

to this country, and lost without the default of the trustee; and therefore, that these plaintiffs cannot recover any thing, or certainly no more than a proportion of what has been saved, and is now in the hands of his executrix the defendant *Eleanor Dawson*; since it has been expressly declared by the testatrix *Ann Russell*, that 'they, the trustees, shall not be answerable or accountable for any misfortune, loss, or damage whatever, that may happen to the said trust moneys, or premises, or any part or parts thereof, unless the same shall happen by or through their or his gross and wilful neglect or default respectively.'

It is distinctly shewn by the codicil to this will, and so admitted, that the testatrix *Ann Russell* made her will with a full knowledge of the situation and legal capacities of all her legatees. She 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 unforeseen 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. (q)

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

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(q) *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.