

21, 1942

30614

In the Privy Council.

No. 35 of 1941.

**ON APPEAL FROM THE SUPREME COURT OF
CANADA.**

IN THE MATTER of the Estate of Maria Famicha Ganong, deceased.

BETWEEN

JEANNETTE ROBINSON BELYEA AND
EDGAR M. ROBINSON, Residuary Legatees (Defendants) Appellants,

AND

SAMUEL A. McBRIDE, Sole Executor and
Trustee of the Last Will and Testament of
Maria Famicha Ganong, deceased (Plaintiff) Respondent,

AND

ARTHUR D. GANONG, KATHERINE L.
WHIDDEN, SUSAN B. GANONG,
WILLIAM F. GANONG, JAMES E.
GANONG, GRACE A. CALDWELL, EDNA
DILLENBECK PELLISSIER, MAY ISABEL
WEYMER, EDWIN M. GANONG, WIL-
LIAM J. GANONG AND R. WHIDDEN
GANONG (Defendants) Respondents.UNIVERSITY OF LONDON
W C I

-8 JUL 1953

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In the Privy Council.

No. 35 of 1941.

ON APPEAL FROM THE SUPREME COURT OF CANADA.

IN THE MATTER of the Estate of Maria Famicha Ganong, deceased.

BETWEEN

JEANNETTE ROBINSON BELYEA AND
EDGAR M. ROBINSON, Residuary Legatees (*Defendants*) *Appellants*,

AND

SAMUEL A. McBRIDE, Sole Executor and
Trustee of the Last Will and Testament of
Maria Famicha Ganong, deceased (*Plaintiff*) *Respondent*,

AND

ARTHUR D. GANONG, KATHERINE L.
WHIDDEN, SUSAN B. GANONG,
WILLIAM F. GANONG, JAMES E.
GANONG, GRACE A. CALDWELL, EDNA
DILLENBECK PELLISSIER, MAY ISABEL
WEYMER, EDWIN M. GANONG, WIL-
LIAM J. GANONG AND R. WHIDDEN
GANONG (*Defendants*) *Respondents*.

RECORD OF PROCEEDINGS.

No. 1.

Originating Summons.

In the Supreme Court.
Chancery Division.

In the matter of the Estate of Maria Famicha Ganong, late of the Town of
St. Stephen, in the County of Charlotte and Province of New Brunswick,
widow and relict of the Honourable Gilbert W. Ganong, late Lieutenant-
Governor of the Province of New Brunswick, deceased.

*In the
Supreme
Court of
New
Brunswick
Chancery
Division.*

No. 1.
Originating
Summons,
1st Decem-
ber, 1939.

*In the
Supreme
Court of
New
Brunswick.
Chancery
Division.*

No. 1.
Originating
Summons,
1st Decem-
ber, 1939
—continued.

Between Samuel A. McBride, Sole Executor and Trustee of
the Last Will and Testament of Maria Famicha
(L. S.) Ganong, late of the Town of St. Stephen, in the
County of Charlotte and Province of New
Brunswick, widow and relict of the Honourable
Gilbert W. Ganong, late Lieutenant-Governor
of the Province of New Brunswick, deceased ..

(Plaintiff),

and

Arthur D. Ganong ; Katherine L. Whidden ; Susan
B. Canong ; William F. Ganong ; James E.
Ganong ; Walter K. Ganong ; Grace A. Cald- 10
well ; Cecilia A. Hyslop ; Jennie H. Christmas ;
Mrs. Frank A. MacDonald ; Francis Ganong
MacDonald ; Edna Dillenbeck Pellissier ; May
Isabel Weymer ; Edwin M. Ganong ; William
J. Ganong ; R. Whidden Ganong ; Philip D.
Ganong ; Arthur R. MacKenzie ; Hugh McK.
McBride ; Neville M. Jackson ; Raymond J.
McCloskey ; Jules L. Charlesbois ; A. Brewer
Edwards ; Hardy N. Ganong ; Mary Margaret 20
McGeachey ; Duncan Webber McGeachey ;
William A. Hyslop ; James Hinds ; George A.
Lockhart ; Clara Gordon Forbes ; Douglas E.
Allen ; Frederick A. McAndrews ; Rainsford
R. Henderson ; Eldon Libby ; James W. Craft ;
Edward Bosien ; Arthur McWha ; Harry L.
McPhail ; Rothwell W. Anderson ; Margaret
Jones ; Gilbert R. Pellissier ; Margaret Isobel
Robinson ; Donald C. Robinson ; John E.
Robinson ; Jeannette R. Belyea ; Edgar M. 30
Robinson, in his own right and as Trustee for his
children ; Serena Robinson ; The Maria F.
Ganong Old Folks Home, in its own right and
as trustee ; and Chipman Memorial Hospital .. (Defendants).

Let Arthur D. Ganong, of the Town of St. Stephen, in the County of
Charlotte and Province of New Brunswick, Manufacturer ; Katherine L.
Whidden of the City of Hamilton, in the Province of Ontario, Married Woman ;
Susan B. Ganong of Rothesay, in the County of Kings and Province of New
Brunswick, Spinster ; William F. Ganong of the City of Northampton, in
the Commonwealth of Massachusetts, one of the United States of America, 40
Gentleman ; James E. Ganong of the City of Toronto, in the Province of
Ontario, Gentleman ; Walter K. Ganong of the Town of Digby, in the
Province of Nova Scotia, Gentleman ; Grace A. Caldwell of the City of
Ottawa, in the Province of Ontario, Widow ; Cecilia A. Hyslop of the said
Town of St. Stephen, Widow ; Jennie H. Christmas of the said City of

Ottawa, Widow ; Mrs. Frank A. MacDonald of Campbell River, in the Province of British Columbia, Widow ; Francis Ganong MacDonald of the said Campbell River, son of Frank A. MacDonald, deceased, an infant ; Edna Dillenbeck Pellissier of Maplewood, in the State of New Jersey, one of the United States of America, Married Woman ; May Isabel Weymer of Summit, in the said State of New Jersey, Widow ; Edwin M. Ganong, of Bayonne, in the said State of New Jersey, Gentleman ; William J. Ganong of the City of New York, in the State of New York, one of the United States of America, Gentleman ; R. Whidden Ganong of the said Town of St. Stephen,
10 Manufacturer ; Philip D. Ganong of the said Town of St. Stephen, Commercial Traveller ; Arthur R. MacKenzie of the said Town of St. Stephen, Sales Manager ; Hugh McK. McBride of the City of Winnipeg, in the Province of Manitoba, Agent ; Neville M. Jackson of the City of Calgary, in the Province of Alberta, Agent ; Raymond J. McCloskey of the City of Montreal, in the Province of Quebec, Commercial Traveller ; Jules L. Charlesbois of the City of Quebec, in the Province of Quebec, Commercial Traveller ; A. Brewer Edwards of the said Town of St. Stephen, Comptroller ; Hardy N. Ganong of the said Town of St. Stephen, Manufacturer ; Mary Margaret McGeachey of the said Town of St. Stephen, Widow of Dugald K. McGeachey ;
20 Duncan Webber McGeachey, of the said Town of St. Stephen, son of the said Dugald K. McGeachey, an infant ; William A. Hyslop of the said Town of St. Stephen, Buyer ; James Hinds of the said Town of St. Stephen, Engineer ; George A. Lockhart of the City of Saint John, in the Province of New Brunswick, Commercial Traveller ; Clara Gordon Forbes of Meddybemps, in the State of Maine, one of the United States of America, Widow of C. Ralph Forbes ; Douglas E. Allen of the said City of Saint John, Commercial Traveller ; Frederick A. McAndrews of the City of Moncton, in the Province of New Brunswick, Commercial Traveller ; Rainsford R. Henderson of the said Town of St. Stephen, Accountant ; Eldon Libby of the said
30 Town of St. Stephen, Superintendent ; James W. Craft of the said Town of St. Stephen, Candy Maker ; Edward Bosien of the said Town of St. Stephen, Candy Maker ; Arthur McWha of the said Town of St. Stephen, Candy Maker ; Harry L. McPhail of the said Town of St. Stephen, Manager ; Rothwell W. Anderson of the said Town of St. Stephen, Gentleman ; Margaret Jones of the said Town of St. Stephen, Nurse ; Gilbert R. Pellissier of Maplewood, in the said State of New Jersey, Gentleman ; Margaret Isobel Robinson of the City of Springfield, in the Commonwealth of Massachusetts, one of the United States of America, Teacher ; Donald C. Robinson of the said City of Springfield, Steamship Engineer ; John E. Robinson of the said
40 City of Springfield, Teacher ; Jeannette R. Belyea of the said Town of St. Stephen, Widow ; Edgar M. Robinson of the said City of Springfield, Gentleman ; Serena Robinson of the said City of Springfield, Married Woman ; The Maria F. Ganong Old Folks Home at the said Town of St. Stephen ; and Chipman Memorial Hospital at the said Town of St. Stephen ; within ten days after the service of this summons on them, inclusive of the day of such service, cause an appearance to be entered for them to this Summons, which is issued upon the application of Samuel A. McBride of the Town of

*In the
Supreme
Court of
New
Brunswick.
Chancery
Division.*

*No. 1.
Originating
Summons,
1st Decem-
ber, 1939
—continued*

*In the
Supreme
Court of
New
Brunswick.
Chancery
Division.*

No. 1.
Originating
Summons,
1st Decem-
ber, 1939
—continued.

St. Stephen, in the County of Charlotte and Province of New Brunswick, Business Manager, who claims to be the Sole Executor and Trustee of the Last Will and Testament of Maria Famicha Ganong, late of the said Town of St. Stephen, Widow, deceased, for the determination of the following questions :—

1. Who are entitled to the shares in the capital stock of Ganong Bros., Limited, either common or preferred, bequeathed under any clauses of either the Last Will and Testament of Maria Famicha Ganong or the second codicil thereto ?

2. When are the beneficiaries of the said shares entitled to delivery 10 thereof ?

Let this Summons be served by mailing a copy of this Summons to all the Defendants, resident as well within the Province as without, registered postage prepaid to their last known address.

Dated this First day of December A.D. 1939.

(Sgd.) JOHN B. M. BAXTER
C.J.

(Sgd.) R. B. HANSON,
Plaintiff's Solicitor.

This Summons was taken out by Richard B. Hanson, Solicitor for the 20 above named Plaintiff.

The Defendants may appear hereto by entering an Appearance either personally or by Solicitor with the Registrar of the Court of Fredericton, N.B., and delivering a copy to Richard B. Hanson, Solicitor for the above named Plaintiff, at Carleton Chambers, 61, Carleton Street, Fredericton, N.B.

NOTE.—If the Defendants do not enter an Appearance within the time and in the manner above mentioned, such order will be made and proceedings taken as the Judge may think just and expedient.

No. 2.
Formal
Judgment,
15th
January,
1940.

No. 2. Formal Judgment.

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In the Supreme Court.
Chancery Division.

Monday, January 15th, 1940.

Before The Honourable John B. M. Baxter, Chief Justice.

In the matter of the Estate of Maria Famicha Ganong, late of the Town of St. Stephen, in the County of Charlotte and Province of New Brunswick, widow and relict of the Honourable Gilbert W. Ganong, late Lieutenant-Governor of the Province of New Brunswick, deceased.

Between Samuel A. McBride, Sole Executor and Trustee of the Last Will and Testament of Maria Famicha Ganong, late of the Town of St. Stephen, in the County of Charlotte and Province of New Brunswick, widow and relict of the Honourable Gilbert W. Ganong, late Lieutenant-Governor of the Province of New Brunswick, deceased

and

10 Arthur D. Ganong ; Katherine L. Whidden ; Susan B. Ganong ; William F. Ganong ; James E. Ganong ; Walter K. Ganong ; Grace A. Caldwell ; Cecilia A. Hyslop ; Jennie H. Christmas ; Mrs. Frank A. MacDonald ; Francis Ganong MacDonald ; Edna Dillenbeck Pellissier ; May Isabel Weymer ; Edwin M. Ganong ; William J. Ganong ; R. Whidden Ganong ; Philip D. Ganong ; Arthur R. MacKenzie ; Hugh McK. McBride ; Neville M. Jackson ; Raymond J. McCloskey ; Jules L. Charlesbois ; A. Brewer Edwards ; Hardy N. Ganong ; Mary Margaret McGeachey ; Duncan Webber McGeachey ;

20 William A. Hyslop ; James Hines ; George A. Lockhart ; Clara Gordon Forbes ; Douglas E. Allen ; Frederick A. McAndrews ; Rainsford R. Henderson ; Eldon Libby ; James W. Craft ; Edward Bosien ; Arthur McWha ; Harry L. McPhail ; Rothwell W. Anderson ; Margaret Jones ; Gilbert R. Pellissier ; Margaret Isobel Robinson ; Donald C. Robinson ; Jeannette R. Belyea ; Edgar M. Robinson, in his own right and as Trustee for his children ; Serena Robinson ; The Maria F. Ganong Old Folks Home, in its own right and as Trustee, and Chipman Memorial Hospital Defendants.

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*In the
Supreme
Court of
New
Brunswick.
Chancery
Division.*

No. 2.

Plaintiff, Formal Judgment, 15th January, 1940
—continued.

This matter and cause coming on for hearing on the nineteenth day of December last, in the presence of Mr. R. B. Hanson, one of His Majesty's Counsel, of counsel for the Executor and Trustee ; Mr. J. H. Drummie, of counsel for twelve defendants, who are representatives of preferred and common shareholders in Ganong Bros., Limited, and Mr. W. J. West, of counsel

40 for the residuary legatees, and on the twenty-seventh day of December last and the fifth day of January instant, in the presence of Mr. J. H. Drummie, of counsel as before ; Mr. W. J. West and Mr. C. F. Inches, one of His Majesty's Counsel, of counsel for the residuary legatees, and Mr. G. F. Nicholson, of counsel for The Maria F. Ganong Old Folks Home and Chipman Memorial Hospital, upon an originating summons for the determination of the following questions :—

*In the
Supreme
Court of
New
Brunswick.
Chancery
Division.*

No. 2.
Formal
Judgment,
15th
January,
1940.
—continued.

1. Who are entitled to the shares in the capital stock of Ganong Bros., Limited, either common or preferred, bequeathed under any clauses of either the Last Will and Testament of Maria Famicha Ganong or the second codicil thereto ?

2. When are the beneficiaries of the said shares entitled to the delivery thereof ?

And during the argument the further question being raised as follows :—

3. Under the circumstances of the present case are any dividends and if so, what apportionable ?

Whereupon, and upon hearing read the order setting the time for hearing, and the affidavit of Corey G. Sansom, proving service, and upon hearing the evidence adduced and proofs taken, and what was alleged by counsel, the Court, having taken time to consider, Doth Now Find and Decree the following answers to the said questions :—

1. The persons and institutions named therein.
2. Immediately.
3. No question of apportionment arises.

And the Court Doth Order that the costs of all parties, as taxed between solicitor and client, be paid out of the estate.

By the Court,

(Sgd.) H. LESTER SMITH,
Registrar.

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No. 3.

Reasons for Judgment of Baxter C.J.

No. 3.
Reasons for
Judgment of
Baxter C.J. BAXTER C.J. :

Upon an originating summons I am asked :—

1. Who are entitled to the shares in the capital stock of Ganong Bros., Limited, either common or preferred, bequeathed under any clauses of either the last Will and Testament of Maria Famicha Ganong or the second codicil thereto ?

2. When are the beneficiaries of the said shares entitled to delivery thereof ?

During the argument the further question was asked :—

3. “ Under the circumstances of the present case are any dividends “ and if so, what, apportionable ? ”

Mrs. Ganong made a will dated 25th September 1924 to which she made a codicil dated 21st August 1926 on which nothing turns. She made a second codicil dated 13th October 1934.

On 15th March 1918 she entered into a trust deed which I have admitted in evidence but which I do not think has any material bearing upon the questions raised. It is enough to say that it came to an end because of a

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default under its terms by which 3790 preferred shares and 3600 common shares of the Ganong Company reverted to the estate of Mrs. Ganong, she having died before the actual reversion. By the 14th paragraph of the second codicil on the assumption that revocation of the trust deed will become operative she says "I do hereby give, devise and bequeath unto the several persons hereinafter named, relatives of my late husband, the number of said Preferred Shares of the Capital Stock of Ganong Bros., Limited, hereinafter mentioned, if, as and when the said Trust Shares are returned to and vested in me or my estate." Here follow fourteen specific bequests of these shares and the testatrix declared that the gift is conditional upon their reversion in her or her estate.

*In the
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New
Brunswick.
Chancery
Division.*

No. 3.
Reasons for
Judgment of
Baxter C.J.
—continued.

The answer to the questions involves the construction of Paragraph 20 of the second codicil which is as follows:—

20 " 20. I hereby revoke and make void Paragraph 17 of my said last Will and Testament dated the twenty-fifth of September, 1924, and in lieu thereof and in substitution therefor I Will and declare that my Executors and Trustees shall pay out of my personal estate any and all Succession Duties which may at my death become payable upon any of the bequests made in my said last Will and Testament or in any Codicil thereto, including this Codicil, it being my intention that all gifts and bequests, including gifts of shares in the Capital Stock of Ganong Bros., Limited, either Preferred or Common, to any nephew or niece of my late husband, shall be free from Succession Duty.

30 " But while I make the foregoing provision with respect to Succession Duty, it is my express Will and intention and I hereby direct that notwithstanding anything hereinbefore contained any and all of the shares of the Capital Stock of Ganong Bros., Limited, in and by my said Last Will and Testament and in and by this Second Codicil to my said last Will and Testament bequeathed by me, shall be and remain the property of my Estate and be held by my Executors and Trustees as part of my Estate until all dividends on the Preferred Shares accrued to the date of my death have been paid in full and also until the two half yearly dividends which shall accrue immediately subsequent to the date of my death shall have been paid in full to my estate for the benefit thereof, it being my intention by this paragraph of this Second Codicil to my will that all dividends on said Preferred shares accrued due to the date of my death, whether earned or declared or not, together with a full year's dividends accruing due after my death, whether earned or declared or not, shall be paid to my Executors and Trustees for the benefit of my Estate before making any transfers of the stock or shares of Ganong Bros., Limited, Common or Preferred, devised and bequeathed under my said last Will and Testament and under this Second Codicil thereto."

Mrs. Ganong died 30th November 1934. At that time she owned or was entitled to 4890 preferred shares of Ganong Bros., Limited, of which

*In the
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Brunswick.
Chancery
Division.*

3790 shares had come from her husband the late Gilbert W. Ganong, and she also was entitled to 4036 shares of common stock of which 3600 had come from him. On 29th September 1934 she had given notice of revocation of the Trust Deed. She died before the notice became operative and the shares came to her executor after her death.

No. 3.
Reasons for
Judgment of
Baxter C.J.
—continued.

The contention on the part of the residuary legatees is that there was no vesting of the shares in the persons to whom they were given until after the payment of the dividends referred to, and as the dividends have not yet been paid and as no one can tell that any ever will be paid the rule against perpetuities applies and the shares pass into residue. 10

The executor would not have been bound to hand over the shares until a year after the testatrix's death. Williams on Executors (12th Ed.) p. 909, citing *Wood v. Penoyre*, 13 Ves. 333, 4, and Lord Redesdale in *Pearson v. Pearson*, 1 Sch. & Lef. 11. The shares would pass to the executor upon the death of the testatrix and what she has said in Clause 20 is only to my mind an extension of this rule. The time of annual meetings is fixed by the Directors of the Company under its by-laws and it is quite possible that the time of declaring a second half yearly dividend might be after something more than a year had elapsed after Mrs. Ganong's death. All she has said is that the shares are to remain in her estate until that time. She speaks of the 20 "two half yearly dividends which shall accrue immediately subsequent to the date of my death." It is true that in the declaration of her intention which follows she does not repeat the word "immediately" but its use reveals her intention and there is no reason why I should not give effect to it. The explanation of her intention is directed to the simple fact that she wanted to give the shares but not to give the new holders any rights to dividends accruing—not a very apt term—before her death or to the dividends which should be earned or payable within a full year after her death. When she says that these dividends "shall be paid to my executors and trustees for the benefit of my estate" what can she mean? She is speaking of the 30 Ganong Company of which by-law 48 provides that "the Directors may declare dividends out of the net profits of the company whenever and so often as in their opinion the state of the company will permit." Until these dividends are paid no transfers were to be made. But there were no dividends nor any funds from which dividends could be declared. She died 30th November 1934. There was a net loss in 1934, 1935, 1936 and 1937 and an accumulated deficit at the end of that year of \$103,118.88. This appears from a statement by A. E. Cox, C.A., which by agreement has been put in at my request after the hearing. Now, who did she mean was to pay or, in fact, who could pay dividends except the company? It has been con- 40 tended that she intended to impose a charge of two years dividends or of an amount equal thereto, \$68,460 upon the shares she was giving. To my mind this is inconceivable. Neither the financial condition of the company nor the language used warrants such an interpretation. It is "dividends" which she says are to be paid and that term can mean only one thing—a return to the shareholders to be paid out of the profits of the company.

It is clear to my mind that the intention of the testatrix has been considerably obscured by the draftsman's confusion between preferential shares per se and the right of preferential shares upon a winding up. In Palmer's Company Precedents 12th ed. Vol. 1, page 800, I find: "Prima facie a preferential dividend is payable only out of the profits made whilst the company is a going concern and it wants a special provision to give the holders a right to have the arrears paid out of assets in winding up." *Crichton's Oil Co.* (1902) 2 Ch. 86. If by the articles, arrears are to be paid they are payable although no profits have been made. *Re Sprinkbok Agricultural Estates, Ltd.* (1920) 1 Ch. 563. The words generally used for this purpose are "as to arrears of dividends whether declared or not up to the commencement of the winding up." The trust deed, which was put in evidence, but which does not affect the case in any way, is full of instances of this confusion: Apparently there was an attempt to apply some of its irrelevant terminology in the drafting of Clause 20 of the second codicil. The shares dealt with were those of Ganong Bros., Limited. The by-laws of that company provided for the declaration of dividends by the Directors out of the net profits of the company "whenever and so often as in their opinion the state of the company will permit." Dividends could not be declared if there were no net profits. By-law number 54 provided for the issue of 10,000 shares of preference stock having fixed cumulative preferential dividends and priority in any division of the assets of the company to the extent of its repayment in full at par together with any dividends thereon then accrued due and remaining unpaid. They were to carry seven per cent. which is "payable as may be convenient, half yearly," and the dividends were to be "payable only out of the net profits of the company." Any attempt by the trust deed or by the will to alter the set up of the company is futile. The words in the will "whether earned or declared or not" would be apt with reference to the right of these preferential shares to rank upon the assets of the company upon a winding up but are utterly meaningless in the connection in which they have been introduced. There were no dividends due at the date of the testatrix's death nor in the year immediately succeeding her death have any dividends been declared nor throughout the whole period could any dividends have lawfully been declared.

In my opinion the shares vested immediately in the persons to whom they were given by the 14th and 16th paragraphs of the second codicil. The re-vesting under the provisions of the Trust Deed became complete after the death of the testatrix.

"When the will is silent the legacy vests immediately if the time of payment is postponed only for convenience. It is a material circumstance if the legacy be severed from the rest of the estate." Per Joyce, J., in *Couturier v. Shea* 76 L. J., Ch. 296. In that case a legacy was to be set apart by the executors to be paid, part at 21, a further part at 25 and the balance at 30.

In the present case the shares are set apart from the rest of the estate by the mere designation of them. There can be no doubt as to the thing given or as to the takers. For the convenience of the testatrix, so that she or her estate may receive directly any dividends which there may be unpaid

*In the
Supreme
Court of
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Brunswick.
Chancery
Division.*

No. 3.
Reasons for
Judgment of
Baxter C.J.
—continued.

*In the
Supreme
Court of
New
Brunswick.
Chancery
Division.*

No. 3.
Reasons for
Judgment of
Baxter C.J.
—continued.

at her death or any dividends which may accrue in the two half yearly periods after her death, the shares are not to be transferred until after those dividends are paid. Against this I am asked to conjecture that the testatrix meant that the shares were not to vest until after two half yearly dividends had been declared and paid even though that might not take place in fifty years. Then, it was said the rule against perpetuities came into play. I cannot accept a construction so contrary to what, to me, is the plain object of the testatrix. As said by Lord James of Hereford in *Comiskey v. Bowring-Hanbury* 74 L.J., Ch. 263, "our only duty is to discover what was the intention of the testator and we must make that discovery from the words used 10
"in the will." That I think I have done despite the embarrassment created by the technical language of the draftsman which has to some extent obscured but has not obliterated, the intention of his client. I find that the shares vested in the takers at the death of the testatrix but that the executor could not transfer them upon the books of the Company until certain dividends were paid; that no such dividends ever accrued; that the time fixed by the will has elapsed and that the legatees are entitled to receive their legacies. No separate or special questions arise as to the Old Folks Home or the Chipman Memorial Hospital which are included in the general answers. The categorical answers are:—

1. The persons and institutions named therein.
2. Immediately.
3. No question of apportionment arises.

All parties will be entitled to their costs as between solicitor and client.

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*In the
Supreme
Court of
New
Brunswick.
Appeal
Division.*

No. 4.
Notice of
Appeal,
25th
January,
1940.

No. 4. Notice of Appeal.

Take Notice that the defendants, Jeannette R. Belyea and Edgar M. Robinson will appeal, and do hereby appeal to the Appeal Division of this Honourable Court from a judgment of Chief Justice Baxter dated the 15th day of January, A.D. 1940, and that a motion will be made to the said Appeal 30
Division on the 13th day of February, A.D. 1940, at the hour of 10.30 o'clock in the forenoon, or so soon thereafter as counsel may be heard, that the said judgment be reversed.

Dated the 25th day of January, A.D. 1940.

WILLIAM J. WEST,
Solicitor for the defendants, Jeannette
R. Belyea and Edgar M. Robinson.

TO—J. Harold Drummie, Esq.,

Counsel for

Arthur D. Ganong; Katherine L. Whidden; Susan B. Ganong; William 40
F. Ganong; James E. Ganong; Grace A. Caldwell; Edna Dillenbeck
Pellissier; May Isabel Weymer; Edwin M. Ganong; William J.
Ganong; R. Whidden Ganong; and Gilbert R. Pellissier.

No. 5.
Formal Judgment.

In the Supreme Court
Appeal Division.

April Session, 4 George VI, Friday, April 19th 1940.

On Appeal from the Chancery Division.

Between Samuel A. McBride, Sole Executor and Trustee of
the last Will and Testament of Maria Famicha
Ganong, late of the Town of St. Stephen in the
County of Charlotte and Province of New
Brunswick, widow and relict of the Honourable
Gilbert W. Ganong, late Lieutenant-Governor
of the Province of New Brunswick, deceased ...

Plaintiff,

and

Arthur D. Ganong, Katherine L. Whidden, Susan
B. Ganong, William F. Ganong, James E.
Ganong, Walter K. Ganong, Grace A. Caldwell,
Cecilia A. Hyslop, Jennie H. Christmas, Mrs.
Frank A. MacDonald, Francis Ganong Mac-
Donald, Edna Dillenbeck Pellissier, May Isabel
Weymer, Edwin M. Ganong, William J. Ganong,
R. Whidden Ganong, Philip D. Ganong, Arthur
R. MacKenzie, Hugh McK. McBride, Neville M.
Jackson, Raymond J. McCloskey, Jules L.
Charlesbois, A. Brewer Edwards, Hardy N.
Ganong, Mary Margaret McGeachey, Duncan
Webber McGeachey, William A. Hyslop, James
Hinds, George A. Lockhart, Clara Gordon
Forbes, Douglas E. Allen, Frederick A. Mc-
Andrews, Rainsford R. Henderson, Eldon Libby,
James W. Craft, Edward Bosien, Arthur McWha,
Harry L. McPhail, Rothwell W. Anderson,
Margaret Jones, Gilbert R. Pellissier, Margaret
Isobel Robinson, Donald C. Robinson, John E.
Robinson, Jeannette R. Belyea, Edgar M.
Robinson, in his own right and as Trustee for
his children, Serena Robinson, The Maria F.
Ganong Old Folks Home in its own right and
and as trustee, and Chipman Memorial Hospital

Defendants,

Jeannette R. Belyea and Edgar M. Robinson,
Residuary Legatees

Appellants,

and

The Maria F. Ganong Old Folks Home ; Chipman
Memorial Hospital ; Arthur D. Ganong ; Kath-

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*No. 5.
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erine L. Whidden ; Susan B. Ganong ; William
F. Ganong ; James E. Ganong ; Grace A.
Caldwell ; Edna Dillenbeck Pellissier ; May
Isabel Weymer ; Edwin M. Ganong ; William
J. Ganong ; R. Whidden Ganong ; and Gilbert
R. Pellissier Respondents.

Upon hearing, in February session last, Mr. W. J. West and Mr. C. F. Inches, one of His Majesty's Counsel, of counsel for the appellants, in support of an appeal from the judgment of the Chief Justice of New Brunswick, upon an originating summons taken out by the plaintiff, Mr. R. B. Henson, one of His Majesty's Counsel, of counsel for the executor ; Mr. G. F. Nicholson, of counsel for the respondent corporations ; and Mr. J. H. Drummie, of counsel for the remaining respondents, contra, the Court, having taken time to consider, Doth Now Order that such appeal be allowed, and that the costs of all parties, as between solicitor and client, on the appeal and in the Court below, be paid out of the estate, except that the solicitor for the executor is not entitled to any costs for his factum : (Grimmer J. dissenting, except as to the disposition of costs).

By the Court.

(Sgd.) H. LESTER SMITH, 20
Registrar.

No. 6.
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No. 6.

Reasons for Judgment of Grimmer J.

GRIMMER J. :

This case arose under an originating summons by which Baxter C.J. was asked to interpret certain provisions of the will of the said Maria F. Ganong and answer the following questions :—

- (1) Who are entitled to the shares in the capital stock of Ganong Brothers Limited either common or preferred bequeathed under any clauses of either the last will and testament of Maria Famicha Ganong or the second codicil thereto ?
- (2) When are the beneficiaries of the said shares entitled to delivery thereof ?
- (3) Under the circumstances of the present case are any dividends and if so, what, apportionable ?

On the 12th of January last the learned Chief Justice delivered a judgment in which he answered the above questions as follows :—

- (1) The persons and institutions named therein.
- (2) Immediately.
- (3) No question of apportionment arises.

The facts are fully and in detail set forth in the judgment and this appeal

being taken, the result depends upon the construction to be placed upon the said will and two codicils thereto, under which a large number of preferred and common shares of the capital stock of Ganong Bros. Ltd. were bequeathed to the beneficiaries named therein, the preferred shares being divided among the relatives of Mrs. Ganong's late husband.

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While the learned Chief Justice states the answers to the questions involve the construction of paragraph 20 of the second codicil, I think they involve to some extent the provisions of the whole will, for it is our duty to discover what was the intention of the testatrix, and that discovery we must
10 make from the words used in the will. This is one rule and another is that the general interest is to prevail against the particular interest; and if the Court can arrive at a general result as to what the testatrix intended, that general result will prevail over every particular construction. *Comiskey vs. Bowring-Hanbury* (1905) 74 L.J., Ch. p. 268. *Haybergham vs. Ridehalgh* (1879) L.R. 9 Eq. 395 at 400, and others to the same effect.

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By her will Mrs. Ganong in section 20 said :—

“ 20. I hereby further will and declare that it is my intention and
“ purpose that any and all of the shares of Ganong Bros. Limited, so
“ hereby bequeathed as aforesaid, shall be and remain the property of
20 “ my estate and be held by my Executors and Trustees as part of my
“ estate until after the first annual meeting of Ganong Bros. Limited,
“ shall have been held subsequent to my decease and until all dividends
“ accruing on said shares of stock from the business of the year in which
“ my decease may occur shall have been paid to my estate for the benefit
“ of my estate intending by this section of my will to show that both
“ semi-annual dividends on the Preferred shares that will be paid during
“ the fiscal year subsequent to my decease but which will have been
“ earned during the fiscal year my decease may occur must be paid to
30 “ my estate before making any transfers of the stock, shares devised and
“ bequeathed as aforesaid.”

This plainly provides that no transfers of shares shall be made until certain dividends are paid out of profits earned during the fiscal year in which her decease occurs, and is a perfectly clear, distinct and positive indication of what she had in her mind and intended when the will was made, apparently realising that dividends could only be paid out of profits earned by the company. The expression “ dividends accruing ” used in this paragraph, wherein also is found the words “ profits earned,” must I think be considered as dividends in the “ process of being earned.” By paragraph 20 of the second codicil, which is quoted in full in the judgment appealed from, the testatrix
40 does not limit the condition to the payment of dividends which have been earned, but requires payment whether the dividends have been “ earned or declared or not,” and these words “ earned, declared or not ” in view of the trend of Mrs. Ganong's mind as expressed in her will, being as I think inconsiderately included in section 20 of the codicil, have created all the doubt and difficulty, for it is too clear for argument that had the draughtsman of the codicil followed or employed the language of the will as expressed in section

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20 thereof, no question would ever have arisen as to the interpretation thereof. It is upon his interpretation of the meaning of these words, and the intention of the testatrix in using them, that my brother Harrison, in his judgment herein, which I have had the privilege of reading, but with regret cannot agree with, bases the conclusion he arrived at, and to these words I must make reference. First then I may say a "dividend" means prima facie a payment made to the shareholders while the company is a going concern and can only be paid out of the profits and not out of the capital. It is distinct law that no dividend shall be payable except out of the profits of the company. *Crichton Oil Co. in re*, 2 Ch. D. (1902) 95 per Sterling J. *Palmer's Company* 10 Precedents p. 749. *Benefits Building Society*, 35 Ch. D. 35. *National Funds Association Society*, 10 Ch. D. 124.

I think the expression "until all dividends on the preferred shares accrued "to the date of my death have been paid in full, and also until the two half "yearly dividends which shall accrue immediately subsequent to the date "of my death shall have been paid in full to my estate for the benefit thereof" is plain enough. It does not suggest that the legatees are to pay dividends, and no words are used creating a charge, as the shares are to remain under the control of the executors until certain dividends are paid, the idea that the dividends are in any way charged upon the shares is excluded. It is so clear 20 that the testatrix wanted her estate to get the dividends accruing up to the date of her death, that there is no excuse for any such construction as would suggest or involve the above mentioned idea, that the legatees and not the company were to pay them, for as I have already pointed out the term "dividend" relates only to a company and nothing else. If Mrs. Ganong intended that before getting the shares, the legatees must pay to her estate a sum of money equal to the maximum dividends which the Company could pay in respect of these shares, it could have been very simply expressed in practically the words I above suggested. The event that releases the shares is a payment out of dividends, not a charge against them. From her will it can 30 reasonably be deduced that Mrs. Ganong was fully aware of By-law 54 of the Company creating the preferential shares, which were to be issued having fixed cumulative preferred dividends, and having priority in any division of the assets of the company, to the extent of their repayment in full at par, together with any dividends thereon then accrued due and remaining unpaid. To carry this out the by-law makes the issue of preference stock a lien upon the assets of the company, so that on any dissolution or winding up of the company, or liquidation of its business or assets, or in any division of capital or assets of the company among the shareholders thereof, the holders of preference stock, shall be entitled to payment for their stock in full at par (together with any 40 dividends in arrears, etc.). These as the learned Chief Justice has pointed out are proper and relevant provisions to ensure preference and priority for their shares on a winding up. But they cannot make dividends payable when there is nothing out of which to pay them.

By-law 48 only expresses the general law when it says that the directors may declare dividends out of the "net profits of the company." Out of what else it may be asked could they declare them? Certainly as I have

pointed out, not out of capital. Making the shares cumulative implies that there may not in some years be a full 7% dividend, and that the shortage will be carried forward until the company is able to pay the arrears, but never out of anything else than profits. Mr. Inches contended for the payment of two years preferential dividends by the legatees, though the company was unable to pay a single cent during that period, because it had no profits out of which to pay them. Suppose there had been enough profits to pay 2% on the preferential shares and no more, how could it be contended that the remaining 5% could be assessed upon the legatees. Of course if such had

10 been the case the cumulative dividend would have been payable in some subsequent year when there were sufficient net profits to do so, or if there never was such a period, then upon winding up. But the testatrix has spoken of dividends alone. She has not said they were to be of the full amount of seven per cent. Is not the natural meaning of her language that she wanted such dividends as there were, whatever the amount might be, to go to her estate, and not to go with the shares to the legatees. This is to me plainly implied in the language of the will and in fact is so expressed. Now there might be a half years dividend accrued, at the date of her death. There might be more. She provides for whatever there was and adds "the two

20 "half yearly dividends which shall accrue immediately subsequent to the date "of my death." Later she calls these a full years dividends accruing due after my death whether "earned or declared or not." It seems to me that her plan is fairly clear. She did not intend the legatees to get a possible control of the company and perhaps manipulate its affairs, so that though there would be sufficient profits to pay them, yet the dividends would not be declared. One thing is clear however, there cannot be such a thing as a dividend, as I have stated, until it is earned, and the use of the words "earned or declared or not" by the testatrix is as stated by the learned Chief Justice meaningless, except in cases of winding up when preferential shares may get

30 their dividends out of capital assets. The very use of the word dividend (to repeat) implies that it was money to be paid to her by the company and out of the earnings. There is no language imposing a charge of an amount equal to the dividends, upon the legatees, and there is no reason for implying anything of the kind. It would be absurd to think that the testatrix intended to take 14 per cent of the nominal capital value of the shares bequeathed, especially at a time when the company could not pay any dividend at all. What would be the point in saying that the shares bequeathed should "be "and remain the property of my estate, and be held by my executors and "trustees, as part of my estate until all dividends, etc., have been paid in full "

40 unless it was to have her executors collect and receive these dividends from the company? If she meant to charge the shares in the hands of the legatees, with such payment, she would undoubtedly have allowed them to pass at once, and charged them specifically with whatever amount she intended the legatees to pay. The answer is plain. She was not selling the shares to her legatees; she was giving them, but she was retaining sufficient control, to assure to her estate, whatever dividends might accrue during certain periods, and being dividends, were a claim against the company and against it alone.

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Further, there is no clear direction that the amount of the dividends is to be paid by the legatees, or charged upon their legacies. Then why is it necessary to import words into the will, to produce that unnecessary effect which would make the gifts by the testatrix largely illusory? Or as stated by Lord Cranworth in *Abbott vs. Middleton* 7 H. L. C. 68 at 84 "when by acting
"on one interpretation of the words used we are driven to the conclusion,
"that the person using them is acting capriciously, contrary to the ordinary
"mode in which men in general act in similar cases. Then if the language
"admits of two constructions, we may reasonably and properly adopt that
"which avoid these anomalies, even though the construction adopted is not 10
"the most obvious or the most grammatically accurate." And by the same
authority in *Roddy v. Fitzgerald* 6 H. L. C. 823 "When a testator shows
"upon the face of his will that he must have used technical words in another
"than their technical sense, there is no rule that prevents us from saying
"that he may be his own interpreter." In the present case the intention is
so clear that the legatees shall have the shares, and that the testator's estate
shall have the dividends, that the words must have been used in other than
their technical sense, which sense would have relation only to a winding up.
They then become words of abundant precaution against the diversion by
- any means of the dividends if there are any from the estate of the testatrix. 20
Also Malins, V. C. in *Unsworth vs. Speakman* L. R. 4 Ch. D. 620 at 625 says
"I agree entirely with the observations of Vice Chancellor James in
"*Haybergham vs. Rideholgh* (1879) L.R. 9 Eq. 395 as to the principles which
"ought to guide the Court in the construction of wills, that is to say, they
"ought to be so interpreted as not to defeat the intention of the testator by
"technical rules of construction; but by considering the language in a free,
"liberal and common sense spirit, to give effect to his manifest intention."
In the present case it is obvious that the solicitor employed to give expression
to the intention of the testatrix, used expressions which are technical, and
which relate only to the position of preference shares upon a winding up. 30
They could have no possible application to the circumstances envisaged by
the testatrix or which have arisen since her death. It is impossible to give
effect to such (as the learned Chief Justice has described them as) "meaning-
less" expressions. That does not however prevent us from carrying into
effect the manifest intention of the testatrix who vested the shares in the
legatees. Nothing was said in her will about creating a charge on those
shares, and why should we write words into her will to express something of
which there is no evidence that she had ever intended. In this connection
I think the remarks of Halsbury L.C. in *Corns vs. Harrison* (1908) 2 Ch. D. 124
are pertinent when he said, "I repudiate any kind of canon of construction 40
"applying to the will and it seems to me that the last thing one ought to
"do would be to attempt to make a canon of construction which would
"guide the Court in interpreting all rules." Of importance also is the fact
that the shares were the principal to which the dividends were accruing.
The whole scheme of codicil 2 clause 20 was to vest the principal in the legatees
and retain just sufficient control over it, so that the accessory might not
follow it, but be diverted from the principal to her own estate. Moreover

I think clause 20 of the codicil referred to, applies to the common as well as the preferred shares. It says "any and all of the shares of the capital stock of Ganong Brothers, Limited, etc., shall be and remain the property of my estate, and be held by my executors and trustees as part of my estate until all dividends on the preferred shares accrued to the date of my death, have been paid in full, etc." Can we change this language so as to confine it to the preferred shares only? Assuredly not. Also take the last words of the clause "before making any transfers of the stock or shares of Ganong Bros. Ltd. common or preferred devised and bequeathed under my said last will and testament and under this second codicil thereto." The residuary legatees as I have said, claim a charge for dividends which have accrued due to the date of her death and a full years dividends afterwards (I am not now discussing the terms employed) not upon any and all of the capital stock, not upon the common or preferred shares or stock, but upon the preferred shares only. Let us refer briefly to the provisions of the codicil by which she gave the common shares to a number of legatees and rather apologised to them for the small present value of the bequest. In sub-section 28 of section 16 of the said second codicil she said "In allotting these common shares to the nephews named in clauses (1) to (4) both inclusive of this paragraph 16, etc., and to the employees named in clauses (5) to (28) both inclusive, I realise that at the present time the said common shares have no monetary value, have been issued against good will, yet it is my hope that eventually such common shares may become of sufficient worth and value to serve as a reward to the recipients for faithful service in the past and as an incentive to greater effort on the part of the recipients for the future." Yet when she makes what the residuary legatees claim is a charge she draws no distinction between common and preferred shares. There can be no clearer indication that she never intended to impose such a charge and there is no language by which such a charge is created. It is impossible to separate the common shares from the preferred in the operation of said clause 20. Both classes are to be withheld from transfer until the payment of dividends (as has herein been frequently stated) is made to her estate. Would it be contended that the charge should be imposed *pari passu* on all the shares? If so the result as regards the common shares would be so unjust, that no Court would assume it to have been the intention of the testatrix unless so expressly declared. It would not be impossible to comply with the language of the will, if the Company had the means to do so. Suppose no dividends were earned, as none were. Suppose also that the company had a surplus or rest account, it could be possible that the demands could be met from such a source. It is compatible with the language she has used that she did not intend her legatees to get anything more than shares, and that anything which the company had available for distribution among them is to be paid to her estate. The language could have been clearer, but the draftsman chose to use terms which have no application to a going concern, though they have an apt relationship to a winding up. Being unable to give literal effect to them I must treat them in the way the learned Chief Justice did and pronounce them as "utterly meaningless" in the connection in which

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they have been introduced. I am also of the opinion the shares vested immediately in the persons to whom they were given, wherein I agree with my brother Harrison, but which fact I think has a good deal to do with a proper construction of the intention of the will. See *Couturier vs. Couturier* (1907) 1 Ch. D. 472, where Joyce J. said: "The general rule when the will is silent "as to the period of vesting, is that the gift is vested immediately on the "donee coming into existence or on the instrument coming into operation." Reading the whole will (in which I include the codicils) and for the reasons herein set forth I am convinced the reservations in section 20 of the second codicil were not designed to deprive the legatees of their legacies, but merely to ensure that the dividends, if any, should go into the estate, and while an argument thereunder in favour of a postponement of vesting has been strongly presented, taken as a whole it seems to me that the expressions used must give way to the general intention as expressed by James V.C. in the case supra—"The general intent is to prevail against the particular interest." I do not and cannot think that the language in section 20 of the codicil in respect to the dividends "whether accrued or declared or not" though dividends for two years, if paid, were to be returned to the estate, were ever intended by the testatrix to control the bequest of the shares or stock to the named legatees so as to deprive them thereof, or make it impossible that they should ever receive the same unless by purchase. I therefore accept and adopt the judgment of the learned Chief Justice herein, but agree with my brother Harrison as to the disposition of costs.

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No. 7.

Reasons for Judgment of Harrison and Fairweather JJ., delivered by Harrison J.

In the Supreme Court,
Appeal Division.

In Re Estate of Maria F. Ganong
McBride Executor

30

v.

Ganong et al.

The judgment of Harrison and Fairweather JJ. was delivered by:—
HARRISON, J. :

This matter comes before us on appeal from the judgment of Baxter C.J. and his answers to three questions submitted to him upon an originating summons. These questions and the answers are as follows:—

(1) Who are entitled to the shares in the capital stock of Ganong Brothers Limited either common or preferred bequeathed under any clauses of either the last will and testament of Maria Famicha Ganong or the second codicil thereto?

Answer: The persons and institutions named therein.

(2) When are the beneficiaries of the said shares entitled to delivery thereof ?

Answer : Immediately.

(3) Under the circumstances of the present case are any dividends and if so, what, apportionable ?

Answer : No question of apportionment arises.

The questions at issue depend upon the construction of the second codicil to the will of the late Mrs. Ganong by which she gave a number of preferred and common shares of the capital stock of Ganong Bros. Ltd. to several
10 persons named, relatives of her late husband, and by a later paragraph in the codicil provided as follows :—

“ 20. I hereby revoke and make void paragraph 17 of my said last
“ Will and Testament dated the twenty-fifth of September, 1924, and
“ in lieu thereof and in substitution therefor I will and declare that my
“ Executors and Trustees shall pay out of my personal estate any and
“ all Succession Duties which may at my death become payable upon
“ any of the bequests made in my said last Will and Testament or in any
“ codicil thereto, including this codicil, it being my intention that all
“ gifts and bequests including gifts of shares in the Capital Stock of
20 “ Ganong Bros. Limited, either Preferred or Common, to any nephew
“ or niece of my late husband, shall be free from Succession Duty.

“ But while I make the foregoing provision with respect to Suc-
“ cession Duty it is my express will and intention and I hereby direct that
“ notwithstanding anything hereinbefore contained any and all of the
“ shares of the Capital Stock of Ganong Bros. Limited, in and by my said
“ Last Will and Testament and in and by this second codicil to my said
“ last Will and Testament bequeathed by me, shall be, and remain the
“ property of my Estate and be held by my Executors and Trustees as
30 “ part of my estate until all dividends on the Preferred Shares accrued
“ to the date of my death, have been paid in full and also until the two
“ half-yearly dividends which shall accrue immediately subsequent to the
“ date of my death shall have been paid in full to my estate for the benefit
“ thereof, it being my intention by this paragraph of this second codicil
“ to my will that all dividends on said Preferred shares accrued due to
“ the date of my death, whether earned or declared or not, together with
“ a full year's dividends accruing due after my death, whether earned or
“ declared or not, shall be paid to my Executors and Trustees for the
“ benefit of my Estate before making any transfers of the stock or shares
“ of Ganong Bros. Limited, common or preferred, devised and bequeathed
40 “ under my said last Will and Testament and under this second codicil
“ thereto.”

In the will there are certain dispositions of common and preferred shares of Ganong Bros. Limited, which are cancelled by the dispositions in the codicil. There is also a paragraph somewhat similar to paragraph 20 in the codicil

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but which differs enough to show a different intention. Paragraph 20 in the Will is as follows :—

“ 20. I hereby further will and declare that it is my intention and purpose that any and all of the shares of Ganong Bros. Limited, so hereby bequeathed as aforesaid, shall be and remain the property of my estate and be held by my Executors and Trustees as part of my estate until after the first annual meeting of Ganong Bros. Limited, shall have been held subsequent to my decease and until all dividends accruing on said shares of stock from the business of the year in which my decease may occur shall have been paid to my estate for the benefit of my estate intending by this Section of my Will to show that both semi-annual dividends on the Preferred Shares that will be paid during the fiscal year subsequent to my decease but which will have been earned during the fiscal year my decease may occur must be paid to my estate before making any transfers of the stock, shares devised and bequeathed as aforesaid.”

Paragraph 20 in the Will provides that no transfers of shares shall be made until certain dividends are paid out of profits earned during the fiscal year in which testatrix's decease occurs, Para. 20 of the codicil does not limit the condition to the payment of dividends which have been earned but requires payment whether these dividends have been “ earned or declared or not.”

The residue of the estate was given to the brother and sister of the testatrix by the will and these residuary legatees appealed from the judgment of the learned Chief Justice alleging error on his part :—

(1) In finding that the shares vested in the specific legatees at the death of the testatrix.

(2) In not finding that by Clause 20 of the codicil there is a gift to the executors and trustees until the specified dividends amounting to \$68,460 are paid.

Certain confusion was introduced into the argument by the references to the intention of the testatrix. It was said by counsel for the specific legatees that Mrs. Ganong never could have intended to give stock to her husband's relatives and then make a provision which would withhold it from them indefinitely, and certainly not a provision which would make the bequests altogether void. This contention would be conceded at once if we were trying to ascertain the actual thoughts in the mind of the testatrix when making her will, but that is not the object of a Court of construction. True the object of the Court is to find out the testatrix's intention but it must be the intention as expressed by the words in the will, not the intention which was in her mind, unless that intention has been expressed.

40

The principle is clearly stated in 28 Halsbury, p. 627 :—

“ The first duty of a Court of construction is, therefore, to ascertain the language of the will, to read the words used and ascertain the intention of the testator from them ; it is not merely to ascertain what the testator's actual mental intentions were. Where the will must be

“in writing the only question is what is the meaning of the words used in that writing. The expressed intention in all cases is considered to be the actual intention, and the Court cannot give effect to any intention which is not expressed or implied in the language of the will.”

In support of these propositions several cases are cited. Thus in *Doe v. Gwillim* 5 B. & Ad. 122 ; 110 E.R. 737, Parke J. said :—

10 “In expounding a will the Court has to ascertain, not what the testator actually intended as contra distinguished from what his words express, but what is the meaning of the words he has used. I consider it doubtful what the testator actually meant should be done, but I have no doubt as to the meaning of the words used by him.”

In *Scale v. Rawlins* (1892) A.C. 342, Lord Halsbury L.C. said :—

“I might be perfectly satisfied that he (the testator) intended that this lady should have an estate of inheritance in this property. I might be satisfied that that was his intention otherwise than by the words of the will ; but I should be compelled to come to the same conclusion as I do now, namely, that the intention is not sufficiently expressed.”

And Lord Watson said, at p. 349 :—

20 “We are not at liberty to speculate upon what the testator may have intended to do or may have thought that he had actually done. We cannot give effect to any intention which is not expressed or plainly implied in the language of his will.”

In a judgment of the Court of Appeal in *re Duke of Cleveland's Settled Estates* (1893) 3 Ch. 244 at p. 251, it is said after citing two or three cases :—

30 “All of these are striking instances of the rigidity of the rule which preclude a Court when construing a will, from giving effect to an intention not expressed by a testator, and which cannot be extracted from his language, when that language is clear in itself and is strictly applicable to some subject-matter with which the testator was dealing.”

And Sir Gorell Barnes, President of the Probate Division, says in *Simpson v. Foxon* (1907) p. 54 at p. 57 :—

“But what a man intends and the expression of his intention are two different things. He is bound, and those who take after him are bound, by his expressed intention. If that expressed intention is unfortunately different from what he really desires, so much the worse for those who wish the actual intention to prevail.”

40 In *In re Brown* (1934) S.C.R. 324, the Court says at p. 328 : “And the only safe method of determining what was the real intention of a testator is to give the fair and literal meaning to the actual language of the will,” citing *Auger v. Beaudry* (1920) A.C. 1010 in which the Judicial Committee say at p. 1014 : “Human motives are too uncertain to render it wise or safe to leave the firm guide of the words used for the uncertain direction of what it must be assumed that a reasonable man would mean.”

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I make the above quotations to emphasise the point that while it is incredible that Mrs. Ganong ever actually intended by her will to put in a clause which would result in depriving the specific legatees of their legacies, still the duty of the Court is to give effect to the language she has used even though it may be quite contrary to her actual intention.

In Paragraph 20 of the second codicil the draughtsman took particular pains to state the intention of the testatrix and by the use of the non obstante clause we are obliged to consider the provisions in this paragraph as paramount to any conflicting provisions in the will.

For the residuary legatees it was argued that the language prevents any 10 vesting of the shares until those dividends are paid because the words are that these shares "shall be and remain the property of my estate and be held "by my executors and trustees as part of my estate until," etc.

We do not agree with this contention, however, but agree with the learned Chief Justice that the shares in question vested immediately in the persons to whom they were given by the codicil, but we also consider that there was a charge upon these shares which vested in the executors and trustees. In making this construction we consider full effect is given to the whole will, namely, the absolute gifts of the shares and the very definite provision that the beneficial enjoyment of those shares should be postponed until a certain 20 condition was fulfilled, namely, "until all dividends on the Preferred shares "accrued to the date of my death have been paid in full and also until the "two half-yearly dividends which shall accrue immediately subsequent to "the date of my death shall have been paid in full to my estate for the benefit "thereof," with the further provision that dividends accrued or accruing means dividends "whether earned or declared or not."

The statement of facts shows that no dividends on the preferred shares have been earned or declared since 1933. Mrs. Ganong died on November 30, 1934, and the company has been run at a loss until the year 1938 when a small profit was made, leaving the company with an accumulated deficit and 30 no funds out of which dividends can be declared.

The learned Chief Justice held that the provision as to payment of these dividends was meaningless and void because there could be no "accrued" dividends unless there were profits out of which they could be paid and unless they had been declared by the directors.

We cannot agree that the provision as to accrued dividends in the codicil is meaningless.

By-law No. 54 of Ganong Brothers, Limited, reads in part as follows :—

"Whereas it is deemed advisable that ten thousand shares of the
"Capital Stock of the Company, each of the par value of One Hundred 40
"Dollars, be created and issued as Preference Stock, having fixed,
"cumulative, preferential dividends and having priority in any division
"of the assets of the company to the extent of its repayment in full
"at par, together with any dividends thereon then accrued due and
"remaining unpaid but, conferring no right to any further participation
"in profits or assets.

“ Now therefore, be it enacted and it is hereby enacted as a By-law
 “ of Ganong Brothers, Limited, that Ten Thousand shares of the Capital
 “ Stock of the Company shall be created as Preference Stock, and that
 “ the said Shares shall have a fixed cumulative preferential dividend of
 “ Seven per cent. per annum, payable as may be convenient half-yearly,
 “ and the said Shares shall be issued and allotted by the Board of Directors
 “ of the Company as they may direct, and the parties to whom the said
 “ shares shall respectively issue and any subsequent holders thereof shall
 “ be entitled to receive the said dividends and shall hold the shares
 10 “ upon the following terms, namely :

“ The issue of the Preference Stock shall become and remain a lien
 “ upon the assets of the Company superior to any claim or claims belong-
 “ ing to the ordinary or common stock, so that on any dissolution or
 “ winding up of the Company or liquidation of its business or assets, or
 “ in any division of capital or assets of the company among the share-
 “ holders thereof, the holders of Preference Stock shall be entitled to
 “ payment for their stock in full at par (together with any dividends in
 “ arrear) and no more, and shall as between themselves and the holders
 20 “ of the Common Stock have the standing of Creditors of the Company
 “ whose claims shall be paid, after satisfaction of all other indebtedness
 “ of the Company, in preference and priority to any payments to the
 “ holders of the Common Stock, but only out of the Assets of the Com-
 “ pany and subject to the prior rights of creditors to be first paid in full.”

We consider the words “ accrued due ” in the first paragraph of this
 By-law refer to the half-yearly dates on which the preferred dividends are
 payable irrespective of whether there are profits available out of which to
 pay such dividends or whether such dividends are declared. It is to be noted
 that in the third paragraph of the By-law reference is made to “ dividends
 in arrear ” ; This expression undoubtedly refers to dividends to which the
 30 preference shareholders would be entitled on the half-yearly dates when they
 were supposed to be paid and means, in the language of the codicil, dividends
 whether “ earned or declared or not.”

In the case of *In re New Chinese Antimony Co. Ltd.* (1916) 2 Ch. 115,
 where a company with preference shares went into liquidation, the preference
 shareholders were entitled to cumulative dividends of ten per cent. and in a
 winding up to have the surplus assets applied first in paying off their capital,
 secondly in paying the arrears if any of the preference dividends. The articles
 of association provided that no dividends should be declared except out of
 profits. No dividends had been declared and the balance sheet showed a
 40 loss. The stock of antimony held by the company, however, went up in
 price to such an extent that the surplus assets were sufficient to cover the
 loss and pay all arrears of preference dividends. It was held by Neville J.
 that the arrears of preference dividends payable could not be limited to
 dividends actually declared and the holders of preference shares were entitled
 to be paid the amount of the cumulative dividends. In his judgment he
 said :—

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“The only point is what is meant by arrears of the preferential dividend aforesaid. Arrears of the dividend might mean only arrears of dividend which had been declared. But I do not think that is what the words do mean. The clause in my opinion means that in the case of a winding up the preference shareholders are to have their capital repaid in full and also the accumulative preference dividend of ten per cent., that is to say the amount they would have had if there had been profits enough to enable the company to declare dividends.”

In *Fairhall v. Butler* (1928) S.C.R. 369, defendant gave an option to purchase a block of common shares and furnished an affidavit that the company's liabilities did not exceed a certain amount. Preferred shares had been issued by the company entitling the holders to an accumulative dividend. It was held that accumulative dividends on the preference shares undeclared and unpaid constituted a liability of the company within the meaning of the contract and should have been included as such in the statement. The Court said “for a purchaser of common stock of the motor corporation undeclared but overdue dividends on its preference shares were certainly a liability of the company in the sense that he could obtain no dividends on his common shares before the payment of all the accrued dividends on preference shares whether in fact a dividend had or had not been declared.” 20

It will be noted that the Supreme Court of Canada use the word “accrued” in reference to dividends whether declared or not. In our opinion the word “accrued” though perhaps not technically correct can be used in respect of preference dividends to mean the same as “accumulated” and clearly the word is used in that sense in this codicil which refers to “dividends accrued due to the date of my death whether earned or declared or not, together with a full year's dividends accruing due after my death whether earned or declared or not.”

We are, therefore, of the opinion that the provision in the codicil for the payment to the estate of two years dividends on the preferred shares of 30 Ganong Bros. Limited bequeathed by the will and second codicil whether such dividends were earned or declared or not, has a perfectly definite meaning and has the effect of charging the preferred and common shares bequeathed by the will and second codicil with the amount of two years dividends at seven per cent. upon the preferred shares amounting to \$68,460.

The next question is as to the effect of such provision. Reading all the provisions of the will together we find that certain shares in Ganong Bros. Limited were given outright to specific legatees by paragraphs 14 and 16 of the codicil the words in paragraph 14 being—“I do hereby give devise and bequeath unto the several persons hereinafter named, relatives of my late 40 husband, the number of said preferred shares of the capital stock of Ganong Bros. Limited, hereinafter mentioned.” And the same provision is made regarding the common shares. The residuary clause in the will also included some shares in Ganong Bros. Limited.

Although the words in Para. 20 of the codicil are that these shares “shall be and remain the property of my estate and be held by my executors and

"trustees as part of my estate, until all dividends, etc." have been paid in full, this provision is followed by a further declaration of intention that the dividends on said preferred shares for two years "whether earned or declared" or not shall be paid to my executors and trustees for the benefit of my estate "before making any transfers of the stock or shares of Ganong Bros. Limited, etc."

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It is obvious we think that the legatees were to have the entire beneficial interest in these shares excepting only the amount of two years dividends on the preferred shares.

10 In Clause 16 of the codicil the testatrix says regarding the common shares "It is my hope that eventually such common shares may become of sufficient worth in value to serve as a reward to the recipients for faithful service in the past and as an incentive to greater effort on the part of the recipients for the future." And in Clause 17 of the codicil which provides for cash bequests to employees it is further provided "And I will and direct that any employee or employees in receipt of a legacy of stock herein or under my said will shall not participate in such cash distribution."

20 It is possible to give full effect to the language requiring the executors and trustees to hold these shares of stock until the amount of two years dividends on the preferred shares have been paid, while holding that the shares vested in the legatees.

In Paragraph 20 of the second codicil provision is made for the payment of succession duties upon all legacies. Under the will the succession duties if any on the larger portion of the shares of Ganong Bros. Limited, dealt with in a certain trust deed which has since become inoperative had to be paid by the donees themselves, so that this is a new provision which would make a further charge against the residuary estate. On the other hand the retention by the estate of an amount equal to two years dividends on the preferred shares would provide a fund for payment of these extra succession duties.

30 It has been held that a direction to accumulate income for payment of a testator's debts gives the creditors an immediate present charge on the property, and that since they can stop the accumulation at any time the direction to accumulate is not void for remoteness. In the same way the executors and trustees under this will have an immediate present charge on the shares of stock of Ganong Bros. Limited to the amount of \$68,460 and they might sell the shares in order to realise the amount of the charge against them. The shares might also be redeemed by the legatees paying the amount of the charge thereon. The rule against perpetuities therefore would not apply, see Gray on Perpetuities, 3rd ed. p. 524, para. 676, citing *Bacon v. Proctor*, T. & R. 31; 37 E.R. 1005; and *Bateman v. Hotchkin* 10 Bea. 426; 40 50 E.R. 646; also *Tewart v. Lawson* L.R. 18 Eq. 490.

In the case of *Hale v. Herring* 208 Mass. 319, a clause in a will directed the executor to carry on the testator's business and credit one-seventh of the annual profits to each of five persons and that these amounts should be allowed

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to accumulate until they reached a certain value when three of these persons should receive a one-seventh undivided interest in the business. The period of the accumulation was entirely indefinite and would have been bad under the rule against perpetuities except for the fact that all the parties beneficially interested were in being and could together stop the accumulation and convey the entire interest in the estate. The Court says at p. 322: "The persons named as beneficiaries were all living at the death of the testator and it is plain that the interests of the legatees vested, if at all, during their lives, and that there has been no time since the death of the testator when the property could not have been conveyed by the joint action of all parties interested. The clause, is, therefore, valid."

So in the present case the legatees have a vested interest in the shares bequeathed to them subject to a charge on all the shares of stock of Ganong Bros. Ltd. bequeathed which charge is held by the executors and trustees for the benefit of the two residuary legatees both of whom are living. By the joint action of all these parties the shares of stock could be conveyed at any time after the death of the testatrix.

The answers to the questions submitted, therefore, in our opinion should be:—

(1) The persons and institutions named therein subject to a charge upon the shares bequeathed by the will and second codicil in favour of the executors and trustees to the amount of two years dividends on the preferred shares so bequeathed namely \$68,460.

(2) When the amount of the said charge has been paid to the estate or the said charge released.

(3) No question of apportionment arises.

We confirm the judgment of the learned Chief Justice as to costs in the Court below. The costs on the appeal of all parties as between solicitor and client should also be paid by the estate, but the solicitor for the executor is not entitled to any costs for his factum.

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*In the
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No. 8.
Notice of
Appeal,
15th May,
1940.

No. 8.

Notice of Appeal.

Take Notice that the above-named Defendants, Arthur D. Ganong, Katherine L. Whidden, Susan B. Ganong, William F. Ganong, James E. Ganong, Grace A. Caldwell, Edna Dillenbeck Pellissier, May Isabel Weymer, Edwin M. Ganong, William J. Ganong, and R. Whidden Ganong, hereby appeal to the Supreme Court of Canada from the judgment, order or decision pronounced and entered in this matter by the Appeal Division of the Supreme Court of New Brunswick on the nineteenth day of April A.D. 1940, whereby

it was ordered that the appeal from the judgment of the Chief Justice of New Brunswick be allowed.

Dated the fifteenth day of May, A.D. 1940.

(Sgd.) J. H. DRUMMIE,
Solicitor for said Defendants.

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To : Richard B. Hanson, K.C.,
Solicitor for the said Samuel A. McBride,
Executor and Trustee, Plaintiff,

And to : William J. West, Esq.,
10 Solicitor for the above-named Defendants,
Jeannette R. Belyea and Edgar M. Robinson,
Residuary Legatees,

And to : Gordon F. Nicholson, Esq.,
Solicitor for the above-named Defendants,
The Maria F. Ganong Old Folks Home and
Chipman Memorial Hospital.

No. 9.

Bond on Appeal 20th May 1940.

[Not printed.]

No. 9.

20

No. 10.

Order approving security for costs of Appeal and settling Case on Appeal.

Upon hearing Mr. J. H. Drummie of counsel for the above named Respondents, Arthur D. Ganong, Katherine L. Whidden, Susan B. Ganong, William F. Ganong, James E. Ganong, Grace A. Caldwell, Edna Dillenbeck Pellissier, May Isabel Weymer, Edwin M. Ganong, William J. Ganong, R. Whidden Ganong, and Gilbert R. Pellissier, and upon hearing Mr. C. F. Inches, one of His Majesty's Counsel, of counsel for the above name Appellants and on this application representing as well Mr. R. B. Hanson, one of His Majesty's Counsel, of counsel for the above named Plaintiff.

30 And it being made to appear to me that the said Respondents, Arthur D. Ganong, Katherine L. Whidden, Susan B. Ganong, William F. Ganong, James E. Ganong, Grace A. Caldwell, Edna Dillenbeck Pellissier, May Isabel Weymer, Edwin M. Ganong, William J. Ganong and R. Whidden Ganong, have given notice of appeal from the judgment of the Appeal Division of the Supreme Court of New Brunswick in this matter to the Supreme Court of Canada, and have given security in the nature of a bond in the sum of Five Hundred Dollars (\$500.00) to my satisfaction that they will effectually prosecute this appeal and pay such costs and damages as may be awarded against them by the Supreme Court of Canada.

No. 10.
Order
approving
security for
costs of
Appeal and
settling Case
on Appeal.
8th June,
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Order
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security for
costs of
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settling Case
on Appeal,
8th June,
1940
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And it being made to appear to me that the above named Respondents, The Maria F. Ganong Old Folks Home and Chipman Memorial Hospital, and the above named Respondent, Gilbert R. Pellissier, do not desire to be made parties to the said appeal to the Supreme Court of Canada and do not intend to take any part in the said appeal.

I Do Hereby approve the said security and bond on appeal, and allow the appeal herein, and do order that the following shall constitute the Case on Appeal :—

- (1) Originating Summons.
- (2) Exhibits. 10
- (3) Formal Judgment, Trial Court.
- (4) The Reasons for Judgment of Trial Judge, Baxter C.J., N.B.
- (5) The Notice of Appeal to the Supreme Court of New Brunswick, Appeal Division.
- (6) The Formal Judgment of the Supreme Court of New Brunswick, Appeal Division.
- (7) Reasons for Judgment of the Supreme Court of New Brunswick, Appeal Division, namely those of Grimmer J. dissenting, and those of Harrison J., Fairweather J. concurring.
- (8) Notice of Appeal to the Supreme Court of Canada. 20
- (9) Bond on Appeal.
- (10) And this Order.

Dated the eighth day of June A.D. 1940.

(Sgd.) JOHN B. M. BAXTER,
C.J., N.B.

No. 11.

No. 11.

Certificate of Appellants' Solicitor, 26th June 1940.

[Not printed.]

No. 12.

No. 12.

Registrar's Certificate certifying Case on Appeal and Bond, 4th July 1940. 30

[Not printed.]

No. 13.
Formal Judgment.

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In the Supreme Court of Canada.
On Appeal from the Supreme Court of New Brunswick.
Appeal Division.

No. 13.
Formal
Judgment,
20th
December,
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Friday, the 20th day of December, A.D. 1940.

Present :

The Honourable Mr. Justice Crocket.
The Honourable Mr. Justice Davis.
10 The Honourable Mr. Justice Kerwin.
The Honourable Mr. Justice Hudson.
The Honourable Mr. Justice Taschereau.

In the Matter of the Estate of Maria Famicha Ganong, deceased.

Between :

Arthur D. Ganong, Katherine L. Whidden, Susan
B. Ganong, William F. Ganong, James E.
Ganong, Grace A. Caldwell, Edna Dillenbeck
Pellissier, May Isabel Weymer, Edwin M.
Ganong, William J. Ganong and R. Whidden
20 Ganong (Defendants) Appellants,

and

Jeannette R. Belyea and Edgar M. Robinson,
Residuary Legatees (Defendants) Respondents,

and

Samuel A. McBride, Sole Executor and Trustee of
the Last Will and Testament of Maria Famicha
Ganong, deceased (Plaintiff) Respondent.

The appeal of the above named Appellants from the judgment of the
Supreme Court of New Brunswick, Appeal Division, rendered in the said
30 cause on the Nineteenth day of April in the year of Our Lord One thousand
nine hundred and forty allowing the appeal of the above named Respondents
Belyea and Robinson from the judgment of the Chief Justice of New Bruns-
wick rendered on the 15th day of January 1940 upon an Originating Summons
taken out by the above named Respondent, executor, having come on to be
heard before this Court on the Twenty-first day of October in the year of
Our Lord One thousand nine hundred and forty, in the presence of counsel
as well for the Appellants as the Respondents, whereupon and upon hearing
what was alleged by counsel aforesaid, this Court was pleased to direct that
the said appeal should stand over for judgment and the same coming on this
40 day for judgment,

This Court did Order and Adjudge that the said appeal should be and
the same was allowed and that the judgment of the Chief Justice of New

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Brunswick on the Originating Summons should be and the same was restored.

And this Court did further Order and Adjudge that the costs of the Appellants on this appeal and of the executor be paid by the executor and charged by him against the residue of the estate and not against the specific legatees, those of the executor as between solicitor and client.

And this Court did further Order and Adjudge that the disposition of the costs of the appeal to the Appeal Division of the Supreme Court of New Brunswick should and do stand as unanimously directed by that Court.

(Signed) PAUL LEDUC,
Registrar. 10

No. 14.
Reasons for
Judgment of
Crocket J.
(concurring in
by Davis,
Kerwin,
Hudson and
Taschereau
JJ.).

No. 14.

Reasons for Judgment of Crocket J.

(concurring in by Davis, Kerwin, Hudson and Taschereau JJ.)

CROCKET J. :—

This is an appeal from a judgment of the Appeal Division of the Supreme Court of New Brunswick, varying the judgment of Baxter C.J., on an originating summons taken out by the sole executor of the estate of Maria Famicha Ganong, late of the town of Saint Stephen, N.B., widow, deceased, for the interpretation of certain provisions of a codicil to her will concerning the disposition of some 4,800 and odd preferred shares and 4,000 and odd 20 common shares of the capital stock of Ganong Bros. Ltd.

Thirty-seven hundred and ninety (3790) of these preferred shares and 3600 of the common shares had been bequeathed to her by her late husband, Gilbert W. Ganong, who died as Lieutenant-Governor of New Brunswick in the year 1916. All these shares she assigned to the Eastern Trust Company on March 15th, 1918, by a trust indenture made between herself as party of the first part, the said Trust Company as party of the second part, and William F. Ganong, James E. Ganong, Walter K. Ganong and Arthur D. Ganong, four nephews of her late husband, as parties of the third part. The indenture provided that all dividends payable thereon should be paid direct 30 by the company to her "under a sufficient order or orders therefor to be deposited by the trustee with the company," and that upon her death, provided there should not theretofore have occurred any default thereunder the trustee should assign and transfer to the said four nephews all the said common shares to be divided amongst them as they should think proper, and the preference shares to a sister and fourteen nephews and nieces, including the said four nephews of her late husband, in the numbers respectively specified in a schedule annexed to the trust indenture, or to their legal representatives in the event of the death of any of them.

This indenture Mrs. Ganong expressly confirmed by para. 15 of her will, 40 executed on September 25th, 1924, and declared to be binding on herself and her estate. At this time she was possessed of several hundred additional

preferred and common shares of the capital stock of Ganong Bros. Ltd., of which she bequeathed 600 preferred shares to her brother, Edgar M. Robinson, in trust for his three children and 200 more to the children themselves. One hundred more preferred shares were to go to an Old Folks Home fund, 20 to the Chipman Memorial Hospital, while a further number of 120 were to be distributed as bequests to four named beneficiaries. No specific mention is made in the will of her common shares, and they would consequently fall into the residue of the estate, which was devised and bequeathed to her brother and sister in equal shares.

- 10 The trust deed provided for its revocation in the event of default in payment of the dividends, and the company having failed in the years 1933 and 1934 to earn and declare the customary dividend upon the preferred shares, Mrs. Ganong, on September 29th, 1934, gave the necessary notice of default and of her intention to revoke the trust. Two weeks later, in anticipation of the reversion to her or her estate of these trust shares she executed the codicil, which created the difficulty it became necessary to submit to the Supreme Court of New Brunswick for solution. Shortly after doing so Mrs. Ganong went to Florida, where it had been her custom for some years to spend the winter months, and there contracted pneumonia, 20 from which she died on November 30th, 1934, and the Trust Company some time later returned the trust shares to the executors of her estate.

- The principal change the codicil made concerning the disposition of the 3,790 preferred and 3,600 common shares, which were still in the hands of the Eastern Trust Company at that time, was the revocation of para. 15 of the will, by which the testatrix had confirmed the trust assignment of March 15th, 1918, and their distribution among the beneficiaries named in paras. 14, 15 and 16 of the codicil. Of the 3,790 preferred shares, which were allotted by the schedule of the trust deed to the testatrix's deceased husband's sister, seven nephews and seven nieces, 3,290 were apportioned 30 by para. 14 among the same nephews and nieces, except that one of the nephews, Frank Ganong, was replaced by his son, Edwin M. Ganong. The sister, Mrs. Perkins, to whom 583 shares had been allotted by the schedule of 1918, was not named. Para. 15 of the codicil, however, provided for the handing over of the remaining 500 of the 3,790 preferred shares to the Trustees of the Maria F. Ganong Old Folks Home, as an additional endowment, when that institution should be incorporated by a proposed provincial statute, as "The Gilbert White Ganong Memorial." Thus did paras. 14 and 15 of the codicil provide for the disposition of the full 3,790 preferred shares, then in the hands of the Trust Company. Two thousand of them were divided 40 between the nephew Arthur D. Ganong and three of the surviving nieces, Mrs. Hyslop, Mrs. Christmas and Mrs. Caldwell, the last named being a daughter of Mrs. Perkins, and the remaining 1,290 among the other surviving nephews and nieces in varying lots of from 200 to 90 shares.

Para. 16 of the codicil provided for the disposition of the common shares, then in the hands of the Trust Company. Of these the testatrix bequeathed 2,694 shares to the four nephews, who joined her in the execution of the trust deed of 1918, and 250 to Arthur D. Ganong's son. The remainder of the

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3,600 shares were bequeathed to old employees and representatives of the company throughout Canada.

As regards the 1,040 additional preferred shares, which the testatrix held independently of the trust, the codicil made no material alteration in the provisions of her will of September 25th, 1924, for their disposition, except that she expressly revoked one of the bequests for 50 of these shares and directed her executors to purchase in lieu thereof a government annuity sufficient to yield an annual income to the legatee named of \$400 for the term of her natural life.

The rights and interests of every beneficiary, to whom any lot of either 10 the preferred or the common stock of the company was bequeathed, whether by the original will or by the codicil, are, however, materially affected by the provisions of para. 20 of the codicil. This paragraph revokes para. 17 of the will of September 25th, 1924, and provides in lieu thereof that her executors and trustees

“shall pay out of my personal estate any and all succession duties,
“which may at my death become payable upon any of the bequests
“made in my said last will and testament or in any codicil thereto,
“including this codicil, it being my intention that all gifts and bequests,
“including gifts of shares in the capital stock of Ganong Bros. Ltd., 20
“either preferred or common, to any nephew or niece of my late husband
“shall be free from succession duty.”

Para. 17 of the original will, while providing that her executors should pay out of her personal estate all succession duties payable upon the bequests made thereby, distinctly provided that her estate should not be liable :

“for any succession duties or other dues, duties, taxes or other charges
“or expenses of any kind payable . . . upon or in respect of any moneys,
“stocks, shares of stocks, gifts or other benefits which have passed or
“which may hereafter pass under the provisions of the said trust agree-
“ment ”

30

of March 15th, 1918. Having thus declared that all bequests of shares in the capital stock of Ganong Bros. Ltd., either preferred or common, to any nephew or niece of her late husband should be free from succession duty, as well as all other bequests, whether made by the original will or by the codicil, para. 20 of the codicil goes on to say :—

“But while I make the foregoing provision with respect to
“succession duty it is my express will and intention and I hereby direct
“that notwithstanding anything hereinbefore contained any and all
“of the shares of the capital stock of Ganong Bros. Limited, in and by
“my said last will and testament and in and by this second codicil 40
“to my said last will and testament bequeathed by me, shall be and
“remain the property of my estate until all dividends on the preferred
“shares accrued to the date of my death have been paid in full and also
“until the two half-yearly dividends which shall accrue immediately
“subsequent to the date of my death shall have been paid in full to
“my estate for the benefit thereof, it being my intention by this

“ paragraph of this second codicil to my will that all dividends on said
 “ preferred shares accrued due to the date of my death, whether earned
 “ or declared or not, together with a full year’s dividends accruing due
 “ after my death, whether earned or declared or not, shall be paid to
 “ my executors and trustees for the benefit of my estate before making
 “ any transfers of the stock or shares of Ganong Bros. Limited, common
 “ or preferred, devised and bequeathed under my said last will and
 “ testament and under this second codicil thereto.”

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These last provisions of para. 20 of the codicil were clearly intended as
 10 a substitution for para. 20 of the original will, which applied to “ any and all
 “ of the shares of Ganong Bros. Ltd.,” bequeathed by the will, and not to
 any of the shares, which the testatrix had assigned to the Trust Company
 six years before she made the will. The codicil, however, did not expressly
 revoke para. 20 of the will, the provisions of which must be examined closely
 for the purpose of determining whether any and what portions thereof are
 inconsistent with and consequently replaced by the provisions of clause 20
 of the codicil, the testatrix having declared by the concluding paragraph
 of the codicil that she ratified and confirmed her said last will and testament
 “ save in so far as any part thereof shall be revoked or altered by this codicil
 20 thereto or any previous codicil.” Para. 20 of the will read as follows:—

“ I hereby further will and declare that it is my intention and
 “ purpose that any and all of the shares of Ganong Bros. Limited, so
 “ hereby bequeathed as aforesaid, shall be and remain the property
 “ of my estate and be held by my executors and trustees as part of my
 “ estate until after the first annual meeting of Ganong Bros. Limited,
 “ shall have been held subsequent to my decease and until all dividends
 “ accruing on said shares of stock from the business of the year in which
 “ my decease may occur shall have been paid to my estate for the benefit
 “ of my estate intending by this section of my will to show that both
 30 “ semi-annual dividends on the preferred shares that will be paid during
 “ the fiscal year subsequent to my decease but which will have been
 “ earned during the fiscal year my decease may occur must be paid
 “ to my estate before making any transfers of the stock, shares devised
 “ and bequeathed as aforesaid.”

When one compares the language of these provisions of the codicil
 with that of para. 20 of the will it is not surprising that the sole remaining
 executor and trustee, who was responsible for the administration of this
 estate and who more than five years after the death of the testatrix still held
 in his possession all the bequeathed preferred and common shares of Ganong
 40 Bros. Ltd. should have sought the intervention of the Supreme Court to
 straighten out the apparent confusion, and proposed the following questions
 on his application for an originating summons:—

1. Who are entitled to the shares in the capital stock of Ganong
 Bros. Limited either common or preferred bequeathed under any clauses
 of either the last will and testament of Maria Famicha Ganong or the
 second codicil thereto ?

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2. When are the beneficiaries of the said shares entitled to delivery thereof?

During the argument another question was added as follows:—

3. Under the circumstances of the present case are any dividends and if so, what, apportionable?

On the hearing, which took place before the learned Chief Justice on documentary evidence only, it was contended on behalf of the residuary legatees that there was no vesting of the shares in the persons to whom they were given until after the payment of two years' dividends, and that, no dividends having yet been paid and as no one could tell that any ever would be paid, the rule against perpetuities applied and the shares consequently passed into residue. The Chief Justice, however, held that this contention could not prevail and that the persons and institutions named in the will and codicil were entitled to delivery of the shares immediately. He also held that no question of apportionment arose.

On an appeal from this judgment to the Appeal Division of the Supreme Court, which was heard by Grimmer, Harrison and Fairweather JJ., all three of the learned justices agreed that the shares vested in the beneficiaries on the death of the testatrix: but Harrison and Fairweather JJ., Grimmer J. dissenting, held that the Chief Justice was in error in holding that the beneficiaries, to whom the shares had been bequeathed, were entitled to their delivery immediately. They took the view that para. 20 of the codicil created a charge upon these shares in favour of the executor and trustee to the amount of a sum of money representing two years' dividends at 7 per cent. on the bequeathed preferred shares, which they calculated at \$68,460, and that the beneficiaries were not entitled to their delivery until that amount of money had been paid to the estate or the charge released.

No contention is now made on this appeal that the shares did not vest in the beneficiaries, to whom they were bequeathed, but the respondent residuary legatees contend that in the light of other provisions of the will and of the circumstances, as they existed at the time of the execution of the codicil, no other construction can consistently be placed upon the relevant language of the codicil than that adopted by Harrison J., in the majority judgment of the Appeal Division. Having conceded that all the shares vested in the several beneficiaries on the death of the testator, it is obvious that this is the only position they could possibly take.

There is no ambiguity whatever regarding the bequests of the preferred shares as made in paras. 14 and 15 of the codicil or of the common shares as made in para. 16. Each one of them is distinct and definite as to the number of shares bequeathed and the persons and institutions to whom the shares are given. The whole difficulty has been created by the language of para. 20 of the codicil, which, while indicating clearly enough an intention to postpone the transfer by the executor and trustee of the bequeathed shares to the various beneficiaries pending the payment to him of dividends accrued to the date of the testatrix's death and two prospective half-yearly dividends during the following year, enshrouds the intended reservation in such

apparent ambiguity and uncertainty as to endanger its entire validity. The difficulty arises primarily from the insertion of the phrase "whether earned or declared or not" in reference first to the payment of "all dividends on said preferred shares *accrued due*" to the date of the testator's death, and its repetition in reference to "a full year's dividends *accruing due*" after her death.

The words "all dividends accrued due" can surely only mean dividends which have become payable by the corporation to the shareholder, as the words "dividends accruing due" during any stated period can only mean
 10 dividends as they become payable by the corporation to the shareholder. The share certificates by a condition endorsed thereon state that the holders shall be entitled out of the net profits whenever ascertained to a fixed cumulative preference dividend at the rate of 7 per cent. per annum . . . in priority to any payment of dividend upon the common stock,

"such dividend to be paid at such times as the directors may determine,
 "but to be payable only out of the profits, and the holder shall not be
 "entitled to participate in further dividends or profits."

This condition is in accordance with the provisions of the by-law of June 28th, 1916, under which these shares were issued. This by-law provides that
 20 the preference shares shall have a fixed cumulative preference dividend of 7 per cent. per annum, payable as may be convenient half yearly, and that such dividend

"shall be payable only out of the net profits of the company, but they
 "shall be cumulative dividends, that is to say, if not earned fully and
 "paid in each year, the amount of such dividend or any portion thereof
 "remaining unpaid from time to time shall be paid out of the first net
 "profits of the company accumulated or earned thereafter."

The by-law also provides that the said dividend shall begin to run from July 1st, 1916.

30 A preferential dividend at a fixed rate may be said, of course, to be always running between fixed dividend periods and perhaps in that sense to be accruing from day to day, but how can these dividends in the face of the express terms of the share certificates and of the by-law, in pursuance of which they were issued, possibly be said to have "accrued due" or to be "accruing due" when no profits have been earned to provide for their payment and no declaration has been made by the directors fixing any date therefor? The shareholders acquire no right to payment of any dividends until there are net profits, out of which alone they can be paid, and until such time as the directors determine they shall be paid. See judgment of Farwell J., in *Bond v. Barrow*
 40 *Haematite Steel Co.* (1902) Ch. D., at p. 362; also judgment of Lord Sterndale, M.R., in *re Wakely* (1920) Ch. D. at p. 217.

That the clause is directed wholly to the payment of dividends on the bequeathed preferred shares during the anticipated period of the administration of the estate cannot be doubted, now that it is conceded that it was the testatrix's intention that the shares themselves should vest in the various legatees at her death. This can only apply to the payment of dividends as

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such to the executors and trustees of the estate, as the registered holders of the bequeathed preferred shares, by the corporation itself as a going concern, and clearly excludes, to my mind, the payment of any sum or sums of money in lieu thereof by or on behalf of the beneficiaries, in whom the shares themselves were vested. The qualifying phrase is so obviously repugnant to the principal phrase that one or the other must be disregarded and the whole clause recast in order to express any such intention as that contended for by the residuary legatees.

If the clause be read without the qualifying phrase, and the words "all dividends on said preferred shares accrued due to the date of my death 10" ". . . together with a full year's dividends accruing due after my death" "shall be paid to my executors and trustees for the benefit of my estate" "before making any transfers," etc., be given their ordinary meaning, they clearly contemplate only the payment of dividends, which the directors of the corporation might legally declare to be payable thereon on definitely appointed dates. The corporation admittedly never having since earned sufficient profits to justify the declaration of any dividend to cover 7 per cent. of the par value of the preferred shares remaining unpaid at the time of the testatrix's death, in November, 1934, or any part thereof or any proportion of the two half yearly dividends, which ordinarily would have 20 matured during the following year, the executors and trustees of her estate, as the registered holders of all the bequeathed shares, have never acquired the right to demand payment from the corporation of any dividends thereon to cover either the year 1934 or the year 1935. They have consequently never "accrued due" within the intendment of the reservation.

But how upon this basis does the non-payment of the dividends affect the condition prescribed by the concluding lines of the paragraph as a prerequisite to the executors' right to transfer the shares? Did the testatrix intend that the executors should not withhold their transfer to the legatees for more than a year after her death in the event of the company's failure up 30 to that time to earn the necessary profits to enable them to declare dividends to cover the arrears for the two years 1934 and 1935, or did she intend that the condition should continue, unlimited as to time, with the inevitable result of indefinitely tying up the administration of her estate until the actual payment of the deferred dividends, which might possibly never happen? The latter hypothesis may at once be dismissed, I think, as wholly inadmissible. The former, though not entirely consistent with the testatrix's undisputed intention to vest the shares in the various legatees at her death, may surely be more reasonably harmonised with it as a modification of the absolute bequests to the extent of withholding from the legatees their right to receive 40 the deferred dividends for the two years in question in the event, and only in the event, of their being paid by the corporation to the executors and trustees as the registered holders of the shares for the purpose of administering the estate, within a period of one year following the death of the testatrix.

If no limitation of the prescribed condition for the transfer of the shares to the legatees can reasonably be inferred from the clause as framed, the reservation itself in my opinion must be held to be void for uncertainty,

whether the alleged qualifying phrase be eliminated or not. As already pointed out, the residuary legatees contended before the learned Chief Justice below that the bequests of the shares were themselves void for uncertainty for the reason that no one could tell when the dividends would be paid or indeed whether they ever would be paid at all. This uncertainty, however, goes, not to the validity of the bequests, but to the validity of the reservation. As Lord Truro expressed it in *Egerton v. Earl Brownlow* 5 H.L.C., in 1853, at p. 181 :—

- 10 “Where a gift is good in itself, but is followed by an unlawful or
 “repugnant condition or qualification in a distinct clause, the gift is
 “upheld and the condition or qualification, which alone is obnoxious,
 “is rejected.”

In *Hancock v. Watson*, 1902 A.C., 14, Lord Davey said :—

“It is settled law that if you find an absolute gift to a legatee in the
 “first instance and trusts are engrafted or imposed on that absolute
 “interest which fail, either from lapse or invalidity or any other reason,
 “then the absolute gift takes effect so far as the trusts have failed to
 “the exclusion of the residuary legatee or next of kin, as the case may be.”

This statement was expressly reaffirmed by the House of Lords in *Fyfe v.*
 20 *Irwin* (1939) 2 All Eng. Rep. 271.

The learned majority judges in the Appeal Division apparently agreed with the Chief Justice and Grimmer J., that the clause should be read as indicating that the condition was intended to lapse upon the expiration of one year after the death of the testatrix, but in their natural anxiety to give some effect to the phrase, “whether earned or declared or not,” sought very properly to solve the perplexing problem by deducing from it and the language of the entire para. 20 of the codicil and other provisions of the will an intention to impose a charge in favour of the estate, either upon the bequeathed preferred shares themselves, or upon the donees, to the amount of the unpaid
 30 dividends for the years 1934 and 1935. They relied especially upon the change made by the opening clause of the paragraph, providing for the payment out of the testatrix’s personal estate of all succession duties in respect of the gifts of all shares in the capital stock of the corporation as evidencing an intention to accumulate a fund, equal to two years’ dividends on all the bequeathed preferred shares, for the special purpose of compensating the estate for relieving them of the payment of succession duties.

While the opening lines of the long clause immediately following the succession duties provision would seem to impart no little colour to this view, I find myself, after anxious consideration of the entire will and codicil, quite
 40 unable to adopt it. In the first place para. 20 of the codicil contains nothing in the nature of a direction to the executors and trustees to collect the two years’ unpaid dividends from the beneficiaries, in whom the shares were vested, or to fund them, if and when collected, for any such purpose. The creation of such a charge seems to me to be wholly inconsistent with her wish to relieve all gifts and bequests made in both the will and the codicil from any and all succession duties at the expense of her personal estate, including gifts of

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shares in the capital stock of Ganong Bros. Limited, either preferred or common, as so explicitly stated in the opening clause of the paragraph. Having thus clearly indicated her desire to relieve the bequeathed shares from any and all liability for the payment of succession duties and thus place them on a footing of equality with all other gifts provided for in the will and codicil, I cannot believe that she intended by the succeeding clause, not only to immediately cancel this additional bounty to the specific legatees of the preferred shares, including her late husband's nearest relatives, and her own brother and his wife and children and such institutions as the Old Folks Home and the Chipman Memorial Hospital, but to charge from \$14 a share in the 10 event of the corporation's inability to earn sufficient profits to pay anything on account of the deferred dividends, and this for no other apparent purpose than that of increasing the value of the residuary estate.

The appeal should be allowed and the judgment of the learned Chief Justice on the originating summons restored. We were informed that practically all the estate had been distributed apart from the shares of the company. We think in the circumstances the costs of the appellants on this appeal and of the executor should be paid by the executor and charged by him against the residue of the estate and not against the specific legatees, those of the executor as between solicitor and client; the disposition of costs of the 20 appeal to the Appeal Division to stand as unanimously directed by that Court.

*In the
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Council.*

No. 15.

Order in
Council
granting
special leave
to appeal to
His Majesty
in Council,
24th July,
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No. 15.

Order in Council granting Special Leave to appeal to His Majesty in Council.

(L.S.)

At the Court at Buckingham Palace.

The 24th day of July, 1941.

Present :

The King's Most Excellent Majesty.

Lord President.

Mr. Lloyd George.

Lord Privy Seal.

Major Lloyd George.

Lord Woolton.

30

Whereas there was this day read at the Board a Report from the Judicial Committee of the Privy Council dated the 27th day of June, 1941, in the words following, viz. :—

“Whereas by virtue of His late Majesty King Edward the Seventh's
“Order in Council of the 18th day of October, 1909, there was referred
“unto this Committee a humble Petition of Jeannette Robinson Belyea
“and Edgar M. Robinson in the matter of an Appeal from the Supreme
“Court of Canada in the matter of the estate of Maria Famicha Ganong
“deceased between the Petitioners Appellants and Samuel A. McBride,
“sole executor and trustee of the last Will and Testament of Maria 40
“Famicha Ganong deceased and Arthur D. Ganong Katherine L.

10 " Whidden Susan B. Ganong William F. Ganong James E. Ganong Grace
 " A. Caldwell Edna Dillenbeck Pellissier May Isabel Weymer Edwin M.
 " Ganong William J. Ganong and R. Whidden Ganong Respondents
 " setting forth (amongst other matters) that the Petitioners desire to
 " obtain special leave to appeal to Your Majesty in Council from a Judg-
 " ment of the Supreme Court of Canada dated the 20th December 1940
 " which had reversed a Judgment of the Appeal Division of the Supreme
 " Court of New Brunswick dated the 19th April 1940 which had allowed
 " an Appeal of the Petitioners from a Judgment of the Chief Justice of
 10 " New Brunswick dated the 15th January 1940 upon an Originating
 " Summons taken out by the Respondent executor and trustee to have
 " determined by the Court who under the Will of Maria Famicha Ganong
 " and the Codicils thereto are entitled to certain common and preferred
 " shares in the capital stock of Ganong Brothers Limited and when the
 " beneficiaries of the shares are entitled to delivery thereof: that the
 " Supreme Court of Canada had granted a stay of execution in order
 " that the Petitioners might have an opportunity of presenting this
 " Petition and that the shares in question are of very considerable value
 " as even the arrears of dividends on the Preference Stock held by Maria
 20 " Famicha Ganong (which must be paid before any dividends are paid
 " on the Common Stock and which on a winding up are payable in full
 " before any payments are made to the holders of Common Stock)
 " amounted to the end of 1935 to \$68,460: that by her Will made on
 " the 25th September 1924 and a second Codicil thereto dated the 13th
 " October 1934 Maria Famicha Ganong among many other bequests
 " made specific bequests to various persons of Preference Stock in
 " Ganong Brothers Limited and left the residue of her estate to the
 " Petitioners: that no dividends have been paid on the Preference Stock
 " in Ganong Brothers Limited since 1933: that Maria Famicha Ganong
 30 " died on the 30th November 1934 possessed of estate which included
 " 4,890 Preference Shares and 4,036 Common Shares in Ganong Brothers
 " Limited and doubts arose concerning the vesting of these shares and
 " the effect of the Will and second Codicil: that accordingly the Re-
 " spondent executor and trustee by Originating Summons dated the 1st
 " December 1939 asked the Court the following questions: ' 1. Who are
 " ' entitled to the shares in the capital stock of Ganong Bros. Limited
 " ' either common or preferred bequeathed under any clauses of either
 " ' the last Will and Testament of Maria Famicha Ganong or the second
 " ' Codicil thereto? 2. When are the beneficiaries of the said shares
 40 " ' entitled to delivery thereof? ' to which another question was added
 " during argument: ' 3. Under the circumstances of the present case are
 " ' any dividends and if so what apportionable? ' that by Judgment
 " dated the 15th January 1940 the Chief Justice answered the questions
 " as follows: ' 1. The persons and institutions named therein. 2. Im-
 " ' mediately. 3. No question of apportionment arises': that the
 " Petitioners appealed to the Appeal Division of the Supreme Court of
 " New Brunswick which on the 19th April 1940 by a majority (Harrison

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“ and Fairweather JJ. Grimmer J. dissenting) allowed the Appeal : that
“ the Respondents other than the executor and trustee appealed to the
“ Supreme Court of Canada which unanimously restored the Judgment
“ of the Chief Justice of New Brunswick by Judgment dated the 20th
“ December 1940 : that the Petitioners submit that the Judgment of
“ the Supreme Court of Canada is wrong and adopts a construction of
“ the Will and second Codicil which is inconsistent with their language
“ and that by reason of the large amount involved the difference of
“ judicial opinion and the important questions raised the case is a proper
“ one to be considered by Your Majesty in Council : And humbly pray- 10
“ ing Your Majesty in Council to order that the Petitioners shall have
“ special leave to appeal from the Judgment of the Supreme Court of
“ Canada dated the 20th December 1940 or for such further or other
“ Order as to Your Majesty in Council may appear fit :

“ The Lords of the Committee in obedience to His late Majesty’s
“ said Order in Council have taken the humble Petition into consideration
“ and having heard Counsel in support thereof Their Lordships do this
“ day agree humbly to report to Your Majesty as their opinion that leave
“ ought to be granted to the Petitioners to enter and prosecute their
“ Appeal against the Judgment of the Supreme Court of Canada dated 20
“ the 20th day of December 1940 upon depositing in the Registry of the
“ Privy Council the sum of £400 as security for costs.

“ And Their Lordships do further report to Your Majesty that the
“ authenticated copy under seal of the Record produced by the Petitioners
“ upon the hearing of the Petition ought to be accepted (subject to any
“ objection that may be taken thereto by the Respondents) as the
“ Record proper to be laid before Your Majesty on the hearing of the
“ Appeal.”

His Majesty having taken the said Report into consideration was pleased
by and with the advice of His Privy Council to approve thereof and to order 30
as it is hereby ordered that the same be punctually observed obeyed and
carried into execution.

Whereof the Governor-General or Officer administering the Government
of the Dominion of Canada for the time being and all other persons whom
it may concern are to take notice and govern themselves accordingly.

RUPERT B. HOWORTH.

EXHIBITS.

No. 1.—By-Laws of Ganong Brothers, Limited.

(No. 1—J.B.M.B., C.J., 5 Jan. 40)

Whereas, it is deemed expedient that certain By-laws for regulating the affairs of Ganong Brothers, Limited, should be made.

Now Therefore, be it enacted and it is hereby enacted as follows :—

ALLOTMENT OF SHARES.

1. The shares of the Company shall be under the control of the Directors, who may allot or otherwise dispose of the same to such persons, on such terms and conditions, and at such times as the Directors may see fit, save and except that the Directors shall have no power to allot stock below par value.

CERTIFICATES.

2. The Certificates of Shares shall be issued under the Seal of the Company and signed by the President or Vice-President, and the Secretary-Treasurer of the Company.

3. Every shareholder shall be entitled to one Certificate for all the shares registered in his or her name, or to several Certificates, each for a part of such shares.

4. Every Certificate shall specify the number of shares in respect of which it is issued, and the amount paid up thereon.

CALLS.

5. The Directors may from time to time make such calls as they think fit upon the Shareholders in respect of all moneys unpaid on the shares held by them respectively, and such Shareholder shall pay the amount of every call so made on him or her to the persons, and at the times and places appointed by the Directors.

6. Any call may be made payable either in one sum or by two or more instalments, as the Directors may think fit.

7. A call shall be deemed to have been made at the time when the Resolution of the Directors authorising such call was passed.

8. Ten days' notice of the first call and thirty days' notice of all subsequent calls shall be given specifying the time and place of payment, and to whom such call shall be paid.

TRANSFERS.

9. Any Shareholder not being in arrears for any call may transfer his or her share or shares, or any one or more of them by registering with the Secretary an instrument of Transfer signed by the Transferrer or his representatives ; and the Transferrer shall be deemed to remain the holder of such share or shares until the name of the Transferee is entered with the Registrar in respect thereof. Provided, however, that if the whole amount of such

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shares has not been paid in, then and in such case such transfer shall not be effectual unless and until approved by a Resolution of the Directors.

10. In case of the death, insolvency or incapacity of any Shareholder, the legal representative of such Shareholder shall, before becoming entitled to the privileges of an original Shareholder, procure his address or place of abode and the particulars of his title to be registered in the books of the Company, and shall at the same time exhibit the Will and probate thereof, or grant of Letters of Administration, or other documents, as the case may be, for the inspection and satisfaction of the Directors, and furnish a certified copy of the same when so required.

11. The Instrument of Transfer of any share shall be in the following form, or as near thereto as circumstances will admit :—

"For value received, I of do certify
 "transfer to of Share standing
 "in my name in the books of Ganong Brothers, Limited, to hold unto the
 "said—his Executors, Administrators and Assigns, subject to the Letters
 "Patent and By-Laws of the Company, and I hereby irrevocably
 "constitute and appoint, Attorney, to transfer the
 "said share on the books of the Company, with full power of substitu- 20
 "tion in the premises.
 "As Witness my hand the day of A.D. 19 .
 "Witness : "

13. All transfer books may be closed prior to the Annual Meeting in each year, or prior to the dates of payment of dividends, for such period as the Directors may see fit, not exceeding fifteen days in each year.

14. If any Shareholder fails to pay any call on or before the day appointed ³⁰ for the payment of same, the Directors may at any time thereafter during such time as the call remains unpaid serve a notice on such Shareholder requiring him or her to pay same with interest and all expenses that may have been incurred to the Company by reason of such non-payment.

15. The notice shall name the date, being not less than twenty days from the date of service, by mailing or otherwise, and the place in and at which such call and such interest and expenses as aforesaid are to be paid. The notice shall also state that in the event of non-payment at or before the time, and at the place specified the shares in respect of which the call was made will be liable to be forfeited. Such notice shall be deemed to have been 40 validly given if mailed postage prepaid and registered to the address of the Shareholders, as shown by the Register of the Company.

16. If payment be not made as provided for in such notice as aforesaid, any share in respect of which such notice has been given may at any time

thereafter before payment of all calls, interest and expenses due in respect thereof, be forfeited by resolution of the Directors to that effect.

17. The Directors may at any time before any share so forfeited, shall have been sold, re-allotted or otherwise disposed of, annul the forfeiture thereof upon such conditions as they think fit.

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LIENS.

18. The Company shall have a first and paramount lien upon all the shares registered in the name of each Shareholder, whether solely or jointly with others, for his debts, liabilities and engagements, solely or jointly with
10 any other person to or with the Company, whether the period for the payment, fulfilment or discharge shall have actually arrived or not.

19. For the purpose of enforcing such lien the Directors may sell the shares subject thereto in such manner as they think fit; but no sale shall be made until such period as aforesaid shall have arrived and until notice in writing of the intention to sell shall have been served on such member, his executors or administrators and default shall have been made by him or them in the payment, fulfilment or discharge of such debts, liabilities or engagements for thirty days after such notice.

20. The net proceeds of any such sale shall be applied in or towards
20 satisfaction of the debts, liabilities or engagements, and the residue (if any) paid to such member, his executors, administrators or assigns.

21. Upon any sale in purported exercise of the powers given by Clauses 19 and 20 hereof respectively, the Directors may cause the Purchaser's name to be entered in the Register in respect of the shares sold, and the Purchaser shall not be bound to see to the regularity of the proceedings or to the application of the purchase money, and after his name has been entered in the Register the validity of the sale shall not be impeached by any person, and the remedy of any person aggrieved by the sale shall be in damages only and against the Company exclusively.

30

GENERAL MEETINGS.

22. An Annual General Meeting of the Company shall be held on such date, at such place, and at such hour as the Directors may determine, in each year.

23. The Directors or any two of them may whenever they think fit convene a Special General Meeting of the Shareholders.

24. Shareholders holding one-tenth part of the allotted shares of the Company may at any time call a Special Meeting of the Shareholders for the transaction of any business specified in such written requisition or notice as they may issue to that effect.

40 25. At all meetings of Shareholders every Shareholder shall be entitled to as many votes as he holds shares of Capital Stock of the Company, and may vote by proxy in the person of another Shareholder present at such meeting.

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—continued.

26. Three Shareholders personally present or represented by proxy in the person of another Shareholder present, and representing twenty-five per cent. of the paid up shares of the Company, shall be a quorum for any Meeting of Shareholders.

27. The election of Directors and if demanded all other questions at meetings of Shareholders shall be by ballot.

28. If within thirty minutes after the time appointed for a Special General Meeting a quorum be not present the meeting shall stand dissolved, but in the case of an Annual General Meeting, it shall stand adjourned until the same day of the next week at the same hour and place. 10

29. Every instrument of proxy may be in the form or to the effect following :—

“ I, _____ of _____ in the County of _____,
 “ and Province of _____ being a Shareholder in Ganong Brothers,
 “ Limited, entitled to _____ votes, hereby appoint
 “ of _____, in the County of _____ in the Province of _____
 “ _____, or failing him, _____ of _____
 “ in the County of _____, in the Province of _____ as my
 “ proxy, to vote for me and in my behalf at the Annual (or Special, as
 “ the case may be) General Meeting of the Company, to be held on the 20
 “ _____ day of _____ and at any adjournment thereof,
 “ or at any meeting of the Company that may be held in the year
 “ As Witness my hand this _____ day of _____ A.D. 19 ____
 “ Witness : ”

and such proxy shall be filed with the Secretary before the vote is recorded.

DIRECTORS.

30. The number of Directors shall be five who shall be elected for one year and until their successors are elected at the next following Annual Meeting, and the Directors so elected shall elect from among themselves at their first meeting after their election a President and one Vice-President of the 30 Company, and they may hold a meeting for the purpose of such election immediately after the General Meeting of the Shareholders in each year.

Amendment to By-law No. 30, adopted March 15, 1918 :—

If those present constitute a quorum of the Board, notwithstanding some members of the Board may not be present or have notice thereof of their election.

31. The qualification of each Director shall be the holding in his own right of at least one share of the stock of the Company.

32. The continuing Directors may act notwithstanding any vacancy in their body as long as there remain three Directors duly qualified to act, 40 and any vacancy may be filled for the unexpired remainder of the term by the Board from among the qualified Shareholders of the Company.

33. The Directors may meet together for the despatch of business, adjourn and otherwise regulate their meetings as they may by resolution or otherwise determine, and they may have a Branch Office in England and such other places either in or out of Canada as they may desire, and may hold meetings of Directors at any of the Branch Offices with the consent of all of the Directors.

Exhibits.

1.
By-laws of
Ganong
Brothers,
Limited
—continued.

34. Three Directors shall be a quorum.

35. Questions arising at any meeting of the Directors shall be decided by a majority of votes, and in case of a tie, the Chairman shall have a second 10 or casting vote.

36. At all meetings of Directors the President of the Company when present shall be Chairman, and in the absence of the President, the Vice-President, or any one Director chosen out of their number by the Directors present shall be Chairman of such meeting.

37. A meeting of the Directors for the time duly called and at which a quorum is present shall be competent to exercise all or any of the authorities, powers and discretions for the time being vested in or exercisable by the Directors generally.

38. The Board of Directors shall appoint from their members a Secretary and a Treasurer, and the same person may be appointed to both offices 20 and may be designated "Secretary-Treasurer" and may also appoint an Assistant Secretary who may or may not be from their members, and they shall also appoint a General Manager, and shall fix the salaries to be paid to the officers of the Company, and may by resolution authorise the President or Manager to allot their respective duties.

39. Expenses of a Director in attending meetings shall be paid in such amounts as the Board may determine.

40. If any Director shall go or reside abroad on the Company's business or otherwise perform services whether of a temporary or continuing nature for which in the opinion of the Board, his ordinary remuneration as a Director under the provisions of By-Law 39 hereof may be inadequate, the Board may arrange with such Director for such special remuneration for the said services, either by way of salary, commission or the payment of a stated sum of money or otherwise as they shall think fit, such special remuneration to be of such amount and to be payable during any period or periods and to be in addition to any remuneration to which such Director would be entitled under the provisions of By-Law 39 hereof or otherwise as the Directors in their absolute discretion think fit.

41. A Director shall not be disqualified by his office from entering into 40 contracts, arrangements or dealings with the Company, nor shall a Director be liable to account to the Company for any profit arising out of any contract, arrangement or dealing with the Company by reason of such Director being a party to or interested in or deriving profit from any such contract, arrangement or dealing and being at the same time a Director of the Company, provided that such Director discloses to the Board at or before the time when

Exhibits.

1.
By-laws of
Ganong
Brothers,
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—continued.

such contract, arrangement or dealing is determined upon his interest therein, or if his interest be subsequently acquired, provided that he on the first occasion possible discloses to the Board the fact that he has acquired such interest ; but no Director shall vote as a Director in regard to any contract, arrangement or dealing in which he is interested, or upon any matter arising thereout, and if he shall so vote his vote shall not be counted nor shall he be reckoned for the purpose of constituting a quorum of Directors. Provided however, that no Director shall be deemed to be in any way interested in any contract or arrangement, nor shall he be disqualified from voting, or be held liable to account to the Company by reason of his holding shares in or 10 being a Director of any other Company with which a contract or arrangement is made or contemplated.

42. All deeds executed on behalf of the Company may be in such form and contain such powers, provisos, conditions, covenants, clauses and agreements as the Directors shall think fit, and in addition to being sealed with the Seal of the Company, shall be signed by the President or Vice-President, or in their absence by a Director appointed so to do, and countersigned by the Secretary, or such other officer as the Directors may from time to time appoint, and any Instrument bearing the Common Seal of the Company attested by the Officers of the Company above-mentioned and issued for 20 valuable consideration, shall be binding on the Company, notwithstanding any irregularity touching the authority of the Directors to issue the same.

43. The Directors may make such arrangements with any of the chartered Banks in Canada, Great Britain or the United States for the deposit of moneys and securities and for conducting other financial matters as they shall from time to time deem necessary, and no moneys shall be drawn from the Bank without the signature of the President or the Secretary-Treasurer ; and the President or Secretary-Treasurer shall have power to endorse for deposit in said banks only all cheques, bills of exchange, drafts, notes or orders for money which shall be made payable to the Company. 30

Amendment to By-Law No. 43, adopted February 22, 1923 :

The words after " deem necessary " shall be omitted and replaced by the following : " And no moneys shall be drawn from the Bank without the " signature of such officer or officers as the Directors shall authorise to sign " negotiable instruments on the Company's behalf and that such officer or " officers shall have power to endorse for deposit in said banks only, all " cheques, bills of exchange, drafts, notes or orders for money which shall be " made payable to the Company."

44. Having reference to the borrowing powers of the Company, repealed at Shareholders' Meeting on March 6, 1936. Replaced by By-Law No. 61. 40.

ACCOUNTS.

45. The Directors shall cause accounts to be kept of the business of the Company, and of all moneys received and expended by the Company, and the assets, credits and liabilities of the Company.

ANNUAL STATEMENT.

Exhibits.

1.
By-laws of
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~~—continued.~~

46. At the Annual Meeting in every year the Directors shall lay before the Company a profit and loss account and a balance sheet showing a summary of the assets and liabilities of the Company made up to the thirty-first day of December before the meeting from the time when the last preceding account and balance sheet were made up, or in the case of the first account and balance sheet, from 1 January, 1916. Every such balance sheet shall be accompanied by a report of the Directors as to the state and condition of the Company and as to the amount which they propose to be paid out of the profits by way of dividends or bonuses to the members, and the amount,
10 if any, which they propose to carry to the reserve fund, and the account, report and balance sheet shall be signed by two Directors and countersigned by the Secretary, and copied into the Minutes.

AUDITOR.

47. An auditor shall be appointed annually by the Shareholders at the Annual General Meeting, whose duty it shall be to examine and audit all books, vouchers and accounts of the Company.

He shall be supplied with a list of all books kept by the Company and a copy of the balance sheet and abstract of the affairs thereof, and it shall be his duty to examine the same and make a report thereon to the Board as soon
20 after the close of the financial year as possible, together with such suggestions or recommendations as he may think fit.

DIVIDENDS.

48. The Directors may declare dividends out of the net profits of the Company whenever and so often as in their opinion the state of the Company will permit.

NOTICES.

49. Any notice of meeting or other notice required to be given to any Director shall be deemed sufficiently given if mailed postage prepaid not less than five days before such meeting to the address of the Director as appearing
30 in the Register of the Company, or to such other address as the Director shall in writing request the Secretary to mail such notice, or a meeting may be held at any time without notice with the written consent of all the Directors construed by their signature to the minutes.

50. Any notice required to be given for the holding of General or Special Meetings of the Company may be given by publishing the same at least ten days previous thereto in some newspaper published in the Town of St. Stephen, New Brunswick or by mailing same as a registered letter duly addressed to each Shareholder at least ten days previous to such meeting; or such General or Special Meetings may be held at any time without notice with the written
40 consent of all the Shareholders of the Company construed by their signatures to the Minutes.

51. That the Corporate Seal of the Company shall have the words "Ganong Brothers, Limited," with the figures "1916" engraved on the outer

*Exhibits.*1.

By-laws of
Ganong
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—continued.

circle, and a representation of a chocolate Cream Drop with the letters G.B. on the bottom in the centre.

52. These By-Laws may be at any time added to, revoked, re-enacted or modified at any meeting of the Directors but such changes shall only have effect until the next meeting of Shareholders unless confirmed thereat.

53. No Transfers of Shares shall be valid until such shares shall have been first offered at the market price to the remaining shareholders in the order of choice by the transferrer.

BY-LAW NO. 54 OF GANONG BROTHERS, LIMITED.

Whereas it is deemed advisable that ten thousand shares of the Capital 10
Stock of the Company, each of the par value of One Hundred Dollars, be created and issued as Preference Stock, having fixed cumulative preferential dividends and having priority in any division of the assets of the Company to the extent of its repayment in full at par, together with any dividends thereon then accrued due and remaining unpaid, but conferring no right to any further participation in profits or assets.

Now Therefore, be it enacted and it is hereby enacted as a By-Law of Ganong Brothers, Limited, that Ten Thousand Shares of the Capital Stock of the Company shall be created as Preference Stock, and that the said Shares shall have a fixed cumulative preferential dividend of seven per cent. per 20
annum, payable as may be convenient half-yearly, and the said Shares shall be issued and allotted by the Board of Directors of the Company as they may direct, and the parties to whom the said shares shall respectively issue and any subsequent holders thereof shall be entitled to receive the said dividends and shall hold the shares upon the following terms, namely :

The issue of the Preference Stock shall become and remain a lien upon the assets of the Company superior to any claim or claims belonging to the ordinary or Common Stock, so that on any dissolution or winding up of the Company or liquidation of its business or assets, or in any division of capital or assets of the Company among the Shareholders, thereof, the holders of 30
Preference Stock shall be entitled to payment for their stock in full at par (together with any dividends in arrear) and no more, and shall, as between themselves and the holders of the Common Stock have the standing of creditors of the Company whose claims shall be paid, after satisfaction of all other indebtedness of the Company, in preference and priority to any payments to the holders of the Common Stock, but only out of the Assets of the Company and subject to the prior rights of creditors to be first paid in full.

The said fixed dividend of seven per cent. shall be payable only out of the net profits of the Company, but they shall be cumulative dividends, that 40
is to say, if not earned fully and paid in each year, the amount of such dividend or any portion thereof remaining unpaid from time to time shall be paid out of the first net profits of the Company accumulated or earned thereafter ; and no dividends shall be declared or paid on the Common Stock of the Company until after payment in full of all such dividends at the rate of seven per cent. per annum then payable on the Preference Stock, but in case any dividend on such Preference Stock or any part thereof is not paid when due

and payable as aforesaid, owing to lack of profits sufficient therefor, the amount so payable and not paid shall bear no interest.

The said dividends shall begin to run from the first day of July, 1916.

After payment to the holders of the Preference Stock of such fixed cumulative dividend of seven per cent., they shall not be entitled to any further dividend or to participate further in the profits of the Company; and after payment of such dividends the surplus shall be applicable to the payments of dividends on Capital paid up on the ordinary or Common shares only.

The Directors may from time to time hereafter by By-Law create and
10 issue out of the unissued Capital Stock of the Company Preference Shares upon the same terms and conditions as the Preference Shares hereby created, and such further or other shares shall rank *pari passu* with the Preference Shares hereby created.

BY-LAW NO. 55 OF GANONG BROTHERS, LIMITED.

A Body Corporate Incorporated Under the Laws of the Dominion
of Canada.

Whereas, Ganong Brothers, Limited, a company incorporated under the laws of the Province of New Brunswick, has applied for seven thousand five hundred (7,500) shares of the Preferred Stock, and four thousand five
20 hundred (4,500) shares of the Common Stock of the Capital Stock of this Company, of the par value of one hundred dollars (\$100) per share, and agreed to pay for the same by the sale and transfer of the business and assets belonging thereto heretofore carried on by the said Company of Ganong Brothers, Limited, incorporated under the laws of the Province of New Brunswick, subject to the liabilities incurred by them in connection with the said business.

And Whereas an agreement has been executed by the said Company for the sale of the said business and assets belonging thereto, in the words and figures following, that is to say :—

30 “ This Agreement made the 28th day of June, A.D. 1916, between
“ Ganong Brothers, Limited, a body corporate, incorporated under the
“ laws of the Province of New Brunswick, of the First Part, and, Ganong
“ Brothers, Limited, a body corporate, incorporated under the laws of the
“ Dominion of Canada, of the Second Part.

“ Whereas, the parties of the first part have applied for seven
“ thousand five hundred (7,500) shares of the Preferred Stock, and four
“ thousand five hundred (4,500) shares of the Common Stock of the
“ Capital Stock of the parties of the second part.

40 “ And Whereas, the parties of the first part have agreed to sell to the
“ parties of the second part all the property, assets, business and goodwill
“ of the parties of the first part as a going concern, as and from the
“ first day of January, 1916, subject to the liabilities existing on that
“ date, at and for the price or sum of one million and two hundred
“ thousand dollars (\$1,200,000), and to apply the same in payment

Exhibits.

1.

By-laws of
Ganong
Brothers,
Limited
—continued.

“ of the stock applied for by the parties of the first part, as mentioned
“ in the preceding paragraph hereof.

“ Now This Agreement Witnesseth that the said parties hereto do
“ hereby mutually covenant, promise and agree to and with each other
“ in manner following, that is to say :

“ 1. The parties of the first part agree to subscribe for seven thousand
“ five hundred (7,500) shares of Preferred Stock of the par value of seven
“ hundred and fifty thousand dollars (\$750,000) and four thousand five
“ hundred (4,500) shares of Common Stock of the par value of four hundred
“ and fifty thousand dollars (\$450,000) of the Capital Stock of the parties 10
“ of the second part, and to pay for the same by the sale and transfer to
“ the parties of the second part of all the property, assets, business and
“ goodwill of the parties of the first part, subject to all liabilities of the
“ parties of the first part existing on the first day of January, 1916.
“ As set out in Balance Sheet hereto attached.

“ 2. The parties of the second part agree to allot to the parties
“ of the first part seven thousand five hundred shares of Preferred Stock,
“ and four thousand five hundred shares of Common Stock, applied for
“ by them as set out in the preceding paragraph hereof, and the parties
“ of the second part agree to purchase from the parties of the first part 20
“ all the property, assets, business and goodwill of the parties of the
“ first part (subject to the liabilities of the parties of the first part, as
“ herein before mentioned) at and for the price or sum of one million
“ two hundred thousand dollars, and to apply the same in payment
“ of the seven thousand five hundred shares of Preferred Stock and
“ four thousand five hundred shares of Common Stock allotted to the
“ said parties of the first part.

“ 3. The parties of the second part agree to assume and pay all the
“ liabilities of the parties of the first part existing on the first day of
“ January, 1916, and to indemnify the parties of the first part of, from 30
“ and against the same and every part thereof.

“ 4. The parties of the first part agree to execute all such conveyances,
“ transfers and assignments as may be necessary and essential to
“ effectually vest the title to the property, assets, business and goodwill
“ of the parties of the first part in the parties of the second part, and the
“ parties of the second part agree to issue Stock Certificates in favour of
“ the parties of the first part for seven thousand five hundred shares of
“ Preferred Stock and four thousand five hundred shares of Common
“ Stock, as fully paid up and unassessable Stock.

“ In Witness Whereof the parties hereto have hereunto affixed their 40
“ Corporate Seals as witness the hands of their respective Presidents and
“ Secretaries.

“ Signed, Sealed and Delivered in Presence of

“ Now Therefore, Ganong Brothers, Limited, a body corporate,

"incorporated under the laws of the Dominion of Canada, enacts as follows :

Exhibits.

1.
By-laws of
Ganong
Brothers,
Limited
—continued.

" 1. That the said agreement made between the said Company and this Company, bearing date the 28th day of June, 1916, be and the same is hereby ratified and confirmed.

10 " 2. That seven thousand five hundred (7,500) shares of the
" Preference Stock, and four thousand five hundred (4,500) shares of the
" Common Stock of the Capital Stock of this Company, applied for and
" agreed to be taken by the said Company, be and the same are hereby
" allotted to the said Company under the terms of the said agreement,
" all as consideration for the sale to this Company of the said business
" heretofore carried on by that Company, and shall be issued to that
" Company as fully paid up and unassessable shares of this Company,
" upon the transfer by that Company to this Company of the business
" and assets as mentioned and set forth in the said agreement; and
" that the officers of this Company do sign the necessary Certificates for
" the same, and they are hereby authorised to affix the Corporate Seal
" of the Company to all assignments, deeds, agreements, mortgages and
20 " other documents necessary and essential to carry out the purposes
" mentioned and set forth in this By-Law."

BY-LAW No. 56.

This By-Law covers amendment to By-Law No. 30, adopted March 15, 1918.

BY-LAW No. 57.

Two or more offices may be combined in the person of any one officer of the Company, who shall hereby be empowered to act in the several capacities so designated in his election by the Board; and if a Director be appointed to any salaried office he shall be entitled to such salary in all respects as if not a Director.

30 BY-LAW No. 58.

An Office shall be created whose Officer shall be styled, "Chairman of the Board of Directors" and who shall be elected by the Directors from among their number.

BY-LAW No. 59.

All withdrawals from the Bank shall be signed by the President or by the Treasurer, and in the absence of both of these then by the Assistant Secretary and countersigned by the Office Manager who shall be placed under bonds.

BY-LAW No. 60.

40 Having reference to the borrowing powers of the Company repealed at Shareholders' Meeting on March 6, 1936; replaced by By-Law No. 61.

Exhibits.

BY-LAW No. 61.

1.
By-laws of
Ganong
Brothers,
Limited
—continued.

Respecting the Borrowing of Money by the Company.

Whereas, it is necessary for the purposes of the Company to borrow money on the credit of the Company from time to time from one of the chartered banks of Canada ;

Therefore be it Enacted by the Directors of Ganong Brothers, Limited, as a By-Law thereof :

1. That the Directors of the Company be and they are hereby authorised to borrow moneys from time to time from the Bank of Montreal upon the credit of the Company in such amounts as they deem proper and by way of 10 overdraft or otherwise.

2. That any promissory notes or other negotiable paper (including renewals thereof in whole or in part) signed on behalf of the Company by the Secretary or any other officer of the Company authorised from time to time to sign negotiable instruments in its behalf and granted to said Bank for the moneys so borrowed and interest thereon as may be agreed upon, shall be binding upon the Company.

3. That the Directors may from time to time, if they see fit to do so, grant securities by way of Mortgage, hypothecation or pledge covering all or any of the property and assets of the Company as security for all or any 20 moneys borrowed by the Company from the Bank or any other indebtedness of the Company to the Bank, and all such securities shall be valid and binding upon the Company if signed by any of the officers authorised to sign negotiable instruments on the Company's behalf.

4. The Directors may from time to time authorise any officer or officers of the Company to make arrangements with said Bank with reference to the moneys from time to time to be borrowed as aforesaid and as to the terms and conditions of the loan thereof and as to the securities to be given therefor, and every such officer shall have authority from time to time to vary or modify such arrangements, terms and conditions, and to give additional 30 security for any moneys remaining due.

5. All contracts, deeds, grants, assurances and documents reasonably required by said Bank or its Counsel for all or any of the purposes aforesaid, shall be executed and carried into effect by the proper officers of the Company, and when necessary the Seal of the Company shall be affixed thereto.

6. This By-Law when sanctioned by the shareholders shall be irrevocable until a By-Law repealing the same shall have been confirmed or sanctioned by the shareholders and a copy thereof duly certified under the Seal of the Company delivered to the said Bank, and meanwhile all the powers and authorities hereby conferred shall continue in force.

**No. 2.—Specimen Preference Share Certificate of Ganong Brothers,
Limited.**

(No. 2.—J.B.M.B. C.J. 3 Jan./40.)

No. 400Shares.

Ganong Brothers, Limited.

Incorporated Under the Companies Act of the Dominion of Canada.

This Certifies that.....
(Preference)

is the owner of.....shares
10 of the par value of One Hundred Dollars each, fully paid, of the Preference
Shares of the Capital Stock of Ganong Brothers, Limited, transferable only
on the books of the Company on surrender of this Certificate and the delivery
of a duly executed instrument of assignment and transfer.

The holders of the Preference Stock are entitled to the dividends and to
priority as to the assets of the Company, as set forth in By-Law No. 54 of the
Company, bearing date the twenty-eighth day of June, A.D. 1916.

In Witness Whereof the said Company has caused this Certificate to be
signed and its Corporate Seal to be affixed by its duly authorised Officers,
this.....day of..... 19....

20
Secretary President

(Endorsement :)—

For Value Received.....hereby sell, assign, and transfer unto
..... Shares.
of The Preferred Stock represented by the within Certificate and do hereby
irrevocably constitute and appoint

.....Attorney
To transfer the said Stock on the books of the within named Corporation with
full power of substitution in the Premises.

30 Dated.....19.....

In presence of
.....

CONDITIONS OF PREFERENCE SHARES.

1. The holders of preference shares shall be entitled out of the net profits
whenever ascertained, to a fixed cumulative preference dividend at the rate
of Seven per cent. per annum on the amount paid up thereon in priority to
any payment of dividend upon the Common Stock, such dividend to be paid
at such times as the Directors may determine but to be payable only out of
the profits, and the holders shall not be entitled to participate in further
40 dividends or profits.

Exhibits.

2.
Specimen
Preference
Share
Certificate of
Ganong
Brothers,
Limited.

Exhibits.

2.

Specimen
Preference
Share
Certificate of
Ganong
Brothers,
Limited
—continued.

2. The holders of preference shares, in case the Company shall be wound-up or its assets otherwise distributed shall have the right to have the surplus assets, applicable for distribution among the shareholders, applied first in payment of the Capital paid up on the said preference shares with all cumulative dividends thereon before any proportion of such surplus assets is distributed among holders of shares not entitled to such preference, but the holders of the said preference shares shall not be entitled to participate in any surplus remaining after the whole amount of capital paid up on such preference shares has, with cumulative dividends, been 10 returned to the holders thereof.

Notice.—The Signature to this Assignment must correspond with the name as written upon the face of the Certificate in every particular, without alteration or enlargement or any change whatever.

A.
Trust
Agreement.
Maria F.
Ganong (1),
Eastern
Trust
Company (2)
and W. F.
Ganong
et al (3),
15th March,
1918.

“ A.”—Trust Agreement between Maria F. Ganong (1), Eastern Trust Company (2) and W. F. Ganong et al (3).

(“ A ” Admitted subject to Mr. Drummie’s objection.
J.B.M.B., C.J.—19 Dec./39.)

This Indenture made this fifteenth day of March A.D. 1918 20 between Maria Famicha Ganong of Saint Stephen in the County of Charlotte and Province of New Brunswick widow and relict of the Honourable Gilbert White Ganong late Lieutenant-Governor of the Province of New Brunswick hereinafter called Mrs. Ganong party hereto of the first part and the Eastern Trust Company a Company incorporated under the laws of the Dominion of Canada having a branch office at the City of Saint John in said Province party hereto of the second part and hereinafter called the trustee and William F. Ganong James E. Ganong Walter K. Ganong and Arthur D. Ganong four nephews of said Honourable Gilbert White Ganong 30 parties hereto of the third part and hereinafter called the said four nephews on behalf of themselves and all those other persons named in schedule “ A ” hereto annexed marked “ Schedule of Relatives ” relatives of said Honourable Gilbert White Ganong.

Whereas at the time of his death the said Honourable Gilbert White Ganong was the largest holder of both common and preferred shares of Ganong Bros. Limited a company incorporated by Letters Patent under the laws of the Dominion of Canada having its head office at Saint Stephen in the County of Charlotte and there carrying on a confectionery manufacturing business and hereinafter called 40 the Company.

And whereas in and by his last Will and testament the said Honourable Gilbert White Ganong after giving and bequeathing to various beneficiaries named in his will certain preferred shares of

the capital stock of the Company did give and bequeath to his wife the said Maria Famicha Ganong all the rest residue and remainder of said preferred shares and all his common shares of said Company.

And whereas the said Maria Famicha Ganong desiring to be relieved of the heavy and unaccustomed responsibility devolving upon her as the majority stockholder in the Company after full consideration, and of her own motion and accord and after advising with members of her own family including her only brother and her only sister and with business friends of her late husband and with the
 10 approval of all persons so consulted and as an evidence of her goodwill toward the said relatives and in particular towards the said four nephews with a view of carrying out what she believes would have been the desire of her said husband as to the ultimate destination of said stock and also with a view of safeguarding the future of the Company by interesting in the management thereof said four nephews who are the most competent to ensure such success has made to the said four nephews an offer to enter into an agreement as hereinafter expressed in respect of and to make disposition of all said preferred shares and all said common shares of said Company so
 20 coming to her under and by virtue of said last will and testament of her late husband (but not including any shares either preferred or common, held by her before her husband's death) all subject to and upon the conditions and terms hereinafter set forth and in consideration of the said four nephews agreeing as herein to do and perform and on their doing and performing on their respective parts as hereinafter expressed.

And Whereas said four nephews having pride in their relationship and identity of name with the two founders of the business and a natural desire to ensure the continuance and success of said Com-
 30 pany have accepted said offer and have agreed on their parts to do observe keep and perform on their part and the part of each of them respectively as hereinafter set forth.

Now Therefore this Indenture Witnesseth that Mrs. Ganong in consideration of the premises and for and in consideration of the agreements and undertakings of said four nephews hereinafter expressed has this day assigned and transferred to the trustee three thousand seven hundred and ninety (3,790) preferred shares and three thousand six hundred (3,600) common shares of the Company the said preferred shares and said common shares being the entire
 40 number of shares so bequeathed to her under and by the last will and testament of her late husband said shares being hereinafter referred to as said "trust shares" the same to be held by the trustee during the continuance of this trust upon the trusts hereinafter expressed of and concerning the same namely:—

1. During the continuance of this trust

(a) The trust shares shall be held by the trustee for the

c

Exhibits.

A.

Trust
 Agreement.
 Maria F.
 Ganong (1),
 Eastern
 Trust
 Company (2)
 and W. F.
 Ganong
 et al (3),
 15th March,
 1918

—continued.

H

Exhibits.

A.

Trust
Agreement.
Maria F.
Ganong (1),
Eastern
Trust
Company (2)
and W. F.
Ganong
et al (3),
15th March,
1918
—continued.

benefit of Mrs. Ganong and all dividends bonuses and other moneys payable or distributable thereupon or in respect thereof (all being hereinafter included in the term dividends) shall be paid direct by the Company to Mrs. Ganong under a sufficient order or orders therefor to be deposited by the trustee with the Company and all dividends shall be considered as accruing from day to day and be apportioned in respect of time accordingly and said trust shares and the interest in the capital and assets of said Company thereby represented are hereby charged with the payment to Mrs. Ganong of full cumulative preference 10 dividends at the rate of seven per cent. per annum on all said preferred shares during the continuance of this trust whether the same be or be not earned or declared, and of all dividends on said common shares which under the terms hereof ought to be paid to Mrs. Ganong whether the same be or be not declared.

(b) Upon the death of Mrs. Ganong provided there shall not theretofore have occurred any default hereunder which shall later be established as a default hereunder the trustee shall assign and transfer all said trust shares to the persons named in said schedule " A " hereto annexed marked Schedule of Relatives 20 as therein set forth, that is to say—There shall be transferred to the said four nephews all said common shares forming part of the trust shares to be divided amongst them as they the said four nephews, shall think proper, and to each person named in said schedule including said four nephews the number of shares of preferred stock set opposite his or her name respectively and in the case of each such person including said four nephews who shall have died before such distribution the shares intended for such deceased person shall be assigned and transferred by the trustee to his or her legal representatives who shall be 30 entitled to receive the same and said Schedule shall be read with and form part hereof.

(c) In the event of a default being established hereunder as hereinafter set forth all said trust shares shall as hereinafter provided be forthwith re-assigned and re-transferred by the Trustee to Mrs. Ganong and thereupon the said trust shares and all parties hereto shall be freed cleared and absolutely discharged of and from all the trusts and provisions hereof and all things herein contained as fully and effectually as if this agreement had never been proposed or entered into and as if nothing had 40 ever been done or taken place hereunder or in consequence hereof.

(d) The said four nephews shall constitute a managing committee under this trust and be the first members thereof and the said committee shall during the continuance of this trust or until default shall be established hereunder have the following

powers exercisable only by the majority of the members thereof acting as a unit namely :

(1) To remove by writing under their hands and seals any of its members without assigning any cause which writing shall be filed with the trustee.

10 (2) To fill within sixty days after the happening thereof by writing under their hands and seals which shall be filed with the trustee any vacancy in the membership of the committee whether caused by death resignation or removal or failure or refusal to act and any new member of said committee so appointed shall upon accepting the appointment in writing under his hand and seal and filing same with the trustee have in respect of the matters to be dealt with by said committee the same rights as such member and be bound hereby and by all things herein contained as if originally appointed hereby. If such vacancy be not filled as aforesaid within said sixty days Mrs. Ganong may fill the same by writing under her hand and seal which shall be filed with the trustee.

20 (3) To vote all said trust shares at all shareholders' meetings annual or special by the vote of not less than three members voting as a unit or the vote of the nominee of said committee or any three members thereof and for such purpose the trustee is to deposit with and keep deposited with said committee a sufficient proxy and authority therefor in the names of the members for the time being of said committee authorising them or any three of them to so vote said trust shares.

30 (4) To determine all questions arising as between the members of said committee and in respect of the practice and procedure of said committee and the rights, powers and duties of each member thereof and the action to be taken by said committee under this trust and in the event of any dispute between the members of the committee the same shall be submitted by them to arbitration under the provisions of the Arbitration Act 9 Edward the Seventh Chapter 9.

2. The said four nephews for themselves their heirs executors and administrators hereby jointly and severally covenant promise
40 and agree to and with Mrs. Ganong that during the continuance of this trust :

(a) Each member of said committee for the time being will well and faithfully serve as a member of the Board of Directors of the Company and give to the duties of such office such time and attention as may be reasonably necessary to obtain the best

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A.

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1918
—continued.

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Trust
Agreement.
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Eastern
Trust
Company (2)
and W.F.
Ganong
et al (3),
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1918

—continued.

results in the management by the Board of Directors of the business of the Company.

(b) The Board of Directors shall be composed of the four members of the managing committee and if desired by Mrs. Ganong one person duly qualified to be named from time to time by her and said shares shall be accordingly so voted.

(c) That while it is clearly understood that said four nephews and the members of said committee shall not in any event be personally liable for the payment of said dividends or any part thereof nevertheless they and each of them will to the best of their ability and judgment manage the Company and cause the Company to be managed in a prudent and businesslike manner and so as best in their opinion to preserve the goodwill and all other assets and secure the best results and the continuance of the payment of the cumulative dividend on the preferred stock and the commencement of payment of dividends on the common stock.

(d) The capital stock of the Company shall not be increased and no treasury stock mortgage bonds or debentures shall be issued or given by the Company without the written consent of Mrs. Ganong.

(e) The salaries of the principal officers and controllable expenses shall not be unduly increased.

(f) Cumulative dividends at the rate of seven per centum per annum on all said preferred stock shall so long as the earnings permit be regularly and promptly paid.

(g) Dividends on the common stock shall commence to be paid half yearly when and as soon as there has been created a reserve of three hundred and seventy-five thousand dollars calculated according to the best approved methods of computing reserves in such or similar lines of business and thereafter so long as the reserve shall be maintained at not less than three hundred and seventy-five thousand dollars such dividends on common stock shall continue to be paid in each year as the earnings may justify up to but not exceeding a rate of seven per centum per annum until said reserve calculated as aforesaid shall be increased to five hundred thousand dollars whereupon and thereafter so long as the reserve shall be maintained at not less than five hundred thousand dollars all net earnings available for dividends on common stock shall be distributed as dividends thereon half yearly as earned.

(h) No one or more of said four nephews will during the continuance of this trust either directly or indirectly either as sole or joint owner partner shareholder employee adviser or otherwise howsoever be interested in any other business in

Canada like or similar to the business carried on by the Company or which may compete or be liable to compete therewith or permit their names to be used in connection therewith or have adverse financial or other interests in any business habitually benefitting from business transactions with the Company and will not do or cause to be done or if within their power or the power of any of them, to prevent permit to be done anything injurious to the Company or its assets, business credit or goodwill.

Exhibits.

A.

Trust Agreement, Maria F. Ganong (1), Eastern Trust Company (2) and W. F. Ganong et al (3), 15th March, 1918

—continued.

10

(i) The Company will not sell license or otherwise alienate or dispose of its undertaking goodwill trade marks trade names or any of them or any interests in subsidiary companies without the written consent of Mrs. Ganong first had and obtained therefor.

20

3. (1) Provided however that notwithstanding anything hereinbefore or hereinafter contained or in any negotiations letters papers or instruments heretofore made, it is hereby expressly stipulated covenanted promised and agreed by and between all parties hereto as an express condition hereof that this agreement and the trusts hereby created in favour of said four nephews and said other relatives and all things in respect thereof herein contained and all proxies given under the provisions hereof shall end and terminate and cease to have any force forthwith upon and in the case of the establishing as hereinafter expressed of any default hereunder namely :

Default.

30

(a) If at any time during the continuance of this trust the Company shall fail to pay to Mrs. Ganong the full dividends whether the same be or be not earned or declared which ought according to the true intent and meaning hereof be paid to her and the amount or amounts so in default shall be equal to a full year's dividends on the preference shares forming part of said trust shares and Mrs. Ganong shall deliver or cause to be delivered to the trustee a notice or claim by her of such default and a solemn declaration thereof and that she has mailed to each member of said committee at his last known address a like notice or claim and a solemn declaration of such default, there shall thereby be established a default hereunder unless within four months after the date of such mailing there shall be an award under a submission to arbitration that such default has occurred wholly by reason of war conditions then existing or of strike or of destruction of or damage to the plant of the Company by fire or other casualty or of other like cause or causes wholly beyond the control of the Company and of its Board of Directors and of such committee and of the members of such committee and each and every of them and not in any way contributed to by them or any of them and in the event of such award being so made such default shall not be considered as established or operative hereunder to work any forfeiture or entitle Mrs.

Notice Solemn Declaration.

40

Arbitration in Certain Events.

Exhibits.

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—continued.

Ganong to a return of said shares or any of them. If after the mailing of any such solemn declaration and claim of default by Mrs. Ganong as above specified said four nephews or any of them shall dispute the alleged default or claim that the same ought not to be operative by reason of any of the cause or causes aforesaid and claim an arbitration, it is agreed that the matter shall be submitted to arbitration as hereinafter provided.

(b) If the Company or said four nephews or any of them or the Managing Committee or any member of such committee shall fail in whole or in part to do observe keep or perform any- 10 thing which the said four nephews or said committee or members thereof have herein agreed shall be done by said Company or done observed kept or performed by them or any of them whereby Mrs. Ganong shall sustain or be liable to sustain any loss or injury or the Company is or is liable to be substantially injured or damaged in its property, assets, earning power, good- will or reputation or whereby the payment of dividends on said trust shares may be or be liable to be decreased or imperilled and Mrs. Ganong shall deliver or cause to be delivered to the trustee a notice or claim by her of such default and a solemn 20 declaration thereof and that she has mailed to each member of said committee at his last known address a like notice or claim and a solemn declaration of such default, the matter shall be submitted to arbitration as hereinafter provided and if upon such submission an award is made that a default has occurred hereunder then upon the filing of such award with the trustee there shall thereby be established a default hereunder.

(2) And on the part of Mrs. Ganong and of the said committee and of the members thereof as well those now members thereof as those who may hereafter become members thereof it is agreed that 30 all matters hereinbefore referred to as matters to be submitted to arbitration shall be by the parties that is Mrs. Ganong of the one part and said committee or the members thereof as the other party, submitted to the determination of two arbitrators under the provisions of The Arbitration Act 9 Edward VII Chapter 9, one of said arbitrators to be appointed by Mrs. Ganong and the other by the members of said committee. In the case of a claim of default under the foregoing sub-section (b) of this section 3 if in the opinion of the arbitrators the matters complained of are true and material but are not such as to justify an immediate award of default but are 40 such as to call for some relief they may prescribe the redress recompense amends remedy or other relief if any which in their opinion ought to be made or given therefor or in respect thereof and the time within which the same shall be made or given and unless the same be so made or given to the satisfaction of the arbitrators within the prescribed time, said arbitrators may and shall by their

award which or a duplicate of which shall be filed with the trustee declare that default has been made hereunder and the award so made and filed shall be final and binding upon the parties and there shall thereby be established a default hereunder.

(3) Each claim of default hereunder shall constitute a new and separate matter for submission to arbitration as aforesaid and shall in no wise be limited or restricted or considered estopped by any previous arbitration hereunder.

(4) In the event of any default being established hereunder as
10 hereinbefore provided the trustee may and shall after ten days' notice mailed postpaid and registered to Mrs. Ganong and the members of the committee for the time being of its intention so to do re-assign and re-transfer all said trust shares to Mrs. Ganong and upon such re-assignment or re-transfer being completed the said trust shares and all parties hereto shall as hereinbefore stated be freed and cleared and absolutely discharged of and from all the trusts and provisions hereof and all things herein contained as fully and effectually as if this agreement had never been proposed or entered into and as if nothing had ever been done or taken place
20 hereunder or in consequence hereof.

(5) Notwithstanding anything herein contained Mrs. Ganong may at any time by writing under her hand and seal filed with the trustee withdraw or abandon any claim previously made by her of a default hereunder and discontinue any proceedings for arbitration in respect thereof at any stage of such proceedings and may in like manner waive an established default if such course shall appear to her to be desirable and in the event of any such waiver of an established default the same shall not operate as a forfeiture hereunder and nothing done or permitted to be done or omitted to be done by
30 the committee or any member thereof pursuant to any written request agreement or consent of Mrs. Ganong shall be a ground for default hereunder.

(6) And Mrs. Ganong after due consideration as aforesaid and with full knowledge of the effect hereof hereby declares this instrument to be irrevocable except as hereinafter expressed and made for the purposes aforesaid and in consideration of and to secure the continued goodwill and services of said four nephews as aforesaid in connection with said Company and its business and the upbuilding thereof during her lifetime provided however it is hereby agreed and
40 declared that notwithstanding anything in this indenture or in said schedule forming part hereof contained this indenture and said schedule and the disposition of said trust shares thereby made may be revoked, cancelled and made void in whole or in part or added to altered amended varied or otherwise changed in substance as well as in form by a writing under seal executed by Mrs. Ganong of the one part and said four nephews or their survivors and the legal

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Trust
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and W. F.
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et al (3),
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representatives of such of said four nephews as may be then deceased of the other part and filed with the trustees.

5. The said trust shares shall bear and are hereby charged with all inheritance succession legacy and other like public charges of every nature and kind whatsoever which may be levied rated charged or otherwise imposed by any Dominion, Provincial or other Government authority or by any municipal or other public authority whatsoever upon or in respect of the transmission, devolution, transferring, assigning or passing of said shares or any of them or the stock thereby represented or by reason of this trust or anything 10 herein contained or anything done or to be done hereunder and all to the exoneration of Mrs. Ganong and her estate as well during her life as after her death this being an express stipulation condition and agreement hereof the shares of each beneficiary however to bear and pay such charges only as may be imposed in respect thereof and not the one for the other.

6. This agreement is hereby further declared to be a family compact and agreement and binding as such between all parties hereto.

7. Any trustee hereunder may resign the trust and be discharged 20 from all further duties and liabilities hereunder after giving one month's notice in writing to Mrs. Ganong and the members of the committee for the time being provided that such shorter notice may be given as the said parties so notified shall accept as sufficient. Any trustee hereunder may be removed from office by written instrument to that effect executed by Mrs. Ganong and all members for the time being of the committee under their signatures and seals and filed with the trustee. In case any trustee hereunder shall die resign be removed or become incapable of acting or fail or refuse to act a successor or successors to such trustee may be appointed by 30 an instrument in writing executed by Mrs. Ganong and the members for the time being of said committee under their signatures and seals. If for three months after a vacancy shall occur in the trust the same shall not be filled as herein, the former trustee or Mrs. Ganong or any member or members of the committee may apply to the proper court or judge in that behalf for the appointment of a new trustee to fill such vacancy in the trust and the said Court or judge may thereupon fill such vacancy in the trust by the appointment of a trustee or trustees who shall thereupon be and become trustee under this instrument, and every trustee so appointed shall be vested with 40 the same property powers rights and privileges and charged with the same duties and responsibilities as are herein expressed to be vested in or imposed on the trustee and upon each such new appointment of trustee hereunder the trust shares shall be assigned to and vest in the new trustee under the trusts hereof.

8. It is expressly declared as follows that is to say :—

(1) The trustee may in relation to these presents act on the opinion or advice of any lawyer or other expert whether retained by the trustee or by the Company or any of the parties interested hereunder or otherwise and may act on the award made under any arbitration held as herein provided for and shall not be responsible for any loss or damage occasioned by so acting.

10 (2) Any such opinion advice or award may be sent or obtained by letter telegram or cablegram and the trustee shall not be liable for acting on any opinion award advice or information purporting to be conveyed by any such letter telegram or cablegram although the same shall contain some error or shall not be authentic.

20 (3) The trustee shall if so minded be at liberty to act on the facts set forth in the solemn declaration of any of the parties hereto which may appear to it to be sufficient and trustworthy and to assume the facts therein set forth as true and the same shall be prima facie evidence of the facts therein declared to and the trustee shall be in no wise bound to call for further evidence or be responsible for any loss or damage that may be occasioned by its failing to do so.

(4) The trustee shall not be responsible for any misconduct on the part of any attorney banker proxy receiver lawyer agent or other person appointed by it hereunder or bound to supervise the proceedings of any such appointee.

(5) The trustee shall only be accountable for reasonable diligence in the management of the trusts hereof.

30 (6) The trustee shall not be bound to give notice to any person or persons of the execution hereof or of anything occurring in the administration of the trusts hereof or in any way to interfere with the conduct of the Company's business or the affairs of said committee or to represent or be represented in respect of said trust shares except as herein particularly and expressly specified.

40 (7) That the trustees shall as regards all the trusts powers authorities and discretions hereby vested in it have absolute and uncontrolled discretion as to the exercise thereof whether in relation to the manner or as to the mode of and time for the exercise thereof and in the absence of fraud it shall be in no wise responsible for any loss costs damages or inconveniences that may result from the exercise or non-exercise thereof.

9. Without prejudice to the right of indemnity given by law to trustees the trustee and every receiver attorney manager agent accountant inspector clerk servant workman or other person appointed by the trustee hereunder, shall be entitled to be indemnified

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*Exhibits.*A.

Trust
Agreement.
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out of the trust shares in respect of all liabilities and expense incurred by it them or him in the execution or purported execution of the trusts hereof or of any powers authorities or discretions vested in it them or him pursuant to these presents and against all actions proceedings costs claims and demands in respect of any and every matter or thing done or omitted to be done in any wise relating to the premises and the trustee may retain and pay out of any moneys in its hands arising from the trusts of these presents the amount of any such moneys and also the remuneration of the trustee as herein provided and in default of having in hand sufficient moneys therefor 10 the parties hereto other than the trustee hereby jointly and severally covenant promise and agree to and with the trustee to pay to the trustee sufficient money therefor.

10. The parties hereto other than the trustee agree to and with the trustee that in each and every year during the continuance of the security hereby created they or some of them will pay to the trustee reasonable remuneration for its services as trustee hereunder and also from time to time as and when incurred and demanded all costs charges and expenses which it may incur in relation to the execution of the trusts hereby in it reposed. 20

11. The present trustee shall not be required to give any security for its conduct or the administration of the trusts hereof. No trustee hereunder shall be in any manner whatever responsible for the mistake oversight forgetfulness error of judgment default or misconduct of itself or himself or of any other trustee or of any receiver attorney manager agent accountant inspector clerk servant workman or other person appointed by the trustee or for the fraud or failure of any banker broker or other person reasonably employed by the trustee or for anything whatever in respect of the premises or the trusts hereby created or in connection with the 30 execution of the same except a breach of trust knowingly and intentionally committed by such trustee.

12. The trustee shall not be bound to do any act or take or continue any action in virtue of the powers conferred or obligations imposed on it hereunder unless and until it has been required to do so by a writing signed by one or more of the parties hereto defining the action which it is required to take and the trustee may before taking or continuing such action require the party or parties at whose instance such action is required to deposit with the trustee satisfactory evidence of the facts justifying such action and reasonable 40 indemnity in respect thereof.

13. The trustee shall not be responsible or liable otherwise than as a trustee for any debts incurred by it or for any damages to persons or property or for salaries or non-fulfilment of contracts. And the trustee shall not be bound to see to the doing observance or performance by any of the parties hereto of any of the obligations hereby

imposed on them or any of them, or in any way to supervise or interfere with the conduct of the Company's business or representation of said trust shares or payment of dividends thereon, or the actions of said committee or any member thereof and in respect of any action to be taken by the trustee it may require that it be kept supplied with moneys and evidence reasonably necessary to enable it to take the required action and with sufficient bonds of indemnity to protect and save harmless the trustee against all loss damage costs charges and expenses by reason thereof.

- 10 14. The trustee and any arbitrators appointed hereunder shall be entitled to access to the books of the Company so far as may be necessary to assist in the determination of any questions that may arise concerning the premises.

15. And the trustee hereby accepts the trusts herein declared.

- In Witness Whereof the said parties hereto other than the said trustee have hereto set their hands and seals the day and year first hereinbefore written and the trustee has caused these presents to be executed under its common corporate seal and the signatures of James Manchester its Vice-President and Clarence H. Ferguson its
20 Manager at Saint John.

Signed sealed and delivered
in the presence of:

(Sgd.) A. P. BARNHILL, as to M. F. Ganong, W. F., J. E., W. K. and A. D. Ganong.	{	(Sgd.) MARIA F. GANONG. [L.S.]
		(Sgd.) WILLIAM F. GANONG. [L.S.]
		(Sgd.) JAMES E. GANONG. [L.S.]
		(Sgd.) WALTER K. GANONG. [L.S.]
		(Sgd.) ARTHUR D. GANONG. [L.S.]

(Sgd.) M. M. CORKERY as to execution by The Eastern Trust Company.

THE EASTERN TRUST COMPANY,

- 30 [SEAL] (Sgd.) JAMES MANCHESTER, Vice-President.
 (Sgd.) C. H. FERGUSON, Manager.

" A "

SCHEDULE OF RELATIVES.

Annexed to and to be read with and form part of the foregoing indenture and showing distribution of trust shares amongst relatives of late Governor Ganong.

To Mary Louisa Perkins, sister—five hundred and eighty three (583) preference shares.

- 40 To Grace Augusta Caldwell, niece—daughter of Sister, Mary Louisa Perkins, ninety-seven (97) preference shares.

Exhibits.

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Trust
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Ganong (1),
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- To Cicelia Augusta Hyslop, niece—daughter of Sister, Matilda Jane Craig, five hundred and eighty-three (583) preference shares.
- To Jennie Hendry Christmas, niece—daughter of Sister, Cecilia Augusta Macdonald, five hundred and eighty-three (583) preference shares.
- To Frank Alexander Macdonald, nephew—son of Sister, Cecilia Augusta Macdonald, ninety-seven (97) preference shares.
- To Edna Dillenbeck Pellissier, niece—daughter of Brother, Edwin Ganong, one hundred and ninety-five (195) preference shares.
- To May Isabel Weymer, niece—daughter of Brother, Edwin Ganong, 10 two hundred and ninety-two (292) preference shares.
- To Frank Henry Ganong, nephew—son of Brother, Edwin Ganong, ninety-seven (97) preference shares.
- To William James Ganong, nephew—son of Brother, Edwin Ganong, ninety-seven (97) preference shares.
- To Katherine Louisa Whidden, niece—daughter of Brother, James Harvey Ganong, one hundred and ninety-five (195) preference shares.
- To Susan Brittain Ganong, niece—daughter of Brother, James Harvey Ganong, ninety-seven (97) preference shares. 20
- To Dr. William Francis Ganong, nephew—son of Brother, James Harvey Ganong, ninety-seven (97) preference shares.
- To James Edwin Ganong, nephew—son of Brother, James Harvey Ganong, ninety-seven (97) preference shares.
- To Arthur Deinstadt Ganong, nephew—son of Brother, James Harvey Ganong, five hundred and eighty-three (583) preference shares.
- To Walter Kierstead Ganong, nephew—son of Brother, James Harvey Ganong, ninety-seven (97) preference shares.

Total shares of preference stock distributed as above three thousand and seven hundred and ninety (3,790). 30

Three thousand six hundred (3,600) Common Shares to go to and be divided amongst the last four named nephews, sons of Brother James Harvey Ganong; namely Dr. William Francis Ganong, James Edwin Ganong, Arthur D. Ganong, and Walter Kierstead Ganong, as they may agree among themselves.

Province of New Brunswick,
County of Charlotte, SS.

I, Alexander P. Barnhill, a Notary Public duly commissioned appointed and sworn in and for the Province of New Brunswick residing and practising at the City of Saint John in said Province 40 Do Hereby Certify that on this fifteenth day of March in the year of our Lord one thousand nine hundred and eighteen before me at Saint Stephen personally came and appeared Maria Famicha Ganong party named in the foregoing instrument and acknowledged that she signed sealed executed and delivered the said instrument as and for

her act and deed to and for the uses and purposes therein expressed and contained.

[L.S.]

In Testimony Whereof I the said Notary Public have hereunto set my hand and affixed my Notarial Seal at the said town of Saint Stephen the day and year in this certificate written.

(Sgd.) ALEXANDER P. BARNHILL
Notary Public
New Brunswick.

10

Province of New Brunswick
County of Charlotte SS.

I Alexander P. Barnhill a Notary Public duly commissioned appointed and sworn in and for the Province of New Brunswick residing and practising at the City of Saint John in said Province Do Hereby Certify that on this fifteenth day of March in the year of our Lord one thousand nine hundred and eighteen before me at the town of Saint Stephen in the County of Charlotte and said Province personally came and appeared William F. Ganong, James
20 E. Ganong, Walter K. Ganong and Arthur D. Ganong, parties named in the foregoing instrument and severally acknowledged that they signed sealed executed and delivered the said instrument as and for their respective act and deed to and for the uses and purposes therein expressed and contained.

[L.S.]

In Testimony Whereof I the said Notary Public have hereunto set my hand and affixed my Notarial Seal at Saint Stephen aforesaid the day and year in this certificate written.

30

(Sgd.) ALEXANDER P. BARNHILL,
Notary Public.

Province of New Brunswick SS.

I, Clarence H. Ferguson, of the City of Saint John in the City and County of Saint John, and Province of New Brunswick Barrister at Law make oath and say :

1. That I am the Manager at the said City of Saint John of The Eastern Trust Company (hereinafter called the said company) one of the parties named in the foregoing instrument and James Manchester is Vice-President of the said company.
- 40 2. That the corporate seal affixed to the foregoing instrument is the corporate seal of the said company and was thereto affixed by order of the Board of Directors of the said company to and for the uses and purposes therein expressed and contained.
3. That the signatures to the said instrument "James Manchester" and "C. H. Ferguson" as Vice-President and

Exhibits.

A.

Trust
Agreement.
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Trust
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Manager respectively of the said Company are the signatures of the said James Manchester and myself as such Vice-President and Manager respectively and were thereto subscribed by order of the Board of Directors of the said Company to and for the uses and purposes therein expressed and contained.

4. That the said Vice-President and Manager are the authorised officers of the said Company to execute the said instrument.

(Sgd.) CLARENCE H. FERGUSON.

10

Sworn at the City of Saint John
in the City and County of
Saint John and Province of
New Brunswick this 28th
day of March A.D. 1918.
Before me,

(Sgd.) C. S. SANFORD.

A Notary Public in and for the
Province of New Brun-
swick duly appointed and
sworn residing and practis-
ing at the said City of Saint
John.

20

In Testimony Whereof I the said
Notary Public have hereunto set
my hand and affixed my Notarial
Seal at the said City of Saint
John the day and year last
aforesaid.

[L.S.]

(Sgd.) C. S. SANFORD
Notary Public 30
New Brunswick.

B.
Last Will
and Testa-
ment of
Maria
Famicha
Ganong,
25th
September,
1924.

"B."—Last Will and Testament of Maria Famicha Ganong.

(" B " J.B.M.B., C.J. 19 Dec./39.)

I, Maria Famicha Ganong of the Town of Saint Stephen in the County of Charlotte and Province of New Brunswick, Widow and Relict of the Honourable Gilbert W. Ganong, late Lieutenant-Governor of the Province of New Brunswick, Do Hereby Make, Publish and Declare this as and for my last Will and Testament, hereby revoking and making void all Wills, Codicils and Testamentary Dispositions by me at any time heretofore made.

40

1. I hereby nominate, constitute and appoint my brother

Executors. Edgar M. Robinson of Edgewater, New Jersey, my sister Jeannette Robinson Belyea of the said Town of Saint Stephen and Samuel A. McBride of the said Town of Saint Stephen, Business Manager, to be Executors and Trustees of and under this my last Will and Testament.

Exhibits,
B.
Last Will
and Testa-
ment of
Maria
Famicha
Ganong,
25th
September,
1924
—continued.

2. I direct that my funeral and testamentary expenses and all my just debts shall be paid out of my estate by my Executors as soon after my decease as may be possible.

10 Perpetual
care
Cemetery.

3. I direct that my Executors shall pay and devote such sum as in their opinion may be necessary to provide for the perpetual care of the five lots in the Cemetery at said Town of Saint Stephen, some of which are in the name of my late husband and some of which are in the name of my father, the same forming our family group of lots.

Jeannette
R. Belyea.

Furniture in
St. Stephen
residence.

20 Furniture at
Residence
Old Folks
Home.

4. I give, devise and bequeath to my said sister Jeannette Robinson Belyea such part or parts or articles of my household furniture, furnishings, books, plate, silverware, ornaments, bric-a-brac and other household goods and effects in the home in which I now reside at Saint Stephen aforesaid as she may desire for her own use and all of the remainder thereof I give to the Trustees for the "Old Folks Home" to be founded under the terms of this my Will as hereinafter set out and hereinafter called the "said Old Folks Home."

Jeannette
R. Belyea

5. I further devise and bequeath to my said sister Jeannette Robinson Belyea as follows:—

\$100,000.00.

(a) The sum of One Hundred Thousand Dollars (\$100,000.00).

Real Estate.

30

(b) The McMonagle Homestead, Lands, Buildings and Premises, so called, situate on Union Street in said Town of Saint Stephen.

Personal
Property.

(c) My freehold property with my winter home and other buildings thereon situate at Tampa in the State of Florida with all household furniture, furnishings, books, plate, silverware, ornaments, bric-a-brac and other like goods and effects in said buildings and upon the premises of my said winter home in case I own the same at the time of my death.

Jewelry, etc.

40

(d) All my jewelry, lace, clothing and other like personal effects to retain for her own use such portion or portions thereof as she shall elect so to do and the remainder thereof to be disposed of by her amongst such of my relatives and friends and such of the relatives and friends of my late husband as she may in her sole and absolute discretion think proper, and as she may believe to be in accordance with what would have been my wishes were I making such dispositions of said personal effects.

Exhibits. Auto.
B.
Last Will
and Testa-
ment of
Maria
Famicha
Ganong,
25th
September,
1924
—continued.

Edgar M.
Robinson.

\$100,000.00.

Real Estate.

600 shares
Pfd. Stock
G. B., Ltd.

In trust.

Trusts.

Children of
first marriage
Income.

Division of
principal.

(e) My automobile and all robes and automobile equipment used in connection therewith.

(f) I release my said sister Jeannette Robinson Belyea of and from all indebtedness, if any, due from her to me at the time of my death, and I direct my Executors to cancel and deliver up to her all notes and other evidences of such indebtedness and to return to her all stocks and securities held by me as security for such indebtedness.

6. I give, devise and bequeath to my said brother Edgar M. Robinson as follows :—

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(a) The sum of One Hundred Thousand Dollars (\$100,000.00).

(b) All my share and interest in the Oak Bay Cottage and lands so called being the lands acquired from one Young and one Bedford with all shore and water and other rights pertaining thereto if and so far as owned by me at the time of my death.

7. I give and bequeath to my said brother Edgar M. Robinson as Trustee Six Hundred (600) shares of the Preferred Stock of Ganong Bros. Limited, of the aggregate par value of Sixty Thousand Dollars (\$60,000.00), the same to be held as a Trust Fund upon the following 20 Trusts :—

(a) That he my said brother shall as such Trustee retain the corpus of the said Trust Fund until the youngest of the three children of my said brother by his first marriage shall attain the age of twenty-nine years or would have attained that age had such youngest child so long lived.

(b) That so long as the principal of the said Trust Fund shall be so retained by my said brother as Trustee hereunder he shall retain and take for his own use all income thereof.

(c) If my said brother shall die before the youngest of his 30 said three children shall attain the age of twenty-nine years or would have attained that age had the said youngest child so long lived, then another Trustee shall be appointed in the place of my brother then so deceased and from and after the date of the death of my said brother until the youngest of his said three children shall attain the age of twenty-nine years or would have attained that age had he so long lived, the income from the principal of the said Trust Fund shall go to the said three children of my said brother in equal shares or such of the said three children as shall at the date of the death of my said brother be 40 living and the issue, if any, of any of the said three children then deceased share and share alike per stirpes.

(d) When the youngest of the said three children of my said brother shall attain the age of twenty-nine years or would have attained that age had said youngest child so long lived, the principal of the said Trust Fund shall be divided equally

amongst the said three children of my said brother or such of said three children as shall then be living and the issue, if any, of any of said three children then deceased share and share alike per stirpes.

Exhibits.

B.
Last Will
and Testa-
ment of
Maria
Famicha
Ganong,
25th
September,
1924
—continued.

8. I further give and bequeath to the said three children of my said brother Edgar M. Robinson by his first marriage Two Hundred (200) shares of the Preferred Stock of Ganong Bros., Limited, of the aggregate par value of Twenty Thousand Dollars (\$20,000.00) to be divided between them as follows :—

10

Children of
Edgar M.
Robinson.

200 Shares
Prfd. Stock G.B.

One Hundred (100) shares of the total par value of Ten Thousand Dollars (\$10,000.00) to his daughter Margaret Isobel Robinson, Fifty (50) shares of the par value of Five Thousand Dollars (\$5,000.00) to his son Donald C. Robinson and Fifty (50) shares of the par value of Five Thousand Dollars (\$5,000.00) to his son John E. Robinson, provided however, that if any of the said three children of my said brother shall predecease me leaving issue which shall survive me such issue shall take the parent's share and if any of the said three children of my said brother shall predecease me without leaving issue which shall survive me then the share of such deceased child shall go to the survivors or survivor of the said three children and the issue of any of the said three children deceased in equal shares per stirpes.

20

Ella May Pike.

See 1st codicil.
Para. 1—
(\$2,000 add to
Ella May Pike)

9. In the event of Ella May Pike, for many years in my employ, surviving me and being in my employ at the time of my death, I direct my Executors and Trustees to set apart and retain One Hundred and Seven and Eight-tenths (107 8/20) shares of the New Brunswick and Canada Railroad Perpetual Guaranteed Debenture Stock of the aggregate par value of Two Thousand One Hundred and Fifty-eight Pounds Sterling (£2,158 Sterling) as a Trust Fund upon Trust to pay the annual income thereof each year to the said Ella May Pike so long as she shall live, and at her death in case the same shall not then have been made over to the said Old Folks Home as hereinafter provided for, to make over the principal of the said Trust Fund to the said Old Folks Home as an addition to the Bagley and Ormrod Endowment Funds hereinafter provided for, one-half to each such Fund. Provided however, that if the said Ella May Pike at any time being then eligible therefor shall desire to become an inmate of the said Old Folks Home then upon the said Ella May Pike executing a release of all right to the said income and upon the said One Hundred and Seven and Eight-tenths (107 8/20) shares of the New Brunswick and Canada Railroad Perpetual Guaranteed Debenture Stock being at her request by my said Trustees, as said Trustees shall in such event be authorised so to do, duly transferred to the said Old Folks Home as the absolute property of the said Old Folks Home, the said Old

30

Ella May Pike.

40

N. B. &
Canada
Debentures,
Trust.

Old Folks
Home (p. 2)

Exhibits.

B.
Last Will
and Testa-
ment of
Maria
Famicha
Ganong,
25th
September,
1924
—continued.

Margaret
Jones.

50 shares
Pfd. Stock
G. B.

Trust.

Old Folks
Home.

Folks Home shall accept the said shares in full payment and satisfaction of all charges of the said Old Folks Home for the admission and maintenance of said Ella May Pike as such inmate.

10. In the event of Margaret Jones, Nurse, mentioned in the Will of my late husband, surviving me, I direct my Executors and Trustees to set apart and retain Fifty (50) shares of the Preferred Stock of Ganong Bros. Limited, of the aggregate par value of Five Thousand Dollars (\$5,000.00) as a Trust Fund upon trust to pay the income thereof each year to the said Margaret Jones so long as she shall live and at her death, in case the same shall not then have been 10 transferred to the said Old Folks Home as hereinafter provided for, to make over the principal of the said Trust Fund to the said Old Folks Home as an addition to the said Bagley and Ormrod Endowment Funds, one-half to each such Fund. Provided however, that if the said Margaret Jones at any time being then eligible therefor shall desire to become an inmate of the said Old Folks Home, then upon the said Margaret Jones executing a release of all rights to the said income and upon the said Fifty (50) shares of Ganong Bros. Limited, being at her request by my said Trustees, as said Trustees in such event are hereby authorised so to do, duly transferred to the 20 said Old Folks Home as the absolute property of the said Old Folks Home, the said Old Folks Home shall accept the said shares in full payment and satisfaction of all charges of the said Old Folks Home for the admission and maintenance of said Margaret Jones as such inmate.

11. I further give and bequeath as follows :—

Union Street
Baptist
Church.

(1) To the Trustees of the Union Street Baptist Church, in the said Town of Saint Stephen as follows :—

Current Exps.

(a) Five Thousand Dollars (\$5,000.00), the principal thereof to be retained by the Trustees of the said Church 30 as a Trust Fund and the income thereof only to be used each year for the current expenses of the said Church.

Home Missions.

(b) Two Thousand Five Hundred Dollars (\$2,500.00), the principal thereof to be retained by the said Trustees of the said Church as a Trust Fund and the income thereof only to be paid in each year by the Trustees of the said Church as an addition to the contribution of the congregation of the said Church for Home Missions.

Foreign
Missions.

(c) Two Thousand Five Hundred Dollars (\$2,500.00), the principal thereof to be retained by the Trustees of the 40 said Church as a Trust Fund and the income thereof only to be paid in each year by the Trustees of the said Church as an addition to the contribution of the congregation of the said Church for Foreign Missions.

(d) Five Thousand Dollars (\$5,000.00), the principal thereof to be retained by Trustees of the said Church as a

Ministers Annuity Fund.	Trust Fund and the income thereof only to be paid in each year by the Trustees of the said Church as an addition to the contribution of the congregation of the said Church to the Board of the Ministers Annuity Fund of the United Baptist Convention of the Maritime Provinces.	<i>Exhibits.</i>
Ganong Bros., Limited.	(2) To Ganong Bros. Limited, of the Town of Saint Stephen Four Hundred (400) shares of the Capital Stock of The New Brunswick Telephone Company, Limited, of the aggregate par value of Four Thousand Dollars (\$4,000.00), the principal thereof to be retained by said Ganong Bros. Limited, as a Trust Fund to be known as "The Maria F. Ganong 'G.B.' Employees Hospital Aid Fund" and the income thereof only to be expended from time to time to provide a bed or the equivalent of the cost of a bed on account of the cost of a room or other accommodation in the Chipman Memorial Hospital at Saint Stephen for any then employee or prior employee of said Ganong Bros. Limited, in the opinion of the Board of Directors of said Ganong Bros. Limited, requiring hospital aid and said expenditure shall at all times be under the control of the Board of Directors of Ganong Bros. Limited, and be made for the aid of such employee or prior employee for such time and under such terms and conditions as to the said Board of Directors of Ganong Bros. Limited, may appear proper. In case said Ganong Bros. Limited shall at any time cease for the space of two consecutive years to operate its works at the Town of Saint Stephen aforesaid, or cease for the space of two consecutive years to so operate under the name of "Ganong Bros. Limited," it is my will that the said Ganong Bros. Limited, shall pay or transfer the principal of the said Trust Fund with all accumulations of income, if any, to the said Old Folks Home as an addition to the said Bagley and Ormrod Endowment Funds, one-half to each such Fund.	B. Last Will and Testa- ment of Maria Famicha Ganong, 25th September, 1924 —continued—
10		
Hospital Aid Fund.		
Codicil Para. 1. 625.		
20		
Parts of Codicil.		
30		
Old Folks Home.		
Chipman Memorial Hospital.		
Codicil Para. 2.		
40		
\$500.00.		
20 shares Prfd. Stock G. B.		

B.

**Last Will
and Testa-
ment of
Maria
Famicha
Ganong,
25th
September,
1924**

Chap. 67, 1902
P.174.

—continued.

Old Folks Home.

**Saint Stephen
Rural
Cemetery.
\$5,000.00.**

1856—45
1861—59
1857—24

15 years

Old Folks
Home.
Chap. 51-1922,
293.
35-1924, 330.

**St. John
Protestant
Orphans Home.**

Coverdale
R. S. 109-1271.

Chap. 16, 1928
45.

**School for
Blind.**

Out.

Acadia.

value of Two Thousand Dollars (\$2,000.00) the principal thereof to be retained by the said Hospital as a Trust Fund and the income thereof only to be used in each year for the upkeep of the said buildings and furnishings of the said isolation accommodation and in the event of the said Chipman Memorial Hospital ceasing for the space of two consecutive years to carry on as a Hospital, then said principal together with all accumulation of income thereof, if any, shall be paid or transferred by the said Hospital to the said Old Folks Home as an addition to the said Bagley and Ormrod Endowment Funds, one-half to 10 each such Fund.

(4) To the Saint Stephen Rural Cemetery Company, the sum of Five Thousand Dollars (\$5,000.00) for the building or to assist in the building of a Mortuary Chapel in said Cemetery, it being my will that if the said sum shall be deemed by the Board of Directors of the said Cemetery Company insufficient to provide a satisfactory Chapel, then the principal shall be retained by the said Cemetery Company and the income thereof allowed to accumulate until in the opinion of the said Board of Directors of the said Cemetery Company the aggregate of 20 the principal and accumulations of interest shall be sufficient for such purpose. Provided, however, that if the said moneys shall not be so used for the building of the said Mortuary Chapel within fifteen years next after my death, the principal and all accumulations of interest thereon shall be paid by the Board of Directors of the said Cemetery Company to the said Old Folks Home as an addition to the said Bagley and Ormrod Endowment Funds, one-half to each such Fund.

(5) To the Saint John Protestant Orphans Home the sum of Two Thousand Five Hundred Dollars (\$2,500.00), the principal 30 thereof to be retained by the said Orphans Home as a Trust Fund and the income thereof only to be used in each year for the current expenses of the said Orphans Home.

(6) To the Inter-Provincial Home for Women at Coverdale, Albert County in said Province of New Brunswick the sum of Two Thousand Five Hundred Dollars (\$2,500.00), the principal thereof to be retained by the said Inter-Provincial Home as a Trust Fund and the income thereof only to be used in each year for the current expenses of the said Inter-Provincial Home.

(7) To the Maritime School for the Blind at Halifax in 40 the Province of Nova Scotia, the sum of One Thousand Dollars (\$1,000.00), the principal to be retained by the said School as a Trust Fund and the income thereof only to be used in each year for the current expenses of the said School.

(8) To Acadia College at Wolfville in the Province of Nova

Out.

Scotia the sum of Five Thousand Dollars (\$5,000.00), the principal thereof to be retained by the said College as a Trust Fund to establish a scholarship at the said College to be known as "The Gilbert W. Ganong Scholarship" upon the Trusts hereinafter mentioned, namely :—

Exhibits.
B.
Last Will
and Testa-
ment of
Maria
Famicha
Ganong,
25th
September,
1924
—continued.

10

(a) The income only shall be used in each year in payment of the tuition fees and other charges of the said College for the attendance and tuition of the student for the time being holding the said scholarship and the balance of the said income shall be used for or on account of payment for the board, support and maintenance of the said student while holding said scholarship and while so in attendance at said College.

20

(b) The scholarship shall be awarded by the Board of School Trustees of Saint Stephen from time to time, each award being for a period of two years, to the Protestant student of the Public Schools of Saint Stephen or the County of Charlotte, male or female, preference being given always to a student of the Public Schools of Saint Stephen whom the said Board of School Trustees may decide to be most worthy and most deserving and in making each such award the said Board shall consider the scholastic attainments, character, ability and financial needs of such students.

(c) In case any holder of the said scholarship shall die or for any other reason cease to attend the said College before the expiration of his or her two years' tenure of the said scholarship the said Board may make a new award.

University
of New
Brunswick.
\$5,000.00.

30

(9) To the University of New Brunswick at Fredericton in the Province of New Brunswick the sum of Five Thousand Dollars (\$5,000.00), the principal thereof to be retained by the said University as a Trust Fund to establish a scholarship at the said University to be known as "The Gilbert W. Ganong Scholarship" upon the Trusts hereinafter mentioned, namely :—

40

(a) The income only shall be used in each year in payment of the tuition fees and other charges of the said University for the attendance and tuition of the student for the time being holding the said scholarship and the balance of the income shall be used for or on account of payment for the board, support and maintenance of the said student while holding said scholarship and while so in attendance at said University.

(b) The scholarship shall be awarded by the Board of School Trustees of Saint Stephen from time to time, each award being for a period of two years, to the Protestant student of the Public Schools of Saint Stephen or the County

Exhibits.

B.
Last Will
and Testa-
ment of
Maria
Famicha
Ganong,
25th
September,
1924
—continued.

St. Stephen
"Y's."
\$1,000.00.

Old Folks
Home.

Women's
Christian
Temp. Union
St. Stephen.
\$500.00.

Old Folks
Home.

War Veterans.
\$500.00.

of Charlotte, male or female, preference being given always to a student of the Public Schools of Saint Stephen whom the said Board of School Trustees may decide to be most worthy and most deserving and in making each such award the said Board shall consider the scholastic attainments, character, ability and financial needs of such students.

(c) In case any holder of the said scholarship shall die or for any other reason cease to attend the said University before the expiration of his or her two years' tenure of said scholarship the said Board may make a new award.

10

(10) To the Society known as the "Y's" in the Town of Saint Stephen the sum of One Thousand Dollars (\$1,000.00), the principal thereof to be retained by said Society as a Trust Fund and the income thereof only in each year to be applied by said Society on account of its current expenses and the principal of this bequest shall be paid by my Executors and Trustees to the President and Secretary for the time being of said Society, and the receipt of said President and Secretary shall be a sufficient discharge to my said Executors and Trustees therefor. Provided that if the said Society shall at any time 20 after my death cease for the period of two years to carry on its present work in the said Town of Saint Stephen or cease for said period to have at least two regular meetings of its Governing Board and one regular general meeting of the Society in each year, then it is my desire that the said President and Secretary shall pay the principal of said moneys to the said Old Folks Home as an addition to the said Bagley and Ormrod Endowment Funds, one-half to each such Fund.

(11) To the Women's Christian Temperance Union of the said Town of Saint Stephen the sum of Five Hundred Dollars 30 (\$500.00) as a memorial to my mother, the principal thereof to be retained by said Union as a Trust Fund and the income thereof only to be expended in each year in such manner as the Governing Board of the said Union may determine to be most advisable with a view of promoting the work of the said Union, and if the said Union shall at any time after my death cease for the period of two consecutive years to carry on its present work in the said Town of Saint Stephen or for said period cease to have at least two regular meetings of its Governing Board and one regular general meeting of the members of the Union in 40 each year, then it is my desire that the said Union shall pay and make over the principal of said Trust Fund to the said Old Folks Home as an addition to the said Bagley and Ormrod Endowment Funds, one-half to each such Fund.

(12) To the War Veterans' Association of the Town of Saint Stephen the sum of Five Hundred Dollars (\$500.00), the

principal thereof to be retained by said Association as a Trust Fund and the income thereof only to be used in each year for the current expenses of the said Association. In the event of the said War Veterans' Association of the Town of Saint Stephen ceasing at any time for the period of two consecutive years to carry on its present work in the Town of Saint Stephen or for said period ceasing to have at least two regular meetings of its Governing Board and one regular general meeting of the general body in each year, then it is my desire that the said Association shall pay and make over the principal of said Trust Fund to the said Old Folks Home as an addition to the said Bagley and Ormrod Endowment Funds, one-half to each such Fund.

Exhibits.
B.
Last Will
and Testa-
ment of
Maria
Famicha
Ganong,
25th
September,
1924
—continued.

10
Old Folks
Home.

Salvation
Army.
\$500.00.

20

Old Folks
Home.

Girl Guides.
\$500.00.

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40
Old Folks
Home.

Boy Scouts.
\$500.00.

(13) To the Salvation Army of the Town of Saint Stephen the sum of Five Hundred Dollars (\$500.00), the principal thereof to be retained by said Salvation Army as a Trust Fund, the income thereof only to be used in each year for the relief of the poor in and about said Town of Saint Stephen in the Christmas season. In the event of the said Salvation Army of the Town of Saint Stephen ceasing at any time for the period of two consecutive years to carry on its present work in the Town of Saint Stephen or for said period ceasing to have at least two regular meetings of its Governing Board and one regular general meeting of the general body in each year, then it is my desire that the said Salvation Army shall pay and make over the principal of said Trust Fund to the said Old Folks Home as an addition to the said Bagley and Ormrod Endowment Funds, one-half to each such Fund.

(14) To the Girl Guides Company No. 1 of the Town of Saint Stephen the sum of Five Hundred Dollars (\$500.00), the principal thereof to be retained by the said Girl Guides as a Trust Fund and the income thereof only to be used in each year for the current expenses of the annual outing of the said Girl Guides. In the event of the said Girl Guides Company No. 1 of the Town of Saint Stephen ceasing at any time after my death for the period of two consecutive years to carry on its present work in the Town of Saint Stephen or for said period ceasing to have at least two regular meetings of its Governing Board and one regular general meeting of its members in each year, then it is my desire that the said Girl Guides Company No. 1 shall pay and make over the principal of the said Trust Fund to the said Old Folks Home as an addition to the said Bagley and Ormrod Endowment Funds, one-half to each such Fund.

(15) To the Protestant Boy Scouts of the Town of Saint Stephen known as "The First Saint Stephen Troop of Boy Scouts" the sum of Five Hundred Dollars (\$500.00), the principal

Exhibits.

B.
Last Will
and Testa-
ment of
Maria
Famicha
Ganong,
25th
September,
1924
—continued.

Old Folks
Home.

Red Cross.
\$1,000.00.

Old Folks
Home.

Baptist
Church,
Hatfield's
Point.

Miscellaneous.

thereof to be retained by the said Boy Scouts as a Trust Fund and the income thereof only to be used in each year for the expenses of the annual outing of the said Boy Scouts. In the event of the said Boy Scouts of the Town of Saint Stephen ceasing at any time after my death for the period of two consecutive years to carry on its present work in the said Town of Saint Stephen or for said period ceasing to have at least two regular meetings of its Governing Board and one regular meeting of its members in each year, then it is my desire that the said Boy Scouts shall pay and make over the principal of the said 10 Trust Fund to the said Old Folks Home as an addition to the said Bagley and Ormrod Endowment Funds, one-half of each such Fund.

(16) To the Red Cross of the Town of Saint Stephen the sum of One Thousand Dollars (\$1,000.00), the principal thereof to be retained by the said Red Cross as a Trust Fund and the income thereof only to be used in each year for the current expenses of the said Red Cross. In the event of the said Red Cross of the Town of Saint Stephen ceasing at any time after my death for the period of two consecutive years to carry on 20 its present work in the Town of Saint Stephen or for said period ceasing to have at least two regular meetings of its Governing Board and one regular meeting of its members in each year, then it is my desire that the said Red Cross shall pay and make over the principal of the said Trust Fund to the said Old Folks Home as an addition to the said Bagley and Ormrod Endowment Funds, one-half to each such Fund.

(17) To the Trustees of the Baptist Church at Hatfield's Point in the County of Kings in the said Province of New Brunswick the sum of Five Hundred Dollars (\$500.00). 30

(18) To the Trustees of the Baptist Church at Kiersteadville, Kings County, in the said Province of New Brunswick the sum of Five Hundred Dollars (\$500.00).

(19) To my second cousin Belle Campbell the sum of Five Hundred Dollars (\$500.00).

(20) To my cousin Frank Robinson the sum of Five Hundred Dollars (\$500.00).

(21) To my cousin Sarah Miller the sum of Two Hundred and Fifty Dollars (\$250.00).

(22) To my cousin Ida Dukes the sum of Two Hundred 40 and Fifty Dollars (\$250.00).

(23) To Fanny Kierstead widow of Isaiah Kierstead, a relative of my late husband, Fifty (50) shares of the Capital Stock of the New Brunswick Telephone Company of the aggregate par value of Five Hundred Dollars (\$500.00).

- (24) To Gilbert R. Pellessier, a relative of my late husband, Ten (10) shares of the Preferred Stock of Ganong Bros. Limited, of the aggregate par value of One Thousand Dollars (\$1,000.00). *Exhibits. B. Last Will and Testament of Maria Famicha Ganong, 25th September, 1924 —continued.*
- Annuit. (25) To Marian V. Straghan Fifty (50) shares of the Preferred Stock of Ganong Bros. Limited, of the aggregate par value of Five Thousand Dollars (\$5,000.00).
- 10 (26) To Serena Robinson wife of my brother Edgar M. Robinson Ten (10) shares of the Preferred Stock of Ganong Bros. Limited, of the aggregate par value of One Thousand Dollars (\$1,000.00).
- Samuel A. McBride. (27) To Samuel A. McBride the sum of Five Thousand Dollars (\$5,000.00) in addition to and not in lieu of any commissions he may be entitled to as an Executor and Trustee hereunder.
- Albert Bagley. (28) To Albert Bagley for many years in my employ, if he shall be in my employ at the time of my death, the sum of Five Thousand Dollars (\$5,000.00), this bequest being in addition to the right hereinafter given to him to become an inmate of the said Old Folks Home.
- 20 (29) To Oliver Ormrod for many years in my employ, if he shall be in my employ at the time of my death, the sum of Three Thousand Dollars (\$3,000.00), this bequest being in addition to the right hereinafter given him to become an inmate of the said Old Folks Home.
- (30) To Miss Mary C. Abbott of the said Town of Saint Stephen the sum of Five Hundred Dollars (\$500.00).
- 30 (31) To Miss Mabel Thompson of the West Side in the City of Saint John in said Province of New Brunswick, daughter of the late Joseph Thompson, the sum of Five Hundred Dollars (\$500.00).
- (32) To Mary Thompson of the West Side in the said City of Saint John, mother of the said Mabel Thompson, the sum of Five Hundred Dollars (\$500.00), provided, that if the said Mary Thompson shall predecease me, then I give the said sum of Five Hundred Dollars (\$500.00) as a further bequest to the said Mabel Thompson.
- (33) To Arthurette Branscombe, Matron of the Chipman Memorial Hospital, the sum of Two Hundred and Fifty Dollars (\$250.00).
- 40 (34) To Sarah McCrea of Thorndyke, Massachusetts, the sum of Two Hundred Dollars (\$200.00).
- (35) To Jessie Deming Moore of the City of New York, widow of Harry Moore, the sum of One Hundred Dollars (\$100.00).

Exhibits.

B.
Last Will
and Testa-
ment of
Maria
Famicha
Ganong,
25th
September,
1924
—continued.

(36) To Etta de Wolfe of the said Town of Saint Stephen the sum of One Hundred Dollars (\$100.00).

(37) To Abbie Smith of Boston, Massachusetts, daughter of Francis Smith, the sum of One Hundred Dollars (\$100.00).

(38) To Mrs. Emma Vaughan of Chatham in the said Province of New Brunswick the sum of One Hundred Dollars (\$100.00).

(39) To Miss Elda Smith of the City of Halifax, Nova Scotia, daughter of the late C. H. Smith, the sum of One Hundred Dollars (\$100.00).

10

(40) To Miss Mabel Burns of Boston, Massachusetts, niece of Harriet Todd, the sum of One Hundred Dollars (\$100.00).

Old Folks
Home.

50 shares
Pfd. Stock
G. B., Ltd.

Bagley
Endowment.

(41) To the Trustees for the said Old Folks Home to be transferred to the said Old Folks Home when incorporated Fifty (50) shares of the Preferred Stock of Ganong Bros. Limited, of the aggregate par value of Five Thousand Dollars (\$5,000.00), the principal thereof together with all additions thereto of income thereof made under the following provisions of this section of my Will and also together with all additions, if any, made thereto under any other of the provisions of this my Will 20 to be held and retained by the said Old Folks Home as a special Permanent Endowment Fund hereinbefore and hereinafter called "The Bagley Endowment Fund" and the said Fund shall be so held and retained by the said Old Folks Home upon the following trusts, namely:

(a) To add to the principal of the Bagley Endowment Fund all accumulations of income and all increase thereof as and to be and remain part and parcel of the principal thereof until it becomes proper to use the income from the accumulated fund so hereinafter called The Bagley En- 30 dowment Fund as hereinafter directed.

Albert
Bagley
(See p. 15).

(b) In case the said Albert Bagley at any time hereafter being then eligible therefor shall desire to enter the said Old Folks Home as an inmate thereof, the said Old Folks Home shall admit him as such an inmate and from and after the date of his admission so long as he shall continue such an inmate, the said Old Folks Home shall use and accept the income from the Bagley Endowment Fund earned during the period said Albert Bagley shall be such an inmate whether such income shall be more or less than 40 the then requirements of the said Old Folks Home for the admission and maintenance of such an inmate as full payment and satisfaction of all charges of the said Old Folks Home for the admission and maintenance of the said Albert

Bagley while he shall continue to be such an inmate of the said Old Folks Home.

Exhibits.

B.
Last Will
and Testa-
ment of
Maria
Famicha
Ganong,
25th
September,
1924
—continued.

Bagley
Endowment.

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20

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(c) Upon the death of the said Albert Bagley if the income of the Bagley Endowment Fund shall then be sufficient therefor, or if not then sufficient therefor, then so soon thereafter as the said income shall by reason of additions to the principal of the Bagley Endowment Fund made under the provisions of this my Will become sufficient under the then requirements of the said Old Folks Home for the continuous maintenance of an inmate in the said Old Folks Home, the Trustees of the Union Street Baptist Church of the Town of Saint Stephen may name any eligible person, not necessarily a Baptist, to become and be an inmate of the said Old Folks Home, but subject always to the rules and regulations of the said Old Folks Home, and so from time to time as the nominee of the Trustees of the said Church may die or for any other reason cease to be an inmate of the said Old Folks Home, the Trustees of the said Church may name another eligible person to become such an inmate so that from and after the time the Trustees of the said Church first name a person to become such an inmate there shall at all times as nearly as may be be an inmate of the said Old Folks Home so named by the Trustees of the said Church under the provisions of this section of my Will, and at all times while there shall be such an inmate of the said Old Folks Home so named by the Trustees of the said Church, the said Old Folks Home shall take and use the income from the Bagley Endowment Fund as full payment and satisfaction of all charges of the said Old Folks Home for the admission and maintenance of such inmate, and the said Old Folks Home shall during all the times there shall be such an inmate so named by the Trustees of the said Church be entitled to so take and use the full income from the Bagley Endowment Fund, although the same may be in excess of the then requirements of the said Old Folks Home for the maintenance of such an inmate.

Ormrod
Endowment
Fund.

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(42) To the Trustees for the said Old Folks Home to be transferred to the said Old Folks Home when incorporated Fifty (50) shares of the Preferred Stock of Ganong Bros. Limited, of the aggregate par value of Five Thousand Dollars (\$5,000.00), the principal thereof together with all additions thereto of income thereof made under the following provisions of this section of my Will, and also together with all additions, if any, made thereto under any other of the provisions of this my Will to be held and retained by the said Old Folks Home as a special

Exhibits. Ormrod
Endowment
B.
Last Will
and Testa-
ment of
Maria
Famicha
Ganong,
25th
September,
1924
—continued.

Permanent Endowment Fund, hereinafter called "The Ormrod Endowment Fund," and the said Fund shall be so held and retained by the said Old Folks Home upon the following trusts, namely :—

(a) To add to the principal of the said Ormrod Endowment Fund all accumulations of income and all increase thereof as and to be and remain part and parcel of the principal thereof until it becomes proper to use the income from the accumulated Fund so hereinafter called The Ormrod Endowment Fund as hereinafter directed. 10

(b) In case the said Oliver Ormrod at any time hereafter being then eligible therefor shall desire to enter the said Old Folks Home as an inmate thereof, the said Old Folks Home shall admit him as such an inmate and from and after the date of his admission so long as he shall continue such an inmate, the said Old Folks Home shall use and accept the income from the Ormrod Endowment Fund earned during the period said Oliver Ormrod shall be such an inmate whether such income shall be more or less than the then requirements of the said Old Folks Home for 20 the admission and maintenance of such an inmate as full payment and satisfaction of all charges of the said Old Folks Home for the admission and maintenance of the said Oliver Ormrod while he shall continue to be such an inmate of the said Old Folks Home.

(c) Upon the death of the said Oliver Ormrod if the income of the Ormrod Endowment Fund shall then be sufficient therefor, or if not then sufficient therefor, then so soon thereafter as the said income shall by reason of additions to the principal of the Ormrod Endowment Fund 30 made under the provisions of this my Will become sufficient under the then requirements of the said Old Folks Home for the continuous maintenance of an inmate in the said Old Folks Home, the Trustees of the Union Street Baptist Church of the Town of Saint Stephen may name any eligible person, not necessarily a Baptist to become and be an inmate of the said Old Folks Home, but subject always to the rules and regulations of the said Old Folks Home, and so from time to time as the nominee of the Trustees of the said Church may die or for any other reason cease to be an 40 inmate of the said Old Folks Home, the Trustees of the said Church may name another eligible person to become such an inmate so that from and after the time the Trustees of the said Church first name a person to become such an inmate there shall at all times as nearly as may be be an inmate of the said Old Folks Home so named by the Trustees

Ormrod
Endowment
Fund.

of the said Church under the provisions of this section of my Will, and at all times while there shall be such an inmate of the said Old Folks Home so named by the Trustees of the said Church, the said Old Folks Home shall take and use the income from the Ormrod Endowment Fund as full payment and satisfaction of all charges of the said Old Folks Home for the admission and maintenance of such inmate, and the said Old Folks Home shall during all the times there shall be such an inmate so named by the Trustees of the said Church be entitled to so take and use the full income from the Ormrod Endowment Fund, although the same may be in excess of the then requirements of the said Old Folks Home for the maintenance of such an inmate.

Exhibits.
B.
Last Will
and Testa-
ment of
Maria
Famicha
Ganong,
25th
September,
1924
—continued.

10

Arthur D.
Ganong.

Promissory
Note
\$12,900.00.

20

Arthur D.
Ganong.

30

Maria F.
Ganong
Old Folks
Home.

12. And Whereas I have loaned to Arthur D. Ganong, nephew of my late husband, the sum of Twelve Thousand Nine Hundred Dollars and have received from him the said Arthur D. Ganong his promissory note for that amount and have also received from him a transfer of One Hundred and Twenty-nine (129) shares of the Preferred Stock of Ganong Bros. Limited, as security for the payment of said promissory note and whereas if the said Arthur D. Ganong shall survive me I desire to release him from the principal money of said indebtedness or so much thereof as may be due to me at the date of my death, now therefore, if he the said Arthur D. Ganong shall survive me, I do hereby release him the said Arthur D. Ganong from the said principal of said indebtedness or so much thereof as may be due me at the date of my death and declare the said principal indebtedness cancelled and upon payment of all interest due upon said indebtedness to the date of my death my Executors shall cancel and surrender to him said Arthur D. Ganong all promissory notes, if any, held by me at the date of my death for said indebtedness and shall re-transfer to him said shares of stock so held by me as security.

13. And Whereas I desire to found and endow a Home for aged Protestant persons, male and female, as hereinafter expressed to be known as "The Maria F. Ganong Old Folks Home" hereinafter called the "said Old Folks Home" I do hereby will and declare as follows :—

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(a) I desire that the said Old Folks Home shall provide board, lodging and medical aid to those who may be admitted as inmates thereof, and that such Home shall be a Home for aged Protestant persons residents of the Dominion of Canada, preference being given in all cases to residents of the said Town of Saint Stephen and of said County of Charlotte who may be in reduced circumstances and in need of and in the opinion of the Board of Trustees of the said Old Folks Home most deserving of such a Home and who shall be required to pay to the said Old

Exhibits. Inmates.

B.
Last Will
and Testa-
ment of
Maria
Famicha
Ganong,
25th
September,
1924

—continued.

Folks Home according to their ability and as may be agreed upon with the Board of Trustees of the said Old Folks Home, provided that in special cases persons without any or with little means but in the opinion of the said Board of Trustees of the said Old Folks Home particularly deserving may be admitted as inmates of the said Old Folks Home upon such terms, if any, as may be determined by the said Board, and aged married couples otherwise eligible for admission may be admitted as man and wife as inmates of the said Old Folks Home. No person shall be entitled to admission to the said Old Folks Home or be 10 admitted thereto as inmate thereof except by vote of the Board of Trustees of the said Old Folks Home.

Board of
Trustees.

(b) I appoint the Honourable Irving R. Todd, James E. Ganong, Arthur D. Ganong, my brother Edgar M. Robinson, Samuel A. McBride, my sister Jeannette Robinson Belyea, Arthurette Branscombe and Mrs. George T. Baskin and their nominees as a Board of Trustees for the said Old Folks Home for the purpose of applying at the Session of the Legislative Assembly next following my death for incorporation of said Old Folks Home with such Charter, constitution, by-laws, rules 20 and regulations and other provisions therefor and for the continuance thereof as to the Trustees for the said Old Folks Home may appear proper to give effect to my wishes as herein expressed in regard to the said Old Folks Home.

Legislature.

Authority
re by-laws
rules and
regulations.

(c) The Charter of the said Old Folks Home shall give authority to the Board of Trustees of the said Old Folks Home to prescribe and make from time to time fit and proper by-laws, rules and regulations as to the grounds upon which deserving applicants being Protestant residents of the Dominion of Canada approved of by the said Board of Trustees of said Old 30 Folks Home may be admitted to the said Old Folks Home as inmates thereof and the grounds upon which inmates may be removed therefrom and be deprived of and denied further privileges in and in respect of said Old Folks Home and generally for the government and management of the said Old Folks Home. The Charter shall further provide that the Board of Trustees of said Old Folks Home may from time to time and at any time repeal, re-enact or amend the by-laws, rules and regulations or make new by-laws, rules and regulations in place thereof, provided such repeal, re-enactment or amendment of 40 any such by-law or the making of a new by-law shall take place only at a special meeting of the Board duly called to consider the same.

Location.

Homestead
Lands and
Premises.

(d) I give, devise and bequeath to the said Trustees for the said Old Folks Home and to be conveyed to said Old Folks Home when incorporated, my Homestead Lands and Premises where

I now reside and all buildings thereon situate at the corner of Marks and Union Streets in said Town of Saint Stephen for the use of and to be used as the said Old Folks Home.

Exhibits.

B.
Last Will
and Testa-
ment of
Maria
Famicha
Ganong,
25th
September,
1924
—continued.

Shares
St. Stephen
Rink.

10

Curling Club.

(e) I do further give and bequeath to the Trustees for the said Old Folks Home to be transferred to the said Old Folks Home when incorporated all shares of the Capital Stock of the Saint Stephen Rink Company owned by me at the time of my death, with all my rights therein and thereto and I authorise and empower my Trustees and also the Trustees for the said Old Folks Home while the holder of the said shares to vote to permit the Saint Stephen Curling Club to occupy the property of the said Rink Company at a nominal or other rental for such time and upon such terms as to the said Trustees may seem proper and not adverse to the interests of the said Old Folks Home.

Change of
Location.

20

Old Folks
Home.

Change of
Location.

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(f) Notwithstanding anything in the foregoing provisions hereof and notwithstanding my strong desire that the said Old Folks Home shall continue to be located upon the lands and premises upon which I now reside, if at any time in the unanimous opinion of the Board of Trustees for the time being of the said Old Folks Home the said lands and premises hereby devised for the said Old Folks Home shall be or become inadequate or for any reason unsuitable for the said Old Folks Home, or an undesirable location therefor, the Trustees of the said Old Folks Home may by the unanimous affirmative vote of all the Trustees for the time being of the said Old Folks Home, being the full number of Trustees permitted under the Charter of the said Old Folks Home, sell and convey the said lands and premises or any part or parts thereof and expend all or any part of the proceeds thereof in or on account of the purchase of other lands and premises and the erection of suitable buildings for the said Old Folks Home.

Gilbert W.
Ganong
Memorial
School.

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\$100,000.00.

Permanent
Endowment
Fund.

(g) And Whereas under the terms of a certain Agreement in writing dated the thirty-first day of May A.D. 1924 and made by me as Party thereto of the First Part and the Board of School Trustees of Saint Stephen as Party thereto of the Second Part, which Agreement is hereby confirmed and declared binding upon me and my estate, I agreed to give to the said Board of School Trustees of Saint Stephen a sum of money not exceeding One Hundred Thousand Dollars for the purpose of erecting and equipping a Public School Building in the Town of Saint Stephen to be known as the Gilbert W. Ganong Memorial School, upon the terms and conditions named in the said Agreement and the said Board of School Trustees of Saint Stephen did thereby under authority of an Act of the Legislative Assembly of the Province of New Brunswick agree to pay to me yearly during

Exhibits.

B.
Last Will
and Testa-
ment of
Maria
Famicha
Ganong,
25th
September,
1924

—continued.

Permanent
Endowment
Fund
Old Folks
Home.

my lifetime a sum of money equal to five and one-half per centum of the money so given by me for the purpose of erecting and equipping said building, as by reference to the said Agreement will more fully and at large appear.

And Whereas by Indenture of Assignment dated the fifteenth day of September A.D. 1924 I have assigned to Honourable Irving R. Todd, Samuel A. McBride and Winifred M. Rent as Trustees, all moneys which shall become payable to me under the provisions of the said Agreement in writing made by me with the Board of School Trustees of Saint Stephen up to but 10 not exceeding the full sum of One Hundred Thousand Dollar (\$100,000.00), the said moneys up to the said sum of One Hundred Thousand Dollars (\$100,000.00) or so much thereof as may be received by the Trustees under the said Assignment in writing to be received and held by the said Trustees upon certain trusts including inter alia the following trusts (a) and (b) quoted as follows from said Assignment, namely :—“(a) The Trustees “ hereunder shall hold the said moneys and all interest and other “ income, increase and accumulations and investments thereof “ hereinafter called the Assigned Trust Fund in trust for or on 20 “ account of a Permanent Endowment Fund for the said Home “ until it becomes proper to pay and make over the said Assigned “ Trust Fund as hereinafter provided ” and “ (b) The Trustees “ hereunder shall pay and make over upon Trust for or on ac- “ count of the said Permanent Endowment Fund for the said “ Home all the said Assigned Trust Fund as and when Mrs. “ Ganong may in her lifetime in writing direct to the said Home “ in case of the incorporation of the said Home during her life- “ time or to a Holding Trust or a Trust Company duly licensed “ in this Province or in the event of default of such direction in 30 “ writing by Mrs. Ganong in her lifetime shall pay and make “ over the said Assigned Trust Fund to the said Home when “ incorporated pursuant to the provisions of the last Will and “ Testament of Mrs. Ganong.”

Now Therefore I Do Hereby Ratify and Confirm the said Assignment of said moneys which shall become due to me from the Board of School Trustees of Saint Stephen under the provisions of the said in part recited Assignment dated the thirty-first day of May last up to but not exceeding the said sum of One Hundred Thousand Dollars (\$100,000.00) to the said 40 Honourable Irving R. Todd, Samuel A. McBride and Winifred M. Rent as Trustees, upon the said trusts set out in the said in part recited Assignment and in the event of the said Assigned Trust Fund not having been so paid over by the said Trustees under said Assignment in my lifetime pursuant to the provisions of said in part recited Assignment to the said Old Folks Home or a Holding Trust or Trust Company in accordance with my

Permanent
Endowment
Fund
Old Folks
Home.

direction in writing, then I hereby will and direct that at my death all said Assigned Trust Fund shall be paid by the said Trustees under the said Assignment to the Trustees for the said Old Folks Home as and on account of a Permanent Endowment Fund for the said Old Folks Home, and I do further will and direct that in the event of the aggregate of the said Assigned Trust Fund not amounting at the time of my death to the full sum of One Hundred Thousand Dollars (\$100,000.00) then my Executors and Trustees shall pay to the said Trustees for the said Old Folks Home on account of the Permanent Endowment Fund for the said Old Folks Home such a sum of money as will when added to the then aggregate of the said Assigned Trust Fund make the said Permanent Endowment Fund for the said Old Folks Home up to the full sum of One Hundred Thousand Dollars (\$100,000.00).

Exhibits.
B.
Last Will
and Testa-
ment of
Maria
Famicha
Ganong,
25th
September,
1924
—continued.

10

Income P. E. F.
to pay Exps.

(h) The principal moneys of the said Permanent Endowment Fund shall be retained by the said Old Folks Home as a Permanent Endowment Fund to be known as the "Maria F. Ganong Permanent Endowment Fund" and the income therefrom only shall be used in each year for the current expenses of the said Old Folks Home.

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Investments.

(i) I desire that the said Old Folks Home shall be authorised by its Charter to hold and invest in shares of the Perpetual Guaranteed Debenture Stock and also in the Common Stock of the New Brunswick and Canada Railroad Company, in the Preferred Stock of Ganong Bros. Limited and in the Stock of The New Brunswick Telephone Company and I authorise the Trustees for said Old Folks Home hereby appointed to invest in, accept, receive and hold shares of the said Stocks.

30 See Para. 2
1st Codicil
\$5,000.00.
added to 13 (j).

(j) And I hereby give and bequeath to the said Trustees for the said Old Folks Home the further sum of Fifteen Thousand Dollars (\$15,000.00), the same or so much thereof as may be necessary to be used for making the necessary additions to and alterations of the said buildings and premises so devised by me for the use of the said Old Folks Home and to provide furniture, furnishings and other equipment to make said buildings and premises ready for occupancy and any balance of said Fifteen Thousand Dollars remaining after making said additions and alterations and providing such equipment with accumulations of interest shall be retained by said Old Folks Home as a Repair Fund and used both principal and interest for repairs to the said buildings and premises as and when the Board of Trustees for the said Old Folks Home may think necessary.

\$15,000.00
for repairs.

Furniture and
Equipment.

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(1st and 2nd
Codicils.)

(k) In case the said Board of Trustees for said Old Folks Home may think the same desirable they may upon my death commence and carry on the work of making such additions and

Exhibits. Preliminary Steps.
 B.
 Last Will and Testament of Maria Famicha Ganong, 25th September, 1924
 —continued.

alterations and equipping the said Old Folks Home and also undertake the management of the said Old Folks Home so far as may be necessary pending the incorporation and organisation of the said Old Folks Home.

(l) It is my will and desire that the said Old Folks Home shall be authorised by its Charter to accept bequests, contributions and other gifts upon such terms and with such privileges, if any, to the donors as to the Trustees of the said Old Folks Home may be thought proper, provided such terms or privileges are not contrary to my intentions with regard to the said Old 10 Folks Home as herein expressed.

Residue.

14. And as to all the rest, residue and remainder of my estate both real and personal, I give devise and bequeath the same as follows :—

(a) The one-half thereof to my sister Jeannette Robinson Belyea if she shall survive me or if she shall predecease me then the said one-half to the legal representatives of my said sister.

(b) The other one-half thereof to my brother Edgar M. Robinson if he shall survive me or if he shall predecease me then the said other one-half shall be divided as follows :—that is to 20 say :—Fifty per cent. thereof to the said three children of my said brother by his first marriage or such of the said three children as shall then be living and the issue if any of any of the said three children then deceased share and share alike per stirpes, and the other fifty per cent. thereof to the legal representatives of my said brother.

15. And I Hereby Ratify and Confirm a certain Trust Indenture of Agreement dated the fifteenth day of March A.D. 1918 and made by me as Party thereto of the First Part and The Eastern Trust Company, party thereto of the Second Part, and William F. Ganong, 30 James E. Ganong, Walter K. Ganong and Arthur D. Ganong, four nephews of my husband, Parties thereto of the Third Part, and I declare the said Trust Indenture or Agreement with schedules thereto to be binding upon me and my estate.

16. I Do Also Ratify and Confirm a certain Agreement dated the seventh day of June A.D. 1924, and made by me of the First Part and Samuel A. McBride of the Town of Saint Stephen aforesaid, Business Manager, and Winifred M. Rent of the Town of Saint Stephen aforesaid, Accountant, as Trustees, Parties thereto of the Second Part whereby I assigned to the said Trustees under said 40 Agreement all my right, title and interest to the dividends upon the Three Thousand Seven Hundred and Ninety (3,790) Preferred Shares and Three Thousand Six Hundred (3,600) Shares of the Common Stock of said Ganong Bros. Limited, held by the Eastern

Trust Company until the dividends so paid to the Trustees under the said Agreement amount to the sum of One Hundred Thousand Dollars exclusive of any interest which may accrue upon such dividends while in the hands of the said Trustees, the same to be paid by the said Trustees to the Board of School Trustees of the Town of Saint Stephen for the building and equipping of The Gilbert W. Ganong Memorial School in accordance with the provisions of the said Agreement and I declare the said Agreement to be binding upon me and my estate.

Exhibits.

B.

Last Will
and Testa-
ment of

Maria
Famicha
Ganong,

25th
September,
1924

—continued.

10 Succession
Duties.

17. I do hereby will and declare that my Executors shall pay out of my personal estate all Succession Duties which at my death may become payable upon the bequests hereby made, it being clearly understood that my estate shall not be liable and nothing herein shall make my estate liable for any Succession Duties or other dues, duties, taxes or other charges or expenses of any kind payable or which may be or become payable upon or in respect of any moneys, stocks, shares of stock, gifts or other benefits which have passed or which may hereafter pass under the provisions of the said Trust Agreement dated the 15th day of March A.D. 1918 mentioned in said Paragraph fifteen (15) of this my Will.

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18. I hereby authorise and empower my Executors and Trustees to continue in the form in which they may then be any investments I may have at the time of my death regardless of the hazardous or wasting nature of the same so long as to my Trustees may seem in the interests of my estate.

19. I hereby authorise and empower my Executors and Trustees to sell and convey any real estate of which I may be seised at the time of my death not herein specifically devised.

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20. I hereby further will and declare that it is my intention and purpose that any and all of the shares of Ganong Bros. Limited, so hereby bequeathed as aforesaid, shall be and remain the property of my estate and be held by my Executors and Trustees as part of my estate until after the first annual meeting of Ganong Bros. Limited, shall have been held subsequent to my decease and until all dividends accruing on said shares of stock from the business of the year in which my decease may occur shall have been paid to my estate for the benefit of my estate intending by this Section of my Will to show that both semi-annual dividends on the Preferred Shares that will be paid during the fiscal year subsequent to my decease but which will have been earned during the fiscal year my decease may occur must be paid to my estate before making any transfers of the stock, shares devised and bequeathed as aforesaid.

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In Witness Whereof I, the said Maria Famicha Ganong have

c

M 2

Exhibits.

B.
Last Will
and Testa-
ment of
Maria
Famicha
Ganong,
25th
September,
1924
—continued.

hereunto set my hand and seal this twenty-fifth day of September in the year of our Lord one thousand nine hundred and twenty-four.

(Sgd.) MARIA F. GANONG. [L.S.]

Signed, sealed, published and declared by the said Maria Famicha Ganong as and for her Last Will and Testament in the presence of us who at her request and in her presence and in the presence of each other have hereunto set our names as witnesses.

10

(Sgd.) E. DUTHIE.

(Sgd.) A. P. BARNHILL.

C.
First Codicil
to Will of
Maria F.
Ganong,
21st August,
1926.

“ C.”—First Codicil to Will of Maria F. Ganong.

(“ C.” J.B.M.B. C.J. 19 Dec./39).

I Maria F. Ganong of the Town of Saint Stephen in the County of Charlotte and Province of New Brunswick widow and relict of the late Honourable Gilbert W. Ganong late Lieutenant-Governor of the Province of New Brunswick do make publish and declare this as and for a codicil to my last will and testament which bears date the twenty-fifth day of September in the year of our Lord one thousand nine hundred and twenty-four.

1. I give devise and bequeath to Ella May Pike in addition to the bequest to her in paragraph nine in my said will the sum of two thousand dollars in cash in case she shall survive me and be in my employ at the time of my death.

Nothing to do
with Home.

2. I give and bequeath to the trustees for the Old Folks Home the sum of five thousand dollars in addition to the sum bequeathed to them in paragraph thirteen sub-section “ J ” of my said will.

In all other respects I hereby confirm my said will.

And I do hereby ratify and confirm a certain trust agreement dated the twenty-first day of August A.D. 1926 and made by me as party thereto of the first part and Samuel A. McBride Business Manager and Winifred M. Rent Accountant all of the Town of Saint Stephen parties thereto of the second part whereby I assigned to the said trustees under said agreement certain moneys to be known as “ The Maria F. Ganong’s Charities Trust.”

In Witness Whereof the said Maria F. Ganong has hereunto set

her hand and seal this twenty-first day of August in the year of our Lord one thousand nine hundred and twenty-six. *Exhibits.*

(Sgd.) MARIA F. GANONG.

Signed sealed published and declared by the said Maria F. Ganong as and for a codicil to her last will and testament in the presence of us present at the same time who at her request in her presence and in the presence of each other have hereunto subscribed our names as witnesses.

(Sgd.) W. L. GRANT.

(Sgd.) G. R. DAYE.

C.
First Codicil
to Will of
Maria F.
Ganong,
21st August,
1926
—continued.

“ D.”—Second Codicil to the Will of Maria F. Ganong.

(“ D ” J.B.M.B., C.J., 19 Dec./39.)

This is a Second Codicil to the last Will and Testament of me, Maria Famicha Ganong, of the Town of Saint Stephen, in the County of Charlotte, in the Province of New Brunswick, widow and relict of the late Honourable Gilbert White Ganong, in his lifetime Lieutenant-Governor of the Province of New Brunswick (which last Will and Testament bears date the twenty-fifth day of September, A.D. 1924), being of sound and disposing mind and memory.

1. In Clause (2) of Paragraph 11 of my said Will dated the twenty-fifth day of September, A.D. 1924, I gave and bequeathed unto Ganong Bros. Limited, of the Town of Saint Stephen, in trust, Four Hundred (400) shares of the Capital Stock of the New Brunswick Telephone Company, Limited, of the aggregate par value of Four Thousand Dollars (\$4,000.00) the principal thereof to be retained by Ganong Bros. Limited, as a Trust Fund to be known as “ The Maria F. Ganong ‘ G.B.’ Employees Hospital Aid Fund ” and the income thereof only to be expended as therein directed.

I now give and bequeath to Ganong Bros. Limited, in trust, an additional Two Hundred and Twenty-five (225) shares of the Capital Stock of The New Brunswick Telephone Company, Limited, of the aggregate par value of Two Thousand Two Hundred and Fifty Dollars (\$2,250.00) being in addition to the Four Hundred (400) shares of said Capital Stock of said Company of the aggregate par value of Four Thousand Dollars (\$4,000.00) so bequeathed as afore-said : To Have and to Hold the same unto Ganong Bros. Limited, as an addition to the said Trust Fund and for the same uses and

D.
Second
Codicil to
the Will of
Maria F.
Ganong,
13th
October,
1934.

Exhibits.

D.

Second
Codicil to
the Will of
Maria F.
Ganong,
13th
October,
1934

—continued.

purposes, the income only to be expended from time to time for the uses and purposes expressed and contained in said Clause (2) of Paragraph 11 of my said Will.

2. I hereby revoke and make void Clause (3) of Paragraph 11 of my said last Will and in lieu thereof I hereby declare that,

Whereas my husband in and by his last Will and Testament gave certain moneys to the Chipman Memorial Hospital to be used to the end that suitable accommodation might be provided for persons suffering from infectious or contagious diseases requiring isolation; and

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Whereas the purpose for which said moneys were given by my said husband to the said Chipman Memorial Hospital has not been given effect to,

I do hereby will and declare that within such reasonable period of time after my death as my Executors and Trustees shall determine, my Executors and Trustees shall pay to the said Chipman Memorial Hospital the sum of Five Hundred Dollars (\$500.00) in cash and also deliver to the Trustees of said Hospital Twenty (20) Preferred Shares of the Capital Stock of Ganong Bros. Limited, of the aggregate par value of Two Thousand Dollars (\$2,000.00) the 20 principal of said cash sum and of the said Preferred Shares to be retained by the said Hospital as a Trust Fund and only the income thereof to be used for the upkeep, repair and maintenance of the Chipman Memorial Hospital Nurses' Home known as the "Robinson Memorial."

3. I hereby revoke and make void Clause (7) of Paragraph 11 of my said last Will, respecting a gift of the sum of One Thousand Dollars (\$1,000.00) to the Maritime School for the Blind at Halifax, it being my intention to make the said gift in my lifetime.

4. I hereby revoke and make void Clause (8) of Paragraph 11 30 of my said last Will, respecting a gift of the sum of Five Thousand Dollars (\$5,000.00) to Acadia College at Wolfville, Nova Scotia, it being my intention to make the said gift in my lifetime.

5. I hereby revoke and make void Clause (22) of Paragraph 11 of my said last Will and in lieu thereof I give, devise and bequeath to my cousin, Ida Dukes, the sum of Two Hundred Dollars (\$200.00).

6. I hereby revoke and make void Clause (25) of Paragraph 11 of my said last Will, whereby I devised unto Marian V. Straghan Fifty (50) shares of the Preferred Stock of Ganong Bros. Limited, of the aggregate par value of Five Thousand Dollars (\$5,000.00) and in 40 lieu thereof I direct that my Executors and Trustees shall within twelve months after my decease purchase for the said Marian V. Straghan a Dominion Government Annuity, in an amount sufficient to yield her the clear yearly sum of Four Hundred Dollars (\$400.00) per annum for and during the term of her natural life: Provided Always that if I shall have in my lifetime purchased such annuity

for the said Marian V. Straghan then the gift of the annuity hereby made to her shall be null and void.

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7. I hereby revoke and make void Clause (27) of Paragraph 11 of my said last Will, whereby I gave and bequeathed to Samuel A. McBride the sum of Five Thousand Dollars (\$5,000.00) in addition to and not in lieu of any commissions he may be entitled to as one of the Executors and Trustees of my Will and Codicils thereto and I hereby declare that it is my intention to give to the said Samuel A. McBride in my lifetime the said sum of Five Thousand Dollars (\$5,000.00) in yearly payments of One Thousand Dollars (\$1,000.00) each, the first of such yearly payments to be made on the thirty-first day of December, 1934, and thereafter yearly until he shall have received the full sum of Five Thousand Dollars (\$5,000.00) the same to be by way of and in addition to his present compensation as my Agent and Attorney and if it shall happen that I shall die before the full amount of Five Thousand Dollars (\$5,000.00) additional compensation is paid to him then it is my will and I hereby direct that he shall receive from my Estate the balance of the said sum of Five Thousand Dollars (\$5,000.00) unpaid at the time of my death, and the whole whether paid in my lifetime or partly in my lifetime and partly after my death shall be in addition to and not in lieu of any commissions he may be entitled to as an Executor and Trustee under my Will and Codicils thereto.

8. I hereby revoke and make void Clause (31) of Paragraph 11 of my said last Will whereby I devised to Miss Mabel Thompson, now Mabel Brittain, formerly of the West Side in the City of Saint John, the sum of Five Hundred Dollars (\$500.00), and in lieu thereof I give, devise and bequeath to the said Mabel Brittain, if living at the time of my death the sum of Two Hundred Dollars (\$200.00).

9. I hereby revoke and make void Clause (32) of Paragraph 11 of my said last Will whereby I devised to Mary Thompson, formerly of West Side in the City of Saint John, mother of the said Mabel Thompson, the sum of Five Hundred Dollars (\$500.00) and in lieu thereof I give, devise and bequeath to the said Mary Thompson the sum of Two Hundred Dollars (\$200.00).

10. I hereby revoke and make void Clause (33) of Paragraph 11 of my said last Will, whereby I devised to Arthurette Branscombe the sum of Two Hundred and Fifty Dollars (\$250.00) and in lieu thereof I give, devise and bequeath to the said Arthurette Branscombe the sum of Two Hundred Dollars (\$200.00).

11. I hereby revoke and make void Clause (35) of Paragraph 11 of my said last Will, whereby I devised to Jessie Deming Moore of the City of New York, now deceased, the sum of One Hundred Dollars (\$100.00) and in lieu thereof I give, devise and bequeath

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unto Rebecca D. Moore of the City of New York, daughter of the said Jessie D. Moore, the sum of One Hundred Dollars (\$100.00).

12. I hereby revoke and make void Paragraph 15 of my said last Will, whereby I ratified and confirmed a certain Trust Indenture of Agreement dated the fifteenth day of March, A.D. 1918, and made between myself as Party thereto of the First Part, The Eastern Trust Company as Party thereto of the Second Part, and William F. Ganong, James E. Ganong, Walter K. Ganong and Arthur D. Ganong, four nephews of my husband, Parties thereto of the Third Part, and whereby I declared the said Trust Indenture or Agreement 10 with Schedules thereto to be binding upon me and my Estate.

I hereby declare that on or about the twenty-ninth day of September, 1934, I declared a default under the provisions of the said Trust Deed of March fifteenth, 1918, whereby I am entitled to have the Trust Shares therein referred to, consisting of Three Thousand Seven Hundred and Ninety (3,790) Preferred Shares and Three Thousand Six Hundred (3,600) Common Shares of Ganong Bros. Limited, returned to and vested in me.

13. In Paragraph 16 of my said last Will and Testament I ratified and confirmed a certain Agreement dated the seventh day 20 of June, A.D. 1924, and made between myself of the First Part and Samuel A. McBride of the Town of Saint Stephen aforesaid, Business Manager, and Winifred M. Rent of the same place, Accountant, as Trustees, Parties thereto of the Second Part, whereby I assigned to the said Trustees under said Agreement all my right, title and interest to the dividends upon Three Thousand Seven Hundred and Ninety (3,790) Preferred Shares and Three Thousand Six Hundred (3,600) Common Shares of Ganong Bros. Limited, then held by The Eastern Trust Company, until the dividends so paid to the said Trustees under the said Agreement should amount to the sum of One Hundred 30 Thousand Dollars (\$100,000.00) and I hereby declare that the dividends received by said Trustees having amounted to the said sum of One Hundred Thousand Dollars (\$100,000.00) the object of the said Trust has been duly carried out and completed and the assignment of the said dividends is hereby revoked.

14. On the assumption that the declaration of default heretofore made by me on the twenty-ninth day of September, A.D. 1934, and notified to The Eastern Trust Company and to William F. Ganong, James E. Ganong, Walter K. Ganong and Arthur D. Ganong, four nephews of my said husband, by the same act of notification and 40 accompanied by a Solemn Declaration of such default, with respect to the Trust Shares of Ganong Bros. Limited, held by the Eastern Trust Company, will become effective at the expiration of the time limited therefor under the terms of the Trust Deed of March fifteenth, A.D. 1918, made between myself of the First Part, The Eastern Trust Company of the Second Part, and the said four nephews of my said

Trust
Agreement.

husband of the Third Part and that the said Trust Shares, being Three Thousand Seven Hundred and Ninety (3,790) Preferred Shares and Three Thousand Six Hundred (3,600) Common Shares of Ganong Bros. Limited, will be returned to and vested in me or my Estate in due course as provided for under the terms of the said Agreement, I do hereby give, devise and bequeath unto the several persons hereinafter named, relatives of my late husband, the number of said Preferred Shares of the Capital Stock of Ganong Bros. Limited, hereinafter mentioned, if, as and when the said Trust Shares are returned to and vested in me or my Estate, that is to say :—

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(1) To Grace Augusta Colwell of Ottawa, Ontario, niece of my late husband, I give, devise and bequeath Five Hundred (500) Preferred Shares of the Capital Stock of Ganong Bros. Limited, of the aggregate par value of Fifty Thousand Dollars (\$50,000.00).

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(2) To Cecilia Augusta Hyslop of Saint Stephen, New Brunswick, niece of my late husband, I give, devise and bequeath Five Hundred (500) Preferred Shares of the Capital Stock of Ganong Bros. Limited, of the aggregate par value of Fifty Thousand Dollars (\$50,000.00).

(3) To Jennie Hendry Christmas of Ottawa, Ontario, niece of my late husband, I give, devise and bequeath Four Hundred (400) Preferred Shares of the Capital Stock of Ganong Bros. Limited, of the aggregate par value of Forty Thousand Dollars (\$40,000.00).

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(4) To Frank A. MacDonald of Vancouver, British Columbia, nephew of my late husband, I give, devise and bequeath One Hundred (100) Preferred Shares of the Capital Stock of Ganong Bros. Limited, of the aggregate par value of Ten Thousand Dollars (\$10,000.00).

(5) To Edna Dillenbeck Pellissier of Maplewood, New Jersey, niece of my late husband, I give, devise and bequeath Two Hundred (200) Preferred Shares of the Capital Stock of Ganong Bros. Limited, of the aggregate par value of Twenty Thousand Dollars (\$20,000.00).

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(6) To May Isabel Weymer of Summit, New Jersey, niece of my late husband, I give, devise and bequeath Two Hundred (200) Preferred Shares of the Capital Stock of Ganong Bros. Limited, of the aggregate par value of Twenty Thousand Dollars (\$20,000.00).

(7) To Edwin M. Ganong of Bayonne, New Jersey, son of H. Frank Ganong, nephew of my said late husband, I give, devise and bequeath One Hundred (100) Preferred Shares of the Capital Stock of Ganong Bros. Limited, of the aggregate par value of Ten Thousand Dollars (\$10,000.00).

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(8) To William J. Ganong of New York City, nephew of my late husband, I give, devise and bequeath Ninety (90) Preferred Shares of the Capital Stock of Ganong Bros. Limited, of the aggregate par value of Nine Thousand Dollars (\$9,000.00).

(9) To Katherine Louisa Whidden, wife of the Rev. Howard P. Whidden of Hamilton, Ontario, niece of my late husband, I give, devise and bequeath One Hundred (100) Preferred Shares of the Capital Stock of Ganong Bros. Limited, of the aggregate par value of Ten Thousand Dollars (\$10,000.00).

(10) To Susan B. Ganong of Rothesay, New Brunswick, 10 niece of my late husband, I give, devise and bequeath One Hundred (100) Preferred Shares of the Capital Stock of Ganong Bros. Limited, of the aggregate par value of Ten Thousand Dollars (\$10,000.00).

(11) To William F. Ganong of Northampton, Massachusetts, nephew of my late husband, I give, devise and bequeath One Hundred and Fifty (150) Preferred Shares of the Capital Stock of Ganong Bros. Limited, of the aggregate par value of Fifteen Thousand Dollars (\$15,000.00).

(12) To James E. Ganong of the City of Toronto, Ontario, 20 nephew of my late husband, I give, devise and bequeath One Hundred and Fifty (150) Preferred Shares of the Capital Stock of Ganong Bros. Limited, of the aggregate par value of Fifteen Thousand Dollars (\$15,000.00).

(13) To Arthur D. Ganong of the Town of Saint Stephen, New Brunswick, nephew of my late husband, I give, devise and bequeath Six Hundred (600) Preferred Shares of the Capital Stock of Ganong Bros. Limited, of the aggregate par value of Sixty Thousand Dollars (\$60,000.00).

(14) To Walter K. Ganong of the Town of Digby, Nova 30 Scotia, nephew of my late husband, I give, devise and bequeath One Hundred (100) Preferred Shares of the Capital Stock of Ganong Bros. Limited, of the aggregate par value of Ten Thousand Dollars (\$10,000.00).

And I Hereby Declare that the gift or bequest of the said Preferred Shares of Ganong Bros. Limited, to the several persons mentioned and referred to in Clauses (1) to (14) both inclusive of this Paragraph 14 of this the Second Codicil to my last Will and Testament is conditional upon the said Preferred Shares being returned to and vested in me in my lifetime or in 40 my Estate after my death by The Eastern Trust Company, which has heretofore held them as Trustee under the provisions of the Trust Agreement of March fifteenth, 1918, and it is my further Will that after the said shares are so returned to and vested in me in my lifetime or in my Estate after my death, if it shall happen that any one or more of the legatees mentioned in any one of the Clauses (1) to (14) both inclusive of this

Paragraph 14 of this Codicil to my last Will shall predecease me or shall die before the vesting of the said shares in me or in my Estate, then it is my Will that the gift or gifts of such share or shares to such person or persons so predeceasing me or dying before the vesting of said shares in me, shall not lapse but shall go to and be vested in the heirs-at-law of any such legatee so predeceasing me or dying before the vesting in me of said shares.

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Home.

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The Gilbert
White Ganong
Memorial.

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15. Whereas under the provisions of Paragraph 13 of my said last Will and Testament dated the twenty-fifth of September, A.D. 1924, I have provided for the founding and endowment of a Home for aged Protestant persons, male and female as therein expressed, to be known as "The Maria F. Ganong Old Folks Home" and have provided an Endowment Fund therefor, I now, in addition to any and all endowment or other funds heretofore given by me in my said Will and Testament for said Old Folks Home, give, devise and bequeath Five Hundred (500) Preferred Shares of the Capital Stock of Ganong Bros. Limited, of the aggregate par value of Fifty Thousand Dollars (\$50,000.00) to be handed over to the persons named in Clause (b) of Paragraph 13 of my said last Will and Testament, or the survivor of them as a Board of Trustees when incorporated and organised as a Board of Trustees and to be held by them and their successors in office as the Board of Trustees for the said Old Folks Home as an additional endowment for said Home and to be known as "The Gilbert White Ganong Memorial" and to be held by the said Trustees and their successors in office as a part of the permanent endowment of such Old Folks Home, and the Trustees thereof shall hold the said shares or the investments for the time being representing the same in case the said shares shall at any time be sold, and use the income derived from the said shares or said investments representing the same, as the case may be, for the same purpose as I have provided that the income from the permanent Endowment Fund of One Hundred Thousand Dollars (\$100,000.00), and any other sums already provided for by me shall be used, that is to say, the principal moneys of the said "Gilbert White Ganong Memorial" hereby established by me shall be retained by the Trustees of the said Home as part of the permanent Endowment thereof and the income thereof only shall be used in each year for the current expenses of the said Old Folks Home. The bequest hereby made is conditional however upon the said Preferred Shares of Ganong Bros. Limited, being returned to and vested in me or in my Estate after my death, the same being held presently by The Eastern Trust Company as Trustee.

16. On the assumption that the declaration of default heretofore made by me on the twenty-ninth day of September, A.D. 1934, and notified to The Eastern Trust Company and to William F. Ganong, James E. Ganong, Walter K. Ganong and Arthur D. Ganong, four

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nephews of my said husband, by the same act of notification and accompanied by a Solemn Declaration of such default with respect to the Trust Shares of Ganong Bros. Limited, held by The Eastern Trust Company, will become effective at the expiration of the time limited therefor under the terms of the Trust Deed of March fifteenth, A.D. 1918, made between myself of the First Part, The Eastern Trust Company of the Second Part, and the said four nephews of my said husband of the Third Part and that the said Three Thousand Six Hundred (3,600) Common Shares of Ganong Bros. Limited, portion of the said Trust Shares, will be returned to 10 and vested in me or my Estate in due course as provided for under the terms of the said Agreement I do hereby give, devise and bequeath unto the several persons hereinafter named, the number of Common Shares of the Capital Stock of Ganong Bros. Limited, hereinafter mentioned, if, as and when the same are returned to or vested in me or my Estate, that is to say:—

(1) To William F. Ganong of Northampton, Massachusetts, nephew of my late husband, I give, devise and bequeath Six Hundred (600) Common Shares of the Capital Stock of Ganong Bros. Limited, of the par value of Sixty Thousand Dollars 20 (\$60,000.00).

(2) To James E. Ganong of the City of Toronto, Ontario, nephew of my late husband, I give, devise and bequeath Six Hundred (600) Common Shares of the Capital Stock of Ganong Bros. Limited, of the par value of Sixty Thousand Dollars (\$60,000.00).

(3) To Walter K. Ganong of the Town of Digby, Nova Scotia, nephew of my late husband, I give, devise and bequeath Three Hundred (300) Common Shares of the Capital Stock of Ganong Bros. Limited, of the par value of Thirty Thousand 30 Dollars (\$30,000.00).

(4) To Arthur D. Ganong of Saint Stephen, New Brunswick, nephew of my late husband, I give, devise and bequeath One Thousand One Hundred and Ninety-Four (1,194) Common Shares of the Capital Stock of Ganong Bros. Limited, of the par value of One Hundred and Nineteen Thousand Four Hundred Dollars (\$119,400.00).

(5) To R. Whidden Ganong, son of Arthur D. Ganong of Saint Stephen, New Brunswick, and grandnephew of my late husband, I give, devise and bequeath One Hundred and Fifty 40 (150) Common Shares of the Capital Stock of Ganong Bros. Limited, of the par value of Fifteen Thousand Dollars (\$15,000.00).

(6) To Philip D. Ganong, son of Arthur D. Ganong of Saint Stephen, New Brunswick, and grandnephew of my late husband, I give, devise and bequeath One Hundred (100)

Common Shares of the Capital Stock of Ganong Bros. Limited, of the par value of Ten Thousand Dollars (\$10,000.00).

(7) To Arthur R. MacKenzie of the Town of Saint Stephen, New Brunswick, for so many years the trusted officer of Ganong Bros. Limited and now a Member of the Board of Directors, I give, devise and bequeath One Hundred (100) Common Shares of the Capital Stock of Ganong Bros. Limited, of the par value of Ten Thousand Dollars (\$10,000.00).

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(8) To Hugh McK. McBride of Winnipeg, Manitoba, formerly of Saint Stephen, New Brunswick, Agent and representative of Ganong Bros. Limited, at Winnipeg aforesaid for many years, I give, devise and bequeath One Hundred (100) Common Shares of the Capital Stock of Ganong Bros. Limited, of the par value of Ten Thousand Dollars (\$10,000.00).

(9) To Neville M. Jackson of the City of Calgary, Alberta, also for many years an Agent of Ganong Bros. Limited, at that point, I give, devise and bequeath Forty (40) Common Shares of the Capital Stock of Ganong Bros. Limited, of the par value of Four Thousand Dollars (\$4,000.00).

(10) To Raymond J. McCloskey of the City of Montreal, Quebec, a representative of Ganong Bros. Limited, I give, devise and bequeath Forty (40) Common Shares of the Capital Stock of Ganong Bros. Limited, of the par value of Four Thousand Dollars (\$4,000.00).

(11) To Jules L. Charlesbois of the City of Quebec, Quebec, a representative of Ganong Bros. Limited, I give, devise and bequeath Forty (40) Common Shares of the Capital Stock of Ganong Bros. Limited, of the par value of Four Thousand Dollars (\$4,000.00).

(12) To A. Brewer Edwards of Saint Stephen, New Brunswick, an employee of Ganong Bros. Limited, I give, devise and bequeath Forty (40) Common Shares of the Capital Stock of Ganong Bros. Limited, of the par value of Four Thousand Dollars (\$4,000.00).

(13) To Hardy N. Ganong of Saint Stephen, New Brunswick, an employee of Ganong Bros. Limited, I give, devise and bequeath Forty (40) Common Shares of the Capital Stock of Ganong Bros. Limited, of the par value of Four Thousand Dollars (\$4,000.00).

(14) To Dugald K. McGeachey of Saint Stephen, New Brunswick, an employee of Ganong Bros. Limited, I give, devise and bequeath Thirty (30) Common Shares of the Capital Stock of Ganong Bros. Limited, of the par value of Three Thousand Dollars (\$3,000.00).

(15) To William A. Hyslop of Saint Stephen, New Brunswick, an employee of Ganong Bros. Limited, I give, devise and bequeath Forty (40) Common Shares of the Capital Stock of

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Ganong Bros. Limited, of the par value of Four Thousand Dollars (\$4,000.00).

(16) To James Hinds of Saint Stephen, New Brunswick, an employee of Ganong Bros. Limited, I give, devise and bequeath Twenty (20) Common Shares of the Capital Stock of Ganong Bros. Limited, of the par value of Two Thousand Dollars (\$2,000.00).

(17) To George A. Lockart of Saint John, New Brunswick, a representative of Ganong Bros. Limited, I give, devise and bequeath Twenty (20) Common Shares of the Capital Stock of Ganong Bros. Limited, of the par value of Two Thousand Dollars (\$2,000.00).

(18) To C. Ralph Forbes of Saint Stephen, New Brunswick, an employee of Ganong Bros. Limited, I give, devise and bequeath Twenty (20) Common Shares of the Capital Stock of Ganong Bros. Limited, of the par value of Two Thousand Dollars (\$2,000.00).

(19) To Douglas E. Allen of Saint John, New Brunswick, a representative of Ganong Bros. Limited, I give, devise and bequeath Twenty (20) Common Shares of the Capital Stock of Ganong Bros. Limited, of the par value of Two Thousand Dollars (\$2,000.00).

(20) To Frederick A. McAndrews of Moncton, New Brunswick, a representative of Ganong Bros. Limited, I give, devise and bequeath Twenty (20) Common Shares of the Capital Stock of Ganong Bros. Limited, of the par value of Two Thousand Dollars (\$2,000.00).

(21) To Rainsford R. Henderson of Saint Stephen, New Brunswick, an employee of Ganong Bros. Limited, I give, devise and bequeath Twenty (20) Common Shares of the Capital Stock of Ganong Bros. Limited, of the par value of Two Thousand Dollars (\$2,000.00).

(22) To Eldon Libby of Saint Stephen, New Brunswick, an employee of Ganong Bros. Limited, I give, devise and bequeath Ten (10) Common Shares of the Capital Stock of Ganong Bros. Limited, of the par value of One Thousand Dollars (\$1,000.00).

(23) To James W. Craft of Saint Stephen, New Brunswick, an employee of Ganong Bros. Limited, I give, devise and bequeath Ten (10) Common Shares of the Capital Stock of Ganong Bros. Limited, of the par value of One Thousand Dollars (\$1,000.00).

(24) To Edward Bosien of Saint Stephen, New Brunswick, an employee of Ganong Bros. Limited, I give, devise and bequeath Ten (10) Common Shares of the Capital Stock of Ganong Bros. Limited, of the par value of One Thousand Dollars (\$1,000.00).

(25) To Arthur McWha of Saint Stephen, New Brunswick, an employee of Ganong Bros. Limited, I give, devise and bequeath Ten (10) Common Shares of the Capital Stock of Ganong Bros. Limited, of the par value of One Thousand Dollars (\$1,000.00).

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(26) To Harry L. McPhail of Saint Stephen, New Brunswick, an employee of Ganong Bros. Limited, I give, devise and bequeath Ten (10) Common Shares of the Capital Stock of Ganong Bros. Limited, of the par value of One Thousand Dollars (\$1,000.00).

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(27) To Rothwell W. Anderson of Saint Stephen, New Brunswick, an employee of Ganong Bros. Limited, I give, devise and bequeath Ten (10) Common Shares of the Capital Stock of Ganong Bros. Limited, of the par value of One Thousand Dollars (\$1,000.00).

(28) To my Executors and Trustees and the survivor of them I give, devise and bequeath Fifty (50) Common Shares of the Capital Stock of Ganong Bros. Limited, to be issued to my Executors and be allotted by them from time to time in their uncontrolled discretion to such employee or employees of Ganong Bros. Limited, as they may decide, and I direct that in making such selection of employees and allotment thereto my Executors and Trustees be empowered to include among the recipients such employees as have already in Paragraph 16 of this Codicil to my Will been named as legatees of such shares, as well as employees not so named.

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In allotting these Common Shares to the nephews named in Clauses (1) to (4) both inclusive of this paragraph 16 of this Second Codicil to my said last Will and Testament, and to the employees named in Clauses (5) to (28) both inclusive, I realise that at the present time the said Common Shares have no monetary value, having been issued against goodwill, yet it is my hope that eventually such Common Shares may become of sufficient worth and value to serve as a reward to the recipients for faithful service in the past and as an incentive to greater effort on the part of the recipients for the future. The said shares so given and bequeathed in Clauses (5) to (27) both inclusive of this Paragraph 16 of this Second Codicil to my said last Will are, however, subject to the express condition that if any one of the legatees or donees therein mentioned has left the employ of Ganong Bros. Limited, for any reason other than incapacity, death or disability, my Executors and Trustees shall have the right to cancel such bequest and to dispose of the shares mentioned in any such bequest so cancelled among such other employees of Ganong Bros. Limited, as my said Executors and Trustees in their uncontrolled discretion may decide.

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AND I HEREBY DECLARE that with respect to the Common Shares of Ganong Bros. Limited, given and bequeathed by me to the said nephews named in Clauses (1) to (4) both inclusive of this Paragraph 16 of this Second Codicil to my said last Will and Testament and to the said employees named in Clauses (5) to (28) both inclusive, if it shall happen that any one or more of said nephews or any one or more of said employees shall predecease me or shall die before the vesting of the said shares in me or in my Estate, then it is my Will that the gift or gifts of such share or shares to such nephews or to such employees so predeceasing me or dying before the vesting of said shares in me, shall not lapse but shall go to and be vested in the heirs-at-law of such nephew or nephews, or such employee or employees so predeceasing me or dying before the vesting in me of said shares.

AND I HEREBY DECLARE that the gift of the said Common Shares of Ganong Bros. Limited, mentioned and referred to in Clauses (1) to (28) both inclusive of this Paragraph 16 of this the Second Codicil to my last Will and Testament is conditional upon the said shares being returned to and vested in me in my lifetime or in my Estate after my death by the Eastern Trust Company.

Employees.

17. I direct my said Executors in the course of the administration of my Estate and as soon as may be convenient after my decease to lay aside from the ready moneys forming part of my Estate a sum or sums of money sufficient to pay to employees of Ganong Bros. Limited, both male and female, including those at Branches and Agencies, if in the employ of Ganong Bros. Limited, at the time of my decease, the following sums of money, that is to say:—

(1) To such employee or employees having Thirty (30) years or more of service the sum of One Hundred Dollars (\$100.00) each.

(2) To such employee or employees having Twenty (20) years of service and up to Thirty (30) years the sum of Seventy-five Dollars (\$75.00) each.

(3) To such employee or employees having Ten (10) years of service and up to Twenty (20) years the sum of Fifty Dollars (\$50.00) each.

(4) To such employee or employees having Seven (7) years of service and up to Ten (10) years the sum of Thirty-five Dollars (\$35.00) each.

(5) To such employee or employees having Five (5) years of service and up to Seven (7) years the sum of Twenty-five Dollars (\$25.00) each.

(6) And to such employee or employees having Two (2)

years of service and up to Five (5) years the sum of Ten Dollars (\$10.00) each.

And I Will and Direct that any employee or employees in receipt of a legacy of stock hereunder or under my said Will shall not participate in such cash distribution.

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—continued—

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18. Whereas under the provisions of Paragraph 15 of my said last Will and Testament dated the twenty-fifth day of September, A.D. 1924, I have provided for the founding and endowment of a Home for aged Protestant people, male and female as therein expressed, to be known as "The Maria F. Ganong Old Folks Home" and have thereby provided for an initial Endowment Fund. I now in addition to any and all endowment or other funds heretofore established by me in my said last Will and Testament or otherwise for said Old Folks Home, direct my said Executors and Trustees to set aside the sum of Twenty-five Thousand Dollars (\$25,000.00) in cash as a further endowment for the said Old Folks Home, such further fund of Twenty-five Thousand Dollars (\$25,000.00) to be known as "The Alice M. Robinson Memorial Fund" and to be handed over to the Trustees of the said Home when the same is incorporated and organised, the principal thereof to be held by them and their successors in office as a part of the permanent endowment of the said Old Folks Home and use the income derived therefrom only for the current expenses of the Old Folks Home.

20

Alice M.
Robinson
Memorial
Fund.

30

The John B.
and Isabella
Robinson
Memorial
Fund.

And I Further Direct that my said Executors and Trustees shall set aside a further sum of Twenty-five Thousand Dollars (\$25,000.00) as a further endowment for the said Old Folks Home, said further fund of Twenty-five Thousand Dollars (\$25,000.00) to be known as "The John B. and Isabella Robinson Memorial Fund" and to be handed over to the Trustees of the said Home when the same is incorporated and organised, the principal thereof to be held by them and their successors in office as a part of the permanent endowment of the said Old Folks Home and use the income derived therefrom only for the current expenses of the Old Folks Home.

Add \$5,000.00

40

19. I hereby give and bequeath to the Trustees of the said "Maria F. Ganong Old Folks Home" the further sum of Five Thousand Dollars (\$5,000.00), being in addition to the sum of Fifteen Thousand Dollars (\$15,000.00) bequeathed by me under Paragraph 13 of my said last Will and Testament and the further sum of Five Thousand Dollars (\$5,000.00) bequeathed to the Trustees of the said Old Folks Home in the first Codicil to my said Will, dated the twenty-first day of August, A.D. 1926, making the whole Twenty-five Thousand Dollars (\$25,000.00) and the same or so much therefor as may be necessary to be used for making additions to and alterations in the buildings and premises devised by me for the use of the said Old Folks Home, and to provide furniture, furnishings and other equipment to make said buildings and premises

Exhibits.

D.
Second
Codicil
to the Will of
Maria F.
Ganong,
13th
October,
1934
—continued.

ready for occupancy, and any balance of the said sum of Five Thousand Dollars (\$5,000.00) or of the whole sum of Twenty-five Thousand Dollars (\$25,000.00) bequeathed by me for the purpose aforesaid, remaining after making such additions and alterations and providing such equipment with accumulations of interest shall be retained by the Trustees of said Old Folks Home as a Repair Fund and used, both principal and interest, for repairs to the said buildings and premises as and when the Board of Trustees for the said Old Folks Home may think necessary.

20. I hereby revoke and make void Paragraph 17 of my said 10 last Will and Testament dated the twenty-fifth of September, 1924, and in lieu thereof and in substitution therefor I Will and declare that my Executors and Trustees shall pay out of my personal estate any and all Succession Duties which may at my death become payable upon any of the bequests made in my said last Will and Testament or in any Codicil thereto, including this Codicil, it being my intention that all gifts and bequests, including gifts of shares in the Capital Stock of Ganong Bros. Limited, either Preferred or Common, to any nephew or niece of my late husband, shall be free from Succession Duty. 20

But while I make the foregoing provision with respect to Succession Duty it is my express will and intention and I hereby direct that notwithstanding anything hereinbefore contained any and all of the shares of the Capital Stock of Ganong Bros. Limited, in and by my said last Will and Testament and in and by this Second Codicil to my said last Will and Testament bequeathed by me, shall be and remain the property of my Estate and be held by my Executors and Trustees as part of my Estate until all dividends on the Preferred Shares accrued to the date of my death have been paid in full and also until the two half yearly dividends which shall 30 accrue immediately subsequent to the date of my death shall have been paid in full to my Estate for the benefit thereof, it being my intention by this paragraph of this Second Codicil to my Will that all dividends on said Preferred Shares accrued due to the date of my death, whether earned or declared or not, together with a full year's dividends accruing due after my death, whether earned or declared or not, shall be paid to my Executors and Trustees for the benefit of my Estate before making any transfers of the stock or shares of Ganong Bros. Limited, Common or Preferred, devised and bequeathed under my said last Will and Testament and under this 40 Second Codicil thereto.

21. In all other respects I do hereby ratify and confirm my said last Will and Testament, save in so far as any part thereof shall be revoked or altered by this Codicil thereto or any previous Codicil.

In Witness Whereof I, the said Maria Famicha Ganong, have

hereunto set my hand and seal as a Second Codicil to my last Will and Testament, and which I have directed to be added thereto and to be taken as part thereof, this 13th day of October, in the year of our Lord one thousand nine hundred and thirty-four.

(Sgd.) MARIA F. GANONG. [L.S.]

Exhibits.
D.
Second
Codicil to
the Will of
Maria F.
Ganong,
13th
October,
1934
—continued.

10 Signed, sealed, published, pronounced,
and declared by the said Testatrix,
Maria Famicha Ganong, as and for
a Second Codicil to her last Will and
Testament, and to be taken as part
thereof, in the presence of us, who,
at her request and in her presence
and in the presence of each other
have hereunto subscribed our names
as witnesses the day and year last
above written.

(Sgd.) WALTER L. GRIMMER.

(Sgd.) FRED A. McLEAN.

(Sgd.) R. B. HANSON.

20 **No. 3.—Statement as to Financial position of Ganong Bros. Limited prepared
by Arthur E. Cox.**

(No. 3, J.B.M.B., C.J., 9 Jan./40.)

Arthur E. Cox.

Chartered Accountant.

21-22 Canada Life Building
60 Prince William Street,
Saint John, N.B.,
January 6, 1940.

3.
Statement as
to financial
position of
Ganong
Bros.
Limited,
prepared by
Arthur E.
Cox,
6th January,
1940.

30 J. H. Drummie, Esq.,
Barrister,
50 Princess Street,
Saint John, N.B.

Dear Mr. Drummie,

GANONG BROS., LIMITED.

I have been requested by Mr. A. D. Ganong, President of Ganong Bros., Limited, to give you such information as you may require regarding the financial position of this Company.

Exhibits.

3.

Statement as
to financial
position of
Ganong
Bros.
Limited,
prepared by
Arthur E.
Cox,
6th January,
1940

—continued.

In your telephone conversation with me to-day you wished to know if there was any fund available out of which a dividend could have been paid at any time since the year 1933. My answer is no.

I have compiled the following Summary from the Company's Financial Statements showing the large Deficit which has accumulated since the last dividend was declared and paid in July 1933.

	Net Profit	Net Loss	Cumulative Deficit
Balance,—December 30, 1933	\$15,025.09
Year ended December 31, 1934	\$2,738.17	17,763.26 10
" " " 1935	9,271.79	27,035.05
" " " 1936	14,371.41	41,406.46
" " " 1937	61,712.42	103,118.88
" " " 1938	\$1,754.84	101,364.04

It should be noted that for the five fiscal years ended December 31, 1938, the Net Deficit increased from \$15,025.09 to \$101,364.04. In view of this condition, any payment on account of dividends could not be considered without encroaching on the Capital of the Company.

Yours faithfully,

ARTHUR E. COX. 20

AEC:HGA.

In the Privy Council.

No. 35 of 1941.

ON APPEAL FROM THE SUPREME COURT OF CANADA.

IN THE MATTER of the Estate of Maria Famicha Ganong,
deceased.

BETWEEN

JEANNETTE ROBINSON BELYEA AND
EDGAR M. ROBINSON, Residuary
Legatees (Defendants) Appellants,

AND

SAMUEL A. McBRIDE, sole Executor and
Trustee of the Last Will and Testament of
Maria Famicha Ganong, deceased (Plaintiff) Respondent,

AND

ARTHUR D. GANONG, KATHERINE L.
WHIDDEN, SUSAN B. GANONG,
WILLIAM F. GANONG, JAMES E.
GANONG, GRACE A. COLDWELL,
EDNA DILLENBECK PELLISSIER,
MAY ISABEL WEYMER, EDWIN M.
GANONG, WILLIAM J. GANONG AND
R. WHIDDEN GANONG (Defendants) Respondents.

RECORD OF PROCEEDINGS.

NORTON, ROSE, GREENWELL & CO.,

116, Old Broad Street,

London, E.C.2.

Solicitors for the Appellants.

CHARLES RUSSELL & CO.,

37, Norfolk Street, Strand,

London, W.C.2.

*Solicitors for all the Respondents other than the
Respondent Samuel A. McBride.*