

to impute to any testator, that he intended to expose the object of his bounty to be disappointed by accident or caprice; or that he should seriously have intended to prohibit him from asking the aid of a court of justice to obtain that which he had actually given him.

In this case I find it impossible to believe, that *Ann Russell* really intended to declare, that any one of her descendants, about whom she has manifested so much impartial solicitude, should forfeit her legacy by claiming it in any form of suit; and that it should, in such case, vest in persons toward whom she entertained no such specially kind and maternal feelings; and who too, by being nominated as the executors, arbitrators, and legatees over, were so deeply interested, and had it so much in their power to provoke a suit so as to produce a forfeiture. I therefore hold, that this clause of this will, requiring all disputes to be submitted to arbitration, is to be regarded in no other light than as a strong admonition or threat intended to preserve harmony among the various objects of her bounty.

But, apart from these considerations, this clause can have no direct bearing upon the present controversy. This is not a suit against the executors of the late *Ann Russell*, or one in which the validity and operation of the will is questioned in any way whatever; on the contrary, it is founded upon an admission of the will in all respects, and claims the fulfilment of its provisions of the trustee to whom, and to a suit of this nature, requiring disputed matters to be referred to the nominated arbitrators, cannot have been intended to apply; because the testatrix has distinctly contemplated the responsibility of the trustees *Dawson* and *Clerk*, according to a regular judicial proceeding, by her express declaration, that they should only be answerable for gross negligence; and it is the alleged negligence and mismanagement of the surviving trustee which is the cause of this suit, not any dispute about the will.

I therefore conceive, that there is no foundation for this first objection, and that this suit may well be sustained notwithstanding this clause requiring certain matters therein specified to be referred to arbitration in case of any dispute.

The next preliminary objection is as to the want of parties. It is urged, that *Ann Russell Contee*, the wife of the defendant *Philip A. L. Contee*, had a direct interest in this matter; and that her legal representatives, the bill stating her to be dead, ought to have been made parties. If the interest of *Ann R. Contee* in this