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SOME LAND TITLE FACTS

(Continued from Last Month)

The province of Pennsylvania was before the Revolution a vast tract of land with only the New Jersey and Maryland boundaries definitely settled. It had eleven counties, Philadelphia, Bucks, Chester, Lancaster, York, Cumberland, Berks, Northampton, Bedford, Northumberland and Westmoreland. Of these Philadelphia was the only county which was not named after a county in England. The spread of the population is shown by the formation of the counties. Up to this time the Quakers had been the dominant influence in the government, but now a new element was about to take charge. The Declaration of Independence was signed on the 4th of July 1776 and a new Constitution was adopted on the 28th of September, 1776.

On the 27th of November, 1779, the General Assembly of the province of Pennsylvania passed "An act for vesting the estates of the late proprietaries of Pennsylvania in this Commonwealth." 1 Sm. L. 479; Pa. St. at L. Vol. X, Page 33. This act known as the Divesting Act was a transfer of the Proprietaries' rights in the province to the Commonwealth as of July 4, 1776. The soil and all other hereditaments were vested in the Commonwealth and

placed at the disposal of the legislature by sections V and VI. of the act. The rights of the settlers and the private property of the Proprietaries were protected by sections VII and VIII.. Section IX abolishes all the quit rents reserved by the Proprietaries other than for lands within the proprietary tenths or manors. The Proprietaries were provided for in Sections XII and XIII which were as follows:

“And whereas the freemen of this Commonwealth, being desirous to manifest not only a regard to their own safety and happiness, but their liberality also, and remembrance of the enterprising spirit which distinguished the founder of Pennsylvania, and mindful of the expectations and dependence of his descendants on the propriety thereof, and also that sundry marriage settlements and testamentary dispositions have been made thereupon, which will be wholly defeated, and the parties exposed to great disappointment and loss, if no provision be made therein.

That the sum of one hundred and thirty thousand pounds, sterling money of Great Britan, be paid out of the treasury of this state, to the devisees and legatees of Thomas Penn and Richard Penn, late Proprietaries of Pennsylvania respectively, and to the widow and relict of the said Thomas Penn, in such proportions as shall hereafter by the legislature be deemed equitable and just, upon a full investigation of their respective claims.”

The readers' attention is again directed to Justice Woodward's opinion in *Wallace v. Harmstad*. 44 Pa. 492. Section X of the act of the 9th of April, I Sm. L. 529; Pa. St. at L. Vol. X, Page 308 should be read in connection with the Divesting Act.

WASHINGTON County, the only one erected during the Revolutionary War, was formed from a part of Westmoreland County by an act of the Assembly passed 28th of March, 1781.; 1 Sm. L. 517; Pa. St. at L. Vol. X, Page 272. The boundaries were as follows:

“All that part of the state of Pennsylvania, west of the Monongahela river, and south of the Ohio, beginning at the junction of the said rivers; thence up the Monongahela river aforesaid, to the line run by Mason and Dixon; thence by the said line due west, to the end thereof; and

from thence the same course, to the end of five degrees of west longitude to be computed from the river Delaware; thence by a meridian line extended north, until the same shall intersect the Ohio river, and thence by the same to the place of beginning (the said lines, from the end of Mason and Dixon's line to the Ohio river, to be understood as to be hereafter ascertained by Commissioners now appointed, or to be appointed for that purpose) shall be, and the same is hereby declared to be, erected into a county, henceforth to be called Washington."

The Act of January, 1802; 3 Sm. L. 480; Pa. St. at L. Vol. XVII, Page 40 defines the boundary between Greene and Washington County as follows:

"Beginning at the present line, on the ridge that divides the waters of Ten-mile and Whelen creeks, near Jacob Bobbett's; thence in a straight line to the head waters of Hunter's fork of Whelen creek; and thence down the same, to the mouth thereof, where it meets the present county line."

This act re-annexes a part of Greene County to Washington.

The Act of 10 April, 1807, 4 Sm. L. 455; Pa. St. at L. XVIII, Page 644 provides that the middle of the Monongahela river shall be the division line between the counties adjoining the same.

The independence of the colonies being recognized by the treaty of September 3, 1783, caused a new problem to rise. There were now thirteen separate and independent nations along the Atlantic seacoast. They were jealous of each other and inclined to quarrel among themselves. The Mason and Dixon line, the twelve mile circle and the Delaware river were the only definite boundaries of Pennsylvania. Massachusetts, Connecticut, New York and Virginia were claiming parts of what was considered to be Pennsylvania territory. The legislators faced the problem and commissioners were appointed to act with commissioners from the other states and fix the boundaries. It will be of interest at this point to take up the treaties by which the boundaries were settled.

Charles I, king of England, granted a tract of land in America, extending from the northern limits of the Virginia colony to the 40th degree of northern latitude, to Cecil Calvert, second Lord Baltimore, by a royal charter dated 20th June, 1632. The Swedes and Dutch were at this time settled on the banks of the Delaware and a dispute arose between them and Lord Baltimore concerning the jurisdiction over the land on which they were settled. Later the English having conquered the New Netherlands and the colonies on the Delaware, Charles II, King of England, granted them to his brother James, Duke of York, by a royal charter dated 12 March, 1684. The dispute concerning the boundaries was continued but not so vehemently since the Duke was the heir apparent to the throne. Penn having acquired his charter over the protests of Lord Baltimore and purchased the interest of the Duke of York in the lands, the controversy became very bitter. As was said in the "Report on the Resurvey of the Mason and Dixon Line," at page 107: "the properties at stake in this controversy were large, involving as they did title to Delaware and a strip over 15 miles wide along the northern border of Maryland, including the site of Philadelphia, Chester, West Chester, York, Hanover, Gettysburg, Waynesboro, Chambersburg and Myersdale.

An agreement was entered into between Lord Baltimore and the Penns' on 10 May, 1732. This agreement provided for quieting the titles of the occupiers and possessors of the lands held under the respective proprietaries, on their attorning and paying arrears of rents and duties, etc. to the several proprietaries. A dispute having arisen over this agreement, the Penns' on 21 June, 1735, filed a bill in Chancery for the specific execution of the agreement of 1732. See *Penn v. Lord Baltimore*, 1 Vesey 455. A temporary line was run in 1738. In 1750, the Chancellor, Lord Hardwicke, decreed specific performance of the Agreement of 1732 and in the course of his decree decided that the center of the circle should be in the middle of the town of New Castle this point was later determined

to be the court house, and that this circle should be of a radius or semidiameter of twelve miles and not six as the Calverts contended.

On the 4th of July, 1760, an agreement was entered into between the Penns' and Lord Baltimore and under this agreement, Charles Mason and Jeremiah Dixon were employed to run the line. The line was completed in 1768 and was ratified by the King by his order in council on the 11th of January, 1769. The latitude of the parallel which was to mark the northern boundary of Maryland was computed to be $39^{\circ} 43' 17.6''$, a value which is very close to the modern determination. The latitude of the northeastern corner of Maryland was found in 1892 to be $39^{\circ} 43' 19.9''$. See Report on "The Resurvey of the Mason and Dixon Line" page 41. The Mason and Dixon Line was 230 miles 18 chains and 21 links from the place of beginning, extending beyond the northwestern corner of Maryland for more than thirty miles.

The Mason and Dixon line was recently resurveyed by the U. S. Coast and Geodetic Survey in conjunction with commissioners from Maryland and Pennsylvania. The Resurvey was authorized by the Act of the General Assembly of the Commonwealth of Pennsylvania approved 4th May, 1889 and under Chapter 745 of the Enactments of 1900 of the General Assembly of the State of Maryland. The field work was done during the years 1901-1903.

The Maryland line having been settled by the confirmation of the Mason and Dixon survey the Penns' now devoted their energies to having the western and northern boundaries marked. In 1773 they petitioned the King to appoint persons to lay them off and in 1774, commissioners were appointed but they could not come to an agreement. The Revolutionary War intervening nothing was done until 1779, when commissioners from Virginia and Pennsylvania met and on the 31st of August, 1779, they agreed "To extend the Mason and Dixon's line due west five degrees of longitude, to be computed from River Delaware, for the southern boundary of Pennsylvania, and that of a meridian

drawn for the western boundary of Pennsylvania. This agreement was ratified on September 23 by the General Assembly of Pennsylvania. Owing to the military operations of Cornwallis in Virginia it was impossible to run the line. On the 1st of April, 1784, the General Assembly passed an act, 2 Sm. L. 261; Pa. St. at L. Vol. XI, page 336, providing as follows:

“That the line, commonly called Mason and Dixon’s Line, be extended due west, five degrees of longitude, to be computed from the river Delaware, for the southern boundary of Pennsylvania, and that a meridian, drawn from the western extremity thereof, to the northern limits of the said states, respectively, be the western boundary of Pennsylvania, forever, on condition, that the private property and rights of all persons, acquired under, founded on, or recognized by the laws of either country, previous to the date hereof, be saved and confirmed to them, although they should be found to fall within the other, and that in the decision of disputes thereon, preference shall be given to the elder or prior right, whichever of the said states the same shall have been acquired under.....”

The line was completed 23 August, 1785. On the 18th of May, 1878, an act was passed, P. L. 74, authorizing the appointment of commissions to act in conjunction with similar commissions from Ohio and West Virginia to mark the lines between the states. This survey is known as the U. S. Coast and Geodetic Survey of 1885. This survey was confirmed by the Act of 6 June, 1887, P. L. 353.

The Penns appointed David Rittenhouse on 24 October, 1774, as commissioner to run the line between the province of Pennsylvania and New York in conjunction with a commissioner from New York. The two commissioners marked the 42 degree of North Latitude but could not proceed any further on account of the weather. The Revolutionary War intervened before the line could be run and nothing was done until 1786 when commissioners were appointed by both states to run the line. The commissioners in 1774 had placed a stone at the 42nd degree of North latitude. This starting point was used and the line run as follows:

"Beginning at the first mentioned cornerstone, planted in the said small island, in the Mohawk or west branch of the Delaware river, and thence extending due west, by marked stones aforesaid, so far westward as to meet the meridian line, which is hereafter to be fixed and established as the western boundary of the state of New York, shall be and forever hereafter shall be deemed and taken to be and is hereby declared to be, the true and just line of boundary and partition both of territory and jurisdiction, between the state of Pennsylvania and the State of New York."

This line was confirmed by the Act of 27 September, 1789, 2 Sm. L. 510; Pa. St. at L. Vol. XIII, page 378. The line surveyed and marked extended to the banks of Lake Erie a distance of two hundred and fifty-nine miles and eighty-eight perches from the stone placed in 1774. The Act of 8 May, 1876, P. L. 142, authorized the appointment of commissioners to mark this line. The line so marked was confirmed by the Act of 6 June, 1887, P. L. 353.

Commissioners were appointed by Pennsylvania and New Jersey for the purpose of settling the jurisdiction of the river Delaware and the islands within the same. These commissioners entered into an agreement on 26 April, 1783 in which the jurisdiction of the river Delaware from Station Point to where the circular boundary touches the same. The islands in the river were apportioned as follows:

"That all islands, islets, and dry lands, within the bed and between the shores of the said river, and between the said Station Point northerly and the falls of Trenton southerly, shall as to jurisdiction, be hereafter deemed and considered as parts and parcels of the state to which such insulated dry land doth lie nearest, at the time of making and executing this agreement; and that from said falls of Trenton to the state of Delaware, southerly, Bile's Island, near Trenton, Wind Mill island, opposite to Philadelphia, League Island, Mud or Fort island, Hog island, and Little Tinnicum islands, shall be annexed to the state of Pennsylvania and considered as parts and parcels thereof; and that Biddle's or Newbold's island, Burlington island, Petty's island, Red Bank island, shall be annexed to the state of New Jersey, and considered as parts and parcels thereof;

and that all other islands within the said river between the falls of Trenton and the State of Delaware, which are not herein before particularly enumerated, shall be hereafter deemed and considered as parts and parcels of the state, which such island doth lie nearest at the date hereof; and that all islands which may hereafter be formed within the said river, shall be classed and annexed to the jurisdiction of either state, according to the same principle."

This agreement was ratified by the act of 20 September 1783, 2 Sm. L. 77; Pa. St. at L. Vol. XI, page 151. On the 25th of September, 1786, the General Assembly passed "An Act to distribute and annex the jurisdiction of this commonwealth upon the river Delaware, below the Station Point, and to certain islands within the same, to the counties of Northampton, Bucks, Philadelphia and Chester," 2 Sm. L. 388; Pa. St. at L. Vol. XII, page 304. This act annexes to Northampton County the following islands:

Pohatcung, Shoemaker's, Loor's, Easton, Mason's Island and bar, Mason's, Four Rift, McIlhenny's, Attin's two islands, Handie's island and bar, Goodwin's two islands, Shawanaugh's island and bar, Vancamper's island, Nicholas Dupui's two islands and bars, Chamber's island, Vanoken's, Swartwood's, Isaac. Vancampen's, Punkey's island and five bars.

Annexes to Bucks county the following islands:

Bird's, Slack's three islands, Dun's, Harvey's lower island, Harvey's upper island, Lowne's, Smith's island and bar, Paxton's island and bar, Prall's two islands, Wall's, Resolution, Marshall's Wall's two islands, Fishing, Pennington's, Laughly's.

Section III. Gives jurisdiction over the bed of the river to the counties of Bucks, Northampton and Philadelphia.

Section IV. Deals with the jurisdiction of Philadelphia and Chester counties.

Section V. Deals with Chester County.

Section VI. Makes Hog Island a part of Chester County.

Although William Penn was proprietor of both the province of Pennsylvania and the three lower counties now the State of Delaware, the inhabitants of the three lower counties were able to enforce the establishment of two distinct assemblies. The circular boundary mentioned in the charter was first run in 1701 by Isaac Tailer and Thomas Pierson. This line was not a part of the Mason and Dixon line as is popularly supposed. A commissioner was appointed by Maryland (February 11, 1846), Delaware (February 10, 1847), and Pennsylvania (April 10, 1849) to determine the point of intersection of the three States. See Report on Resurvey of Mason and Dixon Line, page 197. This commission found an error was made in running the circular boundary and it was pushed back from its actual intersection with the Mason and Dixon line to the theoretical twelve mile circle. The Act of March, 1869, P. L. 13 authorized the Governor to appoint commissioners to act with commissioners from the State of Delaware for the purpose of marking the line between the two states. The commissioners having reported it was impossible to mark the line because its location was uncertain the Act of 4 May, 1889, P. L. 81 was passed providing for a survey in conjunction with the state of Delaware. The line was run by Captain Hodgkins in 1892 and 1893. This line was approved by the Act of 22 June 1897, P. L. 182. The State of Delaware approved it by the Act of 28 March, 1921 and Congress by the Act of 30 June, 1921 making it the legal boundary between the States. The Act of 16 May, 1923, P. L. 242, provides for the transfer and recording of the deeds to the land supposed to have been in the State of Delaware.

That portion of the United States lying between the Ohio River, the Mississippi river and the Great Lakes and immediately west of the original states was ceded to the United States by New York in 1782, Virginia in 1784, Massachusetts in 1785 and Connecticut in 1786. A trian-

gular portion of this territory which was known as the Northwestern territory was bounded on the south by the northern line of the State of Pennsylvania, on the east by the western line of the State of New York and on the northwest by Lake Erie, containing 202,187 acres, was conveyed to the Commonwealth of Pennsylvania under authority of an Act of Congress passed 6 June, 1788. The deed which was dated 3 March, 1792, was recorded in Rolls Office (now Department of Internal Affairs) in Deed Book No. 31, page 107.

FAYETTE County was formed from a part of Westmoreland County by an act passed 26 September, 1783, 2 Sm. L., 81 Pa. St. at L. Vol. XI, Page 196. The boundaries were as follows:

"Beginning at Monongahela river, where Mason and Dixon's Line intersects the same; thence down said river to the mouth of Speir's run; thence by a straight line, to the mouth of Jacob's creek; thence by the Youghiogeny river to the forks of the same; thence up the south-west branch of the said river, by a part of Bedford county, to Mason and Dixon's Line; thence by said line to the Monongahela river aforesaid."

On the 17th day of February, 1784, an act was passed, 2 Sm. L. 88; Pa. St. at L. Vol. XI, page 234, annexing the following portion of Westmoreland county to Fayette County:

"Beginning at the mouth of Jacob's Creek, thence up the main branch of the said creek, to Cherry's mill, thence along the road leading to Jones's mill, until the same shall intersect the line of Bedford county, thence south-westerly, by the line of Bedford county aforesaid, until the same intersects the Youghiogeny river; thence down the said river to the place of beginning."

The Act of 1 March, 1806, 4 Sm. L. 287; Pa. St. at L. Vol. XVIII, page 114 provides that part of the line between Westmoreland and Fayette County shall be as follows:

"Beginning where the said road now crosses the line of Somerset county; thence on the nearest and best ground for a public highway, to intersect the Pittsburg road at or near Lobengier's mill."

The Act of 10 April, 1807, 4 Sm. L. 445; St. at L. Vol. XVIII, page 644 provides that the middle of the Mononghela river shall be the division line between the counties adjoining the same.

FRANKLIN County was erected from a part of Cumberland County by an act passed the 9th of September, 1784; 2 Sm. L. 264; Pa. St. at L. Vol. XI, page 359. The boundaries are as follows:

"Beginning on the York County Line, in the South Mountain, at the intersection of the line between Lurgan and Hopewell townships, in Cumberland county; thence by the line of Lurgan township (leaving Shippensburg to the eastward of the same,) to the line of Fannett township; thence by the lines of the last mentioned township (including the same.) to the line of Bedford county; thence by the line of Bedford county, southwardly, to the Maryland line; thence by the said line, East, to the line of York county; thence by the line of York county, along the South Mountain, to the place of beginning."

The Act of 27 March, 1790, 2 Sm. L. 523; Pa. St. at L. Vol. XIII, page 475 fixes the boundary between Franklin and Cumberland counties as follows:

"Beginning at York county line, in the South Mountain, at the intersection of Lurgan and Hopewell Townships; thence by a line composed of a part of the original line of Lurgan township, and one to be run, so as to leave the tract of land now or late of Edward Shippen, Esquire, whereon the town of Shippensburg is erected, within the county of Cumberland, to the line of Fannett township; thence by the lines of the last mentioned township, (leaving the same in Franklin county) to the line of Bedford county."

The Act of 4th April, 1835, P. L. 106, alters the line between Franklin and Cumberland Counties as follows:

"Beginning on the public road leading from Strasburg to Shippensburg, at the point where said road crosses said

line; thence by the middle of said road to its junction with the turnpike road in the borough of Shippensburg; thence across said turnpike road, south thirty six and half degrees, east through the centre of an alley to the county line—And that the lands, lots and inhabitants, lying southward of said line be and the same are hereby declared to be and a part of the township of Southampton, in the county of Franklin.”

Section 93 of the Act of 16 April, 1838, P./L. 593, annexes the following part of Franklin County to Adams:

“So much of the township of Green, in Franklin County, as lies east and south of the following line, to-wit: ‘Beginning at a point on the division line between the counties of Adams and Franklin, marked by stones, thence north four and a half degrees west four hundred perches, thence south sixty-three and three fourth degrees west four hundred and ninety five perches, thence south one fourth degree east eighty perches, thence south seventy eight degrees east four hundred and eighty-five perches shall be attached to and be a part of the township of Franklin in the county of Adams.’”

Section 93 of the act of 16 April, 1838, P. L. 593 was repealed by the Act of 9th February, 1839, P. L. 22.

Section 5 of the Act of 28th of April, 1841, P. L. 293, fixes the line between Franklin and Perry counties as follows:

“Beginning at the corner of Cumberland and Franklin counties, on the top of the Blue mountain; thence by a line in the direction of Concord, to the summit of the next mountain; thence along the summit of said mountain as far as practicable, so as to leave the entire valley of Amberson, in the county of Franklin, and to divide the mountain territory as equally as possible between the two counties; thence along the summit of the round top, to the most practicable point on the Conococheague mountain, leaving the entire valley called Sherman’s valley, in the county of Perry; and thence to the corner between Franklin, Perry and Juniata counties; and the said commissioners are required in all cases (in running said division line) to keep as near as possible to the summit of said mountains.”

Montgomery County was erected from a part of Philadelphia county by an act passed 10 September, 1784, 2 Sm. L. 267; Pa. St. at L. Vol. XI, page 364. The boundaries are as follows:

"Beginning in the line of Bucks county, where the same is intersected by the line which divides the townships of Byberry and the Manor of Moreland; thence southwesterly, along the last mentioned line to the first corner or turning thereof; thence on the same southwesterly course, to the line of Lower Dublin, and Oxford townships to the line dividing the townships of Cheltenham and Bristol; and thence along the said line dividing Germantown township from the township of Springfield; and thence along said line to the line dividing the township of Springfield aforesaid from the township of Roxbury, to the river Schuylkill; thence down the said river, to the line dividing the townships of Blockley and Lower Merion; and thence along said line, to the line of the county of Chester; thence by the line of Chester county to the line of Berks county; thence by the line of Berks county, to the line of Northampton county; thence by part of the line of Northampton county, and the line of Bucks county; thence along the said line of Bucks county, to the place of beginning."

The Act of 21st April, 1855, P. L. 283 provides that the road, City Avenue, from the south side of the Schuylkill to Cobb's creek shall be the line between Montgomery and Philadelphia counties and provides for commissioners to adjust the county lines. The Act of 30th March, 1866, 383 provides that the center of the road shall be the dividing line between the counties.

DAUPHIN County was erected from a part of Lancaster County by an act passed 4th March, 1785, 2 Sm. L. 284; Pa. St. at L. Vol. XI, page 450. The boundaries are as follows:

"Beginning on the west side of the river Susquehanna, opposite to the mouth of Conawaga creek; thence up the middle of the said creek, to Moor's mill; and from thence to the head of said creek and from thence, by a direct line, to the southeast corner of Heidelberg township, where it strikes the Berks county line; thence northwest by the line of Berks county, to Mahantango creek; thence along the same by the line of Northumberland county, and, crossing the river Susquehanna, to

the line of Cumberland county; thence down the Susquehanna, on the west side thereof, by the line of Cumberland county, and that part of the line of York county, to the place of beginning."

LUZERNE County was erected from the northern part of Northumberland County by an Act passed 25th of September, 1786, 2 Sm. L. 386; Pa. St. at L. Vol. XVIII, page 300. The boundaries are as follows:

"Beginning at the mouth of Nescopeck creek, and running along the south bank thereof eastward to the head of said creek; from thence a due east course to the head branch of Lehigh creek; thence along a due north course to the northern boundary of the state; thence westward along the said boundary till it crosses the east branch of the Susquehanna; and then along said northern boundary fifteen miles west of the said river Susquehanna, thence by a straight line to the head of Tawandee creek; thence along the ridge which divides the waters of the east branch of the Susquehanna from those of the west branch, to a point due west from the mouth of Nescopeck creek; thence east to the place of beginning."

The Act of 27 December, 1786, 2 Sm. L. 344; Pa. St. at L. Vol. XII, Page 339 provides:

"That the line from the mouth of Nescopeck shall run northwestwardly, until it intersects the line which divides the waters of the east branch of Susquehanna river from those of west branch thereof."

The Act of 29th of September, 1787, 2 Sm. L. 438; Pa. St. at L. Vol. XII, Page 587, defines the line as follows:

"That the said line from the mouth of the Nescopeck shall run north, one degree west, until it intersects the line which divides the waters of the east branch of the Susquehanna river from those of the west branch thereof."

The Act of 17th April, 1795, 3 Sm. L. 227; Pa. St. at L. Vol. XV, Page 312, defines the line between the counties

of Berks, Northampton, Northumberland and Luzerne as follows:

"Beginning at the forks of Mahantango and Pine creeks, at the place called the Spread-Eagle, and from thence north sixty-six degrees east, until the same shall intersect the line dividing the counties of Berks and Northampton, and from thence the same course to the Lehigh creek; thence along the east bank of the said Lehigh creek to the head thereof; from thence a due north course to the boundary of the state; which shall hereafter be deemed and taken to be the boundary line between Berks and Northumberland, and Northampton and Luzerne counties."

The Act of 28th March, 1808, 4 Sm. L. 526; Pa. St. at L. Vol. XVIII, Page 887 provides:

"That all that part of Northumberland county lying northeast of a straight line from the mouth of the Nescopeck creek, to the northwest corner of Berks county, shall be and the same is annexed to Luzerne county."

For the line between Luzerne and Columbia counties, see Columbia county.

HUNTINGDON County was erected from a part of Bedford county by an Act passed 20th of September, 1787, 2 Sm. L. 417; Pa. St. at L. Vol. XII. Page 512. The boundaries are as follows:

"Beginning in the line of Bedford and Franklin counties, where the new state road, (by some called Skinner's road,) leading from Shippensburg to Littleton, crosses the Tuscarora mountain, thence in a straight course or line, to the Gap in the Shade mountain, where the road formerly called Pott's road crosses the same, about two miles north of Littleton; thence by a straight line to the Old Gap, in Sideling Hill, where Sideling Hill creek crosses the mountain; thence in a straight line by the northerly side of Sebastan Shoub's mill, on the Raystown branch of Juniata; thence on a straight line to the Elk Gap, in Tussey's mountain; computed to be about nineteen miles above or southwesterly of the town of Huntingdon, (formerly called the Standing Stone,) and from the said Elk Gap, in a straight line, to the Gap at Jacob Steven's mill, a little below where Woolery's mill formerly stood, in Morrison's cove; thence

in a straight line by the southerly side of Blair's mill, at the foot of the Allegheny mountains; thence across the said mountain, in a straight line, to and along the ridges dividing the waters of Conemaugh from the waters of Clearfield and Chest creeks, to the line of Westmoreland county, thence by the same to the old purchase line, which was run from Kittaning to the west branch of Susquehanna river, and along the said line to the said west branch, and down the same to the mouth of Moshannon creek, and along the remaining lines or boundaries which now divide the county of Bedford from the counties of Northumberland, Cumberland, and Franklin, to the place of beginning."

An Act passed 1st April, 1791, 3 Sm. L. 19; Pa. St. at L. Vol. XIV, page 46 fixed the line between Huntingdon and Mifflin counties as follows:

"Beginning where the province line crosses the Tuscarora mountain, and running along the summit of that mountain to the Gap, near the head of the Path-valley; thence with a north line, to the Juniata; and the said line, from the said Gap to the Juniata, being run, shall be and remain the boundary line between the counties of Huntingdon and Mifflin, on the south side of the river Juniata; and until the said shall be run as aforesaid, the line between the two counties aforesaid shall be and remain the same, as that which divided Bedford county from Cumberland county."

This line not being satisfactory the act of 29th of March, 1792, 3 Sm. L. 65; Pa. St. at L. Vol. XIV. Page 219, fixed the line as follows:

"That a straight line, beginning in the middle of the water-gap in the Tuscarora mountain, and from thence to the river Juniata, in such direction as to include Joseph Galloways farm within Huntingdon County, at the mouth of Galloways run, shall be the boundary line between Huntingdon and Mifflin counties on the south side of Juniata."

The Act of March, 1812, 5 Sm. L. 367 provides:

"That so much of the county of Mifflin as is contained within the following boundaries shall be and the same is hereby annexed to the county of Huntingdon, that is to say, crossing the river Juniata one hundred and sixty

perches below Drake's ferry-house, on the northern side of the river Juniata, thence from the bank of the river, north one hundred and sixty perches, thence at a right angle to the said line to Jack's mountain, to intersect the present line of Huntingdon county."

See Mifflin County for boundary between Huntingdon and Mifflin Counties.

Allegheny County was erected from a part of Westmoreland and Washington counties by an act passed 24th of September, 1788, 2 Sm. L. 448; Pa. St at L, Vol, XIII, Page 89. The boundaries were as follows:

"Beginning at the mouth of Flaherty's run, on the south side of the Ohio river; from thence, by a straight line, to the plantation on which Joseph Scott, Esquire, now lives, on Montour's run, to include the same; from thence, by a straight line, to the mouth of Miller's run, on Chartier's creek; thence by a straight line, to the mouth of Perry's mill run, on the east side of Monongahela river; thence, up the said river, to the mouth of Becket's run; thence, by a straight line, to the mouth of Sewickly creek, on Youghiogeny river; thence, down the said river, to the mouth of Crawford's run; thence, by a straight line, to the mouth of Brush creek, on Turtle creek; thence, up Turtle creek to the main fork thereof; thence, by a northerly line, until it strikes Puckety's creek; thence down the said creek, to the Allegheny river; thence up the Allegheny river, to the northern boundary of the state; thence, along the same, to the river Ohio; and thence, up the same to the place of beginning."

The Act of 17th September, 1789, 2 Sm. L. 492; Pa. St. at L. Vol. XIII, Page 319 provided that the following part of Washington county should be annexed to the county of Allegheny:

"Beginning at the river Ohio, where the boundary line of the state crosses the said river, from thence by a straight line to Armstrong's mill, on Miller's run, and from thence by a straight line to the Monongahela river, opposite the mouth of Perry's run, where it strikes the present line of the county of Allegheny, be, immediately after the running of the said lines, and the same is hereby annexed

to the said county of Allegheny, and to all intents and purposes constituted a part of the same."

Section XIV of the Act of April 3, 1792, 3 Sm. L. 70; Pa. St. at L. Vol. XIV, Page 232 provides:

"That all the lands within the triangle of lake Erie, purchased from the United States, shall be taken and deemed and they are hereby declared to be within the limits of the county of Allegheny."

MIFFLIN County was erected from a part of Cumberland and Northumberland counties by an act passed 19 September, 1789, 2 Sm. L. 493; Pa. St. at L. Vol. XIII, Page 321. The boundaries were as follows:

"Beginning at Susquehanna river, where the Turkey hill extends to the said river, thence along the said hill to Juniata, where it cuts Tuscarora mountain, thence along the summit of the said mountain to the line of Franklin county, thence along the said line to Huntingdon county line, thence along the said line to the Juniata river, thence up the said river to Jack's Narrows, thence along the line of Huntingdon county to the summit of Tussey's mountain, thence along the lines of Huntingdon and Northumberland counties, so as to include the whole of Upper Bald Eagle township, in the county of Northumberland, to the mouth of Buck creek, where it empties into the Bald Eagle creek, thence to Logan's Gap in Nittany mountain, thence to the head of Penn's creek, thence down the said creek to Sinking creek, leaving George McCormick's in Northumberland county, thence to the top of Jack's mountain, at the line between Northumberland county and Cumberland, thence along the said line to Montour's spring, at the heads of Mahantango creek, thence down the said creek to Susquehanna river, and thence down the said river to the place of beginning."

The Act of 20th March, 1812, 5 Sm. L. 338 provides as follows:

"That all that part of Northumberland county, in Beaver-dam township, lying westward of a line, to begin at the south-east corner of Centre county on the top of Jack's mountain, on the line between Northumberland and Centre at or near Wildcat-gap, and running across the said town-

ship to a gap in Shade mountain, known by the name of Creb's gap, so as to include John Ritter's tavern, shall from and after the passing of this act, be annexed to the county of Mifflin."

The Act of 15th April, 1834, P. L. 503 provides:

"That so much of the county of Huntingdon as is contained within the following boundaries, shall be and the same is hereby annexed to the county of Mifflin; that is to say, beginning on the Juniata river so as to divide equally between the said counties that part of the road which passes around Blue Rock hill; thence due east until it strikes the Huntingdon and Mifflin county line; thence along said line to the Juniata river; thence up said river to the place of beginning; and the said part of Huntingdon county shall after the passage of this act be a part of the county of Mifflin."

The Act of 27th April, 1855, P. L. 343 fixes the centre of the road which passes round Blue Rock hill thence due east until it strikes the Huntingdon and Mifflin county line as the boundary between the two counties. It also provides that if the due east line from the beginning shall intersect the old county line before it reaches the top of Black Log mountain, the commissioners are required to follow the old line to the corner of Juniata county.

DELAWARE County was erected from a part of Chester County by an act passed 26th September, 1789, 2 Sm. L. 499; Pa. St. at L. Vol, XIII, Page 338. The boundaries were as follows:

"Beginning in the middle of Brandywine river, where the same crosses the circular line of Newcastle county, thence up the middle of the said river to the line dividing the lands of Elizabeth Chads and Caleb Brinton, at or near the ford, commonly called or known by the name of Chad's Ford, and from thence, on a line as nearly straight as may be, so as not to split or divide plantations, to the great road leading from Goshen to Chester, where the Western line intersects or crosses the said road, and from thence along the lines of Edgemont, Newton and Radnor, so as to include those townships, to the line of Montgomery county, and along the same and Philadelphia county line to the river

Delaware, and down the same to the circular line aforesaid, and along the same to the place of beginning."

For circular boundary line see boundary between the State of Pennsylvania and Delaware.

LYCOMING county was formed from part of Northumberland county by an Act passed 13th April, 1795, 3 Sm. (L. 220; Pa. St. at L. Vol. XV., Page 288. The boundaries were as follows:

"That all that part of Northumberland county, lying northwestward of a line drawn from the Mifflin county line, on the summit of Nittany mountain; thence running along the top or highest ridge of the said mountain, to where the White Deer Hole creek runs through the same, and from thence by a direct line crossing the West Branch of Susquehanna, at the mouth of Black Hole creek, to the end of Muncy hills; thence along the top of Muncy hills and the Bald mountain, to the Luzerne county line."

An Act was passed 2nd April, 1804, 4 Sm. L. 187; Pa. St. at L. Vol. XVII, Page 846 annexing the following portion of Luzerne county to Lycoming county:

"Beginning at the east side of the east branch of Susquehanna, on the line between Pennsylvania and New York, at such place that from thence a due south line will strike the north eastern corner of Clavarack township; thence by the line of the same township about a southwest course, crossing the said east branch, to the northwest corner of the said township; thence by the southwest side of the same to the southwest corner thereof; and from thence by a due west line to the line now separating the counties Luzerne and Lycoming."

The Act of 11th March, 1815, 6 Sm. L. 276 annexes the township of Washington in the county of Union to Lycoming county to be effective May 1st, 1815.

The Act of 27 March, 1819, 7 Sm. L. 202, annexes the following part of the township of Bald Eagle Centre county to Lycoming to be effective May 1st, 1819:

"Beginning at the river Susquehanna, opposite the mouth of Queen's run; thence along the division line of the counties of Centre and Lycoming, one mile; thence by a direct line to the mouth of Sinnemahoning creek."

Section 24 of the Act of 4th May, 1832, P.L. 452 provides for the marking of the line between Union and Lycoming counties as follows:

"Beginning at a marked red-oak, on the west side of the West Branch of the river Susquehanna, Fifty-eight perches above the mouth of Laffesties run, thence south eighty-nine degrees west until it intersects the original division line between the counties of Northumberland and Lycoming; thence along the same to the Centre county line."

Sec. 1 of the Act of 31st March, 1868, P. L. 526 provides for running the line between Clinton, Lycoming and Union as follows:

"Beginning at the northwest corner of the county of Union, on the West Branch of the Susquehanna; thence by a south-westerly course, by the present boundary of Union and Lycoming counties, to where the same intersects the south boundary of a tract of land in the warrantee name of John Triteman; thence by said south boundary north eighty-eight degrees west to intersect the boundary line between Clinton and Lycoming; thence by the same, in a north-westerly direction, to the West Branch of the Susquehanna, nearly opposite the mouth of the Tiadugton, now called Pine Creek."

SOMERSET county was formed from a part of Bedford county by an act passed 17th April, 1795, 3 Sm. L. 229; Pa. St. at L. Vol. XV, Page 318. The boundaries were as follows:

"All that part of Bedford county, lying and being to the westward of a line drawn along the top of the Allegheny mountain, from where the Maryland line crosses the same to where the line of Huntingdon county crosses the same mountain."

The act of 1st March, 1800, 3 Sm. L. 415; Pa. St. at L. Vol. XVI, Page 424 annexes the following part of Bedford county to Somerset:

"All that part of Bedford county in Londonderry township, lying westward of a line to begin on the top of the Little Allegheny mountain, where the Maryland line crosses the same; thence running along the said mountain a northerly direction to where the mountain breaks; thence a straight line to the breast-works to intersect the present line between Bedford and Somerset counties."

Section II of the Act of 29th March, 1798, 3 Sm. L. 322; Pa. St. at L. Vol. XVI, Page 88, directs commissioners to ascertain and mark the lines between Somerset and Huntingdon counties according to the following boundaries:

"Beginning on that part of the line between the counties of Bedford and Huntingdon, near the southerly side of Blair's Mills, at the foot of the Allegheny mountain, thence across the said mountain, in a straight line, to and along the ridges dividing the waters of Conemaugh from the waters of the Clearfield and Chest creeks, to the line of Westmoreland county; thence by the same to the Old Purchase line, which was run from Kittanning to the west branch of the Susquehanna."

Sec. III of the same act directs commissioners to ascertain and mark the lines between the counties of Westmoreland and Somerset according to the following boundaries:

"Beginning where Black Lick intersects the said line or north end of Laurel Hill; thence along the ridge of the said hill north eastward, so far as it can be traced, or until it runs into the Allegheny Hill; thence along the ridge dividing the waters of Susquehanna and the Allegheny rivers to the purchase line, at the head of Susquehanna."

GREENE County was formed from a part of Washington county by an Act passed 9th February, 1796, 3 Sm. L. 262; Pa. St. at L. Vol. XV, Page 380. The boundaries were as follows:

"Beginning at the mouth of Ten Mile creek, on the Monongahela river; thence up Ten Mile creek to the Junction of the north and south forks of said creek; thence up said north fork to Colonel William Wallace's mills; thence up a southwesterly direction to the ridge which divides the waters of Ten Mile and Wheeling creeks; thence a straight line to the head of Enlow's Branch of the Wheeling; thence down said branch to the western boundary line of the state; thence south along the said line to the southern boundary line of the state; thence east along said line to the river Monongahela; and thence down the said river to the place of beginning."

A Supplement to this act was passed 22nd January, 1802, 3 Sm. L. 480; Pa. St. at L. Vol, XVII, Page 40, reuniting a portion of Greene county to Washington and altering the line as follows:

"Beginning at the present line, on the ridge that divides the water of the Ten Mile and Whelen creeks, near Jacob Bobbett's; thence a straight line to the head waters of Hunter's fork of Whalen creek; and thence down the same, to the mouth thereof, where it meets the present county line."

The Act of the 10th of April, 1807, 4 Sm. L. 455; Pa. St. at L. Vol. XVIII, Page 644 provides that the middle of the Monongahela river shall be the division line between the counties adjoining the same.

WAYNE County was formed from a part of Northampton county by an Act passed 21st March, 1798, 3 Sm. L. 316; Pa. St. at L. Vol, XVI, Page 64. The boundaries were as follows:

"All that part of Northampton county, lying and being to the northward of a line to be drawn and beginning at the west end of George Michael's farm, on the river Delaware, in Middle Smithfield township, and from thence a straight line to the mouth of Trout creek, on the Lehigh, adjoining Luzerne county."

ADAMS County was formed from a part of York county by an Act passed 22nd January, 1800, 3 Sm. L. 404; Pa. St. at L. Vol. XVI, Page 392. The boundaries were as follows:

"Beginning in the line of Cumberland county where the road from Carlisle to Baltimore leads through Trent's Gap; thence along the said road to Binder's; thence a straight line to Conewago creek opposite to the mouth of Abbot's run; thence along the line of Berwick and Paradise townships, until it strikes the line of Manheim township; thence along the line of Manheim and Berwick westwardly, until it strikes the road leading from Oxford to Hanover town; and from thence a due south course until it strikes the Maryland line; thence along the Maryland line to the line of Franklin County: thence along the line of Franklin and Cumberland counties to the place of beginning."

Section 21 of the act of 4th May, 1832, P. L. 445 provides for commissioners to run a line:

"Beginning at a point where the York, Adams and Cumberland county lines meet, being at a place commonly called Coulters road; thence to a point on the road leading from Gettysburg to Shippensburg, being on the top of the South mountain, to a stone heap at the side of the said road, which line, when run and marked shall be the boundary line dividing the county of Adams from the county of Cumberland."

Section 93 of the Act Regulating Election Districts passed 16th April, 1838, P. L. 593 annexed a portion of Greene Township, Franklin County to Franklin Township, Adams County. This section was repealed by the Act of 9th February, 1839, P. L. 22. See Franklin County for metes and bounds.

CENTRE County was formed from parts of Mifflin, Northumberland, Lycoming and Huntingdon counties by an Act passed 13th February, 1800, 3 Sm. L. 407; Pa. St. at L. Vol. XVI., Page 403. The boundaries were as follows:

"Beginning opposite the mouth of Quinn's run, on the west branch of Susquehanna; thence a straight line to the mouth of Fishing creek, where it empties into the Bald Eagle creek; thence to the northeast corner of Mile's (late Haine's) township, including Nittany valley; thence by the northeastern boundaries of the said township to the summit of Tussey's mountain; thence by the summit of said

mountain, by the lines of Haine's township in Northumberland county, Potter township in Mifflin and Huntingdon counties; thence by a direct line to the head of the south-west branch of Bald-Eagle creek; thence a direct line to the head waters of Moshannon; thence down the same to Susquehanna, and down the Susquehanna to the place of beginning."

The Act of 23rd March, 1818, 7 Sm. L. 115; annexes the following part of Lycoming county to Centre the act to take effect May, 1st, 1818:

"All of that part of Wayne township in Lycoming county, that includes the east end of Sugar valley beginning on the summit of a mountain north of Sugar valley at a water pond, on the division line between Lycoming and Centre counties, thence an east course to the head water of Sinking Fishing creek, including Henry Barner's farm, thence a south course to the Union county line, be, and the same is hereby annexed to Miles township in Centre county."

We have thus far taken up the description of thirty counties of the state, to wit: Philadelphia, Bucks, Chester, Lancaster, York, Cumberland, Berks, Northampton, Bedford, Northumberland, Westmoreland, Washington, Fayette, Franklin, Montgomery, Dauphin, Luzerne, Huntingdon, Allegheny, Delaware, Mifflin, Adams, Butler, Beaver and Centre, comprising largely the eastern, southern and middle portions of the state. The remaining thirty-seven counties as yet to be described are located mainly along the New York border and the northwestern part of the state. The story of the formation of these counties leads into an account of the so called "Depreciation" and "Donation" lands together with the story of intrigue and exploitation of these lands rich in oil and timber by the various land companies formed in the 19th century. The present account is therefore closed with the 18th century history and the remaining portions of the state above mentioned will be taken up in a future article.

A. J. White Hutton

MOOT COURT

SOLON v. HARPER

Conveyances — Mortgages — Recording — Grantor's Name —
Mortgagor's name — Form of Name on Index — Omission of
Middle Initial — Constructive Notice

STATEMENT OF FACTS

William Jefferson executes a mortgage to Solon for \$4,000 on a house and lot, naming himself therein William T. Jefferson. This mortgage was recorded and indexed. Subsequently Jefferson conveyed the premises to the defendant, Harper, styling himself in the deed William Jefferson. his is a scire faceas sur mortgage.

McMenamin, for the Plaintiff.

Johnston, for the Defendant.

OPINION OF THE COURT

Sakin, J. The question before the court is simply this: Whether Harper, the defendant, when he accepted the conveyance from William Jefferson, had sufficient legal notice of the existence of the mortgage at the time he accepted the conveyance. We think he did have sufficient notice.

In Crippen vs. Bergold, 258 Pa. 469, a case nearly identical with the one in controversy, it was held that a purchase of land from one, commonly known as Herman Bergold, and signing his name without a middle initial, is bound to take notice of a prior recorded and indexed mortgage covering the same land, executed by the same man, but signing with a middle initial, as Herman A. Bergold.

It is always easy to ascertain whether or not a mortgage affects the property under examination, so that the prudent rule in examining a mortgage index is to note everything appearing against the name in question, with or without a middle initial. In the case at bar the name, William Jefferson, of course included the name, William T. Jefferson, and a search against all the Williams would have disclosed the mortgage executed by William Jefferson.

The counsel for the defendant cites and relies upon the decision laid down in Prouty vs. Marshall, 225 Pa. 570, as sustaining his contention that the defendant did not have sufficient notice, but the facts of that case differ from those of the case at bar. In that case the first initials were incorrect, and the recorder simply made a mistake in indexing it under those letters, but, in the case at bar,

the mortgage was indexed under the proper letter, and the correct name appeared upon the record; not merely the initial, but the first name. William, appeared in full, as well as the last name. The fact that the middle initial was not inserted, does not constitute sufficient cause why the defendant should be thrown off his guard.

In the case of Fourth Bleucher Building Loan Association vs. Halpern et al, 270 Pa. 169, Mr. Justice Sadler said: "It is true that a judgment against Harry L. Halpner there appeared: but, in absence of some notice, actual or constructive, of the identity of the defendant in the judgment with the owner of the land, the Building Association could not be charged thereby. A contrary conclusion might be reached if there had been a like location on the mortgage index: for, in such case, the searcher would be put on inquiry, and opportunity would be presented to determine whether there was identity of person, since the examination of the mortgage so referred to, would furnish a description of the property proposed to be made the subject of a lien, and thus the requisite knowledge would be obtained."

In view of the authorities above stated, we think that the rule is not an iniquitous one, and that the defendant had sufficient notice of the existence of the mortgage which is therefore, enforceable against him. Judgment for Plaintiff.

OPINION OF THE COURT

Little needs to be added to the satisfactory opinion of the learned court below.

It is not very unusual for men with middle initials not to use them or to use them only at times. It would not be an exorbitant expectation of a man about to purchase land from a William Jefferson, and who sees from the index that there is a mortgage reporting to be by William T. Jefferson, that he should imagine identity and take the pains to read the description of the promises in the deed and mortgage, and thus discover their identity.

The judgment of the learned court below is **AFFIRMED**.

HALLOWAY'S ESTATE

Trust and Trustees — Separate Use Trust — Termination — Divorce
—Wills — Construction — Precedents —

STATEMENT OF FACTS

Halloway, by will directed the interest of a fund to be paid to his daughter annually, but, should she become widowed through the death of her present husband, the fund shall be paid over to her. She obtained a divorce from her husband, and claiming to be thus

"widowed," she demands the fund. The Orphan's Court refuses to award it to her, holding that it is not payable to her until the death of her former husband. Appeal.

Drizin, for the plaintiff.

Crowley, for the defendant.

OPINION OF THE COURT

BOWER, J. The question that arises from the facts in this case is, did the divorce warrant the termination of the trust created in favor of the plaintiff under the terms of the will?

In order to answer this question we must first determine the intention of the creator of the fund. Halloway, by his will directed that the interest of a fund be paid to his daughter annually, but should she become widowed thru the death of her present husband, then the whole fund was to be turned over to her.

It is a well established rule of law that in construing a will, the primary consideration is to ascertain the intent of the testator, and such intent must be gathered from the terms of the will: Hancock's appeal, 112 Pa. 364; Woelpthe Appeal, 126 Pa. 362; Mizner's Estate, 262 Pa. 62; Glenn vs. Stewart, 265 Pa. 208; O'Neill's Estate 266 Pa. 9; Ludwick's Estate 269 Pa. 365. In Joyce's Estate 273 Pa. 404, the court says. "It must be steadily borne in mind that it is not the province of the court to consider what the testator possibly intended, but only what intention is expressed in the language used; a necessary conclusion, since a will is required to be in writing."

Parol evidence is only admissible when the will is too vague and indefinite to interpret the intention of the testator by the terms of the will or where the will contains some latent ambiguity. Hunter vs Hunter, 229 Pa. 349; Best vs Hammond, 55 Pa. 409.

The terms of Halloway's will are clear and definite and the intention of the creator of the will can be ascertained from the language used.

It is evident, from the terms of the instrument, that the testator did not desire the termination of the trust until the death of his daughter's husband. He specifically says that should she become widowed thru the death of her present husband, then the fund was to be turned over to her. The use of the word "present" evidently indicates that, even if in the future he was no longer her husband, thru divorce or separation, that fact should not terminate the trust. Thus it being the intention of the testator that the fund should not be turned over to the daughter until the death of her present husband and only then, we are unable to see why the

divorce should terminate the trust. To rule that the divorce would warrant the termination of the trust would be ruling against the intention of the testator as expressed in the terminology of the will.

In Henry's Estate, 271 Pa. 416, a case exactly on point, Justice Schaeffer, in deciding that the divorce did not terminate the trust says, "That the dominant thought the testator had in mind was to protect the corpus against the possibility of Caldwell (the husband) getting any part of it, and of his daughter obtaining possession thereof during her present husband's life. If the will should be construed as pointed out by the court below, by a prearranged divorce, the appellant and Caldwell could get possession of the money, remarry, and thus set aside the terms of the will."

Koenig's Appel 57 Pa 352, on which the learned counsel for the appellant rests his argument, is not applicable in the present case. The circumstances attaching to that case and the language used differ so materially from the present case that it would be unjust to apply the ruling laid down in that case in the present case. In that case there was a will of personalty, the interest of which was to go to his daughter and if she survived her husband, then the personalty should be turned over to her. She obtained a divorce and the court held that the divorce terminated the trust. But this occurred before the Married Woman's Act of 1848, and thus if the personalty would have been given to her, the husband could take and appropriate it to his own use. It is this thing that the testator had in mind, and the divorce ended the possibility of the husband taking it for his own use, and thus the intention of the testator having been accomplished, the court properly ruled that the divorce terminated the trust.

We, therefore, hold that the divorce did not terminate the trust and dismiss the appeal.

OPINION OF SUPREME COURT

The case cited by the learned court below is authority for its decision. The testator is too precise in the expression of his intention, to make it possible to think that what he meant was a divorce. He used the word "widowed," and he defined "widowed" as a result of the death of the husband. Further discussion is unnecessary. **APEALED DISMISSED.**

HENRY WATKINS et al vs. JOHN WATKINS, JR.

**Deed — Parent and Child — Conveyance for Support — Mental
Capacity of Grantor — Confidential Relation — Burden of Proof
—Evidence — Party Dead**

STATEMENT OF FACTS

John Watkins had three sons. He was seventy-five years old, and for eight years had lived with one of them, John Jr. The other two, Henry and James, fairly prosperous in business, took little heed of their father and contributed nothing to his support. The father conveyed to John Jr., his farm, the only property he had, with \$5,000. The deed stated no consideration. A writing, executed by John Jr., at the time, contained his promise to support the father the rest of his life. Six years later the father died. The brothers of John filed a bill to declare the conveyance void. The court so decreed laying stress on the deeds omitting to provide for revocation and holding that the burden was on John Jr., to show the fairness of the transaction, the absence of improper influence or duress. The court permitted the brothers to testify to facts which occurred during the life of the father.

Orlando, for plaintiff.

Pipa, for defendant.

OPINION OF THE COURT

Everhart, J. There are three questions here:

(1) was the validity of the deed impaired by the omission to provide for revocation?

(2) Was the burden of proof upon John Jr., to show the fairness of the transaction?

(3) Were the brothers competent to testify to facts which occurred during the life of the father?

(1) We hold that the writing executed by John Jr., at the time, containing his promise to support the father was a valid consideration. *Fiscus vs. Fiscus* 272 Pa. 328. And since there was no evidence that the promise was not fulfilled, the father's deed of conveyance was not impaired by omitting to provide for revocation.

Carney vs Carney 196 Pa. 34; *Northup vs Hall* 228 Pa. 20.

We think the lower Court erred on this point.

(2) We think that the lower court was also in error in holding that the burden of proof was upon John Jr., to show the fairness of the transaction and the absence of undue influence or duress.

The burden of proof is upon those attacking the deed. *Neuren-ter vs. Scheller* 270 Pa. 80. *Fiscus vs. Fiscus* 272 Pa. 326. The above cited cases uphold the proposition that a child may accept a

voluntary deed from a parent without being subjected to an obligation to make affirmative proof that the conveyance was fair and conscionable.

(3). The brothers were incompetent to testify to facts which occurred during the life of the father. They were rendered incompetent by the act of May 23, 1887 (P. L. 159) section 5, Clause e. Neither were they competent under the exception clause (f) of the same act which makes competent, parties respectively claiming by devolution. In this case only one party was claiming by devolution.

This decision is substantiated by *Fiscus vs Fiscus* 272 Pa. 329. *Campbell vs. Brown* 183 Pa. 112.

The decree of the court below is reversed.

OPINION OF SUPREME COURT

The brothers offered to testify to facts occurring before the death of their father, for the purpose of nullifying his conveyance of the land to their sister. The grantee, John, Jr., represents the right of the father, who is now dead. The brothers are proceeding adversely to the father's power and right. They are incompetent, under the Act of 1887. *Fiscus v. Fiscus*, 272 Pa. 326; *Campbell v. Brown*, 183 Pa. 112; *King v. Humphrey*, 138 Pa. 310.

Objection to the deed is made, that it does not contain a power of revocation. But, to say that it is therefore void, is to say that a father cannot make a binding contract with his son. Simultaneous with the deed was a written promise by the son to support the father for the rest of his life. It would be absurd to say that such a contract could not be made, and equally absurd to say that it would be revocable. The conveyance was the consideration for the son's undertaking to give support and it cannot be admitted that the consideration from the father could not be given, before the fulfilment by the son, of his promise to give support. We cannot concede that the conveyance must be revocable; that it must stipulate for revocability, or that the absence of such stipulation would itself make the deed revocable.

The relation of the father to his sons is revealed in the evidence. Henry and James neglected their father, and contributed nothing towards his support. The land was worth \$5000. The father died six years later. He might have lived 12 or 15 years. Nothing suggests that the land was too large a recompense for the future support of the grantor. We find nothing in the case to throw on the son John, the duty of affirmatively showing in view of the disclosed facts that there was no fraud or undue influence, or duress, exercised upon the father. *Fiscus v. Fiscus*, 272 Pa. 326.

The judgment of the learned court below is **AFFIRMED**.

BAILEY V. BORTON

Beneficial Associations — Unincorporated — Death Benefits — Payment to "Friends of Deceased" — Widow — Next of Kin — Contract — Construction by Parties — Maxims — "Contemporanea Expositio est Optima et Fortissima in lege,"

STATEMENT OF FACTS

An unincorporated association was thirty years ago founded by the miners at a certain mine. They agreed that upon the death of any miner each survivor should contribute so much, and the money thus collected should be paid to the friends of the deceased. A youth, nineteen years of age, had been cared for by a woman, a friend of his deceased mother, for several years. To rebut her claim the surviving uncle of the deceased, who in no way had befriended him, claimed on the ground that during the 30 years of the life of the association, when death occurred, the money had been invariably paid, (a) to the widow if there were one, or (b) if no widow to the next of kin. The court decided in favor of the foster mother as a friend. The uncle contends that the jury should have been allowed to find in his favor. Appeal by uncle.

Saterlee, for plaintiff.

Zeigler, for defendant.

OPINION OF THE COURT

J. Smith, J. The agreement entered into by the miners when the association was formed is, on its face, ambiguous. The difficulty lies in determining who the friends of a deceased member are; at least those friends who would be entitled to receive the fund which arose upon his death. Where there are immediate relatives such as wife, children, father, mother, brother, sister, the meaning of the term is not so difficult of interpretation. However the case before us presents a different situation; there are no immediate relatives of the deceased but instead an uncle and foster mother of the deceased, who has cared for him for several years, claim the fund. An interpretation of the word friends as used in the agreement, to which the deceased became a party, will determine which of these two is entitled to it.

In determining the meaning of an indefinite or ambiguous contract, the construction placed on it by the parties themselves is controlling. *Saltsburg Gas Co. vs Saltsburg*, 138 Pa. 250; *Bower vs. Walker* 220 Pa. 294; *Thatcher vs West Chester Rwy*, 35 Superior 615; *McMillen vs Titus*, 222 Pa. 500; *Beedy vs Nypano*, 250 Pa. 51. The rule is ably stated by Agnew, J. in *Gass's Appeal*, 73 Pa. 39; "When a contract is capable of two interpretations, that which the parties

themselves have always put upon it, and acted upon, especially for a long period of years, a court will follow, because it is the true intent and meaning of the parties."

The plaintiff in the case has brought forth ample evidence that the association had, during its thirty years of existence, paid the fund when a death occurred, to the widow if there was one, and, if there were no widow, to the next of kin. Over a long period of time this has been the interpretation of the agreement which the members of the association had entered into. Each incoming member would be bound by this interpretation. In applying the rules above stated to the disposal of the fund under what had been invariably the rule of the association, it is evident that the fund should go to the uncle as next of kin.

The decision which the court has reached seemingly works an inequitable result. The deceased, who was a youth nineteen years of age when he was killed, had been left an orphan several years before. The defendant, a friend of his deceased mother, had befriended him and acted as his foster mother from the time of his mother's death until his decease. The plaintiff, an uncle of the deceased, had shown no interest in his welfare and had left him to the care of the defendant, a stranger. No doubt her place in the life of the deceased had been given an inestimable value by him. However, what were perhaps his wishes must be entirely lost sight of in the application of hard and fast rules of law. We must lose sight of what is equitable and just. For humane actions the law finds no reward unless they are connected with some legal obligation. The court is bound by the decision in *Fisher vs Ronemus*, 267 Pa. 325, which presents a similar set of facts.

The judgment of the court below is reversed, the fund to be paid the surviving uncle as next of kin.

OPINION OF THE SUPREME COURT

The money, on the death of a member of the Association, was to be paid to the "friends of the deceased." This phrase is ambiguous. There are many varieties of friends, some durable, and ready to make and making sacrifices of notable kinds and amounts; others exceedingly tepid and fugacious. On the other hand, there is but little connection between friends and next of kin. The living next of kin may be very remote; have borne no social relations with the deceased, ignored him, been envious and jealous of him, etc. The supposition that the deceased was intending to endow such kin at his death is absurd. In many cases, there might be difficulty in fastening upon any criterion, to distinguish the friends selected to receive the money; and in the vaguely conceived class of friends, but, in other cases, there could be no reasonable doubt. Here is a foster mother who has cared for the boy several years. The

inference would be justified that, among the circle of so called friends, she will be the one to whom his gratitude and affection would have wished the money to go, and to whom impartial persons would have approved its going. Competitor with her is an uncle of the boy who had in no way befriended him. The learned court has decided to define "friend" as "next of kin," two conceptions widely different.

The excuse is that during 30 years, when there was a widow, she, when there was no widow, the next of kin, did receive the money. But, no analysis of the case is given. Who was the "next of kin," and what their social relation toward the deceased? Perhaps they were sisters, or brothers living together in the same family. Perhaps they were "friends" as well as relatives. We think the mere fact that the beneficiaries in the earlier cases have been widows, or next of kin, is not a sufficient indication that the relationship alone, was the decisive fact. We think in the circumstances of this case the foster mother was sufficiently marked off as a "friend" to justify the bestowal of the benefit upon her, and to refuse the unfriendly uncle the opportunity to profit by the death of his nephew for whom he did not care.

We are sorry to reverse the judgment of the trial court, especially when endeavoring to yield to authority that it has not felt fully at ease in following. REVERSED.

COMMONWEALTH v. HERRICK

Evidence — Written Memoranda Witness — Admissibility

STATEMENT OF FACTS

The facts in this case are as follows: The Commonwealth called X to whom the false pretenses were made and who furnished the goods to prove which goods were furnished. He had directed a clerk to make lists of goods delivered to Herrick. A few days after the transaction, he remembered the lists, and perceived that they were correct, having at the time of issue, a distinct recollection of the sales. At the trial he had no recollection of the sales, but remembered that he had known the accuracy of the lists. He had used the lists by reading from them. Verdict guilty, Appeal.

Shaw, for the Plaintiff.

Sharp, for the Defendant.

OPINION OF THE COURT

Schildhorn, J. The questions for the court to decide are:

Whether a witness may use a memorandum to refresh his memory even though it was not made by himself.

Whether it was proper for him to read from the list, which he used to refresh his memory?

The law on the first point is well settled, and as it is laid down in Wharton on Evidence 522! "A witness may use a memorandum to refresh his memory, although it was not made by himself, if he saw the paper shortly before the event, and verified the accuracy of the entrees."

The above view is also upheld by the Pennsylvania Courts as is proved in the discussion of *Well Whip Co. vs. Mutual Fire Insurance Co.*, 209 Pa. 488, A case similiar to the one at bar.

The second point regarding the reading directly from the list has been open for discussion, but in 40 Cyc. 2466 we find, "A witness may be permitted to testify directly from a memorandum or other writing provided, and not otherwise, that at some time he had personal knowledge of the facts set forth therein, and it is shown that the writing is to his knowledge an accurate record of facts. For this view they cite *Myers vs. Weger* 62 N. J. L. 423 *Lamberty vs. Roberts* 9 N. Y. Supp. 60.

Although the Pennsylvania cases on this point are few and far between, it seems as if the courts of Pennsylvania favor this view. In *King vs. Lake*, 51 Pa. 387, Agnew T. stated: A witness is always permitted to use a memorandum when the subject consists of items of account, or of many articles. The memory cannot be expected to carry correctly a long list of articles and figures." In this case the witness was permitted to read to the jury from a memorandum.

The judgment of the Lower Court is therefore affirmed.

OPINION OF THE SUPREME COURT

We do not find in this case, any refreshing of the memory of a witness. The witness at one time, distinctly remembered the sales, and, while so remembering them, read a list of the sales and perceived that it was correct. This list, thus verified, is virtually made a witness by being read from. There is no difference between putting the list in the hands of the jury, and their reading of it, and the witness doing the reading for them.

The question before the court is not one of refreshing memory, but of using a narrative, list, history, known to have been accurate, as a substitute for ap resent memory of the facts stated on it, which

present memory does not exist; and is not reawakened by the perusal of the list. The evidence is the paper, proven to be correct by the memory of the witness, not of the sales enumerated on it, but of the comparison between its contents and the memory of the sales mentioned, at a time when that memory was clear and vivid.

Some pertinent observations may be found in *Commonwealth v. Roth*, 71 Superior 71.

The judgment of the learned court below is: **AFFIRMED.**