all the consequences thereof; unless he, or at this time, his executrix, can shew that he was induced to make the sale and transfer by the *cestui que trusts*, 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 then the mere apparent, but by no means the actual *cestui que trusts* of this legacy. And having nothing more than a possibility or expectancy, without even the shadow of 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. (*r*)

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. (*s*) But the defendant *Philip 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

(*r*) Co. Litt. 265; Thomas v. Freeman, 2 Vern. 563; Jones v. Roe, 3 T. R. 93.—
(*s*) Cory v. Gertcken, 2 Mad. Rep. 40.