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Contents and mode of stating executors' accounts

John R. Loomis

New York State Society of Certified Public Accountants

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STATING EXECUTORS'
ACCOUNTS



By
JOHN R. LOOMIS, C. P. A.



AND DISCUSSION THEREON AT THE DECEMBER
MONTHLY MEETING OF THE NEW YORK STATE
SOCIETY OF CERTIFIED PUBLIC ACCOUNTANTS
DECEMBER TENTH, NINETEEN HUNDRED AND SIX

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In the preliminary business of the monthly meeting, December tenth, 1906, the following resolution was unanimously adopted on motion of Mr. Samuel D. Patterson:

Resolved, The New York State Society of Certified Public Accountants favors the distribution to other State Societies, and to the American Association of Public Accountants, of papers on particular subjects or addresses delivered at its meetings on subjects of general interest to the accounting profession, and the secretary of the society is hereby requested to communicate copies of such papers and addresses to the secretaries of the societies referred to, and that he solicit from them an exchange of similar courtesies.

PRESIDENT ALLEN: Gentlemen, we have set aside this evening to the Committee on Lectures and Entertainments, and through the coöperation of the Board of Directors of the society, a particular paper on the special subject, "Contents and Forms of Executors' Accounts," has been prepared. This subject was informally discussed at a recent meeting of the Board of Directors and a request was made of Mr. Loomis, who will presently address us, that he should prepare such a paper and present it for our consideration. We were very pleased to have him consent to do so and the news of that consent having gotten abroad, we are specially favored this evening with the presence of Mr. William F. W. Veysey, on the invitation of Mr. Loomis. I commend Mr. Veysey to your kindness and consideration, as he happens to be the brother of one of our members and a son of one of the charter members of the American Association of Public Accountants. Mr. Veysey, we thank you very much for your presence this evening.

MR. VEYSEY: Mr. President, I am very thankful for your kindness, and I also deeply appreciate the honor conferred upon me of having the pleasure of listening to Mr. Loomis on a subject of particular interest to me.

Mr. Loomis then read the following paper:

Contents and Mode of Stating Executors' Accounts

BY JOHN R. LOOMIS, C. P. A.

Before proceeding to read what I have compiled relating to the subject assigned me, I would say a word by way of explanation, and if you please, of excuse. The subject assigned me,—that of “The Contents and Mode of Stating Executors' Accounts”—is a broad one and to properly present it in all of its importance would require more than one entire evening. Fifteen or twenty minutes will hardly permit of presenting even an intelligent abridgment. Again, the time which has been allowed me for the gathering of proper data has been extremely limited. What I present for your thought this evening is simply a compilation drawn, however, from decisions of the courts rather than from text-books. It has therefore the weight of authority. There is nothing original save perhaps the mode of presenting.

The statute does not prescribe any special form to be adopted by an executor or administrator in making up his account. It simply points out the effect of the account when passed; and indeed it would be quite impossible to state any form which would apply to all cases, except in a general way, as no two estates present exactly the same features and details. The accounting has for its object the furnishing of accurate information as to the condition of the estate so that all persons interested therein may have an opportunity to ascertain positively their rights, to correct errors, if any, in the accountant's administration, and take measures, if necessary, to protect themselves against loss by his fraud or negligence. To this end the account should be full and explicit, containing a clear and definite statement of all the executor's or administrator's dealings with the decedent's estate, so that it can be made the subject of intelligent objection.

From the reports we gather the following directions and rules as indicating what the account should contain and the mode in which it should be stated, showing “to what precision executors and administrators are held in rendering, verifying and establishing their accounts before the surrogate.” They are eminently just and should not be departed from except in cases of the most urgent necessity, and in order to prevent absolute injustice.

AS TO CONTENTS.

The accounts should state distinctly the character and value of all assets belonging to the estate which came into the possession of the executor or administrator at the time of his entering upon the duties of his office, together with any assets subsequently discovered, the disposition thereof, and if the whole or part be sold, whether at public or private sale, and the prices obtained for the same. It should show the "increase," if any, in such assets during the administration, or the "decrease," if any, and the cause of the same; and a list of any articles or property remaining undisposed of and also a list of any property which may have been lost, the appraised value of such property and the cause of the loss. It should state the claims presented against the estate, specifying what claims were allowed, what claims were disputed and what claims were rejected, and the time and manner in which they were rejected or disputed, what suits, if any, have been commenced on such disputed or rejected claims, which of them have been determined, how determined and which of them are pending, and the amount claimed; also what claims have been presented and allowed since the expiration of the publication of the advertisements for claims. If no such claims have been rejected or disputed, and no suits have been commenced, it must be so stated. Not only are all these things material, but it is material also that the character of the debts paid or allowed, or prosecuted, should be stated—that is whether they are judgments docketed, etc., or debts of inferior class. Otherwise the surrogate cannot determine whether they have been properly paid, or if unpaid, determine whether they are preferred debts under the statute. It should contain a list of the debts due to the estate at the time of the appointment of the executor or administrator, distinguishing those which he had collected and those which he had failed to collect, and stating the reason for such failure to collect. It should include a statement of all moneys received by the executor or administrator belonging to the estate and of all interest or profit which he may have received on such moneys. It should show all disbursements made for funeral charges, and necessary expenses of administration, and all payments made to creditors, legatees or persons entitled in distribution, giving the name of each, the amount paid to each and the date of such payments. The executor or administrator must not only state in what character his payments were

made, distinctly, but he must produce vouchers supporting each payment.

In addition to the above items material to the account, the executor or administrator should set forth all other facts which are pertinent and proper to be considered by the surrogate in making up his decree, and as part of the proceeding it should be shown when the letters testamentary or of administration were issued, the date of preparing and filing the inventory, and when the advertisements for claims were published. The statement should also show the names and ages of legatees, and next of kin, with their places of residence. If any are minors, the fact must be stated, and whether they have guardians, and if so their names and places of residence, and how appointed. The surrogate is to pass upon the propriety of the payments, if made to legatees and next of kin, or if not paid, he is to distribute the surplus to them, and in either case these facts are indispensable. If there is any other fact which has occurred as part of his proceedings, which may affect the estate or the rights of any distributee, or his own rights, he is bound to state it.

So much as to the "Contents of the Account."

MODE OF STATING THE ACCOUNT—THE DEBTOR SIDE.

The mode of stating the account by executors and administrators for the purpose of filing, as indicated by the court, differs very materially from the form of statement common with merchants. The usual mercantile form would be to hold the estate as "in account with" the executor, giving the estate credit for all receipts and charging it with all payments, but the courts rule that all persons holding positions of trust shall stand as "in account with" the estate or trust and be charged with all receipts and credited with all payments.

The executor or administrator in making up his account is first to charge himself with the amount of the personal property of the deceased contained in the inventory at its appraised value, then with any "increase" to the same for any cause, whether direct or indirect, such as, sums for which he has sold property exceeding its appraised value—property and demands which have been discovered subsequent to the taking of the inventory—interest that has been accrued on debts owing to the deceased or on securities held by him, dividends, rents and profits.

The whole of the "increase" added to the value of the property as shown in the inventory constitutes the debtor side of the account.

The statute provides that "no profit shall be made by executors or administrators by the "increase," nor shall they sustain any loss by the "decrease," without their fault, of any part of the estate, but they shall account for such "increase," and shall be allowed for such "decrease" on the settlement of their accounts."

The items which go to make up the debtor side of the account and for which the executor or administrator is justly and legally chargeable are comprehended under the following general heads:—

Inventory of assets.

Increase to inventory from selling property mentioned therein at a higher price than the appraised value.

Increase to inventory from new assets subsequently discovered.

Increase to inventory from interest, dividends, rents and profits.

In stating the account it is customary to so arrange it by schedules as to show all items belonging to the capital or principal of the estate, separate and distinct from the items properly income.

The next step in order is to show what has become of the sum total of these assets.

THE CREDIT SIDE OF THE ACCOUNT.

As on the debit side of the account the executor is charged with the value of the inventory, together with all of its "increase," so on the credit side of the account he is to show what has become of this sum total and he will be allowed for the amount of all shrinkage on the inventory valuations whether through depreciation, waste, loss or inability to collect, providing such occur through no lack of care and diligence on his part, and for the amount of all disbursements made in good faith for any liability of the estate either arising in the course of the administration or existing against the deceased at the time of his death and paid in the manner prescribed by the law.

In detail the credit side of the account will show:—

Sums for which the executor has necessarily sold property at less price than its appraised value, with a description of the property so sold.

Articles of property perished or lost without his fault and the cause of such loss, with the appraised value of such articles.

Debts marked bad or doubtful in the inventory and which have not been collected, also debts appraised as good but which the executor is unable to collect by the exercise of ordinary diligence with the reasons why they could not be collected and with the amounts of such debts as noted in the inventory.

Amounts paid for funeral charges and testamentary expenses.

Amounts paid to the creditors of the deceased in settlement of their claims, stating to whom paid and when.

Items of actual and necessary expenses paid in the management of the estate and the execution of the trust.

Amounts paid to legatees and next of kin.

Items of property mentioned in the inventory remaining unsold or uncollected, with the appraised value thereof, and the reasons why such items have not been sold or collected.

Of the above items, all of which will be allowed an executor on his final accounting, providing he has administered his trust with care, discretion and due diligence, some will prove a charge against the principal of the estate and others against the income.

AFFIDAVIT.

To each account filed with the surrogate must be appended the affidavit of the accounting party, to the effect that the account contains, according to the best of his knowledge and belief, a full and true statement of all his receipts and disbursements on account of the estate of the decedent; and of all money and other property belonging to the estate, which have come to his hands, or been received by any other person, by his order or authority, for his use; and that he does not know of any error or omission in the account, to the prejudice of any creditor of, or person interested in the estate of the decedent (Co. Civ. Pro., Sec. 2729).

VOUCHER.

On an accounting by an executor or administrator, the accounting party must produce and file a voucher for every payment, except in one of the following cases:

1. He may be allowed, without a voucher, any proper items of expenditure, not exceeding twenty dollars, if it is supported by his own uncontradicted oath, stating positively the fact of payment, and specifying when and to whom the payment was made; but all the items so allowed against an estate, on all the accountings of all the executors or administrators, shall not exceed five hundred dollars.

2. If he proves, by his own oath or another's testimony, that he did not take a voucher when he made the payment, or that the voucher then taken by him has been lost or destroyed, he may be allowed any item, the payment of which he satisfactorily proves by the testimony of the person to whom he made it; or, if that person is dead, or cannot after diligent search be found, by any competent evidence other than his own oath or that of his wife. But an allowance cannot be made, as specified in this section, unless the surrogate is satisfied that the charge is correct and just. (Co. Civ. Pro., Sec. 2729.)

A SIMPLE DEBIT AND CREDIT ACCOUNT NOT SUFFICIENT.

As evidence that a simple debit and credit account is not sufficient, I read the following decisions:—

“Executors are bound to state their accounts not as they in fact kept them, but as required by law” (74 N. Y., 539).

“The practice of tendering in answer to the order a naked debtor and creditor account of moneys received and paid out is as general as it is bad; such an account can hardly be said to be a skeleton of what is required. As the basis of a decree, it is wholly insufficient and a decree that rests upon it is next to worthless as a protection to the executor. Every attempt that has been made to make such an account answer by stating facts material in the account itself, in the affidavit of verification or in extraneous statements, have only shown a desire to struggle for what is right without having accomplished it. They have utterly failed. This Court for the last two years has conformed its practice in this respect to the obvious requirements of the statutes by requiring an account, the substance of which has been stated in this opinion. The result has been the most satisfactory. What took days and even weeks of examination to ascertain by proofs under the former method is now on the face of the return, and expenses are saved, accuracy and fullness are secured. The account thus rendered explains and justifies itself. Litigation has comparatively ceased

under this practice. It is simply the practice indicated by the statutes" (5 N. Y., Legal Obs., 124).

The substance of the account referred to above is substantially as stated under the headings "As to Contents"—and "As to Mode of Stating."

WHERE EXECUTORS ARE CHARGED WITH TRUST DUTIES.

They should as a general rule, when finally accounting as executors, include all their proceedings in their administration of the estate, in whatever capacity they have acted; for until they have so accounted and been discharged, they may reasonably be assumed to have acted in their capacity of executors under the authority of their letters.

The time allowed me has now expired, but before taking my seat I would like to submit to you a form of account which is compiled from actual precedents, approved by the surrogate, and is believed to cover all that the courts require, and conforms in all respects to the practice indicated in the Code of Civil Procedure. It is simple, full and comprehensive, and easily adjusted, by mere change or addition of schedules, to the conditions existing under any estate. "It is in all respects such an account as may be settled at the call of the applicant, or finally settled at the call of the executor." It so fully explains and justifies itself that "the surrogate on inspection could write on the bottom of it a decree of final settlement and of distribution without asking a single question."

FORM OF ACCOUNT.

SURROGATE'S COURT
COUNTY OF NEW YORK

1

In the Matter
of
the Judicial Settlement of the
account of

Executor of the last Will and
Testament of

deceased.

ACCOUNT
OF
PROCEEDINGS.

2

To the Surrogate of the County of New York:—
I of the City, County and State of New York, do
render the following account of my proceedings as executor of the last

Will and Testament of _____ late of the City of New York,
deceased.

3 On the _____ day of _____ 19____, Letters Testamentary were
issued to me.

4 On the _____ day of _____ 19____, I caused an Inventory of the
personal estate of the deceased to be filed in the office of this Court, which
personal estate, therein set forth amounts, by appraisalment by the
Appraisers duly appointed to \$ _____

5 Schedule A., hereto annexed, contains a statement of all the property
mentioned in said Inventory, sold or collected by me, with the prices
realized, showing the increase on the appraised value—such increase
amounting to \$ _____

6 Schedule B. hereto annexed, contains a statement of all amounts
realized from personal property, sold or collected by me, not mentioned in
the said Inventory, but for which I am legally accountable, amounting
to \$ _____

7 Schedule C. hereto annexed, contains a statement of all amounts re-
ceived by me for interest and dividends on securities, rents, and from other
sources of income accruing subsequent to the death of the said deceased,
amounting to \$ _____

No other assets than those in said Inventory, or herein set forth, have
come to my possession or knowledge, and all the increase in the value of
any asset of said deceased is allowed or charged in the said schedules above
mentioned.

8 Schedule D. hereto annexed, contains a statement of all the property
mentioned in said Inventory, sold or collected by me, with the prices
realized, showing the decrease on the appraised value—such decrease
amounting to \$ _____

9 Schedule E. hereto annexed, contains a statement of all moneys paid
by me for funeral charges and testamentary expenses, amounting to \$ _____

10 On or about the _____ day of _____ in the year 19____, I caused
a notice for claimants to present their claims against the said estate to me
within the period fixed by law, and at a certain place therein specified, to
be published in two newspapers, according to law, for six months pursuant
to an order of the Surrogate of the County of New York, to which order,
a notice for claimants to present their claims against the said estate to me
account.

11 Schedule F. hereto annexed, contains a statement of all amounts paid
by me in settlement of sundry debts and claims against the said estate,
with the names of all creditors, and the time of such payment, amounting
to \$ _____

12 No other debts or claims than those mentioned in said Schedule F. have
come to my knowledge.

13 Schedule G. hereto annexed, contains a statement of all moneys paid
by me to _____ widow of the deceased.

14 Schedule H. hereto annexed, contains a statement of all moneys paid by
me for necessary expenses incurred in the managemnt of the said estate,
amounting to \$ _____

15 Schedule J. hereto annexed, contains a statement of all items of personal property mentioned in said inventory, remaining unsold or uncollected, and their appraised value, amounting to \$

16 Schedule K. hereto annexed, contains the names of all persons who are in any way interested in the estate of the deceased, how interested, and their respective places of residence, to the best of my knowledge, information and belief.

17 Schedule L. hereto annexed, contains a statement of all other facts affecting my administration of said estate, my rights, and those of others interested therein.

The following is a summary of my account:—

		SUMMARY.	
	I charge myself		
	With Amount of Inventory		
18	" " " Increase as per		
		Schedule A.	
	" " realized from assets not		
		mentioned in Inventory as	
		per Schedule B.	
	" " Received as Income as		
		per Schedule C.	\$
			<hr/>
		Total Charges	\$
	I credit myself		
	With Amount of Decrease		
		as per Schedule D.	
	" " paid for funeral charges		
		and testamentary expenses	
		as per Schedule E.	
	" " paid in settlement of		
		sundry debts and claims	
		as per Schedule F.	
	" " paid to widow of deceased		
		as per Schedule G.	
	" " paid for necessary expenses		
		of administration as per	
		Schedule H.	
	" " sundry items mentioned		
		in inventory, remaining unsold	
		or uncollected as per Schedule J.	_____
		Total Credits	\$
			<hr/>
	Leaving a balance of		\$
			<hr/>

19 consisting of cash to be distributed to those entitled thereto, subject to the deduction of the amount of my commissions and the expenses of this accounting.

20 The said Schedules which are severally signed by me are part of this account.

All of which is respectfully submitted.
Dated New York.

Executor.

In the Matter
of
the Judicial Settlement of the Ac-
count of
Executor of the last Will and Testa-
ment of
deceased.

City and County of New York, ss:

21 of said City, Executor of the last Will and
Testament of deceased, being duly sworn, says that the
foregoing account of proceedings and schedules annexed, contains accord-
ing to the best of his knowledge and belief a full and true statement of
all his receipts and disbursements on account of the estate of the said
decedent, and of all moneys and other property belonging to said estate
which have come to his hands, or which have been received by any other
person by his order or authority for his use, and that he does not know
of any error or omission in said account to the prejudice of any creditor
or person interested in the said estate. And deponent further says that
the sums under twenty dollars, charged in the said account, for which no
vouchers or other evidence of payment are produced, or for which he may
not be able to produce vouchers or other evidences of payment, have
actually been paid and disbursed by him as charged.

Sworn before me this
day of 190

COMMENTS ON THE ACCOUNT.

Turning to the above form of account submitted, you will notice certain numbers in the left hand margin. We will follow the paragraphs so numbered for a moment with brief comments.

1 The title of the account may read "First Judicial Settlement" or the "Second Judicial Settlement" as the facts of the case may indicate and where it is an "Intermediate" Account it should be so stated. If there be more than one executor, the name of each should be given, and if the executor be also a trustee it should read "as Executor of and Trustee under the last Will and Testament." Where the account is rendered by an Administrator instead of an Executor write "Administrator of the goods, chattels and credits of" or plainly state such other relationship as the accounting party may occupy towards the estate.

- 2 The office of the accounting party should be correctly stated here. And if the account is not brought down to date add after the word deceased "to and including the day of 19 ."
- 3 Or "letters of administration upon the goods, chattels and credits of said deceased were granted by said Surrogate to me."
- 4 If no inventory of the personal estate of the deceased has been prepared and filed in the office of the Court, such fact should be so stated.
- 5 The value of the inventory when filed is the basis of the accounting and is a charge against the executor or administrator. The object of this schedule is to show the amount of "increase" to the said inventory from having sold property mentioned in the inventory at prices exceeding its appraised value.
- 6 This schedule is intended to show the amount realized from any new assets which have been discovered or come to the hands of the executor or administrator since the taking of the inventory and not mentioned therein.
- 7 All items of income accruing subsequent to the death of the deceased should be stated separately from the items of personal estate mentioned in the inventory or afterward discovered.
- 8 This schedule could be included and made part of Schedule "A." and is done so by some, but I prefer stating the "decrease" separate from the "increase." If there is any article or articles of personal property mentioned in the inventory lost or perished it should be stated here with the cause of such loss, "for the surrogate is to pass on the sufficiency of the excuse offered, judicially, that is whether lost or perished without the fault of the executor."
- 9 Funeral charges and testamentary expenses are sometimes included in the schedule of debts and claims against the estate, but I think improperly so, as it is held that funeral expenses are to be treated not as a debt of the estate, but as a charge upon the same (59 N. Y., 574). They also have priority over all other claims against the estate.
- 10 This notice is intended entirely for the protection of the executor or administrator, though its publication is not enjoined as an absolute duty.
- 11 This schedule is intended to show only such claims against the estate as have been actually paid or settled. The full amount of all such claims should be stated and the manner in which the

same were paid or settled, whether by full payment or with allowances and deductions; the names of creditors and time of payment should be given; it is also "material that the character of all debts paid should be stated, that is, whether they are judgments docketed, etc., or debts of inferior class." The surrogate has to determine whether they have been properly paid and should be furnished with all facts and details necessary to their proper consideration.

- 12** This is a material fact to be stated as part of the proceedings in case all the claims presented have been paid; but if any claims have been presented and by the executors disputed or rejected, the fact should be stated, "with the time and manner in which they were rejected or disputed"; and if any suits have been commenced on such disputed or rejected claims this fact must be stated also.

These facts may be included in Schedule "F." or "L." if preferred.

- 13** Separate schedules should be made to show the various payments to the widow of the deceased, legatees and next of kin.

- 14** This schedule includes all items of expense incurred by the executor in the care and management of the estate other than testamentary expenses which are stated with the funeral charges in Schedule "E."

- 15** In the inventory the executor is charged with all items of personal estate which came into his hands at the time of entering upon the duties of his office. And when he comes to render his account if any such items of personal property remain in his possession unsold or uncollected he should take credit for the same at their appraised value, giving full and sufficient reasons as to why such have not been sold or collected. The amount of this schedule added to the amount of the balance of the account as filed, will be the basis of any future account which the executor may have to render.

- 16** This schedule should contain the names of all persons who are interested in the estate as legatees, next of kin, creditors or otherwise. The executor "must state the ages, condition in life of females, of legatees, and next of kin, and if any are minors, the fact must be stated and whether they have guardians, and if so their names and places of residences and how appointed." These facts are indispensable as enabling the surrogate to determine to whom the surplus is to be distributed.

17 This schedule should contain a full statement of all "facts which have occurred as part of the proceedings which may affect the estate, or the rights of any distributee or his own rights" and which are pertinent and proper to be considered by the surrogate in making up his decree other than those included in the previous schedules.

18 The following form of statement for the Summary of Account, contains perhaps all that is necessary; it has the merit of brevity, and is more nearly in accord with the form adopted by the surrogate's office; its brevity, however, necessitates a reference to each schedule when a knowledge of their contents is desired.

I charge myself		SUMMARY.	
With amount of Inventory			\$
" " " Schedule "A."			
" " " Schedule "B."			
" " " Schedule "C."			_____
Total Charges			\$
I credit myself			
With Amount of Schedule "D."	\$		
" " " Schedule "E."			
" " " Schedule "F."			
" " " Schedule "G."			
" " " Schedule "H."			
" " " Schedule "J."		_____	
Total Credits			\$
Leaving a balance of			\$

Where it is necessary to state the principal and income of the estate separately the following form for the Summary of Account is required:

First. As to Principal.		SUMMARY.	
I charge myself			
With Amount of Inventory			\$
" " " Schedule "A."			
" " " Schedule "B."			_____
Total Charges			\$
I credit myself			
With Amount of Schedule "D."	\$		

With Amount of Schedule " E."	\$	
" " " Schedule " F."		
" " " Schedule " G."		
" " " Schedule " J."		
Total Credits	<u> </u>	\$
Leaving balance of Principal		<u> </u>
Second. As to Income.		
I charge myself		
With Amount of Schedule " C."		\$
I credit myself		
With Amount of Schedule " H."		<u> </u>
Leaving balance of Income		\$
		<u> </u>
Balance of Principal		
consists of Cash		\$
		<u> </u>
Balance of Income		
consists of Cash		\$
		<u> </u>

19 The account should set forth the exact condition of the balances remaining for distribution, showing to what extent the assets consist of cash and the character and degree of availability of such as do not.

20 Each separate schedule should be dated and signed by the executor or administrator.

21 To each account filed with the surrogate must be appended the affidavit of the accounting party.

The rendering of an account to the surrogate by an executor or administrator, and the settlement of that account after it has been rendered, are separate and distinct proceedings.

Gentlemen, I here leave the subject in your hands, simply remarking that in my judgment we have only superficially touched on the matter of the "Contents and Form of Executor's Account." What is of the greatest importance is the nature of the items of receipts and expenditures naturally falling under the head of the respective schedules of the account, the law relating to the same, and as to whether they should be classed as principal or income of the estate.

THE PRESIDENT: Mr. Loomis has some copies of these forms he has referred to and will be very glad to have gentlemen who are interested look them over and make any comments that occur to them. We have a stenographer here and any particular points of merit will be taken down by him and the whole matter will thereupon be edited and a record kept thereby of the principal points of the discussion which will now ensue. I venture to suggest that undoubtedly questions will be asked of Mr. Loomis and our procedure should be such that any gentleman who wishes to speak may have an opportunity of replying thereto, so that we may have a pro and con discussion across the table of general interest.

In response to a question as to the difference between an administrator and an executor, and wherein their duties differ, Mr. Loomis said:

The executor is appointed by the will, and is usually named in the will. The administrator is appointed by the Court in case no executor is named, and upon qualifying he assumes practically the same duties as an executor. Under the law of the State of New York, there is no other difference, as regards the accountancy feature of the duties of administrator or executor.

MR. WEISS: Mr. Chairman and Gentlemen: I would like to say a few words, elaborating on some special points that will confront the accountant in handling executors' accounts in aid and support of the attorney's work. One of the main features that confronts the accountant is the distinction between income and principal. Mr. Loomis in his presentation, which may be accepted as fundamental in principle and form, does not particularly elaborate on that feature. When an executor is obliged to preserve the estate and make a disposition of the income, the question of what is income and what is principal is not always as simple as it appears. I have found, in numerous instances, the attorneys depending entirely upon the accountant and at times seeking a decision of the Court. The accountant can assist the attorney very materially with suggestions, in cases where assets are realized and the proceeds are partially principal and partially income. I will relate one brief experience which we have had. An account had been prepared by attorneys and it was given over to us to put it into proper shape. When we went into the matter we found that it was rather loosely prepared. Certain tax bills

had been charged against income, but the attorneys had forgotten to apportion the accumulation of taxes up to the death of the testator, which amount was chargeable against principal and not against income. We found that this estate contained considerable securities, bonds and stocks. These securities had been pledged for a loan of some thirty-five thousand dollars made by the testator. The widow received, under the attorneys' accounting, the dividends of these stocks and was charged with the interest on the loan. I found that the securities had increased in value some \$28,000. I presented the case to her attorney and told him in holding the securities she had acted solely for the interest of the estate, that as the income from dividends was small compared to the interest charged on the loan, she was entitled to some of the material increase in value. The question being laid before the Court it was so held and the widow was benefited to the extent of \$6,000.

I believe that it may be desirable to support your schedules by a Realization Account in order to show realization is on principal or income. It may be applicable to both at the same time.

A further point that we are interested in at the present time and have been interested in before, is where securities are held by an executor for the benefit of certain heirs and a dividend is declared, the Court will hold that the dividend is income. We have to discriminate sometimes as to what are dividends. Take, for instance, the recent dividend declared by the Pullman Company. In this case we find that the so-called dividend was really a division of accumulated surplus and if this is so, my impression is that a party interested in the principal of an estate can claim it as accumulated principal.

MR. GOTTSBERGER: Everything that Mr. Loomis has read goes to show that the law lays down certain rules to be followed by the attorney, but the attorney has to depend upon the accountant to make up his accounts. Mr. Loomis has read to us the views of the Courts on certain points. Now, what I would like to impress is that we, as accountants, are often obliged to differ with the lawyers upon questions of principal and income. The accountant may raise the point to the lawyer, "Well, how is this, you say this is income and I say it is principal?" The lawyer then has to look up and find out if he has anything which will suspend or counteract the point the accountant raises. In

this very question that Mr. Weiss speaks of, in regard to the Pullman Company, there are large interests at stake, and yet, as I understand it, there has been a decision handed down by the Court of Appeals, in a case instituted by the Farmers' Loan and Trust Company some years ago when there was a fifty per cent. dividend made by the Pullman Company, that the whole of that dividend was income. There is hardly a will made but what distinctly states, "I give and bequeath in the form of a trust. I place one-fifth of my estate for the benefit of John Smith, Tom Jones and so forth. The income and profits thereof are to be paid to them during their life." Now the point comes up, what is the income and what are the profits of that certain share, to be divided between eight, nine or ten people it may be. Now the accountant comes up to prepare an account to put into the Courts to turn over from the executors to the trustees their share of that trust fund. Then comes in another trouble under the laws of the State of New York—income inheritance tax. The inheritance tax man comes and says "on such a date, such and such stocks or bonds were worth so much money." There is only one thing for the executor to do. He has got to file his account of the inventory as prepared and accounted for to the estate. The State exacts their inheritance tax from that estate. Now I can't understand how the executor can file an account to-day in the State of New York, excepting that he files the account as the inventory as assessed by the State of New York. That is the only way. He has got to file that or he has got to file it as an unknown quantity. He has got to say when he files his account that he has paid, as an executor, so much tax on that assessed valuation as put upon it by the assessors of the State of New York. Now, how in the world can the executors file an account excepting they put in their inventory the valuation that was put upon it by the assessors?

Another question that Mr. Loomis only touched upon is this: that an executor does not receive real estate. He does not receive it until it is sold. No executor receives any real estate until it is sold. No executor can collect his commission from real estate that he turns over to the heirs unless he has sold that real estate. The power of sale may be vested in him. He can sell it and then collect his commission, but if in the final disposition that real estate is divided up among certain heirs the executor gets

another commission. These points I am bringing out for the reason, that I think they are of interest to accountants in general.

MR. RYAN: Mr. Loomis has, I think, put very clearly before us a method of settling an account. Mr. Weiss brought up questions that could perhaps be interlined with Mr. Loomis' statement. Mr. Gottsberger concluded his remarks with the suggestion that perhaps the lawyer doesn't always know how to make the account and that we accountants must be the lawyer. I think all of them have forgotten one feature that will sometime arise in the stating of an account. I have for the last few days been reading with great interest, a case before the Appellate Division. Now the Appellate Division has evidently had a great deal of trouble. In all seriousness, gentlemen, we have come to the final course, we are the people. I want to know what you will do with the expenses of a Wake. Really, that has been a very important question to most people and some nationalities have been struggling with it for a long time. And what are we accountants going to do with the expenses of a Wake, with Irish and Scotch whisky, cigars and other expenses?

MR. GOTTSBERGER: Now I would like to criticize this form of Mr. Loomis', and I would suggest to accountants that where you state the receipts under Schedule "A," part 1 would be "the receipts belonging to the principal" and part 2 would be "the receipts belonging to the income." And the same way with the expenditures; that you state in your expenditures that part 1, are "expenditures pertaining to the principal," and part 2, are "expenditures pertaining to the income." I don't think that Mr. Loomis' statement covers that ground fairly. They do not separate the principal from the income. In forming your statement you can say "we charge ourselves as to principal with Schedule No. 1." Then you say "we credit ourselves with Schedule 'C' Part 3 as to income." In that way you can definitely state the amount chargeable and absolutely belonging to the estate as regarding principal and the amount absolutely belonging to the estate regarding income. Then further than that you can credit yourself with the amount of money paid to the legatees as to principal and as to interest.

MR. ULLMAN: These schedules would seem to indicate that all of the items entering into them were to be stated in detail. Now, where the estate consisted of securities in part and of a

department store in part, where would they draw the line? We cannot possibly state all the items as to income and profit of a department store.

MR. WEISS: A separate schedule. You will have to state it.

MR. ULLMAN: We have to state it, but how?

MR. WEISS: If you have a department store as part of the assets, you will have to show the administration of the department store, and if you put all that in you have got to have a separate schedule, bringing out finally a result which will be a decrease or increase of that asset. You will have to do that to give an income account of a department store.

MR. GOTTSBERGER: There are very few department stores to-day that are run by individuals, and in such a case the surviving partner could answer to the estate. A great many of these stores are run by companies and of course the estate simply takes up the corporation value of the account. Where there is a surviving partner he simply says, "I will give so much for the amount of stock on hand."

MR. ULLMAN: This store was left by a widow and continued by managers.

MR. WEISS: Then you have to file every single dollar.

MR. ULLMAN: We must bring in a profit. How can we show the profit in detail?

MR. WEISS: By a separate schedule.

MR. LOOMIS: I think you will find that in preparing the inventory such an interest will be noted as an "amount undetermined." It does not present a serious problem. It is common to many estates. It goes into the inventory simply as "Interest in Jones & Company, amount undetermined," and will be accounted for as proceeds realized from interest in Jones & Company.

Mr. Gottsberger speaks of the executor being charged with the valuation placed upon the estate by the appraisers for the purpose of determining the amount of inheritance tax to be paid. The valuation put upon the estate by the Tax Appraisers has nothing to do with the executor's accounting in any way. The executor under proper appraisalment has his inventory prepared and is bound to account for such inventory with its increase or decrease, but the appraiser of the estate for the purposes of taxation has nothing whatever to do with this work. The inventory is the foundation of the account.

We have really a subject before us that would take several evenings to exhaust. I am not quite ready to endorse all that Mr. Gottsberger has said. If an accountant attempts to make up an account he must follow the law. It is not important how he shall set up his schedules. The Courts specify no particular form of accounting for filing. The form I submit is a form that has been before the Courts and I think is a very good authority to follow.

The question of real estate was touched upon. The executor is merely a representative of the personal estate. As mere executor he has nothing to do with the real estate. In case it becomes necessary to sell real estate for purposes of the trust I think that the Surrogate's Court decides it must be accounted for in separate schedules. An executor may collect rents and pay taxes, however.

As to the matter of the "wake," I don't know that we can decide, but in listening to the gentlemen it occurred to me that it might very properly fall under the head of mourning. It is a custom, and I believe, if I were making up an account, I should put it in as an item of funeral expenses.

MR. CLAIR: When does an executor become a trustee?

MR. GOTTSBERGER: The answer to that is simply that when the accounts of an executor are passed upon and a decree is entered by the surrogate or Supreme Court, then the executors pay over to themselves as trustees the body of the estate which has been handed to them as a trust.

MR. WEISS: I would say that there are many other conditions wherein an executor will become a trustee. The very question Mr. Ullman raised some time ago, the going business owned by a testator. He may state that the business shall be sold as speedily as possible and the proceeds divided in accordance with the will and become part of the estate, or he may provide that the executors be appointed at the same time trustees to manage and conduct that business. To sell to the best advantages, perhaps to a party who will buy the business entirely, and in such a case the executors will act as trustees in the administration of that particular business and become accountable to themselves as well as to the heirs.

THE PRESIDENT: Before I call upon Mr. Ryan to relieve his mind by moving a vote of thanks to the speaker of the evening, I would like to say that "reciprocity" is a very good motto. Our

visiting friend who is not a member has been listening to the proceedings with considerable interest and possibly we may derive a thought or two from him. I should like to call upon Mr. Veysey.

MR. VEYSEY: A point that has come up in my mind is this: A trustee, for the sake of argument, has one hundred thousand dollars to invest. He invests in bonds at 103, interest payable January 1st and July 1st. On July 1st there is accrued a thousand dollars interest on these bonds. The beneficiary says, "I want that thousand dollars, as the will provides that the interest shall be paid to the beneficiary." The trustee says: "You only get half of that because I bought the bonds April 1st and had to pay three months' accrued interest out of the funds." The same point would be, of course, if they sold bonds in September or October. Would the beneficiary get the accrued interest to the date of sale? What I would like to know is, are there any decisions of the Court concerning that question?

MR. WEISS: If this man purchased bonds he will charge up to principal the bonds at cost price and will also charge up purchase accrued interest. That has been passed upon in Court.

MR. VEYSEY: The testator at his death had certain stocks bearing dividends. Prior to his death, about a year and a half, these stocks were syndicated and subsequent to his death, about a month or two, the syndicate declared a profit on their transaction of a certain sum. Does this profit on the syndicate belong to the corpus or the income of the estate? This profit has no bearing on the dividends issued on the stock, the stock being of another corporation.

MR. GOTTSBERGER: It is merely a matter of detail which has to be inquired into to find out when that profit was earned.

MR. RYAN: I believe that everybody here has been deeply interested in the talk of the evening. I think we should declare a vote of thanks to Mr. Loomis for the care and attention he has given to the matter he has presented to us to-night. I would also like to bring to the attention of the accountants of this country that we have their interests at heart. We have spent our money in times past for their benefit, and with that object in view I move, Sir, that Mr. Loomis' paper with his notes be put in pamphlet form at the expense of this New York State Society and be forwarded to every other State Society in the country as a bulletin of this New York State Society. I don't believe there is an

accountant in this country who won't take pleasure in having Mr. Loomis' document.

SECRETARY BRUMMER: We have already passed a resolution, but as I understand Mr. Ryan, it is his desire to send to each of the 675 accountants enrolled in the American Association of Public Accountants the facts of this presentation to-night of this subject, and if there is no objection we will have a thousand copies printed under that resolution if it meets with the approval of the gentlemen present.

Mr. Ryan's motion was seconded and carried.

THE PRESIDENT: All those gentlemen who are desirous of testifying to the enjoyment that our friend Mr. Loomis has given to us to-night, and the instruction and profit he had afforded us, will kindly emphasize it by rising.

MR. LOOMIS: I thank you for this compliment.

The meeting thereupon adjourned.

Attest:

A handwritten signature in cursive script that reads "Leon Brummer". The signature is written in dark ink and is positioned to the right of the "Attest:" text.

Secretary.

277 Broadway,
New York City.