

face of the instrument, the power appears to have been well exercised, and the question is, whether under the circumstances it is in effect a fraud on the power. The power in question is only one form of a discretionary trust to be exercised for the benefit of certain objects, or some of them. The objects of the power are the children of the marriage; and the purpose of the settlement was to make a provision for their benefit, but at the same time to reserve to the mother such a power as would keep the children under control, and to enable her to distribute the property among them in such manner as in her opinion their respective wants and interests, and the exigencies of the case, might require. The same general principles which are applicable to discretionary trusts in general, are applicable to this particular species of discretionary trust. Unless it can be shown that the trustee having the discretion exercises the trust corruptly or improperly, or in a manner which is for the purpose, not of carrying into effect the trust, but defeating the purpose of the trust, the court will not control or interfere with the exercise of the discretion. There may be a suspicion that the trust has been exercised in a particular manner and from a certain motive, which, if it could be proved, would be held not to be a proper motive; but if it be mere suspicion—though suspicion is ground for jealous investigation, if it be mere suspicion—and matter amounting to a judicial inference or conviction from the facts, the court will not act upon it. But if, on the other hand, it can be proved to the satisfaction of the judicial mind that the power has been exercised corruptly or for a purpose which defeats instead of carrying into effect the purposes of the trust, then the court will not permit the exercise of such a power to prevail.

* * * Now it appears to me, that looking at the authorities, and in the view I have taken of the evidence, the case comes within that class of cases in which this court says there has been a fraud upon the power, inasmuch as it has been exercised in such a way as to defeat the purpose for which it was given."

"In some of the cases which have been cited, there has been a direct bargain between the donee of the power and the person in whose favor it is exercised, under which the donee of the power was himself to derive a benefit; and certainly there has been nothing of that kind in this case. In my opinion, however, it is not necessary that the appointee should be privy to the transaction, because the design to defeat the purpose for which the power was created will stand just the same whether the appointee was aware of it or not; and the case of *Wellesley vs.*