In giving the residue to those children, he follows the same bent of will & affection, which had first destined it for their eldest brother. So it may be concluded, he had in his mind a scheme, as it were, of distributive justice; suggested by a provident & parental regard to the welfare & advancement of both generations of his progeny. 2dly As to the relation of the devisor to the devisee; it certainly furnishes the most specious argument agt. the trust: in asmuch as it might seem, at first sight, somewhat unnatural to devise a large estate to an only daughter in such terms as to deprive her of all beneficial interest in it. This objection is answered, very satisfactorily to my mind, in three words: in the first place, a devise to a parent, in trust to make a provision for children, is essentially a beneficial interest to the parent; with whom the desire of accumulation is, or should be subsidiary to the paramount duty of providing for the maintenance education & advancement in life of one's children: then how can it be said, when the benevolence of the testator relieves the parent in the whole or in part, from this most responsible & onerous charge, that the parent is not also the object of benevolence, though nominally appointed to the office of a mere trustee? in the next place the Testator has not subjected all his estate to the trust, but has made an independent provision for his daughter & her husband: and lastly the relation of grandfather & grandchild naturally raises the presumption that he intended to place himself in loco parentis, towards the presumed ~~trustee~~ cestui que trusts, and counterbalances his relation to the presumed Trustee: the intent of the Testator to place himself in loco parentis towards the object of his benevolence, is often inferred from such mere consanguinity, with slighter indications of parental care, than are found in this case, and gives a very different effect to a devise from what it wd. have had, though conceived in the same terms by a stranger: as in the case of a legacy to ~~[illegible]~~ an infant, payable on arriving at full age; — which in the one case may carry with it interest from the death of the Testator; in the other from the time only of becoming due. 3dly As to extrinsic evidence it must be conceded that it preponderates entirely in favor of the trust: for, in so far as the question can be determined by extrinsic circumstances, the explicit admissions of Gov. Lee in the two instances of the brouillon of an intended will found among his papers; and of his obligation to account for a certain Asset put into his hands by the executor of P. Digges, as proved by Mrs. Digges of Melleswood, are decisive.

2. If the presumed Trust shd. be overruled; then I think, the devise must be construed as for the separate ~~maintenance~~ use of Mrs. Lee, entirely independant of her husband. Setting aside the idea of a trust for her children; the declared intent of the testator, to enable her to provide for her children — to which, surely some operation & effect must be given — can be fulfilled in no other way, than by considering the property as at her sole disposal, by gift or otherwise, during her life; or by testamentary appointment at her death; or, if she die intestate, as transmissible directly to her children, exclusive of her husband. — Such, doubtless are the consequences which equity attaches to a devise or legacy to a married woman for her separate use: and that devise must certainly be of at least equivalent virtue, the express object of which can no otherwise be accomplished, than by allowing her the complete & exclusive jus disponendi. The want of a Trustee is supplied in Equity; where the husband, in so far as the law casts upon him the legal estate; or as he, by his own acts, assumes away control or direct, is held strictly responsible as Trustee; for his wife during her life, and for her representatives after her death: and may be restrained, if need be, from any undue exertion of the jus mariti, derogatory from his wife's separate & independant rights of property. All this is of the settled principles & practice of the equity Courts, in case of devise to a married woman, for her separate use; or at her own disposal. — or subject to her sole management &c. &c. —

I think however, the hypothesis of a trust, the preferable alternative.

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