

reason why he was not as much at liberty to change the direction of the money which would accrue at his death upon this policy, as he was to change his will in reference to the disposition of any of his estate at any time preceding his death.

It is urged, however, that Mrs. Taylor has certain equitable claims in this fund, from the fact that, as heir of her mother, she has never received the amount which Samuel P. Stevens, her father, collected from this railroad company as compensation for the death of his wife, and to which the daughter was entitled; and that in his will Samuel P. Stevens directed the application of this insurance money to the payment of his indebtedness to her. A sufficient reply to this, as it seems to me, is that the money accruing on this policy, being payable to the assured, becomes assets of his estate, and is to go into the hands of his executor like any other money collected in the due administration of the estate, and that Mrs. Taylor's claim is to be paid in the due course of administration, with proper regard to the will, under the directions of the probate court in which that estate is being settled. It may be that the probate court can award or has awarded the proceeds of this policy to the widow of Samuel P. Stevens. With that, this court, I think, has nothing to do. If this money is an asset of the estate of Samuel P. Stevens, then it is to be applied as the court charged with the settlement of that estate shall order.

The decree will therefore be entered ordering the payment of the money involved in this suit to Eliza M. Stevens, executrix of Samuel P. Stevens. It is further ordered that each party shall pay their own costs.

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#### EVANS v. STATE NAT. BANK.<sup>1</sup>

(Circuit Court, E. D. Louisiana. February, 1884.)

##### VERBAL AGREEMENTS.

No verbal agreement of parties or their counsel, touching any cause pending before this court, shall be deemed of any validity, or be noticed in any way by the court, in case of dispute or disagreement.

In Equity.

*J. R. Beckwith and W. R. Mills*, for plaintiff.

*H. B. Kelly and James McConnell*, for defendant.

*Thomas Gilmore*, for heirs of Lapeyre.

BILLINGS, J. The sole question which can be considered is as to the effect to be given to an alleged verbal agreement. It is the general rule that such an agreement cannot be noticed by the court. *Parker v. Root*, 7 Johns. 320; *Dubois v. Roosa*, 3 Johns. 145, and num-

<sup>1</sup> Reported by Joseph P. Hornor, Esq., of the New Orleans bar.

erous cases there cited in note, as *Huff v. State*, 29 Ga. 424; *Reese v. Mahoney*, 21 Cal. 305; and *Shippen's Lessee v. Bush*, 1 Dall. 250. Rule 22 of this court is but a statement of the universal canon or precept which is observed by all courts where the matter of rights is involved. That rule is as follows: "No verbal agreement of parties or their counsel, touching any cause pending before this court, shall be deemed of any validity, or be noticed in any way, by the court, in case of dispute or disagreement." The rule is thus stated in Hoff. Ch. Pr.: "It will be noticed that the agreement or consent, unless thus established, is not even to be suggested against the party; and our chancellors have been strict in adhering to this rule." Page 26. The necessity and wisdom of the restriction is manifest by its universal adoption by the courts, and, having been further emphasized by being enrolled as a rule of this court, is obligatory, and must be followed. The rule must therefore be discharged.

### BARLOW v. LOOMIS and others.

(Circuit Court, D. Vermont. March 20, 1884.)

#### 1. TRUST—POWER OF REVOCATION—FAILURE TO EXERCISE.

A trust declared by testator during his life-time, with the privilege of revocation, will, if unrecalled, prevail over the title of a residuary legatee.

#### 2. SAME—STATEMENT.

Testator transferred stocks and bonds to L., upon trust to pay him the income while he lived, and after his death to transfer them to others, reserving the power, however, to revoke this disposition of the property at any time. He died, leaving the trusts unrevoked. *Held*, that the power of revocation died with him, and that upon his death the trusts became absolute.

#### In Equity.

*E. R. Hard*, and *A. G. Safford*, for orator.

*Daniel Roberts* and *Robert Roberts*, for defendants.

WHEELER, J. The orator is a residuary legatee under the will of Sidney Barlow, who, in his life, at three several times, delivered and transferred to the defendant Loomis stocks and bonds, under written agreements made between them, providing in two of them that Loomis should hold the stock and bonds in trust, to pay over the interest and dividends to Barlow during his life, and at his decease to transfer them to the other defendants; and in the other that Loomis should hold the bonds for the benefit of other defendants at the death of Barlow, reserving the right to him to demand and have the income while he should live, and to revoke the trust altogether and have the bonds returned to him if he should so elect. Loomis paid the income to Barlow during his life; he did not revoke the trust, but died leaving the stocks and bonds in the possession of Loomis. This bill