216 Va. 482
CLERK
SUPREME COURT OF VIRGINIA
RECEIVED
AUG 15 1975
RICHMOND, VIRGINIA

IN THE

Supreme Court of Virginia

AT RICHMOND

Record No. 750267

HAZEL H. HOLZBACH

v.

UNITED VIRGINIA BANK, Etc., Et Als

APPENDIX TO BRIEF

C. JACKSON SIMMONS
DUNTON, SIMMONS & DUNTON
White Stone, Virginia 22578
Counsel for Appellant

TABLE OF CONTENTS

	App. Page
BILL OF COMPLAINT	1
JUDGMENT APPEALED FROM.	6
MEMORANDUM OR OPINION OF JUDGE E. BALLARD BAKER	9
ASSIGNMENTS OF ERROR.	13
AFFIDAVIT OF AMMON G. DUNTON.	14
STATEMENT OF FACTS.	15

BILL OF COMPLAINT

To the Honorable Judges of the Circuit Court of Henrico County:

Your Complainant respectfully shows the following case:

1. Arthur Ray Hall, sometimes known as A. R. Hall, hereinafter referred to as the Decedent, died on August 24, 1964, a resident of the County of Henrico, Virginia, without issue, but survived by his widow, Julia Henry Hall, and leaving a last will and testament dated February 9, 1959, which was duly admitted to probate in the office of the Clerk of this Court on October 9, 1964. Complainant, being the executor and Trustee named in said last will and testament, qualified as such before the Clerk of said Court on October 9, 1964.

2. Under Article Fourth of his will, the decedent gave to his Trustee, in trust, so much of his property as is necessary to avail his estate of the full marital deduction permitted by the federal estate tax law applicable at his death and further provided under Paragraph e. of Article Fourth as follows:

> e. My wife, Júlia H. Hall, is hereby given as to the corpus of the marital trust existing at her death, a general power of appointment, by specific reference to the powers granted herein, in her will, in favor of her estate, or, at her election, in favor of any other party. Should she fail to so appoint as to all or any portion of such corpus, then, upon her death such unappointed corpus shall become a part of the

Residual Trust to be administered as herein after provided.

Article Fifth of the Decedent's will provides as follows:

FIFTH: All the rest, residue and remainder of my Estate, real, personal and mixed, wheresoever situated and howsoever held, and which is herein called my "Residuary Estate", I give, devise and bequeath unto my Trustee, hereinafter named, to be held and administered by it upon the following trusts:

* *

b. I direct my Trustee to pay the following amounts to my wife's sisters and brother, namely: To Maude H. Matthews, the sum of $25.00 per month until her death; to Hazel H. Holzbach, the sum of $25.00 per month until her death; to Ward Lee Henry, the sum of $25.00 per month until his death.

c. My Trustee shall collect the remaining income from the Residuary Trust and, after deducting therefrom all taxes, commissions and other expenses properly chargeable thereto, shall divide the income therefrom into two equal parts: One equal part of said income shall be paid to my brother, Jessie B. Hall for so long as he shall live. At and after the death of Jessie B. Hall, his one-half of the residuary income shall be paid, in equal shares, to Jessie B. Hall, Jr. and Mary Anne Hadley, or the survivor of them so long as either shall live; the other one-half of said Residuary income shall be paid, in equal parts to my nephew, Cleveland G. Hall, Jr. and to his mother, Marion S. Hall, or to the survivor of them, so long as either shall live. Income payments shall be made in monthly or other convenient installments in the discretion of the Trustee. Should all the income beneficiaries of either of the two divisions of the residuary trust created in this Paragraph "c" die, the Trustee shall accumulate the income from that division until it becomes distributable along with principal in accordance with Paragraph "d" below.

d. Upon the death of my beloved wife and after the termination of all trust provisions established in Clauses "b" and "c" hereof, I direct

my Trustee to pay to Centenary Methodist Church Endowment Fund, Richmond, Virginia, the sum of $1,000.00; to Sheltering Arms Hospital, Richmond, Virginia, the sum of $500.00 to be applied for the X-Ray Equipment; to Crippled Children's Hospital, the sum of $500.00; to Masonic Home for Men, the sum of $500.00; to The Methodist Orphanage of Virginia the sum of $2,000.00 and to Virginia Masonic Home the sum of $2,000.00 to be used by each of said two latter institutions solely for the college education of one of its respective male wards selected by said institution as worthy of this award and not otherwise able to finance his college education. I direct my Trustee to pay the remaining portion of my residuary estate to the issue of the children of my two brothers, Cleveland G. Hall and Jessie B. Hall, per capita and not per stirpes.

3. Julia Henry Hall, the widow of Arthur Ray Hall, died on August 7, 1972. Her will, dated December 9, 1969, was duly probated in the Clerk's Office of the Circuit Court of Lancaster County, Virginia, on August 17, 1972. Hazel H. Holzbach, being the Executor named in said last will and testament, qualified as such before the Clerk of the Circuit Court of Lancaster County, Virginia, on August 17, 1972. Article II of the will of Julia Henry Hall provides as follows:

ARTICLE II

I give and bequeath unto my beloved sister, HAZEL H. HOLZBACH, provided she survives me, all of my estate, be it real, personal or mixed, or in which I may have a power of appointment of whatsoever nature, kind or description, and wheresoever the same may be located, in fee simple and absolutely.

4. Hazel H. Holzbach survived Julia Henry Hall.

5. Cleveland G. Hall died on February 23, 1953, survived by his widow, Marian Shepherd Hall, age 72, who is

now living and one child, a son, Cleveland G. Hall, Jr. Cleveland G. Hall, Jr. has had the following issue: Marilyn Ann Hall, born December 7, 1948, Linwood Gordon Hall, born March 3, 1951, and Barbara Hall Michie, born January 23, 1956. Linwood Gordon Hall has had one child, a son, Linwood Gordon Hall, Jr., age 2. Jessie B. Hall died on March 30, 1970, survived by two children, namely, Jessie B. Hall, Jr. and Mary Anne Hall Hadley. Jessie B. Hall, Jr. has had the following issue: Anne Cary Hall, born May 28, 1956, and Susan Taliaferro Hall, born September 23, 1961. Mary Ann Hall Hadley has had the following issue: John A. Hadley, Jr., born January 13, 1949, Robert B. Hadley, born January 2, 1951, Michael B. Hadley, born July 28, 1952, and James P. Hadley, born August 4, 1964. There were no other children of Cleveland G. Hall and Jessie B. Hall and the above issue of the children of Cleveland G. Hall and Jessie B. Hall are all of the issue of such children.

6. The assets now constituting the decedent's estate held by Complainant have a total value of $138,917.94 as of November 16, 1973. The Marital Trust is valued at $39,935.42 and the Residuary Trust is valued at $98,982.52.

7. Complainant is in need of the aid and guidance of the Court in the administration of the decedent's estate in the disposition of the corpus of the marital trust existing at the death of Julia H. Hall in that it is uncertain whether the decedent's widow, Julia Henry Hall, by her will dated December 9, 1969, effectively exercised

the power of appointment over the corpus of the marital trust under Decedent's will existing at her death granted to her in Paragraph e. of Article Fourth of Decedent's will.

8. The incompetency of certain defendants by reason of infancy is correctly stated in the caption.

9. WHEREFORE, your Complainant prays that it be advised and directed with respect to whether the Decedent's widow, Julia Henry Hall, effectively exercised the power of appointment over the corpus of the marital trust remaining at her death under Paragraph e. of Article Fourth of the Decedent's will with the result that the corpus of the marital trust existing at the death of Julia Henry Hall passes to her sister, Hazel H. Holzbach, or whether the power of appointment given Julia Henry Hall under Paragraph e. of Article Fourth of the Decedent's will was not effectively exercised resulting in the disposition of the corpus of the marital trust existing at the death of Julia Henry Hall through Article Fifth of the Decedent's will to be administered as part of the Residuary Trust thereunder, and that Complainant's counsel be awarded reasonable compensation for their services in connection with the institution and prosecution of this suit.

UNITED VIRGINIA BANK

BY: /s/ Russell Alton Wright
OF COUNSEL

FILED: NOV. 29, 1973

FINAL DECREE

This cause, which has been regularly matured, set for hearing and docketed, came on this day to be heard upon the Bill of Complaint, taken for confessed as to Jessie B. Hall, Jr., Cleveland G. Hall, Jr., Marian S. Hall, Maude H. Matthews, Marilyn Ann Hall, Ward Lee Henry, Linwood Gordon Hall, Trustees of Centenary Methodist Church, Crippled Children's Hospital, and Masonic Home of Virginia, resident defendants who have been regularly served with process, twenty-one days having elapsed since service and they still failing to appear, plead, answer or demur; and taken for confessed as to Mary Anne Hall Hadley, John A. Hadley, Jr., Robert B. Hadley, Michael B. Hadley, non-resident defendants who accepted service, more than thirty-eight days having elapsed since such acceptance and they still failing to appear, plead, answer or demur; upon the answers of Hazel H. Holzbach, Sheltering Arms Hospital, United Methodist Children's Home of Virginia, and Anne Cary Hall, Susan Taliaferro Hall, James P. Hadley, Barbara Hall Michie, and Linwood Gordon Hall, Jr., Infants, by W. Scott Street, III, Guardian ad litem, heretofore filed; upon the stipulation filed by counsel for the parties; upon the memorandum filed by C. Jackson Simmons for defendant Hazel H. Holzbach; upon the memorandum of law filed by the Guardian ad litem for the infant defendants; upon the reply to the memorandum of law and facts filed by C. Jackson

Simmons, counsel for defendant Hazel H. Holzbach; upon the affidavit filed by Ammon G. Dunton; and was argued by counsel.

UPON CONSIDERATION WHEREOF, the Court being of the opinion, for reasons stated in the opinion of the Court dated September 13, 1974, which is hereby made a part of the record, that the general power of appointment created by the will of Arthur Ray Hall has not been exercised by the will of Julia Henry Hall, the Court does ADJUDGE, ORDER and DECREE that the corpus of the marital trust under Article Fourth of the will of Arthur Ray Hall as it was constituted at the death of Julia Henry Hall be distributed as a part of the Residuary Estate of Arthur Ray Hall under Article Fifth of his will.

It is ORDERED that the Complainant be allowed out of the estate in its hands the costs of this proceeding, and a fee of $800.00, to Russell Alton Wright, its attorney, and a fee of $350.00, to the Guardian ad litem.

To all of which Hazel H. Holzbach objects and excepts on the ground that the will of Julia Henry Hall effectively exercised the general power of appointment created by the will of Arthur Ray Hall, and that the corpus of the marital trust under Article Fourth of the will of Arthur Ray Hall should therefore be paid over and delivered to Hazel H. Holzbach.

And the objects for which this suit was brought having been fully accomplished, and nothing further

remaining to be done herein, it is ORDERED that this cause be stricken from the docket and the papers placed amongst the ended causes, properly indexed.

ENTER: 11/12/74

/s/ E. Ballard Baker
Judge

MEMORANDUM OR OPINION September 11, 1974

Re: Case M-971 - United Virginia Bank, Executor, etc. v. Jessie B. Hall, Jr., et al

Gentlemen:

By will dated February 9, 1959, probated on October 9, 1964, Arthur Ray Hall created a marital trust, named his wife, Julia H. Hall, executor and trustee, and gave her "...as to the corpus of the marital trust existing at her death, a general power of appointment, by specific reference to the powers granted herein, in her will, in favor of her estate, or, at her election, in favor of any other party."

In the event Julia H. Hall failed to exercise the power, the marital trust passed under the residuary clause of Arthur Hall's will, eventually to the issue of the children of his two brothers after certain bequests and trusts to his brothers.

Julia H. Hall died on August 7, 1972, and by her will of December 9, 1969, made the following disposition:

> "I give and bequeath unto my beloved sister, Hazel H. Holzbach, provided she survives me, all of my estate, be it real, personal or mixed, or in which I may have a power of appointment of whatsoever nature, kind or description, and wheresoever the same may be located, in fee simple and absolutely."

Hazel H. Holzbach survived Julia Hall. The issue is whether the above quoted provision of the Julia Hall will is a valid exercise of the power of appointment given her under the will of Arthur Hall.

Julia Hall did adopt the mode required by Arthur Hall by seeking to exercise the power by will. The only question relates to the language used in the two wills. Did Arthur establish enforceable requirements for the exercise of the power? Did Julia manifest an intent to exercise the power in a manner properly prescribed by Arthur?

Authorities support the proposition that as a general rule a power of appointment must be executed in strict accordance with its terms. Goodloe v. Woods, 115 Va. 540, at 545. The donee of the power does not own the

property. The property remains that of the donor and in the execution of the power the donee is considered as the agent of the donor. Shriner's Hospital v. Citizens National Bank, 198 Va. 130, at 136. It is also true that Virginia has held that a power may be executed without reference to the power, Hood v. Haden, 82 Va. 588, at 594. And § 64.1-67 provides that a devise or bequest conveys any property a testator has power to appoint as he may think proper, unless a contrary intention appears by the will.

Sherman's Adm. v. Hicks, 14 Gratt 417, states the rule that a grantor may prescribe any form or mode for the execution of the power he creates. Goodloe v. Hicks and Shriner's Hospital v. Citizens National, seem to be in accord. I think Arthur Hall can require that power he created must be executed by "specific reference."

I find no authority that the donor cannot require more than the law would otherwise require of the donee, other than § 64.1-50, not applicable here. Something capricious or unreasonable may not be upheld, but a requirement for "specific reference" does not appear in that category.

Counsel speculate why Arthur Hall used the words "specific reference." It is stated that he created a marital trust and gave Julia Hall all the interest required under the Internal Revenue Code, but that his intent was that he wanted the estate to go to the remaindermen he had designated. He did not want the power exercised by a residuary-type clause. Counsel for Hazel Holzbach argue that all Arthur Hall wanted to do was prevent an inadvertent exercise of the power, that he had no legitimate interest in doing more, citing Shine v. Monahan, 241 N.E. 2d 854, (Mass. 1968) that Julia Hall did make a specific reference to the power and that she clearly intended to exercise every power of appointment she had.

An affidavit filed by the attorney who drew the Julia Hall will states that she was familiar with the fact that she had a power of appointment under her husband's will. The Court would, it seems, be entitled to presume this knowledge even in absence of the affidavit.

It seems to me that Arthur Hall did not want a residuary-type clause or an inadvertent exercise of the power. Whether he "grudgingly" gave to Julia Hall the power because the Internal Revenue Code required it will never be know. But he did require that Julia exercise the

power of appointment "...by specific reference..."

Did Julia manifest an intent to exercise the power and do so in the manner required?

Julia Hall's language is "...all of my estate... or in which I may have a power of appointment of whatsoever nature..." Reasonably, this is broad enough to include the power granted by Arthur--except, of course, for the question raised by the word "specific." That word must be given meaning.

Gaskins v. Finks, 90 Va. 384, and Hood v. Haden, 82 Va. 592, both state the following:

> "Upon this point the law is very clear, and the cases uniformly hold that all the forms and conditions annexed to the exercise of a power must be strictly complied with..."

Browning v. Bluegrass, 153 Va. 20, at 35, says:

> "The donor may select his conduit and indicate the manner in which the power must be exercised."

Shearman's Adm. v. Goodloe and Shriner's Hospital previously cited, contain similar expressions. While none of these cases contain deviations such as the present, the language in the cases does not encourage the view that anything less than "specific reference" is sufficient.

Julia does not refer to Arthur's will, nor does she refer to the marital trust, the subject of the power. This Court cannot say that Julia's will does what is required. It does not make specific reference to the power created by Arthur.

While a power may be exercised by implication, I do not believe any case applies that rule to a power requiring "specific reference." In view of Virginia cases requiring compliance with the conditions creating the power, exercise by implication required more than is present here.

Section 64.1-67 providing that a devise or bequest extends to any estate as to which the testator has a power to appoint and "...shall operate as an execution of such power..." must be considered.

This section appears as § 5241 in the 1919 Code and as § 2525 in Pollard's 1904 Code. It goes back to the 1849 Code, but apparently has been cited only in Machir v. Funk, 90 Va. 284, and Shriner's Hospital, supra, and applied only in Machir. (90 Va. 287) None of the cases previously referred to in this letter have involved a factual situation relative to the section.

Does § 64.1-67 apply to a general power of appointment where the creator prescribes that it be exercised by "specific reference"? To so hold, the statements in the cases requiring compliance with the conditions attached to the power must be qualified. By its words, § 64.1-67 literally applies to a devise or bequest where there has been no attempt to exercise a power of appointment, which is not the situation here. If applicable here, it would also have to be applicable under Machir if Julia Hall had made no reference to a power of appointment but had made a residuary bequest.

It does not appear to me that § 64.1-67 should be construed so as to make ineffective reasonable conditions placed upon the exercise of a power. Such conditions have been long recognized, and should not be made useless unless statutory construction compels such a holding. Section 64.1-67 has ample meaning without applying it to a general power to be exercised by a specific reference.

Thus, it appears to me that the power created by the will of Arthur Hall has not been exercised by the will of Julia Hall.

Counsel are requested to submit a decree in accord.

With best wishes,

Yours very truly,

/s/ E. Ballard Baker

E. Ballard Baker
Judge

ASSIGNMENTS OF ERROR

The court erred in holding that the general power of appointment created by the Will of Arthur Ray Hall was not exercised by the Will of Julia Henry Hall and that the corpus of the marital trust under Article Fourth of the Will of Arthur Ray Hall as it was constituted at the death of Julia Henry Hall, be distributed as a part of the residuary estate of Arthur Ray Hall under Article Fifth of his Will, on the grounds that:

(1) That Julia Henry Hall, in Article II of her Will, exercised every power of appointment which she possessed, including the power of appointment given her under the Will of Arthur Ray Hall, by the express language "or in which I may have a power of appointment".

(2) Julia Henry Hall validly exercised the power of appointment given her under the Will of Arthur Ray Hall by the residuary clause contained in Article II of her Last Will and Testament.

A statement of facts will be filed hereafter, no transcription having been made.

HAZEL H. HOLZBACH

By: /s/ C. Jackson Simmons
Of Counsel

FILED: DEC. 9, 1974

AFFIDAVIT

STATE OF VIRGINIA,

COUNTY OF LANCASTER, to-wit:

Ammon G. Dunton, being first duly sworn, deposes and says:

My name is Ammon G. Dunton and I am an attorney at law, practicing at White Stone, Virginia. I prepared the Will for Julia H. Hall, dated December 9, 1969, which was duly probated in the Clerk's Office of the Circuit Court of Lancaster County, Virginia. I had represented Mrs. Hall for several years prior to the execution of her Will and had represented her in litigation concerning the Will of her husband, Arthur Ray Hall, in a previous hearing in the Circuit Court of Henrico County, Virginia. She was fully familiar with the fact that she had a power of appointment under the Will of her husband and we discussed this at the time her will was prepared. She had no other power of appointment in any other Will, to the best of my knowledge and belief. Her sister, Hazel H. Holzbach, was present at the time we discussed the Will and at the time it was executed. The power of appointment was exercised by Mrs. Hall in favor of her sister, who is her sole beneficiary.

And further this affiant saith not.

/s/ Ammon G. Dunton,
Ammon G. Dunton

FILED: AUG 12, 1974

STATEMENT OF FACTS

Complainant filed its suit in chancery, on March 18, 1974, asking the Circuit Court of Henrico County, Virginia, for aid and guidance of the Court in the administration of the estate of Arthur Ray Hall, sometimes known as A. R. Hall, deceased, in the disposition of the corpus of the marital trust existing at the death of his widow, Julia H. Hall, in that complainant was uncertain whether the decedent's widow, Julia Henry Hall, by her will dated December 9, 1969, effectively exercised the power of appointment over the corpus of the marital trust under Decedent's will existing at her death granted to her in Paragraph e. of Article Fourth of Decedent's Will.

Arthur Ray Hall, sometimes known as A. R. Hall, hereinafter referred to as the Decedent, died on August 24, 1964, a resident of the County of Henrico, Virginia, without issue, but survived by his widow, Julia H(enry) Hall, and leaving a last will and testament dated February 9, 1959, which was duly admitted to probate in the office of the Clerk of the Circuit Court of Henrico County, Virginia, on October 9, 1964. Complainant, being the Executor and Trustee named in said last will and testament, qualified as such before the Clerk of said Court on October 9, 1964.

Under Article Fourth of his will, the decedent gave to his Trustee, in trust, so much of his property

as is necessary to avail his estate of the full marital deduction permitted by the federal estate tax law applicable at his death and further provided under Paragraph e. of Article Fourth as follows:

> "e. My wife, Julia H. Hall, is hereby given as to the corpus of the marital trust existing at her death, a general power of appointment, by specific reference to the powers granted herein, in her will, in favor of her estate, or, at her election, in favor of any other party. Should she fail to so appoint as to all or any portion of such corpus, then, upon her death such unappointed corpus shall become a part of the Residual Trust to be administered as herein after provided."

Article Fifth of the Decedent's will provides as follows:

> "FIFTH: All the rest, residue and remainder of my Estate, real, personal and mixed, wheresoever situated and howsoever held, and which is herein called my "Residuary Estate", I give, devise and bequeath unto my Trustee, hereinafter named, to be held and administered by it upon the following trusts:
>
> *
>
> b. I direct my Trustee to pay the following amounts to my wife's sisters and brother, namely: To Maude H. Matthews, the sum of $25.00 per month until her death; to Hazel H. Holzbach, the sum of $25.00 per month until her death; to Ward Lee Henry, the sum of $25.00 per month until his death.
>
> c. My Trustee shall collect the remaining income from the Residuary Trust and, after deducting therefrom all taxes, commissions and other expenses properly chargeable thereto, shall divide the income therefrom into two equal parts: One equal part of said income shall be paid to my brother, Jessie B. Hall for so long as he shall live. At and after the death of Jessie B. Hall, his one-half of the residuary income shall be paid, in equal shares, to Jessie

B. Hall, Jr. and Mary Anne Hadley, or the survivor of them so long as either shall live; the other one-half of said Residuary income shall be paid, in equal parts to my nephew, Cleveland G. Hall, Jr. and to his mother, Marion S. Hall, or to the survivor of them, so long as either shall live. Income payments shall be made in monthly or other convenient installments in the discretion of the Trustee. Should all the income beneficiaries of either of the two divisions of the residuary trust created in this Paragraph "c" die, the Trustee shall accumulate the income from that division until it becomes distributable along with principal in accordance with Paragraph "d" below.

d. Upon the death of my beloved wife and after the termination of all trust provisions established in Clauses "b" and "c" hereof, I direct my Trustee to pay to Centenary Methodist Church Endowment Fund, Richmond, Virginia, the sum of $1,000.00; to Sheltering Arms Hospital, Richmond, Virginia, the sum of $500.00 to be applied for the X-Ray Equipment; to Crippled Children's Hospital, the sum of $500.00; to Masonic Home for Men, the sum of $500.00; to The Methodist Orphanage of Virginia the sum of $2,000.00 and to Virginia Masonic Home the sum of $2,000.00 to be used by each of said two latter institutions solely for the college education of one of its respective male wards selected by said institution as worthy of this award and not otherwise able to finance his college education. I direct my Trustee to pay the remaining portion of my residuary estate to the issue of the children of my two brothers, Cleveland G. Hall and Jessie B. Hall, per capita and not per stirpes."

Julia H(enry) Hall, the widow of Arthur Ray Hall, died on August 7, 1972. Her will, dated December 9, 1969, was duly probated in the Clerk's Office of the Circuit Court of Lancaster County, Virginia, on August 17, 1972. Hazel H. Holzbach, being the Executor named in said last will and testament, qualified as such before the Clerk of the Circuit Court of Lancaster County, Virginia, on August

17, 1972. Article II of the will of Julia H(enry) Hall provides as follows:

"ARTICLE II

> I give and bequeath unto my beloved sister, HAZEL H. HOLZBACH, provided she survives me, all of my estate, be it real, personal or mixed, or in which I may have a power of appointment of whatsoever nature, kind or description, and wheresoever the same may be located, in fee simple and absolutely."

Hazel H. Holzbach survived Julia H(enry) Hall.

Cleveland G. Hall died on February 23, 1953, survived by his widow, Marian Shepherd Hall, age 72, who was living when the suit was filed on March 18, 1974, and one child, a son, Cleveland G. Hall, Jr. Cleveland G. Hall, Jr. has had the following issue: Marilyn Ann Hall, born December 7, 1948, Linwood Gordon Hall, born March 3, 1951, and Barbara Hall Michie, born January 23, 1956. Linwood Gordon Hall has had one child, a son, Linwood Gordon Hall, Jr., age 2. Jessie B. Hall died on March 30, 1970, survived by two children, namely, Jessie B. Hall, Jr. and Mary Anne Hall Hadley. Jessie B. Hall, Jr. has had the following issue: Anne Cary Hall, born May 28, 1956, and Susan Taliaferro Hall, born September 23, 1961. Mary Ann Hall Hadley has had the following issue: John A. Hadley, Jr., born January 13, 1949, Robert B. Hadley, born January 2, 1951, Michael B. Hadley, born July 28, 1952, and James P. Hadley, born August 4, 1964. There were no other children of Cleveland G. Hall and Jessie B. Hall and the

above issue of the children of Cleveland G. Hall and Jessie B. Hall are all of the issue of such children.

The assets constituting the decedent's estate held by Complainant, as of the date of filing of this suit had a total value of $138,917.94 as of November 16, 1973. The Marital Trust was then valued at $39,935.42 and the Residuary Trust was then valued at $98,982.52.

This matter was heard by the Honorable E. Ballard Baker, on the above uncontraverted facts and upon the affidavit of Ammon G. Dunton, which was filed in the suit by letter of August 9, 1974. The Court had on July 23, 1974, stated that counsel could file objections to the affidavit without setting a deadline, but the opinion letter of September 11, 1974, was mailed without any objections having been filed.

Memoranda of the law and facts were submitted by counsel, and Judge Baker thereafter rendered his opinion, to which Petitioner excepted upon the grounds stated in the assignments of error.

HAZEL H. HOLZBACH

By: /s/ C. Jackson Simmons,
Of Counsel

FILED MAR 7, 1975