S. P. Langley, being sworn, deposes and says:

That he is, and has been since 1887, Secretary of the Smithsonian Institution, and that he is familiar with the history and present condition of said Institution.

That attached hereto are true and exact copies of the minutes of the annual meeting of the Board of Regents of the Smithsonian Institution held January 22, 1896; of a letter dated May 28, 1896, addressed by him, as Secretary of the Institution, to the President of the Board of Trustees of the Corcoran Gallery of Art; of a letter received by the Institution from the Curator of said Gallery of Art, dated July 18, 1896; and of a letter of Acting Secretary G. Brown Goode, dated July 27, 1896, addressed to said Curator.

That practically all of the Marsh Collection of Engravings purchased by the Smithsonian Institution in 1849, all of the Capron Collection of objects of Japanese art, the Catlin Collection of Indian Portraits, and the articles returned by the Corcoran Gallery of Art as referred to above, remain intact and are now in the possession of the Institution and for the most part on exhibition in its halls; that the United States Government purchased in 1904 a large collection of casts illustrating the history of sculpture, which collection is now in the possession of the Institution and on exhibition in its halls; that a large portrait of the
Dowager Empress of China framed handsomely in camphor-wood, has been presented to the United States and placed in the Institution.

That though two halls in the Institution originally designed and constructed as galleries of art, are now occupied by other collections, it has been and is intended to devote these halls again to their original purposes; that the collection of casts above mentioned, purchased by the Government in 1904, and objects of graphic art, occupy exclusively in their display one large hall, and that sections of other halls are devoted entirely to the display of objects of ceramic art; that art collections have been gathered in other halls; that in fact, a substantial percentage of the objects which have been collected for exhibition in the halls of the Smithsonian Institution are objects of art.

That the Smithsonian Institution has ample facilities for properly caring for and exhibiting the collection of paintings and other articles named in the codicil to the will of Harriet Lane Johnston, dated April 21, 1902.

(Signed) S. P. Langley,
Secretary.

Smithsonian Institution.

District of Columbia, ss.:

Subscribed and sworn to before me this 18th day of October, A. D., 1905.

(Signed) J. Louis Willige
Notary Public.
Smithsonian Institution—Board of Regents.

Extract from minutes of the annual meeting held January 22, 1896.

* * * * * * * * * * * * * *

Art Collections.

Continuing the Secretary said:

"I now desire to bring before the Regents a matter in which they may see fit to express some opinion.

"The fundamental act creating the Institution, in enumerating its functions, apparently considers it first as a kind of Gallery of Art, and declares that all objects of art and of foreign and curious research, the property of the United States, shall be delivered to the Regents, and only after this adds that objects of natural history shall be so also.

"The scientific side of the Institution's activities has been in the past so much greater than its aesthetic, that it is well to recall the undoubted fact that it was intended by Congress to be a curator of the national art, and that this function has never been forgotten, though often in abeyance.

"In 1849, your first Secretary, Joseph Henry, in pursuance of this function of an Institution which in his
own words existed for 'the true, the beautiful, as well as for the immediately practical', purchased of the Honorable George P. Marsh, a collection of works of art, chiefly engravings, for the sum of Three Thousand Dollars ($3,000.00), understood then to be but a fraction of its cost, and which, owing to the great rise in the market value of such things in the last fifty years, does not in the least represent its value today. It is impossible to state what the present value of the collection is, without an examination of the engravings and etchings, but experts that I have consulted say that the rise in all good specimens of engraving and etching during the forty-seven years which have elapsed since the purchase, has been so great, that if these had then the value attributed to them, they must be worth from five to ten times that amount now, or even more."

A Regent here asked Mr. Hubbard as a connoisseur in these matters, if he thought the value of the collection as large as estimated. Mr. Hubbard said he could tell nothing about their value until he had examined them, citing several instances in his own experience to show the wide diversity of cost in such objects today.

Proceeding the Secretary said:

"Immediately after the fire at the Institution in 1865, doubt was felt that the building was a place of safety, and a portion of the collection was transferred to the Librarian
of Congress, and in 1874 and 1879, other portions were lent to the newly founded Corcoran Art Gallery, of which great things were expected. The transfer was with the express understanding that they were there for deposit only, and to be reclaimed by the Regents at any time.

"A portion of the collection is identified by Mr. Spofford as in the charge of the Library at the Capitol, except a few volumes and engravings which he hopes to find at the time of the coming transfer to the new building. There is no question made by the Corcoran Gallery about the fact of the engravings and etchings which they have on deposit, not, however, on public exhibition, but chiefly contained in portfolios.

"In view of the fact of the coming occupancy of the new Congressional Library, in which it is expected that special quarters will be assigned to the Smithsonian Deposit, both for storing in the 'East Stack' of its now over 300,000 titles, and of a suitable room for their consultation, and of the further fact that the Corcoran Gallery will also shortly move into a new building, I have thought it might be desirable for the Regents to take action looking to the reclamation of the engravings, etchings, and other works of art, and to their examination by experts, for it would appear that there is quite an indefinite amount of property
belonging to the Institution which is not in the custody where, by law, it would appear to properly belong, and where it can now be safely housed.

"This building has since been made fireproof, and recent changes have given it means of properly caring for these collections. I should be pleased to have an expression of opinion from the Regents as to the propriety of bringing this collection into a place where it would be once more under their immediate charge, and where, if necessary, it can be exhibited to the public, from whom it appears to be mostly at present secluded.

"Among the pictures lent to the Corcoran Gallery is an oil painting of the Honorable William G. Preston, of South Carolina, one of the Regents of the Institution, which should surely be returned to the building, now that a collection of portraits of eminent Regents is being formed."

Mr. Hubbard asked if the Corcoran Gallery claimed ownership in these works, to which the Secretary replied that they did not.

Senator Gray then offered the following resolution, which was adopted:

"Resolved: That the question of the propriety of bringing the works of art belonging to the Institution under the more immediate control of the Board of Regents, be referred to the Executive Committee and the Secretary with power to act."
May 23, 1896.

Sir:

I have the honor to inform you that at the regular meeting of the Board of Regents of the Smithsonian Institution held on the 22nd of January last, the question of bringing together again under the more immediate custody of the Regents, the works of art belonging to the Institution, was referred to a special committee for action, by which it was decided to recall all the objects of this class that have been from time to time deposited in the Corcoran Gallery of Art and elsewhere, as it has now been found practicable to make more adequate arrangements at the Smithsonian Institution, for the reception and care of these objects than could be made at the time of their loan.

In conformity with the action of the Board of Regents and the instructions of the Committee referred to, I have, therefore, to request that at your convenience you will be kind enough to give instruction that all works of art belonging to the Smithsonian Institution now deposited in the Corcoran Gallery may be placed in my hands. In the accompanying
memorandum, I give a list of those objects of which special record has been made.

I am, Sir, with great respect,

Your obedient servant,

(Signed) S. P. Langley.

Secretary.

S. H. Kauffmann, Esquire,

President, Board of Trustees,

Corcoran Gallery of Art,

Washington, D. C.
THE CORCORAN GALLERY OF ART,

Washington, D.C., July 18th, 1896.

Prof. S. P. Langley,

Secretary, Smithsonian Institution,

Washington, D.C.

Dear Sir:

Referring to your letter of May 23rd, to the President of the Board of Trustees of this Gallery, with regard to the return to the Smithsonian Institution of certain objects which had been received from it, I am instructed to say that all the objects named in your letter are now subject to your order, with the exception of one or two which I have so marked.

The circumstances under which these articles were received by my predecessor, Mr. Macleod, seems to have obliged him to accept a number of casts which apparently were not then, nor have since been, of any use to this institution and have occupied a place in the cellar, where in these years past they have been subject to accident, which has resulted in the entire destruction of a few of them. The figures are in about the same condition (stains excepted) as when received here.
I do not find the engraving of the Aurora by Raphael
Morghen, after Guido. It may be found when we remove to
our new Building; if so, it will then be returned to you.

I hereby enclose you a list of the objects returned.

With great respect, I am,

Your obedient servant,

(Signed)    F. S. Barbarin,

Curator.
July 27, 1896.

Dear Sir:

I hereby acknowledge the receipt of the objects which had been deposited in the Corcoran Gallery of Art by the Smithsonian Institution, and are checked with pencil in the list accompanying your letter of July 18, addressed to the Secretary of the Smithsonian Institution.

Yours very respectfully,

(Signed) G. Brown Goode,
Acting Secretary.

Doctor F. S. Barbarin,
Curator, Corcoran Gallery of Art,
Washington, D.C.
IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

D. K. Este Fisher et al.,

VS.

The Harriet Lane Home for Invalid Children of Baltimore City et al.

In Equity No. 25160.

Upon consideration of the petition filed by the United States of America in the above entitled cause on the 10 day of February, A. D. 1905, it is, by the court ordered, that the United States be and it is hereby made party defendant in said cause.

BY THE COURT:

(signed) Thos. H. Anderson

Justice.
IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,
HOLDING AN EQUITY COURT.

D. K. Este Fisher et al.; )

vs. ) In Equity No. 25160.

Harriet Lane Home for Invalid Children of Baltimore City et al.; 

THE SEPARATE ANSWER OF THE DEFENDANT, THE UNITED STATES
FILED
OF AMERICA, TO THE BILL OF COMPLAINT, IN THE ABOVE ENTITLED CASE.

For answer to said bill, or to so much thereof as the said defendant, the United States of America, is advised that it is necessary to make answer unto, the defendant, the said United States of America, answering said bill, says:

That it is advised, and being advised believes, that the allegations of said bill in so far as same affect said defendant, are contained in paragraph thirteen of said bill, and that the only prayer of said bill that in any way affects said defendant, is the seventh prayer thereof. Therefore, defendant is advised that it is only necessary for it to answer the said thirteenth paragraph of said bill.

1. Answering said thirteenth paragraph of said bill defendant says that it is advised that the defendants, the Trustees of the Corcoran Gallery of Art, have filed an answer in this cause setting up the fact that they have declined to accept the
bequests made to them by the testatrix, Harriet Lane Johnston, deceased, as referred to in said thirteenth paragraph, and in the codicils to said will of the said Harriet Lane Johnston, deceased, which said codicils are referred to in said thirteenth paragraph; but defendant says that the said defendants, the Trustees of the Corcoran Gallery of Art, had no authority to decline to accept the bequests made to them by the testatrix, Harriet Lane Johnston, deceased, in the codicils of her last will and testament, for the reason that at the time of the death of the said Harriet Lane Johnston, there was established and had been established, for a long time prior thereto, a national gallery of art by the Government of the United States, and that the said defendants, the Trustees of the Corcoran Gallery of Art, took no right, title or interest in and to the property mentioned in said codicil dated the 21st day of April, A.D. 1902, but that all right, title and interest therein vested in the defendant, the United States of America, and that the said personal property mentioned in said codicil as bequeathed to the Trustees of the Corcoran Gallery of Art, was, at the time of the death of the said Harriet Lane Johnston, vested in the said United States of America, and it was and is the duty of the executors of said estate to deliver said property to the said United States of America, the same to be placed in the national art gallery established by said United States of America as hereinafter set forth.

Defendant further says that on account of the fact that said national gallery was in existence at the time of the death
of the said Harriet Lane Johnston and is now in existence, it is said defendants, the immaterial whether or not, the Trustees of the Corcoran Gallery of Art, accept said bequest in said codicils, and that said codicils, in so far as they provide a sale of said property, are null and void and of no effect by reason of the fact that there has been no failure of the said bequests referred to in said codicils.

Defendant further says that by an Act approved on the tenth day of August, in the year, 1846, entitled, "An Act to Establish the Smithsonian Institution for the Increase and Diffusion of Knowledge among Men," the Congress of the United States created an establishment by the name of the Smithsonian Institution, and provided for the establishment and maintenance by the said department of an institution having the purpose, among other things, of collecting and preserving for the public use and study, all objects of art and of foreign and curious research; that the said establishment was created in accordance with the provisions of said Act, and does now maintain, in the city of Washington, District of Columbia, such an institution as is contemplated and provided for by said Act, and that said institution has the power and facilities to receive and care for and render available for the use, study and enjoyment of the public, the paintings, curios and other articles which are bequeathed to the said trustees of the Corcoran Gallery of Art in and by the codicil dated April 21, 1902, which said codicil is mentioned in said thirteenth paragraph of said bill, and which said codicil, together with all other codicils, and the will of the said Harriet Lane Johnston, deceased,
which are filed as exhibits to said original bill, are referred to and made a part of this answer. Defendant further refers to the affidavit of S. P. Langley, with exhibit thereto, attached hereto, which said affidavit and exhibit are made a part of this answer and prayed to be read as a part hereof at the hearing of this cause.

Your defendant further says that the said Smithsonian Institution aforesaid, as established and now existing, is essentially national in character and its business is conducted by a Board of Regents appointed and selected by virtue of Section 5101 of the Revised Statutes of the United States; that said Smithsonian Institution has a gallery of art, and there is in said gallery of art a large number of valuable paintings, portraits, engravings, and etchings, and that there belongs to said gallery of art a large number of portraits, engravings and etchings and statuary, some of which are now in the Corcoran Gallery of Art in the city of Washington, District of Columbia, said articles, however, belonging to said Smithsonian Institution, and simply deposited in said Corcoran Gallery of Art as loans to be returned whenever occasion requires.

Defendant further says that the said gallery of art established by said Smithsonian Institution, answers and conforms to the conditions of the bequest made in the said codicil hereinbefore mentioned, and that by a proper construction of said will of Harriet Lane Johnston, deceased, the articles which are the subject of the bequest hereinbefore mentioned, should be declared to
be the property of the United States for deposit and retention in the said Smithsonian Institution. Defendant further says that said Smithsonian Institution can properly care for and keep the said articles mentioned and has every facility for preserving the said articles and preventing their destruction from natural causes or otherwise. Defendant therefore says that this court should so construe said will as to give said property to this defendant, and that in construing said will this court order and direct the said executors to deliver said property to the said Smithsonian Institution, and that defendant may have the same relief under this answer as though a cross-bill had been filed.

Defendant, having fully answered, prays that said will may be construed as herein requested, and that the articles mentioned in said thirteenth paragraph of said bill be ordered to be forthwith delivered to said defendant to be placed in said gallery of art of said Smithsonian Institution. And that this defendant may have general relief on this, its answer, the same as though a cross bill had been filed.

UNITED STATES OF AMERICA;

BY

DANIEL W. BAKER,
United States Attorney in and for the District of Columbia.

DANIEL W. BAKER,
STUART McNAMARA,
Solicitors for defendant,
United States of America.

DISTRICT OF COLUMBIA, SS.

Daniel W. Baker, being first duly sworn, on oath deposes and says that he has read over the foregoing answer by him subscribed and knows the contents thereof; that the matters and facts therein stated upon his personal knowledge are true, and those stated upon information and belief he believes to be true. He further says
that he is the United States Attorney in and for the District of Columbia, and is authorized to sign and swear to this answer.

DANIEL W. BAKER,

Subscribed and sworn to before me this 26th day of October, A. D. 1905.

JOHN R. WETRICH,

SEAL. Notary Public, D. C.
IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

D. K. Este Fisher

VS.

Harriet Lane Home for Invalid Children of Baltimore etc.

In Equity No. 25160
Doc. 56

Upon motion of the defendant, the United States of America, it is this 31st day of October 1905 ordered that the order heretofore passed herein setting this cause for hearing upon bill and answers be extended to include the answer of the defendant the United States of America.

BY THE COURT:

(signed) Wendell P. Stafford
Justice.
IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

D. K. Este Fisher, et al.,

vs.

Harriet Lane Home for Invalid Children of Baltimore City, et al.

Equity No. 25,160.

The Amendment to the Answer filed by Leave of Court.

Further answering said bill, defendant says, that the said Harriet Lane Johnston, deceased, left at the time of her death an estate of great value, and upon information and belief defendant says that the said residuary legatee in said will mentioned will receive, as such residuary legatee upwards of five hundred thousand dollars; that the art collection mentioned in the thirteenth paragraph of said bill is of the value of upwards of sixty thousand dollars, and that it was the desire of the said Harriet Lane Johnston to keep said art collection together and to give to the public the benefit thereof; that she had no knowledge of the fact that there was in the District of Columbia a gallery of art belonging to the United States and conducted by the United States under the supervision of the said Smithsonian Institution.
Defendant further says, that the sole object on the part of the said decedent, Harriet Lane Johnston, in making said bequest aforesaid, was, if possible, to prevent a sale and distribution of said collection, and that she used said defendants, the trustees of the Corcoran Art Gallery, as trustees until the same could be turned over to the United States of America; that said United States of America is ready now to receive said collection of art, and has, as is set out as aforesaid, prepared a proper place to properly care for and exhibit the said pictures and works of art.

In answer to that part of paragraph thirteen in which complainants allege that at the time of the death of testatrix the Government of the United States had not established in the City of Washington, and has not since established therein, a national art gallery within the meaning of said codicils, defendant says that the United States of America had established in the City of Washington and there was at the time of the death of testatrix, a national art gallery in the said City of Washington; and defendant having denied said allegation as aforesaid, calls upon complainants for strict proof of the non-existence in the City of Washington of a national art gallery.

Defendant further avers that the title to the said property, mentioned in said thirteenth paragraph of the said bill, is in the United States of America, and that the said United States of America has by its proper officers accepted said trust reposed in it, but the defendant says that if the court should
be of opinion that it be necessary that there should be any legislation on the part of the United States to accept said bequest as in said thirteenth paragraph mentioned, then defendant requests that a decree in this case be stayed for a reasonable time for the purpose of obtaining said legislation.

UNITED STATES OF AMERICA,

BY,

(signed) Daniel W. Baker

Attorney of the United States in
and for the District of Columbia.

(signed) Daniel W. Baker

" Stuart McNamara

Solicitors for defendant,
United States of America.

District of Columbia, ss:

Daniel W. Baker, being first duly sworn, on oath deposes and says, that he has read the foregoing answer by him subscribed and knows the contents thereof; that the matters and facts therein stated of his own knowledge are true, and those stated on information and belief he believes to be true. He further states that he is the Attorney of the United States in and for the District of Columbia, and is authorized to sign and swear to this answer.

(signed) Daniel W. Baker.

Subscribed and sworn to before me this 2 day of November, 1905.

( SEAL )

(signed) John R. Weyrich
Notary Public, D.C.
IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

D.K. Este Fisher, et al., Executors and Trustees under the last will and testament of Harriet Lane Johnston, deceased; Equity No. 25,160.

vs.

Harriet Lane Home for Invalid Children of Baltimore City, et al.)

Your petitioner, the United States of America, represents:

That on the 11th day of July, A.D., 1906, Mr. Justice Stafford signed a decree awarding to the United States the bequest of the pictures, miniatures and other articles mentioned in the will of Harriet Lane Johnston, and that in said decree the Smithsonian Institution is declared to be a national art gallery for the purposes of receiving said bequest;

That the subject matter of said bequest is now stored and in great danger of being destroyed;

Wherefore, the premises considered, your petitioner prays, that an order be passed requiring the executors and trustees of the said last will and testament of Harriet Lane Johnston to turn over and deliver the subject matter of said bequest to the Smithsonian Institute, and that such other further relief may be granted as the nature of the case may require.

(signed) Daniel W. Baker,

Attorney of the United States in and for the District of Columbia.

Stuart McNamara
Solicitor, etc.
IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

D. K. Este Fisher, et al., Executors and Trustees under the last will and testament of Harriet Lane Johnston, deceased,

VS.

Harriet Lane Home for Invalid Children of Baltimore City, et al.

Equity No. 25,160.

Upon consideration of the petition of the United States of America this 18th day of July, A.D., 1906, filed, and it appearing to the Court that the said bequest of pictures, miniatures and other articles mentioned in the said last will and testament of Harriet Lane Johnston have been adjudged by a decree of this Court to belong to the United States of America and that the Smithsonian Institution is a national art gallery for the purposes of receiving said bequest, it is this 18th day of July, A. D., 1906,

Adjudged, ordered and decreed that the subject-matter of said bequest be turned over to the Smithsonian Institution, or the secretary thereof, and that the receipt of said secretary of said institution be full acquittance to said executors and trustees of the last will and testament of Harriet Lane Johnston.

(signed) Ashley M. Gould
Justice.
HARRIET LANE JOHNSTON ART COLLECTION.

The following exhibits numbered 1, 2, 3, 4, and 5 were filed in equity 25,160, designated as D. K. Este Fisher, et al, vs. Harriet Lane Home for Invalid Children of Baltimore City, &c., The date of filing was June 28, 1906.

Exhibit Number 1 is the proposal of George P. Marsh, dated October 1, 1849, to sell his collection of prints, art works, &c., to the Institution with some appended notes. A copy of this exhibit is appended hereewith.

Exhibit Number 2 consists of a printed pamphlet published by the Smithsonian Institution in December, 1852, entitled "Portraits of North American Indians with Sketches of Scenery, &c.", painted by J. M. Stanley and deposited with the Smithsonian Institution.

Exhibit Number 3 consists of pages 86 and 87 from the Annual Report of Secretary Henry for 1861, entitled Catalogue of Engravings Presented to the Smithsonian Institution by C. B. King, December, 1861.
Exhibit Number 4 consists of a descriptive catalogue (Revised) of General Horace Capron's collection of specimens of antique Japanese works of art temporarily deposited in the United States National Museum, Smithsonian Institution, printed in the Documentary History, Volume I, pages 990 - 1001. At the end is inserted the item from the Sundry Civil Act for 1892, authorizing the purchase of this collection for the Government.

Exhibit Number 5 consists of a list of the articles deposited by the Smithsonian Institution in the Corcoran Art Gallery, in 1874, printed on pages 65 of the Annual Report of Secretary Henry for 1874, also a corresponding list of transfers made in 1879, printed on page 61 of the Annual Report for that year. The following extracts from Annual Reports are also given: Baird, 1878, page 56; Baird, 1879, pages 60 -61.
Department of Justice,  
Washington, D. C.

C. H. R. February 2, 1905.

Morgan H. Beach, Esq.,  
United States Attorney;  
Washington, D. C.

Sir:

Under the codicil to the will of Harriet Lane Johnston, deceased, certain works of art were bequeathed to the Corcoran Gallery of Art with the provision that "in the event that the Government of the United States shall establish in the city of Washington a national art gallery, that the said articles shall upon the establishment of said national art gallery be, by the said trustees of the Corcoran Gallery of Art and their successors, delivered to the said national art gallery, and upon such delivery shall become the absolute property of the said national art gallery established by the United States."

The trustees of the Corcoran Gallery of Art decline the bequest, and the executors of Mrs. Johnston's will are in doubt as to whether the Smithsonian Institution is a national art gallery within the meaning of the will, and have petitioned the Supreme Court of the District of Columbia for a construction thereof.

Section 5 of the act of August 10, 1846 (9 Stat. 104), "Being an Act to establish the Smithsonian Institution for the increase and diffusion of knowledge among men," provides for the erection of a building which shall include a "gallery of art".
Section 6 of the same act provides that "in proportion as suitable arrangements can be made for their reception, all objects of art, of foreign and curious research, and all objects of natural history, plants, and geological and mineralogical specimens now belonging or hereafter to belong to the United States, which may be in the city of Washington in whosoever custody the same may be, shall be delivered to such persons as may be authorized by the Board of Regents to receive them."

The contention of the Government is that the Smithsonian Institution is essentially national in character, and that by express statutory enactment a "gallery of art" was established therein, which has ever since been maintained. The Smithsonian Institution substantially answers the conditions of the bequest. One of the executors, who is also the solicitor for the estate in this proceeding and who wrote the will, admits that at the time the will was drawn he did not know, and so far as his knowledge extends Mrs. Johnston did not know, that the Smithsonian Institution contained a national gallery of art, which would explain the temporary bequest to the Corcoran Gallery of Art.

The Government desires to intervene in this proceeding and claim the bequest. You will therefore prepare and file the proper papers. Please give the matter your early attention.

Respectfully,

Inclosure 1320. 

Attorney General.
NOTES OF ARGUMENT IN THE NATIONAL ART
GALLERY CASE.

The facts in the case are briefly these: Mrs. Harriet Lane Johnston died July 3, 1903, leaving a will and codicil, in which was contained the following bequest:

"I give and bequeath to the Trustees of the Corcoran Gallery of Art and their successors the following articles, to wit, (here follows an enumeration of the different articles comprised in her art collection), provided that the articles hereby bequeathed to the Trustees of the Corcoran Gallery of Art and their successors, shall be kept together in a room provided for the purpose in the Corcoran Gallery of Art, and to be designated as "The Harriet Lane Johnston Collection", the place of deposit to be selected and approved by Mr. Ralph C. Johnson and Mr. Blakeslee of New York; and provided further that in the event that the Government of the United States shall establish in the City of Washington a National Art Gallery, that the said articles shall upon the establishment of said National Art Gallery be by the said trustees of the Corcoran Gallery of Art and their successors delivered to the said National Art Gallery, and upon such delivery shall become the absolute property of the said National Art Gallery established by the United States. Should this bequest be not accepted by the trustees of the Corcoran Gallery of Art under the terms above stated, or for any reason fail, then such of said articles as are, by my will dated June 1, 1895, specifically disposed of, shall follow the disposition made in my said will of June 1, 1895, and those otherwise not disposed of are to be sold at private sale by my executors, which sale shall be conducted under the supervision of Mr. Blakeslee of New York, and the proceeds thereof shall become a part of the general residue of my estate and follow the disposition of such general residue made in my said will of June 1, 1895."

The Corcoran Art Gallery declined to take the bequest, because of the conditions its acceptance would impose. Thereupon, the executors proceeded to sell the art collection, and filed the bill in the Supreme Court of the District of Columbia, to construe certain parts of the will, and have their procedure defined. The executors have taken the position that there was no National Art Gallery. The Government asked leave to intervene in the suit, claiming that the United States had already established a National
Art Gallery, and that title to the art collection had vested in the United States, and that it was the duty of the executors to refrain from making the sale proposed, and deliver the art collection to the Government. The petition of the Government declared that an art gallery was established by the provisions of the act of Congress of August 10, 1846, creating the establishment in the City of Washington of the Smithsonian Institution. This Institution, being established for the increase and diffusion of knowledge among men, contained a department organized to encourage the collection of all objects of art and of foreign and curious research, and preserve them for public use and study. The Institution had already established such an art department, and had facilities for caring for such objects as were bequeathed in the will. The Institution was national in its character; the establishment consists of the President, Vice-President, Chief Justice of the Supreme Court, and members of the cabinet, and its business was conducted by the Board of Regents, provided for by section 5181, R. S. U. S. It had created an art gallery which was national in its character, and, of course, was located in the City of Washington. It, therefore, answered the description in the will. In this gallery had been husbanded great numbers of art objects and valuable collections, some of which have been temporarily loaned to the Corcoran Art Gallery, and subject to recall at any time. The petition claimed that this Art gallery conformed to the description of the beneficiary of Mrs. Johnston's will, and that by the proper construction thereof,
the art collection bequeathed should be declared to belong to the United States for deposit in this art gallery. The petition finally set out that Mrs. Johnston had no knowledge that the Government had established a National Art Gallery in the City of Washington in connection with the Smithsonian Institution.

The executors denied the claim of the United States. They were represented by the Honorable Bernard Carter of Baltimore, and while counsel desired that the art collection should be spared the sacrifice of a sale and should go to the Government, yet he contended as a matter of law, that there was no National Art Gallery in existence such as was referred to in the will, and that the United States could not legally take the art collection for deposit in the Smithsonian Institution. The Government then proceeded to take testimony to prove its claim. The evidence was given according to the ordinary practice in chancery. Mr. Richard Rathbun, the Acting Secretary and Dr. Adler, of the Smithsonian Institution, Miss May Kennedy, and Miss Speare were among those who gave testimony. The witnesses were examined and cross-examined at length, and the testimony in epitome established.

First. In founding the Smithsonian Institution, it was the intention of the Government to provide for an Art Gallery.

Second. Congress had always recognized the Art Gallery, and made constant provision therefor in the legislation from 1846 to the present day. The debates and records and journals of Congress will furnish abundant
recognition on the part of the Government of the National Art Gallery.

Third. The Smithsonian Institution has developed its art collection from a potential National Art Gallery into an actual one with many collections exceedingly large and valuable, including the Morse, Catlin, King, Capron, etc., collections. It is constantly growing, receiving only recently the valuable Freer collection. It is of wonderful promise.

Fourth. The Art Gallery is national in character by reason of its establishment, Board of Regents, under supervision of Congress, use of the franc, deposit of moneys in Treasury, etc. All objects of art belonging to the United States are required by law to be properly deposited in the Smithsonian.

Fifth. Mrs. Johnston did not know that this art Gallery was in existence. The testimony of her close relatives and companions showed that she knew of the Smithsonian Institution only as a place devoted to certain scientific and ethnological, etc., studies, and that she had not visited it for a long time prior to her death.

After thus stating the facts of the case, counsel for the United States argued that the testimony showed that the United States had first intended the establishment of a National Gallery of Art by the provisions of the Act of August 10, 1846, the title LXXXIII. R.S.U.S. Section 5586, et seq., in connection
with the Smithsonian Institution in the City of Washington; second, That this Art Gallery was actually established, had a large Art Gallery, was steadily growing, and was now the National Art Gallery referred to by the testatrix in her will: third, That the testatrix was ignorant of the existence of this National Art Gallery. Such being the testimony, two questions are raised for the consideration of the court. The first is the question of identity. That is to say Is this National Art Gallery the one described in the will as the object of the testatrix' bounty? The second question is, - Could this National Art Gallery take the bequest where it was already in existence when Mrs. Johnston made her will? Although she did not know it? You will find the first question answered by the testimony. The testimony undoubtedly shows that the Art Gallery operated in conjunction with the Smithsonian Institution is the National Art Gallery, established and maintained by the Government in the City of Washington. It has no rivals. Its identity as an Art Gallery, its character in being national, and its location in the City of Washington, conform strictly to the description of the National Art Gallery established by the United States in the City of Washington, which the testatrix has announced in her will. The second question is a question of law. It is answered, I submit, by the uniform holdings of the courts, that in such a case the United States is entitled to claim the Art Collection, and take it for the National Art Gallery in the Smithsonian Institution. A thorough understanding of the position the Government takes in its claim renders necessary a brief recapitulation of the
principles on which the court acts in construing the language of the will. This bequest of Mrs. Johnston is in law a "charity." "Charity" has been often defined, and notably so by Horace Binney, in his argument before the Supreme Court of the United States, in the celebrated Girard case (Vidal VS. Girard's Exrs. 2 How. 196).

"Whatever is given for the love of God or the love of your neighbor, in the catholic and universal sense - given from these motives and to these ends, free from the stain or taint of every consideration that is personal, private of selfish." The Smithsonian Institution itself has been proved by Judicial pronouncement to be a charity in the proceedings instituted by the United States against Drummond, of Charing Cross, the English bankers, in 1838, by the decision of Lord Langdale, Master of the Rolls. This appears in the correspondence of Mr. Rush, our Minister to England at that time. So also is the particular bequest involved in this suit of the art collection a "charity."

The consideration of this bequest as a "charity" is important for the reasons now urged. Courts of chancery construe charities very liberally, and endeavour always by the latitude of construction to support and preserve a bequest, whereby a narrow or strict construction the execution of the wish of the testatrix would fail. In England the right of the Courts to exercise this liberal jurisdiction was established by the Statute 43, Eliz. C. 4. This Statute was never in force in the District of Columbia, but it is now settled beyond dispute, that independently of this Statute, which was only ancillary and remedial, the courts in
chancery in their general equity jurisdiction are empowered
to administer charities, and to sippor such bequests by a liberal
construction even to the extent of awarding what is known as
cy pres, or approximate application of the will of the testatrix.

Oulds vs. Washington Foundling Asylum, 95 U.S. 303.

Hayes vs. Pratt, 147, U.S., 557.


Fountain vs. Ravenel, 17 How. 369.

It is therefore summited that this court has the jurisdic-
tion to construe this bequest liberally, so that the bequest of
Mrs. Jo hanson should at all events, if possible, be carried out.
Having in mind this favoring, I might say kindly, attitude of the
courts towards charities, it is argued that the ignorance of Mrs.
Johnston of the existence of the National Art Gallery is not
different in kind or degree from the ignorance of other testators
in misdescribing, misnaming, or otherwise incorrectly specify-
ing the objects of their bounty. I cases where this has occurred,
the error has not been employed to defeat the good intention of
the donor. Evidence aliunde is competent to identify the claimant
as the legatee. I cite certain cases supporting this doctrine.

Shaw vs. Society, 67 Maine, 493.

Here the bequest to the Methodist Episcopal Missionary
Society in Maine was held to belong to the trustees of the Eastern Maine Conference of the M. E. Church.

The trustees of the Theological Seminary of the Presbyterian Church may take under the devise to the trustees of those who hold the funds of the Theological Seminary of Princeton, N.J.

Women's Union Missionary Society vs. Mead, 131 Ill. 338.

Here a legacy to "the fund for disabled ministers of the Presbyterian Church will go to the Presbyterian Board of Relief for disabled Ministers, and the Widows and Orphans of Deceased Ministers." These cases illustrate the principle, and there are others which may be examined, if desirable.

Greenland Society vs. Hatch, 48 N.H. 393.

Trustees vs. Guthrie, 86 Va. 125.


Dewitt vs. Chandler, 11 Abbott Pr. (N.Y.) 459.

Newmarket Methodist Church vs. Peaslee, 15 N.H. 317.

Weeks vs. Hobson, 150 Mass. 379.

Hayes vs. Pratt, 147 U.S. 567.

Missouri Historical Society vs. The Academy of Science, 94 Mo. 459.

Such being the law with respect to the interpretation of the language of the will where testator has been ignorant of the exact name, condition or other circumstance of the person or thing selected as the object of her bounty, we come to see the case at bar, where the testatrix was ignorant of the very existence of the thing which she desired to bequeath her valuable art collection. Certainly this ignorance on her part is not to be used by the court of equity to prevent a consummation of her charitable and generous intention. The Supreme Court of the United States
has decided the principle which should control in this case. If the National Art Gallery were in existence, and the testatrix did not know of it when she made her will, the Government will be entitled to the collection bequeathed notwithstanding. In the case of Russell vs. Allen 107 U.S. 163, the Supreme Court of the United States decided that where a testator made a large bequest to an institution, which he thought actually existed, but which was not in existence at all, and an institution answering the description of the one named in the will was organized some time after the death of the testator, it could claim the bequest, and the court awarded the legacy to it. Note how that case applies to the case at bar. Where is the difference in principle between the testator thinking an institution was in existence, when it was not, and thinking it was not in existence, when it was? In the Russell and Allen case the testator was ignorant of the actual condition by thinking his beneficiary was in existence; in the case at bar the testatrix was ignorant of the actual condition by thinking her beneficiary was not in existence. The mistake in the first case was positive, so to speak, and in the second case, negative. But the principle is the same, and when the beneficiary who claims the gift answers the description in the will, the law will award it the legacy.

The court agreed with the contention of the Government upon the authority cited, and entered the decree declaring the National Art Gallery to have been established in connection with the Smithsonian Institution, and vesting in it the title of the art collection bequeathed by Mrs. Johnston's will.
MEMORANDUM.

Mr. Stuart McNamara, Assistant District Attorney, advises the Institution by telephone that the intervening petition dated February 10, 1905, in the National Gallery of Art case, was in the nature of the filing of a cross-bill. This course was found to be erroneous, the petition being withdrawn by the Government and the separate answer dated October 26, 1905, substituted.
EXTRACT FROM WILL OF MRS. HARRIET LANE JOHNSTON, dated June 1, 1895.

To the Trustees of the Corcoran Gallery of Art, to be placed and kept in the Art Gallery, I give and bequeath the miniature by Brown of President Buchanan, the portrait of the Prince of Wales, and the first Atlantic Cable message sent to this country as it was received by my uncle James Buchanan, now framed and hanging in my house.

EXTRACT FROM CODICIL dated April 21, 1902:

I give and bequeath to the Trustees of the Corcoran Gallery of Art, and their successors, the following articles, to wit: (1) a portrait of lady Essex as Juliet, by Sir Thomas Lawrence, P.R.A.; (2) a portrait of Mrs. Hammond by Sir Joshua Reynolds, P.R.A.; (3) the picture or painting The Valley Farm by John Constable, R.A.; (4) the portrait of Miss Kirkpatrick, 1734-1802, by George Romney, R.A.; This portrait was purchased by Messrs. Lowrie & Co., 15 Old Bond Street, who bought it from one of the family for whom it was painted; (5) the portrait of Miss Murray by Sir William Beechy, R.A., 1750-1839; (6) the portrait of "Josepha Boegart," lady in waiting to Marie de Medici, wife of Henry Fourth, of France, by Frans Pourbos (the younger); (7) the portrait of "Madam Tulp", perhaps the
wife of the famous Dr. Tulp of Rembrandt celebrity, by Jansen; (8) the portrait of Miss Abingdon by John Hoppner, R.A., 1758-1810; (9) the painting of Madonna and Child by Bernandini Luini, 1460-1530; (10) the painting Madonna and Child by Correggio; (11) the Portrait of King Edward VII, by Sir James Watson Gordon, painted for President Buchanan and sent to him after the King's visit (as Prince of Wales) to President Buchanan; also the framed letter of presentation from the Prince; (12) the painting of the President with the Prince of Wales and his suite, the cabinet, etc., at Mt. Vernon, by Rossiter standing at Washington's Tomb uncovered, whilst the Marine Band played a dirge; (13) the painting A Street in India or Cairo by Weeks; (14) the painting Independence by Mayer; (15) the portrait of President Buchanan, when he was about forty years of age, painted just before he went as Minister to Russia, by Hichlotz of Lancaster, Pennsylvania; (16) the portrait of James Buchanan Johnston painted when about fourteen years of age by Harper Pennington; (17) the marble bust of President Buchanan by Dexter of Boston; (18) the marble likeness of my son Henry E. Johnston, when two years old, as Cupid stringing his bow, by Rhinehart; (20) a fine Roman mosaic, framed;
(21) the first message sent over the Atlantic Cable from Queen Victoria and answer by President Buchanan, framed; (22) a very old engraving, framed, of a portrait of John Hampden, presented to President Buchanan by Mr. McGregor M.P. for Glasgow; (23) the miniature of President Buchanan by Henry Brown of Philadelphia; (24) the photograph, framed, of Queen Victoria, presented to me by Her Majesty in June 1898; (25) large engravings of the Queen and Prince Consort, framed, presented to me by the Prince of Wales through Lord Lyons, when about to leave this country; (26) the silver medal of the Princess Royal of England, struck off on her marriage to the Crown Prince of Germany, sent by the Prince Consort to President Buchanan, together with the letter accompanying said medal; (27) letters between Her Majesty and President Buchanan on the occasion of the visit of the Prince of Wales to the United States; (28) the Bible on which President Buchanan took his oath of office March 4, 1857; and (29) the gavel used at Cincinnati when President Buchanan was nominated June, 1856. Also my additional paintings or other works of art which may be hereafter acquired by me. The medal and the miniature of President Buchanan mentioned above, should be placed in a small glass case with the other things of historical value: PROVIDED that the articles hereby bequeathed to the Trustees of the Corcoran Gallery of Art and
their successors, shall be kept together in a room, provided for the purpose, in the Corcoran Gallery of Art, and to be designated as "The Harriet Lane Johnston Collection", the place of deposit to be selected and approved by Mr. Ralph C. Johnson and Mr. Blakeslee of New York; and provided further that in the event that the Government of the United States shall establish in the City of Washington a National Art Gallery, that the said articles shall, upon the establishment of said National Art Gallery, be, by the Trustees of the Corcoran Gallery of Art and their successors, delivered to the Said national Art Gallery, and upon such delivery shall become the absolute property of the said National Art Gallery established by the United States. Should this bequest be not accepted by the Trustees of the Corcoran Gallery of Art under the terms above stated, or for any reason fail, then such of said articles as are, by my will dated June 1, 1895, specifically disposed of shall follow the disposition made in my said will of June 1, 1895, and those not otherwise disposed of are to be sold at private sale by my executors, which sale shall be conducted under the supervision of Mr. Blakeslee of New York, and the proceeds thereof shall become a part of the general residue of my estate and follow the disposition of such general residue made in my said will of June 1, 1895.
I give and bequeath the marble bust of myself by Rhinehart and the miniature of myself by Henry Brown to my cousin Mary S. Kennedy for life, and upon her death to Mary C. Speer for life, and thereafter the said marble bust and the said miniature shall become a part of the foregoing collection of works of art hereinbefore bequeathed to the Trustees of the Corcoran Gallery of Art and follow the disposition of that bequest.

EXTRACT FROM CODICIL dated March 18, 1903:

Whereas, by a codicil to my said will, which said codicil is dated April 21, 1902, I give and bequeath to the Trustees of the Corcoran Gallery of Art the several works of Art and other articles therein set forth, upon certain conditions, among others that they shall be kept together in a room to be provided for the purpose in the Corcoran Gallery of Art, and to be designated as "The Harriet Lane Johnston Collection"; now I hereby modify said bequest, and make the same upon this condition, in addition to the other terms and conditions therein contained, which I hereby re-affirm, namely; That the Said Trustees of the Corcoran Gallery of Art shall build an annex to the Art Gallery, to be approved by the said Mr. Blakeslee, or should he not be living or should he decline to act, then to be approved by my executors, which said annex shall not be provided with any means for artificial heat, and shall be so
constructed and arranged as to protect as far as possible from
the heat of summer the articles therein deposited. My reason
for this condition is that many of the said pictures bequeath-
ed to the said trustees of the Corcoran Gallery of Art are of
a character to become cracked and ultimately ruined if deposit-
ed in a place subject to the heat ordinarily maintained in
said Art Gallery, and are such as require for thier preservation
to be kept in a depository of low temperature; and it
is my belief that if a suitable annex, as above described be
provided, the said Trustees will be the recipients of other
gifts of valuable paintings which the owners would be unwill-
ing to have deposited in the present Gallery subject to the
therman conditions there existing.