

will be forfeited, if the legatee institutes a suit; but it evidently has no direct bearing upon that question. It merely shews, that where a legacy is given to one upon condition, that he aids in, or does not counteract the execution of the testator's will, the legacy cannot be recovered unless the condition be complied with. It establishes the position, that where a bequest is made for a valuable consideration, if the consideration be withheld, the legacy falls. The case has this extent and no more.

There may, however, be some cases which do, apparently, support the position as a general rule. But the decision, in a leading case, usually cited for this purpose, rests upon other and better principles than those by which the rule as to a devise over, is said to be sustained. The case was this: A freeman of London had several children, all of whom he advanced in marriage in his lifetime; after which, by his will, he gave to one of his daughters £35, taking notice, that he had advanced her; provided, that if she, or her husband, should refuse to give a release to his executors, or should any ways trouble or disturb them, upon any claim or pretence by virtue of the custom of London, that the legacy of £35 given to her, should go over to the child of his youngest deceased daughter. After the testator's death, this legatee brought suit to recover her portion according to the custom of London; and it was proved, that she had been advanced, as noticed in her father's will. Upon which it was held, that she was barred of her customary part, as having been fully advanced; and likewise, that she and her husband had forfeited the £35 legacy by her claiming her orphanage part, and by reason of the devise over. *Cleaver v. Spurling*, 2 P. Will. 526.

It is evident, from this condensed view of the case, that the attempt to recover a child's portion, which had been actually advanced and paid, was a corrupt effort to obtain what was not due, to the prejudice of the other children; and was such an iniquitous movement as required to be repelled, and deserved to be punished. Therefore, the forfeiture was justly imposed as an award due to detected fraud; and because of the legatee's claiming the orphanage * part, and by reason of the devise over. By which the testator manifested his intention to impose a penalty upon **280** such a fraudulent attempt; and not because of the other and the quaint conceit assigned as a reason, that when the legacy was once vested in the devisee over, equity could not fetch it back again. For the mixture of good and ill together makes the whole bad; the truth is obscured by the falsehood; the virtue drowned by the vice. And there are many instances both at law and in equity, where the whole of a just claim may be lost, because of a fraud against others, or the playing of a trick to come at it. *Co. Litt.* 35, a; *Hitchcock v. Sedgwick*, 2 Vern. 162; *Dalbiac v. Dalbiac*, 16 Ves. 125; *Wimbish v. Tailbois*, 1 Plow. 54.