usual to order the proceedings to be laid before the Chancellor; but that order was no part of the judgment, and was not the practice at all in cases of civil proceedings for damages. He should propose, therefore, to remit that part of the interlocutor for reconsideration. Though the Judges below must have been aware that the Commissions of the Peace and Lieutenancy passed under the Great Seal, they might have considered the Advocate as a proper *tertius interveniens*.

Dec. 2, 1813.

ASSAULT.

Suing *Glengary* in the Commission of the Peace and Lieutenancy, remitted for review; the consideration of that question not belonging to his province.

Interlocutors remitted for review as to the remit to the Lord Advocate—affirmed as to the rest.

Judgment.

Agent for Appellants, MUNDELL.
Agent for Respondent, CHALMER.

SCOTLAND.

APPEAL FROM THE COURT OF SESSION.

GRANT and others—*Appellants*.
DYER and others—*Respondents*.

Dec. 8, 1813.

WILL.

TESTATOR gives 3000*l*. portion to each of three daughters, the interest to be paid them in the mean time, and the principal on the event of their marriage with the consent of his widow and one or more of his trustees; and in case of their marrying without such consent, the principal sum of the daughter so marrying to go, not to the wife and husband, but to the children of the marriage; and in case of their dying unmarried, then the principal sum to revert to his estate; the residue of which he gave to his son. After

Dec. 8, 1813.

WILL.

testator's death, the son assigned his contingent interest in the portions to one of the sisters. The mother and trustees died. Held that, as those, whose consent to the marriage of the daughters was required by the will in order to entitle them to their portions in that event, were dead, and as the son was the only other person interested in the portions, and as he had assigned his interest to one of his sisters, that sister was entitled to uplift her own portion immediately, and the portions of her other sisters with their consent, and to close the trust.

ARCHIBALD GRANT, Esq. of Pittencrief, who usually resided in London, and was resident there at the time of his death, died in 1784, having previously made his will, of which the material parts, as read by the *Chancellor*, are stated below, with the sections numbered for the convenience of reference, and, as far as possible, to prevent the necessity of repetition.

Will of A. Grant.—Gives his estates to trustees, the survivor, and representatives of survivor, upon trust to pay 2000*l.* to Thomas Dyer, husband of his eldest daughter, as part of her marriage portion, 1000*l.* thereof having been before paid.

The testator, by his will, "gave all his "property, real and personal, to *trustees*, (therein "named,) *their executors, administrators, and as-* "*signs*, upon trust that they, the survivor of them, "and *executors and administrators of the survivor*, "should convert the whole of his personal estate "into ready money, place the same in the public "funds," &c.; which money, and all other his estates, they, and the "*survivors and survivor*" of them, were to stand possessed of, and interested in, upon trust, for the purposes of his will: and, after reciting that he had agreed to give *Thomas Dyer*, husband of his eldest daughter *Maria Letitia Dyer*, 3000*l.* as her marriage portion, and that 1000*l.* thereof had been already paid, and that the other 2000*l.* was to be paid after his own and his

wife's death, he directed the same to be paid accordingly. And then the will proceeded thus; viz.— Dec. 8, 1813. WILL.

Sect. 1.—" I give and bequeath to each of my three younger " daughters, Amelia Charlotte Grant, Anne Grant, and Elizabeth " Grant, the sum of 2000*l.* a-piece, with legal interest on the " same from the time of my death. The said principal sums of " 2000*l.* to be vested in the said trustees and executors before " mentioned, in trust, for the use and behoof of each of the said " three daughters respectively, from the time of my death, as be- " fore expressed, until the time of their respective marriages, if " such an event shall happen; when they, or such of them shall " be married, (*but with the special consent and approbation of my* " *said wife during her life, and of one or more of the said trustees* " *and executors, first had and obtained,*) and the husband of such " daughter or daughters so married shall be entitled to demand, " uplift, receive, and grant discharges, for the said respective " sums of 2000*l.* each, with legal interest thereof. But in case " one or either of my said daughters shall marry, at any time " after my decease, without having first asked and obtained *the* " *consent and approbation before directed,* then the said daughter so " married, or the husband of such daughter, shall not be entitled " at any time to demand, uplift, and receive, the said respective " principal sum or provision of 2000*l.*; but the same shall remain " vested in the said executors and trustees, in trust, *for the use* " *and behoof of the child or children of such marriage,* if any such " there shall be; and the said daughter, and the husband of such " daughter, shall only be entitled to demand and receive the legal " interest annually arising from the said provision, from the time " of my death aforesaid."

2000*l.* each to his other three daughters, the interest only to be paid them, and the principal on their marriage with consent of their mother and trustees.

Sect. 2.—" And in case any one or more of my said daughters " shall remain unmarried and single after my death, and not be " married at all, then the said daughter or daughters shall only be " entitled to receive the annual interests arising from their re- " spective provisions, after deducting such proportions thereof as " shall hereafter be directed to be paid and applied for their main- " tenance and education; that is to say, I hereby desire and direct " that my three said younger daughters, or such of them as shall

But in case of their dying unmarried, the principal to revert to his estate.

Dec. 8, 1813.

WILL.

" remain unmarried as aforesaid, shall live and reside with my " said wife Anna Maria Grant, so long after my death as she " shall remain a widow; and that my said trustees and executors " do and shall pay and apply so much of the said interest and " produce of their respective portions and provisions, as they shall " in their discretion think fit and reasonable, for the maintenance " and education of such daughters so remaining unmarried; and " that they, or such of them, shall be entitled to receive for them- " selves respectively the remaining balances of the said annual in- " terests, but that the said provisions and *principal sums of* 2000*l.* " *to each of the said daughters so remaining unmarried, shall remain* " *vested in the said executors and trustees, in trust, as aforesaid,* " *during their respective lives,* and shall, at their *deaths,* revert to " and *become a part of my estate, as if no such provision had ever* " *been made.*"

Farther sum of 1000*l.* each to the three unmarried daughters, on same terms as the former 2000*l.*

Sect. 3.—" I also give and bequeath to each of my said three " younger daughters the farther sum of 1000*l.* a-apiece, from the " time of my said wife's decease, to be paid to such of them, or " to the husband of such of them as shall be married, within one " year from the time of her death, with legal interest thereon " from that time, while it shall remain unpaid; but the said far- " ther principal sum of such daughter as shall remain unmarried " shall remain vested in the said trustees before named during her " or their respective lives, and shall, at her or their deaths, revert " to and become a part *of my said estate,* in the same manner as " is before expressed respecting the said 2000*l.* before directed; " and such daughter so remaining unmarried shall be only entitled " to receive the annual interest of the said respective sum of 1000*l.* " from the decease of my said wife during her or their natural " lives."

The testator then went on to give an annuity of 250*l.* to his wife, and several small legacies to various persons, &c. &c.; and then the will proceeded thus:—

Residue of testator's estate to go to his son, but the

Sect. 4.—" It is my farther will and desire that, after *deducting* " *and reserving the several legacies, provisions, and reserved sums,* " left and bequeathed to my said four daughters, the sum of 1000*l.*

Dec. 8, 1813.

WILL.

" to be disposed and bestowed of by the said Anna Maria Grant, " by will, in manner before mentioned, the above recited legacy " of 250*l.* to be paid annually to my said wife from the time of " my death, and the several other legacies and donations above " specified, my said executors and trustees shall stand seised and " possessed of, and interested in, all the residue and remainder of " my fortune and estates, both real and personal, and the inte- " rests, dividends, and profits thereof, in trust, for the use and be- " hoof of my son, the said Alexander Grant, Captain in the 13th " regiment of foot, his heirs, executors, administrators, and as- " signs; the said interests, dividends, and profits thereof to be re- " gularly paid to and accounted for to him yearly, as they shall be- " come due and payable from the time of my death; but that he " shall have no right or title to sell out any stock, or take up or " employ any principal sum or part of the said estate, real or per- " sonal, except so much as may be necessary for the immediate " payment and discharge of the several legacies and donations above " bequeathed, which the said executors and trustees before named " are authorised and required to do as soon as may be convenient " after my decease; and excepting such sums of money as may " be necessary, and as they shall approve of, to be applied towards " and for purchasing the farther promotion of my said son in the " army: and I further direct, and it is my special will and desire, " that the said Alexander Grant shall not be entitled to, or have " any claim, right, or power, to demand, sue for, uplift, receive, " or grant discharges for, any part or portion of the said remain- " ing estates, real or personal, of which I shall die possessed, " either for the payment of such debts as he may have contracted, " or for any other use or pretext whatever, excepting only as before " excepted, *until he shall have arrived at and completed* 31 *years* " *of age, or be married,* whichever of those two events shall first " happen after my decease; but, on his having arrived at, and " completed the *above age of* 31 *years, or being married,* as before " said, they shall pay and make over to him, and he shall have a " full right and title to demand, sue for, uplift, receive, and grant " sufficient acquittances and discharges *for all such remaining un-* " *appropriated sums of money, principal and interest,* stock, and " real estates and personal, as I shall die possessed of, in the same " manner as I could have done in my life-time; *excepting* always " such sums of money as above are reserved and *appropriated for*

interest only to be paid him till he attained the age of 31, or married; and in either of these events to have the principal.

Dec. 8, 1813.

WILL.

" *the uses and purposes before expressed;* and he shall at no time " have any the least right, title, or pretext, to claim, demand, re- " ceive, intermeddle with, or grant acquittances for, any part of " the said reserved and appropriated sums of money as above; but " that the said executors and trustees shall remain vested in and " possessed of the same in trust, for the uses and purposes before " expressed."

Word OR construed as if it were AND. If son died under 31, *and* unmarried, residue to go to daughters.

Sect. 5.—" And in case my said son, Alexander Grant, *shall* " *happen to die under the age of* 31 *years, or unmarried,* then my " will is, that my said executors and trustees shall stand possessed " of, and interested in, my said residuary estates and accumula- " tions thereof, in trust for my said four daughters, and the sur- " vivor or survivors of them, and the respective heirs, executors, " administrators, and assigns of such surviving daughter or daugh- " ters: and in case there shall be but one surviving daughter, " then in trust for such surviving daughter, her heirs, executors, " administrators, and successors, the share of my eldest daughter, " Maria Letitia Dyer, to be paid, assigned, or made over to her or " her said husband, Thomas Dyer, for her use and benefit, within " one year after the death of the said Alexander Grant; and the " share of the survivor or survivors of my said three younger " daughters to continue vested in the said trustees, from the time " of the death of their said mother, Anna Maria Grant, if she " shall survive her son, the said Alexander Grant, and in case she " shall so long remain a widow, in trust until such time as they, " or either of them, shall be married; when such share or pro- " portion shall be paid, assigned, and made over to her or them, " or the husband of such daughter or daughters so married, within " one year after the death of my said wife, in case she shall survive " her son, the said Alexander Grant, as aforesaid."

Sect. 6.—" And in the event of the said Alexander Grant's " dying without having attained the age of 31 years complete, AND " unmarried, *as is before expressed,* then, and in that case, it is " my will, and I desire that my said residuary estates, and accu- " mulations thereof, shall be charged and chargeable with the " payment of the farther clear yearly sum of 100*l.* to my said " wife Anna Maria Grant, &c. &c. And in case my said son shall " die, *as aforesaid,* and my said four daughters shall all die with- " out being married, or such of them as shall be married, *and die* " *without leaving issue of their bodies,* then my will is that my said

" trustees shall stand possessed of, and interested in, all my said Dec. 8, 1813.
" residuary estates, and accumulations thereof, in trust, to pay the
" interest and produce thereof, and of the whole thereof, to my WILL.
" said wife during her life; and after her death, and in the event
" of the death and deaths of my said four daughters, as above ex-
" pressed, I leave and bequeath the sum of 500*l.* a-piece to such
" of my said executors and trustees as shall have accepted of and
" acted in the said trust and character; and all the remainder of
" my property, possessions, and estates, real and personal, I leave
" and bequeath to, and in favour of, *Maria Eleonora Grant*, only
" daughter of the late *Alexander Grant, of Arndilly* in North Bri-
" tain, and to her heirs, executors, administrators, and assigns, to
" be held, occupied, and enjoyed, by her or them, as hers or
" their sole right and property in all time thereafter."

And if daughters die without issue, property to go to M. E. Grant.

The testator then appointed his trustees, together with his wife, executors of his will. Two of the trustees (Colquhoun Grant, Clerk to the Signet, and Richard Mollesworth, of the Navy Pay-Office) and the widow accepted the trust. The widow and the trustee, Colquhoun Grant, having died, the management devolved entirely on Mr. Mollesworth, who acted till the son attained the age of 31, and then paid over to the son the whole of the testator's property, with the exception of 9000*l.* reserved to answer the bequests to his unmarried sisters.

A creditor of the son then arrested in Mr. Mollesworth's hands the son's contingent interest in the 9000*l.*; and, in 1797, Mr. Mollesworth raised an action of multiple-poinding and exoneration, (in the nature of a bill of interpleader,) before the Court of Session, against the testator's children and the son's creditor. Mr. Mollesworth died in 1800, and, on petition by the Appellants, a factor was appointed to carry on the trust and insist in a supplement-

April 19, 1797. Action of multiple-poinding.

Dec. 8, 1813.

WILL.

ary action of multiple-poinding, to which Mrs. M'Dowal Grant (late Miss Grant of Arndilly) and her husband were made parties.

Sept. 6, 1803. Anne Grant acquires her brother and his creditor's interest, and brings an action of declarator, which is conjoined with the other action.

During the progress of this action, Anne Grant, one of the unmarried sisters, by agreement with her brother, in consideration of a certain advance, and by compromise with the arresting creditor, acquired both their interests in the 9000*l.* portions, and brought an action of declarator, concluding, that, in virtue of this transaction, she ought to be declared entitled to her own 3000*l.* absolutely, and to her two unmarried sisters' portions in case they died unmarried, &c. This was conjoined with the process of multiple-poinding.

In 1806, Captain Grant, the son, died unmarried.

In the course of the proceedings, which it is unnecessary for the present purpose to state at length, the Appellants (Anne Grant and her two unmarried sisters) contended that Alexander Grant, the residuary legatee, having attained his age of 31 years, he and his assigns became entitled, under the will in question, to the whole residue of the testator's estates; which, of course, included the legacies given to the Appellants, in the event of their dying unmarried.

That the Appellant, Ann Grant, having come in place of her brother, the residuary legatee, she and the other two Appellants were the only persons who had any interest in the continuance of the trust; and they were entitled, *with joint consent*, to uplift the trust funds *de præsenti*, and to grant valid and effectual discharges and acquittances for the same to all concerned.

There were only two parties who could have any right to oppose the claim of the Appellants; namely, the widow and trustees of the will, and the testator's son as residuary legatee. But the widow and the other trustees of the will being all dead, the trust, so far as they were concerned, was already at an end; and the Appellant, Anne Grant, who had the sole right of the residuary legatee, expressly concurred in the Appellants' claim. For what purpose, then, or on whose account, was this trust to be still continued? The Appellants combined in their persons every right which could, in any possible contingency, exist over the trust fund; and if they were not allowed to call up the same, and to dispose thereof at pleasure, then was this trust continued without any end or object, and for no useful purpose whatever.

Dec. 8, 1813.

WILL.

It might be said, perhaps, that they could not discharge their contingent claims until they married, because, till then, their respective provisions were not due, and as soon as the marriage took place, the wife could not grant any discharge without her husband's consent. But there was a fallacy in this argument; for the husband, taking his wife, must take her with all her debts and obligations whatever; and if she should have received her portion, and granted a discharge, which, of course, she warranted against all contingencies, then this obligation passed with the rest of her debts over upon her husband, and bound him just as it bound her.

The Respondents, (Mrs. Dyer, eldest daughter of the testator, and her children,) on the other hand,

Dec. 8, 1813.

WILL.
Vide will, sect. 5.

contended that, according to the just construction of the will, the residue which vested in the son on his attaining the age of 31 was exclusive of the portions, in which he could have his contingent interest only in case of his having both attained 31, and having married; for that, unless both events happened, this residue was given over to the sisters, (*vide* will, sect. 5,) and the survivors and survivor, and the representatives of such survivors and survivor. The trust ought therefore to be continued; as, in case of the Appellants dying unmarried, the principal sums would belong to the Respondents.

It was answered that the word OR, (*vide* sect. 5,) on which the Respondents' argument depended, was evidently inserted by mistake for the word AND.

The Court of Session pronounced the following interlocutor:—

May 24, 1808. Interlocutor of the Court appealed from.

"*The Lords having advised the mutual informa-*
"*tions and additional memorials for the parties and*
"*whole cause, find that the conditions have failed*
"*on which Mrs. M'Dowall Grant would have been*
"*entitled to succeed to the funds* in medio, *and*
"*therefore repel her claim as residuary legatee;*
"*find that in* hoc statu *the portions of Misses*
"*Amelia Charlotte Grant, Anne Grant, and*
"*Elizabeth Grant, being three thousand pounds*
"*sterling each, cannot be uplifted, but must remain*
"*vested in terms of the trust until the death or*
"*marriage of each of them, reserving the claim of*
"*the parties to the residuary fund which may arise*
"*in the event of any of these ladies deceasing un-*
"*married.*"

From this interlocutor the Appellants lodged their appeal. Dec. 8, 1813.

WILL.

Romilly and *Leach* (for Appellants;) *Adam* and *Richards* (for Respondents.)

Lord Eldon (Chancellor.) The question here, on the whole, was, What was the meaning of the testator's will? and, in order to determine this, it would be necessary to look at the will and the circumstances in detail. The testator by his will gave all his property, real and personal, to certain friends whom he named executors and trustees, (all since dead,) the survivor, and representatives of such survivor, upon trust that they, and the survivors or survivor of them, should pay the same as specified in the will. *First*, That they should pay the sum of 2000*l.* (secured by testator's bond) to Thomas Dyer, husband of one of the testator's daughters, Maria Letitia Dyer, which, together with a sum of 1000*l.* already paid, he had agreed to give with his said daughter as a marriage portion. And then the will proceeded:—"*I give and bequeath to each of* "*my three younger daughters, Amelia Charlotte* "*Grant, Anne Grant, and Elizabeth Grant, the* "*sum of* 2000*l. a-piece, with legal interest for the* "*same from the time of my death.*" (Here their Lordships would observe that this was an *immediate* bequest to the ladies themselves. The testator then proceeded to give directions as to the 2000*l.*, so given to each of his daughters, by immediate words.) "*The said principal sums of* 2000*l. to be* "*vested in the said trustees, &c. until the time of*

Dec. 15, 1813. Judicial observations.

Will of A. Grant.—Gives his property to trustees.

To pay 2000*l.* to Thomas Dyer, husband of testator's eldest daughter.

(*Vide ante*, sect. 1.) 2000*l.* to each of his three unmarried daughters, given by immediate words.

The 2000*l.* to be paid on their marriage

Dec. 15, 1813.

WILL.

with the consent of the wife, if living, and one or more of the trustees.

If such *consent* could now be required, the portions could not be immediately uplifted.

"*their respective marriages, if such an event shall* "*happen, &c. but with the special consent and ap-* "*probation of my wife, &c. and one or more of my* "*said trustees,*" &c. Here nothing was said as to the consent of the survivors or survivor, and yet it must be meant to include the survivor, as the trust was intended to last in the survivor; so that it must be taken as if the words had been repeated. He adverted to this particularly, because, if there was a possibility of the marriage of the daughters without such consent as was here required, it was clear that the portions could not be immediately uplifted; as, in case they did so marry, the portions were not given to the husband and wife, but to the children of the marriage.

But the question was, Whether such consent could now ever be given? or, in other words, Whether the consent was confined to the executors and survivor of them personally, or meant to be extended to the representatives of the survivor? The general course of the decisions went to confine this power of giving or withholding consent to those who were personally named, and not to extend it to representatives. If then the Appellants were not entitled to uplift the portions, he was inclined to think that it could not be on the ground that any consent might be wanting to their marriage that could now be given, but on the ground that the husbands were to receive the principal of the portions, and not the daughters,—a question which he would consider by and by.

The *consent* confined to the trustees personally, and not extended to the representatives of the survivor.

Sect. 2. The testator then proceeded:—"*And in case any* "*one or more of my said daughters shall remain*

Dec. 15, 1813.

WILL.

"*unmarried*," &c. (*vide ante*, sect. 2.) These were certainly very strong words, to show that it was the intention of the testator to suspend immediate payment in any event that might happen. But then this was to be considered, that, if the principal sums must either go to them on their marriage, or, in the event of their not marrying, fall into the residue, and the residuary legatee made over his interest to them, they were entitled to the interest of the portions under the will, and to the principal as having added to their own title the title of the residuary legatee. A supposed case had been put, of a sum of money bequeathed to A. in the event of his attaining the age of 31, and in case he did not attain that age, then the sum to fall into the residue; and it had been said that the Court could not order the legacy to be paid to A. till he attained the age of 31, even with consent of the residuary legatee. He did not concur in that opinion. As the only other person interested was the residuary legatee, the result was that the money might be paid as much sooner as he chose; and if he agreed that it should be paid to A. at the age of 21, the Court had nothing to do with that.

If the three daughters, having the interest of their portions, the principal to be paid them on their marriage, and in the event of their not marrying to fall into the residue, add to their own title that of the residuary legatee, they have then the absolute title, and may uplift the principal immediately.

The will then proceeded thus:—"*I also give and bequeath to each of my said three younger daughters the farther sum of* 1000*l. a-piece, from the time of my said wife's decease, to be paid to such of them, or the husband of such of them as shall be married, within one year from the time of her death, &c.; but the said farther principal sum of such daughter as shall remain unmarried shall remain vested in the said trustees, &c. and shall,*

Sect. 3. Farther sum of 1000*l.* each to the three daughters, with same directions as before given respecting the 2000*l.*

Dec. 15, 1813.

WILL.

" *at her or their deaths, revert to and become part* " *of my said estate,*" (their Lordships would notice the words "*said estate,*') " *in the same manner as is* " *before expressed,*" &c. (*Vide ante,* sect. 3.)

Annuity of 250*l.* to his wife.

The testator then proceeded to give an annuity of 250*l.* to his wife, and the use of his household goods, with an option to his son to take them in the event of his marriage (without reference there to any age) in her lifetime, upon payment of 500*l.* to the widow. And then he gave some small legacies, 200*l.* to his wife, &c.; and then disposed of the residue in this way:—" *It is my farther will and* " *desire, that after deducting and reserving the se-* " *veral legacies,*" &c. (*vide ante,* sect. 4.)

Sect. 4.

The residue to go to his son, the interest only to be paid him till he attained 31, or married; and, in either of these events, the principal.

Their Lordships would here observe that the residue of the testator's estate was given to his son, A. Grant, but with directions that the interest only should be paid him till he attained the age of 31, or married; and on his attaining the age of 31, or being married, " *then the trustees were to pay and* " *make over to him, &c. all such unappropriated* " *sums of money, &c. as the testator should die* " *possessed of, &c.;* EXCEPTING *always such sums* " *of money as are above reserved and appropriated* " *for the uses and purposes before expressed.*"

Then followed a very material passage. Subsequent words might revoke prior words, but where the meaning was clear before, the revocation must be very clear in order to be effectual, and they must look at the context to ascertain from the whole what was the real meaning of the testator. " *And in case* " *my said son A. Grant shall happen to die under* " *the age of* 31 *years,* OR *unmarried, then my will*

Sect. 5.

" *is, that my said executors, &c. shall stand pos-* Dec. 15, 1813.
" *sessed of, and interested in, my said residuary* WILL.
" *estates, &c. in trust for my said four daughters,*"
&c. (*Vide ante*, sect. 5.)

If the will had stopped there, independent of the subsequent passage, it would still be very difficult to say that it ought not to be construed, as a will might be, so as that the word OR should be considered as if it had been AND, where such appeared from the context to be the meaning of the testator. The former part of the will gave the title absolutely in the events either of attaining the age of 31 or marrying: and then followed the passage, " *that in* " *case the son died under* 31, OR *unmarried, the* " *residue was to go to the daughters;*" the effect of which latter clause, unless the word OR should be construed as if it were AND, would be this, that though by the former clause the son was to have the residue either on attaining the age of 31, or marrying, whichever should first happen; by the latter clause he might have it neither in the one event nor the other. Though he attained the age of 31, he could not have the residue till he married; and though he married, unless he also attained the age of 31, the residue must go over.

Word OR construed as AND in wills, where requisite to give effect to intent of testator.

The will inconsistent, unless the word OR is construed as if had been AND.

Then followed the words:—" *And in the event* Sect. 6.
" *of the said A. Grant dying without having at-*
" *tained the age of* 31 *years complete,* AND *unmar-*
" *ried, as is before expressed; then it is my will,*
" *that my said residuary estates shall be charged*
" *with the payment of a farther yearly sum of*
" 100*l. to my said wife, &c.; and in case my*

Dec. 15, 1813.

WILL.

"'aid son shall die as aforesaid," (which, referring to the last antecedent, meant in case he died under 31, AND unmarried,) "and my said four daughters "shall all die without being married," &c. (*Vide ante*, sect. 6.)

This latter clause showed, that, unless the son died both under the age of 31, AND unmarried, the residue was not intended by the testator to go over; and this was consistent with the first part of the will. Then the intermediate clause must be construed in the same way as if the word OR had been AND; and, by this construction, the son, when he attained 31, had the absolute title against all subsequent claimants.

The unappropriated part of the portions of the daughters included in the residue given to the son; the words "*excepting* "*always*," &c. only extending to the several sums as far as they were appropriated to other purposes.

Then it was said that the residue given to the son was *minus* the portions—these portions having been expressly excepted. But the exceptions extended only to the sums appropriated to other purposes mentioned in the will; and whatever remained undisposed of (including all the interest that was undisposed of in the 9000*l.* portions) fell into the residue.

Effect of the will was to give the whole residue to the son on his attaining the age of 31, or being married.

Then the effect of the will on the whole was, that it excluded all claim to the residue after the son attained the age of 31, (which he did,) or married, whichever first happened; and if the interlocutor meant any thing else, the legal effect of the will had been misunderstood.

Legacies vested in trustees

But then it was said that the portions must remain vested in terms of the trust till it was seen whether the daughters, or any of them, should marry with the *consent* required in the will: and if the

Dec. 15, 1813.

WILL. for behoof of daughters, with interest payable to daughters in the mean time, and principal if married with consent of trustees. Trustees all die, and (nobody existing to give or withhold consent) no objection on that ground to the immediate payment of the principal to the daughters.

consent mentioned in the will had extended to the representatives of the surviving trustee, then the proposition was undeniable on the terms of the will. But this consent being properly a matter of personal confidence, was not to be constructively extended to individuals unknown to the testator.

This reduced the matter to the only other question, Whether the interlocutor was right in finding, "that *in hoc statu* the portions could not be up-"lifted by the daughters, but must remain in terms "of the trust till the death or marriage of each of "them?" He originally thought it was right, and it was difficult to think that such was not the intent of the testator: but then consider what was the effect of the will and the subsequent events. The effect was, that before the ladies got the title of the son the interest of the 9000*l.* belonged to the daughters, and the principal to the son in the event of their dying unmarried; but when the daughters got the title of the son, it was impossible not to say that they were entitled to receive the 9000*l.* unless somebody else might be entitled to it independent of any thing the daughters could do in the mean time. Here was an immediate gift to the daughters, and then a trust; and it had been argued, that if the brother had been living, and they had released to the brother, he would have the right against everybody else—even against the husbands—and he thought he would. When they, then, acquired the interest of the residuary legatee, in his judgment, this property was absolute in them, and they might uplift it immediately; and so far the interlocutor was wrong.

When the daughters got the title of the residuary legatee, they were entitled to have their portions immediately. If the son was living, and they had released to him, the release would bind any future husband.

Dec. 18, 1813.

WILL.

He was authorised to state that this opinion was fortified by the authority of his noble and learned friend, (*Redesdale*,) who had attended at the hearing, and who had felt less difficulty in coming to this conclusion than he had.

Judgment. Interlocutor altered conformable to the above opinion.

Agent for Appellants, BERRY.
Agent for Respondents, MUNDELL.

SCOTLAND.

APPEAL FROM THE COURT OF SESSION.

MONTGOMERY and others, Trustees of the late DUKE of QUEENSBERRY, } *Appellants.*
CHARTERIS, EARL of WEMYSS—*Respondent.*

July 5, 7, 8, Dec. 10, 17, 1813.

NIDPATH ENTAIL. (QUEENSBERRY.)

ENTAIL, with prohibition against *alienation*, properly fortified with irritant and resolutive clauses, followed by a permissive clause to let life-rent tacks without diminution of the rental. No specific prohibition against letting of leases, except as above. A lease granted by heir of entail, for 97 years, taking a grassum, or fine. Held that this lease fell under the prohibition against *alienation*.

1693. Entail of Nidpath.

IN 1693, William, Duke of Queensberry, on occasion of the marriage of his second son, Lord William Douglas, executed a deed of entail of the