

that the institution which was extending to her its charity was aware of it, and under such circumstances there was no laches by it in not taking steps to enforce its right under said agreement. This interest then being a conceded vested or property right, which she had when she entered the institution, the agreement to assign with reference to it is not a gambling scheme such as is condemned in the case of *Pierre Vs. Aged Mens Home*, 100 Md. 520. The Court was there dealing with the question of future acquisitions and in other respects it was quite different. Mrs. Mergan, at that time, as her mother was dead, we must assume knew of her interest in this \$1000 legacy, and she should have disclosed it and assigned it to the Home. Without commenting further upon this, I have concluded that her interest in said legacy should be given to that institution, 64 Md. 595 *German Aged Peoples Home vs. Hammaker et. al.*

Now with reference to the residuary clause I am of the opinion that any rights Mrs. Mergan had to share in it depended upon her surviving Mrs. Agnes Castle, and that she having died before that event her right died with her. It seems to me that the case of *Demill vs. Reid* 71 Md. 175 settles that question. When bestowing her bounty upon her sister's children it is supposed that Mrs. Englebrecht intended that those who should share in it were to be confined to the female children of her sister. The clause in question of disposing of the residue of the estate in the event of the daughter of the testatrix died without having issue, and it is pointed out the class of persons who were to take on the happening of that contingency. If she died having issue they took nothing. In this case as in the *Daniel Vs. Reed* case one of the class that was to share in the estate during the life time of the cestui que trust, and in passing upon the question as to whether an absolute vested interest had passed under the will to the deceased, the Court says- "When there is an ultimate limitation upon a contingency to a class of persons plainly described and there are persons answering that description in case when the contingency happens, they alone take." This language is perfectly plain. In the residuary clause Mrs. Englebrecht directed who should be the ultimate beneficiaries under said clause in the event that the contingency upon which it was dependent should occur, and that was that her daughter Agnes should die without any child or children. By it she intended primarily that only the female daughters of her sister should participate. It is true if any of them in the meantime die leaving a child or children surviving her, and said child or children take its mother's share. The limitation ever was confined, however, only to such as died leaving children, and they take as representatives of their mother. As I have above stated Mrs. Mergan died childless, without a child or children to take her place in said bounty and under the rule in 71st Md. the only persons surviving to meet the requirements of said residuary clause are Mrs. Chapline, Mrs. Baer, and Mrs. Hewes, the surviving daughters of Mrs. Eve Margaret Schley, and the children of Mrs. Birely and Mrs. Cassin deceased daughters of Mrs. Schley. It accordingly follows that the Home for the Aged of Frederick City are not entitled to share in the residuum, and on the preparation of a decree in accordance with these views I will sign it.

John C. Metter.

ANSWER OF LAURA CHAPLINE AND OTHERS.

The answer of Laura Chapline, Rosa S. Baer, Fannie S. Hewes, E. Schley Cassin, Margaret B. Gladman, Fannie delaplaine, Mary Martin Schley, Gilmer Schley, Ann P. Schley Lewis E. Birely, George Birely, Charles Birely and William Birely, to the petition of William M. Harst, trustee, filed against them and others in this case, respectfully shows--

1. That these respondents admit the allegations of the 1st, 2nd and 3rd paragraphs of said petition.
2. They admit that the bequests referred to in paragraph 4 of said petition are contained in the will of Ann M. Englebrecht, deceased, though said paragraph does not purport to set forth said bequests verbatim, and these respondents refer to the certified copy of said will filed in this case for an exact statement of said bequests and their context.