sales to the trust where the transaction is fair and the trustee charges no more than anyone else would. *In re Estate of Ena*, 24 Hawaii 414 (1918); *In re Estate of Wichman*, 27 Hawaii 780 (1924). And it has been held that a trustee may be allowed commissions on advertising. *In re Berri*, 130 Misc. 527, 224 N.Y.S. 466 (1927). A salary as a salesman has been allowed the trustee of an interest in a partnership on the ground that the salary resulted not from the trust but from work done independently of the trust. *In re Lewis*, 103 L.T. 495 (1910).

Where the trustee of stock in a corporation is elected an officer of the corporation, the rule that a trustee may not profit from his trust has been used to compel the trustee to account to the estate for any salary received. *Matter of Hirsch No. 1*, 115 App. Div. 367, 101 N.Y.S. 893 (1906); *Pyle v. Pyle*, 137 App. Div. 568, 122 N.Y.S. 256 (1910); *In re Kirkman's Estate*, 143 Misc. 342, 256 N.Y.S. 495 (1932); *In re Francis*, 74 L. J. Ch. 198 (1905). In some cases, however, the trustee has been allowed to retain salary received as a corporate official. *In re Berri*, 130 Misc. 527, 224 N.Y.S. 466 (1927); *In re Gerbereux' Will*, 148 Misc. 461, 266 N.Y.S. 134 (1933). Where a trustee has been given shares in a corporation expressly to enable him to qualify as a director, he may retain compensation received as director. *In re Dover Coalfield Extension, Limited*, [1907] 2 Ch. 76, [1908] 1 Ch. 65. Maryland, as the principal case indicates, will not allow a trustee to retain his salary as a corporate officer when he is elected by virtue of the stock held as trustee; but will allow him to retain the salary if he owns some stock in his own right and is elected by stock exclusive of the stock held in trust. *Dailey v. Wight*, 94 Md. 269, 51 Atl. 38 (1902).

Though it professes to follow the rule that a trustee may not profit from his trust, the court in the instant case has applied it in what seems to be a peculiar manner. The court reasons that because the trust estate consists of half of the corporation's stock, the net return to the estate is lessened by half of the salary, and hence the trustee is accountable only for that amount. It would seem, however, that the reason of the no profit rule would dictate that the trustee should be deprived of all salary received, if deprived of any; the reason being not only to repair loss to the estate, but also to prevent temptation of the trustee. Wherever the transaction might lead the trustee into temptation to be disloyal and neglect the interest of the trust, any profit he gains should be taken away from him in order to discourage him from considering selfish interests. The profit is taken from him not only to make the estate whole for a loss occasioned in the particular instance, but also to have a deterring influence on this trustee and others in the future. 3 Bogert, Trusts (1935), § 492. Actually the trust estate lost nothing, the court admitting the trust had benefitted from the trustee's services as an officer of the corporation. Morever, it hardly seems compatible with compensation for loss to exclude interest as the court here did. Furthermore, the decision in the principal case is objectionable as being capable of evasion by the simple expedient of doubling the salary.

Wills—Ademption—General or Specific Bequests—[Wis.]—Testatrix made two bequests of "one hundred (100) shares of the common stock of the Ohio Oil Company." On petition for construction of the will, the lower court held these bequests to be specific, because at the time of executing the will testatrix owned exactly two hundred shares of the common stock. It also held the bequest to be revoked and destroyed,

since the testatrix no longer owned the shares at her death. *Held*, these are general bequests which are to be satisfied out of the general assets of the estate and are not dependent upon the existence of any specific property. *In re Blomdahl's Will*, 257 N.W. 152 (Wis. 1934).

A specific legacy can be satisfied only by delivery to the legatee of the identical articles described, and if the testator parts with the specific property during his life, the legacy is destroyed, *i.e.*, adeemed. Page, Wills (2d ed. 1928), § 1227. A general bequest may be satisfied by making use of any part of the general assets of the estate, and is not chargeable upon any specific property. Jarman, Wills (7th ed. 1930), 1001 ff. It is possible that a legacy be charged against certain property and yet be payable out of the general assets if the specific property has been destroyed or given away; this is known as a demonstrative legacy. Williams, Executors (12th ed. 1930), 748. See annotation in 6 A.L.R. 1353 (1920).

Because it is often impossible to tell whether the testator intended a particular gift to be specific, general, or demonstrative, certain rules of construction have been evolved. The English courts apply the rule that for a bequest to be held specific, it must identify particular property and must describe that property as belonging to the testator. *Robinson v. Addison*, 2 Beav. 515 (1840). It was held in *Jeffreys v. Jeffreys*, 3 Atk. 120 (1743), that where the sum bequeathed is the same amount possessed by the testator, and the sum is a fractional one, the testator may be presumed to have intended a specific bequest. But the *Jeffreys* case has now been overruled in *In re Willcocks*, [1921] 2 Ch. 327, the court stating, "It would be drawing too fine a distinction to hold that a legacy of stock was general where the sum happened to be a round sum, but was specific where the sum happened to be one which ran into pounds, shillings and pence." Accordingly, in England the fact that the testator has bequeathed an amount exactly equal to the amount of that particular kind of property in his possession is insufficient to make the gift specific. *Robinson v. Addison*, 2 Beav. 515 (1840); *In re Willcocks*, [1921] 2 Ch. 327.

The American courts do not seem to apply as definite a test. Bequests have been held to be specific even though the particular property is not described as belonging to the testator, provided a construction of the entire will leads to the conclusion that the testator intended the bequest to be specific. *Kunkell v. MacGill*, 56 Md. 120 (1881); *In re Mandell's Estate*, 252 Mich. 375, 233 N.W. 230 (1930). American courts differ, however, as to whether evidence is admissible to show that the testator at the time of the execution of the will owned an amount of the bequeathed property exactly equal to the bequest. Some of the American courts, notably those of New York, Maryland, Pennsylvania, Iowa, and New Jersey, follow the English rule and refuse to consider as relevant the fact that the testator bequeathed exactly as much in bonds or shares of stock as he owned at the date of the will. *Evans v. Hunter*, 86 Iowa 413, 53 N.W. 277 (1928); *Dryden v. Owings*, 49 Md. 356 (1878); *Savings Investment & Trust Co. v. Crouch*, 93 N.J. Eq. 311, 116 Atl. 696 (1922); *Tifft v. Porter*, 8 N.Y. 516 (1853); *In re Van Vliet*, 2 Misc. 169, 25 N.Y.S. 722 (1893); *Nash v. Hamilton*, 8 Ohio App. 66 (1918); *Snyder's Estate*, 217 Pa. St. 71, 66 Atl. 157 (1907). But see 10 Mich. S.B.J. 273 (1931); cf. *In re Freeman's Will*, 139 Misc. 301, 248 N.Y.S. 422, 425–427 (1931). Other American courts, however, consider the ownership of the same amount of property as one of the facts from which the testator's intention may be deduced. *Harvard Unitarian Society v. Tufts*, 151 Mass. 76, 23 N.E. 1006 (1890); *In re Largue's Estate*, 267 Mo. 104, 183

S.W. 608 (1915); *In re Ferreck's Estate*, 241 Pa. 340, 88 Atl. 505 (1913); *Drake v. True*, 72 N.H. 322, 56 Atl. 749 (1903); *Gardner v. Viall*, 36 R.I. 436, 90 Atl. 760 (1914). And New Hampshire has gone so far as to hold that where testator bequeaths exactly as much in stocks or bonds as he then owns, it is to be presumed that the gift was intended to be specific, in the absence of evidence to the contrary. *Drake v. True*, 72 N.H. 322, 56 Atl. 749 (1903); *Jewell v. Appolonio*, 75 N.H. 317, 74 Atl. 250 (1909). Cf. *Morse v. Eben Converse*, 80 N.H. 24, 113 Atl. 214 (1921). A gift of stock in a closed corporation, where the gift is of the exact amount owned by the testator, has been held to be sufficiently unique to import a specific legacy even in a jurisdiction which ordinarily refuses to consider the amount of the property owned at the time of execution of the will. *In re Security Trust Co. of Rochester*, 221 N.Y. 213, 116 N.E. 1006 (1917). Cf. *In re Strasenburgh's Will*, 136 Misc. Rep. 91, 242 N.Y.S. 453 (1928). On the other hand, it has been successfully urged that a gift of bonds, particularly where their par value is mentioned, indicates an intention to give the value of the bonds in money to the legatee, and is therefore not specific. *Gillaum v. Adderley*, 15 Ves. Jr. 384 (1808); *Matter of Newman*, 4 Dem. (N.Y.) 65 (1886); *Rote v. Warner*, 17 Ohio C.C. 342, 9 Ohio C.D. 536 (1899), affd. in 57 Ohio St. 633 (1899). But cf. *Jeffreys v. Jeffreys*, 3 Atk. 120 (1743).

In the present case the court stated that the "circumstance of the ownership of the stock at the time of execution is not material" (257 N.W. 152, 153), and indicated that specific identification of the property together with words of possession would be necessary for the court to find a specific legacy. This strict rule, similar to the one applied by the English courts, seems unnecessary to the actual decision. The court might well have recognized that ownership of the exact amount of the stock bequeathed was a factor to be considered, although it could not, by itself, make the bequest specific.