

Answers were filed by the banks and Captain Mayo, but they do not appear to be material to the questions submitted for decision, and which have been argued, in writing, by the counsel for the parties. The first of these questions relates to the supposed obligation of Mrs. Mayo and her children, to elect to hold the bank stock under the will, or declaration of trust.

Upon a deliberate and careful reading of the will, I am unable to find any provision which requires such election to be made. The will does not profess to dispose of that portion of the bank shares which, by the declaration of trust, is given to the daughter and her children, nor is there any expression of a wish on the part of the testator, that she or they shall elect to take under his will as there is with regard to the son. The presumption is very strong, not to say irresistible, that if it had been the design of the testator to put her to such election, he would have said so, when it is plain this very subject of election was present in his mind, and he was expressing an earnest wish that his son should elect to hold under the will. In the absence of any such declared wish with reference to the daughter, and there being nothing in the will from which it can be inferred that the testator intended to deal with this stock, or that portion of it which he had given to her and her children as subject to his will, I am of opinion that she and they are not required to elect.

2d. Looking to the entire will, and every clause thereof, as it is proper to do for the intention of the testator, I am of opinion, also, that the father designed that all the property which his son took under it should be held in trust for his use, and that the trust extends to and comprehends the dividends upon the bank stock, which became due after the date of the will as well as those which were declared previously.

By electing to take under the will and not under the declaration of trust, the latter instrument, so far as the son is concerned, is to be treated as a nullity. Every beneficial interest under it which William G. Bland might have otherwise claimed, not only with regard to the principal, but its fruits, is waived, and in lieu thereof he elects to take that which is given him by