

& Smith, 571. Nor does it change the rule of law in regard to the agreement to pervert the trust from the original purpose for which the power was intended, whether that influence be exerted before the appointment or after it, provided that in both cases it secures the consent of the appointee to fulfil the wishes of the appointer. *Topham v. Portland*, 31 Beavan's Reports, 539, 540.

No American authority has been found which covers the case under consideration, but in *Topham v. The Duke of Portland*, reported in 5 Chan. Appeal Cases, 40, it is held that although the donor and the donee both swore that the power was not executed to carry out any agreement between them, other than those specified in the written instrument, yet that a chancellor might look beyond the oaths and see whether the presence of a moral obligation did not at the date of the appointment, and when the trustee came to act, weigh upon her mind with such force as to make her a passive instrument of the donor's intentions.

A judge or juror is forbidden to sit in a case wherein a party litigant is closely related to him by blood or marriage. He will not be permitted to purge himself of his disqualification by answering that he can, and will act wholly uninfluenced by such relationship.

Certain facts, which the wisdom of ages has recognized as influencing the judgment of mankind generally, create a conclusion of law that they will influence the judgment of each individual.

Applying the law and reasons to this case, testing the uncontradicted evidence by all those principles which I have ever been taught to believe influence the human mind, and control the actions of men, it does establish such a state of facts as would naturally and reasonably restrain and trammel the free judgment of the donee of a power. Such a general presumption cannot be removed by the honest opinion of a donee that in his particular case he is not influenced thereby. Hence I am unable to conclude