daughter, predeceased him, applied to have it declared that Ethel L. Sexton, a granddaughter of the testator, whose parents survived the testator, could not take any interest in the estate of her grandfather under the power of appointment from her grandmother by his will.

Three questions were presented for determination:—

First, it was contended that the whole of the grandfather's estate passed to his widow as her own property.

Second, that this had been treated as being the effect of the will, and in the proceedings in the Surrogate Court, to which the applicant was a party, all the assets had been dealt with as forming part of the widow's estate, and the applicant had received a large sum of money, which he would not otherwise have been entitled to, from her executors.

Third, if this was not so, the applicant, a grandchild, had no status, as the power given by the will could be exercised only in favour of children.

It was not necessary to consider the last two questions—the learned Judge was, so far as he had considered them, against the applicant on both—because the case appeared to be clear upon the construction of the will.

It was one in which there was an absolute gift to the widow, to which the testator had sought to add a repugnant restriction, by dealing with "any of my said estate" which "shall remain undisposed of at the time of his decease."

As put in Theobald: "There can be no gift over of so much as a legatee does not dispose of, where an absolute interest has been given to a legatee." The cases are cited in the 6th edition, p. 623. Apart from this gift over, the testator could not have made the gift to his widow more absolute. She may use and dispose of it "precisely the same as I myself might do were I living." She may sell it. She may give it away—it is hers.

If the widow had only a power of appointment under the husband's will, that was only "to appoint the same among my said children," and the one-sixth given to each of the four children by the widow's will would be well appointed and the one-sixth given to the Kidd family and the one-sixth given to Ethel L. Sexton would not be validly dealt with, and these shares would then fall to be distributed under the 3rd clause of the will, and would be divided among the four surviving children (each of such children taking four-eighteenths), and the issue of the deceased children (each stirps taking one-eighteenth), a result disastrous to the applicant.

The motion should be dismissed; costs to be charged against the applicant's share of the estate.