

evidently requires to be carefully restricted within proper limits. It is in itself a doctrine which involves a wide departure from the policy which induced the Legislature to pass the Statute of Frauds, and it is only in clear cases of fraud that this doctrine has been applied—cases in which the Court has been persuaded that there has been a fraudulent inducement held out on the part of the apparent beneficiary, in order to lead the testator to confide to him the duty which he so undertook to perform." The language of Lord Westbury in the same case seems to go much further: "The jurisdiction which is invoked here by the appellant is founded altogether on personal fraud. It is a jurisdiction by which a Court of Equity, proceeding on the ground of fraud, converts the party who has committed it into a trustee for the party who is injured by that fraud. Now, being a jurisdiction founded on personal fraud, it is incumbent on the Court to see that a fraud, a *malus animus*, is proved by the clearest and most indisputable evidence.

1875.

Ross
v.
Scott.

* * The Court of Equity has, from a very early period, decided that even an Act of Parliament should not be used as an instrument of fraud; and if, in the machinery of perpetrating a fraud, an Act of Parliament intervenes, the Court of Equity, it is true, does not set aside the Act of Parliament, but it fastens on the individual who gets a title under that Act, and imposes upon him a personal obligation, because he applies the Act as an instrument for accomplishing a fraud. In this way the Court of Equity has dealt with the Statute of Frauds; and in this manner, also, it deals with the Statute of Wills." I think this exposition of the law would warrant the decree made, on the ground of the arrangement entered into before the sale, being one which, notwithstanding the Statute of Frauds, can be proved, and being sustained in evidence, affords clear ground for relief. Here there was "a fraudulent inducement held out on the part of the defendant, in order to lead the plaintiff to confide to him the duty which he so under-

Judgment.