

more of his children by his wife Kitty, who shall have the fee simple in all the aforesaid lands: my will being, that the fee should pass to all or any one of them in the discretion of their father; creating this uncertainty of designation merely as a motive to good conduct in them all."

With regard to this clause it is sufficiently clear, that William had an estate for life given to him, with remainder of an interest for life to his then wife Kitty, in case she should survive him. The power given to the devisee William to designate which of his children should take after himself and their mother, cannot, it is true, be considered as enlarging his estate in any respect whatever. It is a mere power to specify the course which the fee simple should take after his death and nothing more. But then, when contemplated with reference to the persons among whom the selection was to be made, it is as to them, almost the same as if the holder of the power had been actually vested with an absolute estate in fee simple; because, as to each of those persons, the power, in the full scope of its exercise, ranges without control from nothing to the whole. And it is allowed to be arbitrarily exercised, because * of its being committed to the hands of a parent, as a

619

motive to good behavior from his children.

The three following clauses of this same will must be considered together; they are in these words: "I give and bequeath to my son-in-law, William Bowie, of Walter, one-third of my negroes. The whole of my negroes to be valued by two impartial men, not related to either side, and divided into three classes, as equal in value, considering age and sex, as can be; and then each class to be distributed by lot. The first number giving the first choice; the second number giving the second choice; and the third number giving the third choice. But in case William Bowie, of Walter, should set up a claim to any of the negroes, at either place, more than then at the Quarter, he and his wife to be barred from any right or title to my real estate. Also, one-third of my stock of all sorts, to be valued, classed, and distributed as the negroes aforesaid; likewise all my household and kitchen furniture, except what I bequeath hereafter, I give to my said son-in-law, William Bowie, of Walter."

"I give and bequeath to my grandson, William D. Bowie, one-third of my negroes, and one-third of my stock of all sorts; all my plate; one eight-day clock; two large looking-glasses; two feather beds and their furniture."

"I give and bequeath the other third of my negroes and stock of all sorts to the rest of the children of William Bowie, of Walter, by his present wife Kitty, as they arrive at age, or marry, share and share alike. I mean the age of sixteen for girls."

From the terms in which these donations are made it is perfectly clear, that the legatee of neither class was to derive any advantage