

and said Ralph L. Hall, can be as well determined after the sale has been made and in the distribution of the proceeds of sale as now, and it would be detrimental to the interests of all parties concerned for said sale to be delayed or postponed for the purpose of having such controversy determined by your Honorable Court before such sale.

SEVENTH,-Your petitioner denies that, as charged in the 11th paragraph of said Carlene Weller and others, the power to sell said real estate rests in Charles H. Utermehle, the only son and heir of said Executrix, either according to the true and proper construction of said will, or by operation of law.

EIGHTH,-Your petitioner denies that this Court was not advised as fully of all the facts and circumstances of the case as it should have been at the time of passing said decree, as charged in the 12th paragraph of the answer of said Ralph L. Hall.

All of which is respectfully submitted.

Urner & Urner
Solicitor for Lewis A. Kolb.

Filed Aug. 9-1915.

OPINION AND DECREE.

The Will of Daniel Kolb, who died in 1882, devised a tract of land in Frederick County, known as "The Homestead", to the testator's sister, Sophia M. A. Kolb, for and during her natural life. There was no specific limitation in remainder as to the land just mentioned, but it passed under a residuary clause, contained in a codicil to the will, in the following terms:--"I do hereby give, devise and bequeath unto my said executrix, her heirs, executors, administrators and assigns, all the rest and residue of my estate not specifically devised in my said last will and testament and in this codicil in trust to sell and dispose of the same, and valid conveyances thereof to make, and to divide and distribute the net proceeds among all my heirs at law share and share alike." The executrix appointed by the codicil was Naomi Utermehle, a sister of the testator.

The devisee for life of the Homestead tract having recently died, a petition was filed in this Court by Lewis A. Kolb, a brother and heir at law of the testator, alleging the decease of the life tenant, and the prior death of the executrix, and that the tract in question has not been sold in pursuance of the power and direction contained in the will, and praying that a trustee be appointed to sell and convey the property and apply the proceeds to the specified purposes. This application was based upon Articles 16, Section 94 of the Code, which provides:--"Where any person dies and leaves real or personal property to be sold for the payment of debts, or other purposes, and shall not appoint any person to sell and convey the same, or if the person appointed dies, or neglects or refuses to execute such trust, the Court, upon the petition of any person interested in the said and convey the same and apply the money arising from the sale to the purposes intended." The allegations of the petition and the provisions of the will filed with it as an exhibit were regarded as bringing the case within the jurisdiction conferred by the statute quoted, and a decree was accordingly passed appointing Lewis A. Kolb, and Milton G. Urner Jr., trustees to sell and convey the Real estate mentioned in the petition and to apply the proceeds as directed by the will of Daniel Kolb, deceased, under the supervision of this Court. Shortly after the passage of the decree a petition was filed by the children of Alfred B. Kolb, one of the testator's brothers and heirs at law, who died during the existence of the life estate created by the will. It was stated in this petition that, acting upon the theory that he had a vested interest in remainder in the Homestead property, Alfred B. Kolb, the father of the petitioners, had executed a deed dated August 24, 1903, and recorded among the Land Records of Frederick County, purporting to convey all his interest in the property, and the proceeds of its sale, to Ralph L. Hall, who had married Sophia M. A. Kolb, the life tenant. The petition avers that according to a proper construction of the will and codicil no interest in the real estate devised, or in its proceeds, was vested in Alfred B. Kolb, but that the period of vesting was deferred until the death of the tenant for life, and that consequently the deed of assignment referred to was wholly ineffective. The theory of the petitioners is that the persons entitled in remainder as heirs of the testator are those who would answer to that designation as of the date of the expiration of the life estate, and that as their father did not survive to that period, his children hold the place he would occupy, if living, among the testator's heirs, and are invested with a corresponding