

testatrix, and at most it is urged that it may have been by oversight that she omitted to preserve that fifth clause. But in my view the bequest to Bertha in the codicil does not in that sense supersede the bequests in the will; it only takes priority of them.

The concluding clause of the codicil emphasises desire to give the husband and daughter the first place: "Following the bequest to Bertha I solemnly charge my executor or executors with a provision for Vernon's education or profession until he attains the age of 25 years." Vernon was then about 20 or 21 years of age. The word "following" evidently means giving priority to, and the clause there did not affect Bertha's right except in so far perhaps as to raise a question whether Vernon might not have been entitled possibly to look to her share as well as his brothers' or to his brothers' share alone, or to his own share only, for this education. But no question now arises under this clause.

In effect, then, in my opinion, the crucial point of the codicil is the reference in it to division under the will; and I construe the whole codicil as keeping the estate in the hands of the executors and thereby postponing the division so long as Bertha's one-fourth share would not alone yield sufficient income to pay her yearly the sum of \$600 or \$400, as the case might be, but expressly authorizing, that is to say no longer postponing, that division, if her assured income were only \$400, so soon as her share would realize sufficient for that purpose; and until such division giving Bertha during her life the specified yearly sum out of the net income of the whole four shares, after the yearly payment to the father, and any residue of such income would go to the sons. In other words, Bertha would be paid only the deficit of income out of her brothers' shares.

Bertha married the respondent King in 1911. She was then 31 years of age. She died in 1912, leaving, it is said, a child, but having by her will appointed her husband her executor. In the events which have happened, therefore, she was entitled to an income of \$600 till at least her marriage, and thereafter to either that sum or the income of her share, which in the year of her marriage is shewn to have exceeded that sum.

In my opinion the appeal should be allowed and the order appealed from varied in the way I have indicated. The costs of all parties, including the costs of the appeal, should be paid out of the estate.