

other children of the late *Margaret R. Clerklee* ever, in any form, requested or approved 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 practise 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 *cestui que trusts*; 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 the 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 urged, that it has not been shewn, that *Eleanor Dawson* has received her share of the estates referred to in the codicil.

But I am of opinion, that it was the intention and meaning of this testatrix by that codicil merely to declare, that *Eleanor Dawson* should not be hindered, obstructed, or impeded in obtaining the benefit of the estates referred to, by any positive or active interference of the legatee *Margaret R. Clerklee*; and not that *Margaret R. Clerklee* should actually aid and assist *Eleanor Dawson* in obtaining her rights, and see that she received her full share of those estates. And consequently, that it lays upon the defendant *Eleanor Dawson* to prove, that her right has, in fact, been contested; and that she has been hindered and prevented by *Margaret R. Clerklee* from obtaining her full share of the estates spoken of in the codicil. So far, however, from there being any proof of that kind, the testimony is full and conclusive, to the extent it goes, that she has met with no impediments whatever; but on the