

share of his property, was in consequence of, and founded upon an express promise made to him by the plaintiff, (at a time when it is admitted on all hands she was in a perfectly sound state of mind,) that she would give all her property after her death to their daughter, this defendant, in fee simple; and in full confidence, that this promise so made to him for the benefit of Charlotte would be faithfully observed and kept, he made his will, and in about one month afterwards died.

Some time after the death of John C. Owings, his son John, being sick and in a rapidly declining state of health, declared his intention to devise his estate to his sister this defendant, when his mother, the plaintiff, dissuaded him from doing so, and induced him to give it to his sister Cassandra, promising him, that if he would do so, she the plaintiff would provide for the defendant. Upon the faith of which promise he made his will, devised his estate to his sister Cassandra, and died. There is nothing said in the pleadings about this devise by John to Cassandra; or as to John's inducement for making it. But it may be fairly inferred, that the plaintiff was actuated by a strong feeling of equity towards all her children; and knowing, that she had promised to give her estate to the defendant, she wished John's to take another direction, and be given to Cassandra, in order to provide for her; and also to prevent the defendant from obtaining a double portion. Taken in this point of view, I have deemed it a matter which might be noticed as a corroboration of the proofs in relation **400** * to the promise made by the plaintiff to her late husband for the benefit of the defendant.

There can be no doubt, that the plaintiff always admitted she had intended to give a life estate, at least, in her property to the defendant. Much testimony has been collected in relation to what the plaintiff had said since the death of her husband, as to the manner in which she intended to provide for the defendant. But the greater part of these declarations are proved to have been made subsequently to that period of time when her mental decay had commenced; and therefore, so far as they may have been introduced as evidence of the affirmance of an equivocal or voidable promise, deserve little attention. But it is of no kind of importance to ascertain what were, at any time, the limits of the plaintiff's intended bounty to the defendant; because, as to that her will is the law. Therefore, all the testimony which relates to her declarations of benevolent intentions, may be at once put out of the case.

The question here is, not what the plaintiff at any time kindly intended; but whether she had made such a promise as is alleged, and what have been her admissions and acknowledgments of that promise, if any. As to which, it appears, that when the plaintiff was called on, at a time about the commencement of her intellec-