received from the crown. The defendants have had a double satisfaction. It is [131] like the case of a supposed loss of a ship, money paid, and the ship afterwards discovered to be in safety.

The *Attorney-General* for the Royal Exchange Assurance Office contended, that though the office compounded and renounced salvage, yet that such composition was only meant to extend to any part of the ship or goods that might be recovered, or to any satisfaction or restitution that might be made by the Spanish captors to the sufferers.

Sewell and *Perrot* for the executors of the *De Pazes*.

If this is in the nature of salvage, the underwriters must undoubtedly have the benefit of it. But it is not so; it is a grant of the king: a royal bounty to British sufferers, and not an act of justice. The commissioners for the distribution were only allowed to pay the difference to the sufferers. The plaintiffs as foreigners could not have claimed under the commission.

The *Lord Keeper*. I am of opinion that upon the policy, and the peril happening, and the payment of the money by the underwriters, the whole rights of the assured vested in them. The assured had this right of restitution vested in them against the Spanish captors, which was afterwards prosecuted by the crown by reprisals. Satisfaction having been made in consequence of that capture, I think the plaintiffs are entitled to that benefit; and that it was received by the executors of *Elias De Paz* in trust for them. The defence of the plaintiffs being foreigners, and as such not entitled to any benefit, is a fallacy: they stand in the place of British subjects, and have therefore in this court the same rights as British subjects. The capture is the origin of that right, which belongs to the plaintiffs by relation, as claiming under one of the sufferers.

[132] As to the nature of the salvage, it was so much saved out of the hands of the *Spaniards* by means of the interposition of the crown: it was so understood by the crown. It was to be considered as a retribution to the underwriters as lessening the loss incurred by the capture. As to the Royal Exchange Assurance, they have no foundation whatever for their claim; they have settled their loss with the assured, and renounced all benefit of salvage.

Decreed the sum of £1636, 7*s*. 3*d*. with interest at 4 per cent. from the time of the payment of the £2050, 18*s*. 6*d*. and costs. (*Reg. Lib. A.* 1757, *fol.* 424.) (*Note:* The case of *Randall v. Cochran*, 1 *Ves.* 98, arose in consequence of the same proclamation, and is precisely in point: it does not appear to have been cited. *Vide Park* on Insurance, 226, 227.)

ALEYN *v.* BELCHIER. July 5, 1758.

[S. C. 2 Wh. & T. L. C. (7th ed.) 308.]

Power of jointuring executed in favour of a wife, but with an agreement that the wife should only receive a part as an annuity for her own benefit, and that the residue should be applied to the payment of the husband's debts: held, a fraud upon the power, and the execution set aside, except so far as re ated to the annuity, the bill containing a submission to pay it, and only seeking relief against the other objects of the appointment.—*S. C. Sugd.* on Powers, App.; *Amb.* MSS.

The Reverend *Thomas Aleyn*, being seised of a real estate in *Essex* of the yearly value of £540, subject to a mortgage for a term of five hundred years to Sir *Charles Palmer* for £500, and having a nephew, *Edmund Aleyn*, and two brothers, the plaintiff, *Giles Aleyn*, and *William*, who was a defendant, by his will, bearing date the 28th of *May* 1746, devised the same to *Eyre* and *Bragg*, in trust, by sale or mortgage, to raise money and pay his debts and legacies, and to permit his wife to receive the rents and profits of the residue for her life, and after her death, in trust, to convey to [133] his nephew *Edmund* for life, with remainder to his first and other sons in tail male, with proper limitation, to support contingent remainders, with a power to his nephew to make a jointure on any woman he should then after marry for her life, in bar of dower; with powers to provide for younger children, and to make leases, with remainder to the testator's brother *Giles* for life, remainder to his first and other sons in tail male; remainder to his brother *William* for life; remainder to his first and other sons in tail male; remainder to his own right heirs: he gave his brother the plaintiff an

annuity of £30 a-year for his life, to be paid out of his estate, to be increased to £50 a-year in case his nephew should survive his, the testator's wife.

A bill was filed soon after the testator's death by the widow, and on the 14th of *February* 1749, a decree made to establish the will, and for payment of debts and legacies by mortgage or sale in the usual way. The Master reported there was due for debts and legacies £1516, 1*s.* 10*d.* which he approved to be raised by mortgage. The widow died in *April* 1750, and *Edmund* became entitled to the possession of the estate. The defendant, *William Belchier*, having advanced money to pay off the incumbrances, a mortgage bearing date the 26th and 27th of *June* 1750, was made of the estate to him in fee, and the term for years was assigned to *John Belchier*, in trust for *W. Belchier*.

Edmund was very extravagant, and became indebted to *William Belchier*, in the sum of £1760.

On the 4th *June* 1750, *Edmund* married the defendant *Jane*, who was a low woman without fortune, and no provision for her was either made or agreed to be made; but soon after the marriage, by articles of agreement, bearing date the 1st of *August* 1750, and made between *Edmund Aleyn* and his wife of the one part, and *William Belchier* [134] of the other, reciting the will of *Thomas Aleyn*, giving *Edmund* a power of jointuring, and that he and *Jane* were lately married; and that he was indebted to *William Belchier* in the sum of £1760, besides the mortgage; *Edmund Aleyn*, in satisfaction and discharge of the said sum of £1760, and in consideration of the several annuities and money thereinafter agreed to be paid, covenanted within six months, to procure an effectual conveyance and settlement, to be made by the trustees in *Thomas Aleyn's* will; and immediately after such settlement should be made, to appoint the whole estate to his wife for her life, in case she should survive him, for her jointure; and that he and his wife, as soon as they should become respectively seised of the legal estate of freehold, would, by fine and conveyances, convey and assure all the said premises by the said will devised and intended to be settled, unto and to the use of *William Belchier*, his heirs and assigns, during the lives of *Edmund Aleyn* and *Jane* his wife, and the longer liver of them, and in consideration thereof, *William Belchier* covenanted, that in case the said settlement should be perfected, whereby the estate should become well vested in him and his heirs, for the lives of *Edmund* and *Jane* his wife, and the longer liver of them, to pay the several annuities after mentioned, namely, to *Jane Aleyn* during the joint lives of her and *Edmund* her husband £60 a-year, clear of all deductions, for her separate use; to *Edmund Aleyn*, for his life, in case he should survive *Jane* his wife, £60 clear of all deductions, and to *Jane*, in case she should survive *Edmund* her husband, for her life £100 a-year, clear of all deductions, and to pay to *John Miles*, son of *Jane* by a former husband, £105 at the age of twenty-one years; and also to pay *Jane* £5 yearly towards his maintenance and education, till the £105 should become payable.

The estate was conveyed by lease and release of 6th [135] and 7th of *August* 1750, to the uses of *Thomas Aleyn's* will, pursuant to the decree; and by deed, dated 8th of *August* 1750, reciting the conveyance and power to jointure, *Edmund Aleyn*, in consideration of the marriage, and in order to make a provision for *Jane* his wife, appointed the whole estate to *Jane* his wife for a jointure, subject to the payment of the annuities given by the will of *Thomas Aleyn*, and of the mortgage of £1516, 1*s.* 10*d.* and interest.

On the 10th of *August* 1750, *Edmund Aleyn* and *Jane* his wife executed a deed, by which *Edmund* covenanted with *George Townsend*, that he and his wife would levy a fine of the premises to *Townsend* and his heirs, for and during the lives of *Edmund* and his wife, and the longer liver of them, in trust for *William Belchier* and his heirs, which was levied accordingly.

William Belchier took possession of the estate, and received the rents and profits, and paid the plaintiff, during *Edmund's* life, two sums of £25 and £21, 5*s.* in part of the annuity he was entitled to under *Thomas Aleyn's* will.

Edmund died in *June* 1755.

On the 26th of *November* 1756, the plaintiff filed the present bill to redeem the estate on payment of £1516, 1*s.* 10*d.* the mortgage money borrowed under the decree, and to be let into the possession of the estate; for an account of the rents and profits from the death of *Edmund*, submitting to pay *Jane* £100 a-year for her life; and to have the deeds and writings of the estate delivered up.

Jane Aleyn and *William Belchier* admitted in their several answers the facts as

before stated. *Jane Aleyn* said, that the settlement was intended to make a reasonable provision for her, and to save *Edmund* from ruin; and that if *Edmund* had not been in debt at [136] the time of their marriage, he would have settled the whole estate on her for her jointure. *William Belchier* said, that the consideration of the settlement and conveyance was truly and *bona fide* advanced, part before the execution of the settlement, and the remainder at or about the time of the execution of the settlement and conveyance to *Townsend*; and they both admitted that *Edmund* was at the time of the settlement in distressed circumstances, and in want of money.

Mr. *Perrot* and Mr. *Ambler* for the plaintiff. This is an improper execution of the power which was to bar dower by giving a jointure; but even supposing it well executed, the fraud will vitiate it. The appointment and conveyance were a deceit upon the testator, and a fraud upon the remainder-men. The power given to the nephew, who was only tenant for life, was to make a fair jointure to encourage him to marry, not to pay his debts. The remainder-man was only to be kept out of the estate, in case a fair and honest jointure were made. It must not be colourable, and for other purposes. This was an artful contrivance of *Belchier* and the defendant *Jane*, a low, mean woman, of no fortune. There is no settlement, nor agreement for one at the time of the marriage, not till *Belchier* put it into *Edmund's* head with a view to secure his own debt by taking an absolute interest in the estate for two lives, instead of a mortgage for *Edmund's* life only. It is at best an unreasonable bargain. The articles of the 1st *August* discover the whole scheme. Upon the face of them it appears, it was not the intention to jointure, but to pay debts. The only jointure averred is £100 a-year. *Edmund* is stripped of every thing during the joint lives of himself and his wife, only £60 a-year to be paid during their joint lives, and that to the separate use of the wife. Suppose a power to make a jointure of so much for every thousand pounds [137] fortune. It has been repeatedly held, that if the husband or others advance a sum of money colourably, to authorize the husband to settle largely, a court of equity will set aside all above the proportion of the real value of the fortune. (Vide *Lane* v. *Page*, *Amb.* 233. Lord *Tyrconnel* v. Duke of *Ancaster*, *ib.* 237.) So, if a father, having a power to appoint amongst his children, bargains with one for a share, equity will set it aside. Though it may be honest in *Edmund* to pay his debts, it must be done with his own money. This is a method of doing it with other persons' money, contrary to the intention of the testator. Even admitting the estate had been fairly and *bona fide* appointed as a jointure, and the wife had afterwards parted with her jointure, or part of it, to pay her husband's debts, it would have been good to bind the remainder-man: yet, in this case the whole is one transaction, a collusion between the husband and wife and *Belchier*. The case of *Lane v. Page*, determined by Lord *Hardwicke*, is precisely in point.

The *Attorney-General* and *Solicitor-General* for the defendant, *Belchier*; Mr. *Clark* for the jointress.

The first question is, as to the extent of the power given by the will. The objection that the power is only to bar dower, and consequently can only comprehend jointures made before marriage, is too extensive, as it will comprehend every jointure, though made *bona fide*. The devise is to a nephew having no estate of his own for life, without impeachment of waste: he had no estate to whch dower could attach; which shews that the words were put in by the scrivener *currente calamo*.

As to the execution, the power was substantially executed. The husband and wife agreed to sell their interest to *Belchier*. If an appointment had been made of the [138] whole estate, and the wife had afterwards joined with the husband, and sold her interest, it would have been good, if only a day had intervened. This is the same thing. Suppose the wife had made a stand after the power was executed, the court would not have compelled her to levy a fine. It was in her power to do it or not. In the case put of a father appointing to a child, making himself a partaker, the appointment would only be avoided as against other children, not against a remainder-man.

The *Lord Keeper*. The question is, whether *Edmund Aleyn* has properly executed the power as a jointure, and has properly conveyed to the defendant *Belchier*, or whether the transaction is void *in toto* or in part. I am inclined to think the power was not well executed in point of law. It ought to have been before marriage. The power is given under restrictions. It must be a jointure in bar of dower, which can only be before marriage. Dower is not barrable by a jointure after marriage. But I build my opinion upon the next question. The whole transaction is on agreement between the husband

and wife. No point is better established than that, a person having a power, must execute it *bona fide* for the end designed, otherwise it is corrupt and void. The power here was intended for a jointure, not to pay the husband's debts. The motive that induced *Edmund* to execute it was not a provision for his wife. This case is not distinguishable from the cases alluded to, nor from *Lane* v. *Page*. If a father has a power to appoint amongst children, and agrees with one of them for a sum of money to appoint to him, such appointment would be void. It was admitted the execution would be void; but it was said to be only so amongst the children. In that case the money is to go to the children; no other person has any interest in it. Here the remain-[139]-der-man has an immediate right to the estate after the death of *Edmund*, if there is no appointment. It was said to differ from the case of parent and children; and, that if the husband had fairly executed the power, the wife might have immediately afterwards joined in a fine to pay his debts. The reason is plain: she would then have had a first interest, and the husband would have had no control over it; but it does not from thence follow that they might make an agreement to divide the money between them. It cannot be supposed he would have settled the whole on her without some such view. She was of no family, and had no fortune. It would have kept the children, if they had any, entirely out of the estate till her death. It is like the case put of parents and children; and I think *Lane* v. *Page* is in point, and ought to govern my decision in the present case.

Declare the appointment good, as to the £100 only, for the benefit of *Jane*. The plaintiff to redeem, on payment of principal and interest of the mortgage and costs, so far as relates to the mortgage. Account of rents and profits from the death of *Edmund*; and *Belchier* to pay the rest of the costs. (*Reg. Lib. A.* 1757, *fol.* 432.) (*Note*: As to relief in equity against fraudulent executions of powers, *vid. Sugd.* on Powers, 400 *et seq.* *Macqueen* v. *Farquhar*, 11 *Ves.* 467. *Palmer* v. *Wheeler*, 2 *Ba. & Be.* 18. *Daubeny* v. *Cockburn*, 1 *Meriv.* 626. *Davis* v. *Uphill*, 1 *Swa.* 136. In the latter case one point directed by the court, to be particularly spoken to, was whether a fraudulent appointment is void *in toto* or in part only; and *Lane* v. *Page*, and *Aleyn* v. *Belchier*, were relied upon to shew that it would be only void in part. Sir *W. Grant*, however, held that no part of a fraudulent agreement could be supported, except where a consideration had been given, in consequence of which the parties could not be [140] restored to their original situation. That in *Lane* v. *Page* the subsequent marriage formed such a consideration on the part of the wife; and that, in *Aleyn* v. *Belchier*, though the appointment was subsequent to the marriage, yet the bill contained a submission to pay the annuity, and only sought relief against the other objects of the appointment.)

BROWN *v.* PECK. 11th & 12th July, 1758.

[See *Wren* v. *Bradley*, 1848, 2 De G. & Sm. 51; *Cartwright* v. *Cartwright*, 1853, 3 De G. M. & G. 991. Considered, *In re Moore, Trafford* v. *Maconochie*, 1887–8, 39 Ch. D. 116.]

Devise and legacy from an uncle to his niece, held not redeemed by an advancement upon her marriage. Bequest of an allowance to a feme-covert on condition she lived apart from her husband, held the condition *contra bonos mores* and void.

William Sparks, by his will, bearing date the 6th of *January* 1756, devised *inter alia* to his niece, *Elizabeth Sparks*, eight dwelling-houses, with divers remainders over, and also gave her two several legacies of £500 each. The testator gave to *Charles Umphreville*, who had married his niece *Rebecca Sparks*, five shillings and no more; because he had married his said niece without the consent of her mother, or one of her relations; and after leaving his said niece *Rebecca Umphreville* £15 for mourning, he directed, that if she lived with her husband, his executors should pay her £2 per month, and no more; but if she lived from him, and with her mother *Sparks*, then they should allow her £5 per month.

By indenture, bearing date the 24th of *September* 1756, made upon the marriage of *Elizabeth Sparks* with the defendant *Peck*, the testator settled five dwelling-houses (one of which was the same with one which he had devised to *Elizabeth Sparks* by his will), and the sum of £500, upon the husband and wife successively, and the issue of the marriage.