

his brother absolutely, under a verbal direction that it should be for the benefit of his illegitimate son. Chief Justice Gibson cites in his opinion a number of cases where the verbal direction was sustained against the text of the will—one, for instance, where a testator having devised his lands to a nephew, desired his heir-at-law not to disturb the nephew in possession of certain lands acquired after the execution of the will, and it was so decreed. Now if a court of equity, to prevent a fraud upon the testator's actual intention, will disregard the written text, how much more consonant to equity is it to regard the solemn act of a testator who has involved his estate in the obligation of a contract in the line of a will, and to carry out its very intent; and how can it regard the promise of the executor to follow the wishes of the testator in this respect, as *ipso facto*, a fraud upon the testator's power. 12

On what principle of sound reason, conscience, or equity can the selection of this lot by the executor be pronounced a fraud on the power, or a disappointment of the power, or as an undue and improper execution of the purpose of the testator as contained in his written will? How has the promise to the testator vitiated the selection? What provision of the will does it offend? How can we say the selection is not made with a broad and thoughtful foresight? On the contrary, it conforms both to the will and the purpose of the testator. In following the testator's own act of purchase, nothing but the clearest evidence of incapacity in the testator to select, or of folly in the selection, and of blind and unreasonable obedience in the executor, can set it aside. I am willing to concede the authority of all the cases cited for the plaintiff, including Duke of Portland's case. They may be summed up in a single view—that a chancellor will so control a trustee that he shall not disappoint the true intent and purpose of the donor, as gathered from the instrument containing the power. To execute