

its proper execution ; but a will can only commence its operation after the death of the donor. A last will is an instrument whereby the author makes a disposition of his property, most commonly, in separate parcels, in different estates, and to a variety of persons, among whom there are, or may be, mutual or conflicting interests to a considerable extent. A will always disposes of property, which, upon the death of its owner, would otherwise, according to its nature, be carried by operation of law in different directions. The personalty, which is the primary and natural fund for the payment of debts, would be placed in the hands of an administrator, who is considered in this court as a trustee for the benefit of creditors and next of kin ; and the realty would devolve upon the heirs. The will, in most respects, follows these different kinds of property, as if it were, in fact, a separate and distinct deed of gift of each. The same solemnities necessary to constitute a valid will disposing of real estate are not required to one which disposes of nothing more than personal property, or in so far only as it disposes of personalty. A probate of such an instrument which is effectual as to personalty is by no means conclusive as to the realty ; and the tribunal before which it is directed to be brought for probate, although clothed with a limited power as to personal property has no sort of jurisdiction in relation to titles to real estates.

Hence, although a will, if it were like an ordinary deed of gift, which conveyed property to no more than one person, might with propriety be entrusted to the custody of the donee alone ; yet it is sufficiently obvious, from the various and rival interests which almost always arise among those who claim under a will, as well as between them and the representatives of the deceased as on his intestacy, that there ought to be some legal place of common deposit where it may be safely kept for the benefit of all concerned ; and that there should also be some mode of having it finally and conclusively authenticated as well in regard to the real as the personal estate.

In England it is the duty of an executor to have the will proved before the Ecclesiastical Court, either in common form, by his own oath, or by the testimony of witnesses ; in case its validity should be disputed. When it has been proved, the original is deposited in the registry, and a copy thereof is made out under the seal of the court, and delivered to the executor, with a certificate of its having been so proved, all which together is usually styled the probate. (b)