"The testator,in the beginning of the language used,given her an absolute estate; but by subquent expressions it is reduced to a trust estate for the joint uses of herself and husband,during their joint lives,and for the use of the survivor during life,and then for their children. Immediate incestment is required by the injunction of the testator,and there is no power given to use or diminish the principal. The testator clearly intended the preservation of the estate for the benefit of their children,when the life estates were terminated. Mrs. McClernan,therefore,takes the property given her as trustee for herself for life and then for her children."

In the case of Howard v.Carusi,supra,Mr. Justice Woods,speaking for the Court,said;

"But even if the will had contained an express request that Samuel should convey to the complainant so much of the estate if he did not dispose of it by sale or devise,there would be no trust,for the will,as we have seen,gives Samuel Carusi the abosolute power of disposal."

The rule is thus stated by Chancelor Kent;

"If there be annabsolute power of disposition given by the will to the first taker,as if an estate be devised to A.in fee,and if he dies possessed of the property without lawful issue,the remainder over,the property which he,dying without heirs,shall leave,or without selling or devising the same,in all such cases the remainder over is void because of his preceding fee; and it is void by way of executory devise,because the limitation is inconsistent with the abosolute estate expressly given or necessarily implied by the will." 4 Kent Com.271.

So that I gather from the examination of the decided cases and the textbooks that whether the words be precatory or directory,that no remainder or executory devise or limitation over is created where the first taker has an absolute estate with power of disposal at his or her own will and pleasure. There must be a trust created either in express terms or by implication. In view of Code Art. 93,Sec. 366,there can be no question but that the wife of the testator in this case took an absolute simple title to the property mentioned in the bill of complaint,and I am of opinion that the second part of the item quoted above is void,first, because it is inconsistent with the absolute estate devised by the first part of the clause, and second,because of the uncertainty as to the subject matter of the devise over the nephews and nieces,that is,as to what would remain of the estate.

In the celebrated case of Morice v.Bishop of Derham,10 Ves. 522,Lord Eldon held that "the indefinite nature and quantum of the subject" is always acknowledged by the Courts as evidence that the mind of the testator was not to create a trust." In this case the intention to create a trust is not sufficiently expressed nor is the subject matter of the devise over definite and certain,but wholly indefinite and uncertain,so that in my opinion the widow of Charles McCauley Hagan takes the property mentioned in the bill of complaint absolutely and in fee simple,and may sell it and dispose of it as she desires without loe or hinderance from any subsequent words in the will.

It is thereupon this 20th day of November,1925,by the Circuit Court for Frederick County, sitting as a Court of Equity,and by authority thereof,adjudged,ordered and decreed that by the true construction of the last will and testament of Charles Mc.Hagan,the widow of the said testator,Lizzie R.Hagan,erroneously called Lizzie R.McHagan,is entitled to the abosolute fee simple ownership of the dwelling house located on West Fourth Street,mentioned in the bill of complaint,and that she may sell and dispose of the same without the necessity of putting the proceeds in trust or of keeping them separate and distinct or earmarked in any way. The costs of this proceeding to be paid by the plaintiff.

(Filed November 20,1925) Glenn H.Worthington

OPINION AND DECREE

Lizzie R.Mc.Hagan	"	No.11,139 Equity.
vs.	"	In the Circuit Court
	"	
Charles Hagan,et al.	"	for Frederick County.
	"	
	"	

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OPINION AND DECREE.

Charles McCauley Hagan,a resident of Frederick County,died testate about the year 1912, leaving him surviving his widow and eleven nephews and nieces,five of whom are children of