—codicil dated in September, 1908. The testator died on the 27th September, 1910. His wife died in 1906, and he had no children. I am not clear as to his age, but I think it was about eighty. The nieces did not know of the terms of the condition or of anything that was in the will—nor did any one, according to the evidence, but the solicitor who drew it (who was not called as a witness.) The nieces, however, lived with and cared for him, as it turned out, according to the terms of the condition, however strictly construed, from before the date of the will and just upon the death of his wife until the 19th July, 1909, when a change in his health and habits became very apparent, which had begun about the date the physician was summoned during February, 1909; then at his instance more competent assistance was called in under the supervision of the nieces, and this state of domestic affairs continued until his death.

Then first became known the condition expressed in the will; and, on a review of and with knowledge of all that was detailed before me in evidence, the executor paid over or turned over to the two beneficiaries the property now claimed (in part) by the plaintiff. The plaintiff, as she testified, sues on her own behalf solely, and is not joined by and does not represent any other possible claimants under the will.

I expressed my opinion as to the effect of the evidence at the close of the argument, but reserved judgment generally. I now deal first with the right of the plaintiff to maintain this action.

. . .

[Reference to Henwood v. Overend (1815), 1 Mer. 23; Bonner v. Bonner (1807), 13 Ves. 380; Hall v. Severne (1839), 9 Sim. 515; Sherer v. Bishop (1792), 4 Bro. C.C. 55.]

Looking at this will per se, I would not think the testator's meaning to be doubtful. He directs that the property intended to be given to his two nieces, which upon their default in certain conditions is to be revoked, shall then be distributed "equally among the other legatees named in this my will." The codicil does not in terms say that that is made part of the will, as in the Severne case, but it confirms the will and gives other pecuniary legacies to persons not named in the will. The obvious meaning, to my mind, is, that the testator names in the will those who share equally in the revoked property, and does not intend that the legatees first named in the codicil shall come in to diminish what is given to those named in the will.

It was said in argument that Hall v. Severne has been discredited. On the contrary, I find that it has not been impeached but rather upheld. It was followed in Early v. Benbow (1846),