[11*th June* 1839.]

(Appeal from the Court of Chancery, Ireland.)

EDWARD SHEEHY and others, Appellants.[1] (No. 15.)

[*Pemberton—Jacob—James Russell.*]

MATHEW FITZMAURICE DEAN, Lord MUSKERRY, Respondent.

[*Knight Bruce—Sir W. Follett.*]

Leasing Power.—Question: Husband and wife, by post-nuptial settlement, convey part of the wife's estates to a trustee to the use of the husband for life, remainder to their eldest son for life, and with an ultimate remainder in fee to the husband, and a power to him to lease "for "any term or terms of years or lives, and with or without "covenants for renewal, and in case of the determination "of all or any of the aforesaid lease or leases to make "new or other leases thereof in manner aforesaid, and "with or without any fine or fines, as he should think "fit." He was also empowered "to raise or levy, by "sale or mortgage, any sum or sums of money not "exceeding in the whole 20,000*l.*, or to charge the "premises therewith," for such uses as he should appoint, and to charge to any amount for younger children. The husband and wife afterwards executed three leases of portions of the estates comprised in the settlement, for terms of 999 years, upon which fines were taken. One of the leases contained a clause permitting the lessee to graff and burn the surface, and also a clause of surrender; and another contained clauses making the lessee dispunishable for waste, and permitting him to cut

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[1] Reported in Lloyd and Goold's Rep. temp. Sir E. B. Sugden, C. 183, and 1 Lloyd and Goold, 182.

timber, &c., and to graff and burn the surface, and in this lease was included part of the wife's estate not comprised in the settlement; the latter lease, and also the third lease, were made subject to existing freehold leases. The amount of the fines received upon the making of these and other leases was 10,208*l.* The husband subsequently mortgaged those estates, subject to the aforesaid leases, for a sum of 10,500*l.* The mortgagee filed a bill of foreclosure in the Court of Exchequer, and obtained a decree, in pursuance of which the lands were sold, subject to the leases. The first tenant in tail under the settlement filed a bill, impeaching the said decree, and also the leases as having been made contrary to the leasing power. Whether the leases were an undue exercise of the leasing power? — Remitted for reconsideration.

Practice — Enrolment of Decree — Rehearing. — Circumstances in which, without deciding on a ground of appeal, that a decree alleged to have been duly enrolled was incompetently opened, and a rehearing allowed, it was held, (recalling the decree on rehearing), that parties were not bound by their consent at such rehearing not to take another case for opinion of court of law; — and the cause remitted to court below to hear parties as to the validity of said leases.

COURT OF CHANCERY, IRELAND.

Sir E. B. Sugden and Lord Plunket, Lords Chancellors.

IN 1732 John Fitzmaurice, being seised of an estate in fee simple in possession in the lands of Springfield, subject only to a legacy of 1,000*l.* charged thereon for his sister Mary, by ante-nuptial settlement conveyed Springfield to trustees, subject to the legacy of 1,000*l.* to the use of himself for life, with remainder to the first and other sons of his said intended marriage in tail, with a power to himself to charge the lands with 4,000*l.* for the younger children of his marriage, and in default of issue male of his marriage remainder to himself, his heirs and assigns.

There was issue of the marriage one son, John (younger), and a daughter, and upon the marriage of the latter in 1759, John (elder), by virtue of the above power, charged Springfield estate with 4,000*l.* and 1,000*l.* (the sister's portion he had paid off), and conveyed the lands for a term of 200 years upon trust to raise the sum of 5,000*l.* by sale or mortgage, which charge became vested by mesne assignments in John Godley. Previous to 1760 John Fitzmaurice (elder) had purchased fee simple estates called Farrihy and Gurtaheedy, and after the death of his wife Anne, having married Hester Littleton, he conveyed to trustees, by a post-nuptial settlement, in 1763, the Farrihy and all other estates in Limerick county of which he had power to dispose, to the use of himself for life, remainder to Hester for life, to whom he also granted a life use after his own death in his personal estate. John Fitzmaurice (younger) died in 1775 intestate, leaving an only child, Anne; and after him, in the same year, died John (elder), also intestate, without issue of his second marriage, leaving Anne his grand-daughter and his heiress at law, and Hester his widow, him surviving. In 1775 Anne, then a minor, married Sir Robert Tilson Deane, afterwards Lord Muskerry; and in 1776, in order to terminate existing differences between Hester the widow and Sir Robert, a deed of compromise was executed between Hester and Sir Robert and Anne his wife, whereby upon recital of the settlement of 1763, in consideration of Hester assuring to Sir Robert all her right and interest in and to the real and personal estate of her late husband, she (Hester) and Sir Robert conveyed to trustees the Springfield and Farrihy and Gurtaheedy estates, for a term of 99 years, with powers to lease or

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mortgage the same, to secure to Hester an annuity of 1,083*l.* 6*s.* 8*d.* in and subject thereto, in trust for the use of Sir Robert and Anne his wife, and the heirs and assigns of the latter.

Anne attained majority in 1779, when there being two sons of the marriage, a settlement was executed on 25th May 1779 between Sir Robert and Anne his wife of the first part, and Thomas Lloyd of the second part, whereby for assuring the lands therein mentioned, and for making a provision for a jointure for the said Anne, and a further provision for the children of the marriage, they granted to Lloyd, his heirs and assigns, the Springfield and Farrihy estates (the property of Anne), to the use of Sir Robert for life, without impeachment for waste; remainder to Anne for life, without impeachment for waste; remainder to Robert Fitzmaurice Deane, their eldest son, for life, and to his first and every other son in tail male; with remainder to the second son, John F. Deane, for life, without impeachment for waste; with an ultimate remainder to Sir Robert; and it was thereby agreed, "that it shall and "may be lawful to and for the said Sir Robert, from "time to time and at all times during his life, to lease "or demise all, every or any part or parts, parcels or "parcel of the aforesaid towns, lands, tenements, here-"ditaments, and premises, for any term or terms of years "or lives, and with or without covenants for renewal, "and in case of the determination of all or any of the "aforesaid leases or lease respectively, from time to "time to make new or other leases thereof in manner "aforesaid, and with or without any fine or fines as he "shall think fit;" and it was also agreed, that it should "be lawful to and for the said Sir Robert to charge

" and encumber all and singular the said towns, lands, " tenements, hereditaments, and premises aforesaid, or " any part or parts thereof, with any sum or sums for " the younger child or children of the said Sir Robert " begotten or to be begotten on the said Dame Anne, in " such proportions and manner, and payable at such " time or times, as he shall by deed or will appoint;" and further, that it should also " be lawful to and for " the said Sir Robert to raise and levy, by one or more " sales or mortgages of all or any part of the premises, " any sum or sums of money, not exceeding in the " whole the sum of 20,000*l.*, or to charge the premises " aforesaid therewith, to and for such use and uses as he " shall at any time or times by deed or will appoint."

By the same deed Sir Robert and his wife covenanted that they would, before the end of the then next Trinity Term, levy a fine of the said towns, lands, tenements, and hereditaments unto the said Thomas Lloyd and his heirs, to the uses of the said indenture of settlement. On the same deed there was an endorsement signed and sealed by Sir Robert and his wife, in the following words:—" It was agreed between the parties within " mentioned, previous to the execution of the within " deed, that the within-named Robert Fitzmaurice " Deane and John Thomas Fitzmaurice Deane, and " every other child of said Sir Robert Tilson Deane " and Dame Anne his wife, who shall, under the limita- " tions within mentioned, be possessed of the premises " within mentioned, or any part thereof, to make leases " of the whole or any part thereof for any term not " exceeding three lives or thirty-one years, provided " such lease be made to commence in possession, and " that the best improved yearly rent that can be had

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" for the same at the time of making such lease be " reserved thereby, and that no fine or other considera- " tion shall be taken for or on account of the making " thereof."

Sir Robert and Anne, by indenture dated 26th August 1779, in consideration of 1,000*l.*, demised to William Sheehy for a term of 999 years, at a rent of 20*l.*, the lands of Rosnerelane, and also part of Springfield, subject to a lease of the latter in 1746 by John Fitzmaurice to Isaac Howell for three lives, at the rent of 40*l.* 3*s.*; and Sir Robert covenanted for himself and his wife, their heirs, executors, &c., to levy one or more fines unto the said William Sheehy, his executors, &c., of all the premises thereby demised. The lands included in this lease were part of the premises comprised in the settlement of 25th May 1779. By indenture of lease dated 28th October 1779, Sir Robert and Anne, in consideration of 2,000*l.*, demised to Roger Sheehy the younger the lands of Clonmore, part of the lands in the settlement of May 1779, for a term of 999 years, at a yearly rent of 150*l.*, with permission to Roger Sheehy, his executors, &c., during the continuance of the term to graff, cut, and burn the soil and surface of the lands thereby demised, without incurring or being liable to any penalty or forfeiture for the same, notwithstanding the several acts to prevent the pernicious practice of burning land, and with power to Roger Sheehy to quit and surrender the demised premises at the end of every year of the term, upon giving six months notice in writing. By indenture of lease dated 4th June 1780, Sir Robert and Anne, in consideration of 5,780*l.*, demised to Roger Sheehy the elder, portions of the Springfield estate and Gurtaheedy, being (excepting

Gurtaheedy) part of the lands in the settlement of 25th May 1779, subject to the remainder of the terms unexpired of different leases then subsisting, and set out in a schedule annexed to the lease, to hold the same for a term of 999 years, at the yearly rent of 50*l.*, without impeachment for waste, and with power to the lessee, his executors, &c., to cut, fell, and carry away all timber and other trees then growing or which thereafter should grow on the said demised premises, and to graff and burn any part of the said demised premises as often as he or they should think proper, with a covenant on the part of Sir Robert and his wife to levy a fine or fines to Roger Sheehy, his executors, &c., for the effectually confirming the said demise. In the schedule were specified five leases for lives of different portions of the lands as then subsisting, and all executed previous to the settlement in 1779, the rent reserved by the lease being less than the former rents; the leases to the Sheehys containing usual clauses of entry and distress, &c., and a reservation of the royalties. Sir Robert and his wife levied no fine pursuant to the above covenants. Sir Robert, by means of fine taken upon these and other leases, raised 10,208*l.*

By deed, dated 29th April 1780, reciting the settlement of 25th of May 1779, and the power therein to raise not exceeding 20,000*l.* by sale or mortgage, Sir Robert mortgaged to St. John Chinnery the Springfield and Farrihy estates, subject to the leases to the Sheehys, for 6,000*l.* Sir Robert was, in 1780, created Baron Muskerry. By deed, dated the 7th of April 1783, reciting the settlement of 1779, and the mortgage of 1780, Lord Muskerry executed a further mortgage to St. John Chinnery of the Springfield and Farrihy

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estates, subject also to the leases to the Sheehys, for 4,500*l.*

In 1780 Hester Fitzmaurice, her annuity being largely in arrear, filed a bill in chancery against Lord Muskerry, the lessees in the several leases being made parties, praying that those leases might be declared fraudulent and void as against her; and that the amount due to her on her annuity, an account being taken, might be raised by a sale of the lands comprised in the trust term created for securing the said annuity. In 1790 Hester died, whereupon her executor, Lord Westcote, revived her suit, and by amended bill made Sir B. Chinnery, the personal representative and heir at law of St. John Chinnery his brother, a party, and putting in issue the two deeds of mortgage for 6,000*l.* and 4,500*l.* All the defendants, except Lord and Lady Muskerry, answered; and in December 1779 there was decree to account. On 27th of January 1802 the master, by his report, found 10,819*l.* due to Lord Westcote as representative of Hester Fitzmaurice, and 5,000*l.* due to Godley. On the 18th of November 1802 Lord Redesdale, C., on hearing the cause, directed that the sum of 10,819*l.* due to Lord Westcote should be raised by mortgage of the estates, and that the trustees of the term of ninety-nine years securing the annuity should execute mortgages of the remainder of the term to a trustee, to be named by Lord Westcote; and also declared that the several leases to the Sheehys were fraudulent and void as against the said Hester and her trustees and Lord Westcote; and that the full and fair rents for the estates, discharged from the said leases, ought to have been paid from time to time to the receiver in the cause, and referred it to the master

to set fair rents on the estates comprised in the leases, and take an account of what was due for such rents, after giving credit for the sums paid by the tenants to the receiver; and also declared that in case the tenants should redeem the said mortgage by payment of what should be found due for rents beyond the rent reserved in their respective leases, or by payment from their own money, they should be entitled to stand in the place of Lord Westcote for so much as they should pay beyond the rent received by their respective leases.

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Sir Broderick Chinnery in 1784 had, in the name of his brother St. John Chinnery, filed a bill in the Court of Exchequer against Lord and Lady Muskerry to foreclose the mortgages of 29th April 1780 and 7th April 1783, pending which suit St. John died without issue, leaving Sir Broderick his heir at law his executor.

By deed dated 11th December 1802, Lord Westcote, in consideration of 4,000*l.*, assigned to Sir B. Chinnery the sum of 10,819*l.*, and the full benefit of the decree of 18th November 1802, and by indenture of the same date the trustees of the term of ninety-nine years (created by deed in 1779 to secure Hester's annuity), by Lord Westcote's direction, and in pursuance of the decree of 1802, mortgaged the lands comprised in the said term to the said Sir B. Chinnery, his executors, administrators, and assigns.

In 1804 Sir B. Chinnery revived the exchequer suit, and obtained a decree to account; and in 1806 a sum of 20,085*l.* 7*s.* 9½*d.* was reported due to him on the mortgages executed to Sir B. Chinnery, and also 10,819*l.* as assignee of Lord Westcote, and 5,000*l.* were reported due on Godley's mortgage. Godley assigned this charge to Sir B. Chinnery during the same cause.

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In February 1807 there was a decree in the exchequer suit for a sale of Springfield and Farrihy estates, for payment, with interest and costs, of the sum reported due on the footing of the mortgages, subject nevertheless to the debts decreed to Godley and Lord Westcote, and to the remedies for receiving thereof, pursuant to decree of 1802, and subject to the several leases to the Sheehys.

In 1808 Sir B. Chinnery died, after bequeathing to his two sons the sums due on the several mortgages, and on Lord Westcote's claim, and his will was proved and the suit revived by Alice, his widow and executrix.

Under the decree of 1807 in the exchequer suit, Springfield and Farrihy were put up for sale, subject to Godley's and Lord Westcote's demand, and the leases to the Sheehys. On 8th May 1812, Alice, executrix of Sir B. Chinnery, became purchaser, and the estates were conveyed to her, but the deed of conveyance was executed by the Chief Remembrancer only. Robert Lord Muskerry died in 1818, leaving Anne Lady Muskerry and two sons, John Thomas Deane Lord Muskerry and Mathew Deane, him surviving.

In May 1819 John Thomas Lord Muskerry and Anne Lady Muskerry (his mother) filed the original bill in this cause. But John Thomas Lord Muskerry having died in 1824 without issue, and his mother dying in 1830, Mathew Lord Muskerry (the respondent) by amended bill in 1826 against the widow and children of Sir B. Chinnery, and the representatives of the Sheehys, the lessees, after stating the transactions between Robert Lord Muskerry and Sir B. Chinnery, charged that the said several leases were not authorized by any power in the settlement of 1779; that Lord Muskerry, having raised 10,208*l.* by taking fines upon leases, and also

10,500*l.* by mortgages to St. John Chinnery, had exceeded his powers to charge under the settlement of 1779, which limited him to 20,000*l.*; that such mortgages having been made subject to said fraudulent leases were contrary to the intent and meaning of the power; that the account in the exchequer cause was fraudulent and erroneous, and that if due credits had been given nothing would have been found due in respect of said mortgages; that the decree in the said cause was also erroneous in directing a sale for the payment of a subsequent mortgage, subject to a prior mortgage and other prior incumbrances, without providing for the payment thereof out of the produce of the sale, and likewise impeaching the said decree on other grounds; and prayed that the leases to the Sheehys might be declared not to have been warranted by the leasing power in the settlement of 1779, and fraudulent and void as against the plaintiff (respondent) claiming in remainder under the said settlement; and that the mortgages to St. John Chinnery might be decreed not warranted by any of the powers in said settlement, and void as against plaintiff (respondent); and that the exchequer decrees might be decreed as fraudulently obtained; and for an account of what was due to Alice as representative of Sir B. Chinnery, or Lord Westcote's and Godley's demands, and that in taking such account such sums only should be allowed as Sir B. Chinnery actually and bonâ fide paid as assignee of Lord Westcote and Godley respectively, and in case the said mortgages or either of them should be declared a subsisting lien on said estates, then that an account might be taken of the sums due in respect thereof; and that upon payment of the sums actually and bonâ

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fide paid for the same, the plaintiff might be entitled to redeem the mortgaged premises; and for a reconveyance of the same; and for an account also of the sums received by Sir B. Chinnery or his representatives, or which without wilful default he or they might have received out of the Springfield and Farrihy estates, &c.

The cause was heard before Lord Plunket, C., on the 29th of November 1832; and his Lordship directed a case for the opinion of the Court of Common Pleas upon the following question:—"Whether the leases, "bearing date respectively the 28th day of August "1779, the 28th day of October 1779, and the 14th "day of June 1780, made by Sir Robert Tilson Deane, "who was afterwards created Baron Muskerry, and "Dame Anne his wife, to William Sheehy, Roger Sheehy "the younger, and Roger Sheehy the elder respec-"tively, or any or either and which of the said leases "were or was warranted by any power contained in "the deed bearing date the 25th day of May 1779?" all further directions being reserved.

The Court of Common Pleas certified that the leases were not warranted by any power contained in the deed of settlement of 1779.

Alice Chinnery died intestate, after the argument in Common Pleas, leaving her two sons her surviving. The cause came on (4th of February 1835) before the Lord Chancellor (Sir E. B. Sugden) for further directions, upon bill, answer, and this certificate.

When the cause was called on the counsel for the plaintiff (respondent) was understood to state to the court that there was an arrangement in progress with respect to the demands arising on the mortgages, in which the counsel on both sides had concurred; but

that as the Chinnerys, in whom the mortgages were vested, were lunatics, a reference was necessary, and that a petition had been presented.

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The Lord Chancellor referred it to the master to inquire and report whether the proposed compromise would be for the benefit of the lunatics. His Lordship stated his wish to have the assistance of two of the common law judges in deciding the question as to the validity of the leases.

That question came on, 11th February 1835, to be argued before the Lord Chancellor, assisted by the Lords Chief Justice of the Common Pleas and Chief Baron.

In the course of the argument the Lord Chancellor stated that his attention had been withdrawn from the facts of the case from the time it was stated that a compromise had been entered into, and as the bill had been filed to impeach the mortgages and the sale, and as the Chinnerys and Lord Muskerry had agreed to withdraw from the consideration of the court the question as to the validity of the sale, he did not think he had jurisdiction to decide upon the validity of the leases, and that he was now differently placed than he would have been if the proceedings had been continued against all the parties, and wished to hear one counsel of a side, whether in the then state of the pleadings he could decide upon the validity of the leases.

Decree of 12th Feb. 1835.

By the decree as made up, after reciting that the plaintiff had, by his counsel in open court, waived insisting on any relief as sought by his bill in respect of the said final decree of the Court of Exchequer, and the said sale in pursuance thereof, and that it had appeared that under the said decree in the Court of

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Exchequer, the said lands were sold to the purchaser Alice Chinnery, subject to the said indentures of lease of 28th October 1779 and 4th June 1780, it was ordered that the plaintiff's bill should be dismissed with costs as against the defendants the representatives of the lessees of the leases of 28th October 1779 and 4th June 1780 (the lessees who appeared at the hearing), save as to costs incurred in respect of the said proceedings in the Court of Common Pleas, as to which it was declared that all parties should abide their own costs. The said decree of 12th of February was, as the appellant contended, duly enrolled.

Order of 8th May 1835.

On 8th May 1835 the respondent presented his petition to Lord Plunket, Lord Chancellor of Ireland, praying for a rehearing of the cause, whereupon his Lordship was pleased to make an order, without notice to the appellants, that the case should be set down to be reheard.

On the 16th May 1835 the appellants Edward Sheehy and John Sheehy applied to the Lord Chancellor to set aside the order for rehearing, as having been obtained by the suppression of the fact that the decree of 12th February 1835 had been enrolled. Affidavits were filed in support of and against the motion.

Order of 28th May 1835.

On the 28th May 1835, on debate in open court, the Lord Chancellor made the following order: "Whereas "Mr. Warren and others, of counsel with the defen- "dants Edward and John Sheehy, this day moved the "court to set aside the order of rehearing dated the 8th "day of May instant, and also moved for the costs of "the said motion: Upon debate of the matter, and on "reading the said order; the decree of the 12th day of "February 1835; the affidavit of John Walsh, filed the

" 15th of May 1835; the order in Chinnerys, lunatics,
" of the 5th day of February 1835; the report of the
" 8th of April 1835; the affidavit of the plaintiff, filed
" the 23d of May 1835; the affidavit of William Fur-
" long, filed the same day; the affidavit of Theo-
" philus Latouche, filed the same day; the notes on
" hearing of 21st November 1832 and the 12th of
" February 1835; the general rule of the 31st of
" March 1819; the two certificates of the clerk of the
" rolls, dated the 11th day of May 1835; as also the
" new rule 132; and hearing what was offered by
" Mr. Blackburne and others of counsel with the plain-
" tiff; and Mr. John Walsh, solicitor for defendant,
" and Mr. William Furlong, solicitor for plaintiff,
" attended: It is ordered by the right honourable the
" Lord Chancellor of Ireland that the said enrolment
" be opened for the purpose of the rehearing the
" cause."

Order on rehearing, 11th June 1835.

On the 4th June 1835 the cause accordingly came on for rehearing, and was further heard on the 6th, 8th, and 11th June, before the Lord Chancellor of Ireland, when his Lordship pronounced a decree, which states, that it appeared to the court that the recital in the decree of dismissal that the respondent waived any relief against the exchequer decree and the sale thereunder, was erroneously inserted in that decree; and on reading the order of reference, and inasmuch as the reference was depending at the time of pronouncing the decree of dismissal, and the Chinnerys were present in court insisting on their rights, it was ordered that the decree of dismissal should be reversed, and the master's report be confirmed; that the compromise therein set forth be carried into effect. The respondent was declared

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entitled to redeem the mortgages on payment of 24,000*l.* and interest within twelve months; it was further ordered, that the premises be reconveyed discharged of the mortgages, and in default of payment the respondent to be foreclosed; and the respondent was further ordered to release the claims of dower due to Anne Lady Muskerry deceased; and the cause was ordered to stand for further hearing, with liberty to all parties to adopt any defence they might be advised arising out of the said compromise and the decree.

In pursuance of the decree of 11th June 1835 the cause came on to be further heard before his Lordship on the 13th day of July 1835; whereupon his Lordship having proposed that any direction which the counsel for the said defendants Richard Boyle Chinnery, Maria Chinnery, and Louisa Chinnery should require for the purpose of protecting their interest in respect of their having a good and sufficient tenant or tenants of the lands and premises comprised in the several leases in the pleadings mentioned, in the event of the said leases being defeated, be inserted in any decree now to be pronounced; and the counsel for the said defendants Richard Boyle Chinnery, Maria Chinnery, and Louisa Chinnery at the bar declining the same; and

Final Decree, 13th July 1835.

"upon "reading the case submitted for the opinion of the "justices of His Majesty's Court of Common Pleas of "Ireland, and the certificate of the learned judges of "the said court, therein setting forth that the said case "had been argued before them by the counsel of the "parties, and that they had considered it, and were of "opinion that the leases in the pleadings mentioned, "bearing date respectively the 26th day of August "1779, the 28th day of October 1779, and the 14th

" day of June 1780, made by Sir Robert Tilson Deane,
" Baronet, afterwards created Lord Muskerry, and
" Dame Anne his wife, to William Sheehy, Roger
" Sheehy the younger, and Roger Sheehy the elder
" respectively, were not warranted by any power con-
" tained in the deed of settlement bearing date the
" 25th day of May 1779; and the said defendants the
" lessees, Edward Sheehy, John Sheehy, William John
" Sheehy, Bryan Sheehy a minor, by the said William
" John Sheehy his father and guardian, Anne Westropp,
" Thomas Johnston Westropp a minor, by the said Anne
" Westropp his mother and guardian, by their coun-
" sel in open court, declining to accept an offer made
" by his Lordship to send the said case for the opinion
" of His Majesty's Court of King's Bench; and upon
" reading the conditional decree, bearing date the 26th
" day of April 1832, against the defendants James
" Keatinge and Henry Singer Keatinge, the orders of
" the 7th and 15th days of June 1832, and the affidavit
" of service thereof; it is this day, that is to say,
" Monday the 13th day of July 1835, ordered, ad-
" judged, and decreed by the right honourable the
" Lord High Chancellor of Ireland, that the said con-
" ditional decree be and the same is hereby made
" absolute against the said defendants James Keatinge
" and Henry Singer Keatinge: And it is further
" ordered, adjudged, and decreed, that the said de-
" cree of the 12th day of February 1835 be and the
" same is hereby reversed; and it is hereby declared
" that the insertion therein of the waiver by the plaintiff
" therein recited was not warranted by the facts: And
" it is hereby further ordered, adjudged, and declared,
" that the said three several leases in the pleadings

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" and in the said certificate of the Court of Common " Pleas specified, bearing date respectively the 26th " day of August 1779, the 28th day of October 1779, " and the 14th day of June 1780, made by the said " Sir Robert Tilson Deane, Baronet, who was after- " wards created Lord Baron Muskerry, and Dame " Anne his wife, to William Sheehy, Roger Sheehy " the younger, and Roger Sheehy the elder respec- " tively, are not, nor is any or either of them, valid " at law or warranted by any power contained in the " deed of settlement of the 25th day of May 1779, and " that there is no ground for sustaining any or either of " them on equitable principles; and the said leases " being invalid at law and not sustainable on equitable " grounds, it is hereby further ordered, adjudged, and " declared that the same are void: And accordingly it " is further ordered, adjudged, and decreed, that the " three several leases be and they are hereby set aside " respectively: And it is further ordered, adjudged, " and decreed, that an injunction do forthwith issue " to put the plaintiff into possession of the premises " comprised in the said three several leases respec- " tively: And it is further ordered, that the said defen- " dant Mary Bourke, the heiress at law of Thomas " Lloyd in the said settlement of the 25th May 1779 " named, be paid her costs of this suit by the plaintiff, " and that the said defendant John Robert Bourke be " likewise paid his costs of this suit by the plaintiff: " And it is further ordered, that the plaintiff and the " several other parties do abide their own costs respec- " tively: And it is further ordered, that the deposit " made by the plaintiff on setting down the cause for " rehearing be paid back to the said plaintiff's six clerk,

" and accordingly the plaintiff may make up and enrol " a decree as aforesaid, for performance whereof the " process of this court is from time to time to issue " as is in such cases usual."

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The appellants appealed against the order for rehearing made on the 8th May 1835, the order for opening the enrolment of said decree of the 12th February 1835 made on the 28th May 1835, and the final decree made on the 13th July 1835.

Statement.

Appellants.—The decree of dismissal of the 12th of February 1835 was duly enrolled; and if so, the Court of Chancery ought not to have made the order of 28th May 1835 for opening the enrolment of the decree of 12th of February 1835, but should have suffered the respondent to have sought redress by appeal to the House of Lords, in case he thought himself aggrieved by the decree of dismissal; the more especially as the respondent had obtained the order of the 8th May 1835 for rehearing the cause without notice to the appellants, by their withholding from the Lord Chancellor all knowledge of the fact of the decree of the dismissal having been duly enrolled.

Appellants Argument.

The respondent having by his counsel in open court withdrawn from the consideration of the court the question whether the sale of the Springfield and Farihy estates to Dame Alice Chinnery, subject to the leases the interest in which had become vested in the appellants, was impeachable or not, he was not in a situation to impeach the validity of the leases. The recital contained in the decree of Lord Chancellor Plunket, " That the recital contained in the said " decree of dismissal of the 12th day of February 1835,

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Appellants Argument.

" stating that the said plaintiff, Mathew Baron Mus-
" kerry, by his counsel in open court, had waived in-
" sisting on any relief, as sought by his bill in respect
" of the final decree pronounced by the Court of
" Exchequer in his bill mentioned, and the sale in
" pursuance thereof was erroneously inserted therein,
" being unfounded in fact, and not warranted by any
" statement or waiver made on the part of the said Lord
" Muskerry," is an averment made without evidence, and contrary to the fact, and contrary to the averment of the decree duly made and signed by the Lord Chancellor, in whose presence and hearing the waiver took place.

The validity of the appellants leases, as against the parties claiming under the settlement of May 1779, is recognized by Lord Redesdale's decree in 1802 and the decree of the Court of Exchequer in 1807; and the lessees are moreover entitled to the benefit of the decree of 1802 in respect of the sums of money which they paid in pursuance of that decree and the agreement of the 16th of May 1803. The leases are warranted by the leasing power contained in the settlement of the 25th of May 1779; and even if the leasing power were ambiguous in its terms in respect of any of the provisions contained in any of the leases, yet the respondent, claiming as a volunteer under the parties who introduced such ambiguous expressions into their deed, ought to be prevented from taking advantage of any such ambiguity, but on the contrary any ambiguity therein ought to be construed in favour of the appellants claiming under lessees who paid large fines and entered into covenants to pay rents equivalent to the value of the land when leased, or such fines and such leases being

in all respects bonâ fide in respect to the lessees, and without any ground for suspicion on their part of the settlement of 25th May 1799 being in any degree impeachable, or the leasing power being insufficient to authorize the leases and the clauses therein contained.

Although the leasing power should be construed as not expressly authorizing the taking of fines on leases, yet inasmuch as there is no express restriction in the settlement against taking such fines, and as there is an express power therein authorizing Sir Robert Tilson Deane to raise or levy by sale or mortgage any sum of money not exceeding 20,000*l.*, the fines should be deemed to be part of the 20,000*l.* raised by sale of so much of the rents as would otherwise have been reserved in the leases, and as in fact the most beneficial way of exercising the power of raising the 20,000*l.* as respects the rights of the persons entitled in remainder; and although Sir Robert Tilson Deane by his subsequent mortgages to St. John Chinnery raised a sum of money, which together with the fines exceeded the 20,000*l.* by a sum of 708*l.*, yet such subsequent dealings with St. John Chinnery could not affect the validity of the previous leases. The lessees and the appellants are claiming under them as purchasers for valuable consideration, without notice of any ground of claim on the part of the respondent, or of those under whom he derives, to impeach the validity of the leases, and are therefore entitled to rely on their title as such purchasers for valuable consideration as against the respondent claiming under the post-nuptial settlement of 25th May 1779. Even if at law the leases should be considered as not authorized by the leasing power, yet the respondent was not entitled to the aid of a court of equity to set aside

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leases bonâ fide made in consideration of large sums of money paid by the lessees, such lessees and their representatives having been suffered to remain in undisturbed enjoyment of the demised premises without any adverse claim for forty years, during which period they had necessarily expended large sums of money in the improvement of the lands, and which leases had been acquiesced in by all parties as due executions of the leasing power in Lord Westcote's cause, in which cause the leases were the subject of discussion before Lord Redesdale, then Lord Chancellor of Ireland, who made a decretal order therein in the year 1802, sustaining the leases against all parties except prior incumbrancers; and the validity of which leases was also subsequently recognized by the Court of Exchequer in the foreclosure cause in the year 1807, and the lands decreed to be sold subject to such leases, under which decree Dame Alice Chinnery had become the purchaser of the lands expressly subject to those leases.

Appellants Argument.

Respondent's Argument.

Respondent.—The course pursued, which the appellants objected to, and the result of the rehearing, could not reasonably be complained of; for the final decree appealed against only brought the cause on the merits back to the position in which it stood upon the certificate of the Court of Common Pleas, finding that the leases were not warranted by any powers in the deed of 1779. Lord Chancellor Sugden ought, before over-ruling that decision, to have directed another case for opinion: And if the appellants stood merely on point of practice it was clear that the question whether the decree had been enrolled or not was so doubtful that the safe course to pursue was for the Lord Chancellor to open the

enrolment, with a view to a rehearing, the affidavits showed that the Master of the Rolls held there had been no enrolment. It appeared that the solicitor for the appellants lodged two engrossments of the decree in the rolls office, the first transmitted by the registrar, and the second by his six clerk; but these were mere transcripts of the decree, made up in the short form as directed by the new rules, which new rules do not apply to enrolment of decrees or alter the practice with respect to enrolments; and all that the deputy keeper of the rolls could certify was, that a parchment copy of the decree, signed by Sir Edward Sugden, Chancellor, had been lodged at the office; thus the decree had not been duly enrolled according to the established practice of the Court. It was at least a doubtful question whether the new rules had changed the practice, and it was, therefore, a fit case in which to exercise the discretionary power of the Court to open the enrolment, and not to suffer the party to be prejudiced by the uncertain state of the practice; because, by reason of the appellants joining as they have done, it is incompetent for them to object to the opening of the enrolment of the said decree.

There was a mistake, in point of fact, as to the relief prayed against, the sale in the exchequer having been waived; the sale was waived and had been waived long before, but the relief against it was never waived. In point of law, though a sale be made subject to impeachable leases, they may be afterwards impeached, especially if the purchaser do not object, as in this instance.

Besides, the decision of the Court of Common Pleas was right, but in any event, ought not to have been over-ruled, (as it was by Sir Edward Sugden's decree,)

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unless upon a case sent to another court, which was offered by Lord Plunket but declined by the appellants.

LORD CHANCELLOR.—My Lords, in this case I felt particularly desirous to deliver my judgment in the presence of the counsel who argued it; so long a time having elapsed I think it right to enter more minutely into the facts of the case, in as far as they bear upon the two points which were raised in the argument.

The first point in this case is one of form and practice, namely, whether the decree appealed from was regular? or in other words, whether it was competent for the court in the then state of the proceedings to pronounce such a decree? In order to come to a conclusion upon this point it will be necessary shortly to examine the different interests of the parties to the cause.

In 1775 Anne Fitzmaurice was seised in fee of the Springfield estate, subject to a charge of 5,000*l.* vested in John Godley, and in fee absolutely of two other estates, called Farrihy and Gurtaheedy. She married Sir Robert Deane, and her mother-in-law Hester making a claim upon the estate, it was arranged that she should accept an annuity charged upon a ninety-nine years term over all the estates in full of her demand.

In 1779 a post-nuptial settlement was made of the estates of Springfield and Farrihy, under which the questions in this cause arise. Under that settlement, after life estates to the husband and wife, the estates were limited to the two sons then living for life, remainder to their sons in tail male, remainder to any other sons of the settlor in tail; power was reserved to

Sir Robert Deane of granting leases and of charging the estate with 20,000*l.*

This power of leasing he exercised by granting a lease dated 26th August 1779, which is now vested in the appellants William John Sheehy and Bryan Sheehy; by granting another lease, dated 28th October 1779, now vested in the appellants Edward and John Sheehy; by granting another lease, dated 4th June 1780, now vested in the appellants Ann Westropp and Thomas Johnston Westropp. He also exercised the power of charging the estate by two mortgages to St. John Chinnery, one dated 29th April 1780 for 6,000*l.*, and the other 7th April 1783 for 4,500*l.*

On the 18th November 1802 a decree was made in a suit instituted to compel payment of the arrears of the annuity secured to Hester under the deed of the 20th June 1776, the right to which was then vested in Lord Westcote by mortgage of the estate charge; and it was by that decree declared that the leases were fraudulent and void as against their charge, and that the tenants were to account for the full value from the year 1784, but the tenants were to be at liberty to redeem the charge, and as against the estate to be repaid what they might pay for that purpose either by way of rent or sums advanced by them. This suit was instituted in 1782, and soon afterwards, that is, in 1784, Chinnery the mortgagee filed a bill in the Exchequer to foreclose, and in 1787 a decree was made merely of reference to take the accounts, and soon after the decree in the chancery suit, that is, in December 1802, Lord Westcote assigned to Chinnery the mortgagee all his interest under the decree of the 18th November 1802.

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On the 19th February 1807 a decree of foreclosure was made in the Exchequer suit, upon the report of the deputy remembrancer, who found a large sum due upon Chinnery's mortgage, but subject to the decree in Chancery of November 1802, and to the leases, and to another mortgage of 5,000*l.* then vested in Godley, but which was afterwards assigned to Chinnery the plaintiff. Under this decree a sale of the Springfield and Farrihy estates took place before the remembrancer, and Alice Chinnery, in whom the mortgage was then vested, became the purchaser, but subject, according to the decree, to Lord Westcote's charge, Godley's mortgage, and the leases.

In 1812 a conveyance was directed to be made under their purchase, but it was not executed except by the deputy remembrancer. In 1819 a bill was filed in the Court of Chancery in Ireland by the respondent, then first tenant in tail, and the other parties then interested under the settlement of 1779, impeaching the title of the mortgagees and of the lessees. In 1832 the cause came to be heard before Lord Plunket, who directed a case for the opinion of the Court of Common Pleas as to whether the leases were warranted by the power. In February 1834 the certificate of the Common Pleas was obtained, finding that the leases were not warranted by the power contained in the settlement of the 25th May 1779.

Before the cause came on for hearing upon this certificate, an arrangement having taken place between the plaintiff, the now respondent, and the Chinnerys, in whom the mortgages and Lord Westcote's charge were then vested, the Court was informed that no judgment was required as between the plaintiff and the mortgagees;

upon which Sir Edward Sugden, then Lord Chancellor of Ireland, expressed his opinion that the plaintiff having waived all relief against the mortgagees, and as to the sale in the Exchequer suit, no judgment could be pronounced as to the leases, and therefore dismissed the bill as against the defendants claiming the several leases. Before this time, that is on the 5th February 1835, one of the parties interested in the mortgages being a lunatic, a reference was made to inquire whether the proposed arrangement would be for the benefit of the lunatic; and after the decree, that is on the 8th April 1835, the master reported in the affirmative. This decree, according to the case made by the defendants, was enrolled, but that is denied by the plaintiff.

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On the 8th May 1835 an order for rehearing was made as of course; and on the 28th May 1835, upon an application by the appellants to discharge the order for rehearing, an order was made to open the enrolment for the purpose of the rehearing.

On the 13th July 1835 Lord Plunket pronounced his decree upon the rehearing, carrying into effect the terms of the arrangement giving to the plaintiff the benefit of the redemption in payment of the sum agreed to be paid upon account of the mortgages and charges, and as against the lessees declaring the leases void, they having declined to take another case for the opinion of the King's Bench.

The appeal is against the order of the 8th May 1835 for a rehearing, the order of the 28th May 1835 opening the enrolment, and the final decree of the 13th July 1835. The two first may be considered together, the question as to both being the regularity and propriety of the order for rehearing, that is whether

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under the circumstances the Court was precluded by the enrolment from rehearing the cause.

It appears from the affidavit of Mr. Furlong that it was a subject of doubt whether there had been in fact any enrolment of the decree; the deputy keeper of the rolls having objected to the engrossments left with him, as being merely copies of the decree in the short form, and that he had, therefore, consulted the Master of the Rolls, who was of opinion that they were not to be considered as an enrolment, and therefore he declined to give any certificate of the enrolment, and, in fact, there was not any such certificate. Mr. Furlong, the plaintiff's solicitor, having received this information, explains the reason of his not having made any application to the Court to vacate the enrolment; but it appears that the defendants, Edward and John Sheehy, moved to set aside the order for a rehearing upon the ground of the decree having been enrolled, whereupon Lord Plunket ordered that the enrolment should be opened, for the purpose of rehearing the cause.

There certainly is a want of regularity in this proceeding, which may perhaps be accounted for by the doubt which appears to have existed as to whether there had in fact been any enrolment; and if the Lord Chancellor was of opinion that under the circumstances there had been no enrolment, or that there was doubt about it, or that if the enrolment were good there was sufficient ground for vacating it, he may have thought it right to remove the doubt by his order of the 28th May 1835. The question, however, now is, whether it be necessary to dispose of this appeal upon the ground of this irregularity, and after all the expense and delay which has been experienced to send the parties back to

commence their proceedings de novo, so far as to make it necessary for the present respondent to appeal against the decree of the 12th February 1835, instead of deciding any of the questions between the parties upon the appellants appeal against the decree of the 13th July 1835.

A court of appeal is always unwilling to adopt such a course when it is possible to reach any of the merits of the case. In questions respecting the enrolment of decrees, the court exercises a discretionary power, and although such discretion ought to be regulated by precedent and authority, yet the circumstances of this case were very peculiar, and I think that your Lordships will not consider it to be your duty upon this question of form to refuse to entertain the other points in the cause.

If then your Lordships feel at liberty to consider the merits of the decree of dismissal of the 12th February 1835, it is material to consider that the decree contains in its recitals the grounds upon which it was founded. It recites that the plaintiff had by his counsel in open court waived insisting on any relief in respect to the final decree in the exchequer and the sale made in pursuance thereof, and that it appeared that the lands had been sold subject to the leases. It proceeds then to dismiss the bill against the lessees with costs. It is unnecessary to consider whether, if these recitals in the decree of the plaintiff having waived insisting on any relief in respect to the decree of the exchequer, and the sale made in pursuance thereof, were consistent with the fact, it would necessarily lead to a dismissal of the bill against the lessees, because it appears to me evident from the proceedings independently of the affidavits,

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that the recital must have been inserted from a misapprehension. It is indeed stated in one of the affidavits that it was introduced after the hearing, and this is not contradicted, but upon a rehearing there can be no reason for binding the plaintiff by this evident mistake by the officer of the court. The whole transaction proves that the plaintiff's counsel could not have done what the decree recites, because the arrangement with the Chinnerys was to be carried into effect by a decree. The proposal was, that the defendant should submit to a decree, and a reference had been obtained to inquire on behalf of one of them, who was a lunatic, whether it would be for the benefit of such lunatic to submit to the proposed decree. Now, from the terms of the recital, it would be inferred that the plaintiff had waived all relief against the decree and sale in the exchequer. Whereas in fact the defendant had at the time agreed, subject to the inquiry, to submit to a decree in the plaintiff's favour. This having been so arranged the counsel might naturally have informed the court that the plaintiff had not to trouble the court to adjudicate as against the Chinnerys, but not because the relief against them had been abandoned, but because the terms of it had been arranged, and this no doubt led to the mistake.

If this had been rightly understood at the time, I cannot think there would have been a decree of dismissal without any decision upon the merits. A decree so arranged with the Chinnerys must have had the same effect as if the Court had pronounced it, with this difference only, that the lessees might themselves have disputed the plaintiff's title to any interest in the estate. It was not competent for any of the defendants at the

hearing to insist that the relief prayed against the Chinnerys and against the lessees had been improperly joined in one suit; and if not, and if the plaintiffs had shown a good title to relief against the Chinnerys, and had so established an interest sufficient to entitle him to dispute the validity of the leases, the Court could not have declined to adjudicate upon the subject.

It was indeed contended, that independently of this title to question the leases, there was sufficient interest left in the plaintiff, notwithstanding the sale in the exchequer, to entitle him to ask a decree to set aside the leases, the sale having been subject to the leases, so that nothing more was disposed of than what remained of the estate, after deducting the interests comprised in the leases; so that so much of such interest as had not been effectually given to the lessees, not belonging to the lessees and not having been sold, remained undisposed of in the original decree, that it is not necessary to give any opinion upon that point, because if the plaintiff had an equity to set aside the decree in the exchequer and the sale had in pursuance thereof, or if these proceedings were in themselves defective, his title to raise the question respecting the leases cannot be disputed, and I have the satisfaction to find from the printed report that Sir Edward Sugden entirely concurs in this view of the case, and gives it as his decided opinion that the suit was not in its original joinder multifarious, but that the plaintiff, disputing the title of the mortgagees under the decree in the exchequer and the sale, was clearly entitled in the same suit to raise his objection to the leases. If then he was so entitled to assert in one suit his equity as against the decree and sale, and also

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against the lessee, he must have been entitled in that suit to relief as to both, if he succeeded in making out his case. Suppose at the hearing he had made out his case so far as to set aside the decree and sale in the exchequer, or to prove that they were defective and void, and that he was, therefore, still entitled to the equity of redemption, he would, no doubt, in that case have been entitled to ask of the court a decision as to the leases, and this right could not properly depend upon the greater or less degree of resistance which the mortgagees might make to the plaintiff's title to relief as against them. If, at the hearing, they had by their counsel said that they could not resist the plaintiff's title to redeem, the hearing, as against them, would have been closed, and the title as to the lessees would alone have remained for decision; but this is, in fact, what was done,—the terms upon which the plaintiff was to have his decree against the mortgagees had been the subject of negociation, but the groundwork of the whole was that the plaintiff should have a decree for redemption against them, nor could the defendants, the lessees, be in any degree prejudiced by this, for, notwithstanding this arrangement, it was quite competent for them, and it necessarily formed part of their case, that the plaintiff had no title to question the leases, not having in him sufficient estate and interest to enable him to do so. For this purpose it was part of their case to insist that by the decree in the exchequer, and the sale had in pursuance of it, the plaintiff had lost that estate and interest which was necessary to enable him to question the leases, and this was as much open to them after the arrangement with the mortgagees as before it took place, for if the lessees could show that before that arrangement

the plaintiff had not any such estate and interest, his acquiring the estate and interest of the mortgagees, even before the hearing, would not have improved his situation, but, in fact, he had it not at that time. If, as seems to have been understood at the time, the plaintiff had consented to the mortgagees keeping the estate under the sale, the plaintiff's position as between himself and the lessees would, no doubt, have been materially altered; but as the arrangement was that he should redeem the mortgages, I think that he was as much entitled to a judgment against the lessees, according to the merits, as if he had proved his title to redeem adversely against the mortgagees.

Possibly the lessees may have relied upon the mortgagees fighting that part of the case which turned upon the want of title in the plaintiff, but as it was undoubtedly competent for the lessees to have done that themselves, they cannot complain if a decree has passed against them from their having omitted to insist upon a point in the case which was open to them.

It appears to me, therefore, that your Lordships must come to the conclusion that the grounds for the dismissal in February 1835 cannot be maintained; if that be so, it appears to me that there is the greatest difficulty in your Lordships proceeding any further in adjudicating upon the question between the parties,—I mean so as to pronounce any judgment upon the leases,—as to which the case stands thus: there has been no adjudication below upon that subject; there is the certificate of the Common Pleas against the leases; there was an argument in February 1835 before the Lord Chancellor of Ireland, assisted by the Chief Justice of the Common Pleas and the Chief Baron, but no judgment was

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pronounced upon it, the Lord Chancellor having been of opinion that the suit must be dismissed upon the point of form already observed upon. He, indeed, expressed a strong opinion in favour of the leases, but carefully guarded against any inference that he was deciding upon their validity. When the cause came on again before Lord Plunket the lessee declined taking any other case for the opinion of the Court of King's Bench, and Lord Plunket made his decree setting the leases aside.

After the opinion of one court of law has been obtained upon a case, if the equity judge entertains doubts as to the opinion returned, or thinks the case of so much difficulty and importance as to require further consideration, it is almost of course to send it for the opinion of another court; it is certainly not necessary so to do, as the judge in equity may take upon himself to decide against the opinion of the court of law, but clearly the parties cannot require him so to do, or complain of his declining to decide the question without further assistance. If, therefore, the parties against whose case the judges have certified decline the offer of the court to have another case sent to another court, they cannot complain of the judge acting upon the opinion already obtained, and in an ordinary case I should not think your Lordships would be exercising a sound discretion if you were to open the door to further litigation on behalf of a party who had declined to accept the offer of the court below, to put the case in the ordinary course for final adjudication.

But there certainly are great peculiarities in the present case; what had taken place in the cause may naturally have led the lessees to think they had a good

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ground for getting rid of the suit, without referring their title to further question, which ground they must have abandoned had they accepted the offer of a second case. I do, therefore, think, that it would be hard and might lead to injustice if we were to bind them by their refusal to accept that offer, particularly in a case in which there has been such a conflict of opinions upon the point of law, and I am the more inclined to think so because I do not see in the last decree any such inquiries and reservations of right, as it would seem the lessees would be entitled to before their leases could be taken away; for instance, I find that in the decree of 1802 they are ordered to account from 1784 to the party entitled to the arrears of the annuity, without reference to the amount which has been given upon the leases. Now, before that can constitute a part of the claim of the Chinnerys, the lessees have a right to reserve those payments against the estate, and to stand in the place of that party for what excess of rent they might so pay or what they might themselves advance. What was done upon this does not appear from the appeal papers, but it is obvious that a considerable demand may have arisen in favour of the lessees from the provisions of that decree, but the decree of July 1835 simply declares the leases void, and proceeds to put the plaintiff into possession.

Now, it is very possible that these and other points may have been overlooked in the contest which was going on as to the principal matters in issue, and this affords another reason to induce this House not to attempt finally to settle the decree between the parties. It is, however, quite sufficient, that as to the question as to the validity of the leases there has been no judgment

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below, except the last decree, which proceeds upon the lessees refusal to accept the offer of another case, and which, for the reasons I have given, I think ought not to bind them. I think, therefore, that for the purpose of obtaining such an adjudication the case must be sent back to the Court of Chancery in Ireland; that court will of course use its own discretion as to the manner of disposing of that question, that is, whether by deciding it itself or calling for further assistance from another court of law. My object is, that this question should come before the court relieved from the difficulties with which it has hitherto been embarrassed, and this, I think, will be attained by this House declaring that it was competent for the Lord Chancellor of Ireland, at the time of making the decree of the 12th February 1835, to adjudicate between the plaintiff and the defendants the lessees as to the validity of the leases, and, therefore, to remit the case to that court to be heard upon that question, and to make such decree between the plaintiff and such lessees as shall be just.

It is true, that if the lessees should adhere to the course they followed below of declining another case, and if they require no inquiries as to advances made by the lessees, expense might be saved by your now dealing with the case upon that ground; but unless I am so informed I shall not suppose that to be the case. I therefore move your Lordships that the case be remitted to the Court of Chancery in Ireland with the declaration and direction proposed.

The House of Lords declared, That it was competent for the Lord Chancellor of Ireland, at the time of making the decree of 12th of February 1835, to adjudicate between the plaintiff and the defendants, the lessees, in the said suit in the

Court below, as to the validity of the said leases: And it is ordered, That with this declaration the cause be remitted back to the Court of Chancery in Ireland, to be heard upon that question, and to make such decree between the said plaintiff and the said defendants the lessees as shall be just, and consistent with this judgment.

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D. S. BOCKETT—J. P. BEAVAN, Solicitors.