

the result of a careful examination of the proof would be adverse to the pretensions of the plaintiffs.

But, as the case stands, the court is relieved from the obligation of instituting such an examination, because, whether those papers stand or fall, the plaintiffs can make out no title to the relief prayed by their bill.

If the will and deed of 1831 and 1832 are adjudged to be void, on account of the mental incapacity of Charles T. Ellicott to execute them, the proof is very strong to show, that the paper called the will, executed in December, 1834, is still less entitled to be treated as a valid and operative instrument, the entire current of the evidence demonstrating, that the intellect of the party signing it, was more infirm then, than when the two first papers were executed. In truth, this could not be otherwise, when the progressive effect of the principal cause of his imbecility is considered, a cause, which increased in intensity and force as the unhappy victim of it grew older.

If the deed of 1832 is free from objection, then it follows, that the plaintiffs, who claim, under the will of 1834, have no title, because, all the property of the grantor passing under the former, there was nothing for the will to act upon. If, on the contrary, all these instruments should be pronounced void, and if the first two meet with that fate, unquestionably, the last cannot escape condemnation, then it follows, that the parties are remitted to their rights as heirs at law of Charles T. Ellicott, and since the decision of the Court of Appeals in the case of *Porter vs. Askew*, 11 *Gill & Johns.*, 346, it is clear, beyond dispute, that the whole estate, real and personal, of the intestate, descended to, and became the property of, Thomas Ellicott, the uncle of the deceased, to the exclusion of his other relatives, and that he, and he alone, under our act, to direct descents and statute of distributions, is the only person interested in his estate.

The bill charges, and there has been some effort to prove, that the two first instruments were procured by the undue influence and control of Thomas Ellicott over his nephew. But the complainants, I think, have entirely failed in establishing