

"with the moiety of the fund in dispute; and is it not necessary that she should be wholly freed from the notion that she is under any moral obligation whatever to observe the Duke's wishes?"

"It is not for the court to point out how this may be done, after all that has passed. It is enough for the court to say that, assuming, as I think it is bound to do, that the Duke is aware of Lady Harriet's mind being made up to act exactly as he wishes her to do, and she declaring such to have always been her position, some evidence is necessary of a change of that purpose of the Duke, which was first evidenced by the proceedings on the former appointment, and which has never been disavowed, because, as Mr. Amphlett well observed, the Duke does not desire to disavow his wishes upon the subject." Lord Hatherly, 5 Ch. Ap. 56, 57, 58.

*"In this state of circumstances no new appointment by the Duke of Portland—the same donee—in favor of Lady Harriet Bentinck—the same appointee—can stand unless the effect and influence of this previous arrangement can be proved to have been so obliterated as to have put the donee of the power on the one hand, and the appointee on the other, in the same position as though no such arrangement had been brought about."*

"In my opinion, the burden of the proof requisite to support a second appointment in such a case rests, and ought to rest, on the appointee. The reasons which, in the case of a dealing between a solicitor and a client, throw the onus of proof on the solicitor; between a trustee and a *cestui que trust*, on the trustee; between a parent and a child, on the parent; and in the class of cases to which *Huguenin v. Baseley*, 14 Ves. 273, belongs, on the persons seeking to sustain the gift; apply with equal force as between the appointee, in such a case as this, and the person entitled in default of appointment.

*"I am satisfied from Lady H. Bentinck's statements, in her answer and her cross-examination, that the original influence and obligation have existed, still exist, and are likely to exist."*

"I should have come to the same conclusion, had I thought that the onus of proof was on the plaintiff; but I think it of importance to reiterate that where an appointment has been set aside by reason of what has taken place between the donee of a power and an appointee, a second appointment by the same donee to the same appointee, cannot be sustained otherwise than by clear proof on the part of the appointee, that the second appointment is perfectly free from the original taint which attached to the first." Giffard, L. J., 5 Ch. Ap. 60, 61, 62.

