

PROMISE TO MAKE A WILL.

by Stephen, J., in *Alderson v. Maddison*. Thus in *McKay v. McKay*, 15 Gr. 371, (1868), where the plaintiff rested his case on a verbal promise to give land to him, Mowat, V.C., says, p. 372:—"A mere intention, though expressed, as to a future disposition of a man's property, creates no legal obligation upon him to carry out that intention; and until the intended gift is made he may change his mind respecting it. But it is contended that there was more than an intention; that there was an agreement, and an agreement followed by possession." Again in *Fitzgerald v. Fitzgerald*, 20 Gr. 410, (1873), in which Spragge, C., discusses *Hammersley v. De Biel*, *Jordan v. Money*, *Loffus v. Maw*, and *Maunsell v. Hedges*, he says:—"It cannot, I think, be held to be the law of this Court that it will aid a party only in cases where the representation is in regard to existing facts; though that seems to have been the opinion of the majority of the Law Lords in *Jordan v. Money*. The case seems to have gone off upon another point . . . On the other hand there may be a mere representation of intention. If such a representation be acted upon, it is acted upon in the expectation only of the continued good will of the party expressing such intention." He then quotes with approval, as does Stephens, J., in *Alderson v. Maddison*, the words of Lord Cranworth in *Maunsell v. Hedges*, where he says:—"A representation may be so made as to constitute the ground of a contract. But is it so here? Where a person makes a representation of what he says he has done, or of some independent fact, and makes that representation under circumstances which he must know will be laid before other persons who are to act on the faith of his representations being true, and who do act upon it, equity will bind him by such representation, treating it as a contract." And adds Spragge, C.:—"This I take to be the law of this Court. If a party engages to do a thing upon the faith of which another to whom it is communicated acts, it is treated as a contract, and is in fact a contract bind-

ing upon the party making it." And referring to the case before him, he says:—"The question then in this case I take to be, whether there was on the part of M. F., the father, an inducement held out to his son, T., amounting to an engagement, that if he would leave Brampton, where he was then residing, and remove with his family to the place where he, the father, was living, he would, by his will, leave to him the north halves of the lots." So in *Orr v. Orr*, 21 Gr., at p. 445. Blake, V.C., after referring to *Jordan v. Money*, *Maunsell v. White*, *Hammersley v. De Biel*, *Bold v. Hutchinson*, 3 Sm. and G. 407, and *Kay v. Crook*, 5 De. G. M. and G. 558, says:—"The deduction from these cases seems to be that where the representation is not of an existing fact, but of a mere intention, or where a promisor will not bind himself by a contract, but gives the other party to understand that he must rely solely on his honour for the fulfilment of his promise, the Court will not enforce the performance of the representation or promise. A representation which amounts to a mere expression of intention must be distinguished from a representation which amounts to an engagement." In accordance with this is also *Black v. Black*, 2 Er. and A. 419.

In such cases, therefore, the question would appear to be (1) whether there has been such an expression of intention as amounts to a contract; (2) whether, if so, and if the intention expressed relates to a future gift or devise of land, there has been such a part performance, or such a memorandum in writing as takes the case out of the Statute of Frauds. What amounts to such a part performance as will take a case of this kind out of the Statute of Frauds, opens too wide a subject to be entered on here, but it may be observed that it is the main question which was dealt with by the Court of Appeal in *Alderson v. Maddison*, when that case comes before it. As contended by counsel for the plaintiff in *Roberts v. Hall*, before the Divisional Court, there is nothing more con-