which the Judges have given their opinion hardly occurred to them at all in the Courts below: I think, however, that the opinion of the Judges is well considered, and well founded, and that the judgment ought to be affirmed. And I should be disposed, independent of the opinion of the Judges as to this point, to consider, upon the whole of the case, the judgment of the Court of Exchequer Chamber as the better judgment. And I say further, suppose it were not the better judgment on the principles stated in the Court below, that yet under the very particular words of this will it would be very difficult to support either of the ejectments.

June 19, 1816.

DEVISE VOID FOR UNCERTAINTY, &c.

The Lord Chancellor concurs in the ground of judgment stated by the Judges here, and, independent of that, is of opinion that, on the whole case, the judgment of the Ex. Ch. below was the better judgment.

Judgment of the Court of Exchequer Chamber in both cases *affirmed*.

Agent for Plaintiff in error, PINKETT.
Agent for Defendant in error, LANE.

IRELAND.

APPEAL FROM THE COURT OF CHANCERY.

STACPOOLE (WILLIAM)—*Appellant*.
STACPOOLE (GEORGE) and others—*Respondents*.

AND

STACPOOLE (GEORGE)—*Appellant*.
STACPOOLE (WILLIAM) and others—*Respondents*.

Administration taken out in 1771. Distribution to a certain extent made, but a large sum retained on unfounded pre-

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tences. No effectual suit against the administrator till 1792, and that protracted, in a great measure, by the administrator's fault, in the Court below till 1810; held by the House of Lords, reversing in that respect decrees of the Irish Chancery, that, notwithstanding the lapse of twenty years before effectual suit for account commenced, the administrator ought to be charged with the full legal interest on the sum remaining undistributed, about 16,000*l.* or 17,000*l.*, during the whole period of retention; and that the account should be taken with annual rests, and that interest be charged on the annual balances; and also that the administrator should pay to the Plaintiff his costs of suit incurred subsequent to the original decree, &c. &c.

1771. Death of intestate John Stacpoole, leaving ten next of kin, and George Stacpoole heir at law.

THIS case arose upon the distribution of the personal estate of John Stacpoole, of Craigbrien, who, being seised and possessed of very considerable real and personal estates, died in 1771 intestate, a widower, and without issue. John, the intestate, had a brother and three sisters, who died in John's life time leaving a child or children, in all ten in number. Francis the brother left two children, George and Frances. Upon the death of John, therefore, George Stacpoole became entitled to the real estate as heir at law, and the personal property became divisible among the ten next of kin: and George the heir at law having the largest fortune,

George Stacpoole the heir at law administers.

it appeared to most of the next of kin that the administration should be confided to him, and he took out administration accordingly.

Intestate's personal estate.

When John died, an inventory was taken of his personal property; part of which, it is material to observe, consisted of a large arrear of rents, and of

Arrear of rents.—Bond and mortgages &c.

a bond and mortgage dated July 1763, for a prin-

cipal sum of 2,000*l.* with the interest thereon, due to John from a relation of the name of Philip Stacpoole. The expenses of John's funeral amounted to 1,200*l.*; and George was encouraged in going to this expense by two of the next of kin, for the purpose of deriving a profit from it to themselves as tradesmen.

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Funeral expenses 1200*l.*

In 1772 George Stacpoole left Ireland, and from that time resided in England, leaving the care of collecting the assets and of the administration to one Croasdaile Malony, an attorney. No distribution having been immediately made, the next of kin became clamorous; and one of them of the name of Arthur filed a bill in 1772 for an account and distribution; to which George, in M. term 1772, and February 1773, put in answers setting out an account of the personal property: but that suit was not further prosecuted, and is only mentioned as it was a point disputed whether George had then rendered a full and fair account, that account differing from what the Master afterwards in another suit found to be the true account of the intestate's personal property, though nothing seems to have turned upon that ground in the ultimate judgment. In 1772 and from that to 1776, several sums and securities for money, were divided among tke next of kin, but in very unequal proportions, amounting to about 11,000*l.* in the whole, though considerably short of the real amount of the personal estate. No steps, however, were taken in a Court of Justice to enforce distribution for twenty years from the time of the commencement of the suit in 1772.

1772. G. Stacpoole the administrator leaves Ireland, leaving the administration to Croasdaile Malony.

Bill for account, &c. 1772.

Answers.

Suit not prosecuted.

Distribution to a certain extent made, but in unequal proportions.

From 1772 till 1792, no proceedings in a Court of Justice to enforce full distribution.

At length the Appellant in the original appeal,

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William Stacpoole, as administrator and only child of Barbara Stacpoole, one of the next of kin of John Stacpoole, the intestate, in 1792 filed a bill in the Court of Chancery against George Stacpoole, for an account and distribution, making the other next of kin parties Defendants, and stating the matters aforesaid, and that George had possessed himself of personal assets of the intestate to the amount of 36,000*l*. George in March 1773, put in an answer which was found insufficient; and then, after standing out process to a sequestration, he, in May 1794, put in a further answer, and insisted on the length of time as fully as if he had pleaded it in bar. The bill was then amended, and to this amended bill George put in his answer in May 1795 insisting upon various claims against the assets; and stating that he was advised that the arrears of rent due at the death of John Stacpoole were not assets, but incident to the reversion, and that they belonged to him, George Stacpoole, as heir at law; and that the household furniture, implements of husbandry, cattle, and other articles, were heir-looms, and belonged to him as heir to the mansion.

1792. Bill by William Stacpoole the Appellant.

Answers.

Length of time.

G. Stacpoole insists, in his answer, that arrears of rent, &c. belonged to him as heir at law.

1800. Decree.

No direction to charge the administrator with interest, nor to make distribution.

The cause came on to be heard in 1800, before Lord Clare, who decreed an account to be taken by the Master of the personal estate of the intestate, debts, legacies, and funeral expenses; the reference being merely to ascertain the amount of the personal estate. It was stated in the printed papers that the Master afterwards applied to Lord Redesdale, when his Lordship was Lord Chancellor of Ireland, for directions whether he might, though

not directed so to do by the decree, charge George Stacpoole with interest on the balance due from him, and make distribution among the next of kin; and that his Lordship directed him to do it. This however was denied by Lord Redesdale.

1805. Report, stating the amount of personal estate with interest, and making distribution.

The Master in 1805 made his report, stating that the amount of the intestate's personal estate at the time of his death was 31,473*l.*, which with interest at five per cent. amounted to 89,582*l.* and a fraction; that George Stacpoole had paid debts, funeral expenses, &c. amounting to 4,906*l.* and a fraction, and had besides distributed to the next of kin sums which with interest amounted to 27,277*l.* and a fraction, making together a sum of 32,184*l.* and a fraction, for which he gave George Stacpoole credit; and this being deducted from the above 89,582*l.* left a balance, including interest, of 57,398*l.* and a fraction to be accounted for; and then the Master found the several distributive shares out of this last sum, giving George credit for 16,935*l.* and a fraction, as the shares of himself and his deceased sister.

Fourteen exceptions by the administrator.

To this report George Stacpoole took fourteen exceptions:—1st, For that the Master had without authority from the decree made distribution:—2d, That the Master had without authority charged the administrator with interest:—3d, That he had refused G. Stacpoole credit for several considerable sums, alleged to have come to the hands of John Stacpoole, out of the personal estate of Francis Stacpoole, George's father. The 4th related to the same matter:—5th, That the Master had refused G. Stacpoole credit for 500*l.* poundage al-

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lowed to Croasdaile Malony for agency in the administration:—6th, That he had refused G. S. credit for a sum of 235*l.* paid by G. S. for rent, repairs, servants' wages, &c. on account of an estate called Violet Hill, which John Stacpoole the intestate had in his lifetime given up to G. Stacpoole. (In order to explain this exception it is necessary to state that John Stacpoole, for fifteen or sixteen years before his death considering George Stacpoole as his heir, had made him large and liberal allowances corresponding to his fortune, and among other things had given him this estate of Violet Hill; and George insisted that the charges connected with that estate incurred in John's lifetime, ought to be paid out of the intestate's assets; but the Master was of opinion that John meant that George should pay these charges.) 7th, Not material:—8th, That the Master had only allowed 200*l.* for the funeral expenses though the expence was 1,237*l.*:—9th, and 10th, Not material:—11th, That the Master had debited G. Stacpoole with a sum of 5,900*l.* principal and interest, due on a bond and mortgage of Philip Stacpoole, dated July 1763, and the exception also applied to a sum of 265*l.* charged against G. Stacpoole in respect of a principal sum of 100*l.* arrear of rent of the lands of Dunnbegg, which more properly related to the subject of the 14th exception. (As to the 2000*l.* bond, it appeared that Philip Stackpoole was a nephew of the intestate John Stackpoole, and his tenant of the lands of *Cahirafinick*, under a lease for his own life at 90*l.* rent, of which a considerable arrear had accrued due. Philip

This sum of 100*l.* did not appear to be properly arrear of rent, but paid to G. S. for some future interest in the lands.

Stacpoole was also indebted to John in this sum of 2000*l.* and interest and applied to John Stacpoole to release him from the debt and arrear, upon his surrendering his lease. John, it appeared, did not consent; but Philip executed an assignment of his interest in the lands to a William Considine, as trustee for John Stacpoole, in consideration of surrendering the lease, in the hope that at a more favourable opportunity John would be induced to consent; but there was no evidence that John accepted of it). 12th, That the Master had charged G. S. with a sum of 1,500*l.* due on bond from one Hogan to John Stacpoole the intestate, though it was alleged to be part of a sum borrowed by John Stacpoole from Francis the father of George: —13th, That the Master had charged George with a sum of 68*l.* due to the intestate, on a note of Patrick Lysaght, though it was part of another sum of 88*l.* afterwards secured by bond, also charged against George, so that, as George contended, he was charged double:—14th, That the Master had charged George with 870*l.* as arrears of rent of the lands of Dunbegg, and with 822*l.* as a deficiency in credit given by George for other arrears of rent, and for sums due on securities, though, as was alleged, these arrears had been released by John Stacpoole in his lifetime, and were not due at his death, and had not been received, and though the securities had been unproductive without any wilful default or neglect of the administrator.

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The cause came on for hearing on the report, exceptions, and merits, in 1807, before Lord Chan-

1807. Consent of parties that cause be heard.

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cellor Ponsonby; the parties having agreed in open Court that the cause should be heard as if the Master had been directed by the original decree to take the account both ways, with and without interest charged, and the Lord Chancellor being of opinion that interest ought to be charged, and that the sum of 5,900*l.* was properly charged against G. Stacpoole, which were the two chief points of the original appeal, decreed that the 2d and 11th exceptions should be overruled, and also the 1st, 3d, 4th, 6th, 12th, and 13th, and as to the other exceptions some inquiries were directed which it is not material to state.

as if original decree had directed account to be taken with and without interest.

Decree that interest ought to be charged against the administrator.

Two questions chiefly on original appeal: 1st. Whether interest should be charged: 2d. Whether a sum of 5,900*l.* should be charged against the administrator.

The cause again came on for hearing in May, 1808, when it was ordered that the Master should inquire whether George Stacpoole had rendered a true account of the assets in 1772 (with reference probably to the question whether interest ought or ought not to be charged). And it was also ordered, as to the third exception, that George Stacpoole should be allowed a sum of 2,600*l.* with interest from the intestate's death, said to have been paid by him in 1775 to his sister Frances, as part of his father's personal property received by the intestate; and it was also ordered as to the eleventh exception that George should be allowed the claim of 5,900*l.* The Master altered his report accordingly, and reported that G. Stacpoole had *not* rendered a full account of the personal estate in 1772, as the amount, as then stated in his answer, was 27,137*l.*, and according to the altered report the gross amount was 29,078*l.* To this report George took ten exceptions.

Decree 1803. Whether G. S. had rendered a true account in 1772, &c. Decree of 1808, that the administrator ought not to be charged with the 5,900*l.*

In July 1810, the cause came on for hearing on the reports, exceptions, and merits; when the Court decreed that these ten last exceptions should be overruled, and the Master's report confirmed without prejudice to the question of interest; that the second exception to the report of 1805 should be allowed, as under the circumstances of the case George ought not to be charged with interest, and the Master was directed to rectify his report accordingly, and it was ordered that plaintiff and defendants should abide their own costs until further order. The Master having made his report finding that a principal sum of 17,910*l.* still remained to be distributed, the charge of interest being disallowed, the report was confirmed by order of Dec. 6, 1810, by consent of the parties, without prejudice to the right of appealing. On December 17, 1810, the cause was finally heard when it was decreed that the costs of the parties, except those of George Stacpoole the administrator, should be paid out of the fund, and the several shares should be distributed to the next of kin or their representatives.

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Decree of 1810, that the administrator ought not to be charged with interest.

Costs of parties (except the administrator's) to be paid out of the fund.

From these decrees the plaintiff, William Stacpoole appealed, in as far as they decided that interest was not to be charged on the balance found due and distributable: 2d, In as far as they decided that George Stacpoole ought not to be charged with the 5,900*l.*: 3d, In as far as they directed that the costs should be paid out of the fund, because, under the circumstances, George, the administrator, ought to pay the costs. George lodged his cross appeal against the decrees in so far as they over-ruled his exceptions and demands against the intestate's es-

Original appeal. Three questions—interest—5,900*l.* costs.

Cross appeal by the administrator.

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tate; and also as to the matter of costs, insisting that his costs also ought to be paid out of the fund. To these appeals the other next of kin or representatives were not made parties.

Hearing in Dom. Proc. 1815, but cause stands over for defect of parties.

The cause came on for hearing in the House of Lords in March, 1815, when it appeared to their Lordships that the other next of kin or their representatives ought to be before the House, and the cause stood over until they were brought forward.

Proceedings making the other next of kin parties to both appeals.

On petition therefore of the Appellant in the original appeal amended by making the other next of kin, or their representatives, parties, an order was made on the 25th of April, 1815, whereby they were ordered to put in their answers in writing on or before the 30th of May following, and they put in their answers accordingly. On the first of the said month of May, 1815, an order was made on petition of the Appellant in the cross appeal, also amended so as to make these next of kin, or their representatives parties, that they should put in their answers in writing on or before the 5th of June then next; but this order was not served till the end of July 1815, so that the hearing was prevented for that session. They were thus made Respondents in both appeals, and, in the printed case prepared for them, claimed the benefit of the appeal by William Stacpoole, the Appellant in the original appeal; and further insisted that the demand of George Stacpoole against the intestate's assets, for the sum of 2,600*l.* alleged by him to have been paid to his sister Frances in 1775, on account of her alleged proportion of their father Francis's assets ought not to be allowed, as there was no evidence

The other next of kin made Respondents in both appeals, and claim benefit of original appeal, and insist on appealing as to a further point.

of any such payment except the assertion of George Stacpoole, in one of his answers filed in May 1795, against which there were circumstances of strong presumption; Francis having died in 1741, and George having come of age in 1756, and administered to his father without ever having made any demand of this kind against the intestate, who expended very large sums for him and his sister previous to his death in 1771, being thirty years after the death of Francis. And they also urged the circumstance that John Stacpoole was not the guardian of the fortune of George and his sister, but only of their persons, and that George Stacpoole had got possession of all the intestate's letters, vouchers, and receipts, and had mutilated his books of account of his money transactions, producing only some leaves torn out of them which had a very suspicious appearance.

No notice taken by the Lords of the appeal as to the new point. Hearing 1816. Question as to the 5,900*l.*

No notice however was taken in the ultimate judgment of the objection as to the allowance to G. Stacpoole of this sum of 2,600*l.*

1st, With respect to the question as to the 5,900*l.* and whether John the intestate had released the bond and mortgage for 2000*l.* to Philip Stacpoole, it was contended for George Stacpoole the administrator, that there had been such a contract as Philip could have enforced against John, had John been alive.

(*Lord Eldon* (C.) If John himself was not bound to release, then, nothing done after his death by George Stacpoole could bind the rest of the personal representatives. If John was bound, then it signifies nothing what was done after his death,

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because his agreement would have altered the nature of the property, though no subsequent act had been done.)

It was argued that the inference from the circumstances was, that the surrender had been made to Considine with the consent of John, especially as no inquiry had been made about the rent for twenty years. The inadequacy of price was to be noticed only as a presumption of fraud, but where it appeared that one partly intended a bounty, the presumption of fraud was rebutted, and he was bound. On the other hand it was contended that the inference was the other way, as the mortgage was in John's possession at the time of his death, and there was no evidence of any agreement by John to release.

Question of interest.

2d, As to the question of interest, it was contended for George Stacpoole that, as there had been great delay in calling for the account, and as the balance was that of a contested account where there were good grounds to contest it, the administrator ought not to be charged with interest in the present case. Lord Hardwicke had said that it was not of course to charge an administrator with interest, and as George Stacpoole had been allowed to go on for so long a time dealing with this money, and considering, and spending it as his own, without any suit effectually prosecuted against him, it was unreasonable now to charge him with interest. On the ground of acquiesence for a great length of time, Courts of Justice had dispensed with the ordinary rules of evidence, and admitted items in account on

Qr. Wilkins v. Hunt. 2 Atk. 151.

the oath of the party without vouchers, as in *Morgan v. Lewes.* On the other side it was contended, that it was strange reasoning to say that because one spent his neighbour's property in ignorance, he was therefore not to be held bound to restore it. Whether it was ignorance or fraud, he was bound to restore it. Under one of the decrees, George was bound to show that he had given an accurate statement of the account in 1772, and it appeared that he had not given an accurate statement. If he had fallen into a fair mistake, and given a fair representation, then it would have been a case for 5 per cent. interest. But it was not fair, and therefore, the full legal rate of Irish interest, 6 per cent. ought to be charged. And as to the delay, the bill was filed in 1792, and from that time at any rate there was an end of the argument as to spending the money in ignorance.

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3d, It was made a question in the course of the hearing whether, as the other next of kin had not appealed from the decree below, they would be entitled to the benefit of the appeal by William Stacpoole, they not having disclaimed, though they now came forward and prayed the benefit of the appeal. And a case was put by the Lord Chancellor; suppose, after the decree had made them all actors, the 2,000*l.* bond in question had been disallowed in the report, and William Stacpoole had excepted, and the exception had been allowed; would the other next of kin be entitled to the benefit of the exception? Nothing however was said upon this point in the ultimate judgment.

Whether the other next of kin entitled to benefit of the appeal.

4th, It appeared that John Stacpoole had made

Agreement to settle lands,

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whether satisfied by suffering lands to descend.

an agreement voluntary on the face of it, but which was, notwithstanding, alleged to be for valuable consideration, to invest a sum of 1,000*l.*, part of a sum of 3,000*l.* due to John on mortgage, in the purchase of land, to be settled on his brother Francis for life, and his first and other sons in tail male. This not having been done, George claimed the 1,000*l.* and interest against the assets. But John had purchased the mortgaged premises and suffered them to descend to George, and it was contended that, supposing the agreement to be for valuable consideration, this was sufficient performance on the authority of *Sowden v. Sowden.* 1 Bro. Ch. Cas. 582. and that class of cases.

Irish Chancery practice.

5th, With reference to a practice of the Irish Chancery, Lord Redesdale observed; "the sequestration was the first effectual process in Ireland until I reformed the practice, and a very abominable practice it was. The delay was the same; all previous processes were issued and the time run out, and then on *non est inventus* to the attachment, they moved for the sequestration."

Evidence not printed whether to be read.

6th, Objections were made at the bar to the reading of evidence not printed, and to the printing of observations without signature of counsel. (*Lord Eldon* (C.) The rule of the House as to the printing of evidence is made for the purpose of guarding itself; but it is competent to the House to hear other evidence not printed, if it thinks proper. The parties are to print what they think material, but in such a case as this, it is rather too much to suppose that any one can infallibly say what is and is not material: As to the other point in a case under

the names of *Eamer v. Fisher*, or some such names, the noble Lord then on the woolsack called the agent to the bar, and censured him for printing observations without signature of counsel.)

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Agent censured for printing observations without signature of counsel.

Mr. Leach and *Mr. Horner* for Appellant in original, and Respondent in cross appeal.

Sir S. Romilly, *Mr. Hart*, and *Mr. Wetheral* for Respondent in original, and Appellant in cross appeal.

Mr. Blake for the other next of kin.

June 26, 1816. Judgment.

Lord Redesdale (after stating the case).—On these two appeals the questions in their order are these: 1st, as to the 5,900*l.*, that the principal sum, was due on mortgage to the intestate from Philip Stacpoole is unquestionable. But George insisted that John Stacpoole had agreed that this sum of 2,500*l.* should be liquidated by a transaction with Philip. There was a good deal of evidence on this point, but nothing to show that John Stacpoole had in his life-time given up this mortgage to Philip, and if he had not relinquished it effectually, it was then still a debt to be demanded by George Stacpoole as administrator. George, however, had thought proper to release this debt, taking to himself the benefit of the consideration which was not adequate, so that it would have been in some measure voluntary on the part of John. But it does not appear that he ever did abandon the mortgage; and as there is no evidence that he accepted the surrender of the lease as the consideration, it must be held to be a debt due to John Stacpoole at the

Question as to the 5,900*l.*

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time of his death, which George Stacpoole had no right to release. As to that sum therefore, the Master's report appears to have been right, and the Lord Chancellor's decree wrong.

The 5,900*l.* ought to have been charged against the administrator, and the decree wrong as to that point.

The original appeal then complains that interest was not allowed on the balances. Now I must confess, I cannot conceive, on what ground the Court refused to allow interest. John Stacpoole died in 1771, and near forty years after, in 1810, a great part of his property remains undistributed in the hands of George Stacpoole the administrator. Some payments were made long ago to the several next of kin, but in very unequal proportions; and, from

The administrator ought also to have been charged with interest.

Reasons for charging interest against the administrator.

that inequality, those who received the larger payments would have an undue advantage over the rest, unless those who received the smaller payments were allowed interest. But there are other grounds upon which the claim for interest may be sustained; for all the embarassments and delays in the distribution of this property have been occasioned by George Stacpoole himself. The different items and particulars in the account of John Stacpoole's property were not complicated, and it was the duty of the administrator to distribute as soon as he could. As to the 5,900*l.* composed of a principal sum of 2,500*l.* and interest thereon, surely, interest ought to be allowed on that as it was a sum which, if allowed to remain as it was, would have produced interest.

Demands of the administrator in respect of his father's assets.

Another demand made by the administrator was of this nature. Francis Stacpoole, the brother of John, and father of George Stacpoole, the admi-

nistrator, died in 1741, leaving a widow and two children; namely, George Stacpoole and Frances his sister. George insisted that, some how or other, John had possessed himself of the personal estate of Francis, and evidence was gone into on that head, and the result was this—that it was true that John had interfered to secure the property for the children of Francis, and that he had in his hands a sum of 2,600*l.* belonging to the sister Frances. As to the other demands upon this ground, it appeared that George had been living with his uncle, John Stacpoole, the intestate, for fifteen or sixteen years, and had received from his uncle the estate of Violet Hill, where he resided; and yet, during all that time, George never made any such demands against his uncle, the intestate, in his life-time; so that it is clearly to be presumed, as the Court below did, that all demands of that sort had been satisfied: but as to the 2,600*l.* belonging to the sister, and which George alleged he paid to her, that was allowed by the Court, and no exception was taken to that allowance. Sums of between 5,000*l.* and 6,000*l.* were thus cut off from these demands on this ground. These, however, were the grounds on which George Stacpoole insisted upon being allowed these payments, and kept 10,000*l.* in his hands to answer such demands; and it seems clear that he ought to pay interest on the sum which, on the result of the accounts, appeared to remain due to the next of kin.

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No demands of that kind made by George in John's life-time, and to be presumed that they were satisfied.

As to the matter of costs, the decree appears not to be perfectly correct, as all the embarrassment and expense, and the delay, by avoiding, as long

Costs.
The costs subsequent to the original decree

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ADMINISTRATION.—INTEREST.—COSTS.—PARTIES.—ACCOUNT, &c. to be paid by the administrator.

as possible, the taking and settling the accounts, were owing to George Stacpoole. On every proceeding, before answer, before examination put in, before evidence produced, he stood out to the issuing of sequestrations, in order to keep in his own hands property which, as administrator, he was bound to account for and distribute fully and fairly, and as soon as possible. All the next of kin had an equal right to the administration; but had trusted it to him on account of his ample fortune. I think, therefore, that, from the time of the original decree, the costs of the Plaintiff in the cause ought to be borne by George Stacpoole, as they were all occasioned by him, except merely the costs of taking the account, which were comparatively small: and it would have been much better for them to have paid this expense, if they could have got the matter settled at once, as then they would have had the property much sooner.

Cross appeal.

The cross appeal applies first to the disallowance of the demands of George Stacpoole against the assets of the intestate, in respect of his father's property, except as to the sum of 2,600*l.*; and so far I have already stated the Court below was right in over-ruling the exception. So with respect to the matter of the fifth exception, which relates to the claim of poundage; that seems an extraordinary charge, and one of which it is difficult to comprehend the ground. I cannot judge on what ground such a charge was made by Malony, and I do not see how the decree can in this respect be altered, as the Court below had more assistance and better means of judging of the propriety of such a charge than we have, and

Administrator not allowed to set off a charge for poundage alleged to have been paid to his agent in the administration.

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they have decided that it ought not to be allowed; and whether it was really paid to Malony or not is doubtful.

ADMINISTRATION.—INTEREST.—COSTS.—PARTIES.—ACCOUNT, &c. Violet Hill estate.

The sixth exception relates to the disallowance of the demand in respect of the rents, servants' wages, and repairs connected with the estate of Violet Hill; and certainly this is a very extraordinary charge. John had permitted George Stacpoole to have the full enjoyment of that estate, leaving it to George to pay the rents due out of it, and connected with his own enjoyment; and John could have had no conception that he was to be charged with any of these expenses.

Funeral expenses.

The eighth exception related to the funeral expenses, which amounted to an enormous sum for such an occasion, and two of the next of kin appear to have had some concern in these expenses, for the purpose of gaining some benefit by it as tradesmen. But George Stacpoole was bound to control this; and the other next of kin could not be charged for the acts of these two; and the two could have had no notion that they were to pay their proportion of the expense, otherwise they could have had no profit as tradesmen. The Master and the Court thought that 200*l.* was a sufficient sum for the funeral, and it would be too much to overturn the decision as to that point.

Then comes the eleventh exception, as to the 5,900*l.*, which I have already mentioned; and the arrears of rent of the lands of Dunbegg, which will come more properly when we consider the fourteenth exception. The twelfth exception related to a sum of 1,500*l.*, with which G. Stackpoole

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ADMINISTRATION,—INTEREST.—COSTS.—PARTIES.—ACCOUNT, &c.

was debited by the Master, as received upon a bond executed by Edmond Hogan to John Stacpoole, which George Stacpoole held out to be part of a sum of 3000*l.*, borrowed by John Stacpoole from Francis Stackpoole, George's father; but on the evidence it appeared that the two demands were altogether distinct, and the Court did right in disallowing the claim and charging the administrator.

As to the thirteenth exception as to Lysaght's note and bond, the matters appeared to be distinct, and the Court did right in over-ruling that exception. The fourteenth exception applies to the

Arrears of rent.

arrears of rent of Dunbegg. As to this matter, of arrears of rent of Dunbegg, there does seem reason for George Stacpoole's having some relief, as it appears from the evidence that part of the sums charged on this account could not have been received; and therefore it seems proper to send that back to the Master for review. As to the 100*l.* mentioned in the eleventh exception, and charged as having been received as part of the arrears of rent of Dunbegg, it should seem that the Master was wrong in taking that as so much received by G. Stacpoole for arrears; for it seems rather to have been the consideration for some future interest in the lands.

Then nothing can be done for George Stacpoole, except in this respect; that is, to remit the subject of the arrears of rent for review: 1st, as to the arrears generally, and 2d, as to this particular arrear. The charge of 265*l.* upon the footing of this 100*l.* seems to be a mistake; and as to the 870*l.* 10*s.* 8*d.*, the Master will have to consider,

whether the whole ought to be charged, or whether only part ought to be charged; the rest having failed, without any wilful neglect or default of the administrator. March 4, 6, 8; June 26, 1816.

ADMINISTRATION.—INTEREST.—COSTS.—PARTIES.—ACCOUNT, &c.

As to the order to be made, the subject is somewhat intricate; but this is the general way in which it should be disposed of, viz.: that on the original appeal George ought to be charged with the 5,900*l.* principal and interest of the sum which he released to Philip Stacpoole. And as to interest upon the balances, there is no ground to refuse that; and the costs, subsequent to the original hearing, ought to be borne by George Stacpoole, as it was chiefly by his unwarrantable demands after the decree, and the delays and embarrassments which were thereby occasioned, that these costs were incurred. And as to the costs of the Appellant, William Stacpoole, in the original appeal, care must be taken, that no more be given to him than he ought to receive out of the shares; as if he receives so much of his costs from George Stacpoole, that is to be deducted from what he would otherwise be entitled to receive out of the shares. And as to the cross appeal, George Stacpoole ought to have some relief in the matters which I have mentioned.

General mode of disposing of the subject.

Sum of 5,900*l.*—Interest.—Costs.—Arrear of rent.

By order reciting the hearing of counsel for the parties, including the several next of kin, &c. the decrees complained of in the original appeal were accordingly *reversed* as to the charge of 5,900*l.* and the decretal order of 18th February, 1807, over-ruling the exception as to that sum was affirmed, subject to directions as to the arrears of rent. The decrees complained of in the original appeal were

Formal judgment.

March 4, 6, 8; June 26, 1816.

ADMINISTRATION.—INTEREST.—COSTS.—PARTIES.—ACCOUNT, &c.

also *reversed* as to the question of interest, and it was ordered that the full legal rate of interest on the sum remaining undistributed should be charged against the administrator, making annual rests in the accounts, and charging interest on the annual balances. The decrees were also *reversed* in so far as they directed the costs of the plaintiff to be paid out of the fund, and it was ordered that the administrator should pay all the Plaintiff's costs, subsequent to the original decree in 1800. And it was ordered that G. S. should be charged with the arrears of rent, and it was referred back to the Master to review his report as to the several sums stated as arrears of rent, and as to whether and how far they were due at death of John Stacpoole, and were received, or without wilful neglect, &c. might have been received by G. Stacpoole, &c.; and the decrees, so far as not reversed or varied, to be affirmed.

Agent for Appellant, WILLIAM STACPOOLE KEANE.
Agents for Respondents, G. STACPOOLE, WILLIAMS, and BROOKS.

IRELAND.

APPEAL FROM THE COURT OF CHANCERY.

MOORE—*Appellant*.

BLAKE and another—*Respondents*.

——1815. March 20, 1816.

A. CONVEYS (or assigns his interest in) lands to B. in consideration, among other things, that B. shall make or give a lease back again to A. of a half or portion of the lands,