

would be for their advantage to sell the property, dividing the proceeds according to the rule of the Court, when they would have taken a very different view of the matter, if the proceeds were to be distributed according to another rule, of which, in view of the established law of this Court, they could not possibly have had the slightest conception. And the result of the various accounts stated by the Auditor in this case, showing how seriously and injuriously their rights will be affected, if the rule is departed from, may well create a doubt whether, if they could have anticipated any such course, they would have asked for a sale.

It has been observed, that though this Court may possess the power to change prospectively the rule regulating the proportions in which the proceeds of property sold under its authority shall be distributed between the dowress and heir-at-law, or between the holder of the life estate and those entitled in remainder, its authority to make such alteration with regard to an actually depending case, when it may well be supposed the parties have had the rule in contemplation, is liable to very grave doubts. The case of *Wall vs. Wall*, 2 H. & G., 79, is well calculated to confirm these doubts, it having been there decided that the Courts have no dispensing power over their rules and long-established practice, and that a party to whose prejudice an innovation upon the rule of the Court is made, has a right to seek redress in the Appellate Court.

I am, therefore, of opinion, that the first exception of the Insurance Company cannot be maintained, and that the rule of the Court applies to and must govern this cause.

And as it is thought the distribution must be made in conformity with the rule, and the rule has no reference to the case of a healthy person, it follows that some abatement must be made on account of the delicate health of Mrs. Mary F. Abercrombie, the *cestui que vie*. This, it appears to me, is as imperatively required by the rule as the ratio of distribution prescribed by it; and hence I think the second exception of the Insurance Company is not well taken.

The Auditor, in his account B, has added five years to the