

ties in or upon which the same shall be invested as aforesaid, unto my grandson John Clerk, for his own absolute use.”

The testatrix in the same will had given a legacy to her granddaughter Eleanor Lee, who was a native, and then a resident of England, and a subject of the British king; and as such incapable of taking real estate in Maryland and Virginia by descent, from several relatives from whom, but for her incapacity, in respect of her alienage, she expected and might obtain a large amount of property in common with her sisters who were citizens of the United States. In reference to this state of things, and to make some indemnity to her granddaughter Eleanor Lee, for any loss she might thus sustain, the testatrix Ann Russell added the following codicil to her will:

“Understanding that my granddaughters in America, viz: Mrs. Sarah Contee, Miss Ann Lee, and Mrs. Margaret Russell Clerk, intended to contest their sister Eleanor Lee’s right to her share of her grandfather’s, grandmother’s, father’s and mother’s lands and personal estate in Maryland and Virginia, I hope and trust they are not so unnatural; if it prove so, I will and desire, that every shilling I have left them in my said will, be paid my dear Eleanor Lee, added to the legacy I have left her in my will, as a compensation for what she loses by their cruelty; but if they do not contest * it, and my dear Eleanor Lee receives an equal
272 share of all the lands and personals belonging to their grandfather, grandmother, fathers and brothers, the legacy I have left in my will to remain good.” After which, on the 31st of January, 1797, the testatrix added the following words to the codicil, “My granddaughter Eleanor Lee is now married to William Dawson, Esq. I hereby confirm the above codicil in favor of Eleanor Lee, now Dawson.”

After the death of the testatrix Ann Russell, her executors paid this legacy, given to Margaret Russell Clerk and her children, to the trustees William Dawson and Robert Clerk, by whom it was invested in the public stocks of Great Britain, in the name of Dawson and Clerk, for the purposes of the trust. After which Robert Clerk died, and Dawson became the sole surviving trustee. Some time in the year 1816, Dawson removed to the United States, and became a resident of Maryland. After which Margaret Russell Clerk, whose surname, with that of her husband and children had been changed, by an Act of the General Assembly of Maryland, to Clerklee, 1803, ch. 69, became very anxious to have the legacy given to her and her children transferred from the British funds to this country, and invested in some stock here; where, as she believed, it would be equally safe, and much more productive and convenient. Under that impression, she wrote a letter, without date, marked as the defendant’s exhibit G, to William Dawson, which letter it may be inferred from one written by her which