

children of my said sister Eve Margaret Schley share and share alike, and in case any of said female children should die having a female child or children of such deceased child shall have its or their mother's share". The other clause in controversy is the residuary clause of the will. It presents the most serious and important question and is in words following--"And should there be any residue remaining after the payment of all the foregoing bequests in full, I give such residue to the female children of my sister Eve Margaret Schley share and share alike, and if any of such female children should die leaving children the child or children of such deceased child shall have its or their mother's share".

An inspection of the will shows that the testatrix created a trust of her whole estate for the benefit of her daughter Agnes Castle, which was to last so long as she lived, which trust estate on the death of said cestui que was to go to her children, if she had any, and in the event she left none then various bequests were provided for, and in the event of a residuum it was disposed of in the manner above set forth.

Agnes Castle on the 22nd day of August, 1911, without leaving any children surviving her, although years ago she had a child, which also died before the execution of said will by her mother Ann M. Englebrecht. Mrs. Eve Margaret Schley died in the year 1890, the mother of the children mentioned in the agreed statement of facts, which shows the relationship of all the parties who are the descendants of Eve Margaret Schley.

Mrs. Morgan, about whose interest the present controversy revolves, was a childless daughter of Mrs. Eve Margaret Schley, who died in the year 1909, at that time being an inmate of the "Home for the Aged of Frederick City", a body corporate under the laws of the State of Maryland. Mrs. Morgan became an inmate of said Home about the 5th day of February 1898, and in accordance with the rules and regulations governing the admission thereto executed the agreement under seal filed as exhibit "M" 2, to the answer of said Home, by which she agreed in consideration of her acceptance as an inmate of said Home; and that she be entitled to all the rights and privileges conferred by its charter, she could transfer to the trustees of said Home all the property she possessed or was entitled to or may hereafter inherit, limiting it, however, to not more than Five Thousand dollars. Mrs. Morgan at the time owned no tangible, visible property, and the only resources she probably had was such as would accrue to her under the above provisions of the will of her aunt Ann M. Englebrecht. This brings us now to the question whether she took any absolutely vested interest in the estate of Mrs. Englebrecht under either of said claims which was assignable or passed to her representatives. It was then conceded both in the oral and written argument by the solicitors for the parties in adverse interest to the Home for the Aged of Frederick City that under the first clause above set forth which has reference to the bequest of \$1000, Mrs. Morgan had such a vested interest that she could assign or dispose of in any way she saw proper. The only contention was that it would not pass under the alleged agreement to assign filed as Exhibit M, 2. It is true that: was merely an alleged agreement to assign, but in a Court of Equity that will be decreed to be done or treated as having been done, which in good conscience should have been done. Before she was admitted to the Home she filed an application in which it was stated that she was without means, the correctness of which was attested by three reputable citizens of this city, and under these circumstances she became a member of the Home, a most worthy charity in this community. The amount involved is small and is only the one-sixth of said legacy. As the interest she had under said will was not tangible property it is not to be supposed