278 *demand itself; so in a will, a positive and unlimited prohibition to sue, would, if enforced, in most cases, operate as a total revocation, or abnegation of the devise itself; and it would be a contradiction in terms and idle, to make a donation, and in the same breath to withhold from the donee all legal means of sustaining his right to the subject bestowed upon him. Hence, where a testator, by his last will, declares that any legatee who controverts the disposition he has made of his estate shall, by so doing, forfeit his legacy; such provision is held to be *in terrorem* only; and that no such forfeiture can be incurred by contesting any disputable matter, in relation to it, in a Court of justice. *Gibbons* v. *Dawley*, 2 *Ca. Chan.* 198; *Powell* v. *Morgan*, 2 *Vern.* 90; *Lloyd* v. *Spillet*, 3 *P. Will.* 346; *Morris* v. *Burroughs*, 1 *Atk.* 404.

By the law of Virginia, real estate may be devised by a holographic will, without any attestation whatever. *Laws Virginia*, 1748, *ch.* 5, *s.* 6; 1792, *ch.* 1; *Domat Civil Law*, *pt.* 2, *b.* 3, *tit.* 1, *s.* 1; *Code Nap. s.* 970; *De Sobry* v. *De Laistre*, 2 *H. & J.* 193. Under which law, our late great leader George Washington, wrote his will altogether in his own hand-writing, without having it attested by any witnesses, by which he devised lands lying in the States of Virginia, Maryland, Pennsylvania, New York, and Kentucky, and in the territory north-west of the Ohio; and concluded by directing, that should any dispute arise, the matter should be decided by arbitrators to be chosen by the disputants; but without declaring, that the party who refused to submit to an arbitration should forfeit his right, or that the devised estate should go over to another. *Ramsay's Life Washington*, *Appendix.* This holographic will, although valid in Virginia, it is clear, was a nullity as to the real estate in Maryland, because of its not having been attested by three witnesses. Disputes did arise as to this or some other defect or ambiguity of this will; and yet it is understood to have been the opinion of the profession, that this provision directing a referenee to arbitrators, did not prevent any party from instituting a suit to establish and recover his right. But the differences among the devisees and legatees were amicably adjusted without bringing suit.

It is said, that where the bringing of a suit by the legatee is prohibited with a bequest over, as in this instance, that then the consequence of bringing suit will be a forfeiture of the legacy. Where a testator devised his estate to trustees to be sold or disposed of

279 for the payment of his debts, and to make provision for his *younger children; and then gave a legacy of £40 to his heir, upon condition, that he did not disturb the trustees. Upon a bill filed, by the trustees, to have an execution of the trust, it was held, that the heir must either join in the sale, or lose his legacy. *Webb* v. *Webb*, 1 *P. Will.* 132. This case has been sometimes cited to shew, that where there is a bequest over the legacy