promise was given. The bill charged (5 Ch. Ap. 45), "After the execution of the deed the late Duke communicated to his children his intention that in the event of the plaintiff marrying Sir Wm. Topham the said income and annuity should be appointed, by the Duke of Portland for the time being, in such way as that one moiety should be received by Lady Harriet for her own benefit, and that the other moiety should be dealt with for the benefit of the plaintiff according to circumstances. The late Duke's children acceded to the wish so expressed, and agreed with him to carry into effect his intentions in reference thereto." It was also charged that the last appointment "was not made for the benefit of Lady Harriet, but for the purpose of carrying into effect an agreement that she had made with the donee, not to use more than one moiety, but to accumulate the other, in pursuance of which said appointments had been made, and that the donee executed the deeds, well knowing that Lady Harriet would act in conformity with such agreement."

After the late Duke's death, a marriage took place between Lady Mary and Col. Topham. The donee of the power then attempted to execute it, and appointed the whole fund nominally in favor of Lady Harriet, but only after he had communicated his father's wishes and subject to an arrangement that she should only use one moiety, and should reserve the other for her sister's benefit under certain contingencies. This moiety of the fund was carried to a separate account on the banker's books under the head "S," meaning sister, under a cotemporaneous order given by Lady Harriet, who was well aware that she was not to use it, and assented to the arrangement.

The power was really exercised only as to one moiety of the fund. In the House of Lords it was so held, but they introduced into their order the words "without prejudice to any question as to any future exercise of the power of appointment." The Duke, after all the litigation through three Chancery Courts, determined to try a new experiment