

Whereas by my said will I have made my wife sole devisee and legatee thereunder, I now desire that this provision be also subject to the condition and proviso that upon her death sixty per centum of my property or estate remaining at the time of her death be divided, share and share alike, as follows:"

Then come the names of a brother and two sisters, and a provision that in the event of the death of any such legatees the legacies are to inure to their heirs.

The codicil proceeds:

"The balance or forty per centum of my remaining property or estate to be disposed of as my dear wife may please (this devise or bequest to be in lieu of her dower, should the latter not have been satisfied previously in the provisions of my will itself). Be it remembered, however, that it is not my intention by the present codicil to restrict in any way my dear wife's reasonable enjoyment of the provision made for her in my last will and testament which, of course, is subject to the three codicils now existing thereto, but only to secure that upon her death any real or personal estate remaining and traceable to said provision to her may be disposed of as directed in the present codicil. In the carrying out of this wish I rely wholly on the sense of justice, as well as on the kindness of heart, of my beloved wife."

The estate is sworn at a little over \$25,000; all realty, except about \$300. The debts are about \$1,000. To pay them it will be necessary to sell the real property.

It was stated upon the argument that Mrs. Stanton would elect to take the benefits under the will in lieu of her dower.

From the language of the codicil and the intention of the testator thereby manifested, I think that he clearly limits the absolute gift to his wife conferred by the will itself.

That devise is to be "subject to the condition and proviso" that upon her death sixty per cent. of the property of the deceased then remaining and traceable to the devise in her favour shall pass to the testator's brother and sisters. In impressive words he reiterates his intention that his wife's reasonable enjoyment of the provision made for her in the will—that is, the devise to her of all absolutely, less the \$140 to a sister—is not to be restricted by the last codicil except to the extent that a fixed proportion of what, if any, of his estate may be in her hands at her death shall pass to his relatives, and not be in her power to dispose of. During her life all is hers. Upon her death, forty per cent. of the testator's property remaining "at the time of her death" may be disposed of as Mrs. Stanton may