record from the Circuit Court of the United States for the District of Columbia, holden in and for the county of Alexandria, and was argued by counsel; on consideration whereof, it is now here ordered, adjudged, and decreed by this court, that the decree of the said Circuit Court in this cause be, and the same is hereby, affirmed, with costs.

CHARLOTTE TAYLOR, BY JAMES M. WALKER, HER NEXT FRIEND, APPELLANT, *v.* JAMES TAYLOR, JULIA SCARBOROUGH, GODFREY BARNSLEY AND JULIA, HIS WIFE, JOSEPH SCARBOROUGH AND WILLIAM SCARBOROUGH, ROBERT M. GOODWIN, NORMAN WALLACE, AND ANDREW T. MILLER.

A deed from a female child, just of age, and living with her parents, made to a trustee for the benefit of one of those parents, founded on no real consideration, executed under the influence of misrepresentation by the parents, and containing in its preamble a recital of false statements, ordered to be set aside, and the property reconveyed to the grantor.[1]

The principles upon which a court of equity interferes to protect persons from undue and improper influences examined and stated.

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[1] A deed will not be set aside on the ground of fraud, unless it be proved beyond a reasonable doubt. *Phettiplace* v. *Sayles*, 4 Mason, 312.

A deed to a parent, by a child just come of age, is *prima facie* valid, and the burden of proving undue influence or fraud, is on the party attacking it. *Sullivan* v. *Sullivan*, 21 Law Rep., 531; *Reehling* v. *Byers*, 94 Pa. St., 316.

In *Hallett* v. *Collins*, 10 How., 174, releases obtained for an inadequate consideration, from heirs just come of age, who were poor and ignorant of their rights, were set aside.

In *Miller* v. *Simonds*, 5 Mo. App., 33, a gift of valuable property was made by a motherless girl of twenty-three, to her father who had been her guardian. The court set aside the deed, treating her legal term of disability as extended, on proof that her habits of submission to her father remained unchanged.

In *Thornton* v. *Ogden*, 3 Vr. (N. J.), 723, a conveyance by an unmarried woman to her brother, with whom she resided, executed in the confidence that the brother would deal justly with her, was set aside for great inadequacy of consideration.

In the recent English case of *Kempson* v. *Ashbee*, L. R. 10, Ch. Cas. 15, two bonds issued by a young woman, living at the time with her mother and step-father—one, at the age of twenty-one, as surety for her step-father's debt, and the other, at the age of twenty-nine, to secure the amount of a judgment recovered on the first bond,—were set aside as against her, on the ground that she had acted in the transaction without independent advice; one of the justices observing that the court had endeavored to prevent persons subject to influence from being induced to enter into transactions without advice of that kind. S. P. *Davis* v. *Dunne*, 46 Iowa, 684; *Rankin* v. *Patton*, 65 Mo., 378; *Miller* v. *Simonds*, 72 Mo., 669.

Taylor *v.* Taylor et al.

THIS was an appeal from the Circuit Court of the United States for the District of Georgia, sitting as a court of equity.

*The bill was filed in the Circuit Court by Charlotte Taylor, formerly Charlotte Scarborough, a resident of [*184
the state of New Jersey, to set aside a deed which she alleged had been obtained from her in an illegal and fraudulent manner. The defendants were James Taylor, her husband, some of the members of her family, Robert M. Goodwin, who had become the trustee under the deed after the death of William Taylor, the original trustee, and Wallace and Miller, who were the executors of William Taylor, the original trustee.

Prior to the year 1819, William Scarborough, a merchant residing in Savannah, became embarrassed in his affairs, and on the 5th of June in that year executed a mortgage for the purpose of securing his indorsers upon certain notes; the indorsers being Andrew Low and Company, and William Taylor. The firm of Andrew Low and Company was composed of Andrew Low, Robert Isaac (who had married William Scarborough's sister), and James McHenry.

The property mortgaged consisted of certain stocks and real estate, amongst which was the following lot:—"All that lot of land, and the buildings and improvements thereon, situated, lying, and being in the city of Savannah aforesaid, bounded on the east by West Broad street, on the south by a street or lane thirty feet wide, and on the west and south by the lots contiguous to the same, containing ninety feet in front, and being the lot and buildings opposite Mr. Daniel Hotchkiss, and recently erected by the said William Scarborough."

On the next day, namely, the 6th of June, 1819, Scarborough confessed a judgment in favor of Andrew Low for $87,534.50.

On the 13th of May, 1820, Scarborough executed a deed in fee simple of the above-described property to Robert Isaac.

On the 16th of November, 1820, Scarborough was discharged as an insolvent debtor by the Chatham County Inferior Court.

On the 2d of January, 1825, a sale of Scarborough's furniture took place by the marshal, under an execution which had been issued by virtue of a judgment obtained against him by Andrew Low. The property was all purchased by Isaac, according to the following schedule. It is inserted here for the purpose of being compared with the inventory [*185
which was taken of Isaac's property after his *death, and which will be stated in its proper place.

ANDREW LOW *v.* WILLIAM SCARBOROUGH.—*Marshal's Sales.*

Purchaser.		*Tuesday, 2d January*, 1825.
R. Isaac, Esq.	To furniture in room No. 1 (dining),	$500.00
	" passage, No. 2 .	200.00
	" dining-room, No. 3, .	500.00
	" larger do . No. 4, .	350.00
	" up-stairs passage, 5, clock	
	" and lamp, . .	60.00
	" bed-room, No. 1, .	110.00
	" " No. 2, .	100.00
	" " No. 3, .	60.00
	" " No. 4, .	75.00
	" " No. 5, .	30.00
	kitchen furniture, . . .	25.00
	silver ware, ...	400.00
	carriage and gig, ...	250.00
	pair carriage horses, . . .	200.00
	saddle horse, ...	80.00
		$2,940.00

In February, 1826, an agreement was made amongst the partners constituting the firm of A. Low and Company, by which the house and lot, which had been mortgaged to the firm, and afterwards conveyed to Isaac, was to be held as the separate and individual property of Isaac, upon his paying to the firm the sum of $20,000.

On the 26th of August, 1827, Isaac made his will, which contained the following clause:—

"Seventh. Item, I give and bequeathe unto my beloved niece, Charlotte Scarborough, all my right, title, and interest in and to the lot, dwelling-house, and all other improvements thereon, which formerly belonged to her father, William Scarborough, on West Broad street, in the city of Savannah, known in the plan of said city as lot No. , together also with the plate, furniture of all kinds, books and prints, all which were purchased and paid for at marshal's sales by me."

On the 16th of October, 1827, Isaac died.

Eight persons were named in the will as executors, but only three acted, viz., William Scarborough, William Taylor, and Norman Wallace, to whom letters testamentary were granted on the 17th of January, 1828.

On the 9th of January, 1828, the will was proved, and on the
*186] next day, viz., the 10th, Charlotte Scarborough, the niece *and devisee of the deceased, addressed the following letter to her father, William Scarborough.

"My ever-honored Father,—From a sense of my unworthiness, I am convinced that the love my dear uncle bore me, and which dictated his bequest to me in his last will, would not, could he now see my conduct, condemn me for pursuing the feelings of a heart strongly and sincerely devoted in affection to the members of my family. Having arrived at an age when I may with impunity legally make a transfer of that which has been so generously placed at my discretion, I unhesitatingly follow this course of conduct, unbiased by any control whatsoever; and in the liberty I am now using, I am acting by my own free will, dictated by my feelings alone, and unknown to any person. Thus, then, I most emphatically transfer all my right to the said property (the gift of my ever-lamented uncle) to my beloved mother, to be used and enjoyed as her unquestionable right, during her lifetime; and at her death and yours, to be equally divided between my sisters, brothers, and myself, my right operating in no manner in my favor to the exclusion of the other members of our family.

"In thus making a transfer of the said property, I trust my much-loved parent will acknowledge *one* slight proof of my gratitude for all his numerous kindnesses lavished on me. Most thankful do I feel for being made the simple instrument of accomplishing the will of him who has so kindly and generously placed his confidence in me; and in acting thus, convince the world that my devoted affection for him was pure, disinterested, and unbiased by any future expectation.

"I am, dear Sir, your most affectionate and grateful daughter, Charlotte D. Scarborough.

"*Savannah, January 10th*, 1828."

On the 22d of January, 1828, Charlotte executed the deed which it was the object of the present suit to set aside. It recited a proposed marriage settlement of 1805, and then proceeded as follows:—

"And whereas, from neglect, the said deed was not recorded in Chatham county and state of Georgia, and whereas, in the year 1819, the said William Scarborough having failed in trade, and some doubts having been suggested as to the validity of the said marriage settlement, from the omission to record the same as aforesaid, the said William Scarborough did, in consequence of such doubt, transfer and convey all his right, title, and interest, if any remained to him, in and to the aforesaid named and described lots of land, to his principal creditor, *Robert Isaac, of Savannah, his heirs and [*187 assigns, in part satisfaction of his debt; and whereas the said Robert Isaac hath recently departed this life, leaving a last

will and testament, whereby he bequeathed and devised to the said Charlotte Scarborough, his niece, all his right, title, and interest in the said lots of land, the dwelling-house and improvements thereon, together with the plate, furniture of all kinds, books and prints, therein, which were purchased by the said Robert at marshal's sales, in the city of Savannah, which said last will and testament has been duly proved before the Court of Ordinary of Chatham County; and whereas the said Charlotte Scarborough, to whom the aforesaid devise was made, being of lawful age, and being desirous of conveying or carrying the said marriage settlement into effect, according to the original intention of the parties thereto, hath determined to convey all her right, title, and interest in said property in trust for that purpose. Now, this indenture witnesseth, that the said Charlotte, in consideration of the premises, and from natural love and affection for her said beloved mother, Julia Scarborough, and her sisters and brothers, and also in consideration of the sum of one dollar, to her in hand paid by the said William Taylor of the second part, the receipt whereof is hereby acknowledged, hath granted, bargained, and sold, released, conveyed, and confirmed, and by these presents doth grant, bargain, and sell, release, convey, and confirm, unto the said William Taylor, his heirs and assigns, all her right, title, and interest in and to the said lots of land herein before described and set forth, together with the buildings and improvements thereon, with the appurtenances, and together with the plate, furniture of all kinds, books and prints, herein before referred to; which lots, buildings, improvements, furniture, plate, books and prints, were devised to her by the said Robert Isaac, as herein before set forth. To have and to hold the said lots of land, with the other premises and appurtenances, unto him, the said William Taylor, his heirs and assigns; in trust, nevertheless, to and for the use of the said Julia Scarborough, wife of the said William Scarborough, for and during the term of her natural life, not to be in any manner, or by any means, subject to, or liable for, the debts of the said William Scarborough, her said husband; and from and after the decease of the said Julia Scarborough, then in further trust to and for the use and benefit of the said Charlotte Scarborough, and such of her brothers and sisters, children of the said Julia, as shall be living at the time of the decease of the said Julia Scarborough, equally to be divided between them, share and share alike."

*188] The deed then contained a covenant for further assurances, *and was executed in presence of Andrew Low and John Guilmartin.

On the 25th of January, 1828, Scarborough, as a qualified executor of the estate of Isaac, exhibited an inventory to the court, from which the following is an extract:

"In the house formerly the property of Wm. Scarborough, and bought by Robert Isaac at marshal's sales, as per his certified copy.

Furniture in room No. 1,	. . . . .	$240.00
" passage, No. 2,	. . . . .	205.00
" dining-room, No. 3,	. . . . .	302.00
" large dining-room, No. 4,	. . .	494.00
" up-stairs passage, clock and lamp,	.	40.00
" bedroom No. 1,	. . . . .	187.00
" bedroom No. 2,	. . . . .	90.00
" bedroom No. 3,	. . . . .	12.00
" bedroom No. 4,	. . . . .	68.00
" bedroom No. 5, included in above.		
" kitchen,	. . . . .	10.00
Silver ware,	. . . . .	426.00
1 gig, $10, carriage destroyed in a hurricane,	. .	10.00
1 set China (table), $130, 1 lot glass ware, $100,		230.00

"PETIT DE VILLERS,
W. ROSE,
J. B. HERBERT, } *Appraisers.*"

In April, 1829, Charlotte Scarborough married James Taylor, one of the defendants in the present suit. They removed to New York to reside, in 1835, and afterwards to New Jersey, where the complainant resided at the institution of this suit. Julia Scarborough, the mother of the complainant, resided in the house in question, at and after the execution of the deed, as did William Scarborough, the father, with occasional absences, until 1835, when he rented it to Barnsley, who had married one of his daughters, and who was also one of the defendants in the present suit.

On the 12th of June, 1838, William Scarborough died.

In the early part of 1840, a petition was filed in the Superior Court of Chatham County, in the names of the different branches of the Scarborough family, stating the death of William Taylor, the trustee under the deed, and praying that Robert M. Goodwin might be appointed in his place; which was accordingly done. To this petition the name of Charlotte Taylor was signed as follows:—"For Charlotte Taylor, Joseph Scarborough."

*On the 4th of September, 1843, Charlotte Taylor filed her bill against all the parties enumerated in the commencement of this statement. [*189

It recited the devises of the will, stated that she was the niece by marriage of Robert Isaac, and an inmate and resident of his family, with whom she continued to reside until his death, when she removed to the residence of her father and mother, being the house devised to her (the oratrix) by the will. It then averred, that, upon her return to the family of her parents, her reception was harsh and unkind; that she was charged with having dictated to the testator, Robert Isaac, the disposition of the property, with ruining the prospects of the family, and breaking the heart of her father. The bill then proceeded thus:—

"And your oratrix further showeth unto your honors, that day after day your oratrix's situation in her father's family became more and more unpleasant and harassing, in consequence of their unkind and, as your oratrix charges, their cruel treatment of her; that your oratrix was at the time an infant under the age of twenty-one years, having been born, as your oratrix charges, on the 4th day of August, in the year of our Lord 1807; that your oratrix was closely watched by her father, mother, and sisters, secluded from society and the advice of friends, and even denied the liberty of communicating with the defendant, James Taylor, whom your oratrix was then under an engagement to marry; that your oratrix was importuned and urged by her mother, with the advice and countenance of her father to relinquish your oratrix's rights under the will aforesaid, and to settle the property on your oratrix, her mother, brothers, and sisters; and with the view of effecting this object, it was particularly urged that the said Robert Isaac, by the said devise and bequest in the seventh item of his said last will and testament, had so conveyed the said property, believing that your oratrix would divide the same in the manner proposed by your oratrix's parents as before stated, although your oratrix at the time knew that the said Robert Isaac had, for a considerable time preceding his death, borne a decided antipathy to the said Julia Scarborough.

"And your oratrix further showeth unto your honors, that, when in answer to these and other repeated importunities most unkindly pressed upon your oratrix, your oratrix would hesitate or refuse to enter into and yield to the proposed arrangement, your oratrix's reluctance and refusal would be ascribed to the influence of the said James Taylor, who was described to be a merciless, grasping man, who would sacrifice any thing for a gain.

*190] *"And your oratrix further showeth unto your honors, that when again, in reply to the urgent importu-

nity of the said Julia Scarborough, your oratrix inquired of her what your oratrix should do, your oratrix, after a conference between the said Julia and William Scarborough, was informed that your oratrix should address a letter to the said William Scarborough, to the effect that, supposing the said Robert Isaac had intended the property should be divided between your oratrix, her mother, sisters, and brothers, your oratrix wished that he, the said William Scarborough, would consent that your oratrix should so have the property disposed of that the said Julia Scarborough should have it during her life, and that after her death it should be divided between your oratrix, her two sisters and two brothers.

"And your oratrix further showeth unto your honors, and expressly charges, that at this stage of the matter your oratrix sought an interview with the said James Taylor, and, after relating to him the circumstances above detailed, asked his opinion and advice as to the duty of your oratrix in the premises, and that his reply was, in substance, that individually he cared nothing about the course your oratrix might pursue, as he was well off, and that he would never meddle with a copper of the value of the property, but advised your oratrix, as she valued her own interest, not to yield to the arrangement proposed by the parents of your oratrix.

"And your oratrix further showeth unto your honors, that at the time referred to the affairs of the said William Scarborough were in a very deranged and embarrassed condition; that he was utterly unable to pay his debts; and that, as a consequence, his family having but very small resources independently of him, their pecuniary situation was pitiable and distressing; and that, urged by this consideration, by the unhappiness and even misery which your oratrix was suffering from the treatment of the family and their importunity, and influenced, too, by the hope that her marriage with the said James Taylor might thereby receive the consent of her parents, your oratrix finally yielded, and wrote the letter to her father, reciting, in substance, as your oratrix charges, that the said Julia and William Scarborough were to have the house, furniture, &c., during their lives, and that at their death the plate, with the crest of the family, was to be given to your oratrix's brothers as their share, and the house and lots divided between your oratrix and her sisters. Your oratrix charges the above to have been the substance of the writing, but that she cannot now ascertain the particulars, as the original draft, which was kept by *your oratrix, was destroyed by fire in the city of New York in the year 1835." [*191

The bill then proceeded to state that a deed was drawn up, which she signed, without reading or hearing it read; that, so far from the marriage settlement upon her mother being an inducement to the execution of the deed, as is alleged, she now finds, in the recital, she had never at that time heard of any such marriage settlement; but, on the contrary, the deed was extorted from her by the most unfair and fraudulent means, and was executed by her as the price of peace with her father, mother, and family.

The bill then stated the marriage of the oratrix with James Taylor, on the 28th of April, 1829; that she had, soon afterwards, used all the means in her power to convince her husband that the deed was fraudulent and invalid, but that he objected to family disputes about property, and averred that his own individual property and means of support were sufficient for his family. It then stated that she did not discover the amount of injustice which had been practiced upon her until the year 1839, when she discovered that, under the deed, in case she died before her mother, her children would be cut off from all share in the property. It then stated the death of Taylor, the trustee, and the appointment of Goodwin in his place, and averred that she was entirely ignorant of the use of her name, which was signed to the petition without her authority.

The bill then stated that Godfrey Barnsley had intermarried with her sister, Julia Scarborough, and resided for a long time in the house in question; that he had committed waste upon the goods and chattels bequeathed to her (the oratrix), had sold or otherwise disposed of a considerable portion of the stock of liquors, and that waste had also been committed by Julia Scarborough, the mother; that Barnsley knew that the oratrix had a claim to the personalty; that she had applied to Goodwin, the trustee, to come to an account with her, which he had refused to do.

The bill then contained a number of interrogatories for the defendants to answer; prayed that the deed might be decreed fraudulent and void, and that the defendants might come to an account with her, and that the real estate, goods, chattels, plate, furniture, goods, prints, rents, and profits, might be decreed to be the separate property of the oratrix, not subject to the debts or liable to the creditors of her husband, James Taylor, &c., &c.

Sundry intermediate steps were taken to bring the defen-
*192] dants all into court, which it is not necessary to mention. At *length they all came in and answered, except Julia Scarborough, the mother, and Joseph Scarborough,

against which two parties an order was obtained, taking the bill *pro confesso*.

Robert M. Goodwin, the trustee, filed his answer on the 6th of November, 1843, admitting the existence of the trust deed, and that it was under his control; and stating that he consented to act at the request of Horace Sistare, who married the complainant's sister, and of Joseph, her brother, and that he supposed he was acting with her consent, not only because her brother signed her name to the petition for his appointment, but because, in conversations with her, she never expressed the least objection to the appointment. That William Taylor left no accounts, never having interfered with the property, or received it into his possession, or any of the rents, issues, or profits, the same being left in the custody or possession of the *cestui que trusts* entitled thereto. He denies that the trust deed was made by compulsion or undue means, or that it was made by her when under age; but, on the contrary, avers that the same was made freely and voluntarily, and that she was then of full age, as would more fully appear by a letter written by her to her father, dated 10th January, 1828, a copy of which he annexed to his answer.

The answer of the executors of William Taylor was filed 6th November, 1843, and states that they do not believe their testator acted as trustee, though he may have assented to the trusteeship; that they have never seen any account of his as trustee, and do not believe he left any; for he regarded the matter as a mere family arrangement, and left every thing in the hands of the *cestui que trust*, then entitled to the use of the same. They deny the right of the complainant to call on them for an account of the personal property conveyed in trust, because by the trust deed Julia Scarborough, who is still living, has the use of it for life; nor can they give any account of said property, or the rents and profits of the real estate, because the said real and personal property never passed into the hands of their testator in his lifetime, nor into their control or possession since his death, but had always been in the possession and management of Julia Scarborough, the *cestui que trust*, entitled to the same under the deed.

The joint answer of Godfrey Barnsley and Julia, his wife, was filed 19th February, 1844, and in substance states that the complainant always called her mother's house her home, and lived as much there as with her uncle; that she was not an infant at the time of the execution of the deed, having been born on the 4th of August, 1806; that they do not know of any *consideration other than that stated [*193
in the deed; that Julia Scarborough lived on the premises at

the time of its execution, and that William Scarborough sometimes resided in Darien, and sometimes on the premises, until 1833, after which he generally resided on the latter; and that complainant never, as far as they know, pretended to have any claim thereto; and as late as April or May last (1843), when defendant, Julia Barnsley, in consequence of rumors which had reached her, asked complainant, "if it was true, as she had been informed, that she (the complainant) intended to attempt to set aside said deed," she stated, "she had no such intention." They deny, as utterly and entirely untrue, the statement of the complainant of unkind treatment by her family, and never heard or knew of any, or of any importunity or coercion used towards her to induce her to sign the deed; that they always believed the execution of the deed was the free, voluntary act of the complainant, and intended to fulfil the design of Robert Isaac, whose title they insist is more than doubtful, in consequence of the marriage settlement of 1805; that they are advised that the said deed was and is valid, as between the parties to the same, and therefore William Scarborough could not make any conveyance to Robert Isaac; and that he always held the premises subject to the marriage settlement, and that they have always heard it in the family, and so believe, that the complainant executed the deed freely and voluntarily, with a view to carry out the wishes and intentions of her uncle, which would otherwise have been defeated. They further allege that no marriage settlement between the complainant and her husband was ever executed, and he having been recently declared bankrupt, any interest which she may have in the property, or any claim against them, belongs to the said James Taylor, or his assignee in bankruptcy. The answer then explains the defendant Godfrey Barnsley's actings and doings with respect to the property.

The answer of James Taylor, the husband of the complainant, admitted all the material facts charged in the bill, and stated that before the marriage he had advised her not to execute the deed, believing, from her representations, that she was unkindly treated by the family; that he had been requested by William Scarborough to be a witness to the execution of the deed, but declined to be so, and that his belief of the unhappy situation of the complainant operated upon him in a great measure to consummate his engagement to marry her twelve months prior to the period before intended.

Several witnesses were examined on the parts of the com-

plainant and defendants. The following were the answers of *the subscribing witnesses to the deed, viz., Andrew Low and John Guilmartin, touching its execution. [*194

Andrew Low:—

"To the fourth direct interrogatory the witness answering saith,—I was intimate in the family of the late William Scarborough, both before, in, and after 1828; I was a subscribing witness to the signing of the deed, and after it was signed the complainant expressed to me that she was then satisfied, and was glad that she had done it, or words to that effect.

"To the fifth direct interrogatory the witness answering saith,—I was present, as stated before, at the execution of the deed; it is impossible, at this distance of time, to remember all that then transpired, but this I am certain of, that the complainant knew the contents of the deed, and approved of it; in fact, as I have before said, she herself told me so.

"To the fourth cross-interrogatory the witness answering saith,—I became acquainted with the circumstances I have stated, relative to the property, from my personal intimacy with William Scarborough and his family, and upon my connection in business with the late Robert Isaac. I was a subscribing witness to the deed at the instance of William Scarborough.

"To the fifth cross-interrogrtory the witness answering saith,—I do not know by whom the deed was drawn; the other subscribing witness was Mr. Guilmartin; he was requested to be so by William Scarborough. There was a change of one of the witnesses of the deed, in consequence of James Taylor, who had previously arranged to be a witness, declining to be so after his arrival at William Scarborough's house, for that purpose. I do not remember that he gave any reason for declining. The parties present, when the deed was executed, were the complainant's father and mother, and the witnesses. I did not see or hear the complainant read the deed, but I was then, and still am, satisfied that she knew the contents, and approved of it.

"To the sixth cross-interrogatory the witness answering saith,—I do not recollect the question being put to the complainant, whether she knew the contents of the deed, nor do I recollect whether any consideration money was offered; if there was, it was a piece of coin, probably a dollar, in the usual way, in such cases; I think I was in William Scarborough's house about two hours previous to signing the deed, and left soon after.

"To the seventh cross-interrogatory the witness answering saith,—James Taylor, now the husband of the complainant,

had been asked by Mr. Scarborough to attest the deed as a witness, and he consented to go with me to the house for that purpose; *after closing our place of business, *195] I asked him to accompany me; he said he would soon follow me, which he did; he did not express himself opposed to the execution of the deed, that I am aware of; I certainly never heard him. It was not known or understood by me, that he was under an engagement to marry the complainant; the previous year there was something of the kind spoken of, but he and the complainant had disagreed, and I was given to believe that it was all broken off. At the dissolution of the partnership of Low, Taylor and Company, in 1834 or 1835, James Taylor was largely indebted on private account to the said firm; and some time in 1835 I granted him a discharge from the said debt, in consideration of his giving up to me every description of property belonging to himself and his wife, except his household furniture, which I allowed him to retain; he did not at this time mention to me that he or his wife had any claim to the property in question, or I should have claimed it in conformity with our agreement. I had never heard of his making any claim to the property conveyed by the said deed, or any part it, until advised of it by William Robertson, under date of the 16th February, 1844."

John Guilmartin:—

"To the first direct interrogatory the witness answers and says, that his name and handwriting is to the instrument as a witness, and that he subscribed as a witness, at the instance of William Scarborough, the deed now presented to him, being the original deed from complainant to William Taylor, in trust.

"To the second direct interrogatory the witness answers and says, he cannot say positively he does, but it strikes him that there was a question or two asked Miss Charlotte Scarborough, viz., whether it was with a free will; he does not recollect the time; but that he does not recollect that Andrew Low, senior, was present when he came in; Mr. Scarborough said he had sent for witness, as such to a deed from Miss Scarborough to her mother, of property, which as a dutiful child she had made. Witness asked Miss Scarborough if it was her voluntary act. Mr. Low replied, that witness was called in to witness the deed, and for no other purpose; she did not read the deed, or hear it read in witness's presence. It was executed at Mr. Scarborough's house, in West Broad street."

At the April adjourned term of 1846, the cause came up

for argument before the Circuit Court, when the bill was dismissed.

The complainant appealed to this court.

It was argued by *Mr. Holmes*, for the appellant, and *Mr. Johnson* (Attorney-General), for the appellee.

**Mr. Holmes* first remarked upon the lapse of time, [*196 which he contended was not sufficient to bar a recovery. 3 Atk., 558; 2 Eden, 285; 2 Story Eq., §§ 1520, 1521; 1 How., 189; 4 Id., 560.

The points raised by the pleadings in behalf of complainant, for cancellation of the deed, were,—

1. Duress.

2. Want of consideration.

3. Fraud, growing out of the relation of the parties as parent and child, trustee and *cestui que trust.*

1. Duress. (*Mr. Holmes* commented upon the evidence in the case, to establish this.)

2. Want of consideration. It is admitted that mere inadequacy of price is not of itself a distinct ground of relief in equity. But, under peculiar circumstances, it may amount to such fraud as will be relieved against. 1 Story Eq., § 246; 1 Dessaus (S. C.), 651; 11 Wheat., 124.

3. The relation of the parties; and

1st. Of parent and child. All contracts and conveyances, whereby benefits are secured by children to their parents, are objects of jealousy. 1 Story Eq. Jur., § 310; 2 Atk., 85, 258; 4 Wash. C. C., 397; 12 Pet., 253; 2 Johns. (N. Y.) Ch., 252.

2d. The relation of trustee and *cestui que trust.* Taylor, the grantee in trust, and Scarborough, were two of the executors of the will of Isaac. The will was proved only five days before the execution of the deed. Executors are trustees for legatees. 1 P. Wms., 544, 575; 1 Story Eq., § 322; 7 Ves., 166; 1 Story Eq., § 423; 10 Pet., 639.

Both executors and ordinary trustees are prohibited by the rules of courts of equity, from considerations of general policy, from dealing with those whose interests are intrusted, during the continuance of the fiduciary relation. 1 Story Eq., §§ 321, 322; *Hatch* v. *Hatch*, 9 Ves., 292; 1 Johns. (N. Y.) Ch., 497, 620; 4 Id., 303; 7 Id., 174; Lewin on Trustees, 376; Willis on Trustees, 163; Fonbl. Eq., book 2, § 7, and notes; 1 Madd. Ch., 110 *et seq.;* 2 Id., 132; Sugd. on Vend., 421 to 436; *Wormley* v. *Wormley*, 8 Wheat., 421; 1 Pet. C. C., 364; 4 Dessaus (S. C.), 654; *Ex parte Bennett*, 10 Ves., 381, 385, 386; 14 Id., 91, 273; 13 Id., 47.

The case of *Hatch* v. *Hatch*, 9 Ves., 292, proves that the rule of prohibition extends to conveyances without consideration of money, as for friendship, kindness, and regard, &c., &c. And it is settled in *Ex parte Bennett*, 10 Ves., 393, that, in order to set aside the sale, it is not necessary to show that the trustee has made any advantage. And see 1 Story Eq., § 322.

*197] *The conduct of the executors having been a breach of trust, it is unnecessary to consider the distinction, if any really exists, between actual and constructive fraud. There is no difference, legally, in the degree of the fraud, and the distinction is between the same kind of fraud, one supported by evidence of actual imposition, and the other being inferred from circumstances. In neither case does the court regard the morality or immorality of the transaction. *Ex parte Bennett*, 10 Ves., 393; 8 Wheat., 463. All such cases are forbidden by "the morality and policy of the law, as it is administered in courts of equity." *Michoud* v. *Girod*, 4 How., 503.

The whole doctrine on this subject has been condensed and illustrated by this court in the case of *Michoud* v. *Girod*, 4 How., 503. The case is too recent to require any particular examination. There the executors, being themselves co-heirs and legatees, bought the estate of their testator at a public sale judicially ordered, denied any fraud in fact or intention, declared that the purchases were rightfully made for a fair price, and yet this court say, in reference to such a transaction, that "an executor or administrator is in equity a trustee for the next of kin, legatees, and creditors, and that we have been unable to find any one well-considered decision, with other cases, or any one case in the books, to sustain the right of an executor to become the purchaser of the property which he represents, or any portion of it, though he has done so for a fair price, without fraud, at a public sale." Id., 553, 557. This language covers the whole ground contended for, though the purchase in that case having been *per interpositam personam* was the reason, probably, why the court declared that it "carries fraud on the face of it." And in the same case this court, commenting upon *Davoue* v. *Fanning*, said,—"The inquiry in such a case is not whether there was or was not fraud in fact. The purchase is void, and will be set aside at the instance of the *cestui que trust*, and a re-sale ordered, on the ground of the temptation to abuse, and of the danger of imposition inaccessible to the eye of the court." Id., 557.

It would be difficult in principle to recognize a distinction between *Davoue* v. *Fanning* and the case at bar. In that case

a purchase was made *per interpositam personam* for the wife of the executor; here a voluntary conveyance (by which is meant a conveyance without consideration) is taken to one executor for the benefit of the wife of another,—that is, for the benefit of that other, and who himself procured the conveyance to be made. If Scarborough had taken the conveyance directly to himself, or through Taylor, the executor, for his own benefit, *such a transaction could not stand. Will it be permitted to stand, his wife being the *cestui que trust* for life? [*198

(*Mr. Holmes* then argued that the marriage settlement, which was stated in the deed to be one of the considerations thereof, had been treated by all parties for a long time as a void instrument; and then proceeded to examine the doctrine of estoppel as applicable to the case.)

If, then, for any of the reasons assigned,—duress, the relation of the parties, fraud actual or constructive,—the deed of complainant cannot be upheld as a family compromise, between which and the present case there is not the least analogy, the question then recurs, To what relief is complainant entitled?

1. She is entitled to have the deed cancelled.
2. To an account of the personal property, and
3. To an account of the rents and profits of the real estate from the executors of William Taylor, the trustee, and
4. To a settlement of the entire fund upon trustees for her separate use during life, and after her death to her children, or such other equitable settlement as the court may decree.

Mr. Johnson, for the appellees, contended,—

I. That, as it is now admitted that complainant was of age at the time the deed of 22d January, 1828, was executed by her to William Taylor, the character of the said deed takes it out of the principles by which, in certain cases, deeds are in equity considered void, because of the relations of the parties to the same. *Pratt* v. *Barker*, 1 Sim., 1; 2 Cond. Eng. Ch., 1; *Hunter* v. *Atkyns*, 8 Id., 303, 313, 321; *Tendril* v. *Smith*, 2 Atk., 85; *Manners* v. *Banning*, 2 Eq. Cas. Abr., 282; *Smith* v. *Low*, 1 Atk., 490; *Cory* v. *Cory*, 1 Ves. Sr., 19; *Brown* v. *Carter*, 5 Ves., 876; *Hotchkis* v. *Dickson*, 2 Bligh, 348; *Tweddell* v. *Tweddell*, 11 Cond. Eng. Ch., 1–8; *Jenkins* v. *Pye*, 12 Pet., 241, 253.

II. That if the deed was at any time within such principle, the long acquiescence, with knowledge, deprive the grantor of the right to avoid it on that ground. *Peck* v. *Randall*, 1 Johns. (N. Y.), 165; *Mooers* v. *White*, 6 Johns. (N. Y.), Ch., 372;

2 Story Eq., 736; *Elmendorff* v. *Taylor*, 10 Wheat., 168, 169, 171; *Bank of United States* v. *Daniels*, 12 Pet., 32; *Foster* v. *Hodgson*, 19 Ves., 185; *Gregory* v. *Gregory*, Coop., 201; *Prevost* v. *Gratz*, 6 Wheat., 497.

III. That there is no evidence of duress in fact, or of undue influence, or of fraud; that the deed was in all respects a fair and proper deed, being supported by the consideration of love and affection; and if that of itself was not sufficient, it is valid *by reason of the marriage contract between the father and mother of the complainant, of the 18th April, 1805, which was omitted to be recorded in Georgia, where the property lay.

*199]

Mr. Justice DANIEL delivered the opinion of the court.

The object of the complainant below, (the appellant here,) as disclosed in her bill, is to vacate the deed, executed on the 22d day of January, 1828, by her before her marriage, conveying to William Taylor in trust for the use of the mother of the grantor for life, (exempt from the debts of her father,) and after the death of her father and mother, for the use in equal portions of the said grantor, and of her brothers and sisters, all the property real and personal which was given to the said grantor by the will of her uncle Robert Isaac, whose will is made an exhibit in the cause and referred to in the deed.

The grounds on which this deed is impeached are the following:—that it was founded on no real consideration; was executed during the nonage of the complainant, and whilst she was living in the family of her parents; that it was extorted from her by false representations, both as to her filial duties, and her rights to the property left her by her uncle; and of extreme urgency and harsh treatment on the part of her parents, to procure its execution; and of the hope, by a compliance with their importunities, of reconciling her parents to her marriage with her husband, which marriage they had theretofore opposed. The objection of nonage must be surrendered in this investigation, it being ascertained that the complainant was some few months over majority when the deed was executed. The other allegations, as resting upon the proofs in the cause, and upon the law as applicable to them, remain for consideration.

The rules of law supposed to control the contracts of parties who do not stand upon a perfect equality, but who deal at a disadvantage on the one side, whether applicable to the relations of parent and child, trustee and *cestui que trust*, attorney and client, or principal and agent, have been laid down in various cases in the courts both of England and of our own

country. To trace these rules to the several cases by which they have been propounded would be an undertaking rather of curiosity, than of necessity or usefulness here, as the extent to which this court has applied them, or is disposed to apply them in cases resembling the present, may be found within a familiar and direct range of inquiry. They are aptly exemplified by the late Justice Story, in his treatise on Equity Jurisprudence, Vol. I., § 307, where, speaking of frauds which "arise from some peculiar confidence or fiduciary relation between the parties," *he remarks,—"In this class of cases [*200 there is often found some intermixture of deceit, imposition, overreaching, unconscionable advantage, or other mark of direct and positive fraud. But the principle on which courts of equity act in regard thereto stands independent of any such ingredients, upon a motive of public policy; and it is designed in some degree as a protection to the parties against the effects of overweening confidence and self-delusion, and the infirmities of hasty and precipitate judgment. These courts will therefore often interfere in such cases, where, but for such peculiar relations, they would wholly abstain from granting relief, or grant it in a very modified and abstemious manner." He proceeds, § 308,—"It is undoubtedly true, that it is not upon the feelings which a delicate and honorable man must experience, nor upon any notion of discretion, to prevent a voluntary gift or other act of a man whereby he strips himself of his property, that courts of equity have deemed themselves at liberty to interpose in cases of this sort. They do not sit, or affect to sit, in judgment upon cases as *custodes morum*, enforcing the strict rules of morality. But they do sit to enforce what has not inaptly been called a technical morality. If confidence is reposed, it must be faithfully acted upon, and preserved from any intermixture of imposition. If influence is acquired, it must be kept free from the taint of selfish interests, and cunning, and overreaching bargains. If the means of personal control are given, they must be always restrained to purposes of good faith and *personal good*. Courts of equity will not, therefore, arrest or set aside an act or contract, merely because a man of more honor would not have entered into it. There must be some relation between the parties which compels the one to make a full discovery to the other, *or to abstain from all selfish projects*. But when such a relation does exist, courts of equity, acting upon this superinduced ground, in aid of general morals, will not suffer one party, standing in a situation of which he can avail himself against the other, to derive advantage from that circumstance." Applying the principles thus annunciated and drawn from an

extensive collection of the English cases to the relation of parent and child, and to transactions occurring in that relation, the same author remarks, § 309,—"The natural and just influence which a parent has over a child renders it peculiarly important for courts of justice to watch over and protect the interests of the latter; and therefore all contracts and conveyances, whereby benefits are secured by children to their parents, are objects of jealousy, and if they are not entered
*201] into with scrupulous good faith, and are not reasonable under the circumstances, they will *be set aside, unless third persons have acquired an interest under them."

The same principle has been clearly put by Justice Washington, in the case of *Slocum and Wife* v. *Marshall*, 2 Wash. C. C., 400, where, in stating that case, he remarks,—"The grantor, a young lady who from her birth had not but on one occasion left the roof of her father,—bound to him by the strong ties of filial affection,—accustomed to repose in his advice and opinion the most unbounded confidence, and to consider his request ever as equivalent to a command,—is informed by him that a certain portion of her property had been conveyed to *him* by her mother, but that the same, from some legal objection, had failed to take effect. She is then requested to confirm this title, and at the same time is assured by her father, that his design in obtaining this confirmation is to promote *her* interest as well as his own. She reflects upon the proposal, and, influenced by the double motive of promoting her own interest and that of her father, and of fulfilling the intentions of her dead mother, she makes the conveyance." He proceeds,—"A transaction attended by such circumstances will naturally excite the suspicions of a court of equity." It has been insisted that, for the principles just stated, the sanction of this court cannot be avouched; but that, on the contrary, they have been weakened, if not rejected, by the doctrines ruled in the case of *Jenkins* v. *Pye*, 12 Pet., 241. The peculiar features of the last-named case, which may in some respects distinguish it from the one now under consideration, and be thought to bring it less obviously within the principles above stated, need not be pointed out; but we inquire what are in truth the doctrines ruled in the case in 12 Pet.; and whether they are not substantially, nay literally, those propounded by Justices Story and Washington. In the case of *Jenkins* v. *Pye*, this court refuse to adopt the rule which they said had in the argument been assumed as the doctrine of the English chancery, viz., that a deed from a child to a parent should, upon considerations of public policy arising from the relation of the parties, *be deemed void*. They

deny, indeed, that this is the just interpretation of the English decisions relied on, but declare that all the leading cases they have examined are accompanied with some ingredient showing undue influence exercised by the parent, operating upon the fears or hopes of the child; and showing reasonable grounds to presume, that the act was not *perfectly free* and *voluntary* on the part of the child. But the court, whilst they deny that a deed from a child to a parent should *primâ facie* be held *absolutely void*, as unequivocally declare, that "it is undoubtedly *the duty of courts [*202 of equity carefully to watch and examine the circumstances attending transactions of this kind, when brought under review before them, to discover if any undue influence has been exercised in obtaining the conveyance." Between the doctrine here ruled and the principles stated by Justices Story and Washington, no difference, much less any contradiction, can be perceived. For why this watchfulness, thus enjoined as a *duty*, this severe and peculiar scrutiny as applicable to contracts between parent and child, but that they are justly "objects of jealousy," rendered so by the relation of the contracting parties,—a relation aptly and naturally productive of powerful influence on the one hand, and of submission on the other,—subjecting such transactions to presumptions never attaching *a priori* to contracts between parties standing upon a perfect equality.

And now let the character of the contract under consideration, and of the circumstances surrounding the execution of that contract, be subjected to the test rationally and justly imposed by the rules above stated.

This is a contract between parent and child, operating by its terms exclusively for the benefit of the former, and to the prejudice of the latter; for it transferred from her a valuable interest, by the very terms of the transaction admitted to be legally and absolutely hers, and by the same terms transferred it without the shadow of an equivalent received or proffered; and for which, the testimony conclusively shows, none could possibly be given. Thus far the provisions of the contract.

With regard to the circumstances attending and surrounding its execution. It is shown that the grantor in this deed, though of age, had little more than attained to majority; that she was living in the house with her parents,—her only home; and may fairly be presumed to have been liable to the influence of feelings and habits which, in the absence of contravening evidence, would control the dispositions and conduct of a youthful female thus situated. She might be moulded to almost any thing, in compliance with the earnest wishes

(with her habitually yielded to as commands) of her parents. Those parents, who once had lived in affluence and luxury, had, with all the habits and necessities which such a condition naturally creates, by commercial reverses been brought to indigence; from the date of the purchase by Robert Isaac of the property in dispute, had been permitted by him to occupy and enjoy it. In fact, it was apparently their only means of shelter or support. In this state of the family, Robert Isaac
*203] by his will bestowed the whole of this property upon the complainant; and it has been *argued that, with her knowledge of the situation of her parents, the impulses of filial duty and affection might of themselves have formed a sufficient groundwork for the complainant's conveyance. However hazardous it might be to prescribe, as a rule of right or of property, imperfect obligations which the law does not originally enforce, this argument can be deemed satisfactory in instances only in which the motives supposed to enter into such obligations are shown to have been free and unconstrained in their operation. In the present instance, too, independently of the influences which will be shown to have been brought to bear upon the transaction, it is thought that the injunctions of filial duty and affection would have demanded something less than the surrender of all possessed by the grantor; and would have been satisfied with a concession, as to which there probably would never have existed a difficulty,—one, indeed, that seems to have been assented to in practice,—the occupation and enjoyment of the property during their lives, by the parents of the grantor. Nay, it would seem that proper *parental* tenderness, and solicitude for the welfare of the child, or the true principles of rectitude and fairness, would have permitted nothing beyond this. And in the estimate of motives which may have led to the transaction under review, it should not be without weight, that this same filial duty and affection, however commendable in themselves, and however their spontaneous action may be recognized and binding, strengthen the probability of their being converted into means of wrong and oppression; and this very probability it is which challenges the duty of watchfulness and jealousy in the courts, in scanning the transactions of those whose peculiar situation exposes them to danger from such means.

Immediately after the death of Robert Isaac, it seems that the various appliances designed to withdraw from the complainant the fruits of the bounty of her affectionate uncle were put into strikingly active operation. Directly following the death of Isaac, it is charged in the bill, came the urgency of

the complainant's family, and their reproaches against her for having intercepted, as they said, the bounty which but for her would have flowed to the family; and for having dictated to her uncle the disposition of his property; thereby having ruined their prospects, and broken the heart of complainant's father. The natural effects of such appeals upon the feelings of an affectionate and sensitive girl, or even upon a spirit awake to the impulses of pride alone, can easily be comprehended. Then, as is alleged, was the reluctance of the complainant to despoil herself of her property ascribed to the avarice of her intended husband; *and then, too, [*204 amidst her perplexity and distress, upon consultation between both her parents, was suggested to her the device of a letter from her, declaring her belief of the wish of the testator, Isaac, to bestow the property for the benefit of the family; and asking the consent of the father of the complainant to a settlement of the property in conformity with such a wish. Although these allegations are not supported by direct statements of witnesses, yet the intrinsic evidence flowing from other conduct of the parties to these transactions, and that presented by the written documents in this cause, impart to the above allegations a force equal, if not surpassing, that which an explicit narrative by witnesses could give them. And here it is worthy of remark, that the will of Robert Isaac contains no expression nor hint of a desire, or intention, that the property should go according to the supposition assumed; or according to the provisions of the deed subsequently executed. This circumstance alone should be one of controlling influence, even if the testator could be regarded as a person of a capacity and character of the most inferior grade. But none can fail to perceive, from the proofs in this cause, that the testator was a man of intelligence and sagacity, extensively practised in the business of life. He strongly declares his affection for his niece, and as clearly gives to her, and to her only, the property in dispute. What room is here for assuming, that others, and not this niece, were the *chief* objects of his bounty? Such an assumption is forbidden by every rule of law, or of common sense; it goes very far, of itself, to stamp with fraud and contrivance the means resorted to in order to divert that bounty to other ends.

We will next consider the letter (Exhibit A, filed with the answer of Goodwin) addressed by the complainant, then Charlotte Scarborough, to her father; concocted, as is alleged by the complainant, between her parents, as preparatory and introductory to the wrong about to be consummated; in which letter she professes her readiness and her desire to settle the

property derived from her uncle to the use of her parents for their lives, and after their deaths to the use of all the children equally. The will of Robert Isaac was admitted to probate on the 9th day of January, 1828, and amongst the persons who qualified as executors of that will, were William Scarborough, the father of the complainant, and William Taylor, the trustee in the deed now sought to be vacated. These men, the depositaries of the solemn trust reposed in them by Isaac,—fully capable of comprehending his will, and one of them sustaining
*205] the further obligation of a parent to protect the interests of this *young woman,—make themselves the ready instruments to betray this confidence, and this in violation of the clearest language in which their duty could possibly have been prescribed. How far this conduct can be excused or palliated under the pretext of duty to Mrs. Scarborough, founded on the alleged marriage contract, or on any supposed intention of Isaac flowing from the same source, will hereafter be shown in the conduct of Scarborough and Taylor in reference to this very property, when dealing with it for their own personal advantage. This conduct will furnish a most efficient clew in unravelling the texture of the deed in question.

On the 10th of January, 1828, the day succeeding the probate of the will of Robert Isaac, was written the letter above mentioned from Charlotte Scarborough to her father. It seems impossible to resist the evidence furnished by this singular production, that it was a fabrication, designed to conceal the very facts and circumstances which it palpably betrays. In the first place, it may be inquired why such a letter should be written, and whether it would be usual or probable in a transaction between persons thus situated, if dictated solely by an admitted sense of propriety, and sanctioned by a willingness of both the parties to it. Can we accredit the probability of a formal diplomatic communication from a daughter just grown, to her father, residing under the same roof, to justify an act which they both believed it a sacred duty to perform? Again, let us look at the declaration here so anxiously and pompously paraded, that in the act about to be performed by this daughter, she "was unbiased by any control whatsoever; and that, in the liberty she was then using, she was acting by her own free will, dictated by her feelings alone, and unknown to any person," and we shall perceive an apprehension, or consciousness of suspicions, which it was believed the simple transaction itself would neither prevent nor allay. Here are the very *clausulæ inconsuetæ* pointed to in Twyne's case, as the sure badges of that which they are intended to hide. Why should this young woman have taken

such deliberate pains to declare, and to place as it were on record, a history of her motives,—her entire exemption from persuasion, authority, or even advice, in what she was about to do in obedience to affection and a sense of duty? If these had constituted the real incentive to her act, would they have left room for one thought or surmise of dishonor, connected with the objects of that affection and duty? Such suspicions and surmises are rather the offspring of colder calculation, and of the "compunctious visitings" that wait on contemplated wrong. And again, in the concluding paragraph *of this letter, may be seen a strong corroboration of [*206 this charge in the complainant's bill, of the painful and discreditable imputations which had been made against her, as inducements to come into the proposed arrangement. The language of this paragraph is as follows:—"Most thankful do I feel for being made the simple instrument of accomplishing the will of him who has so kindly and generously placed his confidence in me, and in acting thus, convince the world that my devoted affection for him was pure, disinterested, and unbiased by future expectation." It will naturally occur to every one to inquire, why this young woman should accuse herself, or fancy herself accused by others, of unworthy motives or conduct, because she had been the object of her uncle's affection? The rational solution of the matter would seem to be this,—that the assumption of such motives on the part of those around her, represented by them, too, as entering into the opinions of the world, had been pressed as an efficient means of influence; and that a vindication from their existence furnished a plausible coloring for the proceeding about to be effected. The tone, the language, the artificial structure of this letter, its familiarity with the terms peculiar to the business of life, all bespeak it, in our judgment, not the production of an inexperienced girl, but of a far more practised and deliberate author. Lastly may be mentioned, with respect to this letter, the care with which it has been preserved, and placed beyond the control of this daughter, as a prop to a transaction which could not stand alone, and as a means of stilling the murmurings of future complaint; the very ends for which it at last emerges from its secret recess.

Next in the chain of evidence, and closely following its harbinger and herald, we will notice the deed itself from the complainant, conveying from her every description of property derived from her uncle; and it is one of the peculiarities of this conveyance, not without significance, that it was executed before there was an inventory made by the executor, to inform the grantor specifically what she had a right to claim or to

bestow. Turning then to the recitals of this deed, they must be regarded as wholly irreconcilable with truth; and especially with that *uberrima fides*, that fullness of candor and fairness, required in transactions between parent and child; transactions upon their face, too, operating to the disadvantage of the latter. This deed sets out a marriage contract entered into between Scarborough and his wife, anterior to their marriage, purporting to cover a portion of the property in dispute; it then states the failure of this contract by reason of
*207] an omission to record it, and *proceeds to declare, that, some doubts having been suggested as to the validity of the said marriage settlement, from the omission to record the same, the said William Scarborough did, in consequence of such doubts, transfer and convey all his right, &c., to the said Robert Isaac, and that the said Isaac, having departed this life, had left this property, with certain personal estate, to his niece Charlotte Scarborough; and that she to whom the devise and bequest had been made, being desirous of carrying the marriage settlement into effect according to the original intent of the parties, had, on coming of age, determined to convey all her right, title, and interest in the property derived from her uncle, for that purpose.

The deductions from these recitals,—nay, their necessary meaning, we may add, their literal import,—are these. That the conveyance from Scarborough to Isaac was with the sole view of effectuating the marriage settlement, and of curing any defects attributable to that contract; that Isaac took the property clothed with this trust, and for no consideration moving from himself; and vesting in him an absolute title or estate; that his devise and bequest to his niece were purely to secure the same objects, and that *she*, fully aware of all these acts and intentions, had, as soon as she could legally do so, determined upon their accomplishment. Such are the declarations and recitals contained in this deed; not one of which, save the statement of a project of a marriage settlement, that is not by the evidence on the record shown to be palpably false. Thus, if we look to the deed from Scarborough to Isaac of the 13th of May, 1820,—to the agreement between Isaac and McHenry as the agent of A. Low & Co., in February, 1826,—and to that between Robert Isaac and Andrew Low, on the 8th of March, 1827,—and also to the return of the marshal of the sale under execution of the personal property in dispute, we find that Isaac was the purchaser and exclusive owner of all this property, for a pecuniary consideration paid by him of nearly twenty-three thousand dollars. Looking next from the recitals of this deed to the will

of Robert Isaac, we find no ambiguity, no declaration, hint, or implication in the will to sustain these recitals; but every thing to falsify and condemn them. We there see clearly the motive of the testator; *his affection* for his favorite niece, and the subjects and the mode with and by which he designed that his affection should be manifested. He gives to her, clear of all trusts or encumbrances, "the lot, dwelling-house, and all other improvements thereon, which formerly belonged to her father, together also with the plate, furniture of all kinds, books and prints, all of which *were purchased and paid for at marshal's sale by me." If this clause of [*208 the will were shown to and clearly understood by the complainant, it is difficult to conceive how it could be made rationally to express or imply a duty on her part to disrobe herself of this bounty, as being clearly designed for others, and not for herself. The conduct of these persons, Scarborough and Low, and of Taylor, who was named as trustee both in the marriage settlement and in the deed from Charlotte Scarborough, furnishes convincing evidence of the light in which they viewed any obligation supposed to be adhering to this property, and forming a binding consideration, either legal or moral, for the deed now impugned; that is, an obligation to bestow it, in conformity with the stipulations of the marriage contract. But it may be naturally asked, if this supposed obligation was limited to Charlotte Scarborough. Did it not, if existing at all, extend equally to her father, and to the trustee in the settlement, and to others acquainted or connected with that contract? In a moral view, at least, no difference is perceived in the position of these parties, and it is not pretended that Charlotte Scarborough sustained any legal obligation to convey away this property. Yet it is seen by the record, that William Scarborough, to serve his convenience or his interest, had no difficulty in subsequently encumbering it both to Low and to Taylor, the trustee in the marriage settlement, or in subsequently selling it out and out to Isaac; and that this same trustee, Taylor, manifested as little scruple for the sanctity of his trust, in its application for his own benefit. And it seems to us to be a most pregnant state of facts connected with this deed, that, when it was to be executed, Taylor and Low, who had so dealt with this property as to be necessarily cognizant of the falsehood of the recitals it contained, were carried to the house of Scarborough to become, the first the trustee, the second a witness to this instrument. The other witness to this deed, John Guilmartin, seems to have been taken under the stress of necessity, from the refusal of James Taylor to attest the deed,

and the manner in which the transaction impressed itself upon Guilmartin, is evinced in his deposition, in which he says that he inquired of Miss Scarborough whether this deed was her voluntary act, but was permitted to have no answer from her, and was silenced in his inquiries by the remark from Low, that the witness had been sent for to *attest the deed, and for no other purpose.* This witness further swears, that the deed was not read to nor by the grantor in his presence. He states, moreover, this uncalled for remark on the part of the father *209] (although witness was not permitted to obtain information *from the child),—that he, Scarborough, had sent for the witness to attest "a deed from Miss Scarborough to her mother, *which as a dutiful child she had made.*" Again, when this deed from Charlotte Scarborough was to be proved, the only witness to its execution called on was Andrew Low; he who knew that its recitals were inconsistent with truth, he who deemed all inquiry about the willingness of the grantor to make it to be impertinent. John Guilmartin was passed by; he might have revealed, if called, circumstances coeval with the transaction, which would be calculated to remove or to weaken the influence of seeming acquiescence, or of the lapse of time; circumstances which time alone, in the absence of direct impeaching testimony, would be competent entirely to cover up. The testimony adduced in support of the deed from the complainant falls far short of the object for which it was intended; much of that evidence, too, seems to have been given under influences necessarily detracting from the weight which it otherwise might have had. It wholly fails to countervail the evidence arising from the statements of witnesses on the other side; from the relative positions of the parties; and, more than all, from the intrinsic nature and force of the documents relied on both by plaintiff and defendants in the court below. From a careful analysis of the facts and circumstances of this case, we think the conclusion cannot be resisted, that the deed from Charlotte Scarborough to William Taylor, of the 22d of January, 1822, was not a fair and voluntary transaction; but was drawn from her by means and under influences which rendered that conveyance void. We are, therefore, of the opinion, that the real property conveyed by that deed should be reconveyed to the said Charlotte, now Charlotte Taylor; and that the several articles of personal property bequeathed to her by her uncle, Robert Isaac, so far as the same are now in existence, and in the possession or under the control of Mrs. Julia Scarborough, or of any other person acting under her authority, or claiming from her and not for valuable consideration without notice, or claiming

under like circumstances from any person by virtue of the provisions of the deed of trust above mentioned, should be delivered up to the complainant as her own property; but it is the opinion of this court, that rents and profits for the use and occupation of the real estate above mentioned, or compensation for the use and enjoyment of the personal property bequeathed to the complainant, should not be allowed her under all the circumstances attending this case; they are accordingly hereby denied her. It is therefore, upon consideration, adjudged, ordered and decreed, that the decree of the Circuit Court *for the Sixth Circuit and District of Georgia, pronounced in this cause at the April term of [*210 that court in the year 1846, be, and the same is hereby, reversed; and this cause is remanded to that court, with directions to decree therein in conformity with the opinion herein above expressed.

Mr. Justice WAYNE remarked, that the decree given in this case was that which he wished to be given in the court below. But the judges of the Circuit Court not being of the same opinion, the bill of complaint was dismissed, that there might be an early appeal to the Supreme Court. He concurs altogether in the reasoning and conclusions which have just been announced by the court.

Mr. Justice NELSON and Mr. Justice WOODBURY dissented.

Order.

This cause came on to be heard on the transcript of the record from the Circuit Court of the United States for the District of Georgia, and was argued by counsel. On consideration whereof, it is now here ordered, adjudged, and decreed by this court, that the decree of the said Circuit Court in this cause be, and the same is hereby, reversed, with costs, and that this cause be, and the same is hereby, remanded to the said Circuit Court, with directions to decree therein in conformity to the opinion of this court.