

the will. The testator evidently intended to dispose of this stock. He speaks of stocks which he had given his son, and expresses his will that they and all other property and claims shall be held in trust by Captain Mayo for the use of his son. He treats this bank stock as subject to his will, and the dividends upon it then due or thereafter to become due, must pass with it. Though the will is different with regard to real estate, it is well settled that a will operates upon whatever personal estate the testator dies possessed of, whether acquired before or after the execution of the instrument. 1 *Williams on Excers.*, 6 ; 4 *McCord*, 39 ; and as the testator deals with this stock as his own, and the son, by his election, has consented that he will take it under the will, the dividends, though they may have accrued after the date of the instrument, must be considered as passing under it.

In the provisions of this will, so far as the son is concerned, there is a marked anxiety to provide for him a comfortable support during his life, to guard him against imposition, and a willingness to gratify him in any natural desire he may feel to select among those persons who stand towards him in the nearest and dearest relation, the individual or individuals upon whom he may bestow in the way pointed out, the bounty acquired by him under his father's will. This purpose, it seems to me, would be clearly frustrated by a construction which would place one portion of the property in trust, and leave another subject to a different disposition.

3d. The third question submitted is, whether the trust created by the will takes effect prior to the death of the widow of the testator, the tenant for life, or in other words, whether the election of William G. Bland to take under the will of his father operates immediately, or shall be suspended until the death of his mother ?

My impression is, that it cannot be so suspended, and that all the arrangements of the will would be disturbed by a contrary decision. It is admitted by the solicitors on both sides, that an account must be taken, and an order to that effect will be passed, and Captain Isaac Mayo will be appointed trustee to