

H. was to accumulate one moiety of the income and hold it in suspense. In a suit instituted by M. this appointment was declared void as a fraud on the power.

The son then executed a second deed of appointment, appointing the income to H. during the joint lives of herself and M. absolutely. H. was informed that this appointment had been made, and she and the appointor deposed that there was no agreement between them as to the disposition of the income. Under the circumstances, Lord Chancellor Hatherley, affirming the decree of V. C. James, held the second deed of appointment void. The Chancellor said, "I think a valid appointment might have been made to her (H.) of that fund; but the real point for consideration is, whether or not, though now conscious of her strict right at law to dispose of the fund, the pressure of a moral obligation not to appropriate more than one-half of it to her own use, and to hold the other half subject to the Duke's intentions and for his purposes did not, at the date of the last appointment, and does not now, weigh on her mind with such force as to convert her into a more passive instrument of the Duke's intentions, and whether such her sense of moral obligation is not well known to the Duke."

"I think upon the whole case that the Vice Chancellor has come to a right conclusion, and that the appeals must be dismissed with costs. Sir G. M. Giffard L. J., concurred.

The Duke, was the Duke of Portland, and son of the settlor, and donee of the power he had been examined as a witness in the cause and had stated that his object was to carry out his father's wishes, and he was "a dummy" in the late Duke's hands.

The principle of these cases, it seems to the Master, is applicable to the case in Court. Mr. Williams avows his intention to carry out the testator's wishes and directions, but denies being a passive instrument, but asserts that in the selection of this site he exercises an untrammelled discretion, which, happily for him, enables him to carry out the testator's instructions, and his counsel insist that this statement being in the answer,

