

children, Harmon, John, and Sarah Annie Greer, share and share alike . . .” Up to this point there is no want of certainty, nor is there any difficulty in gathering the meaning of the language. But then comes the following: “Subject nevertheless as to the share therein of my son Harmon, that he shall hold the same as trustee of his heirs and use the income as he may see fit, and that he shall not be accountable for the expenditure of such income, but that it shall be left entirely to his judgment and discretion.”

The difficulty is to ascertain the nature and extent of the limitation thus expressed with regard to the interest given to Harmon McAllister in the one-third share of the testator's estate.

As has been frequently said, the first duty of the Court in expounding a will is to ascertain what is the meaning of the words used by the testator, i.e., what is the meaning of that which he has actually written, not forgetting to attribute to technical terms or words of known legal import their proper legal effect, unless something is found to satisfy the mind that they were meant by the testator to be used in some other sense, and to shew what that sense is: *Roddy v. Fitzgerald*, 6 H.L.C. 823, per Lord Wensleydale, p. 876. By this means the testator's intention is got at, and it then remains to ascertain in what manner effect shall be given to the intention.

The language of the portion of the 4th clause of the will now under consideration is peculiar. It is quite plain that the testator intended to cut down or limit the estate or interest of Harmon which the earlier words of the clause would, if left unqualified, have vested in him. This object is sought to be expressed by declaring that as to the one-third share expressed in the earlier part of the clause to be given to Harmon, “he shall hold the same as trustee of his heirs.” According to this, the intention was that he was not to hold the share for himself but for others. But for the subsequent directions as to his enjoyment of the income, this might have deprived him of all beneficial interest, just as a gift or devise to A. to hold as trustee for B., without more, would leave A. without any beneficial interest. It is plain that the testator did not intend to give the estate wholly to Harmon, but to constitute him a trustee of the whole, leaving to him the enjoyment of the income until the interest of the *cestuis que trust* vested in possession. Does the nomination of Harmon's “heirs” as the *cestuis que trust* enlarge the beneficial interest intended to be given to Harmon, by operation of the rule in *Shelley's case* or otherwise?

I do not think that such is the effect. It seems to me that