designates these legatees as the children of her granddaughter Margaret R. Clerk, wife of James Clerk, of Maryland; and with this full knowledge of all circumstances, the testatrix gave this legacy, and directed the trustee "to invest the same in their or his names or name in the public stocks or funds, or at interest upon parliamentary, government or real securities."

This specific direction as to the disposition to be made of this legacy, it is evident, was given with a view, that it might be, without delay, made productive, and placed in the greatest possible security, to await the remote events which it was declared should happen before it should be wholly paid over. The trustees were allowed a very limited range of discretion as to the species of investment in England, and no where else. And it manifestly appears to have been the intention of the testatrix, that when the investment had once been made it should remain, without exposing the legacy to any new risk by any change whatever: or if any unforseen circumstance should render a new investment necessary, that it should be made in some one or other of the specified English securities; and certainly not in any foreign funds, stocks, or securities whatever. *Hancom* v. *Allen*, 2 *Dick.* 498; *Howe* v. *Earl of Dartmouth*, 7 *Ves.* 137; *Hill* v. *Simpson*, 7 *Ves.* 152; *Holland* v. *Hughes*, 16 *Ves.* 113; *Ram. on Assets*, 517.

Hence, I feel perfectly satisfied, that the sale made by the surviving trustee William Dawson, of the stocks in which this legacy had been invested, and the transfer of the proceeds from England to Maryland was a most palpable and gross violation of the trust reposed in him; and that he must be held strictly accountable for
290 * all the consequences thereof; unless he, or at this time, his executrix, can show that he was induced to make the sale and transfer by the *cestuis que trust*, who were then competent to recommend and to sanction the transaction.

The interest of the *cestui que trust*, Margaret R. Clerklee, extended only to the profits and dividends of the invested legacy during her life, to dispose of as a *feme sole;* and therefore, as it has been proved, that she advised and required the change to be made, she might have been bound to submit to any loss sustained by reason of the transfer. But the consent of her children to the sale, which has been so much relied on, was given, if at all, during her life-time; and consequently, before any interest whatever had vested in them. The direction of the legacy toward them was, at that time, a mere possibility; they might, none of them, have survived their mother; and if they had, still they might, all of them, have died before they became entitled to take; in which case the legacy went over to John Clerk. The children of Margaret R. Clerklee during her life, were the mere apparent, but by no means the actual *cestuis que trust* of this legacy. And having nothing more than a possibility or expectancy, without even the shadow of