

No. 5344 Equity

Frederick St. Friday & Lorena B. Friday by next friend &c

No. 5344 Equity -  
In the Circuit Court  
for Frederick County -  
September Term 1888 -

Frederick St. Friday et al }  
Salome Friday by her last Will, duly executed to pass real estate, devised as follows - "I will, and bequeath to my daughter, Susan Ann E. Marriott my house, lot and premises, in which I now reside, situated in the town of Jefferson, County of Frederick during her natural life, at a valuation of eight hundred dollars upon the condition that my said daughter Susan shall pay four hundred dollars to the children of my son John M. Friday, as soon as she secures her portion from the sale of the real estate left by the Will of the late Frederick Friday". After the death of my daughter Susan the property conveyed to her by this my will for and during her natural life, shall go to her children" The Bill in this case, was filed by the Plaintiffs for the purpose of having this Court construe said will, and determine "whether the Plaintiffs are entitled to four hundred dollars as a charge upon said real estate, or whether they are the owners of the undivided one half of the same as heirs at law of said Salome Friday," and that the said Real Estate may be sold and the proceeds divided among the parties according to their respective rights."

Court's Opinion  
and Decree.

Susan A. E. Marriott in her answer to the bill says she is not all to pay said four hundred dollars and is not willing to take said real estate at said valuation "but she is willing for a decree to be passed as prayed for the sale of said real estate." On the 14th of December A. D. 1887, a decree was passed that the property be sold, "and that the question of the division or distribution of the proceeds of sale be reserved for the future order of the Court" The property has been sold by the trustee Lewis O. Wharf, for the sum of seven hundred and ninety one dollars (\$791-) and the fund is now in the hands of the trustee, who, by his petition, asks this Court to adjudicate and determine how the proceeds of the sale shall be distributed, and that an audit of the same be made. This necessitates a construction of the Will and a decision by the Court, as to whether the children of John M. Friday take thereunder the sum of four hundred dollars (\$400.) or only one half of the net proceeds of said sale. - John M. Friday, (who died before his mother, leaving two children) and Susan Ann E. Marriott, were the only children of the Testatrix. This House and Lot was devised to the daughter "upon condition" that she pay to the children of her brother, John M. four hundred dollars. It is evident from the language of the will, the testatrix intended to give, and did in effect give, to the children of John M. an interest in the house and lot to the amount or value of four hundred dollars - This interest in the House and Lot therefore, a charge upon the same, and if not paid by the devisee or donee as the Will provides, may be made out of the property of which, it is responsible - Where a party devises his estate to a person upon condition, or request, that he pay a certain sum of money to another, or furnish him a home, or a comfortable support, such