

WILL—LIMITATION TO A. FOR-LIFE REMAINDER TO B. IN TAIL—
CODICIL GIVING A. AN EXCLUSIVE POWER BY DEED OR WILL
TO APPOINT TO A CLASS—REVOCATION OF CODICIL—RESTORA-
TION OF CODICIL ON PROMISE OF A. NOT TO INTERFERE WITH
B.'S SUCCESSION—APPOINTMENT BY A. TO HIMSELF IN VIOLA-
TION OF PROMISE—FRAUD—INVALID APPOINTMENT.

Tharp v. Tharp (1916) 1 Ch. 142. By the will in question in this case real estate was settled to the use of the testator's widow for life, with remainder to Arthur Tharp for life, with remainder to the use of the first and every other son of Arthur Tharp successively for life, with remainder to the use of the first and every other son of Arthur Tharp successively in tail male, with remainder to Horace Tharp for life, with remainder to the use of the first and every other son of Horace successively for life, with remainder to the use of the first and every other son of Horace Tharp successively in tail male. By a codicil the testator gave a power of appointment by deed or will to Arthur to appoint, after the use in favour of Arthur's children in tail male, to such persons being of a certain class (of whom Arthur was one) as Arthur, by deed or will, should appoint and so as the remainder in favour of Horace and his issue should only take effect in default of such appointment or so far as such appointment should not extend. The testator subsequently revoked this codicil, and Arthur, hearing of the revocation, procured the testator's wife to induce the testator to restore the codicil on Arthur's promise that he would not exercise the power to the prejudice of Horace or his issue. After the testator's death, Arthur executed the power in favour of himself. The plaintiff, who was the eldest son of Horace, claimed a declaration that the appointment was void as being a fraud, and to enforce the promise made by Arthur not to exercise the power to the prejudice of Horace and his issue. Neville, J., who tried the action, held that the plaintiff was entitled to the relief claimed, and he granted a declaratory judgment that the defendant was not entitled to exercise the power so as to defeat the estate tail in remainder of the plaintiff, and that the appointment made by the defendant was invalid.