

Squire Diggs of Prince George's County, left a widow, only one
child (Mrs. Lee) at the time of his death had several children

In his will he makes provision for his widow, gives some small legacies
to some of his grandchildren, bequeaths to his daughter some property
and also considerable part of his property to his son in law and daughter.

~~As the eldest of Mrs. Lee Squire, D. Lee he left the most of his estate~~
and in case he died under age & unmarried, then he leaves the estate, which
he had given to S. J. D. Lee, to Mrs. Lee, in order that she may be the better
enabled to provide for her other children. Squire, D. Lee died unmarried
and under age, Mrs. Lee at the time that her father executed his will was
married woman - She survived her before named son and is since dead
leaving her husband, who is now also dead. (It is asked what interest
the other children had in the property devised before stated.)

It is laid down as the rule of law that whenever any person gives
property, and points out the object, the property and the way in which it
shall go, that does create a trust, ~~and~~ unless he shows clearly, that
his desire expressed, is to be controlled by the party, and that he shall
have an option to defeat it. Again "If the Testator shows a desire that
a thing shall be done, unless there are plain express words or necessary
implication that he does not mean to take away the discretion, but intends
to have it to be defeated, the party shall be considered as acting under a trust."

It would be difficult to imagine with what view, the words "the said Mrs.
Lee" could have been introduced into the will of Mr. Diggs if his intention was that
his daughter should have the entire & exclusive interest in the property then left
or have an option to defeat the provision intended to be made for her children.
Her children were the persons to be benefited in their clause. It is not suggested
that she was personally to derive any benefit from it -