

## Atlantic County Orphans' Court

In the matter of the estate of  
Josephine T. Weaver, guardian of  
George H. Weaver and Josephine  
M. Cake, (nee Weaver) infants.

On Exception to Guardian's  
Account.

Opinion by E. C. Higbee, Judge.

Statement of facts.

Theodore S. Weaver, a son of Josephine T. Weaver, the accountant, died in the year eighteen hundred and ninety-two leaving two children, Josephine M. Weaver, now Cake, and George H. Weaver, who at the time of the death of their father were nine and seven years of age respectively. At the time of the death of their father he was a widower, and had been for about three years, and during that time his mother, this accountant and the grandmother of the wards, kept house for him. He left no personal estate. These children continued to live with their grandmother, this accountant, until nineteen hundred and one.

In eighteen hundred and ninety-eight under the Will of John M. Weaver the two children each became entitled to the sum of two hundred and eighty-three dollars and fifty cents, (\$283.50).

These moneys were turned over to Josephine T. Weaver, the accountant, who had been appointed their guardian and who now seeks to charge the infants for board and maintenance. In the case of Josephine M. Weaver, now Cake, from July seventeenth, eighteen hundred and ninety-eight to January first, nineteen hundred and one, one hundred and thirty-one weeks at three dollars per week. In the case of George H. Weaver, from July seventeenth, eighteen hundred and ninety-eight to July seventeenth, nineteen hundred and one. It is quite evident from an examination of the testimony of Mrs. Weaver, the guardian, that at the time of taking these children there was no thought of charging any board nor was the money which afterward came into her hands and out of which she seeks to charge board, then in contemplation. On page three of her direct testimony referring to Josephine M. Weaver, now Cake, she says, "she worked in my house and lived with me as one of my family." On the same page she also says that she does not know how much money she expended for her. "I did not keep a strict account of it, I cannot tell." On page six of her direct testimony she says "I used it for the support of my family, myself and the two children." Question—"By the testimony of Josephine M. Cake and George H. Weaver?" Answer—"Yes sir." Later on on the same page she says "I and they went all together as one family, you know." Again on page ten of her direct testimony she says that Josephine and George, these wards, worked around the house the same as her own daughter and son. That George was very industrious and worked and earned his own living during the summer. It also appears that the accountant partially lived from the rents of a farm in which according to the testimony these children had an interest. It also appears from the testimony that relatives

these children board never occurred to the guardian at least until this money had been left them by the Will of John M. Weaver. It is also clearly proven by testimony that this money which she received was immediately taken to pay past indebtedness which she had incurred. That no part of it was used after its receipt for the benefit of these children. I do not understand the law to be that a person may take minor children and assume the relation of parents or stand in loco parentis with no thought of charging them board and afterward when they shall become possessed of some property, take that money to pay for it. If Mrs. Weaver, the accountant, had taken the money which she received and given the children the benefit of it after the date of its receipt, I think it would have been proper to have allowed her for such extra expenditures. It seems to me to be well settled law that where a person assumes the relation in loco parentis towards the ward as one of his own family and receives the benefit from his labor, etc. with no intention of charging for the maintenance, he will not afterward be allowed to rescind a gift and claim an allowance.

15 Encyclopaedia of Law page 104.

This principle, however, is not disputed because the guardian herself has not in her account charged for the board and clothing prior to the time of receiving the money. It seems to be deduced by her that her relations up to that time at least, were in loco parentis. She never gave any notice to these children or to any one interested in them that she intended to change her relations with them and they had a right to assume that the relations theretofore existed between them were to still continue unless they were notified to the contrary. It will also be observed at the time she began to charge board for these children they were of fifteen and thirteen years of age respectively and it is quite probable that had they known the relations would be changed they could have sought other persons for their guardian who might have been willing to have accepted their service as a return for their board and clothing. They were at that time at an age where they could be said apparently were from the testimony, bright and useful children. Up to this time the accountant, having stood in loco parentis was under the same obligation to the children as the parents would have been and no notice having been given to these children or to any one representing them, that relation, in my judgment, must continue. I conceive the law in relation to a parent or one who stands in loco parentis to a child, to be that they are obliged to maintain the minor children according to their circumstances in life. If, however, the child has an income of its own and the parents are poor, the parents may use the child's money for its advancement over and above what the pecuniary conditions of the parents will warrant.

The circumstances of the accountant were undoubtedly in my mind and she probably provided for these children