

The Mauser Estate Battle

On 3 August 1924, J. Mark Mauser, president and director of the Mauser Milling Company, and a resident of Laurys Station, Lehigh County, Pennsylvania, died of the flu at his cottage in Atlantic City, New Jersey. At his death, he was one of the wealthiest individuals in the Lehigh Valley as a result of his control of the Mauser Mill Company which had milling facilities in Treichlers, Laurys Station, Northampton, Allentown, Palmerton, Hazleton and Howersville.

His death set in motion a protracted estate battle as Mrs. Anna Mauser, his widow, challenged the probate of the estate. The legal battle lasted almost a decade and, in the end, drastically depleted the final, disbursed value of the estate.

The funeral was held in Laurys Station on 6 August, and internment followed in Fairview Cemetery, Allentown. Eight days later, on 14 August, the will was admitted to probate, and the estate details were published in *The Morning Call*, the local newspaper.

An estimated estate value was put at a minimum of approximately \$108,000 (equivalent to about \$1.6 million in 2020), excluding the value of real estate holdings. Per Mauser's last will and testament dated 5 June 1924, the executors were to sell the real estate and give \$2,000 to Miller's Church in Laurys Station and \$1,000 to Harry Bieber of Walnutport. All shares of Mauser Mill Company common stock and all money left after debts had been paid were to be invested in first mortgage securities on real estate with the income to Anna Mauser. If the Mauser Mill Company issued preferred shares, then the executors were directed to exchange the common stock for the preferred shares provided the dividend rate was at least 7% and the value equivalent to \$55 per common share. Also, if the executors found it expedient to sell the shares of the company's common stock, they were directed first to offer the shares to associates in the company at \$55 a share. After the death of the widow, the trust was to distribute \$5,000 to nephew John Livingood, \$5,000 to nephew Lewis Livingood, \$5,000 to nephew Harry Lerch, \$10,000 to nephew George Kern Mauser and \$25,000 to nephew Mauser Lerch. The rest of the money was to remain in trust with the income to benefit the Good Shepherd Home in Allentown, PA. (15 August 1924, *The Morning Call*)

The will provisions were a little complicated, but not overly so. The executors of the will were Harry J. Lerch, brother-in-law of the deceased, and the Citizens Trust Company of Allentown, PA. On 22 August 1924 the legal estate notice was published in the newspaper by the executors.

On 21 September 1924, the executors announced the upcoming sale of 2,420 shares of the Mauser Mill Company to be held on 9 October 1924, but that sale would not take place.

In the meantime, an auction notice on 11 October announced the sale of personal property and real estate in Laurys Station, scheduled for 18 October. That sale took place as scheduled, but the twelve-acre Mauser estate on the hill overlooking the Lehigh River was not sold because the price offered was deemed too low. Other real estate property interests were later sold in December for about \$17,000.

By all appearances, the estate process seemed to be proceeding smoothly, but things changed quickly as the widow objected to proposed liquidation of the stock holdings.

On 8 January 1925 *The Morning Call* reported that two men had been appointed as appraisers to set aside a sufficient number of shares of the Mauser Milling Company stock to which widow Mauser is entitled. Then in early February an announcement appeared that the executors were planning to sell 2408 shares of stock on 27 February 1925 in blocks of 100 shares.

A bill-in-equity filed in court by the widow against Lerch and the Citizens Trust Company, the estate executors, temporarily halted that sale. Then an injunction to prohibit the sale of any of the 2420 common shares of stock was issued pending a hearing to be held by Judge Claude T. Reno, president of the Orphans Court, Lehigh County. (16 February, *The Morning Call*)

For more information on Judge Reno, see

<https://www.legis.state.pa.us/cfdocs/legis/BiosHistory/MemBio.cfm?ID=3864&body=H>.

Later in February, the preliminary injunction issued by Judge Reno was allowed to remain in effect on the shares of company stock. Mrs. Mauser was represented in the case by Dallas Dillinger (a local attorney) and Morgan Z. Paul (an attorney from Philadelphia). (25 February 1925, *The Morning Call*)

In March, Judge Reno reheard arguments and took the case under advisement. (11 March 1925, *The Morning Call*) On 17 March 1925, the judge dissolved the injunction on the sale of the 2420 shares. But the widow had changed her mind in the meantime. She now wanted the shares tendered to Harry Lerch and George Mauser, brother of the deceased, in accord with an agreement once entered into between those two parties and J. Mark Mauser. The defendants argued that the court had no jurisdiction for any injunction. A week later, a citation was awarded in the Orphans court for Anna R. Mauser, against the estate executors, to show cause as to why they should not deliver 2408 shares to Harry Lerch and George Mauser, of California, for purchase at \$100 a share. (24 March 1925, *The Morning Call*) (We'll discover later why sometimes the reference is to 2420 shares and sometimes to 2408 shares.)

A key moment in the case occurred in court in early May with Judge Reno presiding. Anna Mauser petitioned about an agreement made on 2 January 1917. She asked that the executors enforce that agreement. In that agreement, which became the central issue of the ensuing court case, J. Mark Mauser, George B. Mauser and Harry J. Lerch, the principle stockholders of the Mauser Mill Company, agreed that upon the death of

any of the three, the survivors should, and would, purchase those shares of Mauser company stock that had been owned by the dead person. This would turn the stock into cash for the benefit of the deceased's estate and also ensure that the two survivors could acquire the stock at \$100 per share. So, Anna now wanted Harry Lerch and George Mauser to honor that 1917 agreement and purchase the tendered shares at \$100 per share before the executors sold the estate's stock holdings at only \$55 to liquidate the debts and settle the estate. (That's a difference of \$108,000 between the prices of \$100 and \$55; maybe equivalent to about \$1.6 million in 2020 dollars.) Five witnesses testified: Anna Mauser, Fred Lichtenwalner (president of Citizens Trust Company), Julius E. Lentz (Mauser Mill Company), Mr. Shannon (secretary of the People's Trust Company) and Mr. Schwartz (Catasauqua National Bank). Former Congressman Fred B. Gerner appeared for the defendants. A week later, final testimony and findings of fact were held, and then the case was placed on the argument list. In June, judge Reno heard the arguments on points-of-law in the estate case. (12 May, 19 May, 16 June 1925, *The Morning Call*)

Meanwhile the executors continued to liquidate the real estate portions of the estate. In June, the sale of Greystone hunting lodge in Mud Run, Pennsylvania and a 1/6 share of 900 acres of mountain land in Kidder township was announced. Anna Mauser also included her share of the land as part of the sale. (17 June 1925, *The Morning Call*)

In July, the Mauser estate's 1/2 interest in eight Laurys Station properties/lots took place. The sale of the Laurys' properties netted approximately \$16000, while the sale of the hunting lodge and land brought about \$6500. (10-11 July 1925, *The Morning Call*)

On 5 January 1926, Judge Reno issued an order that allowed Anna to prevent the sale of the Mauser Company stock by the estate, which was also ordered to pay the cost of the legal proceedings. Anna was to deposit with the executors enough money to cover debts that a stock sale would have covered and also to deliver to the executors her shares of stock. She will then have the estate tender to George Mauser and Harry Lerch all the estate stock under the terms of the 2 January 1917 agreement. Basically, the judge agreed that the will was superseded by previous agreement of 1917. (6 January 1926, *The Morning Call*)

There were further sales of Mauser properties and goods in 1926, including the "Mauser farm" in Treichlers, Pennsylvania and the former George S. Mauser farm in Bath, Pennsylvania.

The court case continued. In February exceptions to the previous decision of the court were dismissed. In July, Citizens Trust Company, the trustee of the estate, with attorney Fred B. Gerner as counsel for the bank, filed suit for \$242,000 (2,420 shares @ \$100 per share) with interest. The suit, dating to 3 May 1926, was against Harry Lerch and George Mauser for not having paid the estate for the stock per the 1917 agreement. Note that, in the meantime, Harry Lerch had resigned as an executor of the estate on 23 May 1926. The suit averred that the executors had tendered the shares on 3 March

1926 and demanded \$242,000, but the tender was refused, and there had been no payment. The suit was one of the largest ever filed in Lehigh County to that date. (1 July 1926, *The Morning Call*)

For more information on Fred B. Gerner, see [https://en.wikipedia.org/wiki/Fred Benjamin Gerner](https://en.wikipedia.org/wiki/Fred_Benjamin_Gerner).

In September 1926, the trial was scheduled for that October.

On Monday, 25 October, the Lehigh County civil court session opened with Citizens Trust Company v. Lerch and Mauser scheduled as the first case. Attorney Owen J. Roberts of Philadelphia, the famed government counsel in the Teapot Dome case, was engaged as counsel for the defendants as a replacement for Attorney Lawrence H. Rupp who was ill. Gerner was counsel for the plaintiff.

For more information on Owen J. Roberts, later U.S. Supreme Court justice, see [https://en.wikipedia.org/wiki/Owen Roberts](https://en.wikipedia.org/wiki/Owen_Roberts).

High drama reigned in the Lehigh County courthouse on 26 October as the estate trial began before a packed courthouse of attorneys and citizens interested in seeing the famed Philadelphia lawyer in person. Roberts, assisting Reuben J. Butz, a local attorney, asked for the original agreement of 2 January 1917. Recall that the 1917 agreement, which was at the heart of the estate issue, provided for the purchase of the Mauser Company shares in the event of the death of one of the three signatories (J. Mark Mauser, George Mauser and Harry Lerch). The agreement also stipulated that the purchase could be paid over a course of ten years at a certain rate per year. The defendants (Harry Lerch and George Mauser) declared that the agreement had been cancelled by a stock dividend declared on 22 November 1922, and that the cancelled agreements were in the possession of the defendants. However, through an oversight, the agreement in possession of J. Mark Mauser had remained uncanceled.

A search for the document by attorneys Gerner and Dallas Dillinger, counsel for Mrs. Mauser, came up empty, and they announced a willingness to accept a non-suit without prejudice, i.e., that they retained the right to refile the case in the future. Then Anna Mauser rose in the courtroom and shouted, "I take oath here before my God that I left that agreement right here in this court." She kept up the commotion, and then she collapsed. Later in the day papers were found in the safe of Dillinger. Attorneys for the defense asked that the papers be impounded into the custody of the clerk of the orphan's court, which they were. A new suit could now be instituted by the plaintiffs. (27 October 1926, *The Morning Call*)

Unbelievably, nothing happened in the case during 1927. The trial was originally scheduled for April, but then it had to be postponed because the lawyers were not available. When it was rescheduled for October, it again had to be held over. This time because of the absence of the defendants' lawyer, Owen Roberts.

During 1928, the Mauser estate case finally went to trial. On 5 January 1928 *The Morning Call* indicated that Owen Roberts would be in court but with the civil case to be heard in criminal court with a jury. All parties had agreed to interrupt the sessions of the criminal court with this civil case. It was an extraordinary situation, as otherwise the trial would have to be postponed again as Roberts would in Washington, DC when the Lehigh County civil court was again in session. The lineup in court was as follows: Councilor Gerner represented the estate (Citizens Trust); attorneys Dillinger and Schneller represented Anna Mauser; and attorneys Roberts and Butz represented George Mauser and Harry Lerch. Since there had been a stock split, or stock dividend since the 1917 agreement, it was now contended that this reduced the value of each share by $\frac{1}{2}$, but the widow still wanted the parties to purchase 4,840 shares of Mauser Company stock at \$100. Mauser and Lerch had allegedly offered to purchase the shares at the original agreement price. It was a complicated affair.

On 7 January, it was announced that the trial would finally open on 16 January with presiding judge Claude Reno, and on Monday, 16 January, Roberts and George Mauser arrived in town for the trial which was set for the next day.

At 10 o'clock in the morning the courtroom was packed with an estimated 450 people, mostly lawyers who had come to observe Roberts. A jury of three women and nine men was seated, and they observed as Roberts handled the case. The stenographer of the Mauser Mill company verified the signatures on the 2 January 1917 agreement, but it was also discovered that there were some erased notes on the back of the agreement. The agreement itself seemed not to be complicated. Basically, within fifteen days of the death of one of the three parties, the other two could purchase the shares of the deceased at \$100 a share with 10 percent down and ten percent per year for nine years.

The defense argued that the agreement was no longer valid for several reasons.

1. The agreement had been rescinded by the three men during the lifetime of J. Mark Mauser.
2. The corporate structure of the Mauser Milling Company had changed so much as to make the agreement unenforceable because of the increase of the company's capital stock, the declaration of a stock dividend and the issue of preferred stock.
3. The Mauser estate did not own all of the stock tendered.
4. The widow, having elected to take a widow's share of the stock from the estate, should no longer be entitled to the settlement as outlined in the agreement.
5. The widow, having notified the executors that she would take the proportionate stock, i.e., the widow's share, therefor the other parties would not be able to prove cancellations.
6. When J. Mark Mauser designated, in his will, the opportunity for employees to secure his stock at \$55 per share that abrogated the 1917 agreement.
7. Even if the agreement had not been rescinded, there would be an obligation for the surviving parties to buy only 1210 shares at 100\$ per share.

The stock history of the Mauser Mill Company made a determination of the amount and value of the Mauser Company stock in question difficult.

In 1917 when the agreement was made, the Mauser Mill Company was capitalized at 4000 shares with a par value of \$50 each = \$200,000. The three men were directors of the company and owned a majority of the shares. J. Mark Mauser himself had 1210 shares.

On 16 June 1920, there was an increase of the company's capitalization to \$300,000 by the issuance of 2000 shares at \$50 per share. That meant that there were now outstanding 6000 shares of stock.

On 23 November 1922, capitalization was increased to \$500,000 with a stock dividend of 2000 shares of common stock at \$50 and 2000 shares of preferred stock at \$50. That meant that the common stock issued now totaled 8000 shares, and there were 2000 shares of preferred stock, all at par of \$50. The defense claimed that this was intended to nullify the 1917 agreement by mutual agreement of the three men. Remember also that the will gave the estate executors the right to exchange common stock for preferred and to sell shares to employees at \$55.

Norman Hall, the secretary-treasurer of company, produced minute books to show that on 16 June 1920 J. Mark Mauser owned 1210 of the 4000 shares of the company.

Because of undistributed surplus, as of 1 February 1923, the book value of common stock was actually \$66 not \$50.

Julius Lentz, vice president of the Mauser Mill company, claimed that in a telephone conversation between J. Mark Mauser and Harry Lerch, he heard them say that they noted that the agreement was rescinded because of the stock dividend. Mr. Lentz also testified that he had bought stock from both J. Mark and George Mauser over the years. Finally, he noted that J. Mark Mauser could not find his copy of the agreement, but said, "Anyway it is no good."

Harry Lerch and George Mauser would not testify despite efforts of the plaintiffs to call them.

The agreement was shown to the court. By February 1925, the widow, Anna Mauser, had taken the widow's exemption and had transferred in her name 11 and 1/9 share of the company's common stock from the estate. On the stand, Mrs. Mauser claimed that she had found the agreement in an Atlantic City safe deposit box along with insurance policies. The question then became, what about the erasures? Lerch said he had torn up his copy of the agreement.

The following day, 18 January 1928, the case resumed again before a packed courtroom. Handwriting experts testified for both sides in the case, but neither of the experts was able to shed any light on what had been erased or noted. Owen Roberts speculated that maybe it was a note revoking the agreement. Gerner summed up the

estate case saying that the estate was just trying to enforce the will. The judge summed up the charge to the jury which was given the case shortly before noon. At about 4 PM, the jury returned a verdict for the defense (George Mauser and Harry Lerch).

But the case was not done yet. On 5 September, Citizens Trust Company argued for a new trial of Harry Lerch and George Mauser. Three days later, Anna Mauser added herself to the plaintiff's side. She was now represented by Francis Shunk Brown, a famous Philadelphia lawyer. Additional arguments took place before Judge Reno on 17 September. In early January 1829, Judge Reno denied a motion for a new trial.

For more information on Francis Shunk Brown, see https://en.wikipedia.org/wiki/Francis_Shunk_Brown.

On 2 July 1929, the Pennsylvania Supreme Court, sitting in Philadelphia, upheld the ruling of no new trial. To recap, the legal process had been brought originally by Anna Mauser and Citizens Trust Company which, in the meantime, had merged with Merchants National Bank to become Merchants-Citizens National Bank and Trust Company.

But this was still not the end of the case, and it became difficult to follow exactly what was happening. For example, on 3 October 1929, *The Morning Call* carried an announcement by Merchants-Citizens National Bank and Trust Co. of the upcoming sale of 2408 8/9 of Mauser Mill Company common shares to happen on 17 October, but then that sale was postponed to 12 December, which was a bad break for the stock's value because of the stock market crash. This sale never took place. Another complicating factor in determining a final resolution of the estate was a March 1930 meeting of stockholders of the Mauser Mill Company that increased the capital stock from \$500,000 to \$700,000.

There is some information available about Merchants-Citizens National Bank and Trust Company, Allentown, PA, at https://commons.wikimedia.org/wiki/Category:Merchants_National_Bank,_Allentown,_Pennsylvania.

That November, Anna Mauser sued the Mauser Mill Company for dividend payments on the stock that had been owned by her husband and that was still tied up in the estate process. The company argued that there were no dividends being issues at present, and in February 1931, a federal judge dismissed Anna Mauser's suit, saying that the refusal of the directors to declare dividends was entirely within their prerogative.

In July 1931, Merchants-Citizens National Bank and Trust Company posted notice that 3613 1/3 shares of stock were to be sold. All of these shares were purchased by attorney Reuben J. Butz. If that name sounds familiar, then you might be correct, since he was one of the defense lawyers for George Mauser and Harry Lerch. It is not clear the price that he paid, or if he was buying the stock for his clients. (2420 shares x 50% stock dividend + 2420 shares = 3630 shares. Now remember that Anna Mauser had

opted for a widow's share of the original lot (11 1/9). Multiply that amount by the 50% stock dividend to get to 16 2/3. Thus the shares sold = 3630 – 16 2/3 = 3613 1/3.)

Meanwhile, in September, Morton Z. Paul, a Philadelphia attorney who had worked for Anna Mauser since October 1924, filed a claim against her for a balance due of \$1150.

At this point in time, the process shifted to finalizing the estate and paying bills, but this process would drag on for about another year. The procedure started on 28 March 1932, when Judge Ethan A. Gerhart in Orphans Court heard challenges to the second and final account of the executor, the Merchants-Citizens National Bank and Trust Company. Anna Mauser, the widow, represented by former Judge Horace Heydt and attorney N. M. Balliet of Lehighton, PA) sued the executor's report saying that some payments should not have been made. She also requested that several bills, allegedly contracted before her husband's death, be paid by the executor. The bills, totaling \$356.56, were to two stores on the boardwalk in Atlantic City that Anna had subsequently paid. Attorney Gernerd objected to the bills saying they were contracted by Anna herself. The estate was originally estimated at \$152,372 in 1924 but was now worth only about \$26,000. (*The Morning Call*, 29 March 1932)

Hearings on the estate continued off and on in June and then in August. At the end of that month, attorney Gernerd, representing the executor, filed a claim for \$12,500 for expenses connected with the estate. Many lawyers, former judges and Bar Association members testified to prove that the fee was a reasonable cost.

Remember that the original case filed by Anna Mauser was to recover about \$242,000 per the 1917 agreement.

In November-December 1932, testimony continued about the estate. Anna Mauser presented evidence of additional notes due, but the attorney for the bank and the secretary of the bank claimed never to have received anything from Mrs. Mauser. She also contested the fee for attorney Gernerd and wanted payment of the two bills in Atlantic City.

In February 1933, the fee of \$12,500 for Attorney Fred Gernerd, as attorney for Merchants-Citizens National Bank and Trust Company, was confirmed in Orphans Court by judge Gerhart. The estate battle was largely over. Initially, the estate had been appraised at about \$150,000 (not counting some of the real estate). The will provided the bulk of the value to Anna Mauser with bequests to the nephews and eventually the residue to go to the Good Shepherd Home in Allentown, PA. The chain of litigation initiated by the widow in late 1924 substantially decreased the assets of the estate. At one time or another Anna Mauser had engaged eleven attorneys. In addition, the Great Depression had dramatically lowered the value of the Mauser Mill Company stock held in the estate, with the shares selling for only \$20 a share instead of the \$60 a share once offered!

The final account of the estate showed a balance of \$27,822 after the fee of attorney Gerner was deducted. Anna was entitled to \$14,503 after taxes, but she also had claims against her from the Merchants-Citizens National Bank and Trust Company for \$6,462, from Mr. and Mrs. Jacob Slasburg for \$6,702, from Morton, Paul for \$1,292 and from others. That meant that she was personally bankrupt.

In addition, the will had bequests of \$5,000 to the nephews of the deceased. George Kern Mauser now was to get only \$2,663, and the Mauser Lerch nephews were to receive \$6,659 instead of \$10,000.

Distribution of the estate also meant that there would be no residual value left for the Good Shepherd Home.