In *Schultz's Appeal*, (1876,) 30 P. F. S. 396, SHARSWOOD, J., in delivering the Opinion of the Court (*p. 405*,) said :—

"The very able and exhaustive opinions, as well of the "auditor as of the learned Court below, have relieved us from "an examination of the English decisions upon the Mortmain "Act of that country. They undoubtedly throw a clear and "strong light upon the question presented upon this record. "*They establish two positions* :—

1.—"*That* if an absolute estate is devised but upon a secret "trust assented to by the devisee, either expressly or impliedly "by knowledge and silence before the death of the testator, a "Court of Equity will fasten a trust on him on the ground of "fraud, and consequently the statute of Mortmain will avoid "the devise if the trust is in favor of a charity."

(*P. 404.*) "Had *Reuben Yeakle* been present when the "Will was executed, or the objects of the bequest been com-"municated to him before the testator's death and he had "held his peace, there would have been some ground for "fastening a trust upon him *exmaleficio*, as in *Hoge* vs. *Hoge*, 1 "Watts 163. But nothing of that kind can be pretended here."

In *Hegarty's Appeal*, 25 P. F. Smith, 503, (1874,) a devise to religious uses made within one month of the testator's death was set aside, although the heirs-at-law had not proceeded within the time limited by the *Act of April 22, 1856*.

If this bill stand dismissed, no complaint can live which follows the very words of the Statute. If they do not furnish a suitor with a case which a Court is bound to hear, then is the law nullified, and those who are sworn to maintain it, become its executioners.

It is submitted that the decree below should be reversed.

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For Appellants.