

LATCHFORD, J.:—The corpus consists of realty, \$2,900, and personalty, \$8,626.25. The testator's widow is to have by the will the benefit and use of all the real and personal estate during her lifetime, "provided she pays all taxes rates interest on incumbrances and keeps the property in at least as good a state of repair at death." There is, however, a subsequent devise in fee of a parcel of land, valued at \$300, to a brother of the testator. On the death of his wife, there is a gift over of the "property" to relatives of the testator.

By the first codicil—omitting what is not material—the interest only on a certain mortgage is bequeathed to his wife, and, when the principal is paid, it is to be reinvested, and upon the wife's death is to pass into the residue of the estate. An annuity for life of \$100 a year, "to be paid from my estate," is given to a half-sister.

By the second codicil three annuities are given—two of \$25 a year for ten years, and a third of \$50 a year for ten years, should the person benefited so long live. In none of these latter cases is any direction given as to what the annuities shall be paid from.

There are also in this codicil legacies of personal belongings, about which no question arises, except that they are excluded from the bequest to Mrs. Mitchell of the benefit and use to which she may put the personalty.

As to the bequest in the will, the intention of the testator is plainly that his wife shall have the use for life of all the estate of the testator, subject only to the one provision as to the payment of taxes and the maintenance of the buildings on the realty in good repair. What is so bequeathed to her cannot be charged with any of the annuities, unless an intention so to charge it can be deduced from the will or codicils. No such intention appears. To charge any annuity upon the mortgage would be to diminish the income from it. A charge upon the remainder of the personal estate, to the benefit and use of all of which Mrs. Mitchell is entitled for life, would limit beyond the terms of the will the "benefit and use" expressly granted to her. Only the real property, in which the widow has a life interest, remains, and it is out of this alone, in my opinion, that the annuities can be paid.

Costs of all parties out of the estate.