charged at -----	2686.68
Adm ^r charged absolutely with 20 p ^{ct} equal to \$10 pr share the par being \$50 -----	500.00 - 2186.68 - 4745.27
	Bal for distribution 15232.64

This Bal consists of

1. The Mortgage in Pitts'g. -----	7000.00
2. State scrip as pr acct par value -----	5687.93
3. State 6 p ^{ct} -----	154.00
4. Cash -----	2390.71

Distribution

\$15232.64

Distribution

page 21 -

Henry Reed, the Testator died of the Yellow Fever, at Philadelphia in Sep. 1793. By his will dated on the 11th of that month, he appointed Geo. Wallace of Pittsburg and Andrew Kennedy of Philadelphia his executors, and the bequests to Eleanor Elliott, Martha Patton, and Elizabeth Wise \$100. Currency a piece, the residue of his Estate, he then devises as follows, one fourth to his brother Jas. Reed of Bally Kally in Ireland, and to his children in case of his death, another fourth to Jas. Reed his son by Eleanor Elliott, another fourth to Henry Reed his son by Martha Patton, and the remaining fourth part to Robert Reed, his son by Elizabeth Wise, in case of the death of any one of his sons in his minority his share is to rest in James Reed of Bally Kally and should he die to his children, all the Estates, houses, lots, Lands, Tenements, hereditaments and desired to be sold by his executors, and they are empowered to lease until sale be made, none of the devises are now living, though all survived the Testator, the Parties now in Interest & their rights and may be enumerated as follows.

1st James Reed of Bally Kally in Ireland the Testator's Brother died in 1806 leaving five children, 1 Archibald who died intestate and without issue in 1810, 2 James who died in 1812, also intestate and without issue. 3. Wm Reed the present accountant. 4. Henry who was administrator cum testamento annexo of his father and died in 1835, without will leaving two sons and a daughter, 5th Mary Wark intermarried with Wm Wark by whom she has issue a son James Wark.

1 To these five Children, and to his grandson James Wark, James Reed by his Will dated in the year

of his death, devised all his interests in the Estate, and effects of his brother Henry Reed share and share alike and in case of the death of either, his part was to be shared among the survivors Jas Reed of Bally Kally, part is therefore to be divided between Wm Reed the accountant and Mrs Wark and her son

Wm Wark by whom she has issue a son
James Wark.

I To these five Children, and to his grandson James
Wark, James Reed by his Will, dated in the year
page 5

of his death, devised all his interests in the Estate, and
effects of his brother Henry Reed share and share
alike and in case of the death of either, his part was
to be shared among the survivors Jas Reed of Bally
Kally, part is therefore to be divided between Wm
Reed the accountant and Mrs Wark and her son,
Jas. Wark, Henry Reed having received his share as
noted hereafter

2. Henry Reed the son of Martha Patton, died
when about 15 years old of a kick by a horse. His
share is therefore is to be divided among the represen-
-tatives of James Reed of Bally Kally, who thus become
entitled to a full moiety of the Estate

3 James Reed the son of Eleanor Elliott died
leaving a widow Priscilla now living and married
to Wright Warner, a son of Wallace Reed, supposed
to be living, and another son believed to be dead. No full
account of this branch has been given to the Auditor.
The share is represented in the 1st instance by James
R Reed son of the accountant to whom letters
of Administration of the Estate of Jas Reed have
been granted

4 Robert Reed son of Elizabeth Wise died 18 or 20
years ago, he left a widow } now Elizabeth Ann
Adams and a second time a widow } and two
sons - Robert R Reed now living and of age
and Calvert Reed an idiot lately deceased

5 Elizabeth Wise afterward married to a Mr.
Pomeroy is still living at a very advanced age
The Estate of decedent appears to have been very
badly managed by George Wallace the Executor at
Pittsburgh. No regular account seems to have
been filed by him, though he made payments on
account to ^{the} devisees. No accurate statement of their payments

has been given to the auditor, nor is it at all probable that any could be drawn up. It appears ^{Robert} ~~recd~~ less than either the Irish Branch, or Jas. Reed the son of Eleanor Elliott, Mr Kennedy the executor paid about \$2500, to Jas. Reed of Ballykally and after the death of the latter, Henry Reed, his son and Adm^r resided for years at Pittsburgh where he collected rents to a considerable amount but died without settling an account. These collections are supposed to amount to his full share, of the estate but it must be remembered that no person representing this interest appeared at the meetings.

Under these circumstances the Auditor has been obliged to make an adjustment on an arbitrary basis, which will not probably be disputed by any of the parties concerned as follows.

1. One thousand dollars (to be taken from a mortgage in Pittsburg specifically and not from the funds of the estate) are to be paid to the administrator of Robert Reed to equalize his share.

2. Three hundred dollars to be in like manner taken from the Pittsburgh mortgage (are to be paid to the Adm^r of James Reed, son of Eleanor Elliott for a like purpose.

3. One hundred dollars of the same mortgage may be paid to Elizabeth Widdif still living, the legacies however are generally presumed to be paid from the lapse of time, and upon an apertion to that effect in an answer to a bill filed at Pitts^g against the son of George Wallen the executor of Henry Reed of Ballykally.

4. Of the balance one fourth is to be paid to Philip M. Price Adm^r of Robert Reed subject to the claim of Henry Hall and Mrs Coster, if established hereafter, One fourth is to be paid to James Reed Adm^r of James Reed the Testator's son.

One half to the representatives of James Reed of Ballykally, as follows, Five hundred dollars, are to be reserved in the accountant's hands for two years, to indemnify him against claims on behalf of the heirs of his brother Henry Reed. If no claim be set up or established within that time, this sum is to be divided in the same manner as the res-

of Henry Reed and now cover of imbalances
 hereafter, One fourth is to be paid to James Reed
 admr of James Reed the testator's son

One half to the representatives of James Reed of Ballykally,
 as follows, Five hundred dollars, are to be reserved in
 the accountant's hands for two years, to indemnify him
 against claims on behalf of the heirs of his brother Henry Reed.
 If no claim be set up or established within that time,
 this sum is to be divided in the same manner, as the res=
 =ider of this share, One third of the balance to the ac=
 =countant William Reed, one third to Mrs Mary Wark,
 one third to James Wark, son of Mary Wark, out of
 the last two shares, the accountant is to set aside
 \$700 for the advances made by him which have been
 disallowed as credit subject however to a deduction
 for certain copies of documents paid for by the
 distributors in Ireland, of which no account has been
 furnished to the auditor, on these principles, the balance
 in hand is to be distributed as follows.

Distribution of Estate

1st Pittsburg Mortgage \$ 700.

Specific Appropriations

- 1st To Philip M. Price Admr of Robert Reed \$ 1000.
- 2 James R Reed Admr of James Reed 300
- 3 Elizabeth Wark, if living 100. 1200.

Bal \$ 560, to be divided as follows,

one half { Philip M Price Admr $\frac{1}{4}$ — 1400
 James R Reed Admr $\frac{1}{4}$ — 1400 \$ 2800.

The remaining half to the representatives of Jas. Reed of Ballykally as follows

William Reed to indemnify him against the represent^{ion}
 of Henry Reed of Ballykally \$ 500
 William Reed $\frac{1}{3}$ of Balance — 766.66
 Mary Wark $\frac{1}{3}$ of do — 766.67
 James Wark $\frac{1}{3}$ " do — 766.67
 \$ 2800. — \$ 5600

State \$ 5687.83

Philip M Price admr of Robert Reed $\frac{1}{4}$ 1421.98 $\frac{1}{4}$
 James R Reed admr of James Reed $\frac{1}{4}$ 1421.98 $\frac{1}{4}$
 Carried over

Brought over

William Reed	1/6 - 947.98 1/2
Mary Wark	1/6 - 947.98 1/2
James Wark	1/6 - 947.98 1/2 - 5687.93

3. State 6% \$154.00

Philip M. Price admr of Robert Reed,	1/4 - 38.50,
James R. Reed, admr of James Reed.	1/4 - 38.50
William Reed	1/6 - 25.66 2/3
Mary Wark	1/6 - 25.66 2/3
James Wark	1/6 - 25.66 2/3 - 154.00

4. Cash \$ 2390.71

Philip M. Price admr of Robert Reed.	1/4 - 597.67
James R. Reed - admr of James Reed	1/4 - 597.67
William Reed for advance to Ireland	700.00
William Reed	1/6 - 398.45
Mary Wark	48.45
James Wark	48.45 = 2390.71
	\$ 15,232.64

1195.34

Recapitulation

I. Philip M. Price admr of Robt Reed.

Pittsburg Mortgage	2400.00
State 5 prf	1421.98 1/4
State 6 prf	38.50
Cash	597.67 1/4 - 4458.16

2 James R. Reed. Admr of James Reed

Pittsburg Mortgage	1700.00
State 5 prf	1421.98 1/4
State 6 prf	38.50
Cash	597.67 1/4 - 3758.16
	\$ 8216.32

3. Elizabeth Wise

Pittsburg Mortgage	100.00
--------------------	--------

4. William Reed

Pittsburg Mortgage (indemnity)	500.00
	766.66

Carried over 9

State 5 prf	947.98 1/2
State 6 prf	25.66 2/3
Cash	1098.45 1/6 - 3338.76 1/3

5. Mary Wark

Pittsburg Mortgage	766.67
State 5 prf	947.98 1/2

Pittsburg Mortgage (incl. interest) 500.00

766.66

Carried down 9

State 5 pr. %	947.98%
State 6 pr. %	25.66%
Cash	1098.45% - 3338.76%

5. Mary Wark -

Pittsburg Mortgage	766.67
State 5 pr. %	947.98%
State 6 pr. %	25.66%
Cash	48.45% - 1788.77%

6. James Wark -

Pittsburg Mortgage	766.67
State 5 pr. %	947.98%
State 6 pr. %	25.66%
Cash	48.45% - 1788.77%
	<u>15.232.64</u>

A claim of the share of Robert Reed remains to be noticed. Mrs. Jane Costen, Wife of Jerah M. Costen, and executor of George Wallace, son and executor of George Wallace of Pittsburg, the original executor of Henry Reed claimed one fourth of the proceeds, with interest, of the sale of certain real estate in Pittsburg, as representing Robert Reed's share in it. This claim was supported by regular deed, made by Robert Reed by his attorney, Francis Pomroy, to George Wallace the son, dated 24 Dec^r 1812, reciting that the parties had compromised and agreed that Robert Reed should receive 500 dollars, for his own equal undivided fourth part, of the real estate, (a house and lot) in question and conveying in fee all that the said one full, equal and undivided fourth part, together with all the estate right, title and interest of Robert Reed in the usual form. There is a receipt for the purchase money and the deed has been regularly acknowledged and recorded. To establish the authority of the attorney, the claimant, further produces an exemplification of a

letter of Attorney from Reed to Pomeroy dated, Sep 3, 1812, executed in Kentucky, and acknowledged before two Justices of the peace therein, and recorded at Pittsburg. The Clerk of the County Court certifies that the Magistrates were Justices, and the Presiding Judge of the County Court - Certifies that the Clerk's attention is in due form, Original certificates of a similar tenor, dated in 1821 are endorsed on the exemplification, with a further certificate from the clerk of that year, as to the signature of the presiding Justices

As the real Estate of the testator was directed to sold by the will, it was assumed by Mr. Ham for the claimant, that it became personally in the hands of the executor, and that under the conveyance of the "Estate, Right, title and Interest" of the legatee, the right to his share of the funds in the administrators hands arising from the sale of the Real Estate passed to the grantee Wallam and Mr. Price for the admr. Robert Reed replied that the deed was in form, and substance a deed of Real Estate, and therefore could not be construed as passing a new personal interest. The exemplified letter of attorney was informally acknowledged, not within the scope of the recording acts, not proved to be the deed of Robert Reed, and therefore not evidence that the deed was not in strict-pursuance of the power, and that the transaction was a dealing with the funds, by a Trustee, who has grossly mismanaged the Estate. The whole case was elaborately argued before the Auditor. It is plain that the land devised became personally, and that the executor took it as such, Robt. Reed the legatee, had no estate in it - whatever, nothing passed to him but a right to one fourth of the proceeds when sold, such a right is in no shape Real Estate, It is not bound does not pass under a conveyance of the right, title, and

Interest of the party to the land itself. Craft vs Webster, 2 Rawl 242, is an authority directly to this point: Neither can the deed in question be considered as a conveyance of the personality, of the right of Robt Reed on the fund, the form of the instrument - its wording

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does not pass under a conveyance of the right, title, and

Interest of the party to the land itself. Craft vs Webster,
2 Rawl 242, is an authority directly to this point.
Neither can the deed in question be considered as a con-
veyance of the personality, of the right of Robt Reed
on the fund, the form of the instrument - its wording
& the understanding of the parties (as evinced by the
grantor taking possession and by the present claimant's
ejectment) all show that the deed was intended to
pass an interest in land, which the grantor had no
right to convey. It cannot moreover operate as an
election to take the land as land, which might be al-
leged to be the case; because the election to be operative
must be the act of all the heirs and not of one of the
four, Robert Reed might have conveyed all his interest,
not in the proceeds as personality, but he has not done so.

It does not follow, however that because the deed
is thus inoperative, it may not be evidence for other
purposes. It is admitted and indeed agreed by the
counsel of Robert Reed's administrator, that it is a deed
of Real Estate. If it seems to have been regularly
executed and acknowledged and is susceptible of formal
proof, it is rejected by the Auditor, because no such proof
has been made, the authority of the attorney, which is
a requisite fact - not having been ~~in~~ established.
It is very questionable whether the letter of attorney
was properly acknowledged, and if it were, whether
a mere exemplification is evidence. It would seem to be
competent - under the decisions of the Court in Dalzell
vs Crawford, but the settlement of this question
would be useless unless regular proof of the
execution of the deed was tendered. If the deed
and letter, were regularly established their
only effect as evidence material to the question,

would be to show, the payment of the purchase money by
Wallace to Reed's atty, whether they would be admitted
to show even this fact, is a question not argued before the
Auditor and on which he does not report upon, as it is mere-
ly hypothetical, until the proof formally tendered of
payment been shown, the further question would arise,
as to what claim the grantee could have on the funds, all
that can be asked is the repayment of the consideration
as a condition precedent to the receipt of the Bal. of Robt.
Reed's share, by his administrator, Wallace intended to
buy and Reed to convey a fourth part of the Real
estate, This the grantor did not and could not do, and the
purchaser paid his money for nothing, now the repre-
sentatives of Reed, (if Reed himself) come forward and
claim the proceeds of the very land for which the consid-
eration on the Deed was received. In such a case Equity
might interfere. Wallace's Executrix has no apportionment
of any part of the funds. She has only the evidence
of having paid or an interest ~~or an interest~~
which was never conveyed, and if having
paid the very parties now claiming that interest
the rights of third parties persons are not af-
fected. It is a question entirely inter parties, it
is said that this was a dealing with trust prop-
erty, by an executor, because the younger Wallace
acted in that capacity. Had the conveyance been
originally operative, and avoided on that ground
the estate if it had received the consideration could
only be entitled to the profit on a resale, not to the
proceeds and the original consideration together.
It was subsequently alledged but not proved that
the younger Wallace in his answer to a Bill in
equity already mentioned as brought by Henry Reed

of Bally Kally, ^{had} charged \$750. as paid on account
to Robt. Reed, generally on account of his share,
if this should be sustained & the credit taken
identified with the sum paid & claimed
as purchase money it might destroy the equity of

equity already mentioned as brought by Henry Reed
of Bally Kally, ^{had} charged \$750. as paid on account
to Robt. Reed, generally on account of his share,
if this should be sustained & the credit taken
identified with the sum paid & claimed
as purchase money it might destroy the equity of
the claimants this also cannot be settled for
want of proof. — Disputes about part of
a single share must not be allowed to delay,
and add to the expence of the settlement of the entire
estate, they must be settled at the cost of the par-
ticular share. Robt Reeds portion is to be paid
to his adm^r. subject to the claim of Mrs Leoster
so far as the same, has not already been reported
upon, the further proof of both parties must be
presented at the settlement of the administration
account & all of which is respectfully submitted

Dec^r 15. 1842

Copy of Auditors Rept.
H. Ruds Estate
Philadelphia

The Filson Historical Society

6 July 1843

New Albany July 6th 1843

For the satisfaction of Robt Reed I make
the following statements some time in Nov last
a man by the name of Tho^s. D. Reed came here and
said he was a relation of Robt Reed and said
he had an interest in the estate of Henry Reed and
said he had sold his interest to a Mr. Bulver of
St. Louis, and he had persuaded Robt to sell his inter-
est to Bulver that he knew nothing would be had
and if price got any thing he was a damnedascal
and never would give Robt any thing he told me
also that he wished to take Robt to N^o. and he would
do a good part by him and ~~and~~ asked my influence
to get Robt to go with him that he would settle
him and take care of him as he thought Robt
had not sense enough to take care of himself
John Brunner

The Filson Historical Society

7 July 1843

New Albany 7 July 1843

For the Satisfaction of Robt
Reed I now ~~state~~ make the following statement sometime in
November last I was going over to Louisville on the ferry boat
I saw Robt & spoke to him & then another man calling him-
self Thos Reed came & asked me if I know ^{him} I said I did he
then told me that he was his Cousin & that he was going take
Robt with him to Missouri for he was doing no good here
I don't remember the words that part but the meaning of it
was that he had a share in the money that was coming to Robt
and that he was going to help him & see that he was not
wronged I said that was very good but my Idea was that
he was far too smart to deal with Robt I told Robt the
^{age} afterwards that I did not believe that he was a Cousin at
all but some fellow sent from Cincinnati to how he could
divindle him of out of his share of what property was coming
to him I do and always did consider ^{Robt} to tally unfit to act for
himself in any business of consequence for he will believe
any body that tells him a fine story

Samund Lodge

30 Aug. 1843

Know all men by these presents that whereas
I have this day employed and empowered Thomas
Loyes of the City of Louisville & State of Kentucky, to
to prosecute and recover all or any interest to
which I may be entitled in the estate of my Grandfather
Henry Reid, who made his will and departed this
life in the City of Philadelphia in the year 1793. by
which will he devised one fourth part of his estate to
my father James Reid ~~which~~ which estate consisted of
Real estate in the said City of Louisville Cincinnati
Pittsburgh & other parts of the State of Pennsylvania
& perhaps elsewhere, and goods wares & merchandize
& other personal property to a very considerable
amount, all of which fell into the hands of the
Executors of my said Grandfather especially into the
hands of George Wallace of Pittsburgh, who, with An-
drew Kennedy of Phil^a were nominated by my said
Grandfather as his Executors the former of whom acted,
and whereas the said personal property was, by the inju-
-dicious management of the said George Wallace, &
his son George who succeeded him, ~~com~~ mostly dispersed
and squandered, as well as a vast amount of the
Real estate by the said Wallace & others who succeeded
them in the administration, to wit one Henry Reid &
the present administrator William Reid of Philadelphia
in whose hands the remainder of the said estate of the
said Henry Reid & his legatee now seems to rest, except such
Real estate as may yet be saved, to endeavour to recover
my part of which the said power was given & this agree-
-ment is entered into. Now therefore Know Ye, that
I John Wallace Reid do agree and Covenant to and
with the said Thomas Loyes to give transfer & convey to
him the one half of all the money lands lots, or

other property or description of value whatever, that he
the said Joyes may be able to secure or recover for me
or in my name under the said power of attorney. &
the better to secure which to the said Joyes. I hereby
grant bargain and sell alien transfer, release and
convey ~~to the said Joyes~~ ~~the~~ ~~proceeds~~ ~~of~~ ~~the~~ ~~same~~ ~~and~~ ~~also~~ ~~the~~ ~~proceeds~~ ~~of~~ ~~the~~ ~~same~~
and sold aliened, transferred released & conveyed unto
the said Joyes one half of my said interest in the
said estate of my father James Reed in the estate of
my said Grandfather Henry Reed, consisting as a part
of lands lots & other Hereditaments, manors or claims &
demands for manors now in the hands of the said
Wallaces representatives, William Reed of Philadelphia
& others. and I hereby covenant to and with the said Joyes
to warrant & defend the same on condition that
the said Joyes proceed to investigate & recover the same
under the virtue of the said power at his the said Joyes
own expense, except the lawyer's fee, which is to
come out of the deducted from the main fund
to be recovered. and upon the condition also that
the said recovery & saving should not amount to more
than two thousand dollars and should the said
recovery exceed such sum, then with two thousand dollars,
then the said Joyes is to have and receive only one
third part of the said recovery, after paying the lawyer's
fee throughout whether the same be in lands money
or in kind. and the other two thirds are to be and
remain as my own & to be paid, conveyed, transferred
or paid over to me by the said Joyes, as soon as the same
can be brought to a close.

In witness whereof I have hereto set my hand and
Seal this 30th day of Aug. 1843.

Ohio Wallace Reed

State of Ohio
County of Lorain

me David
Ohio Wallace
Reed and
Joyes to be
named and

Attest H. Wolf

State of Kentucky }
City of Louisville } S.S.

Personally appeared before me David G. Beatty Mayor of the City of Louisville; Ohio Wallace Reed, and acknowledged the foregoing deed and instrument of writing from himself to Thomas Joyce to be his act and deed for the purposes therein named and stated.

In testimony whereof I have hereunto signed my name and caused the seal of the Corporation to be affixed this 30th day of August in the Year of our Lord One thousand eight hundred and forty three.

D. G. Beatty Mayor

Attest H. Wolford C. C. S.



The Filson Historical Society

Reed

Q. W. Reed

To $\frac{5}{3}$ Dwd &
Transfer.
Tho. Joyce



The Filson Historical Society

Know all men by these presents that I Ohio Wallace Reed son of
 Son of James Reed of Pittsburg in the State of Penn^a who was the son of
 Henry Reed & Eleanor Elliott, have made constituted & appointed by the presents
 do make constitute & appoint Thomas Loyer of the City of Louisville in
 the State of Ky my sufficient lawful attorney for me & in my name
 for my use & benefit, to enter into take possession of all & every the
 lands tenements & hereditaments, situate lying & being in the States of
 Pennsylvania Kentucky, or the State of Ohio or any other State or Territory
 within the United States, which heretofore belonged to the said Henry Reed, &
 derived by him, among other devices to my said father James Reed, the
 right and inheritance of which may have descended to me as son and
 heir of said James Reed by and through the force & virtue of the will of my
 said grandfather Henry Reed & the same to sell bargain & dispose
 of Lease or rent to such Person or Persons, and for such term or terms
 of money consideration or considerations as to him the said Thomas Loyer may
 seem meet to my interests & advantage & upon such Sale or Sales
 demise or demises proper deeds conveyances or Leases with such covenants
 or covenants, General or Special of warranty with or without as
 to said attorney shall seem expedient in due form of law, as my
 duty to make Seal acknowledge & deliver. And for me & in my name
 to accept & receive all & every sum or sums of money or other con-
 sideration or considerations which may be coming to me on account of the
 said Sale or Sales demise or demises & upon the receipt thereof I intend
 Receipts acquitances or acquitances in my name I intend to make Seal
 and deliver Also giving & granting to my said attorney full power and
 authority for me & in my name to commence & prosecute unto final
 Judgment & execution any action or actions Real Personal or mixed in
 any Court or Courts having jurisdiction, against all or any Person
 tenant or occupier whatever holding detaining or occupying any of the
 lands lots or hereditaments which belonged to the said Henry Reed & which
 have or ought to have descended to me, or which belong to me derived
 through or from any other source or claim whatever. And to ask
 for demand & receive any money or property which may be due or
 coming to me from any of the Executors or administrators of the Estate of
 the said Henry Reed, or any Ex^r or adm^r of my father James Reed, and
 Receipts or acquitances to give for all such sum or sums of money or other
 consideration & in my name to execute & deliver the same. Also giving and
 extending to my said attorney full power & authority to commence and
 prosecute to final judgment & execution any action or suit or suits in
 any Court having jurisdiction which my said attorney may deem necessary
 or proper against such Executor or adm^r as may possess or withhold
 any interest of mine whether Personal or mixed so as to recover the same.
 And generally giving to my said attorney full power & authority in the
 premises. Hereby ratifying & confirming whatever my said attorney may
 lawfully do by virtue hereof in the premises. And authorizing and

EXES

empowering my said attorney one or more attorney or attorneys under him
to substitute & appoint and the same at his discretion to revoke. Hereby
revoking all former power or powers which I may have given. In
testimony whereof I the said Ohio Wallace Reed have hereto set my
hand and seal at Louisville Kentucky this 30th day of Aug^r 1843.

(Signed) Ohio Wallace Reed (Seal)

State of Ky }
City of Louisville } S. S. "Personally appeared before me David L Beatty
Mayor of the City of Louisville. Ohio Wallace Reed acknowledged
the foregoing power of atty^r &c." Certified Seal of the City. 30th day
of Aug^r 1843. Signed. D. L. Beatty Mayor

The Filson Historical Society

Mr. Joseph
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Mr. Joseph M. Clay the auditor made his report this 17th Dec^r 1842 to the Orphans Court in Philadelphia of the account of Phillip M. Price adm^r of Robert Reid in, which he finds that there is in the hands of S^r Adm^r in Cash \$2115.61 } \$3709.03
in Pennsylvania 5th Penn^a state stock 1593.42 }

of which the Auditor directs to be p^d to Tho. Loyer atty in fact for E. Ann Adams in Cash } 705.20 }
and to be paid to same for same in Penn^a stocks . 531.14 } 1236.34 }
Of which he further directs to be p^d to Tho. Loyer atty in fact for R. H. Reid in Cash } 1410.41 } 3709.03
and to be paid to same for same in Penn^a stocks . 1062.28 } 2472.69 }

The said Auditor also reports the same day on the account of James R. Reid adm^r of James Reid & finds that there is in the hands of said adm^r in Cash \$1419.68 }
and in Pennsylvania state five & 5th Penn^a stocks 2524.06 } 3743.69 014.02

of which the Auditor directs to be paid to Tho. Loyer atty in fact for Wright Warner wife in Cash } 539.89 }
and to be paid to same for same in Penn^a state five 774.67 } 1314.56 }
and to be paid to Tho. Loyer atty in fact for Geo. W. Henshuff Guardian for Sarah Ellen in Cash } 879.79 }
and to be p^d to same for same in Penn^a 5's stock . 1549.34 } 2429.13 } 3743.69

And upon these reports the Court agreed to the motion made by E. K. Price Esq^r Loyer's atty to take Loyer as security for the respective legacies in what they call here, a responding bond. The bonds were then prepared by the clerk, one to Phillip M. Price adm^r of Robt. Reid in the penalty of \$4000. & one to James R. Reid adm^r of James Reid in the penalty of \$4000. Signed by Loyer as atty in fact for each party. By himself individually as their security that the adm^rs should not have to pay their moneys over again or incur damages by reason of paying over to Loyer as aff^d.

Thus the matter has to be till 1st Friday in July next, when if there be no exceptions taken to the proceedings, they shall be confirmed, the amt^s as stated (the Penn^a stocks are now worth about 7/8) will be paid over to J. Loyer or order.

William Reid adm^r de bonis man of Henry Reid, since the filing his acct with the Auditor A. J. Clay for settlement which was reported in Dec^r 1842. has received from other sources \$had in his hands over that acct } \$556.69
and \$155.33 Penn^a stocks five, with as he lays in many } 113.39
from which he deducts, to cover expenses in final settlement of } 67 0.08
and paid to Tho. Loyer as atty in fact for Robert & James branches } 62.02
in the } 608.06
of } 304.03

For which Loyer accepted as atty in fact I rec^d & subscribe that J. W. Reid is to pay to these branches their proportion of whatever may come to his hands, as there is some Mt^s Mt^s of Pittsburg has to collect, & something due from C. J. Wright & Concem^t.

Extract from auditors report as to acct. of P. M. Price

acct. of Robert Reid.

To amt. brought forward

\$3709.03

1st The balance is to be paid thus

To Messrs. Loyer atty in fact of Wm. Elzerbeth

Ann Adams formerly Reid 1226.34

3709.03

2^d To Mrs. Loyer atty in fact of R. Reid 2472.69

all which is recd. & duly led in the

J. S. Clay
Auditor

\$76.95 E. Price

\$500. Penna. Stock to be transferred to Robert H. Reid

300. " " to be transferred to Elzerbeth Ann Adams

793.42 " " to be transferred to Thomas Loyer

Robert Reid

2115.61. Cash to be deposited in Bk Penna. to credit of Thomas Loyer.

\$3709.03 Robert.

775.00 Penna. Stock to be transferred to Sarah Ellen Slingsuff

1549.01 " " to be transferred to Thomas Loyer

2324.01

1419.68

In Cash to be deposited in Bk Penna. to credit of Mrs. Loyer

\$3743.69

Wm. Warner part in Cash of the 1419.68 is \$539.89

1/3 of the half of \$304.02 is 50.67

590.56

Sent her a check on Bk of Penna. 15th Jan'y '48 295.28

& yet have her Penna. 5's 774.67 the half 387.33

G. W. Slingsuff Guardian for Sarah Ellen Cash \$879.79

2/3 of the half of \$304.02 is 101.34

981.13

15th Jan'y '48 Sent to G. W. Slingsuff check on Bk Penna. 490.56 the half

and Penna. 5's

1549.34

Sent to G. W. Slingsuff a Penna. Certificate for 774.67 half

having yet in my hands of these stocks 44.67

Also Sent to Mr. Slingsuff N. Longworths bond to Sarah E. \$2000.00