

3. So, too, a court will interfere where a trustee has *bound* his discretion, and this, without regard to the motive and intention which induced the result. It is sufficient for the court that the exercise be not with the eye single to the benefit of the appointee.

Now, the donee of a discretion may bind it in one of three ways:—

1. By corrupt motives.
2. By motives personal to himself.
3. By the highest and best motives.

And the law knows no difference as to the result,—all are equally, in technical language, “a fraud upon the power.”\*

The books contain cases as to each of these classes:—

1. By corrupt motives.

The jurisdiction of equity as to such a case was exercised more than a century ago. The Lord Sandwich whose case was referred to by Lord Eldon and Sir E. Sugden, (for the case seems to be unreported,) was no doubt the celebrated Lord Sandwich (the fourth Earl) of whom others than Walpole have told

\*The familiar leading case as to “fraud upon a power” is *Aleyn vs. Belchier*, 1 Leading Cases in Equity, \*304, decided by Lord Worthington (then Lord Keeper Henley) in 1758, and it is said by the editor to have been “decided upon the well-established principle that a person having a power *must execute it bona fide for the end designed*, otherwise the appointment, although unimpeachable in law, will be held corrupt and void in equity.” In the notes to this case many of the authorities are collected. Whatever may have been the indisposition of American courts to follow the doctrine up to that of illusory appointments, (now abolished by statute,) the principle on which it is based was never doubted in this country. In 1824 Chancellor Desaussure said, “This construction is according to a rule in equity which has long prevailed, and is of considerable extent and application. It is that where the power of electing is given to a trustee, as to the rights of a third person, the trustee is bound to exercise that power most beneficially for the *cestui que use*.” *Haynesworth vs. Cox*, Harper’s Eq. R., (L. Cases,) 119.

