all times until the conditions thereof have been duly performed, be and remain the first preferred obligation of said company, and all payments out of the said net earnings of the company shall, in all events, be made as provided in said bonds prior to any payment on account of any other obligation or agreement concerning the said net income of the said company whatsoever."

These provisions are not unilateral. Their effect is to relieve the company from the payment of interest in each fiscal year except from and out of its "net earnings" for such year, as defined; but it seems to be quite as clearly their intent that the bondholders should receive such sum as interest, not exceeding 7 per centum in any one year, as the net earnings of the company for the same year will pay. Manifestly, the bondholders are creditors of the company, but they are creditors who, with respect to interest, are subject to a peculiar restriction, and are endowed with a correlative peculiar right. They are entitled to no interest if there be no net earnings applicable, according to the terms of the bond, to its payment; but, if there be such net earnings, then, to an amount not exceeding 7 per centum in any one year, they are entitled to them. Surely, then, as was said, by this court in the case of Morse v. Gas Co., 91 Fed. 938, "the holders of these bonds are entitled to know whether there have been net earnings, and, if there have not been, whether their absence is attributable to a failure on the part of the defendant to discharge any duty which it owed to the plaintiffs." The suit to which I have referred was heard upon demurrer to the bill, and the demurrer was overruled. The question now before the court was then considered, and it is not necessary to repeat what was then said. I have, in this case, arrived at the same conclusion which was reached in that one. By this bill, as in the Morse bill, "the plaintiffs have presented a case which, I think, entitled them to discovery by answer and through an accounting in equity, and their title to any other or further relief need not now be considered." Of course, no decree will be made affecting any person who is not a party, and no decree touching the rights or obligations of any other than the corporation itself need now be anticipated. All that will or should be decided in the present state of the record is, as I have said, whether the defendant company, and it only, should be required to answer. I am of opinion that it should be, and therefore the demurrer to the bill of complaint will be overruled, but without prejudice to any other matter or question in the cause, and with leave to the defendant to answer within 30 days.

HANDLEY et al. v. PALMER et al.

(Circuit Court, W. D. Pennsylvania. January 12, 1899.)

No. 1, September Term, 1896.

1. WILLS—VALIDITY—CONFLICT OF LAWS.
   The validity of a residuary clause in the will of one domiciled in Pennsylvania, whereby he made a bequest to a city of Virginia for the purpose of establishing schools for the poor, is to be determined by the law of Pennsylvania, in respect, at least, to all real and personal estate situated in the state.

2. SAME—DIRECTION TO SELL REAL ESTATE—CONVERSION.
A mandatory direction by the testator, requiring his executors to sell all his real estate, wherever situate, at the end of 20 years, works an equitable conversion, under the Pennsylvania law, of all his lands, wherever they may be, into personalty.

3. MUNICIPAL CORPORATIONS—ACQUISITION OF PROPERTY BY WILL.
In Pennsylvania, municipal corporations are capable of taking and holding property under a will, and acting as trustee, for purposes of a public nature germane to the objects of the corporation.

4. WILLS—CHARITABLE BEQUESTS—INCAPACITY OF TRUSTEE.
If, for any reason, a municipal corporation, to which a charitable bequest for educational purposes has been made in trust, is incapable of acting as trustee, the bequest will not be allowed to fail, under the law of Pennsylvania, but the court will supply a trustee.

5. SAME—VALIDITY—UNCERTAINTY OF BENEFICIARIES.
A bequest to a city directing that the income of the fund shall be expended "in said city by the erection of school houses for the education of the poor," is not void, under the Pennsylvania law, because of the indefiniteness of beneficiaries.

6. SAME—UNCERTAINTY OF SUBJECT-MATTER.
A will, in one of its items, bequeathed the following sums of money to each of the persons named in Schedule A, "which schedule is hereby made a part of my will, the same as if the name of each person was named herein." The testator left a separate paper, marked "Schedule A," which was filed, and admitted to probate, with his will. The paper, however, contained nothing but a heading, the names and amounts being left blank. The will was in all other respects complete and perfect. *Held*, that this paper was to be entirely disregarded, and did not affect the validity of the will in other respects.

7. SAME—VIRGINIA LAW.
Under the Virginia statutes of April 2, 1839, and March 10, 1841, gifts, devises, etc., for educational purposes were excepted from the general rule in that state under which the courts have no authority to sustain charities where the objects are indefinite and uncertain.

8. SAME—SPECIAL ACT CONFERRING CAPACITY.
The special act of the general assembly of Virginia of February 7, 1896, authorizing the city of Winchester to accept the bequests under the will of John Handley, and providing for the administration thereof, gave to the city, if it were otherwise wanting, capacity to take under the will, the bequest being valid in all other respects.

This was a suit in equity by Henry Handley and others, heirs at law of John Handley, deceased, against Henry W. Palmer and others, seeking to have adjudged invalid the residuary clause in the will of the said John Handley.

Jessup & Jessup and Geo. H. Starr, for complainants.
H. W. Palmer and R. M. Ward, for defendants.

ACHESON, Circuit Judge. John Handley, late a citizen of the state of Pennsylvania, and a resident of the city of Scranton, in that state, died at that city on February 15, 1895, without leaving to survive him a wife or any descendants, or any relatives nearer than first cousins. He left a large estate, both personal and real. A great part of his real estate was situated in the city of Scranton, and elsewhere in the state of Pennsylvania. A portion, consisting of about 15,000 acres of timber and coal land, was situated in the county of McDowell, in the state of West Virginia; and another

portion, consisting of about 1,200 acres of land, was situated in Frederick county, in the state of Virginia. He left a will dated December 29, 1890, with a codicil attached thereto dated July 31, 1893, which were duly probated since his death. By his will he disposed of his entire estate. He ordered and directed his executors to sell and convey all his real estate at the end of 20 years. He made certain specific bequests, and disposed of the entire residue of his estate in manner following:

"Item. All the rest and residue of my estate I give, devise, and bequeath to the city of Winchester, Virginia, to be accumulated by said city for the period of twenty years; the income arising from said residue estate to be expended and laid out in said city by the erection of school houses for the education of the poor."

The plaintiffs in this bill are first cousins of John Handley. They sue as heirs at law of the decedent and next of kin to him. The defendants are the executors of and trustees under the will of John Handley. The specific bequests under the will are not here drawn in question, but the plaintiffs claim that John Handley died intestate as to all the rest of his estate, and they seek a decree adjudging that the residuary clause of his will above quoted is invalid, and wholly void. The plaintiffs contend that the residuary clause is invalid, because the city of Winchester, a municipal corporation of the state of Virginia, has not the legal capacity to take the estate intended to be given thereby, or to take and administer the same upon the trust therein set forth, and because the beneficiaries and the objects and purposes of the trust are uncertain, and because the subject-matter of the residuary bequest is also uncertain.

It is clear that, as respects all the testator's personal estate and his real estate situated in the state of Pennsylvania, the validity of the residuary clause is to be determined by the law of Pennsylvania; the testator's domicile having been there at the date of his will and at the time of his death. Desesbats v. Berquier, 1 Bin. 336; Freeman's Appeal, 68 Pa. St. 151; Magill v. Brown, 16 Fed. Cas. 408; Brightly, N. P. 346; Jones v. Habersham, 107 U. S. 174, 179, 2 Sup. Ct. 336. In Magill v. Brown, supra,—a case relating to bequests to charitable uses under the will of Sarah Zane,—Mr. Justice Baldwin, sitting at circuit in this state, held that, the domicile of the testatrix being here, the law of this state governed her disposition of her personal property as well as of her real estate situated here; and (curiously enough) sustained a bequest "to the citizens of Winchester," Va., to purchase a fire engine and hose, and a bequest "to the select members belonging to the Monthly Meeting of Women Friends held at Hopewell, Frederick county, Virginia," the interest to be applied "towards the relief of the poor belonging thereto." In Jones v. Habersham, supra, which involved charitable devises and bequests, the supreme court of the United States said that the validity of the devises, "as against the heirs at law, depends upon the law of the state in which the lands lie, and the validity of the bequests, as against the next of kin, upon the law of the state in which the testratrix had her domicile." It is to observed that under the will of John Handley no real estate anywhere is devised