

Case.

General Philip Van Cortlandt deceased by his Will dated Ninth day of March in the year one thousand eight hundred and twenty four, among other dispositions of his property did devise to his Nephew Pierre C. Van Wyck his heirs and assigns his part of the Mills South of Croton River, and the House and land in possession of John F. Hollman: And did also devise his part of the land given to him by his deceased Father's Will situate South of Croton River and South and East of John F. Hollman to his ^{Brother} Pierre and his Sisters Catharine, Cornelia and Ann their heirs and assigns: And did ~~thereby~~ ^{in a separate instrument} his ~~Codicil~~ after reciting that he had thus far arranged and disposed of the Estate which he derived from his Grandfather and Father "proceeds to dispose of what it had pleased his heavenly Father to bless him with in addition, and devised all the residue of his real and personal estate except such parts thereof as he might afterwards designate and dispose of by a Codicil to his Nephew Philip S. Van Wyck his heirs and assigns," charged with the payment of all the Testator's just debts not before provided for in his Will.

By a Codicil bearing date the eighteenth day of January in the year one thousand eight hundred and thirty one, the Testator revokes the above mentioned devise to Pierre C. Van Wyck; and also the aforesaid devise to his Brothers and Sisters. —

Upon the foregoing Case the following questions arise. —

1. To whom and how the property devised to Pierre C. Van Wyck descends in consequence of the revocation of that devise, without any other disposition having been made thereof by the Testator? —
2. To whom and how the property devised by

the Testator to his Brother and Sisters, situate South of Croton River and South and East of John F. Hollman descends, in consequence of the revocation of the last mentioned devise, without any other disposition having been made by the Testator of the devised premises? —

Ans. to 1. Quest: In consequence of the revocation of the devise to Pierre C. Van Wyck without any other disposition having been made by the Testator of the devised premises, those premises descend by operation of Law to the Testators Brother and Sisters, and the children & grand children if any of such of them as may be deceased: But in the latter case the children & grand children collectively take only the share which the Parent would have taken solely, if living. —

Ans. to 2.^d Quest: The revocation of the devise to the Testators Brother and Sisters, without any other disposition being made of the devised premises by the Testator, will have the same effect, and produce the same result, as in the case of the devise to Pierre C. Van Wyck. — But here another question arises, growing out of the residuary devise to Philip G. Van Wyck, to wit, whether the Testators lands situate South of Croton River, which he had purchased from his Brother and Sisters, do not pass by the last mentioned devise, to Philip G. Van Wyck?

This being property not derived by the Testator from his Grandfather or Father, it may be said, falls within the scope of the residuary devise to Philip G. Van Wyck. But by adverting to the revocation clause in the Codicil, it seems that the Testator considered all his lands on the South side of Croton River (including what he had purchased from his Brother and Sisters) as included in the devise to them. If so his intention thus declared was to exclude it out of the residuary devise to Van Wyck. — This circumstance and the Testator's intention as expressed in the Codicil

Motive avowed in the Codicil, for the revocation of
the devise to his Brother and Sisters are I apprehend
sufficient to rebut a construction of the residuary devise
so as to extend it to the property purchased by the
Testator from his Brother & Sisters. —

Albany December 23^d 1831. —

Wm. Van Vleet

Abraham Van Vleet
Opinion respecting
the wild ~~bird~~ of
Chilip Van Cortlandt
