

with whom he was then living." The evidence showed that James was in "a deplorable state of health," a dissolute man, with mind and body broken down by intemperance, and a hopeless lunatic, and that the Earl had this from James' own physician. He, moreover, owed £3000.

The whole of the opinion of the court, (Sir W. Page Wood, afterwards Lord Hatherley,) setting aside the appointment as "a fraud upon the power," deserves attention. Without hearing the complainants' counsel in reply, the decision was given, and was

"rested on the ground of fraud on the part of the parent; I mean not simply upon the ground of the appointments not being for the child's benefit, but upon the broad ground that the parent executed these appointments, not with any intention of benefiting the object of the power, but to secure to himself the benefit that might result from the appointments so executed. \* \* \*

I quite concede that deeds are not to be set aside for fraud on vague suspicion, and the case I have been referred to\* was that and nothing more. A trustee had said, 'I suspect some arrangement has been come to between this lady and her daughter, and I will not hand over the fund.' The answer of the Vice Chancellor was, 'let the parties who question the appointment come forward and question it. I shall not, on this vague surmise, allow the trustee to withhold a fund which has thus been appointed, merely because he says he entertains vague suspicions. Let the parties who are interested in the discussion come forward?' That is what the parties who are interested in the discussion are doing here. They are coming forward to dispute it, and the dispute is distinctly put on this ground. 'You have made this appointment of £27,000, without any intention whatever of benefiting your son. You have made it for the sole purpose of obtaining a benefit to yourself.' The case must rest on ground as high as that, and I put it as high as that. I ask, can anybody, if this case were before a jury, suppose that the defense which is made would be a satisfactory answer with reference to an appointment to a person in this imbecile condition? A lunatic who was in a weak and infirm state of health brought on by excesses. The father had been informed throughout, that the weakness and infirmity of his son's health was so occasioned, and having made due inquiries at two previous periods as to the state of his health,

\* Campbell vs. Horne, 1 Young & Collyer's Chan. R., 664.

