WILL AND TESTAMENT—*Continued.*

certain property, including this stock, in trust for his son, and expressed a desire in the will that the son should elect to take thereunder. He also gave to his wife certain property for life, confiding to her the care and maintenance of his son, and after her death, he gave his son in addition, a life annuity of $600. The son elected to take under the will. HELD—

1st. That by this election, the declaration of trust, so far as the son is concerned, is to be treated as a nullity, and the trust under the will extends to, and comprehends, the dividends upon the stock, which became due after the date of the will, as well as those which were declared previously.

2d. That the trusts created by the will in favor of the son take effect immediately upon the death of the testator, and are not suspended until the death of the widow of the testator.

3d. The will not having disposed of the portion of the stock given to the daughter and her children, and there being no expression in the will of the testator's wish that they should take thereunder, they are not required to elect to hold the stock under the will, or the declaration of trust. *Mayo* vs. *Mayo*, 103.

3. A will operates upon whatever *personal* estate the testator dies possessed of, whether acquired before or after the execution of the instrument. *Ib.*

4. A testator confided to his wife, to whom he had given a large portion of his estate, the care and maintenance of his son, and after her death he charges upon his estate an annuity of $600 per annum, and provides that this annuity, with all the other property given to his son by his will, should be held in trust by his executor "for the use and benefit of his son during his natural life," and declared "his intention" to be, to assure to him "an ample and *independent* support," so far as the law will allow. HELD—

That the income of the trust estate was to be paid over to the son during the life of the testator's widow, and not to accumulate during that time, and form part of the principal; it was not the testator's intention to give his son, during the life of his wife, a mere indefinite claim upon her for care and maintenance. *Ib.*

5. A testator by his will, executed in 1832, in order to place his sons upon an equality with his daughters, gave to each a pecuniary legacy to be paid by his executors "by the sale of his bank or other stocks." HELD—

That this equality had reference to the state of facts existing at the date of his will, and no subsequent fluctuation in the value of the property which the testator may have previously given his children can influence this bequest, either to diminish or increase it. *Dugan* vs. *Hollins*, 139.

6. A gift of a house to one of his sons subsequently to the date of the will, is not an ademption, *pro tanto*, of the pecuniary legacy given by the