And I hereby constitute and appoint my said wife,Lizzie R.McHagen,to be the Executrix of this my last Will and Testament,without bond except such as may be necesaary to cover the cos t of administration.

And I hereby name constitute and appoint Frank L.Stoner,as attorney to assist and advise my said wife,in the administration of my said estate and the management of said property and estate.

IN TESTIMONY WHEREOF I have hereunto affixed my hand and seal on this 5th day of August,A.D.1912.

Charles McHagan (seal)

Signed,sealed,published and declared by the above named Testator and as for his last Will and Testament,who at his request,in his presence and in the presence of each other we have signed our names hereto as subscribing witnesses. ,

Leo Weinberg
Frank L.Stoner.

(Filed May 27,1925)

OPINION OF COURT.

Lizzie R.McHaggan " No.11,139 Equity.
" Vs. " In the Circuit Court
" Charles Hagan " for Frederick County.
"

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IN EQUITY.

ORDER AND OPINION.

The bill of complaint in this case was filed to obtain a legal construction of the last will and testament of Charles McHagan,late of Frederick County,deceased. The clause to be construed is as follows;

> I will,devise and bequeath all of my property and estate of every kind and description and wheresoever situate,to my wife,Lizzie R.McHagan,with full power to handle and dispose of the whole or any portion of my estate for her comforts and pleasure, at her will and pleasure; The whole or such portion of my said property and estate as may remain at the death of my said wife,I will,devise and bequeath to my nephews and nieces,share and share alike,the child or children of any deceased nephew or niece to take the portion the parent whld have taken,if living."

The bill was filed by the wife,named in the copy of the will filed with the bill of complaint Lizzie McHagan,but as a matter of fact the name,as I knew the parties well,should be Lizzie R Hagan. Thee decedent's name was Charles McHagah,but in some manner the "Mc" was coupled up with the surname until it now reads "McHagan" improperly. The nephews and nieces named Hagan filed answers of a similar tenor,that is to say,they consent to the passage of such decree in the case as may bee consistent with the law.

No attorney appears in the case for the defendants,and no authorities were submitted to the Court by either side for its guidance in reaching a conclusion in regard to the proper interpretation of the language of the will as quoted above. I have,therefore,had to spend considerable time in finding cases that are analogous. Counsel for the plaintiff suggested that the case was similar to that in No.9657 Equity,where I was called upon to construe the will of Gustavus W.Shafer,deceased,but that case differs from this in that the devise was for life of the devisee,whereas here the devise is an absolute one in the first part of theclause quoted. The Courts have uniformly held that where there is a devise of a life estate wuth precatory words for the benefit of some one in remainder,but the devise over will be upheld,whereas in the case of a gift in fee simple the gift over of the residue that remains at the death of the first taker,is generally void. In a note to the case of Roberts v.Roberts,102 Md.131, found in I L.R.A. (N.S.) 782 ,it is said;

> "Tn Roberts the Court applied the common-law rune that the devise or bequest for and during the term of the natural life of the devisee or legatee,with limitation over, conveys a life estate only,notwithstanding such person has the power to use and dispose of the estate during his life,and the limitation over relates only to what may remain upon his death."