No. 54. EARL OF STAIR, Appellant.—*Abercromby.* EARL OF STAIR'S TRUSTEES, Respondents.—*Shadwell.*

Trust—Testament.—A party who had executed a deed of entail, having also made a trust deed of settlement, or will, by which he appointed his trustees, after paying certain legacies, and annuities to particular persons, 'to lay out the residue of the 'trust funds, interest, and proceeds thereof,' in purchasing lands to be annexed to his entailed estate, for behoof of the heirs of entail seriatim,—the trustees being paid, out of the trust-estate, the expenses disbursed by them in relation to the trust;—and the first heir of tailzie, who was also heir-at-law, having claimed the interest of the fund not invested in land, from and after the expiration of twelve months, from the death of the truster,—Held, (reversing the judgment of the Court of Session,) 1st, That, as the trust-deed imported a gift, to the several heirs of entail, of the residue of the funds thereby conveyed, and which were to be invested in land for their behoof; therefore each of them, including the appellant, was entitled to the interest and proceeds of the trust-funds, arising from and after the period of twelve months, usually allowed by the law of Scotland for payment of legacies, until the whole of these trust-funds, together with the interest prior to the twelve months, should be invested in land, in terms of the deed; 2d, That these trust-funds, including the interest prior, but not subsequent to the expiration of the twelve months, were subject to the expenses of the trust; and 3d, That the interest arising subsequent to the above period was chargeable with the expenses of the collection and application thereof, and also with those of the appeal.

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1ST DIVISION.
Lord Eldin.

THIS was the sequel of the case noticed, ante p. 414, which see. In addition to what is there stated, it is only necessary to mention, that, by his deed of settlement, the late Earl of Stair appointed certain annuities to be secured to particular persons, after which the residue was to be applied in the manner noticed in the above report, and declared, that the trustees 'are to be paid, out of the trust-estate, all expenses dis-'bursed by them, or any of them, in relation to the trust.' On reviewing the interlocutor which they had pronounced on the 21st of February 1826, and after consulting the other Judges in terms of the remit by the House of Lords, the Court of Session, on the 1st of March 1827, adhered.* By the interlocutor of the 21st of February 1826, their Lordships had assoilzied the trustees, 'in respect that the testator has directed that the whole 'produce of the trust-estate, both principal and interest accruing 'thereon, shall be laid out in the purchase of lands, and that 'the present is the first attempt made in Scotland, for having 'any part of the trust-estate allotted to the heir, in the mean-'time, under such circumstances; and also, in respect there 'has been no undue delay upon the part of the trustees, in lay-'ing out the trust-funds, as appointed by the truster.'

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* See 5 Shaw and Dunlop, No. 248, where the opinions of the Judges will be found.

Lord Stair having then appealed, and maintained the same arguments which he formerly stated, the House of Lords pronounced this judgment :—' The Lords Spiritual and Temporal ' in parliament assembled, are of opinion, That according to the ' true construction of the trust-disposition in question, the same ' ought to be considered as containing a gift of all and sundry ' lands and heritages of the said John, Earl of Stair, deceased, ' (other than and excepting those contained in any deed of en- ' tail executed by the said Earl ;) and also all and sundry debts ' and sums of money, heritable and moveable, owing to him in ' England or in Scotland, or elsewhere, rents of land, goods, ' gear, and moveable effects whatever, presently pertaining and ' belonging to him, or that should pertain and belong unto him ' at his death, (excepting the furniture in his house of Cul- ' thorn,) together with the interest and proceeds of such several ' funds aftermentioned, to the appellant, and the several persons ' who may become entitled in succession to the lands of Cul- ' quhasen and others, by virtue of the disposition and tailzie of ' the said lands of Culquhasen and others, according to the se- ' veral rights and interests of the appellant, and of such several ' persons successively, in the said lands of Culquhasen and ' others, by virtue of such entail, subject nevertheless to the ' costs and expenses of the execution of the trusts of the trust- ' disposition in question, except the particular costs and expen- ' ses after-mentioned, and also subject to the payment of the se- ' veral legacies and annuities in the said trust-disposition men- ' tioned ; and this House is therefore of opinion, that the appel- ' lant was and is entitled, and that the several persons who shall ' from time to time succeed him in the entail of the said lands ' of Culquhasen and others, according to the course of such en- ' tail, will be from time to time entitled to the interest and pro- ' ceeds of the whole of the trust-funds which have arisen from ' the end of the twelve months usually allowed, according to the ' course of the law of Scotland, for payment of debts and lega- ' cies, and which shall arise until the whole of the capital of ' the said trust-funds, with the interest and proceeds thereof, ' which have accrued prior to the expiration of the said twelve ' months, shall have been applied in the purchase of lands, ac- ' cording to the directions contained in the said trust-disposi- ' tion, after deducting out of such capital; and out of the in- ' terest and proceeds accrued prior to the expiration of such ' twelve months, all costs and expenses attending the execution of ' the trusts declared by the said trust-disposition, except the ' costs and expenses attending the collection and application of

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'such interest and proceeds which have accrued, and which 'shall accrue, after the expiration of such twelve months, which 'last-mentioned costs and expenses, this House is of opinion, 'ought to be deducted out of such interest and proceeds only; 'and this House is therefore of opinion, that the costs of all 'parties to this suit, including the costs of this appeal, inas-'much as the same particularly concern the question respecting 'the rights to such interest and proceeds, ought to be paid out 'of such interest and proceeds, as part of the costs of the appli-'cation thereof; and this House is also of opinion, that accord-'ing to the directions contained in the said trust-disposition, 'the annuities thereby given ought to be secured by appropria-'tion of a sufficient part of the capital of the said trust-funds; 'and that the funds which shall be appropriated for such pur-'pose, ought, from time to time, as such annuities shall respec-'tively cease and be determined, be applied in the purchase of 'lands as part of the capital of the said trust-funds, and that 'the interest and proceeds of the funds which shall be so ap-'propriated, after payment of such annuities respectively, and 'subject thereto, ought to be paid, from time to time, as the 'same shall accrue, to the appellant, and to such other person 'and persons as shall from time to time succeed to the appel-'lant, under the entail aforesaid, as part of the interest and pro-'ceeds of the capital directed to be applied in the purchase of 'lands, as aforesaid: And it is, therefore, ordered, that the 'cause be remitted back to the Court of Session in Scotland, to 'review all of the several interlocutors pronounced in this cause, 'and to make such orders respecting the same, and in execu-'tion of the trusts aforesaid, as shall be consistent with the 'opinions so declared by this House, and as shall be just.'

LORD REDESDALE.—My Lords, in the case in which John William Henry, Earl of Stair is the appellant, and Sir John Dalrymple, Hamilton, Macgill, and others, are the respondents, the question arose on a trust disposition executed by John, late Earl of Stair, who died in the year 1821, respecting the proceeds of a property which he disponed for the purpose of being invested in land, to be entailed on a series of heirs, of whom the appellant is the first.

My Lords, my Lord Stair, by a trust disposition, dated the 18th day of December 1815, disponed to certain trustees, who are the respondents in this appeal, 'All and sundry lands,' &c. (here his Lordship read the clause,) and 'under the same conditions, provisions, clauses, irritant and 'resolutive, contained in the disposition and tailzie of my lands of Cul-'quhasen and others, executed by me;' and then he appointed heirs of tailzie, and, under the conditions foresaid, appointed them to get the

disposition recorded in the register of tailzies. The trustees are then appointed in trust for the uses and purposes contained in the trust-deed mentioned, being his sole executors and legators, and intromitters with his whole goods and gear, and other moveables falling under the testament, with and under the exceptions foresaid, and excluding all others from that office. June 19, 1827.

My Lords, besides this trust-deed, which was executed according to the forms of the Scotch law, the late Earl of Stair also left a will drawn up in the English form. By that will, which is dated the 5th of June 1819, after making certain bequests, he gave the rest, residue, and remainder of his personal estate in England, which should not consist of real or government securities, and directed his executors to convert the same into money, and, after payment of his just and lawful debts, to invest such money in government securities: and he thereby gave and bequeathed all such stock, together with all such other stocks, funds, and securities, which he might be possessed of at the time of his death, to such uses, and for such purposes as he had in and by a certain deed and writing, prepared according to the Scotch form, executed by him, and bearing date the 18th December 1815, declared of and concerning his personal estate, and as to all estates which at the time of his death should be vested in him, upon any trust whatsoever, or by way of mortgages; he gave, devised, and bequeathed the same to the respondents in this cause, according to the nature and quality thereof, upon the trusts, and subject to the equity of redemption, which at the time of his death should be subsisting or capable of taking effect therein. The consequence of this was, that the whole of his property, except the entailed estates, under any deed executed by him for that purpose, was to be laid out in the purchase of lands, to the same uses as the entailed estates of Culquhasen.

The question which arose in this cause was with respect to the proceeds of the personal estate, from the time of the death of my Lord Stair until the whole fund should be laid out in the purchase of lands. The property amounted, I believe, to about L.200,000. The trustees invested about L.120,000 in the purchase of lands; but as they were by the will directed to invest the whole, the question which was raised was, whether my Lord Stair was not entitled to the interest from the death of the late Earl of Stair until the trustees had invested it in the purchase of land, or whether, under the words of the trust designation, they were to invest the proceeds as well as the capital in the purchase of land. My Lords, in discussing this question, which came first of all before the House during the time that my Lord Gifford usually acted as Speaker in the absence of the Lord Chancellor, the first suit having been instituted immediately upon the death of the testator, my Lord Gifford was of opinion, that at that time it was impossible to say that my Lord Stair was entitled to the interest, because, according to all the practice in the law of Scotland, a twelvemonth was allowed to the executors to convert the property, and provide for the several purposes directed by the will.

My Lord Stair, in consequence of this, instituted a second suit,

June 19, 1827. claiming the interest from and after that time of twelve months, insisting that he was to have that interest applied to his use, so far as it was not applied in the purchase of lands, the question simply, as he contended, being, what was the construction of this disposition? My Lord Gifford, when the case came before him the second time, considered it a case of very great importance in the law of Scotland; and as it did not appear that there were decisions in the law of Scotland ruling the point, he remitted the case to the Division of the Court of Session, from which it came for the purpose of taking the opinion of the Lords of the other Division so that this House might have the opinion of all the Lords upon this point. The result has been, that, with the exception of two of the Lords, my Lord Eldin and my Lord Alloway, they are of opinion that the whole interests and proceeds are to be laid out in the purchase of lands; and that until the whole are purchased, my Lord Stair is not entitled, under the trust disposition, to any interest and proceeds whatever.

The question, therefore, is upon the proper construction of this instrument; and, my Lords, it appears to me that the Lords of Session in Scotland have mistaken the meaning of the disposition of the late Lord Stair. They have supposed that my Lord Gifford acted upon an analogy between dispositions of this kind in England and dispositions of this kind in Scotland, and they seem to think that it was a sort of attempt to make what they call the Scotch law conformable to the law of England. My Lords, it seems to me that they have totally mistaken the subject. The question is not a question of law; the question is a question of intent—what was the intent of the late Earl of Stair. The late Earl of Stair has unquestionably used these words, that he gave all his personal property, after his debts and legacies were all paid, and a sum set apart for payment of the annuities, or the same were otherwise well secured, appointing his trustees to lay out the residue of the trust funds, and interest and proceeds thereof, in purchasing lands. In the first place, the interest and proceeds are not expressed definitively, but they are words which are very properly thrown in as necessary to include whatever interest or proceeds shall be due to him at the time of his death, and whatever interest or proceeds shall accrue (in the same way as in this country we have similar dispositions during the period allowed to the executors to collect the effects). Your Lordships well know, that, according to the law of England, twelve months are allowed for that purpose. According to the law of Scotland, twelve months are allowed for the same purpose. No person has right to claim against the executors of a testator before the end of a twelvemonth,—six months for the collection of the debts, and six months for the distribution of them, according to the disposition of the testator.

My Lords, it appears to me, that the true construction of this instrument is this—to give all the personal estate to the persons who shall from time to time be entitled to the lands. It is a gift to them—a gift through the medium of a trust, but a gift to them; and it would be absurd to suppose that he did not mean it equally. If the

construction which has been contended for by the trustees in Scotland were to take effect, the consequence would be, there would be an inequality; for if it should so happen, which might very well happen, that the personal estate, through debts and mortgages, and so on, could not be all collected for the course of twenty or thirty years, the present Lord Stair, and two or three other persons succeeding to the estate, might have no enjoyment of the bequest whatever, but, on the contrary, the fund would be augmenting for the benefit of the successors. It appears to me perfectly clear, that the intent of this testator was—an equal benefit to all the persons who should succeed each other in the heritages and lands taken under the deed of entail; and although this is through the medium of a trust, it is in effect a disposition for their benefit, and it strikes me, that that is the mistake that has been made by the Court of Scotland. Some of the learned Judges appear to be of opinion, and they have in truth considered the words 'interest 'and proceeds,' introduced in this disposition, as constituting no interest and proceeds, until lands should be purchased as part of the substance of the gift. Now, my Lords, I apprehend the meaning of those words is simply this—the interest and proceeds which shall not have been received at the time of the testator's death, and the interest and proceeds which shall accrue, until the ordinary time of the disposition of the personal estate. If the words had been added, 'until the money 'shall be laid out in the purchase of lands,' then, undoubtedly, that might have been the construction, but there are no such words; and I do not conceive that there is any ground for inferring, that it was the intention of the Noble Lord to give to his will a construction containing those words, those words not being to be found there. It strikes me, that even in the argument on the part of the respondents, and of the learned Judges in Scotland, they really do introduce these words into the will, which are not there, and that they have founded their decision upon that opinion.

My Lords, you will be pleased to recollect some of the circumstances which happen in the disposition of trust property, in order to see to what extent this will go. Suppose this had happened in the case of the Duke of Queensberry, where, for twenty years together, his whole property was subject to such claims, that the executors could not execute his will, would that circumstance alter the intent of the testator? would it make the disposition different, from that which it would have been, if that circumstance had not occurred? So, suppose this trust-disposition or will had been disputed, as was the case in the matter of my Lord Fife; suppose the question to be, whether this disposition could or could not take effect, a considerable time might be employed in litigation. Your Lordships will observe, this extends to all and sundry lands of inheritance, except those contained in the deed of entail, so that it applies to all his lands of inheritance, as well as the rest of his property. I take it, that whatever is not within the power of control of the testator, is not to be conceived to be within his mind and meaning. It is important to consider, within what time he might expect

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My Lords, under this impression, it has struck me, that the proper manner of disposing of this case would be simply to declare your opinion upon the subject, and so refer it back, with that expression of opinion, to the Court of Session. I think that will be the best way, because, having declared your opinion upon the subject, the Court of Session will then be able to execute the intention, in such manner as to prevent any mistake on the part of your Lordships. I have always thought, that when dealing with the law of Scotland, where you are not so perfectly well acquainted with all the forms and the little difficulties which occur in the execution of a decree, it is best, generally speaking, only to declare your opinion upon the subject, and to leave the execution of that opinion to the Court below; and feeling this to be the proper mode of proceeding, I would propose to your Lordships, to declare that you are of opinion, that according to the construction of the trust-disposition in question, the same ought to be considered as containing a gift of all and sundry lands and heritages of John, late Earl of Stair, other than and except those contained in any deed of entail executed by him; and also, all and sundry debts and sums of money, heritable and moveable, owing to him in England and Scotland, and elsewhere; rents of lands, goods, gear, and moveable effects whatsoever, presently pertaining and belonging to him, or that should pertain and belong to him at his death; the furniture of his house in Culthorn, together with the interest and proceeds of such several funds after-mentioned to the appellant, and the several persons who may become entitled, in succession, to the lands of Culquhasen and others, by virtue of the disposition and tailzie of the said lands of Culquhasen and others, according to the several rights and interests of the appellant, and of such several other persons successively, in the said lands of Culquhasen and others, by virtue of such entail; subject, nevertheless, to the costs and expenses of making good the trusts of the trust-disposition in question, except the particular costs and expenses after-mentioned. That exception I approve of on this

ground. This has arisen from a question, not properly respecting the capital of the estate, but respecting the interim profits, and therefore it appears to me, referring to the words of the will, in which he appoints factors and trustees, and persons to collect the effects, and so on, it was his intention, that whatever expenses occurred, with respect to the produce of his property, whilst in the hands of trustees, should be paid out of that produce. I would, therefore, propose to your Lordships, to declare that you are of opinion, that the appellant was, and is entitled, and that the several persons, who shall from time to time succeed him in the entail of the said lands of Culquhasen and others, according to the course of such entail, will be from time to time entitled to the interest and proceeds of the whole of the trust funds, which have arisen from the end of twelve months, usually allowed, according to the course of the law of Scotland for payment of the debts and legacies, and which shall arise until the whole of the capital of that fund, with the interest and proceeds thereof which have accrued prior to the expiration of the twelve months, shall have been applied to the purchase of land, according to the directions contained in the trust disposition, after deducting out of such capital, and out of the interest and proceeds accrued prior to the expiration of such twelve months, all costs and expenses attending the execution of the trusts declared by this trust disposition, except the trusts and expenses attending the collection and application of such interest and proceeds which have accrued, and which shall accrue after the expiration of such twelve months, which last mentioned I should propose to declare that your Lordships are of opinion ought to be deducted out of such interests and proceeds only, and that your Lordships are therefore of opinion, that the costs of all parties to this suit, including the costs of this appeal, inasmuch, as the same particularly concern the question respecting the right to such interest and proceeds, ought to be paid out of such interest and proceeds, as part of the costs of the application thereof; and that your Lordships are of opinion, that, according to the directions contained in the said trust disposition, the annuities therein given ought to be secured by the appropriation of a sufficient part of the capital of said trust funds, that funds should be set apart to answer those annuities. That will be the proper way; and that the funds to be appropriated for such purpose might, from time to time, as such annuities shall respectively cease and be determined, be applied in the purchase of lands as part of the capital of said trust funds, and that the interest and proceeds of the funds which shall be appropriated, after payment of such annuities respectively, but subject thereto, ought to be paid from time to time, as the same shall accrue, to the appellant, and to such other person and persons as shall from time to time succeed to the appellant under the entail aforesaid, as part of the interest and proceeds of the capital directed to be applied in the purchase of lands as aforesaid. Then I would propose that your Lordships should order that the cause be referred back to the Court of Session to review all the several interlocutors pronounced in this cause, and to make such orders respecting the same, and in the executions of the trusts aforesaid, as shall be consistent with the opi-

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June 19, 1827. nions so declared by your Lordships, and as shall be just. If a fund is set apart to answer those annuities, that fund cannot be laid out in the purchase of land until the annuities are determined. Now, your Lordships will perceive the lands of Belhaven were to be settled according to the entail; the lands of Belhaven, therefore, could not be charged with these annuities; they were not within the provisions of the entail; nor could the lands to be purchased be charged with them. It appears to me, therefore, obvious that these words interpret, if there was any necessity for interpretation, what was the intention of my Lord Stair,—that he meant the whole property should go, from the time when, according to the law of Scotland, the effects would be considered as collected, to the same uses to which he had given the estate of Belhaven by his will. Under these circumstances, therefore, I would present this to your Lordships as the proper findings in this cause.

LORD ELDON,—My Lords, agreeing with the learned Lord in the propositions which he has stated to your Lordships, and particularly in the propriety of remitting this cause back to the Court of Session in Scotland, I am governed in the latter part of the few words I have stated by this circumstance, that the execution of the trust must be carried forward in the Court of Session in Scotland.

My Lords, having in Scotch cases, I think I may venture to say now, in practice as a counsel at your Lordships' bar, and in judicial proceedings in this House, been concerned for upwards of forty years, I must take the liberty now of saying, (and I shall have never occasion perhaps to repeat it,) that it has always been an acknowledged maxim in this House, that you are not to make the laws of Scotland in your decisions, and by your judicial proceedings, similar to the laws of England,—that is a purpose which can be accomplished only by legislation, and that it is not to be attempted in the distribution of justice here—that you are to decide here as if you were sitting in the Court of Session in Scotland; and I take the liberty of begging your Lordships to attend to this circumstance in what I have now stated, because it is quite obvious there has been an opinion entertained elsewhere that we are proceeding on a different principle. My Lords, we have never proceeded on a different principle in the long period to which I have been now adverting. At the same time, it is idle to deny, that it is extremely possible that a person whose mind is constantly intent upon what is the law of England, may sometimes feel that mind more influenced by considerations arising out of the law of England, than if he were a pure Scotch lawyer, sitting in the Court of Session in Scotland; but I can take upon myself to say for my Lord Thurlow, my Lord Rosslyn, and myself, that as far as is consistent with human infirmity, we were enabled to guard ourselves against being misled from that influence which our early occupations might introduce into our minds. To the utmost extent we have endeavoured to avoid it, and I therefore preface the few words I have to state, with professing my entire concurrence with that which is expressed by Lord Alloway and Lord Eldin, both great authorities in Scotch law, that with regard to the English cases so much founded on by the

parties, they conceive they are not authorities sufficient to warrant the proceeding of that Court, which must be directed by their own laws and by their own rules. This therefore, which your Lordships have now before you, is a case that must be decided according to the law of Scotland. June 19, 1827.

My Lords, on the other hand, there can be no manner of doubt that it is perfectly competent, in considering what the law of Scotland is in a case where we have not before us any decision in the law of Scotland which forms a precedent by which we ought to be governed,—it is perfectly competent for us to obtain what assistance we can derive in forming a proper judgment by looking at the law of England, not by transfusing the law of England into that of Scotland, but to see how far those principles, which are applicable to every law, and capable of application in the law of every country, can be, or not, made serviceable for the decision of a case which stands before your Lordships for determination. My Lords, we have not many cases which have been decided in the law of England proceeding from Courts of Equity and Courts of Law—not many cases upon this question. I think one of the first is that strong case of my Lord Thurlow, of Hutcheson *v.* Mamington, which was a case in which a person, if I recollect the circumstances accurately, had died possessed of a very considerable personal property, at Bath, and had left considerable sums to different individuals, with a direction, that those sums were to go over to others, in case those individuals died before they were received. My Lord Thurlow was of opinion,—and whether the principle is accurately or inaccurately applied, in the particular case, is a question that must be submitted to the mind of the man who is considering whether that principle is properly applied or not,—but my Lord Thurlow was of opinion, that there was a rule of law, which rule of law has been applied through all the subsequent cases, namely, that you are not to look at a particular intention of the testator, particularly expressed with a view to carry that into effect, if you find that the primary and principal intention of the testator, declared by the same instrument, must be disappointed, by carrying into effect that particular intention, that it leads to the laying aside all intention whatever to that which was the primary purpose of the testator. My Lord Thurlow, therefore, was of opinion, that, as it was utterly impossible to inquire how far this sum, and that sum, and the other sum, and all the different sums, which were to constitute the different legacies given to particular persons, could, or could not, with reasonable diligence, have been remitted from a distant country to this country, and actually received, it was competent to him, in looking into the whole of that instrument, not laying it down as a rule of equity, but laying it down as a principle on which he could act, guiding himself by what, he satisfied himself, was the intention of the testator; and he thought he was justified in sacrificing that which required the money to be received, to that general intention of the testator, that the persons who were the objects of his bounty should enjoy the benefit of that bounty. My Lords, then came the case of Schooll *v.* Bernard; as

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to which, my Lords, I should be extremely sorry to think that I was wrong; because I never certainly, in the whole course of my judicial life, took more pains to be right, than I did in that case. In subsequent cases, in the case of Mr Angerstein's will, I had an opportunity of stating, that it was not my opinion that there was a general rule, which, let the will be what it might, in its terms and its expressions, must be acted upon by the House; but that you are to look to the whole, or as Lord Kenyon expressed it, to look to everything within the four corners of the will, and to see what was the intent of the testator, with respect to which you would be justified in thinking he was anxious it should be carried into execution; and I thought that that will entitled the individual to interest before the money was laid out; and I cannot in the least agree to the proposition that has been stated in the opinions of learned Judges in this case, that the mere object of the testator was to annex this property to the title of Stair—my opinion upon that being, that this testator's primary intent was, that all who were to succeed to that title, should, so far as the text and language of the will went, take a benefit under that will; that not a particular intent, but merely the leading intent, being looked to, he was anxious that each and every of them should have their proportion of the enjoyment of that fund, which, as it appears to me, was meant to be a fund to be enjoyed, and to be for the benefit of all of them. Then, my Lords, the question here is, what was the particular intent of the testator, and what was his general intent? My Lords, where you see a general intent, I apprehend that will authorize you to say, that where the general intent cannot be carried into execution, unless you give those particular words a limited meaning, then according to all cases in English Law, and in Scotch Law, in all law relating to the construction of wills, you must give that construction, which, upon the whole, best and most effectually carries into execution that which was the primary intent of the testator; and I cannot bring myself to think, that because the words 'interest and 'rest and proceeds' are here,—there not being, according to what we find very frequently in wills and in deeds, a particular direction that, where money is laid out in land, all the interest that shall accrue upon that money shall also be laid out; on the other hand, there are, that which is very common in wills of this description, particular clauses, that until the money is laid out, the interest shall be enjoyed as the rents and profits would be enjoyed if the money were laid out in land; but the question here is, it being the clear intent of this testator to give a beneficial interest to every one who was to succeed to his real property purchased in the counties in which he directed the purchase to be made,—whether the mere insertion of these words 'interest and 'proceeds,' may not be satisfied by a much more limited construction of them than that construction which would make them mean interest and proceeds as they accrue, and may be received until the money shall be so laid out; so that, though this happens to be a title, which is to last for ever, if we were to apply such a principle to money so laid out in land subject to inheritance as other lands are in Scotland, it might turn

out that no one person to whom the benefit of that demise was intended might enjoy any part of that benefit but the ultimate remainder. June 19, 1827.

My Lords, it is, therefore, I apprehend, not upon any purpose of your Lordships of applying this general rule, that you are now called upon to reverse, in effect, by expressing your opinion, this determination of the Court of Session in Scotland; but you are called upon to do so, because, at least according to my view of the case, you are thereby effectuating what, upon the legal and best construction of this will, is the authorized construction of this will, by which I mean, authorized by the principles on which you are authorized to construe all wills. Upon the authorized construction of this will, you are determining that that benefit shall be given to my Lord Stair, which you think it consistent with the true intent and meaning of this will should be given to my Lord Stair; and upon these grounds, therefore, it is that I perfectly agree in the general purpose expressed in the proposition stated by my noble friend. I am also of opinion, that as the late Lord Stair has created this question himself, by the manner in which he has expressed himself respecting this purchase and this interest, the expense of deciding this question must fall upon the fund, with reference to which the question has arisen. Having said this much, my Lords, I have only to add, that I entirely concur in the proposition which has been stated to your Lordships.*

RICHARDSON AND CONNELL—GOODEVE AND RANKIN, Solicitors.

J. and C. B. LAWSONS, Appellants.—*Sir Charles Wetherell*—*Wilson.* No. 55.
STEWARTS and Others, Respondents.—*Keay*—*John Campbell.*

Legacy—Substitute or Conditional Institute.—A husband and wife having disponed, by a trust-settlement, their estates and effects to themselves jointly, for their joint and several liferents allenarly, and to trustees in fee, declaring the settlement irrevocable at the death of either; and bequeathed certain legacies, declaring, that 'in the event of the death of any of the said legatees prior to the survivor of 'us, his, her, or their legacy or legacies shall thereby fall and belong to their exe-'cutors, or next of kin;' and a legatee having survived one of the testators, but predeceased the other, Held (affirming the judgment of the Court of Session) that the legacy belonged to the legatee's nearest of kin, as conditional institutes.

THE late Colonel and Mrs Baillie, in 1811, executed a joint settlement, by which, on the inductive cause that it was made 'for the welfare of our relations and friends after mentioned,' they assigned and conveyed their whole property, both herita- June 20, 1827. 1ST DIVISION. Lord Alloway.

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* For the Authorities, see ante, p. 428.