

for judgment that "Untrue representations were made to the appointee and her father which induced the execution of the power of appointment." From this isolated sentence it is urged that the exercise of the power of appointment was nugatory, being exercised in such a way as to invalidate it; this point was raised in that action; it was argued that the appointment was exercised for another purpose than to give the appointee any interest and that the whole transaction should be vacated if any part of it was to be set aside (pp. 231-2). But the decision was the instruments subsequent to the deed of appointment were declared to be inefficacious and the title of the plaintiff as appointee was sustained (p. 235). No doubt the rights of the appointee were contingent on her surviving the life tenant who was to appoint, but on his death her rights to the fee became absolute under the appointment of 1880, which was not invalid and has not been disturbed by the appointor up to the time of his death. This deed of appointment was valid as between appointor and appointee. The misrepresentations were not such as to affect the valid passing of the interest under the control of the life tenant (the appointor).

No good purpose would be served by opening up the transaction and the litigation for another investigation on this aspect of the case. The appointment was good though voluntary and though not disclosed at the time to the appointee, and it was not competent for the appointor, of his own motion, to execute any subsequent appointment which would operate as a revocation of the first.

The plaintiff should have judgment as asked with costs.