

**COURT OF COMMON PLEAS OF PHILADELPHIA  
ORPHANS' COURT DIVISION**

Control No. 020400  
# 4 April 2002

**No. 174 IV of 1953**

**In Re: Trust  
Estate of KATE R. AVERY CLARK, Settlor**

**Sur account entitled Second and Final Account of First Union  
National Bank, Surviving Trustee, Joseph S. Clark, Jr. and  
William P. Wood**

For The Trust Established Under Deed Of Gift Of Kate  
R. Avery Clark Dated October 30, 1942 For The Benefit Of  
Avery B. Clark, Et Al

**Before O'KEEFE, ADM. J.**

**This account was called for audit**

**April 1, September 9,  
November 4 &  
December 4, 2002**

**Counsel appeared as follows:**

**NORMAN E. DONOGHUE, ESQ. of DECHERT PRICE &  
RHOADS - for the Accountant**

**WILLIAM C. BULLITT, ESQ., And MATTHEW L. ROSIN,  
ESQ., of DRINKER BIDDLE & REATH - for Noel Clark  
Miller and Estate of Joseph S. Clark, III, Deceased**

MARGARET E.W. SAGER, ESQ., and MARTIN A. HECKSCHER,  
ESQ., of HECKSCHER, TEILLON, TERRILL & SAGER  
- for Harvard University

LISA KOEBBE, ESQ. Of FOX, ROTHSCHILD, O'BRIEN  
& FRANKEL, LLP - for Iris C. Clark

CHARLES E. DONOHUE, ESQ., DEPUTY ATTORNEY GENERAL  
- for the Commonwealth of PA, Office of  
Attorney General, as parens patriae for charities

This trust arises under irrevocable deed of gift of Kate R. Avery Clark, dated October 30, 1942, whereby the Settlor created a trust for the benefit of her son, Avery B. Clark, to pay him all of the net income, and, so much of the principal as the trustees may deem advisable for his suitable maintenance and support, during his life. Article THIRD of the deed of gift reads as follows, to wit:

**“THIRD:** Upon the death of my said son, Avery B. Clark, I direct my Trustees to distribute or hold the principal of said trust estate, as follows:

1. If my said son shall leave him surviving a widow and lawful issue, then my Trustees shall divide said trust estate into two equal parts and shall hold and distribute the same as follows:

(a) The income from one of said parts shall be paid over to the widow of my said son for and during the term of her natural life, or until she shall remarry, ..... Upon the death or remarriage of said widow, my Trustees shall (.....) Pay over the principal of such part to the then living lawful children of my said son, Avery B. Clark, and the issue of deceased children, in equal shares per stirpes.

(b) The principal of the other of said two parts shall (.....) Be paid over to the children of my said son, Avery B. Clark, living on the date of his death and the then living issue of deceased children, in equal shares per stirpes.

2. If my said son shall leave surviving him a

widow and no issue, then my Trustee shall divide said trust estate into two equal parts and shall hold or distribute the same as follows:

(a) The income from one of said two parts shall be paid over to said widow pursuant to this Article Third 1 (a) of this trust deed. Upon the death or remarriage of said widow, the principal of said part shall be paid over to my son, Joseph S. Clark, Jr., if he be then living and, if not (.....), to his then living children, or issue of deceased children, in equal shares per stirpes.

(b) The principal of the other of said parts shall be paid over and distributed to my son, Joseph S. Clark, Jr., if he be then living and, if not (.....), to his then living children and the issue of deceased children in equal shares per stirpes.

3. If my said son, Avery B. Clark, shall leave him surviving lawful issue, but no widow, then my Trustees shall at his death pay over the principal of said trust estate (.....) To the then living children and issue of deceased children of my son, Avery B. Clark, in equal shares per stirpes.

4. If my said son, Avery B. Clark, shall leave him surviving neither widow nor issue, then my Trustees shall at his death pay over the principal of said part of this trust estate (.....) To my son, Joseph S. Clark, Jr., if he be then living or, if not, then (.....) To his then living children and issue of deceased children in equal shares per stirpes."

Article FOURTH of the deed of gift provides that the share of principal due any minor shall be held in further trust until the minor shall have attained the age of twenty-one (21) years. Article SEVENTH provides that the trust shall be irrevocable. Article EIGHTH appoints the settlor's husband and son, Joseph S. Clark, Sr., and Joseph S. Clark, Jr., to serve as trustees.

A copy of the deed of gift is annexed.

When the settlor executed her deed of gift, on October 30, 1942, her immediate family consisted of the following persons, to wit: her husband, Joseph S. Clark, Sr.; her son, Joseph S. Clark, Jr., aged forty-one (41) years and married to Noel Hall Clark; her son, Avery B. Clark, aged thirty-eight (38) years and married to Patricia Hughes Clark; and, two children of Joseph S. Clark, Jr., being Joseph S. Clark, III, and Noel Clark (now Noel Clark Miller). Avery B. Clark had no children when his mother, the settlor, executed her deed of gift.

On April 26, 1944, a daughter named Kate Avery Clark was born to Avery B. Clark and his wife, Patricia Hughes Clark.

On October 2, 1945, the settlor executed a second deed of gift whereby she deposited additional securities with her husband and son, Joseph S. Clark, Sr., and Joseph S. Clark, Jr., to be held by them as trustees upon the same terms and provisions set forth in the aforementioned deed of gift dated October 30, 1942.

A copy of the second deed of gift is annexed.

On January 17, 1949, the United States Supreme Court decided the case of Spiegel's Estate v. Commissioner Of Internal Revenue, 335 U.S. 701 (1949).

On January 27, 1949, the settlor executed a document headed, "R E C I T A L" which reads as follows, to wit,

"I, KATE R. EVERY CLARK, am the donor under a Deed of Trust dated October 30, 1942, wherein I conveyed certain debentures to my husband, Joseph S. Clark, Sr., and my son, Joseph S. Clark, Jr., in trust under certain terms and conditions therein stated; and I am also donor in a Deed of Gift dated October 2, 1945, wherein I conveyed certain additional property to the same Trustees, to be held by them under the terms and

conditions of the earlier deed of gift.

When I executed these deeds it was my intent that thereafter I should have no interest in the property thereby transferred to the Trustees. I now wish to make certain that, no matter what contingencies occur, no part of the principal of the trust or of the income from such principal will ever revert to me or my heirs, executors or administrators.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS:

That I, KATE R. AVERY CLARK, intending to be legally bound, do hereby irrevocably direct that if at any time there is any part of the principal of the trust to which, and to the income from which, no one is entitled under the terms of the deeds of gift mentioned above, thereupon such principal shall be paid over absolutely and unconditionally to HARVARD UNIVERSITY, Cambridge, Massachusetts.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 27th day of January, 1949."

The Recital is witnessed by the settlor's son, Avery B. Clark, and, by her daughter-in-law, Noel Hall Clark.

A copy of the Recital is annexed.

The settlor executed a Will and Codicil dated November 10, 1949 and April 13, 1950. She died on January 19, 1951. Her Will and Codicil were admitted to probate by Decree of the Register of Wills of Delaware County who granted Letters Testamentary to Joseph S. Clark, Sr., and Joseph S. Clark, Jr., as the executors named in the Will. Harvard University is not named as a beneficiary in said Will and Codicil.

On January 28, 1953, Joseph S. Clark, Sr., and Joseph S. Clark, Jr., filed

their First Account as trustees of the trust under Kate R. Avery Clark's deed of gift dated October 30, 1942. This First Account was confirmed by an Adjudication of Lefever, J., dated December 9, 1953. At page 2 of his Adjudication, Judge Lefever noted that the Account was, ".....filed to record the administration of the trust since 1942, and, to dispose of a question concerning allocation of 'mineral rights'". There is no mention of the Recital in the audit papers or the Adjudication of December 9, 1953.

Joseph S. Clark, Sr., husband of the settlor and a co-trustee, died on April 13, 1956.

Avery B. Clark, son of the settlor and first named income beneficiary, died on July 14, 1957, survived by his wife and minor daughter, Patricia Hughes Clark and Kate Avery Clark.

On April 30, 1958, Joseph S. Clark, Jr., and Joseph S. Clark, III, filed the Second Account of the trust under Kate R. Avery Clark's deed of gift dated October 30, 1942. Joseph S. Clark, Jr., signed the Account and Statement Of Proposed Distribution in his capacity as surviving trustee, and, in his capacity as co-executor of the estate of his deceased father, Joseph S. Clark, Sr. Joseph S. Clark, III, signed the Account and Statement Of Proposed Distribution in his capacity as co-executor of the estate of his deceased grandfather, Joseph S. Clark, Sr. The existence of the Recital is noted in a rider to Paragraph (c) of the Statement Of Proposed Distribution. And, in a rider to Paragraph (e) of the Statement Of Proposed Distribution, Harvard University is noted as having a, "Contingent reversionary interest", in the trust.

(Emphasis supplied)

In connection with the audit of the Second Account of the trust, Arthur C. Dorrance, Jr., Esquire, counsel for Joseph S. Clark, Jr., and Joseph S. Clark, III, as the accountants, sent a letter dated June 2, 1958 to counsel for Harvard University. In said letter, Mr.Dorrance enclosed a copy of the Recital, and, advised counsel for Harvard that the Second Account was listed for audit on June 12, 1958. The third full paragraph of Mr.Dorrance's letter to counsel for Harvard, dated June 2, 1958, reads as follows, to wit,

“ The present accounting has been filed because of the death of the primary life tenant, Avery B. Clark, on July 14, 1957, survived by a widow, Patricia H. Clark, and a minor child, Kate Avery Clark. Under these circumstances, Item 1, page 2 of the Deed is the effective provision, and the Court will be asked to approve division of the trust into two equal shares -- one to be held for the benefit of the widow during her lifetime or until her remarriage, and the other to be held for Kate Avery Clark during her minority pursuant to article FOURTH of the deed. This latter share has clearly vested in the minor, and would be payable to her estate should she fail to survive until majority. The contingency upon which Harvard University's interest in the former share would vest would occur if the minor child or her issue were not living at the widow's death or remarriage.” Stipulation Exhibit “C” (Emphasis supplied)

On June 4, 1958, counsel for Harvard sent a letter to Mr.Dorrance in which he acknowledged that he had received Mr.Dorrance's letter of June 2, 1958.

On July 9, 1958, Judge Lefever issued an Adjudication in which he noted the existence of the Recital; confirmed the Second Account of the trust; and,

awarded the principal as follows, to wit:

“.....: one-half thereof to Joseph S. Clark, (Jr.), Surviving Trustee, and The First Pennsylvania Banking and Trust Company, Substituted Co-Trustee, in trust for Kate Avery Clark, a minor, for the purposes of the minority trust under Article Fourth of the Settlor’s deed; and the other one-half to Joseph S. Clark, (Jr.), Surviving Trustee and The First Pennsylvania Banking and Trust Company, Substituted Co-Trustee, for the uses and purposes of the continuing trust for Patricia H. Clark, widow of Avery B. Clark, deceased son of Settlor, as declared by the Deed of Trust of Settlor.” Adjudication, page 10

Kate Avery Clark, daughter of Avery B. Clark and granddaughter of the settlor, died on April 6, 1966, without leaving issue surviving her.

On June 3, 1966, George Craven, Esquire, counsel for the settlor’s son, then United States Senator Joseph S. Clark, Jr., wrote a letter to his client which reads as follows, in pertinent part, to wit,

“ A few weeks ago Bill Lange asked me what disposition would be made on the death or remarriage of Patricia Hughes Clark of the one-half of the trust under your mother’s October 30, 1942 deed of trust (supplemented by the deed of October 2, 1945) from which Patricia has been receiving the income since Avery’s death. The 1942 deed provides that on the death or remarriage of Avery’s widow, the principal of that one-half shall be paid over to ‘the then living children of my said son, Avery B. Clark, and the issue of deceased children in equal shares per stirpes.’ .....

....., there is also a “Recital” which Mrs.Clark executed on January 7, 1949. As you will see from the enclosed copies of the recital and deeds, the former provides that if at any time there is no one entitled to principal or income under the terms of the deeds of gift,

the trust principal shall be paid over to Harvard University, and shall not revert to your mother or her estate. In accordance with the Orphans' Court Rules, Harvard was given notice of its interest under the recital at the time of the 1958 accounting.

I assume that this paper was executed by your mother to avoid the possibility that the trust would be subjected to federal estate tax as part of her estate. Prior to the Technical Changes Act of 1949, approved November 25, 1949, the existence of this reversionary interest would have caused the entire trust fund to be taxable in your mother's estate, although under the law which has been in force since October 5, 1949, the existence of such reversion would not cause the estate tax to apply.

Braith Dorrance and I have been considering whether it could be successfully argued that Harvard does not have a right to the remainder interest in the trust and that notwithstanding this recital, the interest will revert to your mother's estate on Patricia's death or remarriage. If the recital could be construed as an attempt to modify the terms of an irrevocable trust, we could argue that it never became effective. However, the recital probably would be construed as a disclaimer or an assignment of your mother's reversionary interest, which clearly would be valid. ..... Accordingly, we believe that the recital is effective to transfer Mrs.Clark's reversionary interest to Harvard." Stipulation Exhibit "D" (Emphasis supplied)

Copies of the aforementioned letter were sent to William Lange, a Trust Officer at First Pennsylvania Bank, and, to the Senator's son, Joseph S. Clark, III.

On October 27, 1966, George Craven, Esquire, counsel for the settlor's son, Senator Clark, wrote a letter to the Senator's son, Joseph S. Clark, III, which letter reads as follows, in pertinent part, to wit,

" I have been talking with your father about the ultimate disposition of the two shares of the trust created by your grandmother by deeds dated October 30, 1942 and October 2, 1945 for Avery B. Clark. Your father asked me

to write you about this.

On Avery's death one-half of the trust (referred to below as Patricia's share) continued in trust for Patricia and the other one-half (referred to below as Kate's share) went outright to Kate. The disposition of these shares is as follows:

Patricia's Share

The income is payable to Patricia for life or until her remarriage. The deed of trust provides that on Patricia's death or remarriage the principal of this share shall be paid over to 'the then-living lawful children of my said son, Avery B. Clark, and the issue of deceased children, in equal shares per stirpes.' There is no further provision in the deed for the disposition of this share. Since there will be no living children or issue of deceased children of Avery on the death or remarriage of Patricia, there would be a failure of disposition of this share, and on the death or remarriage of Patricia, except for the assignment of that share by your grandmother, the principal would revert to her estate and would pass under her will as part of her residuary estate.

In 1949, prior to an amendment of the estate tax law to prevent such result, the existence of a reversionary interest in this share as well as in the other one-half share, would have caused the entire trust fund to be included in your grandmother's estate for federal estate tax purposes. In order to avoid that result, your grandmother, by a written "Recital" dated January 27, 1949, referred to the trust under the 1942 and 1945 deeds and provided that 'if at any time there is any part of the principal of the trust to which, and to the income from which, no one is entitled under the terms of the deeds of gift mentioned above, thereupon such principal shall be paid over absolutely and unconditionally to Harvard University, Cambridge, Massachusetts.'

Since, on the death or remarriage of Patricia, there will be no one entitled to the principal of or income from that share under the terms of the deeds of trust, Patricia's share will be payable outright to Harvard." Reply

Memorandum Of Harvard University Exhibit "A"  
(Emphasis supplied)

A copy of the aforementioned letter was sent to Senator Clark. The Senator's son, Joseph S. Clark, III, wrote back to Mr.Craven on October 28, 1966. Mr.Craven responded in a letter dated November 2, 1966 which reads, in pertinent part, as follows, to wit,

" 1. Pat has no power of disposition over the one-half share of your grandmother's 1942 trust from which Pat is entitled to receive the income for life or until her remarriage and which will go to Harvard on Pat's death.

.....

2. The recital executed by you grandmother on January 27, 1949 transferring to Harvard her reversionary interest in the 1942 trust was irrevocable. It was not legally possible to change the provisions of that instrument after the Technical Changes Act of 1949 was approved on October 25, 1949. Your grandmother's 1942 deed of trust made no provision for disposition of the trust fund if Avery died without issue and made no provision for disposition of Pat's one-half share if no issue of Avery are living on Pat's death. ..... Those who prepared the 1949 recital had no reason to suppose that an amendment to the estate tax law would be enacted and they evidently thought that the chances were remote that there would be no issue of Avery who would survive to receive the entire trust fund. Therefore, they evidently thought that an irrevocable assignment of your grandmother's reversionary interest to Harvard was good insurance against a substantial estate tax." Reply Memorandum Of Harvard University Exhibit "B" (Emphasis supplied)

Senator Clark received a copy of the aforementioned letter of George Craven dated November 2, 1966.

On August 2, 1967, Arthur C. Dorrance, Jr., Esquire, counsel for the settlor's son, Senator Clark, wrote a letter to the Recording Secretary of Harvard

University, which letter reads as follows, in pertinent part, to wit,

" In view of the recital, instead of reverting to the settlor's estate, at Mrs.Clark's death we believe the principal is payable to Harvard University.

While Harvard's entitlement seems clear to me, it will, of course, have to be adjudicated by our Philadelphia County Orphans' Court on the death of Patricia Hughes Clark. In the event of any interim accounting, Harvard University will, of course, receive due notice." Reply Memorandum Of Harvard University Exhibit "C" (Emphasis supplied)

A copy of the aforementioned letter was sent to Mr.William Lange at First Pennsylvania Bank.

On June 4, 1970, George Craven, counsel for the settlor's son, Senator Clark, wrote a letter to Samuel Hopkins, a Trust Officer at First Pennsylvania Bank, which letter reads as follow, in pertinent part, to wit,

"No. 28336 - Trust under deeds of Kate R. Avery Clark dated 10/30/42 and 10/2/45

\* \* \* \* \*

The income from one part shall be paid to the son's widow for life until her remarriage and on her death or remarriage, the trustees shall pay over the principal to the then-living children of Avery B. Clark and the issue of deceased children in equal shares per stirpes. There is no provision for disposition of the property on the death of the widow of Avery B. Clark, it [sic] at that time there are no issue of Avery B. Clark then living. In that event, the principal of the trust would revert to the estate of the settlor, Kate R. Avery Clark.

\* \* \* \* \*

Kate R. Avery Clark, the settlor, by written instrument dated January 27, 1949, assigned to Harvard

University her reversionary interest in the above trust.

Patricia H. Clark, the widow of Avery B. Clark, is now receiving the income from the one-half part of the trust which continues during her life. As there will be no issue of Avery B. Clark living on the death of Patricia H. Clark, that part will pass outright to Harvard University on the death of Patricia H. Clark.” Reply Memorandum Of Harvard University Exhibit “D” (Emphasis supplied)

Copies of the aformentioned letter were sent to Senator Clark and his son, Joseph S. Clark, III.

On September 6, 1973, the Third Account of the trust under Kate R. Avery's deed of gift, dated October 30, 1942, was filed by reason of the resignation of Senator Clark as a co-trustee. The Senator signed the Account and Statement Of Proposed Distribution in his capacity as surviving trustee. The existence of the Recital is noted in Paragraph (c) of the Statement Of Proposed Distribution. Harvard University is identified as, “Remainderman entitled to receive the principal upon death or remarriage of Patricia H. Clark pursuant to the Recital dated 1/27/49.”, in Paragraph (e) of the Statement Of Proposed Distribution. (Emphasis Supplied) And, Paragraph (f) of the Statement Of Proposed Distribution contains the following statement, to wit, “Harvard University, Cambridge, Mass., has a vested remainder interest in the trust which terminates on the death or remarriage of Patricia H. Clark.” (Emphasis supplied)

On January 10, 1974, Judge Pawelec issued an Adjudication in which he noted the existence of the Recital; confirmed the Third Account of the trust; and, awarded the principal to, “.....William P. Wood and The First Pennsylvania Banking

**and Trust Company, in trust, for the uses and purposes specified in the deed of trust.”**

**Senator Joseph S. Clark, Jr., son of the settlor and former co-trustee, died on January 12, 1990.**

**Patricia Hughes Clark, widow of Avery B. Clark, never remarried, and, died on June 12, 2000.**

**Joseph S. Clark, III, son of the Senator and grandson of the settlor, died on September 1, 2001.**

**Noel Clark Miller, daughter of the Senator and granddaughter of the settlor, is alive and sui juris.**

**The death of Patricia Hughes Clark marks the termination of the trust under deed of gift of Kate R. Avery Clark dated October 30, 1942, and, has resulted in the filing of the Fourth And Final Account of said trust by First Union National Bank (formerly The First Pennsylvania Banking and Trust Company) as surviving trustee. In Rider #6 to its Petition For Adjudication And Statement Of Proposed Distribution, the Bank proposes that the principal of the trust should not be paid to Harvard University, but, instead, should be paid as follows, to wit: one-half (1/2) to Abbe Shapiro and Main Line Trust Company, as Executors of the Will of Joseph S. Clark, III; and, one-half (1/2) to Noel Clark Miller.**

**It is stated that notice of the audit has been given to all parties having a possible interest in the trust under deed of gift of Kate R. Avery Clark dated October 30, 1942, including the Attorney General as parens patriae for charities.**

**Harvard University has appeared and filed an Objection which reads as follows, to wit,**

“ 1. Objectant objects to the Trustee’s proposed distribution of the remaining Trust property....., because Harvard University is the proper remainder beneficiary of the Trust. By failing to provide for all contingencies in the Deed of Gift dated October 30, 1942, Kate R. Avery Clark retained an interest in the property which she transferred to the 1942 Deed of Gift. In the Recital dated January 27, 1949, Kate R. Avery Clark irrevocably and effectively transferred her retained interest to Harvard University. Because a factual scenario not provided for in the original 1942 Deed of Gift has now occurred, and is directly addressed by the clear and unambiguous terms of the Recital, the property remaining in the Trust is now distributable to Harvard University, the proper remainder beneficiary of the Trust under the Recital.”

**The Attorney General, as parens patriae, has filed a similar Objection to the proposed distribution.**

**Disavowing the positions heretofore taken by counsel for Senator Clark and his son, Joseph S. Clark, III, which positions were ratified and adopted by the Senator and his son in their lifetimes, Noel Clark Miller and the Executors of the Will of Joseph S. Clark, III, (hereinafter the “Grandchildren”) have appeared to defend the Bank’s proposal to distribute the principal to them and not to Harvard University.**

**Counsel for the Grandchildren argue that there are no “gaps” in the deed dated October 30, 1942. They insist that the language of the deed, as written, does not fail to dispose of any part of the principal of this trust. They suggest that the settlor clearly intended to benefit her family, not Harvard, so long as there were any members of her family living on the death of Avery’s widow, Patricia Hughes**

Clark. They cite Rouse Estate, 369 Pa. 568 (1952), Wainwright Estate, 376 Pa. 161 (1954), Vandergrift Estate, 406 Pa. 14 (1964), and, Porter Estate, 36 D.&C.2d 91 (O.C., Phila., 1965), in support of an argument that, by necessary implication, the deed gives the principal to them, not Harvard.

Having considered the language of the deed of gift; the language of the Recital; the language of the settlor's Will and Codicil; and, the Affidavit of Noel Clark Miller which appears as Exhibit "A" to the Stipulation of the parties, this Court finds the cases cited by the Grandchildren to be unpersuasive and inapposite. In arguing that they are the beneficiaries of a gift by necessary implication, the Grandchildren stretch the doctrine of "gift by necessary implication" beyond its permissible bounds. See Verner Estate, 358 Pa. 280 (1948). The cases cited by the Grandchildren involve attempts to interpret Wills in such a manner as to avoid intestacy. In the case at bar, this Court is not faced with a stark choice of "gift by necessary implication" or intestacy. In the Recital, the settlor told her trustees exactly what to do with any portion of the principal to which, ".....no one is entitled under the terms of the deeds of gift.....".

Having considered the entire record in this matter, this Court adopts the positions taken by counsel for Senator Clark and his son, Joseph S. Clark, III, which positions were ratified and adopted by the Senator and his son in their lifetimes, and, which positions are now defended by Harvard University and the Attorney General as parens patriae, to wit: that there are "gaps" in the deed dated October 30,

1942, and, that the deed fails to dispose of part of the principal of the trust because it fails to provide for factual events which have occurred. This Court holds that there is no implied gift to the Grandchildren by necessary implication. See Verner Estate, supra.

Counsel for the Grandchildren next argue that the Recital is a “legal nullity” which must be ignored because it attempts to amend or revoke a deed of gift which, by its terms, is stated to be irrevocable. However, as noted by counsel for the Senator and his son, the Recital is nothing more or less than an assignment by the settlor of her retained reversionary interest in the principal of the trust, and, as such, is clearly valid. See Irish v. Irish, 361 Pa. 410 (1949), Jackson Trust, 351 Pa. 89 (1945), and, Thompson et al. v. Fitzgerald et al., 344 Pa. 90 (1941).

Finally, counsel for the Grandchildren argue that the Recital is a “legal nullity” which must be ignored because it was never delivered into the hands of the trustees in the lifetime of the settlor. However, upon consideration of the record, this Court finds, as a fact, that the Recital was delivered into the hands of the trustees in the lifetime of the settlor. In Rynier Estate, 347 Pa. 465, 471 (1943), our Supreme Court noted that,

“ As the chief factor in the determination of the question whether a legal delivery has been effected is the intention of the donor to transfer title to the donee, as manifested by his words and actions and by the circumstances surrounding the transaction, it is evident that each case must depend largely upon its own facts.”

Kate R. Avery Clark clearly executed the Recital in an effort to avoid the imposition of federal estate tax upon the principal of the instant trust. The Recital is witnessed

by her son, Avery, and, by her then daughter-in-law, Noel Hall Clark. Failure to deliver the Recital to the settlor's husband and son, the trustees, would defeat the very purpose for which it was executed. In none of the aforementioned correspondence, and, in none of the aforementioned Statements Of Proposed Distribution, do counsel for the Senator and his son, or, their clients, ever suggest that the Recital was not delivered into the hands of the trustees in the settlor's lifetime. Once again, considering the record and all the circumstances surrounding the transaction, this Court has no hesitancy in finding, as a fact, that the Recital was delivered into the hands of the trustees in the lifetime of the settlor.

In accordance with the foregoing discussion, this Court holds, as a matter of law, that Kate R. Avery Clark, the settlor, by written Recital dated January 27, 1949, which Recital was delivered into the hands of the trustees in her lifetime, effectively and irrevocably assigned her reversionary interest in the instant trust to Harvard University. Because there were no issue of Avery B. Clark living on the death of his unremarried widow, Patricia Hughes Clark, the remaining principal of the instant trust is now payable to Harvard University in accordance with the terms of the Recital. The Objections of Harvard and the Attorney General, to the distribution proposed by the Bank and defended by the Grandchildren, are sustained. The awards will be made accordingly.

All Objections having been withdrawn or addressed and disposed of,  
the account shows a balance of principal of \$ 1,671,149.67  
which, composed as indicated in the account, is awarded to Harvard University.

The account shows a balance of income, before distributions,  
of \$ 297,682.97  
Which, together with income received since the filing of the account, if any, is awarded as follows, to wit: \$18,606.53 in income accrued through June 19, 2000 to Frederick J.M. LaValley and Bettye H. Turitto, Executors of the Will of Patricia Hughes Clark, deceased income beneficiary; and, the balance then remaining, or residue, to Harvard University.

The above award of principal is made subject to payment of costs of notes of oral argument to Mary Anne McAndress, Official Court Reporter.

All of the above awards are made subject to all payments heretofore properly made on account of distribution.

Leave is hereby granted to the accountant to make all transfers and assignments necessary to effect distribution in accordance with this adjudication.

AND NOW, , the account is confirmed absolutely.

Exceptions to this Adjudication may be filed within twenty (20) days from the date of issuance of the Adjudication. An Appeal from this Adjudication may be taken, to the appropriate Appellate Court, within thirty (30) days from the date of issuance of the Adjudication. See Phila. O.C. Div. Rule 7.1.A and Pa. O.C. Rule 7.1, as amended, and, Pa.R.A.P. 902 and 903.

**ADM. J.**