

us say, of the exact state of the law on the subject), saying to himself, "No, I will not make it absolutely compulsory upon her to adopt such and such a course in the disposition of the property I give her, but I will give her the most solemn of all declarations, viz., a declaration in the will itself, of what my desire would be as to her disposition of it, and then if she choose to ignore my wishes I cannot help it." Many a testator would prefer not to deprive his legatee of all freedom of action, to convert him or her into a mere passive machine, but would think it a fitter exercise of his bounty to place that legatee in the position of a thinking reasoning being upon whose shoulders should rest the burden of a well-defined moral responsibility, the proper discharge of which it might well seem to the testator could not fail to prove a cogent beneficial factor in the formation or strengthening of the character of the legatee(e).

(e) Curiously enough, after writing the above, the writer came upon a passage in a reported judgment which singularly illustrates the idea under comment. It is from the judgment of Lord Justice Cotton in *In re Adams and Kensington Vestry*, 27 Ch. D. 394, and is as follows: "It may be noted that the words of the will in that case were 'I give' . . . 'all my real and personal estate' . . . 'unto and to the absolute use of my dear wife, in full confidence that she will do what is right as to the disposal thereof among my children either in her lifetime or by will after her decease' and that the decision was against the creation of a trust." Lord Justice Cotton said: "Now just let us look at it in the first instance alone, and see what we can spell out of it, and see what was expressed by the will. It seems to me perfectly clear what the testator intended. He leaves his wife his property absolutely but what was in his mind was this: 'I am the head of the family, and it is laid upon me to provide properly for the members of my family—my children; my widow will succeed me when I die, and I wish to put her in the position I occupied as the person who is to provide for my children.'

"Not that he entails upon her any trust so as to bind her, but he simply says in giving her this: 'I express to her, and call to her attention the moral obligation which I myself had, and which I feel she is going to discharge.' The motive of the gift is in my opinion not a trust imposed upon her by the gift in the will. He leaves the property to her, and he knows that she will do what is right and carry out the moral obligation which he thought lay on him, and on her if she survived him, to provide for the children. But it is said the testator would be very much astonished if he found he had given his wife power to give the property away. This is a proposition which I should express in a different way. He would be very much surprised if the wife, to whom he had left his property absolutely, should so act as not to provide for the children, that is to say not to do what is right. That is a very different thing. He would have said: 'I expected that she would do what was right, and therefore, I left it to her absolutely. I find she has not done what I think is right, but I cannot help it. I am