

## A CHALLENGING INHERITANCE: THE FATE OF MARK TWAIN’S WILL

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## I. INTRODUCTION

There have been numerous books and essays written about Mark Twain's<sup>1</sup> final two unhappy years in Redding, Connecticut,<sup>2</sup> as well as several writings capturing the lives, also generally tragic, of his surviving daughter and granddaughter.<sup>3</sup> This article retells some of that story, but from a legal perspective.

The article makes use of documents from the estates of Mark Twain and his descendants, including original wills, probate papers, trust instruments, and court and business filings. This legal perspective concludes on a happier note, explaining how the literary "Mark Twain" has succeeded in the twenty-first century, well beyond his death in 1910.

## II. THE YEARS IMMEDIATELY BEFORE THE DRAFTING OF MARK TWAIN'S WILL

Several events occurred in Mark Twain's life during the 1908–1909 period which would later influence the drafting of his will. First, on June 18, 1908, he moved to an estate in Redding, a town where his assistant Albert Bigelow Paine lived.<sup>4</sup> Twain first considered making Paine his literary executor in 1906, and in 1909 the final version of his will gave Paine and Twain's daughter Clara joint authority over his literary works, both published and unpublished.<sup>5</sup> Twain at first called

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<sup>1</sup> Mark Twain was the pen name of Samuel Clemens. *Frequently Asked Questions, THE MARK TWAIN BOYHOOD HOME & MUSEUM*, <https://www.marktwainmuseum.org/frequently-asked-questions/> (last visited Sept. 11, 2018). In the article, except as otherwise required, the name Mark Twain is used throughout.

<sup>2</sup> See, e.g., KAREN LYSTRA, *DANGEROUS INTIMACY: THE UNTOLD STORY OF MARK TWAIN'S FINAL YEARS* (2004); MICHAEL SHELDEN, *MARK TWAIN, MAN IN WHITE: THE GRAND ADVENTURE OF HIS FINAL YEARS* (2010); LAURA SKANDERA TROMBLY, *MARK TWAIN'S OTHER WOMAN: THE HIDDEN STORY OF HIS FINAL YEARS* (2010).

<sup>3</sup> See, e.g., Isabelle Budd, *Twain's Will Be Done*, 22 *MARK TWAIN J.* 34 (1984).

<sup>4</sup> *History of the Mark Twain Library*, MARK TWAIN LIBRARY, <http://marktwainlibrary.org/about-us/history-of-the-mark-twain-library/> (last visited Sept. 11, 2018); R. KENT RASMUSSEN, *MARK TWAIN A TO Z: THE ESSENTIAL REFERENCE TO HIS LIFE AND WRITINGS* 350 (1996). The home was destroyed by fire in 1923, and was recently substantially re-built. *Id.* at 450.

<sup>5</sup> Harriet E. Smith et al., *Appendix to 3 MARK TWAIN, AUTOBIOGRAPHY OF MARK TWAIN* 670–73 (Harriet E. Smith et al. eds., Complete and Authoritative ed. 2015).

his new home “Innocents at Home,” but later settled on “Stormfield.”<sup>6</sup> Twain also acquired additional land at the edge of the Redding property on which there was a cottage known as the “Lobster Pot,” which he gave to his then-secretary and housekeeper, Isabel V. Lyon.<sup>7</sup> He also bought land for his daughter Jean to have a small farm near Stormfield and for the projected Mark Twain public library of Redding.<sup>8</sup>

Twain always longed for the safeguards of copyright and keeping the “earnings of [his] books continually in the family, even after the copyright on the books themselves expire[d].”<sup>9</sup> To further this aim, on December 22, 1908, he incorporated the “Mark Twain Company” at Albany, New York, with a stated capital of \$5,000.<sup>10</sup> He became the majority shareholder.<sup>11</sup> The directors were Twain, his two daughters (Clara and Jean), Isabel Lyon, and his business agent, Ralph W. Ashcroft.<sup>12</sup>

“The duration of the corporation [was] to be perpetual, and its purpose [was] to acquire from Samuel L. Clemens all his rights, titles and interest in and to the name ‘Mark Twain.’”<sup>13</sup> Twain was president, Lyon was vice president, and Ashcroft was secretary and treasurer.<sup>14</sup> According to Mark Twain scholar Kent Rasmussen, a few days after incorporation, Twain “assigned all his copyrights and his pen name to the company.”<sup>15</sup> Twain wrote a rough autobiography at this time with the understanding that it would extend his copyrights into the future.<sup>16</sup>

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<sup>6</sup> 4 ALBERT BIGELOW PAINE, MARK TWAIN: A BIOGRAPHY 1454 (1912). Twain determined that the name “Stormfield” was more appropriate because the money that he earned from his work, *Captain Stormfield’s Visit to Heaven*, was used to build the loggia wing. *Id.*

<sup>7</sup> See SHELDEN, *supra* note 2, at 146–47 (stating that Twain gifted the “Lobster Pot” to Lyon as a reward for her devoted service to him).

<sup>8</sup> *History of Mark Twain Library*, *supra* note 4.

<sup>9</sup> Harriet E. Smith et al., *Explanatory Notes to 3 MARK TWAIN, AUTOBIOGRAPHY OF MARK TWAIN* 607 (Harriet E. Smith et al. eds., Complete and Authoritative ed. 2015); see also SIVA VAIDHYANATHAN, COPYRIGHTS AND COPYWRONGS: THE RISE OF INTELLECTUAL PROPERTY AND HOW IT THREATENS CREATIVITY 35–37 (2001) (noting that “from about 1898 until the end of his life in 1910, Twain endorsed maximum protection for authors, the thickest possible copyright, at the expense of both readers and publishers.”).

<sup>10</sup> Smith, *supra* note 9, at 606–07.

<sup>11</sup> *Id.* at 607.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> Smith, *supra* note 9, at 607.

<sup>15</sup> RASMUSSEN, *supra* note 4, at 304.

<sup>16</sup> *Twain’s Plan to Beat the Copyright Law*, N.Y. TIMES, Dec. 12, 1906, at 1 (explaining how Twain planned to use his autobiography to “vanquish[] the copyright law”).

Although Ashcroft had suggested to Twain that he incorporate,<sup>17</sup> and Lyon was practically a member of the family,<sup>18</sup> Twain had a falling out with the pair just as Ashcroft and Lyon married in March 1909.<sup>19</sup> The conflict between Twain and Ashcroft and Lyon has been dubbed the “Ashcroft-Lyon affair.”<sup>20</sup> Twain wrote a lengthy report in 1909 detailing his turning against them and throwing them out of his life; scholars since have dubbed this piece “The Ashcroft-Lyon Manuscript.”<sup>21</sup>

Twain’s second daughter, Clara Clemens, was the person most responsible for changing Twain’s mind about Ashcroft and Lyon.<sup>22</sup> She demanded an audit, and Twain ultimately came to believe that Lyon had been stealing money from his household account and had misled him into paying expenses for Lyon’s Lobster Pot.<sup>23</sup>

On September 10, 1909, Twain entered into a settlement with Ashcroft and Lyon that included Ashcroft’s resignation from the Mark Twain Company and the departure of Ashcroft and Lyon from the Redding realty.<sup>24</sup> The charges made by Twain and Clara were resolved without any further proceedings.<sup>25</sup> Twain; Zoheth Freeman, a banker; Jervis Langdon, the son of Olivia’s brother Charlie; Twain’s attorney Charles Tressler Lark; Edward E. Loomis, Olivia’s nephew by marriage; and Albert B. Paine formed a new board.<sup>26</sup>

There were several other personal developments during and immediately after the Ashcroft-Lyon affair. The millionaire responsible for assisting Twain in putting aside his debts of the 1890’s, H.H. Rogers,<sup>27</sup> died on May 19, 1909.<sup>28</sup> On the same day, a distraught Twain

<sup>17</sup> LYSTRA, *supra* note 2, at 118

<sup>18</sup> Harriet E. Smith et al., *Editorial Preface to 3 MARK TWAIN, AUTOBIOGRAPHY OF MARK TWAIN* 323 (Harriet E. Smith et al. eds., Complete and Authoritative ed. 2015); *see also* MARK TWAIN & JOSEPH HOPKINS TWICHELL, *THE LETTERS OF MARK TWAIN AND JOSEPH HOPKINS TWICHELL* 341 (Harold K. Bush et al. eds., 2017) (noting that Isabel Lyon had taken on “an ever-more important role in the family” until Twain’s subsequent falling out with her and her by-then husband, Ashcroft).

<sup>19</sup> 3 MARK TWAIN, *AUTOBIOGRAPHY OF MARK TWAIN* 359 (Harriet E. Smith et al. eds., Complete and Authoritative ed. 2015).

<sup>20</sup> *See* LYSTRA, *supra* note 2, at 303 n.11, 306 n.18 (citing the Accountant’s Statements and Schedules from 1907–1909 as the “Ashcroft-Lyon Affair”).

<sup>21</sup> Smith, *supra* note 18, at 323.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> *Id.* at 326.

<sup>25</sup> *Id.*

<sup>26</sup> RASMUSSEN, *supra* note 4, at 304.

<sup>27</sup> *Id.* at 393.

<sup>28</sup> *H.H. Rogers Dead, Leaving \$50,000,000*, N.Y. TIMES, May 20, 1909.

and Clara traveled to New York City and paid a condolence call on Rogers' son-in-law, Urban H. Broughton.<sup>29</sup>

Clara believed that Lyon was responsible for her sister Jean's exclusion from Stormfield and her placement at various sanatoriums.<sup>30</sup> On April 14, 1909, Twain was able to convince Jean's physician to give Jean permission to reunite with her father.<sup>31</sup> Jean arrived at Stormfield a few weeks later.<sup>32</sup>

Because Lyon had been dismissed as Twain's secretary, Jean took on this role.<sup>33</sup> In Albert B. Paine's biography of Twain, Paine recalled that Twain read to him and Jean from an essay that he was composing.<sup>34</sup> He also wrote that

Jean [was] occupied with her farming [on land that Twain had purchased for her], and her secretarial labors . . . . Occasionally she joined in the billiard games . . . . She had mastered tennis and French and German and Italian. She had naturally a fine intellect, with many of her father's characteristics, and a tender heart that made every dumb creature her friend.<sup>35</sup>

Clara had a resolution of her love-life as the Ashcroft-Lyon affair came to an end. In 1898, she met the brilliant pianist and conductor Ossip Gabrilowitsch.<sup>36</sup> By 1903, the couple was engaged.<sup>37</sup> After Clara's mother died in 1904, Clara and Ossip paused their romance, putting their engagement on hold.<sup>38</sup> In 1909, Clara learned that Ossip had a dangerous mastoidectomy in New York.<sup>39</sup> She invited him to Stormfield and, by

<sup>29</sup> *Id.* Another blow was the decline through neuritis of the wife of Twain's close friend William Dean Howells, who died just two weeks after Twain in 1910. The William Dean Howells Society, *William Dean Howells: Brief Chronology of Selected Works and Events*, WASH. STATE UNIV., <https://public.wsu.edu/~campbelld/howells/howchron1.htm> (last visited Aug. 28, 2018).

<sup>30</sup> Smith, *supra* note 18, at 323.

<sup>31</sup> 3 MARK TWAIN, AUTOBIOGRAPHY OF MARK TWAIN 359 (Harriet E. Smith et al. eds., Complete and Authoritative ed. 2015).

<sup>32</sup> *Id.*

<sup>33</sup> *See id.*

<sup>34</sup> 3 ALBERT BIGELOW PAINE, MARK TWAIN: A BIOGRAPHY 1228 (2016).

<sup>35</sup> *Id.* at 1229.

<sup>36</sup> Smith, *supra* note 9, at 611. Gabrilowitsch was often called the "Poet of Piano." HAROLD C. SCHONBERG, THE GREAT PIANISTS 327 (1987).

<sup>37</sup> *See Miss Clemens Weds Mr. Gabrilowitsch*, N.Y. TIMES, Oct. 7, 1909, at 9 [hereinafter *Miss Clemens Weds Mr. Gabrilowitsch*, N.Y. TIMES] (describing a 1909 interview with Mark Twain in which he disclosed that Clara's initial engagement to Mr. Gabrilowitsch was six years prior).

<sup>38</sup> RASMUSSEN, *supra* note 4, at 160.

<sup>39</sup> *Id.* A mastoidectomy is a surgical procedure removing a portion of the bone behind the ear, usually due to infection. THE GALE ENCYCLOPEDIA OF MEDICINE (Jacqueline L.

late September, they had renewed their engagement.<sup>40</sup> They were married on October 6, 1909.<sup>41</sup>

The New York Times reported that the wedding took place in the drawing room of Stormfield with Twain's friend, Reverend Doctor Joseph Twichell, officiating.<sup>42</sup> Twain wore the same scarlet cap and gown that he wore when he graduated with an honorary Doctorate of Literature from Oxford University. After the wedding, he wore a white flannel suit.<sup>43</sup> The bride and groom were to leave for Berlin, Germany, where Gabrilowitsch had purchased a house.<sup>44</sup>

Twain commented that he was pleased with the marriage, realizing that "[t]here are two or three tragically solemn things in this life, and a happy marriage is one of them."<sup>45</sup> Clara joked once that Twain complained that he would "have to spend the rest of [his] life learning how to pronounce" Gabrilowitsch.<sup>46</sup>

Twain, while looking well-enough at Clara's wedding, was actually suffering on a daily basis from angina.<sup>47</sup> He also suffered from seizures that suddenly forced him to lie down.<sup>48</sup> Paine recalled Twain satirically declaring to Jean that she should refuse a visitor because "I am likely to drop dead at any minute."<sup>49</sup>

### III. DRAFTING TWAIN'S WILL AND THE WILL'S CONTENTS

A most important development during the Ashcroft-Lyon Affair

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Longe ed., 5th ed. 2015).

<sup>40</sup> RASMUSSEN, *supra* note 4, at 160.

<sup>41</sup> *Id.*

<sup>42</sup> *Miss Clemens Weds*, N.Y. TIMES, *supra* note 37, at 9.

<sup>43</sup> *Id.*

<sup>44</sup> *Id.* By November 1909, Clara was pregnant. It is unclear whether she shared the news with her father, who may have never known that he had a grandchild. In *I Am Your Loving Daughter, Clara Clemens*, Thomas Larson wrote that the news about the pregnancy may have been intentionally withheld from Twain out of "spite or fear of over-exciting him" as he was on his deathbed. See Thomas Larson, *I Am Your Loving Daughter, Clara Clemens*, SAN DIEGO READER (May 8, 2003), <http://www.thomaslarson.com/publications/san-diego-reader/116-i-am-your-loving-daughter.html>. Alternatively, Mark Zwonitzer in *The Statesman and the Storyteller* specifically relates that Clara told Twain about the pregnancy while he was on his deathbed. MARK ZWONITZER, *THE STATESMAN AND THE STORYTELLER: JOHN HAY, MARK TWAIN, AND THE RISE OF AMERICAN IMPERIALISM* 546 (2016). Neither cites any factual reference to support their opposite conclusions.

<sup>45</sup> *Miss Clemens Weds*, N.Y. TIMES, *supra* note 37, at 9.

<sup>46</sup> *Kin of Mark Twain Wed in Hollywood*, N.Y. TIMES, May 12, 1944, at 17.

<sup>47</sup> PAINE, *supra* note 34, at 1228.

<sup>48</sup> *Id.*

<sup>49</sup> *Id.* at 1229.

was the drafting and signing of Twain's last will and testament.

A. *The Drafter, Charles T. Lark*

Twain's regular attorney was John B. Stanchfield,<sup>50</sup> whose "subordinate" was Charles Tressler Lark.<sup>51</sup> Lark was born in Berrysburg, Pennsylvania and graduated from Gettysburg College in 1898.<sup>52</sup> He later became counsel for the College and chairman of the executive committee of its board of trustees.<sup>53</sup> After graduating from Gettysburg, he enrolled in Yale Law School and received his law degree in 1902.<sup>54</sup> He married and had two sons and a daughter.<sup>55</sup>

By 1918, Lark had developed his own legal practice in New York City, with clients such as the Lehigh Valley Railroad.<sup>56</sup> He defended suits, including one brought by the Russian government, "arising from the famous Black Tom explosion in the first world war."<sup>57</sup> The suits alleged that the Lehigh Valley Railroad, whose tracks ran over Black Tom Island,<sup>58</sup> lacked adequate security at the site.<sup>59</sup>

Upon his death, on October 4, 1946 at age 70, the New York Times called Lark an "authority on wills."<sup>60</sup> Lark had a reputation for drafting

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<sup>50</sup> See Smith, *supra* note 18, at 326 (identifying John B. Stanchfield as the "attorney for the Clemens Estate"). The connection between Twain and John B. Stanchfield is more fully discussed below.

<sup>51</sup> TWAIN, *supra* note 31, at 395. Stanchfield had offices in Elmira and New York City as a named partner of the firm Reynolds, Stanchfield & Collin. *John B. Stanchfield, Lawyer, Dies at 66*, N.Y. TIMES, June 26, 1921. Collin had two additional partners, John L. Wells and Thomas L. Hughes, at the New York City office where Lark was an associate at the time when Twain's will was drafted. TWAIN, *supra* note 19, at 395.

<sup>52</sup> *Charles T. Lark Dies; College Trustee 24 Yrs.*, GETTYSBURG STAR AND SENTINEL, Oct. 12, 1946, at 1.

<sup>53</sup> *Id.*; see also *Charles T. Lark, 70, Authority on Wills*, N.Y. TIMES, Oct. 5, 1946, at 17 [hereinafter *Charles T. Lark, 70*, N.Y. TIMES].

<sup>54</sup> *Charles T. Lark Dies*, GETTYSBURG STAR AND SENTINEL, *supra* note 52.

<sup>55</sup> *Id.*

<sup>56</sup> *Id.*

<sup>57</sup> *Charles T. Lark, 70*, N.Y. TIMES, *supra* note 53. Black Tom was an island near Liberty Island where the Statue of Liberty is placed. On July 30, 1916, German saboteurs blew up munitions at the Island with such force that property in the city was injured. See Roberts, *An Attack That Turned Out to Be German Terrorism Has a Modest Legacy 100 Years Later*, N.Y. TIMES (July 24, 2016), <https://www.nytimes.com/2016/07/25/nyregion/an-attack-that-turned-out-to-be-german-terrorism-has-a-modest-legacy-100-years-later.html>. The torch at the Statue of Liberty was damaged and no visitors have been allowed in the torch since. See *id.*

<sup>58</sup> Roberts, *supra* note 57.

<sup>59</sup> See CAPTAIN HENRY LANDAU, *THE ENEMY WITHIN* 80 (1937).

<sup>60</sup> *Charles T. Lark, 70*, N.Y. TIMES, *supra* note 53.

“many wills” that had “never . . . been broken by contest.”<sup>61</sup> According to the New York Times “[h]e had traveled extensively as a lecturer on Mark Twain and drew the will of Samuel L. Clemens and acted as legal representative for his estate. Until two years ago [actually 1943] he was a director of the Mark Twain Corporation.”<sup>62</sup>

In 1932, Lark worked with an agent, Ernest Briggs, Inc., to promote a lecture that he called “My Client—Mark Twain.”<sup>63</sup> In publicity for the lecture, the Briggs company noted that Lark was a “well known New York attorney[] who ha[d] been eminently successful heretofore on notable occasions where a speaker capable of talking authoritatively on the subject of Mark Twain . . . [was] required . . . .”<sup>64</sup> Lark “was an intimate friend of Mark Twain, was his last household guest, drew his will and [was] still counsel for his estate.”<sup>65</sup> Lark praised Twain in a speech to the Hackensack Rotary Club for his “lively sense of humor,” his “attitude of observation,” and his “fertile wit and wisdom.”<sup>66</sup>

Lark was present on November 19, 1935, as 1,000 guests celebrated the centennial of Twain’s birth at a dinner in the New York Waldorf-Astoria.<sup>67</sup> Lark, addressing those present as well as a radio audience, paid tribute to Twain’s accomplishments and recalled personal experiences with him.<sup>68</sup>

Lark engaged in several legal tasks during the Ashcroft-Lyon affair. On July 17 and July 20, 1909, Clara, Jean, and Lark visited Lyon’s Lobster Pot cottage “to negotiate its transfer back to Clemens and arrange [for] her departure.”<sup>69</sup> On June 1, 1909, under the signature of Samuel L. Clemens, Twain revoked a November 14, 1908 power of attorney issued to Lyon and Ashcroft that had been filed in the office of the Register of the county of New York.<sup>70</sup> The revocation document was witnessed by Charles T. Lark, Albert Bigelow Paine and “CLARA

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<sup>61</sup> *See id.*

<sup>62</sup> *Id.* The New York Times incorrectly reported that Lark had been the director of the Mark Twain Company until 1944, but conflicting resources state that Lark resigned from this position in 1943. *See* RASMUSSEN, *supra* note 4, at 304.

<sup>63</sup> *My Client—Mark Twain*, U. OF IOWA LIBR. (1932), <http://digital.lib.uiowa.edu/cdm/ref/collection/tc/id/23049> (last visited Oct. 15, 2018).

<sup>64</sup> *Id.*

<sup>65</sup> *Id.*

<sup>66</sup> *Id.*

<sup>67</sup> *Nation-Wide Fetes Close Twain Year*, N.Y. TIMES, Nov. 20, 1935, at 25.

<sup>68</sup> *Id.*

<sup>69</sup> Smith, *supra* note 5, at 673; TWAIN, *supra* note 19, at 389.

<sup>70</sup> *Id.*

CLEMENS !!”<sup>71</sup> On June 12, 1909, Lark, on stationery of Collin, Wells & Hughes, where he was an associate, wrote to Paine that someone at Ashcroft’s office had informed him that Ashcroft had sailed for Europe on June 8.<sup>72</sup> Lark noted that this was not consistent with what Ashcroft had told him earlier in the week: that Ashcroft might not leave for Europe because his wife (Lyon) might enter a “sanitarium.”<sup>73</sup> According to Twain’s version of the Ashcroft-Lyon affair, at the same time that Ashcroft fled to Europe, Lark was preparing to refer Lyon’s theft to the District Attorney for Fairfield County.<sup>74</sup> Twain remarked in his autobiography that “the ‘soiled birds’ had flown.”<sup>75</sup>

Finally, in September 1909, Lark concluded a specific agreement with Ashcroft and Lyon to have them resign from the Mark Twain Company, end any pending lawsuits, and refrain from commencing any other possible lawsuits.<sup>76</sup> Lark also came into possession of Twain’s Ashcroft-Lyon manuscript after Twain’s death.<sup>77</sup>

Lark was devoted not only to the resolution of the Ashcroft-Lyon affair, but to the drafting of Twain’s will. Paine recalled at least one meeting between Lark and Twain: “one day he sent for his attorney, Mr. Charles T. Lark, and made some final revisions in his will.”<sup>78</sup> This statement implies that there had been other meetings prior to this meeting.

#### B. *The Text of Mark Twain’s Will*<sup>79</sup>

Twain executed his will on August 17, 1909.<sup>80</sup> It consisted of

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<sup>71</sup> TWAIN, *supra* note 19, at 389. Apparently Clara was intent on making a point.

<sup>72</sup> *Id.* at 395.

<sup>73</sup> *Id.*

<sup>74</sup> *Id.*

<sup>75</sup> TWAIN, *supra* note 19, at 395.

<sup>76</sup> Smith, *supra* note 5, at 673.

<sup>77</sup> Smith, *supra* note 18, at 323–24.

<sup>78</sup> PAINE, *supra* note 34, at 1228.

<sup>79</sup> Twain’s will and related documents were removed from the Redding Probate Court and deposited in the Connecticut State Library due to their value in light of Twain’s signature thereon. Interview with Kendall Wiggan, Connecticut State Librarian by Henry S. Cohn, Judge, New Britain District Sup. Ct. (May 16, 2016). The Redding Probate Court, now the Northern Fairfield Probate Court, retained a book of copies contemporaneously hand-written by the clerk, William E. Hagen. *Id.* The New York Times, in an excellent article titled *Twain’s Heavily Lawyered Last Words*, described the essentials of the will and probate documents. Alison Leigh Cowan, *Twain’s Heavily Lawyered Last Words*, N.Y. TIMES (Apr. 20, 2010, 2:00 PM), <https://cityroom.blogs.nytimes.com/2010/04/20/twains-heavily-lawyered-last-words/>. Seemingly unaware of the State Library collection, the Times used the Redding copies. *See id.*

seven articles. The first article, a routine provision, directed that his funeral expenses and “just debts” be paid by his executors as soon as convenient.<sup>81</sup> The second article bequeathed to his daughter Clara Langdon Clemens five percent of any and all moneys on deposit at any banking institution.<sup>82</sup> The third article made a similar five percent bequest to his daughter Jean Lampton Clemens.<sup>83</sup>

The fourth article dealt with the remainder of Twain’s estate and was arguably most important. He devised his remaining assets of any kind to his executors in trust.<sup>84</sup> Twain appears to have considered himself to have had a duty to protect his daughters from the mistaken investment path he had taken.<sup>85</sup> It is also likely that Twain was concerned that his daughters would not safely control their husbands’ spending habits.<sup>86</sup>

The executors were to divide the assets into two equal parts.<sup>87</sup> They would invest the corpus of the trust and pay the income therefrom quarterly in January, April, July, and October of each year to each daughter.<sup>88</sup> These payments were to be for the sole and separate use of each daughter “free from any control or interference on the part of any husband she may have.”<sup>89</sup> The payments were to continue throughout each daughter’s lifetime, but they could alienate their share by will to a designee.<sup>90</sup> If a daughter died without a will and had a child, then the

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<sup>80</sup> Last Will and Testament of Samuel L. Clemens, 14 Redding Prob. Ct. 430 (1909).

<sup>81</sup> *Id.* at 431.

<sup>82</sup> *Id.*

<sup>83</sup> *Id.*

<sup>84</sup> Last Will and Testament of Samuel L. Clemens, *supra* note 80, at 432.

<sup>85</sup> See Isabelle Budd, *Twain’s Will Be Done*, 22 MARK TWAIN J. 34, 34 (1984) (describing Twain’s clear intent for his will “to keep the money in the family”).

<sup>86</sup> See Last Will and Testament of Samuel L. Clemens, *supra* note 80, at 432–33 (stating that the inheritance was to be “free from any control or interference on the part of any husband” that Clara or Jean may have). While neither daughter was married at the time of the will’s execution, Thomas Larson’s essay, *I am Your Loving Daughter, Clara Clemens*, quotes a biography of Clara’s to demonstrate Twain’s concerns over his daughters’ ability to manage their affairs. Larson, *supra* note 44. In December 1906, Twain told a Congressional Committee reviewing legislation on his favorite concern, copyrights, that he urged a lengthy time period for author rights because he wanted to provide for his daughters Clara and Jean because the two young women “can’t get along as well as I can because I have carefully raised them as young ladies, who don’t know anything and can’t do anything.” *Mark Twain in White Amuses Congressmen*, N.Y. TIMES, Dec. 8, 1906, at 5. Perhaps this was more than a humorous declaration on Twain’s part.

<sup>87</sup> Last Will and Testament of Samuel L. Clemens, *supra* note 80, at 431–32.

<sup>88</sup> *Id.* at 432–33.

<sup>89</sup> *Id.*

<sup>90</sup> *Id.*

child would inherit the daughter's share.<sup>91</sup> If either daughter died without a will and without a child, then the share of income from the trust due to that daughter would pass to the other daughter.<sup>92</sup> The surviving daughter would then become the beneficiary of the entire trust.<sup>93</sup> If the surviving daughter had no will, then on her death, the next of kin would inherit.<sup>94</sup>

Article five named three executors and trustees. The first named was Jervis Langdon.<sup>95</sup> Langdon, who lived in Elmira at Quarry Farm for much of his life, was Olivia Clemens' nephew.<sup>96</sup> He attended Cornell University and was a trustee of his alma mater from 1930–1940.<sup>97</sup> He was a businessman and owner of the Chemung Coal Company of Elmira, as well as trustee of two hospitals.<sup>98</sup> For many years, Mark Twain and his family spent their summers at Quarry Farm with Jervis Langdon and his family.<sup>99</sup>

The second executor-trustee named was Edward E. Loomis (1864–1937),<sup>100</sup> who was the husband of Olivia's niece and Jervis's sister, Julia.<sup>101</sup> Julia was Mark Twain's favorite niece.<sup>102</sup> Loomis was a railroad executive, at one time associated with the Lackawanna &

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<sup>91</sup> Last Will and Testament of Samuel L. Clemens, *supra* note 80, at 432–433.

<sup>92</sup> *Id.* at 432–34.

<sup>93</sup> *Id.*

<sup>94</sup> *Id.* at 434.

<sup>95</sup> Last Will and Testament of Samuel L. Clemens, *supra* note 80, at 435. Larson, while otherwise correct as a general rule, wrongly calls Jervis Langdon Clara's uncle. Larson, *supra* note 44. The confusion is understandable as there were several "Jervises" in the lives of the Twain family. Jervis Langdon (1809–1870) was Olivia Clemens' father, Twain's father-in-law, and Clara's grandfather. See RASMUSSEN, *supra* note 4, at 275. Charles Jervis Langdon (1949–1916) was Olivia's brother, therefore Clara's uncle, and Twain's traveling companion on the Quaker City. *Id.* at 274. Charles had three children, Jervis (1870–1952), Ida, and Julia. *Id.* at 274–75. Jervis, Charles' son, was the executor-trustee and Clara's first cousin, not her uncle. *Jervis Langdon, Leader in Elmira*, N.Y. TIMES, Dec. 17, 1952, at 33 [hereinafter *Jervis Langdon*, N.Y. TIMES].

<sup>96</sup> *Jervis Langdon*, N.Y. TIMES, *supra* note 95.

<sup>97</sup> *Id.*

<sup>98</sup> *Id.*

<sup>99</sup> *Id.*; RASMUSSEN, *supra* note 4, at 384.

<sup>100</sup> Last Will and Testament of Samuel L. Clemens, *supra* note 80, at 435.

<sup>101</sup> See *E.E. Loomis is Dead; Railroad Leader*, N.Y. TIMES, July 12, 1937, at 17 [hereinafter *E.E. Loomis is Dead*, N.Y. TIMES] (identifying Julia Olivia Langdon Loomis as Edward Loomis' widow); see also RASMUSSEN, *supra* note 4, at 274 (identifying Julia Olivia Langdon, Edward Loomis' wife, as the niece of Olivia Langdon Clemens and the sister of Jervis Langdon).

<sup>102</sup> *Mark Twain is Dead at 74*, N.Y. TIMES, Apr. 22, 1910, at 1 [hereinafter *Mark Twain is Dead*, N.Y. TIMES].

Western Railroad and later with the Lehigh Valley Railroad.<sup>103</sup> When Ashcroft was removed from Twain's service, Loomis represented Twain's interest in the Plasmon Milk Products Company.<sup>104</sup>

The third executor-trustee was Zoheth (Zoe) Sparrow Freeman (1875-1932),<sup>105</sup> Vice President of Liberty National Bank, where Twain was a customer.<sup>106</sup> The Freeman family often visited Twain at Stormfield.<sup>107</sup> Zoe's wife, "Sheba" Freeman (Grace Hill), "was apparently a friend of Isabel Lyon's."<sup>108</sup> Jervis Langdon, Edward Loomis and Zoe Freeman were among the named successors to the original board of trustees of the Mark Twain Company as well.<sup>109</sup>

The will's article five also contained the usual duties and powers of executors/trustees. It dispensed with the necessity for the executors to obtain a bond for their role as executors.<sup>110</sup> It allowed the sale of real and personal property from Twain's estate and the payment of his "just debts."<sup>111</sup> It allowed a liberal standard for investment decisions.<sup>112</sup> The expenses of the estate for inheritance taxes were to be paid from the corpus of the trust, not from trust income.<sup>113</sup>

The sixth article provided for successor trustees on a trustee's death.<sup>114</sup> The successor trustee had "all the power and authority conferred . . . upon his predecessor."<sup>115</sup> The successor trustees were to be appointed by the survivor trustees, or by the probate court upon application of a beneficiary if an appointment was not made within six months of the death of a trustee.<sup>116</sup>

The seventh article was one in which Twain set forth the role of Clara and Paine with regard to his literary works. This article provided

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<sup>103</sup> *E.E. Loomis is Dead*, N.Y. TIMES, *supra* note 101.

<sup>104</sup> Letter from Ralph W. Ashcroft to John B. Stanchfield (July 30, 1909), in Harriet E. Smith et al., *appendix to 3 MARK TWAIN, AUTOBIOGRAPHY OF MARK TWAIN 679* (Harriet E. Smith et al. eds., Complete and Authoritative ed. 2015).

<sup>105</sup> Last Will and Testament of Samuel L. Clemens, *supra* note 80, at 435.

<sup>106</sup> ONE THOUSAND NEW HAMPSHIRE NOTABLES 414 (Henry Harrison Metcalf & Frances M. Abbott, eds. 1919); *see also* Letter from Samuel L. Clemens to Zoheth S. Freeman (Nov. 16, 1908) (on file with author).

<sup>107</sup> Smith, *supra* note 9, at 618.

<sup>108</sup> *Id.*

<sup>109</sup> RASMUSSEN, *supra* note 4, at 304.

<sup>110</sup> Last Will and Testament of Samuel L. Clemens, *supra* note 80, at 435.

<sup>111</sup> *Id.* at 435-36.

<sup>112</sup> *See id.* at 436 (allowing the trustees to "invest and reinvest . . . in such manner as in their discretion they deem best").

<sup>113</sup> *Id.*

<sup>114</sup> Last Will and Testament of Samuel L. Clemens, *supra* note 80, at 437.

<sup>115</sup> *Id.*

<sup>116</sup> *Id.*

as follows:

As I have expressed to my daughter, Clara Langdon Clemens, and my associate, Albert Bigelow Paine, my ideas and desires regarding the administration of my literary productions, and as they are especially familiar with my wishes in that respect, I request that my executors and trustees above named confer and advise with [them] as to all matters relating in any way to the control, management and disposition of my literary productions, published and unpublished, and all my literary articles and memoranda of every kind and description, and generally as to all matters which pertain to copyrights and such other literary property as I may leave at the time of my decease. The foregoing suggestion as to consultation is, however, made subject to my contract dated July 24<sup>th</sup> 1909, with [Paine] for the preparation of my letters for publication . . . and subject also to the contract [of August 27, 1906 between Harpers & Brothers and Paine], as I have appointed the said [Paine] as my biographer, and have ratified and approved his said contract relating to the publication thereof.<sup>117</sup>

With that, the will was complete. It was sealed and “subscribed” by Samuel L. Clemens on August 17, 1909.<sup>118</sup> The will was witnessed by Albert Bigelow Paine, Charles T. Lark, and Harry A. Lounsbury.<sup>119</sup>

One of the earliest persons to study Twain’s will in full, Isabelle Budd, reacted to the will as follows:

When Clemens died (April 21, 1910) many of his followers thought (or hoped) his will would be a humorous essay, but when it came to money, he was dead serious. Samuel Clemens the man, like Mark Twain the writer, knew when to be wry and when to play it straight. His will is a standard legalese document obviously drawn up by an attorney. The painful financial problems which plagued him all of his life and his experiences as an executor of the wills of his father-in-law Jervis Langdon and his wife Olivia Langdon Clemens no doubt played a part in his solemn respect for a will.<sup>120</sup>

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<sup>117</sup> *Id.* at 437–38.

<sup>118</sup> Last Will and Testament of Samuel L. Clemens, *supra* note 80, at 438.

<sup>119</sup> *Id.* Harry A. Lounsbury was Twain’s caretaker from Redding who assisted with the founding of the Mark Twain Library. See Letter from Samuel L. Clemens to Charles T. Lark (Apr. 6, 1910), in 2 MARK TWAIN & ALBERT BIGELOW PAINE, MARK TWAIN’S LETTERS 843 (1917) (writing to Lark of his intent for Lounsbury to be involved in the foundation of the Mark Twain Library); see also Brent Colley, *Mark Twain’s Redding, Connecticut Home: Stormfield*, HISTORY OF REDDING, <http://historyofredding.net/HRTwainstormfield.htm> (last visited Sept. 8, 2018) (noting Harry Lounsbury’s relationship to Twain).

<sup>120</sup> Isabelle Budd, *Twain’s Will Be Done*, 22 MARK TWAIN J. 34, 34 (1984).

## IV. THE DEATHS OF JEAN CLEMENS AND MARK TWAIN

On December 20, 1909, Twain returned to Stormfield from a month's vacation in Bermuda.<sup>121</sup> He and Jean began making plans for a Christmas celebration.<sup>122</sup> Jean had a friend due to arrive for a visit to spend the holidays at Stormfield.<sup>123</sup> They spent some time just days before her death trimming a Christmas tree in preparation for the holiday.<sup>124</sup> Tragedy struck on December 24, 1909 at 7:30 AM: Jean suffered an epileptic seizure and drowned in her bathtub as a result.<sup>125</sup> Jean's sister Clara was notified in Europe.<sup>126</sup> A funeral was held and Jean was buried with her mother in Elmira.<sup>127</sup> Due to his health, Twain did not travel to Elmira.<sup>128</sup> Twain described Jean's loss as "a bullet crash[ing] through his heart."<sup>129</sup>

As Twain's will no longer applied to Jean, Clara became his sole legatee.<sup>130</sup> Twain, an inveterate smoker, was suffering from angina.<sup>131</sup> He was also emotionally affected by Jean's death.<sup>132</sup> He tried another trip to Bermuda in April, 1910, but could not relax there.<sup>133</sup> Having been informed by William H. Allen in Bermuda, with whom Twain was staying, of the crisis in Twain's health, Paine immediately set out to bring Twain home.<sup>134</sup>

Twain had given land at Stormfield to Jean for a farm.<sup>135</sup> As he returned from Bermuda, he wrote to Lark in New York on April 6, 1910:

<sup>121</sup> See TWAIN, *supra* note 19, at 310, 312 (in an entry dated Christmas Eve (December 24<sup>th</sup>), Twain states that he returned from a month's vacation in Bermuda four days ago—December 20<sup>th</sup>).

<sup>122</sup> *Miss Jean Clemens Found Dead in Bath*, N.Y. TIMES, Dec. 25, 1909 [hereinafter *Miss Jean Clemens Found Dead in Bath*, N.Y. TIMES].

<sup>123</sup> *Id.*

<sup>124</sup> *Id.*

<sup>125</sup> *Id.*

<sup>126</sup> *Miss Jean Clemens Found Dead in Bath*, N.Y. TIMES, *supra* note 122 (reporting that Clara Clemens was informed of her sister's death through cablegram while on her honeymoon abroad).

<sup>127</sup> *Id.*

<sup>128</sup> *Id.* Twain wrote in his autobiography, however, that he was not actually ill; rather, he was too heartbroken to attend the ceremony in Elmira. TWAIN, *supra* note 19, at 312.

<sup>129</sup> TWAIN, *supra* note 19, at 311.

<sup>130</sup> Last Will and Testament of Samuel L. Clemens, *supra* note 80, at 433–434.

<sup>131</sup> Smith, *supra* note 9, at 628.

<sup>132</sup> See TWAIN, *supra* note 19, at 310–19 (Twain describing his sorrow following the death of his daughter Jean).

<sup>133</sup> PAINE, *supra* note 6, at 1255.

<sup>134</sup> *Id.*

<sup>135</sup> 6 MARK TWAIN & ALBERT BIGELOW PAINE, MARK TWAIN'S LETTERS 1907–1910 (1917) [hereinafter TWAIN & PAINE].

I have told Paine that I want the money derived from the sale of the farm, which I had given, but not conveyed, to my daughter Jean, to be used to erect a building for the Mark Twain Library of Redding, the building to be called the Jean L. Clemens Memorial Building.

I wish to place the money \$6,000.00 in the hands of three trustees,—Paine and two others: H. A. Lounsbury and William E. Hazen, all of Redding, these trustees to form a building Committee to decide on the size and plan of the building needed and to arrange for and supervise the work in such a manner that the fund shall amply provide for the building complete, with necessary furnishings, leaving, if possible, a balance remaining, sufficient for such repairs and additional furnishings as may be required for two years from the time of completion.

Will you please draw a document covering these requirements and have it ready by the time I reach New York (April 14<sup>th</sup>).<sup>136</sup>

This is considered Twain's last public letter.<sup>137</sup>

Twain and Paine sailed home on April 12 and arrived on April 14.<sup>138</sup> On April 21, Twain started his day stable at Stormfield, but later in the day he slipped into a coma and died.<sup>139</sup> Clara and Ossip were present.<sup>140</sup> Two trustees named in Twain's will, Loomis and Langdon, had visited in the morning and left for New York assuming that Twain was improving.<sup>141</sup>

The casket first stopped in nearby Branchville to board the train, then went on to the Bouton Funeral Home in the Georgetown section of Greenwich, Connecticut.<sup>142</sup> The funeral was held at the Brick Presbyterian Church in New York City, officiated by Twain's friends Henry Van Dyke and the Reverend Joseph Twichell of Hartford.<sup>143</sup> The burial took place in Woodlawn Cemetery in Elmira, where Twain was buried beside his wife.<sup>144</sup> While Twichell was expected to attend, he did

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<sup>136</sup> Letter from Samuel L. Clemens to Charles T. Lark (Apr. 6, 1910), in *TWAIN & PAINE*, *supra* note 135.

<sup>137</sup> *TWAIN & PAINE*, *supra* note 135.

<sup>138</sup> *Id.*

<sup>139</sup> *Id.*

<sup>140</sup> *Mark Twain is Dead at 74*, N.Y. TIMES, Apr. 22, 1910, at 1.

<sup>141</sup> *Id.*

<sup>142</sup> James Lomuscio, *Historians Stake Norwalk's Claim to Twain*, CONN. POST (Apr. 18, 2010), <https://www.ctpost.com/local/article/Historians-stake-Norwalk-s-claim-to-Twain-453299.php>.

<sup>143</sup> *Last Glimpse Here of Mark Twain*, N.Y. TIMES, Apr. 24, 1910, at 3 [hereinafter *Last Glimpse Here of Mark Twain*, N.Y. TIMES].

<sup>144</sup> *Mark Twain at Rest; Buried Beside Wife*, N.Y. TIMES, Apr. 25, 1910, at 9 [hereinafter *Mark Twain at Rest*].

not attend the burial as he learned that his own wife had fallen critically ill during the funeral exercises.<sup>145</sup>

## V. PROBATING MARK TWAIN'S WILL

On May 2, 1910, Mark Twain's will and associated documents were filed with the Redding Probate Court and the probate process began.<sup>146</sup> Three lawyers were involved in the probating of the will: John B. Stanchfield, Charles D. Lockwood, and Charles T. Lark.<sup>147</sup>

The main attorney in the matter was Lark's supervisor, Twain's standard attorney, John B. Stanchfield.<sup>148</sup> Stanchfield was born in 1856 in Elmira, New York.<sup>149</sup> He graduated from Amherst and attended Harvard Law School.<sup>150</sup>

Stanchfield was an attorney in Elmira for twenty-two years, also serving as a district attorney and in the New York State legislature.<sup>151</sup> He later moved his practice to New York City.<sup>152</sup> He was an unsuccessful Democratic candidate for governor in 1900,<sup>153</sup> as well as an unsuccessful Democratic candidate for U.S. senator in 1901.<sup>154</sup> He

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<sup>145</sup> *Mrs. Twichell Seriously Ill*, N.Y. TIMES, Apr. 24, 1910, at 3. The illness resulted in Mrs. Twichell's death and the news of her passing was shared at Twain's burial. *Mark Twain at Rest*, *supra* note 144.

<sup>146</sup> Budd, *supra* note 120, at 35 n.1. At the time that the will was filed, the Redding Probate Court was an entity of its own. After 2011, the Redding Probate Court as well as the probate courts of Bethel and Ridgefield were consolidated into the Northern Fairfield Probate Court, located in Bethel. The Redding Probate Court documents cited herein are part of Record Group (RG) 004:117, which may be located through the Connecticut State Library's finding aid at [https://ctstatelibrary.org/RG004\\_117.html](https://ctstatelibrary.org/RG004_117.html). The references to the Record Group at the State Library are for Mark Twain's will and associated documents, not any other Clara-related documents, which are available exclusively through the Northern Fairfield Probate Court.

<sup>147</sup> See Waiver of Notice on Probate of Will and Granting Letters, 14 Redding Prob. Ct. 431 (May 2, 1910). Lark was intimately involved with the probating of the will as the document's drafter.

<sup>148</sup> See TWAIN, *supra* note 19, at 326 (in which Charles T. Lark describes John B. Stanchfield as the attorney for the Clemens estate).

<sup>149</sup> *John B. Stanchfield, Lawyer, Dies at 66*, N.Y. TIMES, *supra* note 51.

<sup>150</sup> *Id.* As a pitcher at Amherst, he was credited with having thrown the first curve ball in a baseball game. *Id.* Immediately after the game, a professor of physics gave a lecture declaring such a pitch was impossible, violating the laws of nature and physics. *Id.* Stanchfield then provided a demonstration by pitching a roundhouse curve on the diamond to the professor's amazement. *Id.*

<sup>151</sup> *John B. Stanchfield, Lawyer, Dies at 66*, N.Y. TIMES, *supra* note 51.

<sup>152</sup> BUILDERS OF OUR NATION: MEN OF NINETEEN THIRTEEN 437 (20th Century ed. 1914).

<sup>153</sup> *Id.*; see also *The State Official Vote*, N.Y. TIMES, Dec. 13, 1900, at 1.

<sup>154</sup> Charles Strauss & William M. Parke, *Memorial of John B. Stanchfield*, in 14 N.Y.

became one of New York's most famous attorneys, his major cases including obtaining the release of Harry K. Thaw from the Matteawan Institution,<sup>155</sup> where he had been placed after a finding of not guilty by reason of insanity in the killing of Stanford White.<sup>156</sup> Stanchfield died of kidney failure at age 66 in 1921.<sup>157</sup>

Stanchfield's connection to Twain was through Stanchfield's wife Clara, whom he married in 1886.<sup>158</sup> Clara met Olivia (Livy) Twain while they were growing up and at school in Elmira.<sup>159</sup> In 1878, as Clara Spaulding, she had sailed on the *S.S. Holsatia* to Hamburg, Germany with the Twain family, a voyage that became the start of Twain's book, *A Tramp Abroad*.<sup>160</sup> Clara Spaulding Stanchfield had invested \$5,000 in Twain's albatross, the typesetter.<sup>161</sup> Mrs. Stanchfield reportedly attended Clara Clemens' wedding;<sup>162</sup> Mr. Stanchfield later attended Mark Twain's funeral.<sup>163</sup>

It is likely that Stanchfield was not admitted to the Connecticut bar and, as a result of his inability to admit the will in Connecticut, turned to Connecticut attorney Charles D. Lockwood to file the probate papers in Redding.<sup>164</sup> While Stanchfield was not the attorney to formally admit the will, he remained present throughout the process as evidenced by the fact that several of the probate documents bear the signature of or identify both Stanchfield and Lockwood's law firm, Cummings & Lockwood, as attorneys for the estate.<sup>165</sup>

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CTY. LAWYERS' ASS'N, YEAR BOOK 1922 274 (1922).

<sup>155</sup> *John B. Stanchfield, Lawyer, Dies at 66*, N.Y. TIMES, *supra* note 51.

<sup>156</sup> *Thaw in Asylum at Matteawan, Jury Finds Him Not Guilty on Ground of Insanity*, HARTFORD COURANT, Feb. 3, 1908, at 13.

<sup>157</sup> *John B. Stanchfield, Lawyer, Dies at 66*, N.Y. TIMES, *supra* note 51.

<sup>158</sup> *Clara L. Spaulding Biography*, MARK TWAIN PROJECT, [http://www.marktwainproject.org/biographies/bio\\_spaulding\\_clara.html](http://www.marktwainproject.org/biographies/bio_spaulding_clara.html) (last visited Sept. 16, 2018) [hereinafter *Clara Spaulding Biography*]; *see also* Strauss & Parke, *supra* note 154, at 273 (noting Stanchfield's three terms serving as Mayor of Elmira).

<sup>159</sup> *Clara Spaulding Biography*, *supra* note 158.

<sup>160</sup> 2 MARK TWAIN, MARK TWAIN'S NOTEBOOKS & JOURNALS 42-43 (Frederick Anderson, Lin Salamo & Bernard L. Stein eds., 1975).

<sup>161</sup> 3 MARK TWAIN, MARK TWAIN'S NOTEBOOKS & JOURNALS 461 n.182 (Frederick Anderson et al. eds., 1979).

<sup>162</sup> *Miss Clemens Weds*, N.Y. TIMES, *supra* note 37.

<sup>163</sup> *Last Glimpse Here of Mark Twain*, N.Y. TIMES, *supra* note 143.

<sup>164</sup> *John B. Stanchfield, Lawyer, Dies at 66*, N.Y. TIMES, *supra* note 51 (referring to Stanchfield as "one of the leaders of the New York bar" and making no reference to any work conducted by Stanchfield outside of the state of New York, supporting the inference that he was not admitted in Connecticut or any other state).

<sup>165</sup> *See, e.g.*, Application for Extension of Time for Filing Inventory, and Order Allowing the Same, 14 Redding Prob. Ct. 497 (Aug. 30, 1910) (bearing the names of both John B.

Charles D. Lockwood, age 32, had entered into a partnership with Homer Cummings in 1909,<sup>166</sup> just as Lark was obtaining Twain's signature on his will.<sup>167</sup> By 1910, when Cummings & Lockwood was acting as counsel for the probate of Twain's will,<sup>168</sup> the partnership was still so new that the stamp on some of the documents was changed in hand from "Charles D. Lockwood, Attorney and Counsellor" to "Cummings & Lockwood, Attorneys at Law."<sup>169</sup>

Homer Cummings became famous after creating the partnership, serving as Franklin Roosevelt's Attorney General from 1933 to 1939.<sup>170</sup> Prior to his appointment as the Attorney General of the United States, he was the Fairfield State's attorney and, in that role, entered a "nolle prosequi" in a case in which a man stood accused of killing a Bridgeport priest.<sup>171</sup> Cummings' decision to recall his own charge became the subject of the movie "*Boomerang!*" starring Dana Andrews as Cummings.<sup>172</sup>

But why did Lockwood become local counsel? Lockwood was born in Stamford in 1877, graduating from Yale in 1900 with a philosophy degree.<sup>173</sup> He then entered Yale Law School, graduating in 1903.<sup>174</sup> Charles Lark was a member of the Yale class of 1899 and the Yale Law School class of 1902.<sup>175</sup> It is possible, therefore, that Lark

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Stanchfield and Charles D. Lockwood as the attorneys representing the executors of the estate); Inventory of Property Belonging to the Estate of Samuel L. Clemens, 14 Redding Prob. Ct. 504 (Oct. 18, 1910) [hereinafter Oct. 18, 1910 Inventory] (identifying both Cummings & Lockwood and John B. Stanchfield as associated attorneys).

<sup>166</sup> *Portrait of a Family: Stamford through the Legacy of the Davenports: Charles Davenport Lockwood 1877-1949*, THE STAMFORD HISTORICAL SOC'Y, [http://www.stamfordhistory.org/dav\\_lockwood.htm](http://www.stamfordhistory.org/dav_lockwood.htm) (last visited Sept. 17, 2018) [hereinafter STAMFORD HISTORICAL SOC'Y].

<sup>167</sup> Last Will and Testament of Samuel L. Clemens, *supra* note 80, at 47.

<sup>168</sup> See Order Admitting Will to Probate, 14 Redding Prob. Ct. 394 (May 2, 1910) (identifying Cummings & Lockwood as the attorney for the probate of Twain's will).

<sup>169</sup> See, e.g., Petition for Probate of Will, 14 Redding Prob. Ct. 430 (Apr. 28, 1910). The firm of Cummings and Lockwood has since become one of the most successful Connecticut firms, specializing in estate matters in states across the U.S. *About Us*, CUMMINGS & LOCKWOOD, LLC, <https://www.cl-law.com/our-firm/about-us> (last visited Sept. 17, 2018).

<sup>170</sup> *Attorney General: Homer Stillé Cummings*, U.S. DEP'T OF JUSTICE, <https://www.justice.gov/ag/bio/cummings-homer-still> (last updated June 29, 2017).

<sup>171</sup> Ken Armstrong, Smithsonian Magazine & The Marshall Project, *The Suspect, The Prosecutor, and the Unlikely Bond They Forged*, SMITHSONIAN MAGAZINE (Jan. 2017), <https://www.smithsonianmag.com/history/charming-story-homer-cummings-harold-israel-180961429/>.

<sup>172</sup> *Id.*

<sup>173</sup> STAMFORD HISTORICAL SOC'Y, *supra* note 166.

<sup>174</sup> *Id.*

<sup>175</sup> *Charles T. Lark*, 70, N.Y. TIMES, *supra* note 53.

was aware of Lockwood before their interactions surrounding Mark Twain's will as a result of their time spent together at Yale. After law school, Lockwood passed both the Connecticut and New York bar examinations and began his career as Deputy Assistant District Attorney of New York County.<sup>176</sup> He served in that position from 1904 until 1906.<sup>177</sup> He returned to Stamford in 1906, married, and became Stamford's Probate Judge in 1907.<sup>178</sup> He was re-elected in 1908 and 1910, but declined to seek another term in 1913.<sup>179</sup>

As Stamford's probate judge, he could not accept a private client's legal business at his court, but could become counsel at the Redding Probate Court for the estate of Mark Twain.<sup>180</sup> After serving as the local counsel in the probate of Twain's will, he held several governmental and political posts as a prominent Stamford Democrat until his death in 1949.<sup>181</sup>

In 1920, Lockwood unsuccessfully sought the Democratic nomination for governor.<sup>182</sup> Lockwood indicated in his campaign literature that he served as an attorney in Connecticut for the executors and trustees of and under the will of Mark Twain.<sup>183</sup>

Lockwood had reason to be proud of his family's name and heritage. The Lockwoods had been a fixture in Fairfield County, their ancestor being Robert Lockwood, who arrived there around 1646.<sup>184</sup> Interestingly, on a voyage aboard the *Quaker City*, Twain himself befriended a "prominent Norwalk resident[]" bearing the Lockwood

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<sup>176</sup> THE STAMFORD HISTORICAL SOC'Y, *supra* note 166.

<sup>177</sup> *Id.*

<sup>178</sup> THE STAMFORD HISTORICAL SOC'Y, *supra* note 166.

<sup>179</sup> *Id.*

<sup>180</sup> See Jane Gordon, *Judges and Lawyers Debate Probate System*, N.Y. TIMES (Feb. 5, 2006), <https://www.nytimes.com/2006/02/05/nyregion/nyregionspecial2/judges-and-lawyers-debate-probate-system.html> (noting that in the Connecticut probate system, a judge from one town may appear as an attorney in neighboring courts).

<sup>181</sup> THE STAMFORD HISTORICAL SOC'Y, *supra* note 166 (listing Lockwood's political positions, which included state representative, delegate-at-large to the 1916 and 1920 Democratic Conventions, and others).

<sup>182</sup> *Lockwood Looms Up as Delegation Starts for Coast*, HARTFORD COURANT, June 18, 1920, at 1.

<sup>183</sup> Interview with Attorney William Narwald of Cummings & Lockwood, by Henry S. Cohn, Judge, New Britain District Sup. Ct. (Jan. 9, 2017) (notes of interview on file with author).

<sup>184</sup> See FREDERICK A. HOLDEN & E. DUNBAR LOCKWOOD, *DESCENDANTS OF ROBERT LOCKWOOD: COLONIAL AND REVOLUTIONARY HISTORY OF THE LOCKWOOD FAMILY IN AMERICA 1* (1889) (discussing Robert Lockwood's move to Fairfield, Connecticut from Massachusetts).

name, Edward Keeler Lockwood.<sup>185</sup> Twain wrote after his trip to his friend, another passenger on the ship, Mary Mason Fairbanks, of Lockwood: “ripples of silvery laughter.”<sup>186</sup> Edward K. Lockwood died in 1906, just a few years before Charles would become involved with Twain’s estate.<sup>187</sup>

Lark, Stanchfield, and Lockwood filed the following documents with the Redding Probate Court:

- A. *A Petition for Probate of a Will was Prepared by Lockwood of Cummings & Lockwood of Stamford, Connecticut and Filed on April 28, 1910.*<sup>188</sup>

The petition contained representations from Edward E. Loomis and Zoheth S. Freeman of New York City that Samuel L. Clemens was domiciled in Redding, died testate on April 21, 1910 at the age of “about seventy-four,” and that he died “leaving real and personal estate.”<sup>189</sup> They further represented that the real estate in Redding (Stormfield) had an estimated value of \$30,000 and that the value of all personal property did not exceed \$150,000.<sup>190</sup> Additionally, they represented “that, according to their best belief and knowledge, the below named [was] the only next of kin and heir-at-law of said deceased and the only person (other than creditors) interested in said Estate.”<sup>191</sup> This sole interested party was Twain’s last living daughter, Clara L. Gabrilowitsch.<sup>192</sup>

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<sup>185</sup> Lomuscio, *supra* note 142. Edward Keeler Lockwood was Charles D. Lockwood’s sixth cousin once removed. See Madeleine Eckert, Descendant Report for Robert Lockwood (on file with author).

<sup>186</sup> Letter from Samuel Clemens to Mary Mason Fairbanks (Dec. 12, 1867) (on file with Huntington Library, San Marino, California), [https://oac.cdlib.org/findaid/ark:/13030/c8988ch/c/entire\\_text/](https://oac.cdlib.org/findaid/ark:/13030/c8988ch/c/entire_text/).

<sup>187</sup> *Death of Edward K. Lockwood After a Few Days’ Illness*, NORWALK HOUR, June 22, 1906; see Order Admitting Will to Probate, *supra* note 168 (a 1910 document identifying Cummings & Lockwood as attorneys for the executors and the estate).

<sup>188</sup> Petition for Probate of Will, *supra* note 169.

<sup>189</sup> *Id.*

<sup>190</sup> *Id.*

<sup>191</sup> *Id.*

<sup>192</sup> Petition for Probate of Will, *supra* note 169. At the time, Clara was still married to Ossip Gabrilowitsch and was deemed to be “temporarily residing” in Redding. *Id.*

*B. The Three Executors also Submitted a Bond in the Amount of \$200 Dated April 30, 1910, Whereby Albert Paine Acted as Surety and the Executors as Principals.*<sup>193</sup>

While a bond of this nature was expressly excused by the terms of the will,<sup>194</sup> it ensured that the executors were held to their duties in the scope of their appointments.<sup>195</sup>

*C. A Document Signed by “Clara Gabrilowitsch” Waiving Notice and Agreeing to the Issuance of “Letters Testamentary” to the Executors was Dated and Filed May 2, 1910.*<sup>196</sup>

Through bearing her signature on the document, Clara acknowledged that she was the “only person interested in said Estate as heir-at-law who [was] entitled to notice of a hearing upon said petition in said Court.”<sup>197</sup> Probate Judge John N. Nickerson ordered that the waiver was “to be recorded and kept on file in [the] Court.”<sup>198</sup>

On May 2, 1910, Judge Nickerson entered an order confirming that the will of Samuel L. Clemens had been presented to the court by two of the executors named therein, Edward Loomis and Zoheth Freeman; that Clara Clemens was the only heir-at-law; that she had submitted a waiver of notice allowing for dispensing with notice to interested parties; that the executors’ attorneys, John B. Stanchfield and Cummings & Lockwood, had produced Albert Bigelow Paine and Charles Lark as attesting witnesses to the execution of the will; and that there was no opposition to the probate of the will.<sup>199</sup> Accordingly, the Court concluded the following:

[T]he said deceased at the time of the execution of said instrument was of lawful age and of sound mind, that he was domiciled in said Redding at the time of his decease, and died within the last ten years, and that said instrument

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<sup>193</sup> Bond of Executor, 8 Redding Prob. Ct. 421 (May 2, 1910). While the bond was dated April 30, 1910, it was not filed with the Redding Probate Court until May 2, 1910. *Id.*

<sup>194</sup> Last Will and Testament of Samuel L. Clemens, *supra* note 80, at 435 (stating in Article Five that “I desire that [Langdon, Loomis, and Freeman] shall not be required to furnish any bond or other security as such Executors or Trustees, and that if the Court administering upon my said estate shall nevertheless require any such bond or security, the same shall be obtained at the expense of my estate”).

<sup>195</sup> Bond of Executor, *supra* note 193.

<sup>196</sup> Waiver of Notice on Probate of Will and Granting Letters, *supra* note 147.

<sup>197</sup> *Id.*

<sup>198</sup> *Id.*

<sup>199</sup> Order Admitting Will to Probate, *supra* note 168.

was duly executed according to law, and [the Court] adjudges said instrument to be the last will and testament of said deceased, valid to pass real and personal estate, and that the same is duly proved, and [the Court] approves and orders the same to be recorded and kept on file in this Court.<sup>200</sup>

On July 15, 1911, Lockwood reported to the court that a notice to creditors to make claims against the estate had been published in the Danbury News and posted on a sign in Redding on May 2, 1910.<sup>201</sup> On August 30, 1910, the executors, by Stanchfield and Cummings & Lockwood as representatives, moved for an extension from July 2 to October 2, 1910 to file the estate's inventory.<sup>202</sup> Judge Nickerson entered an order approving the extension on September 9, 1910.<sup>203</sup>

The parties filed the estate's inventory on October 18, 1910 on the stationery of Cummings & Lockwood and it bore the name of John B. Stanchfield of 11 Pine Street, New York City, New York, attorney for executors.<sup>204</sup> The first item of inventory was the 230 acres in Redding known as "Stormfield."<sup>205</sup> As described by the estate's inventory, the land was bound in part by an old highway on the north, westerly by land of Fanny Nash, southerly by the Georgetown Road, and easterly by a highway known as "Knob Crook."<sup>206</sup> It consisted of four parcels conveyed to Twain throughout his life, one lot from March 24, 1906, another of seventy-three acres from April 8, 1909, another of ten acres from September 4, 1906, and one of 107 acres dated May 7, 1906.<sup>207</sup> The appraisers valued this property at \$65,000.<sup>208</sup>

There were two other pieces of real estate listed on the inventory. The first was a tract near the Diamond Hill school house and the old highway valued at \$1,000.<sup>209</sup> The second was Isabella Lyon's cottage known as the "Lobster Pot," built on twenty-one acres.<sup>210</sup> It was bound in part by land belonging to A.B. Paine and separated from Stormfield

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<sup>200</sup> *Id.*

<sup>201</sup> Return of Notice to Creditors, 15 Redding Prob. Ct. 15 (July 15, 1911).

<sup>202</sup> Application for Extension of Time for Filing Inventory, and Order Allowing Same, *supra* note 165.

<sup>203</sup> *Id.*

<sup>204</sup> Oct. 18, 1910 Inventory, *supra* note 165.

<sup>205</sup> *Id.*

<sup>206</sup> *Id.*

<sup>207</sup> *Id.*

<sup>208</sup> Oct. 18, 1910 Inventory, *supra* note 165.

<sup>209</sup> *Id.*

<sup>210</sup> *Id.* For more information about Isabella Lyon's cottage, the "Lobster Pot," see RASMUSSEN, *supra* note 4, at 297.

by the old highway.<sup>211</sup> Isabella V. Lyon Ashcroft had deeded this land to Mark Twain on July 17, 1909 as part of the Ashcroft-Lyon settlement.<sup>212</sup> It had a value of \$4,000.<sup>213</sup>

The inventory next turned to Twain's stock holdings. He owned 100 shares of AT&T valued at \$13,687.50; 1750 shares of Utah Consolidated Mining Company valued at \$80,937.50; 165 shares of United Fruit Company valued at \$29,370; 67 shares of Brooklyn Union Gas Company valued at \$10,050; 400 shares of Anaconda Copper Company valued at \$18,100; 100 shares of Union Pacific Railroad Company valued at \$18,587.50; and, most importantly, 50 shares of the Mark Twain Company valued at \$200,000.<sup>214</sup>

Additionally, the inventory addressed a series of investments in the Plasmon Milk Products Company.<sup>215</sup> First, 375 shares of capital stock of the Plasmon Milk Products Company were considered to be "practically worthless" and were valued at a mere \$100.<sup>216</sup> Second, the inventory addressed 5000 shares of the Plasmon Syndicate, Limited, and 6 of the so-called "Founder Shares" of which "the executors . . . [were] unable to secure an offer, but which stock they believe[d] to be worth about \$1000."<sup>217</sup> Finally, another 400 shares of the Plasmon Company of America were, once more, "believed to be worthless."<sup>218</sup>

Continuing with the Twain investments, the inventory reported that

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<sup>211</sup> Oct. 18, 1910 Inventory, *supra* note 165.

<sup>212</sup> *Id.*; see LYSTRA, *supra* note 2 at 214 (describing the matter of obtaining the cottage from Lyon in the settlement).

<sup>213</sup> Oct. 18, 1910 Inventory, *supra* note 165.

<sup>214</sup> *Id.* In a comment on this appraisal, Harper & Brothers, the publisher of Twain's books, put the Mark Twain Company figure at \$180,000. *Mark Twain Estate About Half Million*, N.Y. TIMES, July 15, 2011, at 7. In a letter commenting on the appraisal, F.A. Duneka of Harper stated that

[a] copyright is a very perishable and usually non-marketable thing, growing of less and less value very rapidly after an author's death. While we expect that during the next four years the Mark Twain estate will receive under existing contracts \$18,000 a year upon copyright royalty account, yet this amount after the expiration of existing contracts will immediately tend to dwindle and diminish.

*Id.* As seen in the foregoing, however, Duneka's analysis was incorrect.

<sup>215</sup> Plasmon was a cookie company in which Twain was invested for several years. See PAINE, *supra* note 31, at 845 (regarding the nature of the product and Twain's original investment). When the company declared bankruptcy in 1907, the New York Times reported that Twain had acted as an officer, specifically the vice president, of the company. *Mark Twain Concern Gives Up The Ghost*, N.Y. TIMES, Dec. 21, 1907, at 6 (regarding the company's bankruptcy filing).

<sup>216</sup> Oct. 18, 1910 Inventory, *supra* note 165.

<sup>217</sup> *Id.*

<sup>218</sup> *Id.*

he had 3 shares of the Fentress Land Company valued at \$500; 813 shares of J. Langdon & Company valued at \$21,674.58; and 60 shares of an English corporation, Roodeport Central Deeps valued at \$150.<sup>219</sup>

The following stock was appraised as worthless: 50 shares of the Hope-Jones Organ Company, 345 shares of the Koy-lo Company, 133 shares of International Spiral Pin Company, 1 share of the Bandar Log Press, 400 shares of the American Mechanical Cash Register Company, and 32 bonds issued thereby.<sup>220</sup>

Three groups of bonds did have value: two bonds issued by Park County, State of Montana, worth \$2,000, one bond issued by Atlanta Gas Light Company, worth \$1,000, and ten bonds issued by DuVal County, State of Florida, worth \$5,000.<sup>221</sup>

Other outstanding items were included in the inventory. Twain was due \$41,666.67 from C.J. Langdon from the proceeds of the sale of property on April 1, 1910; \$7,824.24 had been paid by a debtor to the estate and was in the hands of the executors; and \$734.08 was reported to be located in the New York bank, Lincoln National.<sup>222</sup> Finally, Twain left a “small trunk with the Lincoln Safe Deposit Company, which trunk contained copies of certain of his manuscripts, the originals of which were in [Twain’s] possession in Redding, Connecticut, at the time of his decease” and were deemed to be worthless.<sup>223</sup>

The personalty contents of Stormfield were also set forth for the billiard room, the lower hall, the office, the living room, the dining room, the loggia, the upper hall, the bachelor guest room, “Mr. Clemens’ room,” the music room, the small north bedroom, the small east guest’s room, the attic and servants’ room, the kitchen, the pantry, laundry, and servants’ dining room.<sup>224</sup> These contents had a total value of \$6,045.<sup>225</sup>

The inventory concluded with a miscellaneous list of tangible property, including the contents of the cellar valued at \$100; silverware valued at \$1,000; china and glassware valued at \$500; kitchenware valued at \$4,100; and books in the library valued at \$2,000.<sup>226</sup> Two

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<sup>219</sup> *Id.*

<sup>220</sup> Oct. 18, 1910 Inventory, *supra* note 165.

<sup>221</sup> *Id.*

<sup>222</sup> *Id.*

<sup>223</sup> *Id.*

<sup>224</sup> Oct. 18, 1910 Inventory, *supra* note 165.

<sup>225</sup> *Id.*

<sup>226</sup> *Id.* The books from Twain’s library were donated to the Redding Library, which was erected in Jean’s memory. See *History of the Mark Twain Library*, MARK TWAIN LIBRARY, <https://marktwainlibrary.org/about-us/history-of-the-mark-twain-library/> (last visited Sept. 26, 2018).

horses, one cow, and “several vehicles, all used in connection” with Stormfield were valued at \$500.<sup>227</sup> There was also a small amount of furniture in storage in New York City, valued at \$600.<sup>228</sup> There were five notes of \$100 due to Twain from J. E. Clemens (a cousin of Twain’s from St. Louis) which were deemed uncollectible and therefore, worthless.<sup>229</sup> Four notes for \$100 due Twain from one Sanford Wilson, however, were deemed collectible and hence worth \$400.<sup>230</sup>

The inventory also stated that Jean’s intestate estate was being settled in the Redding Probate Court with Twain’s estate as the sole heir thereof.<sup>231</sup> Jean’s estate had a value of \$7,000, consisting of five bonds of U.S. Steel Corporation, a bond of the Atlantic Gas Light Corporation, 370 worthless shares of common stock of the Tabard Inn Corporation, a horse, and an orchestrelle.<sup>232</sup>

The inventory concludes with various signatures. It was signed under oath by the two appraisers; Albert Paine and Harry Lounsbury; by the three executors of the estate, Edward Loomis, Zoheth Freeman, and Jervis Langdon; and, finally, by the judge.<sup>233</sup>

The aforementioned New York Times article, *Twain’s Heavily Lawyered Last Words*, turned to the attachments to the inventory that showed adjustments.<sup>234</sup> Clara’s quarterly payments under the will totaled \$40,093.60 yearly.<sup>235</sup> The inheritance tax paid was \$5,167.01.<sup>236</sup> Dividends and bond interest paid during the time of the inventory were set forth, including \$10,000 in royalties from Harper & Brothers not payable until March, 1911.<sup>237</sup> Funds were spent on gravestones for both Jean (\$50) and Twain (\$100).<sup>238</sup> Lockwood was paid \$1000 for his legal

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<sup>227</sup> Oct. 18, 1910 Inventory, *supra* note 165.

<sup>228</sup> *Id.*

<sup>229</sup> *Id.*

<sup>230</sup> *Id.*

<sup>231</sup> Oct. 18, 1910 Inventory, *supra* note 165.

<sup>232</sup> *Id.* An orchestrelle is a large musical instrument that looks like an organ and is designed to mimic the sound of an orchestra. *Orchestrelle*, WEBSTER’S INTERNATIONAL DICTIONARY (3d ed. 1969).

<sup>233</sup> *Id.*

<sup>234</sup> Cowan, *supra* note 79 (follow the hyperlinks within the article to be directed to various original documents procured by the New York Times).

<sup>235</sup> See Administration Account, 15 Redding Prob. Ct. 16 (July 1, 1911) [hereinafter Administration Account] (on file with author).

<sup>236</sup> See *id.* (noting the computation of inheritance tax paid to the State of Connecticut and the amount due thereto).

<sup>237</sup> See *id.*

<sup>238</sup> See *id.* (Schedule C records payment for Jean’s gravestone. Schedule E records a \$75 payment for Twain’s gravestone and a second \$25 payment for Twain’s gravestone.)

services.<sup>239</sup> The estate incurred expenses for care of the real estate and to rent a safe deposit box.<sup>240</sup> Additionally, the executors bought a manuscript from Ashcroft for \$229.74.<sup>241</sup> While the inventory began with a gross value of \$541,136.07, the estate was worth \$515,286.42 after all adjustments.<sup>242</sup>

## VI. CLARA CLEMENS, 1910–1936

A good deal of the rest of this essay is about Clara Clemens, the sole heir to Mark Twain's estate. She remained temporarily at Stormfield while her father's estate was settled.<sup>243</sup> She gave birth there to her daughter Nina on August 19, 1910.<sup>244</sup> Clara returned to Europe with Ossip in October 1910.<sup>245</sup>

In the last episode of the Ashcroft-Lyon affair in July 1910, she and Lark dealt with Ashcroft's attempt to sell the Twain manuscript, *Is Shakespeare Dead?*<sup>246</sup> Both Clara and Lark described the outcome in letters.<sup>247</sup> Writing to a friend, Clara alleged that she discovered that the Ashcrofts had stolen manuscripts from her father when dealers, to whom she claimed Ashcroft had offered the manuscripts, contacted her in an effort to authenticate them.<sup>248</sup> Her letter also alleged that either Miss Lyon or Mr. Ashcroft had sent her a "blackmail letter" in an attempt to frighten her into allowing their actions.<sup>249</sup> Instead of giving in, Clara sent Lark to Chicago to see them; there, Lark threatened them with Twain's written document on the affair.<sup>250</sup> This resulted in the Ashcrofts surrendering the documents they held.<sup>251</sup> Lark reported that "this Shakespearean manuscript," known as *Is Shakespeare Dead?*, was being

<sup>239</sup> Administration Account, *supra* note 235.

<sup>240</sup> *Id.* (recording the expenses incident to the care and maintenance of the property in Redding, including taxes in Schedule D and recording the amount reimbursed for the rent of the safety deposit box, a total of \$10, in Schedule E).

<sup>241</sup> *Id.*

<sup>242</sup> Oct. 18, 1910 Inventory, *supra* note 165 (recording the total value of the estate to be \$541,136.07); Administration Account, *supra* note 235 (calculating the net taxable estate to be a total of \$515,026.84).

<sup>243</sup> RASMUSSEN, *supra* note 4, at 76.

<sup>244</sup> *Daughter Born to Mrs. Gabrilowitsch*, N.Y. TIMES, Aug. 20, 1910, at 7.

<sup>245</sup> *Mark Twain Left Daughter \$611,136*, N.Y. TIMES, Oct. 27, 1910, at 1.

<sup>246</sup> Smith, *supra* note 18, at 326.

<sup>247</sup> *See id.* at 326–27 (excerpting the letters).

<sup>248</sup> *Id.* at 326.

<sup>249</sup> *Id.*

<sup>250</sup> Smith, *supra* note 18, at 326–27.

<sup>251</sup> *Id.*

offered by Ashcroft in New York City.<sup>252</sup> At the request of Clara and at the direction of Stanchfield, Lark met Ashcroft on July 15, 1910 and secured the manuscript for a “nominal consideration.”<sup>253</sup>

Another episode requiring Lark’s assistance arose in February 1918. A professor and editor of the *Journal of Psychical Research*, James Hyslop, with the assistance of two mediums, wrote in the January 1918 issue of the journal that Twain had contacted them about letting the world hear more about his intelligent thought.<sup>254</sup> Hyslop had contacted Clara to verify some statements of Twain’s and his ownership of certain trinkets and personalty.<sup>255</sup> Clara reportedly thought the matter to be “silly, foolish, stupid, and crazy,” subsequently placing the matter into the hands of her attorney, Lark, to seek an injunction against any further publication.<sup>256</sup>

After returning to Europe, Ossip became a conductor in Munich.<sup>257</sup> But when war broke out in 1914, he was unsafe as a Russian national in Germany; Ossip was briefly held as an enemy national, until he, Clara, and Nina were able to return to the United States following his freedom.<sup>258</sup> They lived in a variety of cities. The 1918 New York Times article on Clara and Hyslop put their residence in Bryn Mawr, Pennsylvania, where Ossip was performing with Stokowski’s Philadelphia Symphony.<sup>259</sup> Eventually, the family reportedly settled in Detroit, where Ossip was named conductor of the Detroit Symphony, where he remained until his death.<sup>260</sup> Rasmussen’s encyclopedia states:

Clara abandoned her professional singing ambitions, but occasionally sang on Ossip’s concert tours. She was also active in Detroit theater groups and played Joan of Arc in productions of G.B. Shaw’s *Saint Joan* and an adaptation of her

<sup>252</sup> *Id.* at 326.

<sup>253</sup> *Id.*

<sup>254</sup> See *Purpose and Scope of the Society*, 12 J. AM. SOC’Y PSYCHICAL RES. 1, 73 (1918) (listing James Hyslop as an editor of the *Journal of Psychical Research*); see also James H. Hyslop, *The Return of Mark Twain*, 12 J. AM. SOC’Y PSYCHICAL RES. 4, 4–38 (1918). The New York Times aptly summed up the ordeal in its February 1918 article. See *Twain’s Daughter Spurns Spirit Book*, N.Y. TIMES, Feb. 11, 1918, at 5 [hereinafter *Twain’s Daughter Spurns Spirit Book*, N.Y. TIMES].

<sup>255</sup> *Twain’s Daughter Spurns Spirit Book*, N.Y. TIMES, *supra* note 254.

<sup>256</sup> *Id.*

<sup>257</sup> RASMUSSEN, *supra* note 4, at 160.

<sup>258</sup> *Id.*

<sup>259</sup> *Twain’s Daughter Spurns Spirit Book*, N.Y. TIMES, *supra* note 254 (reporting that Clara was residing in Bryn Mawr); see also RASMUSSEN, *supra* note 4, at 160 (noting that the family first settled “in Philadelphia, where [Ossip] worked with Leopold Stokowski and the Philadelphia Symphony”).

<sup>260</sup> RASMUSSEN, *supra* note 4, at 160.

father's *Joan of Arc*. On her first visit to Hannibal, Missouri in January 1924, she gave a singing recital to help raise funds for the Mark Twain Memorial Park Association. She revisited Hannibal in 1935 to help open the museum now run by the Mark Twain Home Foundation.<sup>261</sup>

Clara's two decades in Detroit were fruitful. On the strength of payments from Mark Twain's estate and Ossip's salary, she and Ossip purchased a mansion for \$125,000 in 1919.<sup>262</sup> Their wealth grew and Clara's income was at one point \$831,000 (this was during the Great Depression).<sup>263</sup> Clara and Ossip's daughter, Nina had private tutors and qualified for admission to Barnard.<sup>264</sup> Clara continued to be an entertainer, occasionally acting in Detroit theater groups.<sup>265</sup>

As evidenced by her later pursuits, it was during Clara's Detroit residence after her father's death that her effort to make Twain into an idol began. As Margalit Fox wrote in an April 2000 article:

When Mark Twain died 90 years ago this week, the machinery that would spin his posthumous image was already oiled and running. At the controls was his daughter Clara, who would spend the next half-century transforming her difficult, depressive father into the genial, doting patriarch that endures in the American mind.<sup>266</sup>

Clara published what Fox called "[Clara's] own affectionate memoir," *My Father, Mark Twain* in 1931.<sup>267</sup>

Commenting on Clara's efforts to take control of her father's legacy, Larson wrote:

Evidence that Clara was busy shaping the legend came soon after her father's death. She sent a letter to a woman who had written an intimate account of Clemens's final days. "I have looked at [the article]," Clara wrote, "as nearly as possible with Father's mental eyes and I can not feel that he would be pleased. His advice, I am sure, would be: 'Give the facts to Paine, who is writing my biography and has practice in literary expression, and let him tell the story.' Of one thing I am absolutely sure . . . he would never want those insignificant and purely personal letters to be published . . . These facts Mr. Paine is of course acquainted with and he will be able thereby to save the

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<sup>261</sup> *Id.* at 76.

<sup>262</sup> Larson, *supra* note 44.

<sup>263</sup> *Id.*

<sup>264</sup> *Id.*

<sup>265</sup> *Id.*

<sup>266</sup> Margalit Fox, *Putting a Happy Face on an Often Unhappy Twain*, N.Y. TIMES, Apr. 22, 2000, at B13.

<sup>267</sup> *Id.*

public from an unnecessarily tormenting impression of his end.”<sup>268</sup>

At the grand celebration of November 19, 1935, the 100<sup>th</sup> anniversary of Twain’s birth, Nina read a tribute written by Clara, which stated that Twain “never tiptoed through life, and his temptations were always toward strength.”<sup>269</sup>

Meanwhile, the trustees under the Twain will began a tradition that continues yearly to date: the production of an accounting of the estate or the successor estate. The first accounting, which was drawn by Lockwood, ran from the date of the estate’s inventory to July 1911.<sup>270</sup> In many ways, the accounting duplicated the inventory by repeating some information; it did, however, contain new elements as well.

In the span of time between Twain’s death and the first accounting in July of 1911, there were reports of payments to Clara totaling \$40,093.60, loss of \$149.73 on the amount from the settlement of Jean’s estate, and 100 shares of AT&T stock found after the filing of the initial inventory.<sup>271</sup> The Harper & Brothers royalties amounted to \$19,500 during that time period.<sup>272</sup> Losses included \$14,015.03 plus interest paid on a note signed by Twain.<sup>273</sup> Clara received reimbursement for her payments to Twain’s doctors Kirsch and Peterson, totaling \$585.00,<sup>274</sup> and was also reimbursed for her payment of \$200 to “Mr. Allen of Bermuda.”<sup>275</sup> She was reimbursed \$94.61 for books ordered and received by Twain.<sup>276</sup> A failed investment in the Hope-Jones Organ Company cost the estate \$665.79.<sup>277</sup>

There were several Stormfield-related charges. For example, the accounting reported that the telephone bill at Stormfield amounted to \$70.58.<sup>278</sup> Additionally, Charles Field Griffen & Co. received \$566.40 to advertise the home’s availability, while Cruickshank Co. was paid for an appraisal, and the estate paid various other companies for

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<sup>268</sup> Larson, *supra* note 44.

<sup>269</sup> *Nation-Wide Fetes Close Twain Year*, N.Y. TIMES, *supra* note 67.

<sup>270</sup> Administration Account, *supra* note 235.

<sup>271</sup> *Id.*

<sup>272</sup> *Id.* This is not including the royalties from Harper & Brothers earned during the life of Twain, which totaled to \$10,000.00, which were not payable until March of 1911, or the interest earned on the account. *Id.*

<sup>273</sup> Administration Account, *supra* note 235.

<sup>274</sup> *Id.*

<sup>275</sup> *Id.*

<sup>276</sup> *Id.*

<sup>277</sup> Administration Account, *supra* note 235.

<sup>278</sup> *Id.*

miscellaneous repairs and taxes.<sup>279</sup>

The trustees and attorneys were allotted fees as well. The estate paid Stanchfield an annual retainer of \$1,000.<sup>280</sup> The trustees received \$18,000 and were to be paid an annual fee out of the income of the trust.<sup>281</sup> Lockwood received \$1,000.<sup>282</sup> Probate fees totaled \$87.40.<sup>283</sup>

The dividends received as well as the investments made by the executors were also set forth in the accounting. On July 19, 1911, the accounting listed \$229.74 for the purchase of *Is Shakespeare Dead?* from Ashcroft, including “the expenses connected with said purchase.”<sup>284</sup> The corpus of the trust, consisting of real estate and stocks, showed both profitable holdings and worthless ones. Most valuable were the fifty shares of the Mark Twain Company worth \$200,000.<sup>285</sup> Others, such as the Hope-Jones investment, the Koy-lo company, the International Spiral Pin Company, the Bander Log Press, the Tabard Inn, and the American Mechanical Cash Register Company were believed to be worthless.<sup>286</sup> The trunk at Lincoln Safe Deposit with duplicate copies of several manuscripts was also listed as worthless.<sup>287</sup>

Finally, certain small claims against the estate were paid by the Mark Twain Company, including \$100 paid to Paine as Twain’s secretary.<sup>288</sup> The trustees also denied as meritless a claim of one Dr. Helmer for \$2,000.<sup>289</sup>

This accounting was approved by Probate Judge Jonathan B. Sanford on July 15, 1911.<sup>290</sup> This accounting was typical of accountings filed for many years, as late as the 1960s.<sup>291</sup>

There was one change in trustees on December 15, 1926, when Trustee Zoheth Freeman swore by affidavit that he resided in China and did not feel that it was “just or fair” that he continue as trustee.<sup>292</sup> His

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<sup>279</sup> *See id.*

<sup>280</sup> *Id.*

<sup>281</sup> Administration Account, *supra* note 235.

<sup>282</sup> *Id.*

<sup>283</sup> *Id.*

<sup>284</sup> *Id.*

<sup>285</sup> Administration Account, *supra* note 235.

<sup>286</sup> *Id.*

<sup>287</sup> *See id.*

<sup>288</sup> *Id.*

<sup>289</sup> Administration Account, *supra* note 235.

<sup>290</sup> *Id.*

<sup>291</sup> *See infra* note 484 and accompanying text (discussing the Mark Twain Foundation’s history of filing annual accountings).

<sup>292</sup> Resignation of Zoheth S. Freeman as Trustee and Order Accepting Same, 19 Redding Prob. Ct. 116 (July 1, 1927) (on file with author).

resignation was acknowledged by Robert B. Streeper, vice consul of the United States at Tientsin, China.<sup>293</sup> The resignation was forwarded to the Redding Probate Court by Lark as attorney for the estate and Judge Jonathan Sanford approved the resignation on February 1, 1927.<sup>294</sup> No longer a trustee, Freeman continued with his other affairs, and died on July 22, 1932.<sup>295</sup> Trustee Edward Loomis died on July 11, 1937.<sup>296</sup>

## VII. CLARA CLEMENS, 1936–1962

Ossip died of stomach cancer on September 14, 1936 at age 58.<sup>297</sup> He was buried at the foot of Mark Twain's grave in Elmira's Woodlawn Cemetery.<sup>298</sup> Following his death, Clara wrote *My Husband Gabrilowitsch*, published in 1938.<sup>299</sup> Clara, with wealth from both Twain's trust payments and her husband's estate, then moved with Nina to an "impressive home on five acres in a secluded spot in Hollywood, California."<sup>300</sup>

In 1944, she married again to Jacques Samossoud who, like Ossip, was a Russian émigré, and was dashing handsome.<sup>301</sup> She was seventy and he was fifty.<sup>302</sup> While Clara had numerous financial assets, Samossoud "had little money, no steady income (he was an unemployed conductor), and a costly gambling habit."<sup>303</sup>

In a matter of months, Samossoud began to spend Clara's money and incur large debts.<sup>304</sup> He signed a promissory note to Clara on January 6, 1945 for \$53,482.90.<sup>305</sup> A year later, he borrowed \$61,133.22.<sup>306</sup> On July 25, 1950, he obtained a loan from Clara for

<sup>293</sup> *Id.*

<sup>294</sup> *Id.*

<sup>295</sup> *Deaths*, N.Y. TIMES, July 24, 1932, at 22.

<sup>296</sup> *Lehigh Valley R.R. Official Dead at 72*, HARTFORD COURANT, July 12, 1937, at 4.

<sup>297</sup> RASMUSSEN, *supra* note 4, at 160; *see also Ossip Gabrilowitsch Dies in Detroit*, II JEWISH TELEGRAPHIC TELEGRAPHIC AGENCY, Sept. 15, 1936, at 38.

<sup>298</sup> RASMUSSEN, *supra* note 4, at 160.

<sup>299</sup> *Id.*

<sup>300</sup> Isabelle Budd, *Clara Samossoud's Will*, 25 MARK TWAIN J. 17, 17 (1987) [hereinafter Budd, *Clara Samossoud's Will*]; *Kin of Mark Twain Wed in Hollywood*, N.Y. TIMES, *supra* note 46 (reporting that Nina resided in Hollywood with her mother Clara).

<sup>301</sup> RASMUSSEN, *supra* note 4, at 414.

<sup>302</sup> Budd, *Clara Samossoud's Will*, *supra* note 300, at 17.

<sup>303</sup> *Id.*

<sup>304</sup> *Id.*

<sup>305</sup> *Id.*

<sup>306</sup> Budd, *Clara Samossoud's Will*, *supra* note 300, at 17.

\$236,538.85.<sup>307</sup> Up to this point, Clara had been employing Phyllis Harrington, Ossip's secretary, as her financial manager.<sup>308</sup> After 1950, Samossoud became supervisor of her finances.<sup>309</sup>

On April 4, 1951, Samossoud auctioned off Clara's Hollywood home and various personalty.<sup>310</sup> According to Isabella Budd's research, the couple received a total of \$60,000.<sup>311</sup> Following the sale of their home, they moved to the newly-constructed Bahia Motor Hotel near the DelMar racetrack in San Diego, where Clara remained until her death.<sup>312</sup> With her finances in jeopardy due to the outrageous spending habits of her husband, however, Clara began to borrow from her friend, Caroline Harnsberger, as well as her former assistant, Harrington, through the 1950s and into the 1960s.<sup>313</sup>

In 1958, Samossoud's hope that Clara would draft a will before her passing came true.<sup>314</sup> As sole heir to her will, he would continue to receive payments from Mark Twain's estate and would avoid repayment on his notes to her.<sup>315</sup> Drafted by attorney, Thomas Chamberlain, and dated April 14, 1958,<sup>316</sup> Clara's will provided the following.

The first provision stated that her funeral should be "inexpensive and unpretentious," and requested that she be buried at the Langdon-Clemens lot at the Woodlawn Cemetery in Elmira, New York.<sup>317</sup> The second provision, most importantly, provided that (A) various manuscripts, writings, notes, and letters written by Mark Twain were to be left to the Regents of the University of California, except for the manuscript of *The Personal Recollections of Joan of Arc* which was given to Yale University; (B) if Samossoud survived her, he was to receive \$25,000 outright; and (C) the remainder of her property (including her Mark Twain legacy) was to be left to Thomas G. Chamberlain and Hanover Bank in trust.<sup>318</sup> The net income from the

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<sup>307</sup> *Id.*

<sup>308</sup> *Id.* at 17 n.2.

<sup>309</sup> *Id.* at 17.

<sup>310</sup> Budd, *Clara Samossoud's Will*, *supra* note 300, at 17.

<sup>311</sup> *Id.* at 17 n.3.

<sup>312</sup> *Id.* at 17; *Mrs. Jacques Samossoud Dies*, N.Y. TIMES, Nov. 21, 1962.

<sup>313</sup> Budd, *Clara Samossoud's Will*, *supra* note 300, at 17-18.

<sup>314</sup> *Id.* at 18.

<sup>315</sup> *Id.*

<sup>316</sup> *Id.* How Chamberlain obtained a role in Clara's affairs is discussed below.

<sup>317</sup> 29 Will of Clara Clemens 256, 256 (1958) [hereinafter Will of Clara Clemens] (on file with author).

<sup>318</sup> *Id.* at 256-57.

trust was to be paid quarterly to Samossoud during his lifetime.<sup>319</sup> He was given the right to withdraw up to ten percent of the principal as well.<sup>320</sup> “From and after the death of my said husband, or from and after my death if my said husband shall not survive me, if Dr. William E. Seiler be then living, the net income from said trust shall be paid” quarterly to Seiler during his lifetime.<sup>321</sup>

After Seiler’s and/or Samossoud’s death, the principal of the trust was to pass to the “Mark Twain Foundation” in perpetuity for “religious, charitable, scientific, literary or educational purposes including, within such purposes, the enabling of mankind to appreciate and enjoy the works of Mark Twain.”<sup>322</sup> The trustees were to give to tax-free organizations only.<sup>323</sup> The trustees could receive contributions or securities or other property, and had the usual power to make and control investments.<sup>324</sup>

The third provision left Samossoud all of Clara’s property if he survived her.<sup>325</sup> If he did not survive her, the property passed to Dr. Seiler, and then to the Mark Twain Foundation in trust upon the death of Seiler and Samossoud.<sup>326</sup> The fourth provision named Thomas G. Chamberlain and Hanover Bank as executors.<sup>327</sup> Edward J. Willi was the successor executor.<sup>328</sup> The will was signed “Clara Clemens Samossoud” and witnessed by three women from San Diego.<sup>329</sup>

According to Budd:

This will accomplished the following: 1) it took care of Jacques’ money problems by eliminating his indebtedness to Clara’s estate and supplying him with a lifetime income; 2) it kept intact the trust over which Thomas Chamberlain would preside; 3) it paid off some kind of unspoken indebtedness to Samossoud’s friend Seiler; and 4) it ultimately set up a permanent foundation to honor Mark Twain.<sup>330</sup>

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<sup>319</sup> *Id.* at 257. According to Budd, Clara exercised a power of appointment given under Mark Twain’s will. Budd, *Clara Samossoud’s Will*, *supra* note 300, at 18.

<sup>320</sup> Will of Clara Clemens, *supra* note 317, at 257.

<sup>321</sup> *Id.*

<sup>322</sup> *Id.* at 257–58.

<sup>323</sup> Will of Clara Clemens, *supra* note 317, at 258.

<sup>324</sup> *Id.* at 258–60.

<sup>325</sup> *Id.* at 260.

<sup>326</sup> *Id.*

<sup>327</sup> Will of Clara Clemens, *supra* note 317, at 260.

<sup>328</sup> *Id.* Edward J. Willi’s relation to Clara is discussed below.

<sup>329</sup> *Id.*

<sup>330</sup> Budd, *Clara Samossoud’s Will*, *supra* note 300, at 18.

Although Budd was unsure of the reason why Clara made Seiler a beneficiary,<sup>331</sup> Larson gives some context to Clara's thinking.<sup>332</sup> Dr. William Seiler was born in 1909 and died on November 17, 1978.<sup>333</sup> He received his medical degree from Creighton University in 1936.<sup>334</sup> Seiler was Clara's doctor and, through her, Samossoud also engaged him.<sup>335</sup> Samossoud and Seiler were not just patient and doctor, however; they were personal friends and race track fanatics—Seiler often drove Samossoud to Tijuana where they would bet on the horses and jai alai.<sup>336</sup> Clara gave Seiler's wife a diamond ring with the inscription: "To Bill Seiler, from Clara Clemens Samossoud, the last of the Twains."<sup>337</sup> According to Seiler's wife, Clara was fond of Seiler, possibly because he allegedly treated Clara as a patient for aches and pains.<sup>338</sup>

The one wild-card in all this was Clara's daughter, Nina. Clara had established a trust fund for Nina at the time of her marriage to Samossoud, but gave no reason for why she disinherited her.<sup>339</sup> Had Samossoud put the pressure on Clara to leave Nina out of the will? Or, was it what she wrote to Nina: that money would only provide more opportunity for Nina to indulge in her alcohol addiction?<sup>340</sup> Clara died in San Diego on November 19, 1962, at the age of 88.<sup>341</sup>

On December 13, 1962, Thomas Chamberlain filed Clara's will for probate in the Redding Probate Court.<sup>342</sup> After the will had been filed,

<sup>331</sup> See *id.* (noting that "there is no explanation of why [Seiler] was named in the will").

<sup>332</sup> See Larson, *supra* note 44 (discussing the reasoning for Seiler's presence in Clara's will).

<sup>333</sup> Budd, *Clara Samossoud's Will*, *supra* note 300, at 19.

<sup>334</sup> *Id.*

<sup>335</sup> Larson, *supra* note 44.

<sup>336</sup> *Id.*; Budd, *Clara Samossoud's Will*, *supra* note 300, at 19.

<sup>337</sup> Budd, *Clara Samossoud's Will*, *supra* note 300, at 19.

<sup>338</sup> *Id.* Clara's friend and biographer, Caroline Harnsberger, was so enraged with the bequest to Seiler that she declared in her book, *Mark Twain's Clara*, that she was omitting the doctor's name from the book "purposely." CAROLINE HARNSBERGER, MARK TWAIN'S CLARA 198 (1982).

<sup>339</sup> Budd, *Clara Samossoud's Will*, *supra* note 300, at 18.

<sup>340</sup> See Larson, *supra* note 44 ("In 1958, Clara disinherited Nina. She told her daughter why in a letter: 'Since I created a trust for you several years ago, I am leaving you nothing in my will. Too much money increases your difficulties caused by alcohol.'").

<sup>341</sup> Budd, *Clara Samossoud's Will*, *supra* note 300, at 18.

<sup>342</sup> *Twain's Daughter Leaves Estate to Her Husband*, HARTFORD COURANT, Dec. 14, 1962, at 11. Richard Watson, a successor trustee, told one of the authors, Judge Henry Cohn, in an interview on January 10, 2017 that Chamberlain's quick moves in Redding and San Diego helped his position in the subsequent litigation. Interview with Richard Watson, Esq., by Henry S. Cohn, Judge, New Britain District Sup. Ct. (Jan. 10, 2017) (notes of interview on file with author).

Nina's attorneys objected in January 1963.<sup>343</sup> Judge Anderson of the Redding Probate Court overruled her objections in a ruling filed on February, 5, 1963, dismissing an undue influence claim.<sup>344</sup> A request to probate the will in California, rather than Redding, was also rejected.<sup>345</sup> In that case, Probate Judge Anderson found that Nina had failed to meet her burden of proof regarding the claim that Samossoud had exerted undue influence over her mother, and that she, as Clara's daughter and heir-at-law, should have shared in the estate regardless of the existing trust.<sup>346</sup> Judge Anderson also approved Chamberlain as executor of Clara's will.<sup>347</sup>

In March 1963, Nina's attorneys, Gumbart, Corbin, Tyler & Cooper, had filed an appeal from probate in the Fairfield County Superior Court with a return date of April 2, 1963.<sup>348</sup> On May 2, 1963, Nina's attorneys filed their reasons for appeal, and Hirschberg, Pettengill & Strong filed a response on May 9, 1963.<sup>349</sup> The full text of the appeal is unavailable as the file has been destroyed pursuant to a timed-disposal program used by the Connecticut Judicial Branch after a case has been resolved.<sup>350</sup>

On December 31, 1962, Nina filed a petition in the San Diego Superior Court, Probate Division, stating that no will of Clara's had been found.<sup>351</sup> Additionally, she asked that the court appoint Robert E. Kronemyer as special administrator; the request for his appointment was granted on January 14, 1963.<sup>352</sup> Nina's arguments in this petition amplified those presented in the Fairfield County appeal; for example, Nina alleged that Clara was "in a weakened physical and mental state" and confined to her room for her final three years" and was unduly influenced by Samossoud and Seiler.<sup>353</sup> She further alleged that the two men told Clara that Nina "did not love or care for [her]," and that she

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<sup>343</sup> *To File Twain's Daughter's Will*, HARTFORD COURANT, Feb. 6, 1963, at 13.

<sup>344</sup> *Id.*

<sup>345</sup> *Id.*

<sup>346</sup> *Id.*

<sup>347</sup> *To File Twain's Daughter's Will*, HARTFORD COURANT, *supra* note 343.

<sup>348</sup> *Nina Clemens Gabrilowitsch v. Estate of Clara Clemens Samossoud*, Docket No. #118337 (on file with author)

<sup>349</sup> *Id.*

<sup>350</sup> Record of the destruction of the documents was recorded on August 31, 1971 in the docket of *Nina Clemens Gabrilowitsch v. Estate of Clara Clemens Samossoud*, Docket No. #118337 (on file with author).

<sup>351</sup> Budd, *Clara Samossoud's Will*, *supra* note 300, at 18.

<sup>352</sup> *Id.*

<sup>353</sup> Larson, *supra* note 44.

“was not worthy to be a beneficiary of her estate.”<sup>354</sup> Nina seemed to be claiming that she was a pretermitted heir (a beneficiary that was not, under statute, allowed to be entirely disinherited).<sup>355</sup>

Chamberlain, through a local attorney, then filed a counter-petition in the San Diego Probate Division asking for approval of Clara’s will in opposition to Nina’s letter testamentary.<sup>356</sup> In several of Chamberlain’s filings, he characterized Nina’s suit as a “doubtful and disputed claim.”<sup>357</sup>

Continuing the legal battle, Nina took an extraordinary step in the Civil Division of the San Diego Superior Court. On February 1, 1963, Kronemyer, by the law firm of Lindley, Scales, and Patton, brought suit against Jacques Samossoud.<sup>358</sup> Paragraph II of the initial complaint alleged that Clara had “advanced” from her “separate property” the sum of \$53,482.90 to Samossoud and received from him a promissory note in return.<sup>359</sup> Paragraph IV alleged that Samossoud had defaulted on the note and had not paid any amount in whole or in part; the note was thus fully due with interest at 6% and a reasonable attorney’s fee of \$5,000.<sup>360</sup>

The plaintiff alleged as the special administrator of Clara’s estate that he was “now owner of said promissory note” and was entitled to payment.<sup>361</sup> A second count made a similar claim as to a January 2, 1946 note for \$61,133.22.<sup>362</sup> Samossoud fought back by filing a demurrer to the pre-amended suit on March 25, 1963.<sup>363</sup> On June 11, 1963, the action was amended to cover a July 25, 1950 note in the amount of \$236,538.85.<sup>364</sup> He claimed that the suit was barred by California Civil Practice Code Section 337, a statute of limitations

<sup>354</sup> *Id.*

<sup>355</sup> Budd, *Clara Samossoud’s Will*, *supra* note 300, at 18 (describing Nina’s efforts to have Clara’s will set aside); *see also Pretermitted Heir*, BLACK’S LAW DICTIONARY (10<sup>th</sup> ed. 2014).

<sup>356</sup> Budd, *Clara Samossoud’s Will*, *supra* note 300, at 18.

<sup>357</sup> Prayer to Approve August 30, 1963 Settlement Agreement, 51 Redding Prob. Ct. 438 (Oct. 28, 1963) (on file with author).

<sup>358</sup> Complaint for Money, Robert E. Kronemyer v. Jacques Samossoud, No. 271658 (San Diego Sup. Ct. Cal. Feb. 1, 1963), at 1 (on file with author).

<sup>359</sup> *Id.*

<sup>360</sup> *Id.* at 2.

<sup>361</sup> *Id.*

<sup>362</sup> Complaint for Money, *supra* note 358, at 3.

<sup>363</sup> Demurrer to Complaint, Robert E. Kronemyer v. Jacques Samossoud, No. 271658 (San Diego Sup. Ct. Cal. Mar. 25, 1963), at 1 (on file with author).

<sup>364</sup> Amended Complaint for Money, Robert E. Kronemyer v. Jacques Samossoud, No. 271658 (San Diego Sup. Ct. Cal. June 11, 1963), at 1–2 (on file with author).

defense.<sup>365</sup> He did not receive a ruling on this defense because, as discussed in greater detail below, the case ultimately settled.

Tightening his case again, in May 1963, Kronemyer demanded all communications from 1944 to 1963 between Samossoud and Clara, Chamberlain, Seiler, and their respective attorneys.<sup>366</sup> A hearing scheduled for June 10, 1963 was postponed, however, as negotiations commenced and a settlement was announced just three months later.<sup>367</sup> On August 30, 1963,<sup>368</sup> Samossoud, Seiler, and Nina reached an agreement that provided as follows.

The first five paragraphs set forth the various lawsuits then pending in the Connecticut Probate Court, the Fairfield Superior Court, and the San Diego Probate and Civil Courts.<sup>369</sup> The sixth paragraph relayed that Clara was a beneficiary of Twain's will under a "trust or trusts."<sup>370</sup> The seventh paragraph declared that Samossoud was Clara's surviving husband, that Nina was the surviving daughter, and that "William E. Seiler [was] a stranger-in-blood" of Clara.<sup>371</sup>

The eighth paragraph incorporated by reference an agreement between Samossoud, Seiler, and Phyllis Harrington dated January 14, 1963, assigning certain rights under Clara's will to Phyllis.<sup>372</sup> This agreement provided that to the extent that either Samossoud or Seiler was receiving payment under Clara's will, the first \$300 per month would be paid over to Phyllis.<sup>373</sup>

After these "recitals," the main settlement was set forth. First, all contests in Connecticut and California were to be withdrawn and administration was to take place through the Redding Probate Court.<sup>374</sup> The income of the trust in Clara's will was to be distributed first in accordance with the agreement with Phyllis.<sup>375</sup> Second, during Samossoud's life, 65% was to be distributed quarterly to Samossoud and

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<sup>365</sup> *Id.*

<sup>366</sup> Budd, *Clara Samossoud's Will*, *supra* note 300, at 18.

<sup>367</sup> *Id.* at 18–19.

<sup>368</sup> *Id.*

<sup>369</sup> Agreement Compromising Will Contests and Claims to Estate, 30 Redding Prob. Ct. 533, 533 (Aug. 30, 1963), *in* Budd, *Clara Samossoud's Will*, *supra* note 300, at 23–29 [hereinafter Agreement Compromising Will Contests and Claims to Estate].

<sup>370</sup> *Id.* at 534.

<sup>371</sup> *Id.*

<sup>372</sup> *Id.*

<sup>373</sup> Agreement Compromising Will Contests and Claims to Estate, *supra* note 369, at 536.

<sup>374</sup> *Id.* at 535.

<sup>375</sup> *Id.* at 536.

35% to Nina.<sup>376</sup> After Samossoud's death, 55% was to be distributed to Seiler, if alive, and 45% to Nina.<sup>377</sup>

The agreement allowed, in lieu of Clara's will, for an immediate withdrawal of \$15,000 to Nina, \$15,000 to Seiler, and \$10,000 to Samossoud.<sup>378</sup> The payment to Samossoud was to be based on valuation of literary properties undertaken by the Redding Probate Court.<sup>379</sup> Additionally, the Mark Twain Foundation was to have powers of appointment for tax-free organizations and only the law of Connecticut was to govern allocations between principal and interest.<sup>380</sup>

Samossoud and Seiler were to deliver to Nina and Phyllis authorizations to the Foundation to make payments to them.<sup>381</sup> Payments to Nina were to be made to a trust held by Security First National Bank.<sup>382</sup> Other than to Phyllis, Samossoud and Seiler made no other assignments of their interests under Clara's will.<sup>383</sup> Samossoud was to agree to pay all claimants against Clara's estate.<sup>384</sup> This included the Bahia Motor Hotel and Clara's friend Caroline Harnsberger, "as well as doctors, hospitals, ambulance service, and funeral establishments."<sup>385</sup>

Kronemyer was to withdraw his lawsuit and surrender all promissory notes to Samossoud's attorney.<sup>386</sup> According to Budd, this concession by Nina was the main reason Samossoud agreed to the settlement.<sup>387</sup> This settlement also terminated Nina's argument that she was a pretermitted heir and her claim for attorney's fees.<sup>388</sup>

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<sup>376</sup> *Id.*

<sup>377</sup> Agreement Compromising Will Contests and Claims to Estate, *supra* note 369, at 536.

<sup>378</sup> *Id.* at 536–37.

<sup>379</sup> *Id.* at 537.

<sup>380</sup> *Id.*

<sup>381</sup> Agreement Compromising Will Contests and Claims to Estate, *supra* note 369, at 538.

<sup>382</sup> *Id.* at 538–39.

<sup>383</sup> *Id.* at 539.

<sup>384</sup> *Id.*

<sup>385</sup> Agreement Compromising Will Contests and Claims to Estate, *supra* note 369, at 539. In keeping with this agreement, Samossoud paid over \$2,000 to the Motel. This was apparently back rent. He also paid his attorney \$6,500 for legal services and the IRS \$13,406.51. Mark Twain House Archives, Cyril Clemens Collection (on file with Mark Twain Memorial, Hartford, Connecticut).

<sup>386</sup> Agreement Compromising Will Contests and Claims to Estate, *supra* note 369, at 540.

<sup>387</sup> Budd, *Clara Samossoud's Will*, *supra* note 300, at 19.

<sup>388</sup> Agreement Compromising Will Contests and Claims to Estate, *supra* note 369, at 542–43. The Agreement included statements assuring that "Nina Clemens Gabrilowitsch specifically [waived] any right she may have to claim all or any part of the estates of Clara

### According to Budd:

[This settlement] was approved by a decree of the Superior Court for San Diego on October 11, 1963, when Judge John A. Hewicker signed an order that admitted Clara's will to probate, appointed Chamberlain as executor, accepted the compromise agreement, and dismissed Kronemyer as the special administrator for the estate. On February 21, 1964, the final action needed to probate Clara's will was completed when Judge Hjalmar Anderson also approved the compromise agreement . . . .<sup>389</sup>

Anderson closed out Twain's estate and set up a trust under Clara's will.<sup>390</sup>

In San Diego, Judge Hewicker of the Probate Division decided that the settlement was fair and reasonable.<sup>391</sup> He ordered Chamberlain to file any bond required by the Redding Probate Court.<sup>392</sup> In the San Diego Civil Division, the parties requested the clerk to dismiss the action with prejudice.<sup>393</sup> Kronemyer was represented by Lindley, Scales and Patten, Chamberlain by Higgs, Fletcher, and Mack, and Samossoud by Eugene A. Horton.<sup>394</sup>

In Connecticut, Nina's appeal from probate was withdrawn on November 4, 1963.<sup>395</sup> In the Redding Probate Court, Chamberlain, as

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Clemens Samossoud or Samuel J. Clemens as a pretermitted heir or as a creditor claimant, or otherwise . . . [E]ach party to this agreement waive[d], relinquishe[d], and release[d] . . . any and all claims, demands, and causes of action of every kind [including attorney's fees]. . . ." *Id.* at 543-44.

<sup>389</sup> Budd, *Clara Samossoud's Will*, *supra* note 300, at 19.

<sup>390</sup> *Id.*

<sup>391</sup> *Id.*

<sup>392</sup> See Petition for Approval of Agreement Compromising Will Contest, for Instructions and for Discharge of Special Administrator, No. 73035 (San Diego Sup. Ct. Cal. 1963) [hereinafter Petition for Approval of Agreement Compromising Will Contest] (on file with author); Order Admitting Will to Probate and Approving Executor, Approving Compromise of Will Contest, Instructing Executor and Special Administrator Relative Thereto and Discharging Special Administrator, No. 73035 (San Diego Sup. Ct. Cal. 1963) [hereinafter Order Admitting Will to Probate] (on file with author).

<sup>393</sup> Petition for Approval of Agreement Compromising Will Contest, *supra* note 392

<sup>394</sup> Horton was born in Nebraska and came to San Diego at age 14 because he wanted to see the Pacific. He received his B.A. from Stanford and his law degree from Berkeley. He served a term as president of the San Diego Bar Association. He was proudest of the fact that as a high school student, he won a competition for class orator against Art Linkletter, the radio and television personality. His passion was gardening and he won many prizes. He died in 2003 at age 90. *Eugene Horton's Obituary*, SAN DIEGO UNION TRIB., June 11, 2003.

<sup>395</sup> *Nina Clemens Gabrilowitsch v. Estate of Clara Clemens Samossoud*, Docket No. #118337 (on file with author). As indicated, the court file was destroyed by the Fairfield Superior Court on August 15, 1971. See *supra* note 350.

executor, filed an inventory and a bond on September 19, 1963.<sup>396</sup> He was granted the right to hold the literary property without taking depreciation.<sup>397</sup> Chamberlain moved in the Redding Probate Court that the compromise be accepted and for payments under Clara's will to begin on February 21, 1964.<sup>398</sup> Judge Anderson issued an order of approval.<sup>399</sup>

The settlement's approval was disclosed in a Hartford Courant article dated February 22, 1964.<sup>400</sup> The article stated that Mark Twain's estate was then valued at \$867,000 and that Clara had passed her life interest in the income to Samossoud.<sup>401</sup> Nina initially had been disinherited,<sup>402</sup> but under the settlement, she was entitled to 35% of the income.<sup>403</sup> It further stated that "after their deaths," according to Probate Judge Anderson, the income would become part of the Mark Twain Foundation to further the public's interest in Twain's works.<sup>404</sup> The article did not mention Clara's bequest to Seiler,<sup>405</sup> one that became relevant shortly after the 1964 probate court approval.<sup>406</sup>

There were no major developments until 1966. In May 1964, Chamberlain filed an affidavit of "no transfers by decedent," as required by Connecticut law.<sup>407</sup> He also filed an inventory showing \$11,832.81 from accrued income from the trust, a \$3,639 claims commission payment, and a \$8,763.23 federal income tax overpayment.<sup>408</sup>

Then on January 18, 1966, Nina, age 55, was found dead in a Los Angeles motel room, surrounded by bottles of pills and alcohol.<sup>409</sup> On

<sup>396</sup> See Estate of Clara Clemens, 29 REDDING PROB. CT. 263, 263-64 (on file with author). Chamberlain's attorney was Mortimer P. Barnes, who was also to continue to play a role as attorney for the Mark Twain Foundation (now Elizabeth Grant).

<sup>397</sup> Estate of Clara Clemens, 30 Redding Prob. Ct. 550 (on file with author).

<sup>398</sup> Budd, *Clara Samossoud's Will*, *supra* note 300, at 19.

<sup>399</sup> *Id.*

<sup>400</sup> *Settlement Ends Mark Twain Estate Dispute*, HARTFORD COURANT, Feb. 22, 1964, at 23.

<sup>401</sup> *Id.*

<sup>402</sup> Clara disinherited Nina in 1958. Larson, *supra* note 44.

<sup>403</sup> *Id.*

<sup>404</sup> *Settlement Ends Mark Twain Estate Dispute*, *supra* note 400.

<sup>405</sup> *See id.*

<sup>406</sup> *See infra* for a discussion of the later appeal.

<sup>407</sup> Affidavit of No Transfers By Decedent, 29 Redding Prob. Ct. 353 (May 12, 1964) (on file with author).

<sup>408</sup> Inventory, 29 Redding Prob. Ct. 352 (May 12, 1964) (on file with author).

<sup>409</sup> *Nina Clemens Gabrilowitsch, 55, Twain's Last Direct Heir, Dies*, N.Y. TIMES, Jan. 19, 1966, at 41. Even though the settlement referred to funds paid to Nina's successors, there is no record that the payments in fact continued. It appears, based on the author's research, that no one attempted to claim rights on behalf of Nina's successors.

January 23, the New York Times disclosed that she left most of her estate to the American Cancer Society.<sup>410</sup> She left her “personal effects to her friend and attorney, Al Matthews.”<sup>411</sup> She also left \$100 and \$75 respectively to two friends, which was to be paid monthly.<sup>412</sup> Six months later, on June 13, 1966, Samossoud died.<sup>413</sup> He was buried in an unmarked grave in the Clemens family plot in Elmira.<sup>414</sup>

Samossoud’s will, drawn in June 1965, provided that he was the widower of Clara.<sup>415</sup> He also stated that he had a “possible daughter,” Tatianade Beauplan, of Paris, France, and other children from previous marriages.<sup>416</sup> He bequeathed all tangible personal property to the “Mark Twain Library and Memorial Commission” in Hartford, except that if he was in possession of the twenty-four books of Mark Twain’s works (one of Clara’s favorite possessions)<sup>417</sup>, these were to be part of the residue of his estate.<sup>418</sup> The books surfaced in 2004 at a Sotheby’s auction.<sup>419</sup> Samossoud also left \$25,000 to a couple, Mary Elizabeth Fagan and George V. Fagan.<sup>420</sup> The residue of his estate was given to Henry G. Shisler and Mary Shisler.<sup>421</sup> He also included a penalty clause that provided that if anyone challenged the will, he/she would receive only \$1 as a bequest.<sup>422</sup> In August 1968, the executor of Samossoud’s will sent the following personalty to the Mark Twain Memorial: a man’s yellow metal pocket watch, a pair of yellow metal cufflinks with a black background and a white face, several papers of Clara’s, an oil painting of Mark Twain by Charles C. Curran from 1937, an oil painting by Clara,

<sup>410</sup> *Twain Relative’s Will Filed*, N.Y. TIMES, Jan. 23, 1966.

<sup>411</sup> *Id.*

<sup>412</sup> *Id.*

<sup>413</sup> *Composer Dies; Twain In-Law*, HARTFORD COURANT, June 16, 1966, at 65

<sup>414</sup> *Id.*; see also Larson, *supra* note 44.

<sup>415</sup> Last Will and Testament of Jacques Samossoud, 1, 3 (June 24, 1965) (on file with author).

<sup>416</sup> *Id.* at 1.

<sup>417</sup> According to the New York Times, books 1–23 had an aphorism handwritten by Twain on each of the inside covers. *Mrs. Jacques Samossoud Dies*, N.Y. TIMES, *supra* note 312. Some are very familiar, such as “When angry, count. When very angry, swear.” Twain made up an identical set for Jean, now held by the Mark Twain Memorial in Hartford.

<sup>418</sup> Last Will and Testament of Jacques Samossoud, *supra* note 415, at 1.

<sup>419</sup> *Lot 27, (Clemens, Samuel L.)*, SOTHEBY’S (Apr. 13, 2004), <http://www.sothebys.com/en/auctions/ecatalogue/2004/the-maurice-f-neville-collection-of-modern-literature-part-1-n07980/lot.27.html>. Caroline Harnsberger, in contrast, writes that she helped sell these books while Clara was alive and was reimbursed in the Clara will settlement for an advance that she had made to Samossoud. HARNBERGER, *supra* note 338, at 188–89.

<sup>420</sup> Last Will and Testament of Jacques Samossoud, *supra* note 415, at 2.

<sup>421</sup> *Id.*

<sup>422</sup> *Id.* at 3.

and an oil painting of a street scene unsigned.<sup>423</sup>

In 1966, the portion of the income received by the Mark Twain Foundation that was to be allotted under the terms of Clara's will and settlement, passed from Samossoud to Seiler.<sup>424</sup> He continued to receive it until his death on November 17, 1978.<sup>425</sup>

### VIII. THE MARK TWAIN FOUNDATION

Three trustees were appointed in Mark Twain's will,<sup>426</sup> but as discussed above, Zoheth Freeman resigned in 1926<sup>427</sup> and Edward Loomis died in 1937.<sup>428</sup> Jervis Langdon, however, remained as trustee. According to Larson, Clara eventually became distrustful of both Charles Lark and her so-called "uncle" Jervis Langdon (actually her first cousin).<sup>429</sup> "By the late 1930s Clara felt neither man was providing her enough income nor upholding her father's public image. Too much personal [information] was coming out about him, and, by extension, her."<sup>430</sup> Lark deemed Clara to be greedy and wrote to a friend that she felt slighted from the negotiation process of movie deals regarding the life and works of Mark Twain.<sup>431</sup> She also objected to full access by scholars to Twain's manuscripts and letters.<sup>432</sup> Her complaints finally resulted in the resignation of Langdon and Lark in 1943.<sup>433</sup> At that time, she was still the sole beneficiary under Twain's will, and she asked the

<sup>423</sup> Legacy Receipt, In re Estate of Jacques Samossoud, No. 82936 (San Diego Sup. Ct. Cal. Aug. 27, 1968).

<sup>424</sup> See Agreement Compromising Will Contests and Claims to Estate, *supra* note 369.

<sup>425</sup> See *id.*; see also Budd, *supra* note 300, at 17.

<sup>426</sup> *Mark Twain's Will Filed*, N.Y. TIMES, May 4, 1910, at 1.

<sup>427</sup> Resignation of Zoheth S. Freeman as Trustee and Order Accepting Same, *supra* note 292.

<sup>428</sup> *Lehigh Valley R.R. Official Dead At 72*, *supra* note 296.

<sup>429</sup> Larson, *supra* note 44.

<sup>430</sup> *Id.*

<sup>431</sup> *Id.* For example, movies of *Huckleberry Finn* opened in 1931 and 1939. See *Huckleberry Finn (1931)*, IMDB, <https://www.imdb.com/title/tt0021981/> (last visited Nov. 17, 2018); *The Adventures of Huckleberry Finn (1939)*, IMDB, <https://www.imdb.com/title/tt0031020/> (last visited Nov. 17, 2018). In 1936, the trustees, the Mark Twain Company, and Harold Sherman entered into an agreement providing that Sherman could produce a biographical play based on the life and works of Mark Twain. Clipp Aliperti, *Researching the Adventure of Mark Twain – I Wish They All Had Sources Like This*, IMMORTAL EPHEMERA (Mar. 21, 2012), <https://immortalephemera.com/16682/researching-the-adventures-of-mark-twain-behind-the-screenplay/>; SASKIA BLOCK, BEHIND THE SCREENPLAY: CORRESPONDENCE RELATED TO THE WRITING OF THE SCREENPLAY OF THE ADVENTURES OF MARK TWAIN (1944).

<sup>432</sup> Larson, *supra* note 44.

<sup>433</sup> *Id.*

Redding probate judge to appoint Thomas Chamberlain and what was known for some years as Manufacturers Hanover Bank of New York as successor trustees.<sup>434</sup> According to Larson, one reason that Clara chose Chamberlain was because he did not personally know her father.<sup>435</sup>

The full story was linked to Chamberlain's biography. Chamberlain was a lawyer practicing in New York, but he had ties to California.<sup>436</sup> He was born in Auburn, California, the son of the Placer County District Attorney, and received his law degree from the University of California at Berkeley in 1917, specializing in estates and trusts.<sup>437</sup> He was drawn into politics immediately, and in 1919, Chamberlain had the opportunity to accompany former President Taft on a national barnstorming tour to support the League of Nations.<sup>438</sup> Chamberlain also served on the finance committee of the Republican National Committee during President Hoover's 1928 campaign.<sup>439</sup> Chamberlain gained national attention in 1943 when Clara selected him to replace Langdon as successor trustee of the Twain estate.<sup>440</sup> According to a Hartford Courant article, Clara's personal attorney, Harold A. Black of Los Angeles, suggested Chamberlain to her.<sup>441</sup> Black was a friend of Chamberlain's as a child, and both had enjoyed reading Twain's works.<sup>442</sup>

On August 25, 1943, Redding Probate Court Judge Hjalmar Anderson decreed that Jervis Langdon and Charles T. Lark had resigned as trustees under Mark Twain's will on August 5, 1943.<sup>443</sup> Their annual accounts through August 1943 were accepted, and Thomas G. Chamberlain and what the court called the "Central Hanover Bank and Trust Company" were appointed successor trustees.<sup>444</sup> On October 24, 1945, Langdon, as a former trustee, assigned all rights, title, and interest

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<sup>434</sup> *Id.*

<sup>435</sup> *Id.*

<sup>436</sup> See *Thomas Chamberlain, 82; Trustee of Twain Estate*, N.Y. TIMES, May 11, 1978, at 86.

<sup>437</sup> *Id.*

<sup>438</sup> *Id.*

<sup>439</sup> *Id.*

<sup>440</sup> *Thomas Chamberlain, 82; Trustee of Twain Estate*, N.Y. TIMES, *supra* note 436.

<sup>441</sup> Charles Honce, *Mark Twain Company is Big Business*, HARTFORD COURANT, Nov. 28, 1943, at 10.

<sup>442</sup> *Id.*

<sup>443</sup> Brief for Appellants at 142, *Chamberlain v. Feldman*, 84 N.Y.S.2d 713 (N.Y. App. Div. 1948).

<sup>444</sup> *Id.* Jervis Langdon died in 1952 at the age of 77. *Jervis Langdon, Leader in Elmira*, N.Y. TIMES, Dec. 17, 1952, at 33.

under Twain's will to Chamberlain and the Central Hanover Bank.<sup>445</sup> This included all literary property not heretofore published, including the "paper, parchment, vellum or other substance on which the same was written."<sup>446</sup> The assignment also included the right to protect and prevent injury to this literary property.<sup>447</sup> The Mark Twain Company was also included in this assignment.<sup>448</sup>

Starting with his appointment in 1943, Chamberlain had a series of duties, first as a successor trustee under Twain's will and then as executor and co-trustee under Clara's 1958 will. According to his obituary published in the New York Times on May 11, 1978, the Twain estate, of which Chamberlain was initially named successor trustee, was finally settled in 1964, at the time that the Clara-Nina compromise was approved.<sup>449</sup> It reported a final accounting of \$867,565.<sup>450</sup>

One humorous incident, later mentioned in Chamberlain's obituary, occurred during the oral argument in *Mapp v. Ohio*.<sup>451</sup> While the ultimate holding in *Mapp* directed that the Fourth Amendment's exclusionary rule be applied to the states, the initial question for the Court concerned the First Amendment right to possess pornographic literature.<sup>452</sup> Justice Frankfurter, as did the other justices at oral argument, concentrated on the pornography issue, doubting whether the appellant, Mapp, had preserved the Fourth Amendment issue on appeal.<sup>453</sup>

Frankfurter asked appellee attorney, Assistant Prosecutor of Cuyahoga County, Ohio, Gertrude Bauer Mahon to suppose that he "was a bibliophile—I collect first editions, and I have an obscene book—Not for that reason, but because it was published in 1527." Then he asked: "Am I guilty?" "Any collector of obscenity would be guilty," Ms. Mahon replied."<sup>454</sup> As the court burst into laughter, Frankfurter was barely heard to say: "Mark Twain was one of the biggest collectors . . . I

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<sup>445</sup> Brief for Appellants, *supra* note 443, at 143–44.

<sup>446</sup> *Id.* at 143.

<sup>447</sup> *Id.* at 143–44.

<sup>448</sup> *Id.* at 144.

<sup>449</sup> *Thomas Chamberlain, 82; Trustee of Twain Estate*, N.Y. TIMES, *supra* note 436.

<sup>450</sup> *Id.*; see also Richard H. Parke, *Humorist's \$867,575 is Put Into New Trust Fund 54 Years After His Death*, N.Y. TIMES, Feb. 22, 1964.

<sup>451</sup> See *Thomas Chamberlain, 82; Trustee of Twain Estate*, N.Y. TIMES, *supra* note 436.

<sup>452</sup> See *Mapp v. Ohio*, 367 U.S. 643, 668–670 (1961).

<sup>453</sup> It had not been mentioned in the briefs. Interview with Akhil Reed Amar by Henry S. Cohn, Judge, New Britain District Sup. Ct. (July 4, 2017); see also Anthony Lewis, *High Court Hears Obscenity Appeal*, N.Y. TIMES, Apr. 2, 1961, at 52.

<sup>454</sup> Lewis, *supra* note 453.

can tell you right now where the collection is—but that is outside your jurisdiction.”<sup>455</sup>

On May 8, Chamberlain had a letter published in the New York Times that read in part:

Mark Twain is recognized by millions throughout the world as America’s foremost writer. Occasionally comment has been made indicating that he had an unclean mind, but always on examination it has developed that the comment was without any substantial foundation.

The Times on April 2 carried a story about a case presently awaiting decision in the United States Supreme Court with reference to the validity of a law in Ohio making it a crime to own salacious literature. [At this point, he sets forth Frankfurter’s comments about Twain’s collecting pornography.] The Hanover Bank of New York and I are trustees of the estate of Samuel L. Clemens (Mark Twain).

When I asked Justice Frankfurter about his remarks concerning Mark Twain, he wrote me:

“I am very sorry indeed if my unauthenticated remark of what may have been either a hoax or an inaccuracy should have led you to the inconvenience of looking for a needle in a haystack, particularly if the needle isn’t there.”

He then refers to his “casual and regrettable remark about Mark Twain.” Thus it appears that there was no substantial basis for his comment.<sup>456</sup>

As seen above, Chamberlain was busy from 1962 to 1964 with settling Clara’s estate and Nina’s contest. Chamberlain continued in his trustee post under Clara’s will until his death on May 10, 1978.<sup>457</sup> Under the terms of Clara’s will, the designated successor trustee to Chamberlain was his partner, Edward John Willi.<sup>458</sup> Willi was a graduate of Dartmouth College and Harvard Law School.<sup>459</sup> He became

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<sup>455</sup> *Id.* The famous Supreme Court reporter and author of *Gideon’s Trumpet*, Anthony Lewis, reported this series of questions from the court on April 1, 1961. *Id.* In the much later transcript released by the Oyez Project, Frankfurter is quoted, not referring to Twain, but to “Uncle Sam.” Original Oyez Project transcript on file with author. This was a transcription error, due to the laughter occurring at the time Frankfurter made his remarks. The retired director of the Oyez Project, Jerry Goodman, corrected the mistake in June 2017, after author Henry Cohn informed him of the contemporaneous Anthony Lewis report. *Mapp v. Ohio, Oral Argument—March 29, 1961*, OYEZ PROJECT, <http://www.oyez.org/cases/1960/236> (last visited Dec. 26, 2018).

<sup>456</sup> Thomas G. Chamberlain, *Letters to the Times, Ownership of Salacious Literature*, N.Y. TIMES, May 8, 1961, at 34.

<sup>457</sup> *Thomas Chamberlain, 82; Trustee of Twain Estate*, N.Y. TIMES, *supra* note 436.

<sup>458</sup> Will of Clara Clemens, *supra* note 317, at 260.

<sup>459</sup> *Edward John Willi, Lawyer*, 88, N.Y. TIMES, Jan. 2, 1992, at 19.

a corporate and probate lawyer, and founded his firm with Chamberlain in the New York financial district.<sup>460</sup> On June 14, 1978, Willi filed in Redding Probate Court a document reciting that he was the “successor co-trustee” under Clara’s will, the trust “for the benefit of William E. Seiler.”<sup>461</sup> He accepted the appointment, subject to the approval of the court.<sup>462</sup> He filed at the same time a document making the probate judge his agent for service.<sup>463</sup> On August 28, 1978, the court accepted a \$5,000 bond Willi had filed a month prior.<sup>464</sup> Willi was thus the individual trustee under Clara’s will along with the then-titled Manufacturers-Hanover Bank.<sup>465</sup>

Seiler died on November 17, 1978.<sup>466</sup> On May 24, 1979, acting Judge Andrew Hogan, Junior of Bethel approved and allowed the trustees account for the period of May 9, 1978 to December 31, 1978.<sup>467</sup> The order concluded: “As of November 17, 1978, the Trust will continue to be maintained by the Trustees as a fund known as the Mark Twain Foundation.”<sup>468</sup>

No particular issue arose when Willi was co-trustee from 1978 to 1991.<sup>469</sup> Willi died at age 88 on December 27, 1991.<sup>470</sup> On October 21, 1992, the vice president of Chemical Bank, John J. Kindred, made the following application in the Redding Probate Court.<sup>471</sup> He first set forth that Clara’s will and subsequent settlement provided that, after deaths of Samossoud and Seiler, there was to be a trust created and referred to as the Mark Twain Foundation, to be “used and expended for religious, charitable, scientific, literary or educational purposes including within

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<sup>460</sup> *Id.*

<sup>461</sup> Estate of Clara Clemens Samossoud, 42 Redding. Prob. Ct. 479 (June 14, 1978) (on file with author).

<sup>462</sup> *Id.*

<sup>463</sup> Estate of Clara Clemens Samossoud, 42 Redding. Prob. Ct. 480 (June 12, 1978) (on file with author).

<sup>464</sup> Estate of Clara Clemens Samossoud, 43 Redding. Prob. Ct. 114 (Aug. 28, 1978) (on file with author).

<sup>465</sup> *Id.* (approving Willi as co-trustee). The Hanover Bank remained a co-trustee, with Willi, only replacing Chamberlain as per Clara’s request. *See* Will of Clara Clemens, *supra* note 317, at 260.

<sup>466</sup> Budd, *supra* note 300, at 17.

<sup>467</sup> Estate of Clara Clemens Samossoud, 43 Redding. Prob. Ct. 954 (May 24, 1979) (on file with author).

<sup>468</sup> *Id.*

<sup>469</sup> The authors’ review of the probate documents regarding the estate of Clara Clemens from 1978 through 1991 revealed no contested issues.

<sup>470</sup> *Edward John Willi, Lawyer*, 88, *supra* note 459.

<sup>471</sup> Application for Appointment of Successor Co-Trustee, Estate of Clara Clemens, 61 Redding Prob. Ct. 0625 (on file with author) [hereinafter Kindred Application].

such purposes, the enabling of mankind to appreciate and enjoy the works of Mark Twain.<sup>472</sup>

Chamberlain was a co-trustee with Hanover Bank, now Chemical Bank, followed by Willi.<sup>473</sup> Now by Connecticut statute, the probate court was required to name a “suitable person” to fill the vacancy.<sup>474</sup> Kindred’s application concluded:

Richard A. Watson, a partner of the law firm of Chamberlain, Willi, Ouchterloney & Watson worked closely with said Thomas G. Chamberlain (until his death in 1978) and with said Edward J. Willi (until his death in 1991) on many legal issues associated with the administration of the Mark Twain Foundation. He is, in the opinion of the subscriber, a suitable person to fill such vacancy.<sup>475</sup>

On November 4, 1992, an attorney Elizabeth M. Grant, who had represented Willi, also urged the appointment of Watson.<sup>476</sup>

Richard A. Watson was a law student at Columbia in 1970 but went to Vietnam as a translator.<sup>477</sup> He returned to the U.S. and renewed his studies at Columbia, graduating in 1972.<sup>478</sup> He joined Chamberlain and Willi, and was given the Mark Twain Foundation file to work on.<sup>479</sup> For over twenty years, he had been involved in requests from writers, actors, producers, and musicians seeking permission to use Mark Twain’s works and had negotiated contracts as set forth in the accounts filed with the probate court.<sup>480</sup> He was appointed co-trustee of the Mark Twain Foundation by the Redding Probate Court upon the granting of Kindred’s application and has remained co-trustee ever since.<sup>481</sup>

One major change that Watson made was the dissolution in 1994 of

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<sup>472</sup> *Id.*

<sup>473</sup> *Id.*

<sup>474</sup> *Id.*

<sup>475</sup> Kindred Application, *supra* note 471.

<sup>476</sup> Letter from Elizabeth M. Grant, Esq., Whitman & Ransom to the Honorable Richard L. Emerson, Judge, Redding Probate Court (Nov. 4, 1992) [hereinafter Grant Letter to Watson, Nov. 4, 1992] (on file with author).

<sup>477</sup> Telephone Interview by Henry S. Cohn, Judge, New Britain District Sup. Ct. with Richard A. Watson (Jan. 10, 2017) (notes on file with author).

<sup>478</sup> *Id.*

<sup>479</sup> *Id.*

<sup>480</sup> Grant Letter to Watson, Nov. 4, 1992, *supra* note 476; *see also* Letter from Elizabeth M. Grant, Esq., Whitman & Ransom, to the Honorable Richard L. Emerson, Judge, Redding Probate Court (Sept. 30, 1993) (on file with author) (noting that Chamberlain, Willi, Ouchterloney, and Watson had been paid a fee from the trust income for over twenty-five years for their work managing the rights to Twain’s published works on behalf of the Foundation).

<sup>481</sup> Interview by Judge Henry Cohn with Richard A. Watson, *supra* note 477.

the Mark Twain Company, which had been created in 1908 to hold copyrights to Twain's published works. The trust created under Twain's will held shares in the Mark Twain Company.<sup>482</sup> Watson decided that the Mark Twain Company was no longer needed, and therefore dissolved it; the Mark Twain Company's assets became part of the Mark Twain Foundation.<sup>483</sup>

A. *Duties of the Mark Twain Foundation*

From the inception of Twain's probated will, the trustees have continuously filed an annual accounting. Between 1943 and 1978, Chamberlain continued these required filings, initially for the Twain will and then for Clara's will.<sup>484</sup>

On November 28, 1943, the Hartford Courant reported that the "Mark Twain Company is Big Business."<sup>485</sup> The article described the funds received from copyrights and royalties.<sup>486</sup> The article also traced how Chamberlain became the successor trustee to Langdon and pictured him, as newly appointed in 1943, sitting in his pleasant New York office coming up to speed on Twain's unpublished works.<sup>487</sup>

A similar story on Twain's trust income appeared in the Courant on July 17, 1955.<sup>488</sup> The estate received \$11,655.82 in 1954 for the use of Twain's works, which were not yet in the public domain.<sup>489</sup> Among the payments were those by Harpers & Brothers totaling \$5,232.03, William Morris Agency totaling \$3,127.23, and Contait Publications totaling \$1,421.53; Clara received total payments of \$21,869.85.<sup>490</sup>

In 1959, the New York Times reported that Judge Anderson, who

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<sup>482</sup> See *id.*; see generally Last Will and Testament of Samuel L. Clemens, *supra* note 80 (regarding disbursement of stocks and holdings); Oct. 18, 1910 Inventory, *supra* note 165 (noting fifty shares of the Mark Twain Company for disbursement in the first Inventory).

<sup>483</sup> Interview by Judge Henry Cohn with Richard A. Watson, *supra* note 477.

<sup>484</sup> Information based on authors' review of probate court filings during this time period. These filings were often reported in the newspapers. See, e.g., *Mark Twain Estate Assets Put at \$700,000 in Report*, N.Y. TIMES, May 20, 1966, at 53 (reporting on an annual accounting filed in the Redding Probate Court).

<sup>485</sup> Honce, *supra* note 441. The movie musical *Connecticut Yankee in King Arthur's Court*, the movie, *The Adventures of Mark Twain*, South American sales, and Harper Brothers payments were bringing in high levels of income. *Id.*

<sup>486</sup> *Id.*

<sup>487</sup> *Id.*

<sup>488</sup> *Twain's Writings Still Produce Sizable Income*, HARTFORD COURANT, July 17, 1955, at 4.

<sup>489</sup> *Id.*

<sup>490</sup> *Id.*

was a boy when Twain was the most famous resident of Redding, disclosed that the securities had \$398,337.13 in investment value.<sup>491</sup> Investments included IBM stock worth \$148,061.<sup>492</sup> Clara received payments of \$35,781 that year and a recurring payment that began in 1919 was made in the amount of \$10,000 to build up the remainder trust, the Foundation itself.<sup>493</sup>

In 1961, the New York Times reported that the estate had increased considerably in the past year.<sup>494</sup> Its value in 1961 was \$783,485, which was \$105,351 more than the total in 1959.<sup>495</sup> The article also reported that Clara had received \$50,036 in the previous year.<sup>496</sup>

In 1962, Judge Anderson approved the twenty-third report.<sup>497</sup> The trust had a value of \$878,952, an increase of \$95,467 from 1961.<sup>498</sup> Clara received \$75,556.<sup>499</sup> Again, IBM was the most successful investment, worth \$231,037.<sup>500</sup> Royalties had remained fairly constant.<sup>501</sup>

The final article on the trust under the Mark Twain will was published on February 22, 1964.<sup>502</sup> Judge Anderson terminated the Twain trust and approved Clara's trust and the legal settlement.<sup>503</sup> Anderson had presided over the Twain accounting since 1939 and stated that he intended to maintain his role with Clara's trust as well.<sup>504</sup> The final accounting by Chamberlain and Hanover Bank for the Twain estate was \$867,565, with an additional undistributed income of \$61,000.<sup>505</sup> The article disclosed the settlement split of 65%–35% between Samossoud and Nina, but did not mention any possibility of payment to Seiler.<sup>506</sup> It did mention the \$300 monthly payments to Phyllis

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<sup>491</sup> David Anderson, *Twain Estate Up \$65,000 in Year*, N.Y. TIMES, Apr. 18, 1959, at 25.

<sup>492</sup> *Id.*

<sup>493</sup> *Id.*

<sup>494</sup> *Mark Twain Estate Up \$105,351 in '60; Total Is \$783,485*, N.Y. TIMES, Apr. 22, 1961, at 27.

<sup>495</sup> *Id.*

<sup>496</sup> *Id.*

<sup>497</sup> *Twain Heirs Gain By \$95,467 in Year*, N.Y. TIMES, Apr. 28, 1962, at 27.

<sup>498</sup> *Id.*

<sup>499</sup> *Id.*

<sup>500</sup> *Id.*

<sup>501</sup> *Twain Heirs Gain By \$95,467 in Year*, N.Y. TIMES, *supra* note 497.

<sup>502</sup> Richard H. Parke, *Humorist's \$867,565 is Put Into New Trust Fund 54 Years After his Death*, N.Y. TIMES, Feb. 22, 1964, at 1.

<sup>503</sup> *Id.*

<sup>504</sup> *Id.* at 18.

<sup>505</sup> Parke, *supra* note 502, at 1.

<sup>506</sup> *Id.*

Harrington, but gave no explanation of the reason, other than to state that it was an “annuity.”<sup>507</sup> Also in 1964, the sinking fund trust receiving payments of \$10,000 was merged into Clara’s trust.<sup>508</sup>

The Mark Twain Foundation post-Chamberlain did not receive press attention, but the annual accounting reports continued. For example, in the 1979 accounting, the first after Chamberlain’s death, the attorney for the Mark Twain Foundation, Mortimer P. Barnes, noted that Seiler had died a few months earlier on November 17, 1978.<sup>509</sup> The period covered by this accounting spanned from June 14, 1978 to December 31, 1978.<sup>510</sup> Barnes declared that with Seiler’s death, the Mark Twain Foundation would continue to be maintained by the trustees and its annual income used for charitable purposes.<sup>511</sup> Under Clara’s will and the settlement, Barnes asked in a cover letter to the accounting that he be called with the date of the required hearing because “the trustees would like to telephone the newspapers to prevent inaccurate reporting of the matter.”<sup>512</sup>

On August 26, 1992, several months after Willi’s death, attorney Elizabeth Grant filed an account for the period of December 31, 1990 to December 31, 1991.<sup>513</sup> This was one of several accounts filed with Probate Judge Richard L. Emerson.<sup>514</sup> In a follow-up letter dated September 25, 1992, Grant explained the methodology of the granting of funds by the Mark Twain Foundation.<sup>515</sup>

The letter explained that in order for beneficiary organizations to receive grants from the trust, they were required to submit an application to the trustees of the Foundation.<sup>516</sup> The trustees had given a grant to the

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<sup>507</sup> *Id.*

<sup>508</sup> *Id.* at 18.

<sup>509</sup> Letter from Mortimer P. Barnes, Esq., Whitman & Ransom, to the Honorable Patricia A. Green, Judge, Redding Probate Court (May 1, 1979) (on file with author) [hereinafter May 1, 1979 Letter from Barnes to Judge Green].

<sup>510</sup> May 1, 1979 Letter from Barnes to Judge Green, *supra* note 509.

<sup>511</sup> *Id.*

<sup>512</sup> *Id.*

<sup>513</sup> Letter from Elizabeth M. Grant Esq., Whitman & Ransom, to the Honorable Richard L. Emerson, Judge, Redding Probate Court (Aug. 26, 1992) (on file with author). The details of Willi’s death were reported by the New York Times on January 2, 1992. *Edward John Willi, Lawyer*, 88, N.Y. TIMES, Jan. 2, 1992, at A.19.

<sup>514</sup> *See, e.g.*, Letter from Elizabeth M. Grant Esq., Whitman & Ransom, to the Honorable Richard L. Emerson, Judge, Redding Probate Court (Mar. 24, 1995) (on file with author) (noting the filing of a later accounting of the estate with Judge Emerson).

<sup>515</sup> *See* Letter from Elizabeth M. Grant Esq., Whitman & Ransom, to the Honorable Richard L. Emerson, Judge, Redding Probate Court (Sept. 25, 1992) (on file with author).

<sup>516</sup> *Id.*

Mark Twain Journal for biographical research in the amount of \$2,500.<sup>517</sup> The Hartford Memorial received \$17,500 to support basic operations, including an educational program.<sup>518</sup> The Bancroft Library received \$25,000 to support the Mark Twain Foundation; this was a supplement to its National Endowment grant.<sup>519</sup> Elmira College received \$12,000 for preservation of Mark Twain facilities.<sup>520</sup> Willi also arranged for \$250 to be given to the Mark Twain Association of New York for a series of lectures.<sup>521</sup>

The thirty-second account of the Foundation under Clara's will occurred in 1994.<sup>522</sup> Grant wrote a letter after the filing explaining the allocation of fees between income and principal.<sup>523</sup> Clara's will had been silent on this point, but the settlement subjected the allocation to Connecticut law, which left the allocation between principal and income to the discretion of the trustees.<sup>524</sup> Here, the trustees reasonably decided to allocate the bond premium and legal fees to principal.<sup>525</sup> Grant also defended the payment of legal fees to Watson's firm as they were in keeping with past practice over twenty-five years.<sup>526</sup> Her fee was also discussed; it was higher during this particular accounting period due to her efforts in having Watson named as successor trustee.<sup>527</sup>

Various fee issues were discussed in a thorough letter written by Watson to Judge Emerson and dated May 16, 1995.<sup>528</sup> Watson and Chemical Bank received fees as trustees.<sup>529</sup> Watson wrote to justify the fees paid to his firm for legal services, as indicated in Grant's previous letter.<sup>530</sup> There had been additional one-time charges in the 1994

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<sup>517</sup> *Id.*

<sup>518</sup> *Id.*

<sup>519</sup> Letter from Elizabeth M. Grant Esq., Whitman & Ransom, to the Honorable Richard L. Emerson, Judge, Redding Probate Court (Sept. 25, 1992) (on file with author). This library is host to the Mark Twain Papers Project, discussed below.

<sup>520</sup> *Id.*

<sup>521</sup> *Id.*

<sup>522</sup> Letter from Elizabeth M. Grant Esq., Whitman & Ransom, to the Honorable Richard L. Emerson, Judge, Redding Probate Court (Aug. 3, 1994) (on file with author).

<sup>523</sup> *Id.*

<sup>524</sup> *Id.*

<sup>525</sup> *Id.*

<sup>526</sup> *Id.* The fees charged were \$4,000 plus ten-percent of the corpus. *See id.*

<sup>527</sup> Letter from Elizabeth M. Grant Esq., Whitman & Ransom, to the Honorable Richard L. Emerson, Judge, Redding Probate Court (Aug. 3, 1994) (on file with author).

<sup>528</sup> Letter from Richard A. Watson, Esq., Chamberlain, Willi, Ouchterloney & Watson, to the Honorable Richard L. Emerson, Judge, Redding Probate Court (May 16, 1995) [hereinafter May 16, 1995 Letter from Watson to Judge Emerson] (on file with author).

<sup>529</sup> *Id.* at 1.

<sup>530</sup> *See id.* at 3–5.

accounting related to the Mark Twain Company, dissolved as “uneconomical to maintain.”<sup>531</sup> The letter explained that a major function of the legal services provided was preparation of the yearly accounting.<sup>532</sup>

A summary in the thirty-sixth accounting (December 31, 1996 to December 31, 1997) filed by Chase Manhattan Bank (as it was then called) and Watson shows both a principal account and an income account.<sup>533</sup> The principal account balance was \$1,065,242.28.<sup>534</sup> There had been an increase of \$219,575.39 in that period.<sup>535</sup> During that period, on May 21, 1997, Judge Emerson wrote to Helen Stauderman at the Mark Twain Library in Redding concerning how the net income of the Mark Twain Foundation could be used.<sup>536</sup> Again, Clara’s will provided for “religious, charitable, scientific, literary or educational purposes, including within such purposes, the enabling of mankind to appreciate and enjoy the works of Mark Twain.”<sup>537</sup> The settlement had further restricted grants to tax free charities.<sup>538</sup> He concluded: “[S]ince your organization is tax exempt, that additional restriction is not an issue.”<sup>539</sup>

Chase Manhattan Bank and Watson filed the thirty-eighth accounting covering December 31, 1998 to December 31, 1999 with the Redding Probate Court.<sup>540</sup> The principal account had a bottom line of \$1,459,790.32.<sup>541</sup> The income account showed a bottom line of \$20,179.91.<sup>542</sup> The trustees had invested in a series of income and equity funds.<sup>543</sup> The same legal fees and trustees’ commissions as previously

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<sup>531</sup> See *id.* at 2.

<sup>532</sup> See *id.* at 4–5. Further functions of the firm, as set forth in Watson’s letter, are described below.

<sup>533</sup> Thirty-Sixth Account of Proceedings Under the Will of Clara Clemens Samossoud, 70 Redding Prob. Ct. 6070, 6070–71 (on file with author).

<sup>534</sup> *Id.* at 6070.

<sup>535</sup> *Id.*

<sup>536</sup> Letter from Judge Richard L. Emerson to Helen Stauderman of the Mark Twain Library (May 21, 1997) [hereinafter letter from Judge Emerson to Helen Stauderman] (on file with author).

<sup>537</sup> Will of Clara Clemens, *supra* note 317, at 258.

<sup>538</sup> Agreement Compromising Will Contests and Claims to Estate, *supra* note 369, at 537.

<sup>539</sup> Letter from Judge Emerson to Helen Stauderman, *supra* note 536.

<sup>540</sup> Thirty-Eighth Account of Proceedings Under The Will of Clara Clemens Samossoud, 72 Redding Prob. Ct. 0372 [hereinafter Thirty-Eighth Account] (on file with author).

<sup>541</sup> *Id.* at 0373.

<sup>542</sup> *Id.* at 0374.

<sup>543</sup> *Id.* at 0374 (showing investments in Equity Income Fund, the Intermediate Bond Fund, the International Equity Fund, and more).

indicated were set forth.<sup>544</sup> Grants were given to the Hartford Public Library (\$2,000), The Mark Twain Library (\$2,000), the Bancroft Library (\$10,000), Elmira College (\$15,000), the Mark Twain Journal (\$3,000), the Mark Twain Home Foundation in Hannibal (\$8,000), the Mark Twain House, Hartford (\$15,000) and the Cleveland Playhouse (\$5,000).<sup>545</sup>

The most significant section of this report (which had also been a feature of earlier accountings) was a list of literary property retained by the Mark Twain Foundation, which reported that the value of the property was \$140,000.<sup>546</sup> Some of this property included:

- A 1910 agreement between Mark Twain trustees and the Mark Twain Company relating to the Harper Brothers contract of October 22, 1903;
- Publication rights in *A Bit of Curious History*, and *How to Remember History Dates*;
- Loew's picture rights to *Huckleberry Finn*;
- Clara's rights in the Mark Twain Foundation;
- Motion picture rights in *A Connecticut Yankee in King Arthur's Court*;
- Salkow Agency rights in the Works of Samuel Clemens;
- The rights of William Morris Agency to certain Mark Twain property;
- Rights of Walter Selden Associates in dramatic performances of *Tom Sawyer*;
- Harvard College rights in the book *Nook Farm, Mark Twain's Hartford Circle*;
- Warner Brothers rights, *Prince and the Pauper*;
- Rights of Frank Orth, including the sale of details and sketches of Mark Twain and his famous characters;
- Rights to *Five Books of Life or the Fine Gifts*;
- Rights of Yale University Library Gazette for quotations from the *Twichell Papers* and *A Tramp Abroad*;
- Rights of Philip Foner to publication of *Mark Twain Social Critic*;
- Lloyd E. Smith, *Mark Twain: A Laurel Reader*;
- Hal Holbrook's performance impersonating Mark Twain;
- Hallmark Cards, Inc., use of Mark Twain's writings;

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<sup>544</sup> Thirty-Eighth Account, *supra* note 540, at 0386.

<sup>545</sup> *Id.* at 0394.

<sup>546</sup> *Id.* at 0384.

- Worldwide TV rights to *Puddin' Head Wilson*;
- Clearance rights to *Letters from the Earth*;
- Income received in connection with Suzy Clemens's book, *Suzy and Mark Twain*;
- Hamlin Hill, *Mark Twain's Last Decade*;
- An agreement with Robert Jager, Director of Composition, Department of Music, Tennessee Tech University for re-adaptation of *The War Prayer*, transcribed by narrator and concert band;
- Rights of Jules Berke to the use of names of Mark Twain and his characters for ice cream parlor motifs;
- Rights of Gail Kubik to *Mark Twain's War Prayer*;
- Spanish and Italian editions of *Mark Twain and the Three Rs*;
- Rights of Jennings Burch to use of Mark Twain material in animations and television productions;
- Rights of Paul Fatout to the publication of Mark Twain speeches;
- Rights to use of Mark Twain material in *Gospel According to Mark Twain*, a play;
- Agreements allowing the recording of books on tape, including *Life on the Mississippi*, *Huckleberry Finn*, *The Innocents Abroad*, and *Roughing It*;
- Publication of a book called *The Devil's Race Track* containing Mark Twain's *Great Dark Writings*, edited by John S. Tuckey;
- *Mysterious Stranger*, royalties;
- A Letter Agreement dated June 28, 1985 regarding "Royalty and Royalty Division arrangement" for *Adventures of Huckleberry Finn from University of California Press*; and
- An agreement regarding the *Huckleberry Finn* settlement.<sup>547</sup>

The most recent accounting that the authors reviewed was filed on May 20, 2016 with the Northern Fairfield County Probate Court.<sup>548</sup> The

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<sup>547</sup> Thirty-Eighth Account, *supra* note 540, at 375–84. The legal settlement is discussed in the foregoing.

<sup>548</sup> Fifty-Fourth Account of Proceedings Under The Will of Clara Samossoud at 1, A/C # P63073004 TUW C.C. Samossoud FBO Mark Twain Foundation (N. Fairfield Prob. Ct. 2016) [hereinafter Fifty-Fourth Account] (on file with author).

account of December 31, 2014 to December 31, 2015 filed by JP Morgan Chase Bank (its present name) and Watson differs little from previous accounts.<sup>549</sup> Judge Egan approved the account on July 28, 2016.<sup>550</sup>

By this time, the principal account had risen to \$3,048,021.14.<sup>551</sup> The income account, accordingly, had risen to \$140,702.16.<sup>552</sup> Beneficiaries received grants from income and principal, including Elmira College (\$37,000 from principal), the Mark Twain Memorial (\$25,000 from principal), the University of California (\$17,000 from principal, \$60,000 from income), the Mark Twain Journal (\$4,000 from income), and the Mark Twain Library Association, Inc. (\$3,000 from income).<sup>553</sup> The literary property section noted, in addition to the carry-overs from previous accounts, an agreement with the University of California Press with respect to royalty payments on the book *Is He Dead?*<sup>554</sup> The account also noted income from “royalties received from the University of California” due to the “[e]xtraordinary [s]uccess of the [a]utobiography of Mark Twain.”<sup>555</sup>

Watson’s May 16, 1995 letter to Judge Emerson also details other functions of the Mark Twain Foundation.<sup>556</sup> The extensive literary property makes the Mark Twain Foundation, as Watson emphasized in his letter, “no ordinary trust.”<sup>557</sup> The list of property in the account constituted the most important of the contracts generating income for the Foundation.<sup>558</sup> There were also common law rights not listed in the account.<sup>559</sup>

It took considerable work to assert these rights. Watson reported that “[o]ver the course of a year,” he typically received “100 or so requests from various people” for usage of “the name or likeness of

<sup>549</sup> *Id.*

<sup>550</sup> Information obtained by author’s telephone call to the Northern Fairfield County Probate Court on Monday, January 14, 2019. During this phonecall, the author also learned that there were two subsequent accountings. For the period December 31, 2015 to December 31, 2016, Judge Daniel O’Grady approved the accounting. Judge O’Grady also approved the 2017 accounting on August 16, 2018. Notes of phone conversation on file with author.

<sup>551</sup> Fifty-Fourth Account, *supra* note 548, at 2.

<sup>552</sup> *Id.* at 3.

<sup>553</sup> *Id.* at 8, 62–63.

<sup>554</sup> *Id.* at 12.

<sup>555</sup> Fifty-Fourth Account, *supra* note 548, at 4.

<sup>556</sup> May 16, 1995 Letter from Watson to Judge Emerson, *supra* note 528.

<sup>557</sup> *Id.* at 3.

<sup>558</sup> *Id.*

<sup>559</sup> *See id.* (noting that various intangible rights, such as common law copyrights, generated income for the trust but were not listed explicitly in the accounting).

Mark Twain or one of his works in various ways.”<sup>560</sup> This required Watson to review how the person intended to use the work, to reach agreement on a reasonable charge and to make certain that the payment was made correctly.<sup>561</sup>

The small user might pay \$50, while a large corporation like the Disney Company may pay much more.<sup>562</sup> In his letter, Watson gave the example of a project in which Disney paid \$5,000 to use Twain’s likeness as an “animatronic” robot.<sup>563</sup> In 2017, Watson allowed the Mark Twain Memorial to publish and sell a children’s book, “Oleomargarine,” a previously unpublished work of Twain.<sup>564</sup> The New York Times noted that the book “gives a tantalizing glimpse of the wild, ephemeral tales that Twain spontaneously created for his daughters each night.”<sup>565</sup>

Watson’s letter also discusses the “right to publicity,” which is the “right to exploit the name and likeness of a celebrity, particularly in a commercial setting.”<sup>566</sup> He expressed the need to keep up-to-date on the rights in each state for such protection after the celebrity has died.<sup>567</sup> Watson gives, as an example, his successful negotiation with a furniture company for a contract under which the company obtained rights to make use of the name and likeness of Twain.<sup>568</sup> This led to a contract for \$13,750 to be paid to the trust; the arrangement was also expected to bring royalties to the Foundation for several years.<sup>569</sup> A similar arrangement led to a contract with Hal Holbrook for his one man show, which consisted of Mark Twain impersonations.<sup>570</sup>

One of the earliest reported cases regarding literary rights to Mark Twain’s works began with Chamberlain in the late 1940s.<sup>571</sup> Lew D.

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<sup>560</sup> May 16, 1995 Letter from Watson to Judge Emerson, *supra* note 528, at 3.

<sup>561</sup> *Id.*

<sup>562</sup> *Id.* at 4.

<sup>563</sup> *Id.*

<sup>564</sup> Alexandra Alter, *A Rediscovered Mark Twain Fairy Tale Is Coming Soon*, N.Y. TIMES, Jan. 21, 2017, at C1. Watson’s letter does not mention this occurrence as it occurred much later than the letter.

<sup>565</sup> *Id.*

<sup>566</sup> May 16, 1995 Letter from Watson to Judge Emerson, *supra* note 528, at 4.

<sup>567</sup> *Id.*

<sup>568</sup> *Id.*

<sup>569</sup> *Id.*

<sup>570</sup> See Thirty-Eighth Account, *supra* note 540, at 0379. Presently, the Mark Twain Foundation contracts with the CMG corporation to provide copyright protection and licensing. Interview with Richard Watson, Esq., by Henry S. Cohn, Judge, New Britain District Sup. Ct., New Britain, Conn. (Jan. 10, 2017) (on file with author).

<sup>571</sup> See generally *Chamberlain v. Feldman*, 79 N.Y.S.2d 42 (N.Y. Sup. Ct. 1948).

Feldman acquired a short story by Twain entitled *A Murder, A Mystery, and a Marriage* for \$1,250 at auction.<sup>572</sup> Twain had written the short story with the idea that he would join with William Dean Howells and others, including Bret Harte, to write alternative final chapters to his story.<sup>573</sup> Howells was also the editor of the *Atlantic Monthly* and he declined to publish the story in his magazine.<sup>574</sup>

The manuscript's history shows two possible routes to Feldman. It either passed to Dr. James Brentano Clemens (no relation to Twain), a collector, in a transaction with Twain in 1897; or it passed to Dr. Clemens from a man who bought it and consigned it to Dodd & Mead Company and then to Dr. Clemens.<sup>575</sup> It was part of Dr. Clemens' estate in 1930 and sold by his wife to Feldman in 1945.<sup>576</sup>

Feldman privately printed the manuscript in order to apply for a copyright registration and distribute the work.<sup>577</sup> Chamberlain and Central Hanover Bank as the plaintiffs, represented by their attorney Alexander Andrews, brought suit in the New York Supreme Court (the trial court in New York) to enjoin publication of the manuscript by Feldman, represented by Alan Hyman as his attorney.<sup>578</sup>

During the trial, Hyman called Chamberlain to the stand and tried to suggest a compromise, suggesting that payment to the estate of one-half or one-third of net sales should resolve the estate's claim.<sup>579</sup> But Chamberlain testified that Clara was opposed to any publication by Feldman.<sup>580</sup> Her deposition relating her opposition was also introduced into evidence.<sup>581</sup> She gave her residence as 2005 La Brea Terrace, Hollywood, California.<sup>582</sup> At the time of Twain's death, she was his sole

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<sup>572</sup> *Id.* at 42–43; *A Mysterious Manuscript*, PBS NEWS HOUR (June 25, 2001), [https://www.pbs.org/newshour/arts/entertainment-jan-june01-twain\\_06-25](https://www.pbs.org/newshour/arts/entertainment-jan-june01-twain_06-25) [hereinafter *A Mysterious Manuscript*, PBS NEWS HOUR].

<sup>573</sup> *Chamberlain*, 79 N.Y.S.2d at 43; *A Mysterious Manuscript*, PBS NEWS HOUR, *supra* note 572.

<sup>574</sup> *Chamberlain*, 79 N.Y.S.2d at 43.

<sup>575</sup> *Chamberlain v. Feldman*, 274 A.D. 515, 516–17 (N.Y. App. Div. 1948).

<sup>576</sup> *Id.* at 517.

<sup>577</sup> *A Mysterious Manuscript*, PBS NEWS HOUR, *supra* note 572.

<sup>578</sup> *Chamberlain*, 79 N.Y.S.2d at 42–43.

<sup>579</sup> Plaintiff's Witness, Thomas G. Chamberlain, Cross, at 205:1–205:10, *Chamberlain v. Feldman*, 274 A.D. 515 (N.Y. App. Div. 1948) [hereinafter *Chamberlain Cross*] (on file with author).

<sup>580</sup> *Chamberlain Cross*, *supra* note 579, at 206:12–207:2.

<sup>581</sup> Deposition of Plaintiff Clara Clemens Samossoud, Sept. 11, 1946, *Chamberlain v. Feldman*, 274 A.D. 515 (N.Y. App. Div. 1948) (on file with author) [hereinafter *Clara Clemens Dep.*] Both Clara and Harvard scholar Bernard DeVoto had control of publication, as illustrated in the foregoing.

<sup>582</sup> *Id.* at 215:8–215:9.

descendant.<sup>583</sup> Nina was born four months after Twain's death.<sup>584</sup>

She went on to explain, in her deposition, that Twain's principal profession was writing.<sup>585</sup> He also engaged in the publishing business with Charles L. Webster, the husband of Twain's niece, Ann Moffatt.<sup>586</sup> In 1909, Albert Paine was the other party involved with Twain's literary property.<sup>587</sup>

The Supreme Court ruled against Chamberlain, dismissing his complaint.<sup>588</sup> The court held that "a transfer of [publication] rights will be presumed from a transfer of title unless there is a specific reservation in the act of transfer."<sup>589</sup>

Subsequently, the Appellate Division reversed the decision on appeal.<sup>590</sup> Although the ownership of the work appeared to be with Feldman, "literary rights have always been held to be separate from the manuscript itself."<sup>591</sup> The plaintiffs held a common law copyright and there was no proof that Twain had transferred the literary rights at the time of his disposal of the document.<sup>592</sup> The trial court was in error in finding the presumption in Feldman's favor.<sup>593</sup>

On further appeal to the New York Court of Appeals, the Court affirmed the Appellate Division.<sup>594</sup> Justice Desmond set forth the facts; specifically, that Feldman had purchased the document at auction, was refused publication by the Mark Twain trustees, who had rights in Twain's unpublished works, and had nevertheless decided to publish the story.<sup>595</sup> The trustees had then sued for an injunction to stop Feldman from publishing and to cancel a claimed statutory copyright entered by Feldman in the federal registry of copyrights.<sup>596</sup>

Justice Desmond held that the Appellate Division was factually

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<sup>583</sup> *Id.* at 216:2–216:3.

<sup>584</sup> *Id.* at 216:3–216:4.

<sup>585</sup> Clara Clemens Dep., *supra* note 581, at 216:5–216:6.

<sup>586</sup> *Id.* at 217:6–218:13.

<sup>587</sup> *Id.* at 219:8–219:24. As seen in the foregoing, Paine was succeeded by DeVoto at the time of this suit.

<sup>588</sup> *Chamberlain v. Feldman*, 79 N.Y.S.2d 42, 43 (N.Y. Sup. Ct. 1948).

<sup>589</sup> *Id.* at 43 (citing *Pushman v. N.Y. Graphic Soc'y*, 39 N.E.2d 249 (N.Y. App. Div. 1942)).

<sup>590</sup> *Chamberlain v. Feldman*, 274 A.D. 515, 516, 518 (N.Y. App. Div. 1948).

<sup>591</sup> *Id.* at 517.

<sup>592</sup> *Id.* at 517–18.

<sup>593</sup> *Id.* at 518.

<sup>594</sup> *Chamberlain v. Feldman*, 89 N.E.2d 863, 865 (N.Y. 1949). Interestingly, Edward Willi was listed on the appellee's brief. *See id.* at 863.

<sup>595</sup> *Id.* at 864.

<sup>596</sup> *Id.*

correct that Twain never fully parted with his literary rights when he, presumably, transferred the document.<sup>597</sup> Therefore, Feldman's purchase of the physical manuscript at the auction sale did not include the literary rights to publish; these resided with the plaintiff trustees.<sup>598</sup> In his conclusion, Desmond stated:

A recent commentary on this case in the Harvard Law Review, suggests that it may be contrary to sound policy to keep meritorious literary achievement out of the public domain for so long a time as is here involved. "Without expressing any views of our own as to the advisability of permitting literary flowers so to blush unseen, we state our agreement with the last sentence of that Law Review article, in which it is pointed out that any such change of public policy must be the doing of the Legislature."<sup>599</sup>

The *New York Times* headline for December 31, 1949, declared: "Buyer Can't Print a Twain Original."<sup>600</sup> The ultimate conclusion to this litigation occurred in 2001 when the Buffalo and Erie Library purchased the short story.<sup>601</sup> Watson gave permission for publication and his approval appears on the copyright page.<sup>602</sup>

Chamberlain did not fare as well in *Chamberlain v. Columbia Pictures Corp.* When Columbia brought out a film called *Best Man Wins* and implied that Twain had some link to the plot through the famous jumping frog tale, the court did not approve Chamberlain's subsequent suit.<sup>603</sup> First, the jumping frog story was in the public domain and, therefore, there could be no claim of copyright infringement.<sup>604</sup> Secondly, the court determined that the persona "Mark Twain" could not be controlled by Chamberlain and fellow trustees.<sup>605</sup> Additionally, while they had claimed that *Best Man Wins* was a poorly done film and was interfering with the trustees' efforts to protect Twain's works, the court concluded that this claim was "nebulous [and] far-fetched."<sup>606</sup>

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<sup>597</sup> *Chamberlain*, 89 N.E.2d at 864.

<sup>598</sup> *Id.* at 865.

<sup>599</sup> *Id.*

<sup>600</sup> *Buyer Can't Print a Twain Original*, N.Y. TIMES, Dec. 31, 1949, at 13.

<sup>601</sup> *A Mysterious Manuscript*, PBS NEWS HOUR, *supra* note 572.

<sup>602</sup> MARK TWAIN, A MURDER, A MYSTERY, AND A MARRIAGE (2003).

<sup>603</sup> *See Chamberlain v. Columbia Pictures Corp.*, 186 F.2d 923 (9th Cir. 1951).

<sup>604</sup> *Id.* at 924.

<sup>605</sup> *Id.* at 925.

<sup>606</sup> *Id.*

IX. MARK TWAIN'S LITERARY HERITAGE<sup>607</sup>

Mark Twain wrote over thirty books and “easily three or four thousand newspaper and magazine articles,” but there are multitudes of works he did not publish.<sup>608</sup> Stories have appeared over the years about newly discovered Twain documents and letters.<sup>609</sup> Private collectors and libraries still hold some of this material, while other works became part of the main collection, or returned thereto.<sup>610</sup>

One example of documents coming to the central repository was published as a story in the New York Times on September 19, 1954, with the headline, “University gets Mark Twain Items.”<sup>611</sup> Sixteen hundred family letters, 134 of which were signed by Twain himself, were obtained from the estate of Anita Moffett, a grandniece of Twain.<sup>612</sup> A rare book dealer in Los Angeles had turned over the materials, which included various letters as well ten scrapbooks of newspaper clippings compiled by Orion (Twain’s brother), a family Bible, an article from a Nevada newspaper signed by Twain, and “much miscellany.”<sup>613</sup> There were 691 letters from Twain’s sister, Pamela.<sup>614</sup> The material was hailed as the “most important addition” to the collection since Paine’s biography in 1912.<sup>615</sup>

Another example of additions to the main collection was made known in 1984.<sup>616</sup> Cyril Clemens, who as a seven-year-old met cousin Mark Twain in Redding, while Twain was holding a cat, gave his large collection of letters to the Mark Twain Memorial in Hartford.<sup>617</sup> In the collection were humorous exchanges between Twain and his wife

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<sup>607</sup> This portion of the article relies extensively on an online essay of the Mark Twain Papers Project, University of California, Berkeley. See Mark Twain Papers Project, *Mark Twain Papers & Project: A Brief History*, U. OF CALIFORNIA MARK TWAIN PROJECT, [http://www.marktwainproject.org/about\\_projecthistory.shtml](http://www.marktwainproject.org/about_projecthistory.shtml) (last visited Aug. 9, 2018) [hereinafter *Mark Twain Papers & Project: A Brief History*].

<sup>608</sup> *Id.*

<sup>609</sup> *Id.*

<sup>610</sup> *Id.* This collection is now part of the Mark Twain Papers Project, which is discussed below.

<sup>611</sup> *University Gets Mark Twain Items*, N.Y. TIMES, Sept. 19, 1954, at 120.

<sup>612</sup> *Id.* She was married to the founder of the Charles Webster publishing house. *Id.*

<sup>613</sup> *Id.*

<sup>614</sup> *Id.*

<sup>615</sup> *University Gets Mark Twain Items*, N.Y. TIMES, *supra* note 611.

<sup>616</sup> Garret Condon, *Twain's Letters Return Home, With Help of Admiring Cousin*, HARTFORD COURANT, Nov. 29, 1984, at D2.

<sup>617</sup> *Id.*

Livy.<sup>618</sup>

Mark Twain's will envisioned that this vast collection of material would have literary editors.<sup>619</sup> He left the "control, management and disposition" of the unpublished work to Clara and Paine, but Clara could not dispose of the documents without the trustees' permission.<sup>620</sup>

At first, Clara had thought to involve Yale University with her literary supervision because the University had awarded Twain an honorary degree in 1888.<sup>621</sup> Instead, Clara turned her collection over to a series of literary editors.<sup>622</sup>

The first editor was obviously Paine, also named by Twain in his will with this task.<sup>623</sup> Twain had actually made his papers available to Paine in 1906.<sup>624</sup> In the years after Twain died, Clara and Paine published a sample of the papers.<sup>625</sup> After Paine's three volume biography was completed in 1912, he published five hundred Twain letters in 1915 and one half of the notebooks in 1935.<sup>626</sup> Paine carefully edited the works by removing, changing and denying access to portions of the papers.<sup>627</sup> In the *Feldman* litigation, Clara in her deposition stated that "[she] expressed [her] views on whether different manuscripts should be published."<sup>628</sup>

In Paine's view, the unpublished works of Mark Twain had little literary value.<sup>629</sup> A scholar who differed with him was Bernard DeVoto of Harvard.<sup>630</sup> DeVoto offered his services to the trustees and Clara to sort through the manuscripts.<sup>631</sup> Paine would not hear of it, resisting efforts to have any other biography of Twain and mocking DeVoto's

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<sup>618</sup> *Id.*; see also Diane Swanbrow, *The Lost Legacy of Mark Twain: How a Boxful of Letters Worth Half a Million Dollars Ended Up in a Los Angeles Hobby Shop*, L.A. TIMES (May 10, 1987), [http://articles.latimes.com/1987-05-10/magazine/tm-6194\\_1\\_mark-twain](http://articles.latimes.com/1987-05-10/magazine/tm-6194_1_mark-twain). (discussing some of the content of the unpublished materials as well as the disposition behind many of Twain's documents throughout Los Angeles).

<sup>619</sup> Last Will and Testament of Samuel L. Clemens, *supra* note 80, at 437–38; *Mark Twain Papers & Project: A Brief History*, *supra* note 607.

<sup>620</sup> Last Will and Testament of Samuel L. Clemens, *supra* note 80, at 437–38.

<sup>621</sup> *Mark Twain Papers & Project: A Brief History*, *supra* note 607.

<sup>622</sup> *Id.*

<sup>623</sup> *Id.*

<sup>624</sup> *Id.*

<sup>625</sup> *Mark Twain Papers & Project: A Brief History*, *supra* note 607.

<sup>626</sup> *Id.*

<sup>627</sup> *Id.*

<sup>628</sup> Clara Clemens Dep., *supra* note 585, at 219:35–219:37.

<sup>629</sup> Edward Wagenknecht, "The Mark Twain Papers" and "Henry James: The Treacherous Years," 2 STUDIES IN THE NOVEL 88, 88 (1970).

<sup>630</sup> See Wallace Stegner, *Bernard DeVoto*, 20 W. AM. LIT. 151, 152–53 (1985).

<sup>631</sup> *Mark Twain Papers & Project: A Brief History*, *supra* note 607.

attempt to summarize his position in his *Mark Twain's America* as “the only humor in the book.”<sup>632</sup>

After Paine's death in 1937, however, the trustees and Clara chose DeVoto to replace him, and he gathered the manuscripts from bank vaults, the Lincoln warehouse, Paine's residence, and some in the possession of Clara, who was holding one hundred items given to her by Paine.<sup>633</sup> DeVoto took these materials to the Widener Library at Harvard, where he studied them for eight years.<sup>634</sup> The documents are still labeled with “P” (Paine) numbers and “DV” (DeVoto) numbers, signifying which of the editors catalogued each document.<sup>635</sup> With Clara's approval, DeVoto published *Mark Twain in Eruption* in 1940, and the *Portable Mark Twain* in 1946.<sup>636</sup>

The Clara-DeVoto relationship began to break down in 1939, as DeVoto sought to publish *Letters from the Earth*, a series of highly inflammatory, anti-religious essays.<sup>637</sup> The essays attacked man as unworthy of the name “higher animal.”<sup>638</sup> Twain asserted that the Bible was full of lies, describing God as a fiend and at the same time, satirically, as “a father.”<sup>639</sup> According to Larson, “when Clara read DeVoto's proposal to publish *Letters From the Earth*, she was appalled . . . she wrote him [expressing her] ‘insurmountable objections to its publication.’”<sup>640</sup> DeVoto answered that she should agree to publication, as it would lead to more interest in Twain and increase sales of all his books.<sup>641</sup> According to DeVoto, it would also show the *true* Mark Twain that Paine had hidden up to this point.<sup>642</sup>

Clara's refusal to allow DeVoto to publish *Letters from the Earth* in 1939–1940 came at the same time that she was changing trustees from

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<sup>632</sup> *Id.*; see also 1 R. KENT RASMUSSEN, *CRITICAL COMPANION TO MARK TWAIN: A LITERARY REFERENCE TO HIS LIFE AND WORK* 669 (1995) (noting that Paine's refusal to let him inspect the unpublished works hindered DeVoto's efforts).

<sup>633</sup> *Mark Twain Papers & Project: A Brief History*, *supra* note 607.

<sup>634</sup> *Id.*

<sup>635</sup> *Id.*

<sup>636</sup> *Id.*

<sup>637</sup> *Mark Twain Papers & Project: A Brief History*, *supra* note 607; Arthur Gelb, *Anti-Religious Work by Twain Long Withheld, to be Published*, N.Y. TIMES, Aug. 24, 1962, at 23.

<sup>638</sup> Larson, *supra* note 44.

<sup>639</sup> *Id.*

<sup>640</sup> *Id.*

<sup>641</sup> *Id.*

<sup>642</sup> Larson, *supra* note 44. Clara did eventually change her mind and allow publication near her death in 1962. Gelb, *supra* note 637. She said she had released the letters in 1961 because Mark Twain “belonged to the world” and public opinion had become more tolerant. *Mrs. Jacques Samossoud Dies*, N.Y. TIMES, *supra* note 312.

Langdon and Lark to Chamberlain.<sup>643</sup> Isabel Lyon, still alive, wrote to Cyril Clemens on May 1, 1943 that she believed that DeVoto was the only one to be Twain's biographer and that she was glad when the papers were turned over to him.<sup>644</sup>

DeVoto responded to Clara's charge that he had done irremediable damage to her father's reputation by attempting to publish something that was "anti-God";<sup>645</sup> he indicated that Clara had failed to understand that Twain could play a current role in the world only if he continued to be discussed, and his controversial writings were part of this discussion.<sup>646</sup>

DeVoto resigned in 1946, suggesting the appointment Dixon Wecter, a professor of history at UCLA and chairman of the Research Group at the Huntington Library in San Marino, California.<sup>647</sup> He was a Texan, known as persuasive and courtly.<sup>648</sup> The papers arrived in Huntington in January 1947 on a ten-year loan.<sup>649</sup> By 1949, Wecter "published two collections of letters that were not part of the [main collection of] Mark Twain papers."<sup>650</sup> He moved the papers to UC Berkeley in 1949 when he became a professor there.<sup>651</sup>

At Berkeley, "Wecter and Clara enjoyed a positive working relationship; once he had brought the papers to Berkeley, he persuaded Clara to change her will so that Berkeley would remain the papers' permanent repository."<sup>652</sup> Clara signed a codicil on June 20, 1949 to an existing will giving ownership of the papers to Berkeley, terminating her former relationship with Yale.<sup>653</sup> She and the trustees retained the copyright under Mark Twain's will.<sup>654</sup>

Wecter had a goal of publishing his own Twain biography, making use of the papers to which had had exclusive access; he intended for his

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<sup>643</sup> As addressed in the foregoing, Chamberlain became the trustee under Twain's will in 1943, see *supra* text accompanying note 440, and became the trustee of Clara's estate on September 19, 1963, Estate of Clara Clemens, *supra* note 396, at 264.

<sup>644</sup> Letter from Isabel Lyon to Cyril Clemens (May 1, 1943) (UCLC 47990) (on file with the Mark Twain Memorial, Hartford, Conn.).

<sup>645</sup> Larson, *supra* note 44.

<sup>646</sup> *Id.*

<sup>647</sup> *Mark Twain Papers & Project: A Brief History*, *supra* note 607.

<sup>648</sup> *Id.*

<sup>649</sup> *Id.*

<sup>650</sup> *Id.*

<sup>651</sup> *Mark Twain Papers & Project: A Brief History*, *supra* note 607.

<sup>652</sup> TROMBLY, *supra* note 2, at 252.

<sup>653</sup> *Mark Twain Papers & Project: A Brief History*, *supra* note 607.

<sup>654</sup> *Id.*

to be the definitive work on Twain's life.<sup>655</sup> He feuded with DeVoto, urging him not to publish Twain's complete letters until his biography was issued.<sup>656</sup> Wecter died unexpectedly in June 1950 at age 44.<sup>657</sup> Only a portion of his biography was completed, published posthumously as *Sam Clemens of Hannibal* in 1952.<sup>658</sup>

From 1950 to 1953, there was a vacancy in editorship.<sup>659</sup> On August 31, 1953, Henry Nash Smith became editor.<sup>660</sup> He was one of the people, along with Chamberlain, who convinced Clara to publish *Letters from the Earth*.<sup>661</sup> Smith and his successor, Frederick Anderson, secured control of the papers with UC Berkeley, and the papers were located on the campus at the Bancroft Library.<sup>662</sup> Along with scholars from the University of Iowa, the Mark Twain Project first produced *Roughing It*.<sup>663</sup> In 1988 an excellent version of *Huckleberry Finn*, adding sections from *Life on the Mississippi*, was issued.<sup>664</sup> The next editor, who continues today, is Robert Hirst.<sup>665</sup> He named a group of scholars to create The Mark Twain Papers Project at Bancroft Library of the University of California, Berkeley.<sup>666</sup>

Mark Twain was obsessed with keeping his copyrights in place.<sup>667</sup> Trustee Watson wrote to Probate Judge Emerson about the Mark Twain Foundation losing revenue through loss of copyrights.<sup>668</sup> In 1962, the University of California contracted for the publication of all unpublished works of Mark Twain.<sup>669</sup> Between 1962 and 2002, the Papers

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<sup>655</sup> *Id.*

<sup>656</sup> TROMBLEY, *supra* note 2, at 252.

<sup>657</sup> *Mark Twain Papers & Project: A Brief History*, *supra* note 607.

<sup>658</sup> *Id.*

<sup>659</sup> *Id.*

<sup>660</sup> TROMBLEY, *supra* note 2, at 252.

<sup>661</sup> *Mark Twain Papers & Project: A Brief History*, *supra* note 607.

<sup>662</sup> *Id.*

<sup>663</sup> *Id.*

<sup>664</sup> See Rita Reif, *Twain Manuscript Resolves Huck Finn Mysteries*, N.Y. TIMES, Feb 26, 1991, at 00011 (explaining the role of *Life on the Mississippi* in the 1988 edition of *Huckleberry Finn*).

<sup>665</sup> *Mark Twain Papers & Project: A Brief History*, *supra* note 607.

<sup>666</sup> *Id.*

<sup>667</sup> See generally Erin Allen, *Mark Twain & Copyright*, LIBR. CONGRESS BLOG (Sept. 30, 2014), <https://blogs.loc.gov/loc/2014/09/mark-twain-copyright/> (discussing "Samuel Clemens' fight for the intellectual property rights to Mark Twain's works").

<sup>668</sup> See May 16, 1995 Letter from Watson to Judge Emerson, *supra* note 528 (discussing the fact that *Huckleberry Finn* had fallen into public domain and was therefore not profitable with respect to copyright royalties).

<sup>669</sup> *Copyright and Permissions*, U. OF CALIFORNIA MARK TWAIN PROJECT, <http://www.marktwainproject.org/copyright.shtml> (last visited Dec. 2, 2018) [hereinafter

“published” these works either by actual printed editions or on microfilm.<sup>670</sup> The Papers Project will retain rights through the end of the copyright in 2047.<sup>671</sup>

Several writers, including David Bollier, author of *Brand Name Bullies*, questioned the extension of the copyright through 2047.<sup>672</sup> He wrote that the “publishing” loophole extended the Papers Project copyright too far and the public was being denied the full use of Twain’s works.<sup>673</sup>

The Papers Project publication that Bollier specifically objected to was Twain’s autobiography, issued in three volumes beginning in 2010.<sup>674</sup> In 1906, Twain had compiled over 2,000 pages of dictation and notes, but had not completed this material as an autobiography.<sup>675</sup> Legend says that Twain wanted to wait one-hundred or more years before publishing it.<sup>676</sup> The Twain effort was actually a “stream of consciousness” work, rather than a chronological report.<sup>677</sup> Paine did not wait to publish portions of the autobiography, although he did suppress other parts.<sup>678</sup> Other sections of the autobiography were published by DeVoto and Charles Neidler.<sup>679</sup>

In 2004, the Papers Project began a six-year job to complete the first volume of the autobiography.<sup>680</sup> This consisted of feeding pages into a computer and comparing the Twain original with the prior published works.<sup>681</sup> The result was a “director’s cut.”<sup>682</sup> The New York

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*Copyright and Permissions*].

<sup>670</sup> *Id.*

<sup>671</sup> *Id.*

<sup>672</sup> See, e.g., David Bollier, *Mark Twain’s Final Copyright Crusade*, BOLLIER.ORG (Nov. 29, 2010), <http://www.bollier.org/mark-twains-final-copyright-crusade>.

<sup>673</sup> *Id.*

<sup>674</sup> *Id.*

<sup>675</sup> *On Publishing Mark Twain’s Autobiography*, NPR (Dec. 1, 2010), <https://www.npr.org/2010/12/01/131703237/on-publishing-mark-twain-s-autobiography>.

<sup>676</sup> *Id.*

<sup>677</sup> See *id.* (describing the autobiography as “[following] a less linear path than a more traditional written work [akin to] a trip with digressions, strung off it like . . . beads on a string”).

<sup>678</sup> *Mark Twain Papers & Project: A Brief History*, *supra* note 607.

<sup>679</sup> See Harriet E. Smith et al., *Copyright page to 1 MARK TWAIN, AUTOBIOGRAPHY OF MARK TWAIN* vii (Harriet E. Smith et al. eds., 2010) (crediting DeVoto and Neider for their previous publications).

<sup>680</sup> David Downs, *Mark Twain’s Last Stunt*, EAST BAY EXPRESS (Oct. 20, 2010), <https://www.eastbayexpress.com/oakland/mark-twains-last-stunt/Content?oid=2138536>.

<sup>681</sup> *Id.*

<sup>682</sup> *Id.*

Times, NPR, and PBS were caught up in a Mark Twain revival.<sup>683</sup> The first volume was a publication sensation; the publisher planned to print 7,500 books, but in actuality, printed close to 500,000.<sup>684</sup>

The second volume was released in 2013.<sup>685</sup> In a lecture at the Mark Twain Memorial which one of the authors of this article attended, Benjamin Griffin, one of the editors, noted the difficulties in editing the material.<sup>686</sup> For example, Twain had written to Andrew Carnegie some years prior to 1906, but, on August 11, 1906, the letter was supposedly published in a newspaper that Twain saw.<sup>687</sup> Twain dictated a comment about the letter as printed.<sup>688</sup> Griffin stated that the original letter and the letter as printed were somewhat different and had different intents.<sup>689</sup> According to Griffin, this was only one example of the challenging editing tasks associated with publishing the final autobiography.

The third volume was published in 2015.<sup>690</sup> It provides the most chronological details of the three volumes, following along from 1907 to 1910.<sup>691</sup> Much of this book prints Twain's never before published discussion of the Ashcroft-Lyon affair.<sup>692</sup> The three-volume autobiography was authorized by the Mark Twain Foundation, in its

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<sup>683</sup> See e.g., Larry Rohter, *Dead for a Century, Twain Says What He Meant*, N.Y. TIMES (July 9, 2010), <https://www.nytimes.com/2010/07/10/books/10twain.html>; *On Publishing Mark Twain's Autobiography*, NPR, *supra* note 675; Spencer Michels, *Transcript of Mark Twain's Autobiography Set for Unveiling, a Century After His Death*, PBS NEWS HOUR (July 7, 2010), <https://www.pbs.org/newshour/show/mark-twains-autobiography-set-for-unveiling-a-century-after-his-death>.

<sup>684</sup> Julie Bosman, *Mark Twain's Autobiography Flying Off the Shelves*, N.Y. TIMES (Nov. 19, 2010), <https://www.nytimes.com/2010/11/20/books/20twain.html>; see also Ben Griffin, *Mark Twain's Eternal Chatter*, NEW YORKER (Nov. 13, 2013) (indicating that volume one sold half a million copies).

<sup>685</sup> 2 MARK TWAIN, AUTOBIOGRAPHY OF MARK TWAIN (Benjamin Griffin et al. eds., 2013).

<sup>686</sup> Benjamin Griffin, *Mark Twain at Home: An Edition and its Challenges* (Nov. 20, 2014) (attended by author); see also Benjamin Griffin, *A Voice From the Vault*, GRANTA (July 15, 2010), <https://granta.com/a-voice-from-the-vault/> (explaining that “[f]ixing the ‘final form’ of a long-dead author’s intentions is a tricky business at the best of times, but in the case of *Autobiography of Mark Twain*, we’re dealing with a text which has actually been declared un-editable by one critic”).

<sup>687</sup> Griffin, *supra* note 686.

<sup>688</sup> *Id.*

<sup>689</sup> *Id.*

<sup>690</sup> 3 MARK TWAIN, AUTOBIOGRAPHY OF MARK TWAIN (Harriet E. Smith et al. eds., 2015).

<sup>691</sup> See generally *id.*

<sup>692</sup> See *id.* at 329–440 (containing the Ashcroft-Lyon Manuscript); see also Harriet E. Smith et al., *Editorial Preface to 3 MARK TWAIN, AUTOBIOGRAPHY OF MARK TWAIN* 323–24 (Harriet E. Smith et al. eds., 2010) (discussing the never-before-published Ashcroft-Lyon Manuscript).

agreement with the Papers Project, with the Foundation retaining the copyright in the work.<sup>693</sup>

## X. HUCK FINN, THE LEGAL BATTLE

In 1991, a unique court case developed over part of the earliest manuscript of *Huckleberry Finn* that involved the Mark Twain Foundation and the Mark Twain Papers Project. The case is illustrative of the close connection between the two institutions.

The facts, derived mostly from the introduction to the University of California edition of *Huckleberry Finn*, are as follows.<sup>694</sup> In November 1885, nine months after the publication of the American edition of *Huckleberry Finn*, Mark Twain received a letter from one James Fraser Gluck, a Buffalo attorney and curator of what became the Buffalo and Erie County Library.<sup>695</sup> Gluck's letter asked Twain to donate a handwritten copy of one of his manuscripts to the library.<sup>696</sup> "They will be accorded a place of honor and preserved in perpetuo."<sup>697</sup> To this letter, Twain responded "with the greatest pleasure," enclosing the fifty-percent of the handwritten manuscript of *Huckleberry Finn* that he could locate (generally known today as the "second half" of the work).<sup>698</sup> Then, two years later, Twain found the "first half" and sent it on to the Buffalo Library, whose superintendent acknowledged its receipt.<sup>699</sup> A few days later Gluck also thanked Twain by letter, declaring that "[t]he whole can now be bound and placed on exhibition."<sup>700</sup> In spite of these

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<sup>693</sup> According to Watson, in a January 10, 2017 interview, besides agreeing with the Papers Project to publish the autobiography, in 2006 the Foundation agreed with the Papers Project to publish a play by Twain, *Is He Dead?*, from which both organizations have successfully received royalties. Interview by Judge Henry Cohn with Richard A. Watson, *supra* note 477. For further evidence of the Mark Twain Foundation's copyrights to the autobiography, see Harriet E. Smith et al., *Copyright page to 1 MARK TWAIN, AUTOBIOGRAPHY OF MARK TWAIN* vii (Harriet E. Smith et al. eds., 2010); Harriet E. Smith et al., *Copyright page to 2 MARK TWAIN, AUTOBIOGRAPHY OF MARK TWAIN* vii (Harriet E. Smith et al. eds., 2013); Harriet E. Smith et al., *Copyright page to 3 MARK TWAIN, AUTOBIOGRAPHY OF MARK TWAIN* vii (Harriet E. Smith et al. eds., 2015).

<sup>694</sup> See Victor Fisher & Lin Salmo, *Note on the Text, in MARK TWAIN, ADVENTURES OF HUCKLEBERRY FINN* 550 (Univ. Cal. Press ed., 2001).

<sup>695</sup> *Id.*

<sup>696</sup> *Id.*

<sup>697</sup> *Id.*

<sup>698</sup> Fisher & Salmo, *supra* note 694, at 550; Rita Reif, *First Half of 'Huck Finn' in Twain's Hand is Found*, N.Y. TIMES (Feb. 14, 1991), <https://www.nytimes.com/1991/02/14/books/first-half-of-huck-finn-in-twain-s-hand-is-found.html>.

<sup>699</sup> Fisher & Salmo, *supra* note 694, at 550–551.

<sup>700</sup> *Id.* at 551.

acceptances by the superintendent and Gluck, the first half went missing for over one hundred years.<sup>701</sup>

Then, amazingly, Gluck's granddaughter, Barbara Gluck Testa, in October of 1990 found the first half of the manuscript neatly wrapped in a trunk kept by her late grandfather.<sup>702</sup> Barbara Testa and her sister Pamela sent the manuscript to Sotheby's in New York for sale.<sup>703</sup> Sotheby's put an initial value of at least \$50,000 on the manuscript, but an investment group was said to be pooling its funds to make a bid of \$1.5 million.<sup>704</sup> The group was planning to resell the manuscript page by page.<sup>705</sup>

Sotheby's contacted the Mark Twain Papers Project to determine the terms of Twain's gift of the first half.<sup>706</sup> The Papers Project found the original letters of 1887 showing that the Buffalo Library likely had a major interest in the manuscript.<sup>707</sup> The Papers Project sent the letters to Sotheby's and the Library.<sup>708</sup> On February 6, 1991, the Library lodged a claim of ownership with Sotheby's.<sup>709</sup>

Gluck's grandchildren, the Testa sisters, then stated that they wanted the first and second halves re-united and placed in the Library.<sup>710</sup> However, the negotiations soon fell apart. The Library said that it learned that the sisters were not merely donating the manuscript, but wanted compensation as well; specifically, they wanted "megabucks."<sup>711</sup> The attorney for the sisters, David Eames of New York City, replied that they owned the manuscript and could sell it or keep it as they chose.<sup>712</sup> The Library board voted then to proceed to a court action.<sup>713</sup>

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<sup>701</sup> *Id.*

<sup>702</sup> *Id.* at 552.

<sup>703</sup> Fisher & Salmo, *supra* note 694, at 549

<sup>704</sup> Complaint in Interpleader, *Sotheby's, Inc., v. Buffalo and Erie Cty. Pub. Libr.*, No. 1:91-cv-03001-SWK, at 2 (S.D.N.Y. May 1, 1991) [hereinafter *Sotheby's Complaint*]; see also Rita Reif, *More Huck Finn Adventures, to Buffalo Via Hollywood*, N.Y. TIMES, Feb. 15, 1991, at C17 (noting that the manuscript had been valued at \$1.5 million); Fisher & Salmo, *supra* note 694, at 670.

<sup>705</sup> Fisher & Salmo, *supra* note 694, at 549.

<sup>706</sup> *Id.*

<sup>707</sup> See Charisse Jones, *Library Threatens Legal Action Over 'Huck' Manuscript*, L.A. TIMES (Apr. 20, 1991), [http://articles.latimes.com/1991-04-20/local/me-78\\_1\\_public-library](http://articles.latimes.com/1991-04-20/local/me-78_1_public-library) (explaining that the Buffalo and Erie County Public Library was in possession of letters indicating Twain's intent to donate the manuscript to it).

<sup>708</sup> Fisher & Salmo, *supra* note 694, at 551.

<sup>709</sup> *Id.*

<sup>710</sup> See Reif, *supra* note 704.

<sup>711</sup> Jones, *supra* note 707.

<sup>712</sup> *Id.*

<sup>713</sup> *Id.*

Actually, in a suit dated April 30 and filed on May 1, 1991, Sotheby's brought an interpleader action in the federal court for the Southern District of New York with both the Library and the granddaughters as defendants.<sup>714</sup> The case was assigned to Federal District Judge Shirley Wohl Kram.<sup>715</sup>

The interpleader alleged in part as follows. The property, the subject of the interpleader, was "an autograph manuscript of a portion of Samuel L. Clemens' book entitled *Huckleberry Finn*."<sup>716</sup> Sotheby's had possession of the property with a presale estimate in excess of \$50,000.<sup>717</sup> The defendant Barbara Testa was a California resident, while her sister, defendant Lindholm was a Virginia resident (these were Gluck's two granddaughters).<sup>718</sup> Defendant Buffalo and Erie County Library was a New York corporation.<sup>719</sup>

The complaint then alleged that the sisters and the Library each contested ownership of the property and Sotheby's could not rightly decide between the two claimants.<sup>720</sup> Sotheby's awarding the property to one or the other could expose Sotheby's to liability.<sup>721</sup> Sotheby's was "prepared to store the Property on its premises . . . or to otherwise dispose of the Property as the Court shall direct."<sup>722</sup> The complaint sought ultimate court resolution of the ownership.<sup>723</sup> Sotheby's attorney, who signed the complaint, was Rena J. Mouloupoulos, Sotheby's Associate General Counsel.<sup>724</sup>

The Library filed an answer on June 3, 1991.<sup>725</sup> The Library also asked that the court order the opening of five other trunks owned by the two sisters.<sup>726</sup> "What's in those trunks is the \$64,000 question," said the

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<sup>714</sup> Sotheby's Complaint, *supra* note 704, at 1–3 (S.D.N.Y. May 1, 1991).

<sup>715</sup> Docket, *Sotheby's, Inc., v. Buffalo and Erie Cty. Pub. Libr.*, No. 1:91-cv-03001-SWK, at 1–3 (S.D.N.Y. May 1, 1991) [hereinafter Docket, *Sotheby's, Inc.*]. Judge Kram had formerly been a New York City family judge from 1971 to 1983 and President Ronald Reagan appointed her to the federal bench in 1983. *Kram, Shirley Wohl*, FED. JUDICIAL CTR., <https://www.fjc.gov/history/judges/kram-shirley-wohl> (last visited Dec. 2, 2018).

<sup>716</sup> Sotheby's Complaint, *supra* note 704, at 1.

<sup>717</sup> *Id.*

<sup>718</sup> *Id.* at 2.

<sup>719</sup> *Id.*

<sup>720</sup> Sotheby's Complaint, *supra* note 704, at 2.

<sup>721</sup> *Id.*

<sup>722</sup> *Id.* at 3.

<sup>723</sup> *Id.*

<sup>724</sup> Sotheby's Complaint, *supra* note 704, at 3.

<sup>725</sup> Docket, *Sotheby's, Inc.*, *supra* note 715, at 2.

<sup>726</sup> *Library Eyes Twain-Case Trunks Asks Court OK to Probe for More Literary Treasures*, BUFFALO NEWS, June 21, 1991 (on file author).

chairman of the Library board.<sup>727</sup> The sisters filed their answer on June 11, 1991.<sup>728</sup> A pretrial conference was held on January 30, 1992.<sup>729</sup> The Mark Twain Foundation, likely through then-trustee Watson, moved to intervene on behalf of the Foundation in April 1992.<sup>730</sup> Briefs on this motion were ordered to be completed by July 27, 1992.<sup>731</sup>

In the meantime, negotiations between all the parties continued toward a resolution. On July 21, 1992, Judge Kram approved a settlement, actually signed by the parties on June 30, 1992.<sup>732</sup> Attorney Marjorie Stone signed for Sotheby's, Attorney Arthur H. Christy signed for the Library, Attorney David Eames signed for the sisters and Watson signed for the Mark Twain Foundation.<sup>733</sup>

The terms of the settlement were as follows: the sisters agreed to turn the manuscript over to the Library in return for a share of the income derived from its publication.<sup>734</sup> The Mark Twain Papers Project and the University of California "agreed to set aside their exclusive right to publish" the new portions of the original manuscript, "a right they had by virtue of a 1982 contract with the Mark Twain Foundation, giving them 'an exclusive license to publish and continue to publish, Mark Twain's previously unpublished writings.'"<sup>735</sup> The Papers Project and the University of California Press could publish a new edition based on the united manuscript only after July 1997.<sup>736</sup> The Papers Project "authorized edition" appeared in 2001.<sup>737</sup>

Meanwhile, the Mark Twain Foundation, the Buffalo Erie Library, and the sisters were free to market the united manuscript or parts thereof.<sup>738</sup> The first publication of a portion of the manuscript was in the

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<sup>727</sup> *Id.*

<sup>728</sup> Docket, Sotheby's, Inc., *supra* note 715, at 2.

<sup>729</sup> *Id.*

<sup>730</sup> *Id.*; see also Stipulation of Dismissal, Sotheby's, Inc. v. Buffalo and Erie Cty. Pub. Libr., No. 1:91-cv-03001-SWK (S.D.N.Y. May 1, 1991) (illustrating Watson's representation of the Mark Twain Foundation in this action as an intervener).

<sup>731</sup> Docket, Sotheby's, Inc., *supra* note 715, at 3.

<sup>732</sup> Stipulation of Dismissal, Sotheby's, Inc. v. Buffalo and Erie Cty. Pub. Libr., No. 1:91-cv-03001-SWK (S.D.N.Y. May 1, 1991).

<sup>733</sup> *Id.*

<sup>734</sup> A summary of the settlement in the August 2, 1992 issue of the New York Times states that the sisters received at least six figures worth of compensation. Reif, *More Huck Finn Adventures, to Buffalo Via Hollywood*, *supra* note 704.

<sup>735</sup> Fisher & Salmo, *supra* note 694, at 552.

<sup>736</sup> *Id.*

<sup>737</sup> See *Preface to MARK TWAIN, ADVENTURES OF HUCKLEBERRY FINN* (Mark Twain Libr. ed., 2001).

<sup>738</sup> *Id.*

June 26, 1995 *New Yorker*.<sup>739</sup> The piece was called “Jim and the Dead Man,” an outtake from the final version of the novel.<sup>740</sup> Scholars were split on its literary worth, with Duke University’s Louis Budd calling it “a bit over-the-top racial stereotyping,” while Victor Doyno of State University at Buffalo called it “a good suspenseful story [that] plays with Huck’s emotions.”<sup>741</sup>

One of the *New Yorker* officials, Daniel Menaker, also had ties to Random House, and a full “comprehensive edition” was published in 1996.<sup>742</sup> Under the editorial supervision of Professor Doyno, *Huckleberry Finn* was expanded upon and enhanced.<sup>743</sup> The technique was to place some new material in an appendix, and other material was added to the book with a reference to the appendix.

Doyno gives insight to the “Notice” at the beginning of the book. The discovered manuscript draft did not include the message “persons attempting to find a moral in the book will be ‘banished.’”<sup>744</sup> Doyno theorizes that the addition of the “moral phrase” occurred to Twain as he became aware over his long period of writing that *Huckleberry Finn* was not just a description of a boy’s life, but also his idea of morality.<sup>745</sup> He added the phrase to the “Notice” later, in typical “Twainian” irony.<sup>746</sup> After the settlement, the Foundation has made clear in its annual accountings that there are arrangements for exploitation of newly discovered material from the manuscript.<sup>747</sup>

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<sup>739</sup> Samuel Clemens, *Jim and the Dead Man*, *NEW YORKER*, June 26, 1995, at 129; see also Garret Condon, *Yet Another Adventure in the Tale of Huck and Jim*, *HARTFORD COURANT* (June 20, 1995), <https://www.courant.com/news/connecticut/hc-xpm-1995-06-20-9506200165-story.html>.

<sup>740</sup> Condon, *supra* note 739.

<sup>741</sup> *Id.*

<sup>742</sup> MARK TWAIN, *ADVENTURES OF HUCKLEBERRY FINN (THE ONLY COMPREHENSIVE EDITION)* (Random House ed., 1996).

<sup>743</sup> See Richard Doyno, *foreword to* MARK TWAIN, *ADVENTURES OF HUCKLEBERRY FINN (THE ONLY COMPREHENSIVE EDITION)* (Random House ed., 1996).

<sup>744</sup> *Id.*

<sup>745</sup> *Id.*

<sup>746</sup> *Id.*

<sup>747</sup> See, e.g., Thirty-Eighth Account of Proceedings Under The Will of Clara Clemens Samossoud, Schedule A, 72 Redding Prob. Ct. 0372, 0384 (on file with author) (describing contractual arrangements for the publication of Mark Twain manuscripts). According to an interview by the author with Watson on January 10, 2017, Random House was a successful bidder, but did not receive a good return on its publication. Interview by Judge Henry Cohn with Richard A. Watson, *supra* note 477.

## XI. CONCLUSION

The last years of Mark Twain's life were marked with tragedy and emotional hurt.<sup>748</sup> He lost his favorite daughter in 1896, his wife in 1904, and his youngest daughter Jean on Christmas Eve 1909, just four months before his death.<sup>749</sup> Mark Twain's will, which was written in August 1909 just before his health worsened, captures this emotional state of affairs.<sup>750</sup>

Even though the provisions of Twain's will and Clara's subsequent bequests were illustrative of familial grief, Mark Twain's investments and accumulated assets were a positive factor and only grew over time. While even in death some of his investments were deemed worthless, the trustees under Twain's will and the Mark Twain Foundation achieved many financial triumphs. Further, thanks to the Papers Project, the Mark Twain literary "brand" has been glowingly successful. Writing in the April 17, 1960 Hartford Courant, Bissell Brooke declared: "Mark Twain again has caught the public's fancy. Posthumously, he has never been more 'alive.'"<sup>751</sup>

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<sup>748</sup> *But see* Larson, *supra* note 44 (in which Larson argues that Twain was never a happy man and Clara achieved her goal of eliminating this flaw from his biography).

<sup>749</sup> *See supra* Part II.

<sup>750</sup> *See supra* Part III. The will also captures Twain's disbelief that his two surviving daughters had any financial sense. This is seen in his language about protecting them from scheming husbands and the establishing of a trustee system to pay them a quarterly stipend. *See Last Will and Testament of Samuel L. Clemens, supra* note 80. Of course, Clara's marriage to Samossoud proved Twain correct.

<sup>751</sup> Bissell Brooke, *Mark Twain Enjoys New Popularity, And He Carefully Planned It*, HARTFORD COURANT, Apr. 17, 1960, at 6F.