other property was given, some of it to her separately, and the rest to her jointly with her husband, but here the estate is devised, not that she may have the power of disposing of it, but expressly, & solely that she may be better able to provide for her children. If the device had been to a stranger "in order that he may be better able to provide for the children of Mrs. Lee" I presume it would not be questioned that the device would have been in trust for their exclusive benefit. And can the circumstance, that the person, named is their mother, alter the case? If she had been a female Sole or if the device had been to their father - instead of the mother then it might have been contended with greater appearance of reason - But here the person named is a married woman, the property given personal, as well as real, and if this was a device to herself absolutely, then it must have been the Testator's intent to give the whole of the personal property absolutely & the real estate for her life to the husband, "in order that the wife might be better enabled to provide for the children.

It has been asked, whether if the Testator had said that he gave the property to Mrs. Lee in order to educate her children, she would have been bound to spend the whole of it in the education of the children? Certainly not, and I presume it is equally certain that to what remained after defraying the expences of their education, she would have had no title" It is a general rule that where lands are devised for a particular purpose, what remains after such purpose is satisfied, shall result to the heirs at law of the testator (7 Bac. Ab. 144) It is hardly the practice so that if lands be devised to executors in order that they may be better enabled to pay debts & legacies, the executors are entitled to the surplus.

I apprehend that it was obviously the intent of the testator that the children shd. have the property, and their mother not being authorized to deprive them of it, or of any part of it, the expressions in the will are sufficient to create a trust in their favor.

In this case it is not "the earnest desire" nor "the recommendation," nor "the dying request" of the Testator, with which a compliance is required, but it is his will to place the property in the hands of his daughter, not to enable her to dispose of it from the children, but to provision for their children. It is a bequest for their benefit: but nothing is said from which it can be collected, or inferred that the testator in the clause of the will was making any provision for the daughter. This, as the testator, seemed to suppose was done in other parts of the will.

It is true this intent might have been expressed differently, and the reason which induced the Td. to leave the property in this way, and not give it immediately to his grand children, it may not be easy to conjecture. But if he intended to give the estate to his daughter why delay in the words before recited? In other bequests, he does not say that it was in order that she shd. provide for her children, and they could not have been introduced merely to inform her that if she got this estate in addition to what he had elsewhere given her, she would be better able to provide for her children, than she wd. be without it. Such a clause was never introduced into a will for such a purpose, and such words ought never to receive a construction which would make the bequest mean that her husband should have a considerable part of the property thus disposed of.

signed A. Callhoun

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