

still be some remaining interest in that property which might in that event be the subject of disposition by himself. As pointed out in several of the cases above cited, the disposition in favour of the sons and daughters would be repugnant and invalid for uncertainty, if it must be read as intended to operate only upon such portion of the capital received from the sale of the landed property, if it be sold, as might remain after the death of Elizabeth A. Silverthorn, she having the right to use, in her untrammelled discretion, any part of such capital. This, therefore, is not a construction to be favoured.

If the words "as she thinks best" refer to the use to be made of the money arising from the sale of the realty, it might be difficult to maintain that the widow's interest is not absolute. These words, however, do not necessarily relate to the use to be made of the money. I think they rather relate to the widow's option to use the property herself, or to rent it, or to sell it. Any one of these things she may do "as she thinks best," and this quite consistently with her own interest being a life interest only. But in the event of sale she is given the use of the money. So, in the event of not selling she is given the use of the land itself. The testator apparently applies the word "use" to the money—proceeds of the sale of the land, standing in the place of the land itself—in the same way as he applies it to the land. The widow, I think, is limited to the enjoyment of the income to be derived from the investment of the money should she sell the land, her discretion as to the place, manner, and kind of investment being apparently unrestricted. As already pointed out, it is impossible to read the disposition in favour of Elizabeth A. Silverthorn as to the landed property in any other way without rejecting, as wholly inoperative, the preceding disposition in favour of the sons and daughters.

For these reasons, in my opinion, the interest of Elizabeth A. Silverthorn in the landed property should be declared to be a life interest only, with a power to sell the land, if she so desires, and, in that event, a right to invest the proceeds as she deems best, and enjoy the income derivable therefrom during her life. Costs of all parties to be out of the estate, those of the executors as between solicitor and client.