

record in Liber No. 370, folio 343, one of the Land Records of Frederick County, Maryland, a certified copy of said paper writing being herewith filed as part hereof, marked Exhibit No. 2

FIFTH: That said paper writing is not a deed, and was not intended to take effect in the lifetime of the said ELLEN C. CASTLE, as hereinafter more fully appears.

SIXTH: That the Plaintiffs are advised and so charge that said paper writing remained in the private box of the said ELLEN C. CASTLE, in the Frederick County National Bank, Frederick Maryland, under her exclusive custody and control, to which she had access at all times, and was never delivered in the lifetime of the said ELLEN C. CASTLE, to the Defendant or to any other person for her, but the same remained in the private box of the said ELLEN C. CASTLE, in the Frederick County National Bank, during her lifetime, and was only removed therefrom after her death by Joseph W.L. Carty, the Executor of the Last Will and Testament of the said ELLEN C. CASTLE, aforesaid, who, without ^{any} legal authority, placed the same on record.

SEVENTH: That said deed was never delivered by the said ELLEN C. CASTLE in her lifetime and that the same is null and void.

EIGHTH: That, as aforesaid, the said paper writing bears date March 4, 1927, while the Last Will and Testament of the said ELLEN C. CASTLE, was executed on March 18, 1927, fourteen days after the date of said paper writing, Exhibit No. 2, and in her said Last Will and Testament the said ELLEN C. CASTLE herself clearly manifests her intention that the said paper writing of March 4, 1927, was not to be a deed, an absolute conveyance passing immediately upon its execution, the title to said property, because, in her last Will and Testament, the said ELLEN C. CASTLE, declares as follows:

"In the event that I shall not have disposed of my real estate, I hereby authorize and empower my Executor to make sale of and convey any parcel or parcels of real estate of which I may die seized and possessed, and the proceeds of this sale to become part of the residue of my estate".

NINTH: That, both by reason of the fact that the said ELLEN C. CASTLE retained full custody and control of the deed, keeping the same in her private box, and, by reason of the Clause, in her Last Will and Testament, hereinbefore quoted, it appears that the Defendant did not have any present interest in the deed, but that the said ELLEN C. CASTLE, thus kept in herself the dominion and control of it, revealing the paper writing not at all an absolute conveyance of the property, effective and irrevocable, but, if anything, was in the nature of a testamentary act, which could be revoked at any time, and which was in fact revoked by the said ELLEN C. CASTLE, in her Last Will and Testament, wherein she expressly states her purpose to this effect by the following language: "And lastly I nominate constitute and appoint Joseph W. L. Carty, of Frederick City, Maryland, to be the Executor of this my Last Will and Testament HEREBY REVOKING ALL FORMER WILLS BY ME HERETOFORE MADE, AND DECLARING THIS AND NONE OTHER TO BE MY TRUE LAST WILL AND TESTAMENT."

TENTH: That, as aforesaid, the said ELLEN C. CASTLE, made her Last Will and Testament on March 18, 1927, fourteen days subsequent to March 4, 1927, the date of the paper writing, which was not intended as a disposition of her property, in praesenti and which did not take effect as such, the Plaintiffs are advised and so aver.

ELEVENTH: That in her Last Will and Testament, the said ELLEN C. CASTLE, disposes of the residue of her Estate in the following manner: "All the rest and residue of my estate I give, devise and bequeath as follows: "One-third of the rest and residue of my estate to Charles Halley. "One-third of the rest and residue of my estate to Bradley T. Halley. "One-third of the rest and residue of my estate to the children of Edward M. Halley, the names of said children being Mrs. Louise M. Shelly, Mrs. Elizabeth Depro, Mrs. Nan C. Rodda, David A. Halley Frank P. Halley, and Edward M. Halley, the one-third to be divided among said children."

TWELFTH: That the said CHARLES HALLEY is deceased, and left surviving him, as his only children and heirs-at-law, the Plaintiffs, ELEANOR M. STREETT, KATIE A. COLBERT, ALICE E.