

of over \$400 a year. If Bertha remained unmarried then she was to be paid \$600 a year for life.

I quite agree with my brother Middleton that down to this point the codicil deals exclusively with income, save that Bertha would be entitled to receive her \$600 out of the corpus if the income were insufficient; but I fail to find anything in the concluding sentence of the 2nd paragraph or in the 3rd paragraph of the codicil to justify his conclusion that they refer to corpus and not to income.

There is nothing in the instrument itself to suggest that the testatrix was proceeding in the last sentence of the 2nd paragraph to take up a new subject or that she was about in a few words to write something that was entirely out of harmony with what she had previously written or with her expressed desire at the beginning of the codicil, or that she was about to practically revoke the whole will except in so far as it provided for her husband, as the learned Judge puts it. I am not surprised that he had hesitation in coming to such a conclusion or that he could not surmise why the testatrix should have so determined.

He seems to have been influenced almost entirely if not wholly by the meaning which he attached to two words used by the testatrix, namely, "realizes" in the last sentence of the 2nd paragraph and "supersede" in the 3rd.

He assumes that the testatrix used the word "realizes" in the sense in which he has used it in his judgment in his summary of the will: the conversion of real and personal property into cash. In my opinion the testatrix used it in the same sense as she had done in an earlier part of the 2nd paragraph, where she speaks of "the income realized through or by my property," and that she was simply providing for an equal division among her 3 sons or their children of the surplus income of the estate after payment of the annuities to her husband and to Bertha. Another difficulty is created by his conclusion that this division referred to the corpus. If so, when was it to take place? No time is mentioned; but the language points to an immediate division after the death of the testatrix, which is quite inconsistent with the scheme of both will and codicil.

It would appear to have been her use of the word "supersede" which chiefly led the learned Judge to the conclusion that the whole will was abandoned except in so far as it provided for the husband. I think a reading of the sentence with what precedes and follows makes it abundantly clear