

children might be born to him, and has, upon the face of the instrument, made provision for only such as were living at the date of the will, it is impossible to supply the defect, and give such afterborn child any provision, notwithstanding the anxiety of the court to do so. 1 *Roper on Legacies*, 146, 3 *ves.*, 611.

In this case, the testator has described the children by name, among whom the estate was to be divided upon the happening of either contingency upon which the estate to his widow was to determine; and, it is impossible, therefore, to bring this posthumous son within the description. He must, therefore, be excluded from the distribution.

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[As to the second question, the Chancellor said:]

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These creditors of Mrs. Elizabeth Hall, rest their right to be paid their several claims out of the proceeds of her real estate, upon the ground, that by the marriage contract between her and her husband, Hall, her estate was settled to her separate use; and there can be no doubt that a *feme covert*, with respect to her separate property, will be regarded in a court of equity, to some extent at least, as a *feme sole*, and may dispose of it without the assent of her trustee, unless she is specially restrained by the instrument by which she acquires the separate estate. Eminent judges have differed, it is true, with regard to the precise limits of this power. Some insisting, that the mode of disposition pointed out in the instrument (and none other) must be pursued; whilst others have held, that even though a particular mode is specifically pointed out, any other may be adopted, unless the instrument itself restrains the wife to the particular mode. *Methodist Church vs. Jaques*, 3 *Johns. Ch. Rep.*, 77; *Jaques vs. Methodist Church*, 17 *Johns. Rep.*, 548.

As, however, in this case no particular mode of disposing of the property settled upon Mrs. Hall is pointed out, but she is, by the instrument, left at liberty to dispose of it as if she was a *feme sole*, there is no necessity for expressing any opinion upon the point in regard to which the Court of Errors and the Chancery Court of New York appear to have differed.