an absolutely vested interest they had nothing to release, nor any estate which they could require or authorize the trustee to dispose of or transfer. And therefore, even supposing the proofs had established the fact, that they had each one, being competent to contract, required the transfer to be made; yet as it was made before any right whatever had accrued to them, it could not be deemed a sound and available sanction of the conduct of this trustee. For the relinquishment of a mere expectancy, as the release of an heir apparent during the life of the ancestor is absolutely void. *Co. Litt.* 265; *Thomas* v. *Freeman*, 2 *Vern.* 563; *Jones* v. *Roe*, 3 *T. R.* 93.

If, however, these daughters had been sole and nearly of full age, and had by misrepresentation, concealment, or any fraudulent means induced the trustee to make this transfer; and the trustee had made it under a confident and honest, but erroneous reliance on their assurances, he certainly could not now be made to bear any loss which ensued in consequence thereof. *Corey* v. *Gertcken*, 2 *Mad. Rep.* 40. But the defendant A. L. Contee admits that the claim to a share of this legacy which had devolved upon him, in right of his wife, has been satisfied; and there is no proof whatever, that any of the *other children of the late Mar
garet R. Clerklee ever, in any form, requested or approved **291**
of the transfer made by the trustee William Dawson; or that they were then of an age to mislead him in the execution of his trust, or to practsie a fraud upon him in any way whatever. I am therefore of opinion, that the sale of the English stocks, in which this legacy had been vested, as regards all these daughters, except Ann Russell Contee, never was required to be made, and has not been sanctioned, in any manner whatever, by these *cestuis que trust;* and that the trustee must be held liable for all the consequences of that unwarrantable act.

Hence, supposing it to have been proved, that the proceeds of the English stocks in which this legacy had been invested, had been brought to Maryland, and, in great part, invested in the stock of the City Bank of Baltimore, and lost by the insolvency of that institution; and other parts loaned on a mortgage of real estate, as is alleged, still the trustee Dawson, and his executrix the defendant Eleanor Dawson, must be held liable. But there is, in fact, no satisfactory proof, that any part of the proceeds of the sale of the English stocks were actually invested in the stock of City Bank of Baltimore.

The defendant Eleanor Dawson has attempted to take shelter under another defence. Ann Russell, by the codicil to her will, has declared, in effect, as it is said, that if Margaret R. Clerklee contests Eleanor Dawson's right to a share of certain estates, that then this legacy shall go to Eleanor Dawson. Upon which it is