

No. 5593 Equity

"After all my just debts and funeral Expenses are paid, I give devise and bequeath all my estate, real personal and mixed and wherever situated to my dear wife Catharine Ordeman."

"In case my said wife should die before I do, I then will and direct that all my property, real and personal of which I shall die seized and possessed, except as hereinafter excepted and otherwise disposed of, shall be sold by my Executors or the survivors of them and the proceeds divided as follows " &c. &c."

Then follow his directions as to how the proceeds shall be divided among his children, in the event of his wife dying first, the last of which says "I will and direct, that my son Daniel J. Ordeman shall have my interest in the property situated on the corner of Patrick and Market streets, in Frederick City, described in a deed to me from John E. Price and wife, at the sum of six thousand dollars being the amount paid for the same by me and he shall have five years after my death to pay for the same."

The will of the wife in the first clause gives all her estate absolutely to her husband Herman D. Ordeman, next it provides, in the event of her husband dying before her, just as in the husband's will. Then follows the disposition of the proceeds of the sale of her property, substantially as in her husband's will, except there is no mention or devise of the corner property to Daniel J. Ordeman.

Both wills were made on the 30th day of September A.D. 1852. and witnessed by the same parties.

For all practical purposes, these wills are identical except as to the devise of the corner property, which is in the husband's will and not in the wife's.

The real question is, does Daniel J. Ordeman take the corner property under his father's will, or must he take only the one sixth under the will of his mother. Herman D. Ordeman died before his wife. He having died first, the Court is of the opinion, there can be no doubt that Mrs. Ordeman took under her husband's will the whole of his estate, absolutely and in fee. This gave her full power to dispose of it as she might think proper. Under the second clause of Mr. Ordeman's will, the distribution among his children as directed by the father could only take effect on the contingency of the death of Mrs. Ordeman before her husband. As, however, having died first, all after the second clause of his will failed to take effect (the provisions in favor of Daniel J. as well as those to the other children) and there can, therefore, be no repugnancy between the first and the last clauses.

The exception contained in the second clause, meant that all his property should be sold, except the corner property devised to Daniel J. Ordeman which he was to take as so much money (six thousand dollars), in the distribution, if it should take place under his will. But if he died before his wife, then there was to be no distribution under his will and she took the whole estate. Mrs. Ordeman, evidently, understood that she took her husband's whole estate, ~~devised~~ in her will, she says, "Whereas my husband Herman D. Ordeman has executed his last will and testament, whereby he has bequeathed and devised his property, to me, now in case my said