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METHODIST EPISCOPAL

HOSPITAL,

IN THE CITY OF PHILADELPHIA.

OPINION DELIVERED BY JUDGE PENROSE

IN REGARD TO

SCOTT STEWART'S ESTATE.

PHILADELPHIA:

1887.

IN THE
ORPHANS COURT OF PHILADELPHIA COUNTY.

July Term, 1882. No. 206.

ESTATE OF SCOTT STEWART, deceased.

The account of the Penna. Co. for Insurance on Lives, etc., executors and trustees, was called for audit before Penrose J., January 11, 1886.

Counsel appeared as follows: Henry V. Massey, Esq., for the accountant; A. J. Maloney, Esq., for the Methodist Episcopal Hospital, James E. Roney, Esq. and J. K. Berry, Esq for John R. Haslam, Thomas Haslam, Anna M. Dunlap, Lilla S. Dunlap, Wm. A. Haslam, Lizzy Haslam, and Susan Haslam; Harold Mann, Esq., for Chas. Stewart; Arthur M. Burton, Esq., for Maria Young; Ed. A. Price, Esq., and Geo. Junkin, Esq., for W. S. S. Gay, Anna H. Valentine, Elizabeth Weidell and Mary N. Seagrave; Theodore Barrett, Esq., for Sarah Claxton; J. D. B. Bennett, Esq., for Catherine McCormick.

The account is of the residue of the estate of the testator awarded to the accountant November 16, 1882, by the adjudication of a former account, in trust for the purposes declared in the will and codicils, viz.: for the payment of certain annuities to Mary N. Seagrave and her husband, Anna H. Gay, and Eliza Scott, for life, with provision for payment of principal sums to their respective children, and for the payment of the income of the residue to Anna Holmes and Sarah Gay sisters of the testator for life: and the life of the survivor.

At the death of the survivor of the sisters the will, which was dated November 1, 1877, after directing the payment of two

legacies of \$1000 each, provided for the disposition of the residue as follows:

"In trust to pay over the balance * * * to the trustees of a hospital to be founded or established within five years after the decease of my surviving sister, in that part of the city of Philadelphia south of South Street and to be under the auspices of the Methodist Episcopal Church, provided said hospital shall be under the charge and care only of regularly educated physicians of the old school who shall have received the degree of A. B. from some university or college, and provided also that no homœopathic or eclectic physician, as they call themselves, shall have anything to do with the management and charge of said hospital or with the treatment of any patient or patients therein, and in the event of said hospital not being founded or established within said period of five years, then, in trust, to pay over the balance of the said residuary estate, with the accumulated interest, unto my right heirs in the shares and proportions to which they would have been entitled had I died intestate.

By codicil dated June 21, 1879, after modifying in certain respects the disposition of the income of the residuary estate during the lifetime of his sisters he provided further as follows:

In trust as to the remaining principal of my residuary estate, subject to the foregoing annuities and provisions upon the decease of the last survivor of my said sisters, to pay thereout to the St. Paul's Methodist Episcopal Church, located on Catherine Street above Sixth Street, in this city, the sum of \$1000 free of collateral tax, to be kept invested forever in trust, further to pay thereout to the Mifflin Street Methodist Episcopal Church, located at Eleventh and Mifflin Streets, the sum of \$1000 clear of collateral taxes. The remaining principal of my residuary estate on the said decease I wish to be used as a nucleus for the erection of a hospital to be founded and established within five years after the decease of my last surviving sister, in that part of the city south of South Street, to be under the auspices of the Methodist Episcopal Church, said hospital must be under the charge or care only of regularly educated physicians of the old school who shall have received the degree

of A. B. from some University or College and no homœopathist or eclectic, so-called physicians, shall have anything to do with the management or charge of said hospital or with the treatment of any patient or patients therein. I authorize the Conference of the Methodist Church for the district in which the city of Philadelphia is situated, which meets annually for the purpose of locating its clergymen and for other church purposes, to organize in such way as to it shall seem best a scheme for this charity. I desire them to appoint a Board of Trustees which may become incorporated or not. The certificate of the presiding Bishop of the said Conference shall be sufficient authority to my trustees for the payment of the money to such persons as he shall designate, the receipts of such designated persons shall be good and sufficient vouchers for the payment of the residuary estate to them. To facilitate such payment, I authorize my trustees to convert my whole estate, real and personal, into cash if they shall deem it necessary, and I authorize them to make good deed or deeds of conveyance therefore in fee simple or for any less estate, without the purchaser or purchasers being obliged to see to or be responsible for the application of the purchase money.

Of course I rely upon the said Conference and Bishop not to call for the payment of the money unless they have devised a scheme for the hospital, practical and seemingly certain of success. I do not wish my estate wasted in an abortive scheme, nor buildings commenced unless the funds at hand are sufficient to erect, equip, and endow them. As I have said my estate will be but the nucleus of what is requisite, other contributions will be needed and I am willing that what I leave shall be mingled with such contributions. I desire it distinctly understood, however, that in paying over my estate to such persons as shall be designated by the said Bishop as competent to receive it, my trustees assume no responsibility as to the practicability of the scheme, nor as to the proper application of the fund thereto. I direct that if within five years from the decease of my last surviving sister, by reason of the failure of such presiding Bishop to certify persons to receive my residuary estate for the purposes aforesaid, the impracticability of the establishment of the proposed hospital shall have been demon-

strated, that then immediately upon the expiration of said period of five years my trustees shall pay my residuary estate in fee to such persons as would have taken the same at my decease as my heirs and next of kin under the intestate laws of Pennsylvania had I died without a will.

The last surviving sister died, as represented to the Court, February 18, 1883. The legacies of \$1000 each have been paid and are credited in the account. All of the annuitants are still living.

The fund held by the accountant, subject to the annuities, etc., was claimed by Mr. Maloney for the "Methodist Episcopal Hospital," which was incorporated by decree of the Court of Common Pleas No. 2 of Philadelphia, February 14, 1885, with a view to the execution of the provisions of the will and codicil above set forth.

The charter so obtained is as follows :

"CHARTER OF THE METHODIST EPISCOPAL HOSPITAL IN THE
CITY OF PHILADELPHIA.

I. The name of this corporation shall be the Methodist Episcopal Hospital in the City of Philadelphia.

II. It is formed to establish, maintain, and conduct a hospital in the said city to be under the charge or care only of regularly educated physicians of the old school.

III. Its business is to be transacted at a suitable locality south of South Street, in the said city.

IV. It is to exist perpetually.

V. No shares of stocks are to be issued. The hospital is to be maintained by the voluntary contributions from time to time of members of the Methodist Episcopal Church, or of any other person or persons who may be so disposed.

VI. The property and concerns of the corporation shall be vested in and managed by a Board of Trustees composed of ten clergymen and eleven laymen, of the Methodist Episcopal Church, within the jurisdiction or control of the Philadelphia Annual Conference thereof, to be elected or appointed in accordance with By-Laws to be adopted hereafter.

The names and residences of those composing the Board of Trustees until May 1, 1885, appointed by the Annual Conference, held in Philadelphia, March, 1884, are as follows:”

(Names in full in Charter.)

“VII. There shall be no capital stock.”

Mr. Maloney presented a certificate from the presiding Bishop of the Annual Conference of the Methodist Episcopal Church, for the district of Philadelphia, which is as follows:

“*To whom it may concern:*

This is to certify that at the session of the Philadelphia Annual Conference of the Methodist Episcopal Church, held at the City of Chester, Penna., on the Twenty-fifth day of March, 1885, I, Cyrus D. Foss, one of the Bishops of the Methodist Episcopal Church, and President of said Conference, in accordance with the request of the said Philadelphia Annual Conference, have appointed and do hereby appoint the following named persons, to-wit: James Neill, James Gillinder, George Cummins, Peter Lamb, Wm. J. Paxon, Andrew J. Maloney, Wm. Swindell, John Simmons, Samuel W. Thomas, P. B. West, M. Simpson McCullough, George Kessler, Andrew Longacre, Aaron Rittenhouse, John S. J. McConnell, E. J. D. Pepper, Phillip S. Hotz, Robert E. Pattison, John J. Ziegler, George S. Robinson, M.D., and Jacob M. Hinson, as trustees to receive the legacy of Scott Stewart, M.D., deceased, and to organize and establish a hospital in the City of Philadelphia, under the provisions of the last will and testament of the said Scott Stewart, M.D., deceased.

CYRUS D. FOSS, Bishop, *Presiding.*

ATTEST:

JOS. R. TAYLOR GRAY, *Secretary of the Conference.*”

This certificate, which was presented to the Trustees June 3, 1885, being, as contended by Mr. Maloney, in strict accordance with the terms of the directions of the testator, entitled the persons named therein, as representatives of the proposed hospital, to demand the surrender of the residuary estate, subject to the annuities, etc. On the other hand, it was urged on behalf of the next of kin of the testator, many of whom were represented by counsel, that while perhaps the certificate might have been a sufficient protection to the Trustees, had payment

been made in consequence of it, it will not avail to support a demand in this court against the next of kin entitled to the estate in the event of the failure to establish the practicability of the proposed hospital within the prescribed period where it affirmatively appears that a scheme, within the meaning of the will, had not, when the certificate was given, or since been devised.

The action which has been taken by the conference and by the committee appointed for the purpose is shown by the following extracts from the minutes of their proceedings, respectively:

(Minutes of 1882, page 11). "Bishop Simpson made a statement in reference to the requirements of the will of Dr. Scott Stewart, deceased, concerning a bequest to the Philadelphia Conference, for a Methodist Hospital, and presented an extract from said will, which was read by the secretary. W. L. Gray moved that the matter be referred to a committee consisting of four ministers and three laymen.

The bishop announced the following as the committee: Ministers.—W. L. Gray, S. W. Thomas, G. Cummins, A. Rittenhouse. Laymen.—W. H. Sutton, Jas. Long, John Simmons"

Page 14. "W. L. Gray presented the report of the committee on legacy of Dr. Scott Stewart, which was read and adopted."

The report is set forth on page 51, as follows:

"*Whereas*, the late Dr. Scott Stewart bequeathed to the Methodist Episcopal Church, within the bounds of the Philadelphia Annual Conference, a large part of his estate as a nucleus of a fund which shall be used for the erection and maintainance of a hospital to be erected in the city of Philadelphia.

"*Whereas*, his will requires the Conference to signify its purpose to accept the legacy by the election of trustees; therefore be it

Resolved, 1. That we accept the trust with its conditions and limitations.

2. That we elect twenty-one persons to constitute the Board of Trustees, ten of whom shall be clergymen and eleven laymen.

3. That the Bishop and his Council nominate suitable persons to act as Trustees.

4. That the Trustees be and hereby are instructed, as soon as they conveniently can, to procure a charter of incorporation in accordance with the laws of the State of Pennsylvania.

5. That we commend this charity to the liberality of all our people.

6. That we shall ever cherish the memory of our departed brother, Dr. Scott Stewart, and trust that this, his memorial, will stimulate others to be likeminded."

Minutes of 1884, page 31:

"On motion of J. S. J. McConnell, the Secretary cast the ballot of the Conference for the former Board of Trustees of the Stewart Hospital, and they were declared elected to serve for the ensuing year." (See List.)

"On motion the request of W. Swindells to be excused from serving on the Board of Trustees of the Stewart Hospital, was granted."

"By direction of the Conference the Secretary cast its ballot for J. Niell to fill the vacancy, and he was declared elected."

Minutes of 1885, p. 12. (March 20, 1885.)

"The following resolution, presented by W. J. Paxson, was adopted:

Resolved, That the Bishop presiding at this session be requested to appoint the members of the Board of Trustees of the Methodist Episcopal Hospital, when the vacancies shall have been filled by this body, as the Trustees to receive the bequest of Scott Stewart, M.D., deceased, and to establish the hospital as directed by his last will and testament.

Page 28.

The Bishop announced the appointment of those elected as Trustees of the Methodist Hospital, in accordance with the resolution of the Conference."

Minutes of the Board of Trustees.

" PHILADELPHIA, May 29, 1882.

" Meeting for organization. Election of officers. The chairman stated the object of the meeting, being a temporary organization for the purpose of taking steps to procure a charter for the regular and permanent organization of the Board of Trustees of the Stewart Hospital.

"On motion it was ordered, that a committee of three members be appointed to draw up a charter in proper form, and present the same to a proper Court for legal sanction. M. S. McCullough, A. J. Maloney, and Robert E. Pattison, Esquires, were appointed as said Committee, and the Committee was authorized to call a meeting of the Board when their report shall be ready for presentation.

"On motion it was ordered that a committee of three members be appointed to inquire into and report upon the subject of a suitable location for the Stewart Hospital. Rev. S. W. Thomas, Peter Lamb, and John Simmons were appointed as said Committee.

Board adjourned."

"PHILADELPHIA, September 29, 1884.

M. S. McCullough moved that five members be added to the Committee on Charter, with full power in the committee as enlarged to adopt a form of charter, and submit the same to the Court, which prevailed.

John Simmons from the Committee on Location reported that various lots had been viewed and considered, but no decision had been reached. The committee was continued.

M. S. McCullough reported that the bequest of Dr. Scott Stewart will be available as soon as the corporation is constituted.

The following were appointed members of the Committee on Charter, Messrs. Paxson, Thomas, Lamb, Simmons, West, and the Chairman.

Adjourned."

"PHILADELPHIA, February 23, 1885.

The Secretary, on behalf of the Committee on Charter, reported that the Court of Common Pleas No. 2 has duly approved the articles of incorporation, and that the Board is legally incorporated as "The Methodist Episcopal Hospital of Philadelphia."

On motion, the President, Secretary, and Treasurer, were appointed a committee to coöperate with the Solicitor in taking such steps as may be necessary to secure to this Corporation the bequest of Dr. Scott Stewart, deceased.

On motion, the following a committee to prepare and report :

1. By-laws for the government of this Board; and
2. A scheme or plan for the organization and operation of the Hospital: viz., Rev. A. Longacre, A. J. Maloney, James Gillinder, John Simmons, Rev. G. Cummins.

On motion, Rev. G. Cummins and Rev. W. J. Paxson were added to the Committee on Location.

On motion of A. J. Maloney the following named physicians were appointed as an advisory Board, with reference to the location and organization of the Hospital: Drs. H. C. Wood, D. M. Barr, J. S. Pearson, C. K. Mills, S. D. Risley, S. Harlon, and A. C. Deakyne.

The President and Secretary were directed to communicate with the Philadelphia Annual Conference, requesting that body to take such measures as it shall deem expedient to awaken interest and secure coöperation, on the part of the pastors, churches, and friends of the Methodist Episcopal Church within its bounds, in the establishment and support of the Hospital.

Adjourned."

“ PHILADELPHIA, May 8, 1885.

Rev. A. Longacre from the Committee on Rules and Plan of Organization, submitted a report as follows :

A meeting of the Committee of Trustees and Physicians appointed to confer as to the proposed Methodist Hospital was held March 9th at the house of Rev. Dr. A. Longacre. Those present were Rev. Dr. A. Longacre, Rev. Geo. Cummins, A. J. Maloney, Esq., Mr. John Simmons, Dr. L. D. Harlon, Dr. H. C. Wood, Dr. A. C. Deakyne, Dr. Chas. K. Mills, Dr. S. D. Risley, and Dr. J. S. Pearson.

The provisions of the will were read.

A scheme was suggested by the physicians, on motion of Dr. Wood, as follows: A site to be secured on Broad Street or elsewhere, and a pavilion to be erected thereon, and that the churches be directed on a certain day to take a collection for the Hospital.

It was agreed to recommend that the principal of Dr. Stewart's bequest be kept intact as an endowment, and that at least \$20,000 to \$30,000 be raised to buy ground and erect pavilion. A suitable pavilion could be built at a cost of from \$12,000 to \$20,000.

The report was read, and, on motion, accepted, and the Committee continued.

The Secretary reported that agreeably to the request of the Philadelphia Annual Conference, Bishop Foss has appointed the members of the Board, as at present constituted, as Trustees to receive the legacy of Dr. Scott Stewart, deceased, and to organize the Hospital as provided for by his last will and testament, and, on motion, the Secretary was instructed to procure from Bishop Foss a certificate in due form of such appointment.

Rev. S. W. Thomas, from the Committee on Location, reported that no definite steps have been taken toward the securing of a lot, but that he has had interviews with interested parties in reference to the Morris property, at Sixth and Tasker Streets, and also with reference to property situated south of Broad and Jackson Streets.

John Simmons, from same Committee, reported that a lot on North side of Wharton Street between Eleventh and Twelfth Streets, 168 x 378 feet, can be had for \$40,000 on mortgage at five per cent. interest.

Rev. G. Cummins, from same Committee, reported that the property, south-west corner of Broad and Federal Streets, about 100 x 200 feet can be purchased for \$50,000.

Peter Lamb stated that the large mansion and lot of ground, south-west corner of Tenth and Bainbridge Streets, is for sale, and probably may be bought cheaply.

On motion of Rev. J. M. Thomas, the Committee on Location was instructed to ascertain the terms on which the property south-west corner of Tenth and Bainbridge Streets can be purchased and report at a meeting of this Board to be called in the near future.

Adjourned."

"PHILADELPHIA, October 19, 1885.

A communication from N. Beardsley, Esq., of Auburn, N. Y., addressed to Rev. S. W. Thomas, and inviting an offer for a tract of ground belonging to him, situate on South Broad Street below Jackson Street was read, and on motion, was referred to the Committee on Location.

Rev. J. S. J. McConnell moved that the Committee on Location be instructed to examine some lots west of Broad and south of South Street, which prevailed.

The Treasurer reported that he has received during the last month, from Stephen Green, Treasurer of the Committee on Centennial, the sum of \$362.66, which he has deposited in the Southwark National Bank, to the credit of Peter Lamb, Treasurer of the Methodist Episcopal Hospital of Philadelphia, on motion, report accepted.

Rev. W. J. Paxson, proposed that the members present open a contribution list for the purchase of property, etc., for the Hospital, the subscriptions to be conditioned upon the receipt by this Board of the funds bequeathed for the purpose of establishing said Hospital by Scott Stewart, M. D., deceased.

And the following subscriptions were pledged, conditioned as above:

Rev. Samuel W. Thomas	\$1000.
Rev. William J. Paxson	500.
Rev. Andrew Longacre	500.
Andrew J. Maloney, Esq.	500.
George Kessler	500.
Dr. George S. Robinson	100.
John Simmons	500.
Peter Lamb	500.

On motion, the Trustees individually were authorized to solicit subscriptions to the fund.

Adjourned."

"PHILADELPHIA, November 16, 1885.

The Secretary announced that the sum of \$500 had been subscribed to the building fund by Mr. Henry Kessler.

Mr. P. B. West subscribed \$100 to the same fund."

"PHILADELPHIA, December, 1885.

The Chairman announced that he has been informed by Rev. G. Cummins, that the "Watts" estate, south-west corner of Broad and Federal Streets, is to be sold by the Sheriff in about two weeks from this date. After discussion, on motion of Rev. J. M. Hinson, it was *Resolved*, That the Committee on Location be instructed to ascertain all the facts connected with the tenure and sale of the property at the south-west corner of Broad and Federal Streets, and report to this Board at a called meeting.

On motion of Rev. J. M. Hinson, the Committee on Location

was authorized to call a meeting of the Board when they shall be ready to report.

The Solicitor reported that the case of the estate of Dr. Scott Stewart, deceased, had been called on account filed by the executors of his last will, in Orphans Court No. 2, and that the hearing was postponed until the second Monday in January, 1886.

Also, that the Counsel for one of the heirs at law of Dr. S. Stuart had suggested to him that a compromise might probably be effected with the heirs, if this Board would offer it, on a basis of say one-fourth to said heirs, but that he had not accepted or approved said suggestion.

Adjourned."

It is natural to suppose that the testator, when he provided for the establishment of a Methodist Episcopal Hospital, had in his mind the similar charities already in existence under the auspices of the Presbyterian, the Episcopalian, the Jewish, and the Catholic churches; and thinking that a denomination of Christians so large and influential as that for which his magnificent gift was intended, would not be satisfied if an institution to be known by their name did not at least equal these in size and usefulness, and that contributions would therefor at once be made with liberality, he declares that his estate which, as the account shows, amounts to over \$200,000, would be "*but a nucleus of what is requisite,*" that "other contributions will be needed," and that he is willing that what he leaves "shall be mingled with such contributions." He seems to have thought that the buildings alone would cost as much as the sum given by him, for he says that he does "not wish the buildings commenced unless the funds at command are sufficient to erect, *equip,* and *endow* them."

All this, however, he leaves to the Annual Conference, which is "to organize in such way as to it shall seem best a scheme for this charity;" and when so organized, the certificate of the presiding Bishop shall be sufficient to warrant the payment by the trustee to the designated persons. But the "organization" of the scheme must *precede* the Bishop's certificate. "I rely," he says, "upon the said Conference and Bishop not to call for the payment of the money *unless* they have devised a scheme for the hospital, practical, and seemingly certain of success. I

do not wish my estate wasted in an abortive scheme, nor buildings commenced unless the funds *at command* are sufficient to erect, equip, and endow them." If the scheme should prove "abortive," the estate is to go, at the expiration of the period prescribed, to his heirs and next of kin; and it will be abortive, in the sense understood by him, unless there should be funds "at command" sufficient to "erect" and "equip," as well as to "endow." As the effect of the certificate, when properly given, is to take away the rights of heirs and next of kin, they are, under well-settled principles, entitled to demand a strict compliance with the preliminary terms of the will, and to insist that the fund shall be retained by the trustees, for their protection, in the meanwhile.

Even if it be conceded that the action of the Board of Trustees required no ratification or adoption on the part of the Conference (although, in general, a power in the absence of express words, cannot be delegated), it cannot be said that a scheme has yet been devised, within the terms of the will, by them. It is true that at their meeting of May 8, 1885 (after the date of the Bishop's certificate), what was called a scheme was suggested by the physicians, composing part of the board, or called in to advise them, and was adopted, but the "scheme" was nothing more than a suggestion. It was that "A site be secured on Broad Street, or elsewhere, and a pavilion be erected thereon; and that the churches be directed on a certain day to take a collection for the Hospital." And it was agreed "to recommend" that the "principal of Dr. Stewart's bequest be kept intact as an endowment," and "that at least \$20,000 to \$30,000 be raised to buy ground and erect a pavilion," the cost of the erection of a suitable pavilion being stated at from "\$12,000 to \$20,000." Nothing could be more incomplete and indefinite than this. The site was to be on Broad Street, "or elsewhere;" "at least" \$20,000 "to \$30,000" were to "*be raised*" to buy ground and erect pavilion, and the cost of the pavilion might be \$12,000, or as much as \$20,000, and as it was proposed "to recommend" that the bequest from Dr. Stewart "should be kept intact as an endowment," nothing was left for the erection or equipment of the buildings, nor even for the purchase of the land when it should be determined whether the site should be on Broad Street or "elsewhere."

Clearly the recommendation as to the endowment fund required action by the parent body, as did also the suggestion that "the churches be directed on a certain day to take a collection for the hospital;" but all of this was after the adjournment of the Annual Conference, and after the date of the certificate of the Bishop.

It is true that the corporation of the hospital had taken place, and that as early as September, 1884, the Committee on Charter had reported that "the bequest of Dr. Stewart will be available as soon as the corporation is constituted."

But, this report was based upon a misconception of the terms of the will, which expressly declares that the Conference shall determine whether the Board of Trustees shall become incorporated or not. The incorporation had nothing to do with the right to receive the money or with the duty of the Conference, and of the Bishop before the giving of the certificate. Nor has the proposed collection, so far as the evidence discloses, been yet taken; and except the very liberal subscriptions of some of the members of the Board, shown by their minutes of October 19, 1885 (*supra*, p. 10-11) amounting in all to \$4600, and the \$362 66 received on the same day from the Treasurer of the Committee on Centennial, nothing has been contributed toward this noble charity up to the present time. And yet as early as March 20, 1882, the Conference adopted resolutions setting forth that they would ever cherish the memory of their departed brother, Dr. Scott Stewart, trusting, that, "this his memorial will stimulate others to be like minded; and commending, "this charity to the liberality of all our people" (*supra*, p. 7).

It will be observed, also, that the subscriptions of the members of the Board are conditioned upon the receipt of the funds bequeathed by the testator, a condition which would scarcely have been expressed if the members themselves had considered that a scheme, such as contemplated by the will, had been devised. In that case the receipt of the money would have been a certainty.

So, too, it will be observed, as long ago as May 29, 1882, a Committee was appointed by the Board of Trustees to inquire into and report upon the subject of a suitable location for the hospital. Three years later the members of the Committee

made individual reports; one stating that "he had had interviews with interested parties in reference to the Morris property at Sixth and Tasker, and also with reference to property south of Broad and Jackson," another, that a lot on Wharton Street, between Eleventh and Twelfth Streets, could be had at \$40,000 on mortgage at five per cent.; another, that a lot at Broad at Federal Streets could be purchased at \$50,000, and another that "a large mansion and lot, southwest corner of Tenth and Bainbridge Street," was for sale, and "probably may be bought cheaply." In October, 1885, the Committee on Location was instructed to "examine some lots west of of Broad and south of South Streets;" and in December of the same year, it having been announced that a property at Broad and Federal Streets was to be sold by the Sheriff "in about two weeks;" the Committee was instructed "to ascertain all the facts connected with the tenure and sale of the property at the southwest corner of Broad and Federal Streets, and report to this Board at a called meeting."

Thus everything remains absolutely indefinite and without fixed plan: the location and cost of the lot; the amount to be expended upon the erection of the necessary buildings; the character and expense of their equipment when erected; the time and manner of taking collection by the various churches; and whether the bequest of the testator shall be retained as an endowment fund or otherwise expended for immediate necessities. Can it be said that the scheme devised is "practical and seemingly certain of success?" The necessary funds are an essential part of success; and these, if not actually in hand, must, as the will declares, be "at command," at least in the sense of the subscriptions by individual members of the Board of Trustees.

The Auditing Judge is of the opinion, therefore, that the estate cannot yet be taken from the accountant and placed beyond the reach of the heirs and next of kin of the testator. Two years, however, remain before it can be asserted that "the impracticability of the proposed hospital shall have been demonstrated;" and there is little reason to doubt that in the meanwhile everything will be done by the Methodist Episcopal Church of Philadelphia and its members necessary for the organization and establishment of this charity. The payment

of the money, in all probability, is therefore only a question of time; and in the custody of this accountant the fund will be entirely safe, and its accumulations will enure to the benefit of the party ultimately entitled to receive it.

It is proper to state that the charter which has been obtained fails to provide that the physicians under whose charge the proposed hospital is to be, shall have received "the degree of A. B. from some university or college," as required by the terms of the will. It will be advisable, perhaps, to have the charter amended in this respect.

The account, which was admitted to be correct, shows a balance held by the accountant, exclusive of the real estate mentioned, composed as there set forth, of . . . \$231,465 34

Deduct: Clerk's fees \$23 50

Certified copy of adjudication.

Amount now awarded to

Catharine McCormick, as

stated below 126 00

The balance \$

will be held by the accountant, subject to the terms of the will and codicils, until further order of the Court.

The claim of Catharine McCormick, allowed as above, was for moneys deposited by a lessee of the decedent as security for the performance of the covenants of the lease. The original lessee having complied with his covenants, removed from the premises, and the claimant was accepted in his place, the amount of the deposit, \$100, being assigned to her, and being retained by the decedent to secure performance by her. It was shown that she had paid her rent in full, and had surrendered the demised premises in good condition. She was, therefore, entitled to the sum so retained, with interest to the time of payment.

And now, the said account having been called as aforesaid, and no exceptions thereto having been filed or presented, it is ordered and adjudged that the same be confirmed nisi on payment of Clerk's fees; and that the balance in the hands of the Accountant, after payment as above ordered, remain subject to the provisions of the said will, etc.

(Signed)

CLEMENT B. PENROSE.

J.

