

There are, moreover, in this case, circumstances which in my judgment strongly repel the claim set up by the complainants. By the terms of the instrument under which they claim, the sum or value of \$20,000 was not to be set apart for the complainant, Mary, in the event of her mother leaving issue other than herself, unless one equal child's share should exceed or be equal to that sum. It was not, therefore, an absolute and unconditional gift of the sum of \$20,000, for in case the mother should have other issue living beside her said daughter Mary, and the said sum should exceed a child's share, then Mary was not to have that amount, but only one equal child's share. The mother, who executed the articles in contemplation of her marriage with the defendant, Donnell, which took place immediately thereafter, did leave other issue, and hence it became necessary, before setting apart the \$20,000 for her daughter Mary, to ascertain whether the sum was more or less than a child's share. But this could not be done until the condition of her estate was ascertained, as preliminary to which the estate of her first husband was to be divided. It certainly would have been impossible, immediately upon the death of the mother, to have set apart \$20,000 of her estate for the use of her daughter, the complainant, Mary, because it could not then be known whether that sum would exceed or fall short of a child's share.

There is, moreover, another ground, apparent upon the face of the instrument, from which the inference is strong, if not irresistible, that the mother did not and could not have intended that in case she died in the minority of her daughter, that this portion of her estate should be immediately set apart for her use. It will be observed that the property so directed to be set apart was "to be ascertained and decided in writing, and upon oath by three persons, or a majority of them, to be appointed by the said trustee, the *said Mary*, or those who may claim under her, and the said John S. Donnell respectively." The complainant, Mary, who was an infant at the date of the marriage articles, and at the period of her mother's death, was to appoint one of the persons who were to ascertain