

I am also of opinion that the limitation over of the two hundred and fifty dollar legacy bequeathed to Susan A. Usilton, afterwards Susan A. Taylor, is void, being after an indefinite failure of issue. The courts, it is true, incline, in respect to dispositions of personal property, to support the limitation over, and for that purpose avail themselves of slight circumstances or expressions in the will indicative of the intention of the testator; but it is believed to be settled, that even as regards bequests of personal property, the mere circumstance that the limitation over is to a person *in esse*, will not of itself be sufficient to restrict the words "dying without issue," to mean a dying without issue at the death of the first legatee.

The cases cited and commented on in *Newton vs. Griffith*, 1 *H. & G.*, 111, and the views maintained by the Court of Appeals in that case, and in the cases which have followed it, fully sustain this proposition. The case of *Biscoe vs. Biscoe*, 6 *G. & J.*, 232, leaves the principle undisturbed, though it was deemed inapplicable there, because the subject of the bequest was a negro man, "*a life in being*;" and the subsequent case of *Hatton vs. Weems*, 12 *G. & J.*, 83, shows a strong indisposition to carry the principle of *Biscoe vs. Biscoe* beyond the precise circumstances of that case, which, from the nature of the property, the subject of the bequest rendered it absolutely certain that the limitation over would take effect, if at all, during a life in being.

In the will under consideration, all the pecuniary legacies are limited over, and in the reference to each of them except that to Susan A. the bequest over is to take effect if the first legatee dies without "*leaving issue*," which word "*leaving*," when applied to bequests of personal property, is deemed sufficient to restrict the limitation over to a definite failure of issue. In the bequest to Susan A., the word "*leaving*" is omitted, the words being "in case of her death without issue" the property to go over to her sisters, and this is a circumstance well worth consideration in construing this will. My opinion, then, is, that the limitation over of the bequest to the testator's daughter, Susan A., is void, being too remote, and that it must be given to her surviving husband.