"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 twenty-five years.

　　　　　　　　　　　　　"(Sgd.)　Emma J. Smith
"(Sgd.)　Lillie Marie Burnham
"(Sgd.)　M. Frances F. Bryson
　　　　　　Witnesses.
　"Wildwood, July 16th, 1894."

It was agreed by the counsel on both sides that the real question to be decided was whether this codicil dealt only with the income of the estate of the testatrix or whether it also disposed of the corpus. It was argued on behalf of the appellant that it had reference solely to the income, while it was contended by counsel for the respondent that it practically revoked the whole will. The learned Judge has adopted the latter view, and held that "the whole will is abandoned excepting so far as it provides for the husband."

In the 1st paragraph of the codicil the testatrix states clearly what was her reason and motive for making it: "Not feeling satisfied with the provision made in my will for Bertha Hope Smith my only daughter I hereby add to this codicil." She says she adds a codicil to the will; no suggestion that she is practically revoking it except in so far as it provides for her husband. It is quite clear what she intended to accomplish by it; it remains to be seen whether there is anything in the language she used to prevent effect being given to her intention.

In the will she had given no preference to Bertha over her sons, either as to income or corpus. By the 2nd paragraph of the codicil she proceeded to carry out her expressed intention by giving to Bertha $600 a year until she was 25; and by the 3rd paragraph of the codicil she gives Bertha priority for this sum next after the provision made for her husband, and it would be payable out of corpus if the net income was not sufficient to give the husband his $750 a year and Bertha her $600.

If Bertha was married when she attained 25 years of age her preferred income was to be reduced to $400 unless the income of her estate realised on a division more than $400 for each child, in which case a division was to be made; each of her 4 children in that event receiving an equal sum