

U. H. J.
Liber No. 36
Dec. 21

2. Because by the liberal Devise to Samuel Dorsey it appears that the Testator was very far from being destitute of the Feeling of Parental Affection, and if he had not even made any Provision for his Son Samuel in his Will, which I conceive would have been a Case of greater Compassion than that which the Petition represented, it would be a most extraordinary and unprecedented Proceeding to enact a particular Law for the very purpose of controuling the Will of the Owner of Property which under the prior general Legal Establishment He had an incontestable Authority to dispose of as he thought proper.

p. 731

3. Because the Motive of the Testator in annexing the Condition in order to prevent his Son's marrying the Woman described in his Will is not known and if known, (supposing the Effect of a Will ought to depend upon the Propriety of the Testators Motive) might appear to have been proper. In this State of uncertainty the possibility of a proper just Motive (and such may be imagined) affords I conceive a sufficient Reason for not controuling the Operation of the general established Law by which the Owner of Property is authorized to dispose of it by his Will not being inconsistent with the policy of the Law in such manner as he thinks fit

4.th Because as the Motive for Annexing the Condition to the Devise to Samuel Dorsey is not known, the Principle of this Act may be I conceive inferred to have been that the Will of a Parent ought to be controuled by a particular subsequent Legislative Act if the Majority of the Legislators in their respective Branches suspect the Motive of the Testator to have been such, as they imagine would not have influenced their Conduct in a similar Situation and that too supposed upon Conjecture only—a Principle which I conceive if maintained with consistency by future Legislators may be productive of great inconvenience.

5.th Because the Reasoning from the Circumstances that the Devises in the Will of Caleb Dorsey have joined in the Petition for the Act of Assembly, is, I conceive of little weight inasmuch as upon a Breach of the Condition annexed to the Devise to Samuel the immediate Limitation is to Edward Dorsey who is an Infant, of the Real Estate in Tail, and of the personal Estate absolutely: for the further Limitation of the Personal Estate upon the Death of Edward Dorsey the Infant without Heirs of his Body, is I conceive void and the other Devises in respect of the Limitation over to them of the real Estate upon the Death of Edward without Issue may transfer their Interest to Samuel without the aid of the Legislature and Edward Dorsey when of Age would also have it in his Power to relinquish the Benefit of the Condition in favor of Samuel; but the Act of Assembly barring the Limitation to Edward deprives the Infant of the Provision which the general Law hath Established for the Protection of Infancy.

p. 732

D. Dulany.