

VIRGINIA:

IN THE CORPORATION COURT FOR THE CITY OF LYNCHBURG

FIRST NATIONAL TRUST & SAVINGS BANK, Trustee  
u/w of Louise J. Smith, deceased

vs.            )  
              )  
              )     DEPOSITIONS  
              )

RANDOLPH-MACON WOMAN'S COLLEGE

The depositions of Harriet Fitzgerald and others taken before me, Marion D. Leys, the undersigned Notary Public in and for the City of Lynchburg, in the State of Virginia, on the 25th day of October, 1957, in the Treasurer's office of Randolph-Macon Woman's College in the City of Lynchburg between the hours of 9:00 A.M. and 5:00 P.M., pursuant to the annexed notice to be read as evidence on behalf of the complainant in the above styled suit:

Present: Samuel H. Williams, Attorney for First National Trust & Savings Bank, Trustee  
Robert C. Watts, Jr., Attorney for Randolph-Macon Woman's College.

The witness, Harriet Fitzgerald being first duly sworn deposes and says as follows:

Q.1. Please state your residence and occupation.

A. My residence is New York City where I work for about six months of the year. I am by profession an artist. I devote a great deal of my time to actual painting. Since 1948 I have been employed by the Abingdon Square Painters, 242 West 14 Street, New York City, as director of their educational program. I am also engaged in giving lectures on art throughout the United States under the auspices of the Arts Program of the Association of American Colleges. I have been following my profession continuously since graduation.

Q.2. What official connection, if any, do you have with Randolph-Macon Woman's College and particularly with its art department and the acquisition of works of art for its permanent collection.

A. I am an alumna of the College of the class of 1926 and have been a member of its Board of Trustees since 1929. I have been interested in the art department since my student days. When I was a senior, as president of the student body, I had the privilege of presenting Miss Smith's plan for what she called the Fine Arts Program, to the students, and after their endorsement, of presenting this plan to the Executive Committee of the Board of Trustees. The plan was adopted and has been followed since that year. While it is not related officially to the Smith Fund, it was Miss Smith's first step toward the larger plan made possible by the terms of her will.

After Miss Louise's death, when her bequest to the college became available for the purchase of paintings I was called on by the Head of the Art Department for assistance and advice. My residence in New York and contact with the dealers and galleries there keep me rather constantly in touch with developments in the art market. My services to the art department have been unofficial and advisory. Being officially connected in other capacities I am too close to the college to qualify as one of the "disinterested experts" mentioned in Miss Smith's will as necessary to pass upon any prospective purchase but I have frequently assisted in choosing and consulting these experts and for twenty years have usually participated in the careful consideration which has preceded the nomination by the Head of the Art Department of a painting for purchase. During the war years (World War II) when Mrs. von Keller's services had been lent by Randolph-Macon to the Virginia Museum of Fine Arts and her work at the college was carried on by substitutes, Dr. Jack requested me to prepare nominations for purchase when the Smith Fund purchases came due. As I recall, I prepared three such nominations, keeping in close consultation with Mrs. von Keller.

Q. 3. You are familiar with the terms of her will and its construction by Mr. Kemp for the Trustee whereby these purchases have been limited to one each two years, and the use of the two-year income for that purpose. Please state whether such a construction has provided a feasible plan for the formation of a permanent collection of art for the Art Department at Randolph-Macon Woman's College?

A. Prior to and during World War II, and even for a brief period thereafter, the plan was workable in spite of its limitations. I mean that we were able to follow the terms of the will with a slight latitude given for purchase price, and to carry out the stated intention of the will to buy excellent

works of art. Paying from \$2,200.00 to \$2,800.00, we bought six or seven distinguished paintings between 1936 and 1948.

By this time, however, three factors had appeared which did not exist at the time Miss Smith wrote her will.

First was the increase in prices. This meant that an "excellent" work of American art (that is, an outstanding work by an artist of recognized maturity, living or dead) soon exceeded the \$2,000. to \$2,800. limit and required a larger sum to make the purchase. European masters, early or contemporary, were generally out of the question because of price. From time to time, however, desirable paintings, both American and European, appeared in the market costing much less than \$2,500., but these were not available because they did not fit the price pattern and could not be bought because their prices were too low.

The second factor which has changed the situation since Miss Louise Smith made her will is that the number of people interested in buying art has greatly increased, with the result that prices have gone up. This does not mean that all of these collectors are in as close touch with the art market as we are, but it does mean that the general level of prices of art, like everything else, has gone up rapidly since 1940. This means that while the two year income may be too large for a tax bargain, it is very much too small for the normal price of an excellent work. In the earlier days most of the best modern American painting came within our limit as did desirable examples from the 18th and 19th centuries. Some masterpieces have always been priced beyond us and some have come on the market at prices too low for us to buy because of the terms of the will but it was reasonable to believe that we could build a collection of the distinction which Miss Louise had in mind with our two year limit. NOW THAT THE DEMAND FOR AMERICAN ART HAS INCREASED SO GREATLY AND IS CONSTANTLY INCREASING, I DO NOT think that we shall see again the market conditions which Miss Smith knew. On the other hand, if the fund could accumulate and amount to something like \$7,000.00 or \$8,000.00 we could hope to maintain a quality of purchase which Miss Louise Smith undoubtedly thought could be had and which could be had in her day for \$2,000.00 to \$2,500.00.

Finally, the matter of estate taxes has changed the situation, with respect to buying art. Sometimes it appears that a collection of paintings is owned by an estate whose beneficiaries want to minimize death taxes as far as they can and perhaps want to liquidate the collection to provide tax money. The result is a forced sale of valuable paintings at prices much less than a voluntary sale would produce. As a result an excellent painting will be available for

\$1,000 to \$1,500. that in the voluntary market would command much more. I have in mind one painting that was offered us for \$1,500.00. The last owner had bought it at \$6,000.00 and we had an option at \$1,500.00 but could not buy it because it was less than the two year income. The painting is now worth a great deal more and we lost a real opportunity. Thus the tax sale has created a market that frequently produces paintings that fall well below our biennial limit.

Under the circumstances I despair of our collecting the type of art Miss Smith had in mind, if the college must spend not less than \$2,000.00 and not more than \$2,500.00 in buying suitable works of art.

- Q.4. In what way and to what extent do you think the limitations on art purchase heretofore enforced by the Trustee should be relaxed so as to enable the committee to buy the type of art that Miss Smith had in mind.
- A. To accomplish her purpose I think that the college should be able to avail itself of the tax sale material and buy for as low a price as \$1,000.00 when an excellent opportunity arises and funds are available. In this way we would get some qualified and highly desirable paintings, and at the same time accumulate sufficient funds necessary to meet the higher prices of the general market in respect to the types of art that could have been bought in 1928 with a two year income from the trust. I do not wish to see the Court permit purchases to be made at greater intervals than two years as a general policy under the present conditions because I believe that Miss Smith had a serious educational purpose in her desire for our students not only to live with good art but to participate in the experience of acquiring new work. If, however, the Court would permit purchases to be made from time to time at a sum considerably less than \$2,000.00, thereby making a surplus possible, I believe that the college could keep its biennial purchases on a level of excellence in keeping with Miss Smith's standards. It is a matter of practical impossibility to spend the exact amount of income. Of necessity there must be some accumulation and the accumulation must be expended for art purchases. So if the will can be construed to mean that its object is to acquire excellent art and so as to permit purchases from time to time, not of modest quality but of modest price, so as to maintain two year purchases and at the same time absorb accumulations for more expensive art, I think that Miss Smith's ambition and plan would be realized.

CROSS-EXAMINATION BY Mr. Robert C. Watts, Jr.:

- Q.1. Were you personally acquainted with Miss Louise Smith during her lifetime?

- A. ~~My acquaintance with Miss Smith began with her while I was~~ between my graduation, 1926 and Miss Smith's death in 1928. At that time Miss Louise was just beginning to form the college's fine arts collection and I worked with her to a great extent both while I was a student and thereafter until her death.
- Q.2. Did your acquaintance and collaboration with Miss Smith proceed to the point where her plans for the college's fine art collection became known to you?
- A. Yes. To considerable extent, though I did not know the terms of her will until after her death. She had sent for me to come to see her on my next trip from New York to Virginia and I would have gone, of course, but my trip came too late. As I mentioned before, I worked with her on the creation of the Fine Arts Program, the first step in her plan. I believe that I understand her aims for the collection.
- Q.3. What were those plans as you understood them?
- A. Miss Smith had penetrating judgment in art. New York dealers who knew her still remember and speak of her high standards and rare insight. She was quick to realize the ability of a new talent or genius, and she liked to buy as soon as the artist reached what she considered to be a mature style, often before popularity raised the price. Miss Louise was noted for loving a bargain but this never meant that she compromised quality for low price. I do not think that she would approve of our spending the funds from her trust experimenting with the work of immature artists no matter how promising. On the other hand, she herself was deeply in sympathy with the avant guard of her day and the purchases which she made for the college were from the work of her contemporaries. She put an emphasis on the importance of the contemporary in the study of art and I believe that she would want us to follow this policy. At the same time I am sure that she would want the Collection filled out from the point of view of art history, to include as much important work from the 18th and 19th centuries of American art as we can reasonably afford and as we find the opportunity to purchase. My understanding from her was that she aimed at creating a collection of real distinction in quality.

And further this deponent sayeth not.

Harriet Fitzgerald

The witness Mary F. Williams, being duly sworn deposes and says as follows:

Questions by Mr. Williams:

Q. 1. Please state your name, residence and occupation.

A. My name is Mary F. Williams. I reside on Westmoreland Avenue in the City of Lynchburg and I am a member of the faculty of Randolph-Macon Woman's College, the teacher of the history of Art and being now the Chairman of the Department of Art, a Curator of collection of paintings of the College.

Q. 2. Please give your academic qualifications and experience.

A. I have received a Bachelor's and Master's degrees on 'Education'. I have continuously taught history as Dean of Women and one in Post-Doctoral study. I came to Randolph-Macon in 1952 as Chairman of the Department of Art and as Curator of the College's collection of Paintings.

Q. 3. To what extent, if at all, have you participated in the purchase of works of Art with funds from the trust established by the will of the late Miss Louise J. Smith?

A. In my capacity as Curator of the Art collection it is my responsibility to recommend paintings for purchase under the terms of Miss Louise Smith's will. In the discharge of this responsibility I rely quite heavily upon Miss Harriet Fitzgerald, a Randolph-Macon alumna, an artist who lives in New York, and to whom we look as Advisor to our department. Her residence there and her contacts with the dealers' galleries keep her continually posted in connection with developments of the art market and give her opportunities for this observation that are not available to us here in Lynchburg. With the advice and assistance of Miss Fitzgerald I have been functioning in the selection of works of art since my first association with Randolph-Macon in 1952.

- Q. 4. What are the conditions or the limitations of purchase imposed by this trust, as you understand them?
- A. I understand that her will has been construed to mean that purchases are limited to one painting in each two years upon which one occasion the entire income accrued to that date must be spent, this sum amounting to some \$2,500.00.
- Q. 5. As you may know this fund was created by the will about the year 1928, and has been effective since about 1936, when the will was construed by the attorney for the trustees to limit purchases, as you have stated, to one each two years when the entire income for two years must be spent. Please state what changes occurred in the factors that tend to influence the supply and demand of art in the last fifteen or twenty years.
- A. Paintings of the quality that Miss Louise Smith undoubtedly wanted have increased tremendously in price. I never knew Miss Smith personally and can judge her intentions with respect to this art collection only through her will and through the high quality of paintings selected by those who prior to my connection with the college have tried to carry out her wishes. As I stated, paintings of this quality have increased tremendously and have more than trebled in value since 1928. The sum of \$2,500.00 is not enough now for works of recognized masters of the 18th, 19th and early 20th centuries, for which a sum from \$7,000. to \$8,000 would be required to make a purchase.
- Another condition has come into the situation, which was not in existence in Miss Smith's day. The Tax situation now prevalent in the United States makes it possible to find paintings that originally cost very much, which now come on the market at a low or moderate price because tax purposes have brought it about that they have been appraised very moderately. The majority of these good paintings are now tied up in private collections rather than available in the hands of dealers, hence the possibility that they might come on the market for tax purposes and it is important to be in a position to take advantage of these prices when the opportunity arises.
- Still another circumstance which Miss Smith could hardly have foreseen is a great increase in

competition for available American paintings. More museums have been started, more old established ones now buy American works, more private persons collect as an investment and even business for these reasons Randolph-Macon cannot acquire paintings unless some money has been accumulated in advance and is available when a desirable work comes to our attention. The opportunity of buying such a work comes quite quickly and without warning and the purchaser must have the money in hand and be on the alert for such an opportunity. When a painting of this kind appears perhaps ten museums and twenty-five private collectors all want the same ones so it is important, in fact it is absolutely essential to be prepared to make the purchase on short notice with funds then available.

These are the factors which in my opinion have entered into the problem of acquiring good works of art, since Miss Louise Smith's day.

- Q. 6. In order that the college might purchase the class of art that was available in 1928 for \$2,000.00 to \$2,500.00, what price range would now have to be permissible for such a purchase.
- A. I believe it would take from \$8,000 to \$10,000 now to purchase a painting such as would have been available in Miss Louise Smith's day for purchase at from \$2,000 to \$2500.00.
- Q. 7. How would such a change make available the tax sale material that you speak of, at prices around \$1,000.00?
- A. In my opinion a minimum of \$1,000 would insure the purchase of works by painters whose worth is generally recognized. I do not believe that Miss Smith wanted her trust fund used to purchase paintings by experimenting with an artist of unrecognized merit, however high his ability might be in the estimation of future members of the art department. There is a time however when an artist's mature style gives evidence of lasting quality, but when the prices for his works have not been increased by the pressure of popular demand, although in artistic circles his merit is unquestioned. This is the moment when the college can buy to advantage at from \$1,000 to \$1500. Such an opportunity is comparable to the one which might present itself in the case of a tax sale, when a painting might

become available at such a price. Whether the \$1,000 work of art is available by the tax sale or by the artist of promising ability, such a program would enable the fund to accumulate for several years until there was enough money to purchase a painting at \$7,000 to \$8,000 upon the basis mentioned above.

CROSS-EXAMINATION BY MR. WATTS:

- Q. 1. Do I get the proper impression from you that the present interpretation or construction of Miss Louise Smith's will is no longer workable or feasible under modern conditions.
- A. That is my conclusion. I regard it as no longer practical to make a purchase of paintings biennially with a sum limited to \$2,000 as a minimum and \$2,500 as a maximum. The opportunity to purchase the work of recognized living artists at less than \$2,000 is no longer available. Similarly the opportunity of buying the recognized master at current market prices is likewise no longer available under this interpretation of the will. I am satisfied from the standard of art which Miss Louise Smith herself purchased during her lifetime and which I know she appreciated and understood that she would not be content with a painting of a lesser degree of ability and merit and I know too, that it takes more than the specified sum to acquire such a painting. If Miss Smith could have foreseen the rise in prices for the old masters of American painting, the bargains occasioned by tax situations and the enormous demand for the scarce masterpieces I am sure that she would have made provisions in her will to permit the expenditure of a smaller sum periodically and for the accumulation of income, sufficient for purchasing under present conditions at periods possibly longer than the two years specified in her will.

AND FURTHER THIS DEPONENT SAYETH NOT.

Mary F. Williams

STATE OF VIRGINIA

To-wit:

CITY OF LYNCHBURG

I, Marion D. Leys, a Notary Public in and for the City of Lynchburg, in the State of Virginia, do hereby certify that the foregoing depositions were duly taken, reduced to writing and signed by the witnesses respectively before me at the time and place therein mentioned, pursuant to the annexed notice.

In witness whereof I have hereunto set my hand at Lynchburg, Virginia, this 25<sup>th</sup> day of October, 1957.

Marion D. Leys  
Notary Public

My commission expires June 30, 1959.

Filed in Clerk's Office of  
Corporation Court City of  
Lynchburg: OCT 26 1957  
J. H. Martin Clerk