

Orphans' Court Division
Court of Common Pleas of Philadelphia

No. 654 April Term 1902.

Estate of

JOHN McKEE,

Deceased

MEMORANDUM

Honorable Robert V. Bolger, Judge of the Orphans' Court Division of the Court of Common Pleas of Philadelphia County, has approved with commendation the report filed by John J. Gallen, Executive Secretary of the John McKee Scholarship Committee, which was filed at Judge Bolger's direction. The report is a comprehensive one, a review of the activities of the Committee for the years 1955-1971. A copy of the report is attached to this memorandum.

The McKee case is one of the most unusual in the annals of the Orphans' Court and has been under the close personal supervision of Judge Bolger for over twenty years.

The testator, Colonel John McKee, was a Negro and his estate was one of the largest ever left for charity by a man of his race. It is an inspiring example of integration in which a member of the Negro race has supplied all of the funds.

Colonel John McKee, reputedly associated with a Home Guard Regiment of Pennsylvania during the Civil War, died in 1902 leaving an estate consisting, inter alia, of real estate in Philadelphia and Bucks Counties, in New Jersey (McKee City near the Atlantic City Race Track was named for him), and lands in West Virginia and other southern states. His will was modeled quite extensively along the lines of that of Stephen Girard. It was drafted by Joseph P. McCullen, Esquire, later a distinguished Judge of the Court of Common Pleas

No. 4 of Philadelphia County. After numerous pecuniary legacies and life estates in trust to kindred, the residuary estate was left likewise in trust for the purpose of setting up, upon the death of the last surviving grandchild or great-grandchild who survived him, a nautical school for an equal number of "poor white and colored orphans" between the ages of twelve and eighteen years. Included in his estate were 68 acres of land (1,500 feet on the Delaware River) a few miles below the present Burlington-Bristol Bridge -- an ideal site for the school. Although not a Roman Catholic, McKee named the Archbishop of Philadelphia and Joseph P. McCullen, scrivener of his will, as executors and trustees of his estate. The word was that he had faith in the continuity and integrity of the Catholic Church, stemming largely from the fact that as a young man he was stricken with smallpox and found that the only persons who would minister to him were Roman Catholic nuns. A contest was entered against the will by his heirs in 1908 which was settled in writing through the offices of John G. Johnson, Esquire, and Mr. McCullen in the amount of \$120,000. The estate was then valued between \$750,000 and one million dollars. Today it is worth approximately \$1,250,000.

Cardinal Dougherty, the surviving trustee, filed an account with this Court in 1947, believing all grandchildren living at the time of Mr. McKee's death had died. The validity of the trust was then attacked on several grounds, inter alia, that the purpose, because of certain stipulations in the will, was not charitable but mainly to gratify the vanity of McKee and that the trust violated the rule against perpetuities. A New York lawyer claiming to be a grandchild attacked the will and was the main objector. It was reported that this grandchild

had "turned white" as a boy and attended a New England Preparatory Academy and a small New England college where he distinguished himself in athletics. He later graduated from Columbia Law School and was admitted to the New York Bar. He married two white women in succession. Other claimants from Virginia appeared and although their origin was not by way of McKee's wife it was ruled by the auditing judge that the presumption of legitimacy was applicable. Not unexpectedly, they joined in the attack on the will.

When the New York lawyer-claimant filed his attack upon the validity of the trust in 1947, the New York newspapers in sensational headlines chronicled the event. When asked about his connection with the decedent he said that his grandfather, Colonel McKee, was white. A master was appointed by the Court and among other testimony taken by him was that of the New York lawyer-grandson at Lenox Hill Hospital where he died shortly thereafter, allegedly from the shock following the expose'. The auditing judge made the finding of fact that the New York lawyer was a grandson of McKee but dismissed his and all other attacks upon the validity of the trust.

The fund was grossly inadequate to accomplish the establishment of a nautical school in accordance with the terms of the will but, because of the laudable objective of the trust created by a man who had the prescience to anticipate events so accurately, the auditing judge engaged in extensive efforts to obtain additional monies to complete the trust inasmuch as the will provided that other funds could be added to those provided by Colonel McKee. Respecting the motives of the testator the auditing judge states in his adjudication, McKee Estate, 83 D. & C. 492, 518, as follows:

"Events have proved the unique wisdom and foresight of testator's purpose and scheme. One of the greatest social problems facing this country today, the handling of which the whole world is watching with keen interest, is the so-called Negro problem. When this will was written, few white men had envisaged it and it was, therefore, neglected, but Colonel McKee felt it keenly and decided to do something about it. He did so in an intensely practical and timely manner. No doubt he felt that immediate establishment of the college at the time of his death would be inauspicious and that his estate, which was then inadequate for the purpose, would yield enough income prior to the death of his last surviving grandchild living at the time of his death to raise a fund large enough to then establish the college, at which time also his plan for such a non-segregated institution would be generally accepted by the public. The plan for a nonsegregated school is one of the most practical and tangible ideas yet offered for the solution of this great sociological problem. Teaching colored and white to live together helps enormously to break down the artificial social barriers society has traditionally raised between them, and to live and study together in preparation for service in the Navy of the United States is of great added value and incentive to the project."

The auditing judge's efforts to have the project completed proved fruitless. He was then faced with the dilemma of applying the well known cy pres doctrine to the effect that when the exact purpose of a trust cannot be fulfilled the auditing judge must order the fund to be used for the purpose most nearly approximating that of the donor or testator. The decision was reached that if the qualifying students could not be given an education in the exact manner the Colonel envisaged, then to assist in educating them in other institutions of learning through scholarships would most closely approach his stated wishes. Following this, applications for the fund were received. Among them were private, public and state maritime schools, several Negro colleges, a hospital, and others. The auditing judge ruled out all of these claims mainly on the ground that none of the applicants was qualified even minimally to comply with McKee's main purpose, that of educating an equal number of Negro and white orphan boys. He thereupon established a scholarship committee consisting of Revelle Brown, then President of the Reading Company and a leading figure in the Boy Scout movement, the Commandant of the Fourth Naval District at League Island, the Superintendent of Parochial Schools of Philadelphia, and two Negroes, Judge Hastie of the United States Circuit Court of Appeals and Doctor C. G. Wooding of South Philadelphia. As Executive Secretary the auditing judge appointed John J. Gallen, Professor of Engineering at Villanova University. The Orphans' Court unanimously approved everything decreed by the auditing judge and the Supreme Court of Pennsylvania affirmed: McKee Estate, 378 Pa. 607. The auditing judge in awarding the income of the trust to be used for scholarships did so as a temporary expedient only. Time was not of the essence

in awarding the distribution of the principal because of the many implications involved. Therefore, the auditing judge ruled that reports of the operation of the Scholarship Committee should be filed every five years at which time reconsideration could be given as to the disposition of the principal. These reports have been made, but in the auditing judge's opinion the occasion has not arisen to justify the awarding of the principal.

Following the Supreme Court's affirmation of this Court's decision a dramatic incident occurred. As stated before, the settlement of the will contest in 1903 was attested by all of the claimants signing a typed settlement agreement. While several unsigned copies of that agreement were discovered before and during the trial, search failed to uncover any signed copies. However, when the files of the former counsel (who had died) were turned over to the present attorneys for the trust, a signed copy of the agreement was discovered. It contained among others the signature of the New York grandchild.

Mr. Gallen, as Executive Secretary of the Scholarship Committee, has been the key to the success of this project set forth in his report. He not only delineates therein the substantial part of his work, but he modestly fails to state that he served in the capacity of what we regard as a foster father to all of the students who benefitted under this project during their attendance at the several institutions where their tuition was paid for largely by this fund. Mr. Gallen has kept in constant communication with the administrators of these institutions as well as with the beneficiaries themselves.

In conclusion, on behalf of Colonel John McKee and the public, the Court expresses its heartfelt appreciation to the members of the Scholarship Committee for their contribution to the success of this unique and worthy project and our sense of pride that these prominent citizens have devoted their time and energies to the fulfillment of Colonel McKee's ideal.

BOLGER, J.

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