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.

June 20, 1827.

ble and moveable, belonging to them, or that should belong to them at the period of the death of the party predeceasing, 'to 'and in favour of the survivor of us, in liferent, for his or her 'liferent use allenarly, and to certain trustees in fee, for pay-'ment of just and lawful debts and funeral expenses;' under the special condition, that 'the survivor of us shall enjoy a total 'liferent of the whole fund and estate, real and personal, hereby 'conveyed, during all the days of his or her life, and that with-'out any control or interruption on the part of our said trus-'tees, or any other person or persons whatever;' that the trustees should sell and dispose of, immediately on failure of the said liferent, or as soon thereafter as the trustees might see proper, the whole property and effects conveyed; and 'when the said 'subjects are so converted into money, we hereby appoint the 'said trustees, (after payment of our debts, and charges of exe-'cuting this trust,) as aforesaid, to pay the net proceeds thereof 'to the several persons herein after named, according to the por-'tions, and in the sums herein after fixed and appointed; which 'several sums we do hereby legate and bequeath to the persons 'after mentioned.' Among the legacies, there was bequeathed 'to Mrs Janet Hamilton, otherwise Lawson, wife of Peter 'Lawson, seedsman in Blair Street, Edinburgh, and niece of 'me, the said Euphemia Baillie, excluding the jus mariti, or 'right of administration, of her said husband, the sum of L.2000 'sterling.'—'And which several legacies shall bear interest 'from the first term of Whitsunday, or Martinmas, after the 'decease of the survivor of us, but shall not be payable for two 'years after that event;' and a longer period was allowed to the trustees, if they found it advantageous; but with power, if they saw proper, to make interim and partial payments to the legatees. The trustees were then to pay over the residue of the estate to such persons as Mrs Baillie might appoint; and in the event of her dying before Colonel Baillie, without leaving directions, then to such persons as Colonel Baillie might appoint; failing both which appointments, to such persons, 'or relations, or 'friends,' as the trustees might deem most deserving. After making a provision for the abatement of the legacies, in case of a deficiency of the funds, it was 'specially declared, that 'in the event of the death of any of the said legatees, prior to 'the survivor of us, the said Alexander and Euphemia Baillie, 'his, her, or their legacy, or legacies, shall thereby fall and be-'long to their executors, or next of kin; but in the event of 'any of the said legatees predeceasing either of us, then his, 'her, or their legacy or legacies shall fall, and lapse, and be at

'our disposal;' and failing of a joint disposal, to be at the dis- June 20, 1827.
posal of the survivor; which failing, to the trustees themselves. A procuratory of resignation and precept of sasine were granted, for infefting the survivor in liferent, and the trustees in fee. All previous settlements were revoked, and a power was reserved during their joint lives, to recall the deed; but declaring, 'at 'the same time, that, upon the death of either of us, these pre- 'sents shall become an absolute and irrevocable deed, excepting 'in so far as is herein before provided.'

Thereafter the following codicil was added:—'We, Colonel 'Alexander Baillie, and Mrs Euphemia Hamilton, or Baillie, 'within designed, considering that, by the foregoing deed, we 'legated and bequeathed to Major Alexander Walker, Colonel 'Robert Walker, and Miss Barbara Walker, the sum of L.2000 'sterling each, and declared that, in the event of their survi- 'ving either of us, the said legacies should fall and belong 'to their executors or next of kin; and seeing that it is our 'wish that Mrs Elizabeth Walker or Raitt, of Carphin, eldest 'daughter of the said Alexander Walker, and John Raitt, Esq. 'her husband, should be secured in the half of the said legacy, 'so bequeathed to the said Alexander Walker; that the said 'Robert Walker is married, and has no family, and that the 'said Barbara Walker is unmarried; therefore, we hereby re- 'voke the foresaid legacy of L.2000 to the said Alexander Wal- 'ker, to the extent of the half thereof, or L.1000 sterling; 'which sum of L.1000 sterling, we hereby legate and bequeath, 'to the said Mrs Elizabeth Walker or Raitt, and John Raitt, 'her husband, in conjunct fee, and to their heirs, executors, 'and successors, declaring, that it shall be payable and bear 'interest, and be subject to the conditions, all as specified in 'the foregoing deed. With regard to the other legacies thereby 'bequeathed, and, in respect the said Robert Walker is mar- 'ried, but has no family, we declare that, in the event of his 'dying without children, the destination of the foresaid legacy 'of L.2000 to him is hereby so far altered, that he shall not 'have the power of disposal of it; but, in the event of his being 'survived by Mrs Sarah Holland, or Walker his wife, that she 'shall have the liferent of the same; and, after her death, it 'shall fall and accrue to, and become part of, our residuary 'estate, under the foregoing deed, unless we, or the survivor of 'us, shall specially destine the same. And, in respect the said 'Barbara Walker is unmarried, we hereby declare, that she 'shall only have the power of disposal of the half of the fore- 'said legacy of L.2000, bequeathed to her by the foregoing deed,

June 20, 1827. 'and that the other half thereof shall fall and accrue to, and 'become part of, our residuary estate, under the same, unless 'we, or the survivor of us, shall specially destine the same; 'and, in the event of her not executing any settlement of the 'other half, we hereby declare, that it shall also revert to, and 'form part of, our residuary estate, and be subject to the dis- 'posal of the survivor of us, in terms of the foregoing settle- 'ment.'

Colonel Baillie died in 1814—the settlement was put upon record, and the trustees entered on the management. Mrs Lawson died in 1820, and Mrs Baillie in 1823. Mrs Lawson had, by her marriage-contract, assigned to her husband 'all 'and sundry goods, gear, debts, sums of money, as well heri- 'table as moveable, that are presently belonging, or resting 'and owing to her, and that shall pertain and belong to her 'during the standing of the said marriage, with all action and 'execution competent to her hereanent.' Her husband was decerned her executor, conform to decree-dative by the Commissaries of Edinburgh. He had no sons by Mrs Lawson, but appointed his two sons, by a former marriage, his sole executors, and thereafter died.

The trustees having realized the estate, a competition arose between Mr Lawson's two sons, as representing through him the legatee, Mrs Lawson, and Mrs Stewart and others, the next of kin of Mrs Lawson (the children of her sister), for the legacy left by Colonel and Mrs Baillie; and to try the question, the trustees raised a multiplepoinding. The Lord Ordinary— 'In the competition between the claimant, Mrs Stewart of Sham- 'belly, and the other executors and next of kin of Mrs Janet 'Hamilton, wife of Mr Peter Lawson, seedsman in Edinburgh, 'and the representatives of the late Mr Lawson her husband, 'prefers the said Mrs Stewart and the other next of kin of Mrs 'Lawson to the legacy of L.2000, in respect that it is expressly 'provided by the settlement, that in the event of the death of 'any of the said legatees prior to the survivor of us, the said 'Alexander and Euphemia Baillie, his, her, or their legacy, or 'legacies, shall thereby fall and belong to their executors or next 'of kin; and, therefore, the executors, or next of kin of Mrs 'Lawson, were called as conditional institutes, she having sur- 'vived Colonel Baillie, but having died before Mrs Baillie, when 'the legacy became payable.'

On advising petition and answers, the Court being equally divided, the Lord Ordinary was called in, and his Lordship remaining of his former opinion, the Court adhered; and there-

after, on advising a reclaiming petition and answers, and a hear- June 20, 1827.
ing in presence, the Court, on the 24th January 1826, adhered.*

† *Lord Hermand* observed, I doubted the soundness of this interlocutor from the beginning, and I do so still. I have heard nothing to satisfy me that it is right. There is only one will, and it became irrevocable by the death of either of the parties; as soon as either of these died, the other could not touch it. It is said, that the legacy did not vest upon the death of one of the parties; and if it could be shown, that although the legacy did not vest upon the death of one of the parties, and if it could be shown that, although the legacy was secured by the death of one of them, without altering the will, it did not vest till the death of the survivor, then to be sure it could not be conveyed by any deed of the legatee. But, on the other hand, if it did vest, I suppose it could be assigned or conveyed by any deed which Mrs Lawson chose to execute. We must look to the whole deed. And in the will the intention is expressly stated. It is to her 'executors, or next of kin.' It is said, that this is mere tautology; and it is asked, must we take every word in a will and give a separate meaning to it? But, my Lords, where we have words which have different meanings, I apprehend we must give effect to them. It is 'to executors or next of kin,' &c. These words, and each of them, have a different meaning. The next of kin is not necessarily the executor, and as little is the executor necessarily the next of kin. Suppose the expression used had been to executors *and* next of kin, that might be more doubtful as to what was the meaning; but in such a case I would be inclined to prefer the executors, because they came first. The testator did not, and could not know, who the next of kin might be after a series of years. Nobody knows who they may be; and I think that the words used here were sufficient to show, that, according to the idea of the testator, the legatee had a right to the legacy, and power to dispose of it. Had Mrs Baillie attempted, after this deed became irrevocable by the death of her husband, to dispose of these funds in another way, I conceive that she would have been guilty of stellionate. They say that the legacy did not vest. I say it did vest; and if an attempt were made to attach it, there would not be appearance made by these trustees. They talk of a conditional institution in this case. I conceive that it was in favour of the executors or next

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* See 4 Shaw and Dunlop, No. 261.

† These are the opinions which were laid before the House of Lords.

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June 20, 1827. of kin. They say there is a term of payment. I apprehend the answer to both is the same, that 'dies cessit sed non venit.' I am quite clear, upon the whole, that this interlocutor should be altered.

Lord Balgray.—Any difficulty that was in my mind in this case has been completely removed in the course of the hearing which took place. The original grounds which I took up, and which puzzled me, were, that here was a deed, no doubt a testamentary deed, but also an onerous contract between the parties, and therefore you are not entitled to look at it as a mere testamentary deed, but you must regard it also as an onerous contract between the parties. I was very much moved at first by this, and then I was moved greatly by the trust being created, and the trustees appointed in gremio of the deed, and the declaration that in the event of the death of one of the parties—the death of either of the granters—the survivor was to be merely a liferenter, and in case of any of the legatees dying before the survivor, it was to go to their executors or next of kin. I am perfectly aware of the rules of law laid down and alluded to by the Counsel of the petitioners.

But when you look to this deed, and examine it narrowly, and find out the real intention of the parties, when I come to this, to the intention of the parties, I confess that the argument for the respondents removed all difficulty in my mind, and satisfied me that you are to interpret the 'executors, or next of 'kin,' of the legatees to be the same thing; and this difficulty being removed, I see no difficulty at all in the other parts of the case. You are to look to the trustees as holding for all parties interested. But they only could hold for those parties, who, under this will, had a vested interest. But I am quite clear that the legacies could not vest in the legatees. I am of opinion that the interlocutor is right.

Lord Craigie.—I considered this case very carefully when it was first before us, and have done so since, and I confess I was impressed by the very able pleadings which we heard at the bar. I had several doubts upon the case, but I confess I now think this judgment should be altered. This deed is of a twofold nature; it is a testamentary deed, revocable no doubt during the lifetime of the granters; but one of its characters is, that so soon as one of the parties should die, it is a grant in favour of a number of persons as legatees, and we are to consider the case which has occurred in the event I have mentioned, of one of the parties dying, by which the deed was irrevocable. I am strongly moved by the nature of the trust-deed. I see that at the time

this was executed, the parties ceased to be proprietors of the subjects; and with regard to that, the consequence in my opinion is, that the whole property and fee was transferred to the trustees, and that it was not in the power of the survivor to dispose of it immediately, nor to settle it by any testamentary deed. I conceive, with regard to the property belonging to Colonel Baillie, that Mrs Baillie had no right to interfere with it whatever. I don't think she could touch it, for it was put out of her power by Colonel Baillie's death. With respect to the personal property in herself, no doubt that was hers, and she could sell or dispose of it. But I say it was quite competent for the trustees of Colonel Baillie, to take up an inventory of all the property which belonged to him, and say, 'this is not the property of this lady.' I think they would have been right in this. The property was not vested in her, but in others; it was vested in the trustees for behoof of others. Even with regard to the residuary fund, this lady had no power at all, except that of disposal. She had a power of disposal, no doubt, but if she did not dispose by exercising this power, the property was vested in the trustees for behoof of the persons mentioned in the will; and, I think, the whole right was vested in these parties. I would wish your Lordships to attend to the terms of the provision; after directing the lands to be sold at the death of the survivor, it says, 'the 'trustees are appointed to pay the net proceeds of the sale to 'the several persons herein after named, according to the pro-'portions, and in the sums herein after fixed and appointed.' And if after this these words had followed— (His Lordship was here inaudible.) June 20, 1827.

I think it cannot be denied there was a jus crediti, a right complete and absolute, which never could be shaken. But unfortunately it is said, 'which several sums we do accordingly 'legate and bequeath to the persons after-mentioned, as fol-'lows.' Then a number of persons are named. Now, I say, these were proper enough words with regard to the first part of the subjects, during the joint lives of the parties. But, I say, they do not apply to the second event, after the death of one of them. I conceive that the word legacy was improper and inapplicable to the latter case, after the subjects had been sold. It was a payment out of funds put into the hands of certain persons for the very purpose. I am satisfied that the association which formed itself in the opinion of the framer of the deed, was just this. . It is specially declared, that in the event, &c. (His Lordship here quoted a passage from the deed.) I am satisfied, that if he had not used these words, 'executor or next of kin,'

June 20, 1827. there would have been no need of any explanation. The object is to keep in the persons favoured by these testators, and who are intended to be benefitted by the grant. The words used are, that in that event of predeceasing the survivor of us, the legacies shall thereby fall and belong to their executors, or next of kin. Now, with regard to the meaning of the word 'or,' I listened with great attention to what fell from the counsel for the respondents, in his very ingenious speech, and I confess it did rather change my opinion at the time; but, after considering the matter, I am quite clear that the word 'or' is a disjunctive conjunction, and must be considered so here. I say that is the common understanding, and, according to the language of the country; it is always considered in this way in the language of the country. But further, I agree with Lord Hermand, in saying, that in a deed, a regular and legal deed, your Lordships are never to presume that any word is used without meaning; if, according to the ordinary language, you can apply a meaning to it. Now, I can apply a meaning to it, and it is that the executors and next of kin are different, and that the legacy did vest, and that it was to go to next of kin in the event of the legatee not disposing of it. It struck me that the view the counsel for the petitioners took of the codicil, was of importance. I understand perfectly this codicil applying to the powers of the parties. But what I call your Lordships' attention to is this—attend to the way in which this one is described in favour of Colonel Alexander Walker. It says, that 'the said Robert 'Walker is married, and has no family, and that the said Bar-'bara Walker is unmarried; therefore we hereby revoke the 'foresaid legacy of L.2000, to the extent of one-half thereof, or 'L.1000, which sum of L.1000 we hereby legate and bequeath 'to the said Mrs Elizabeth Walker or Raitt, and John Raitt, 'her husband, in conjunct fee, and to their heirs, executors, and 'successors.' Here the important words occur, 'and to their 'heirs, executors, and successors.' Now, I ask your Lordships, if a deed were granted to parties in conjunct fee, and to their heirs, executors, and successors, if it would not be a complete right? The right opens to those favoured, or to those who do diligence against them.

Lord Gillies.—I was of opinion, when the case was formerly before us, that the interlocutor of the Lord Ordinary was right, and I remain of that opinion still. I stated formerly upon what my opinion was rested, and need not go over these grounds again. I never entertained any doubt as to the intention here; notwithstanding all the argument, very able and very ingenious

argument at the Bar, I have never formed any different opinion. I was puzzled with some part of that argument, but it never for one moment changed my opinion of the intention. Various rules and maxims were resorted to by the counsel, but they were rules and maxims, as appears to me, which were used not to discover, but to defeat the intention of the testators. Suppose that a conditional institution was really intended here, which I think was the case, how was it to be expressed? Why, the regular way would be to take it to Mrs Lawson, whom failing, to her heirs and executors. But this would not have done, because if she did not survive the death of one of the parties, the legacy would have lapsed. June 20, 1827.

Lord President.—I confess I am in the same situation with my Lord Gillies. We are all agreed that this legacy did not lapse. It vested in the trustees for the benefit of those who were entitled to take it. That I think quite clear. But then who were entitled to take it? It could not be for behoof of Mrs Lawson, for she was dead before Mrs Baillie. It could not be for her behoof, therefore the question just comes to—what is the meaning of the word 'executors, or next of kin?' Now, as to this, I really have no difficulty. The word 'or' has, no doubt, a disjunctive meaning, but it is just as often used in a different way. Why, suppose a person were to leave one of your Lordships a legacy, how would you be designed, but as Lords of Council and Session, *or* Senators of the College of Justice. But could it ever be maintained, that the word 'or' was a disjunctive? Then, again, there is another thing as to the expression 'executors.' In ordinary language it just means, and in nine cases out of ten, when you talk of executors, you just mean, the heir in mobilibus; and nobody ever thinks of applying it to any different persons. But there is another thing that has struck me here, and that is, how comes this gentleman to call himself an executor? He is not even an executor nominate. He claims as an assignee, or creditor, and if he claims as assignee, then the case of Grahame and Hope is just in point. He claims under the marriage contract, but that does not make him an executor; so that, even strictly speaking, although we were to hold the interpretation given to executor, as different from that of next of kin, I do not see how this person could take under this will. He is neither an heir nor executor; he is only an assignee, or a creditor, and if he is an assignee, what do you make of the case of Grahame? Why, it is exactly in point. Upon the whole, I am quite clear that the interlocutor is right.

June 20, 1827. The Lawsons appealed.

Appellants.—Where there is a single testator, the legacy vests by the survivance of the legatee, and becomes transmissible by deed or by law. Where there are two testators, the joint disposing power ceases by the death of either, and the settlement becomes absolute. The legatees become irrevocably donees. There is, therefore, no room for the doctrine of conditional institution. That only can come in where the right has not vested in the donee. Much more is this the case where the legacies are given by the intervention of a trust. At the death of Colonel Baillie, this trust became irrevocable, and the right in the legatees vested. Everything concurred in the present case to strengthen this view. The fee of the funds was vested in trustees, who had no discretionary power of paying or withholding the legacies—and the investiture commenced with the first death. The deed, quoad the legacies, was irrevocable from that moment. The survivor had a right of a liferent allenarly, and a power of disposal only of the surplus over the legacies, or over the lapsed legacies. But where there is a power of disposal only if the legatee predecease both testators, it seems a necessary inference that the legacy vests if the legatee survive one of them. It is of no moment that the day of payment did not arrive until the death of both. That was necessary for the liferent of the survivor—but still the trust had become, at the death of the first, absolute in the trustees for the behoof of the legatees, and the legacies had already vested. Everything tended to show that this was the intention of the donors. The right vested in Mrs Lawson was not affected by the clause introducing the words 'executors 'or nearest of kin.' Thereby the executors nominate of the legatee would take; and whom failing, the nearest of kin. But it was not meant that only executors by blood could. The word 'or' cannot be taken here for 'and'—for if the expression 'executor' is synonymous with 'nearest of kin,' (and both mean heirs-at-law in mobilibus,) it would have been enough to have used the last. The first must have been introduced for some other purpose than merely signifying what followed. This is made clear by the codicil. The power of disposal is there taken from certain legatees, (subject to the same clause relative to predeceasing the survivor of the testators;) but that power would not thus formally have been recalled, if, by the deed, the legatees had truly no power of disposal. The respondents pretend that the codicil relates to the case of legatees surviving both testators, when the legatees would have an absolute power, which the testators meant to take away; but this is an overstrained view,

and refuted by the express reference in the codicil to legatees June 20, 1827.
'surviving either of us.' The title of the appellants is good—the jus exigendi of any debt or legacy belonging to Mrs Lawson being now in their persons.

Respondents.—Assuming that executors or next of kin are here used synonymously, it is impossible to hesitate about the meaning of the terms used in the deed. In the event of predeceasing the survivor, the legacy was to belong to the next of kin. Mrs Lawson did predecease the survivor. The condition, therefore, is purified under which the next of kin are called, and they take in their own right. This is not the case of a legacy given absolutely, but payable at some future time. It is not given merely under a suspended period of payment, but on a condition creating a conditional institution in others. This the testators had the power to do, and it is clear they also had the intention to do so. The construction of the whole deed shows that an absolute interest, implying a power of disposal, was not vested until the death of both testators. But there is no ground of distinction between executors and next of kin. 'Or' is not used here disjunctively, but to connect two explanatory synonymous words. Under them, the executor nominate is not let in. Where a legacy is left to a party and his executors, the executors will take in their own right on failure of the legatee; but that rule does not apply to executors nominate, but only to executors by blood—nor can assignees claim; for no person can convey a legacy to assignees or executors nominate, unless it be actually vested in his own person. The settlement being in the shape of a trust, is in favour of the respondent's argument. The trust suspends all vesting that could disappoint contingent rights. It remains qualified and subject to all the conditions under which it was created and constituted. The circumstance of its being irrevocable cannot have any effect in removing the condition in the trust. The interest of the conditional institutes remains exactly as it would have been without the intervention of the trust. As to the codicil, the testators were desirous of securing a particular individual in a certain sum, which, as the deed stood, would not have been so secured, either under the appellants' or the respondents' reading; and in other respects, it refers to the party surviving both testators, when his power would, if not controlled, have been absolute. The appellants have no title. The legacy was not effectually conveyed by Mrs Lawson to her husband, nor by Mr Lawson to them.

The House of Lords ordered and adjudged that the several interlocutors complained of be affirmed, with L.100 costs.

June 20, 1827. *Master of the Rolls.*—The first question is, what would be the gift, if nothing had followed affecting that gift? The words are —'To Mrs Janet Hamilton, otherwise Lawson, wife of Peter 'Lawson, seedsman in Blair Street, Edinburgh, and niece of 'me, the said Euphemia Baillie, excluding the jus mariti, or 'right of administration of her said husband, the sum of L.2000 'Sterling.' Mrs Lawson survived Colonel Baillie.—Then, on principle and authority, she would have taken a vested interest in the legacy. Now, see how the gift is affected by what follows—(and here I think that the case of Nicolson and Ramsay is so far from being favourable to the appellant, that it assists the respondents.) The testators say—'It is hereby specially 'declared, that in the event of the death of any of the said le- 'gatees prior to the survivor of us, the said Alexander and Eu- 'phemia Baillie, his, her, or their legacies, shall thereby fall and 'belong to their executors or nearest of kin.' Now, the testators never meant to repeat what they had done before, viz. that if the legatees survived one of the testators, they had a vested interest, and could, of course, distribute it as they thought proper; but this second clause must have been intended to express a modification or qualification of the first; therefore we must use it as introducing a modification or qualification. Suppose these words had immediately followed the legating clause, what, by the Scotch law, would have been the effect of this conjoined clause? I have looked into the authorities of the Scotch law on the point, and I am clear, that to call executors or nearest of kin, is to make the executors and nearest of kin conditional institutes. Then what is to be said when these very words are to be introduced to qualify a previous vested interest? Can we arrive at another and different conclusion, than that the conditional institutes take the legacy? It remains, therefore, only necessary to consider the codicil. I was at first misled by the recital of the early part of the codicil, holding that it referred to the case of a legatee predeceasing one of the testators. If that had been the true construction of the codicil, it would, by implication, have amounted to a declaration that, if the legatee survived either, he was to have an absolute interest. But if you continue to read, you will see that the operation of the codicil is not confined to that case. On this head also, therefore, the argument of the appellant falls to the ground. I am clearly of opinion—indeed not a doubt remains on my mind,—that the judgment of the Court of Session is consistent with the soundest principles of the Scotch law, and of English principles, as far as they are applicable to the point at issue.*

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* The *Master of the Rolls* communicated this opinion to the parties in a private room.

Appellant's Authorities.—Nicolson, 16th Dec. 1806, (No. 2. App. Legacy.) 3 Stair's Inst. 8. 21. 3 Ersk. Inst. 2. 9. Voet, 36. 2. 2. Grahame, 17th Feb. 1807, (No. 3. App. Legacy.) Blackstone's Com. vol. 2. p. 379. Duncan, 27th June 1809, (Fac. Col.) Roxburghe Cause. June 20, 1827.

Respondent's Authorities.—Grahame, 17th Feb. 1807, (No. 3. App. Legacy.) Duncan, 27th June 1809, (F. C.) Glendinning, 30th Nov. 1825, (4 Shaw and Dunlop, No. 191.) Inglis, 16th July 1760, (8084.)

RICHARDSON and CONNELL,—SPOTTISWOODE and ROBERTSON, —Solicitors.

JAMES ROSE INNES, Esq. Appellant.—*Adam—Keay.* No. 56.
JAMES, EARL OF FIFE, Respondent.

Sasine—Member of Parliament—Freehold Qualification.—Held, ex parte, (affirming the judgment of the Court of Session,) in a question relative to freehold qualification, that part of the name of one of the parcels of land enumerated in the sasine founded on having been written throughout the instrument on erasures, the sasine was not sufficient to establish the qualification.

June 20, 1827.

1ST DIVISION.

BY a crown charter of resignation, dated the 2d, and sealed the 6th June 1825, in favour of Mrs Rose Innes, there was conveyed to her, 'hæreditarie et irredimabiliter, totas et integras 'terras dominicales, et maneriei locum de Netherdale, molen- 'dinum et terras molendinarias earundem, cum multuris, se- 'quelis, lie sucken et knaveship, ad easdem spectan. villam et 'terras de Husbandtown de Netherdale, Craignethertie, Cha- 'peltown, Millhill, Windyedge, et Coblecroft, cum cymba vec- 'toria ejusdem, et salmonum piscationibus, &c. omnes jacen. in 'parochia de Abercharder, nunc vocat. Marnoch, et vicecomi- 'tatu de Banff, et sicuti dict. terræ nunc sunt divisæ in duas 'portiones, lie lots consisten. cognitæ et sub nominibus et de- 'scriptione sequen. appellatæ, viz. Portio prima de Wester 'Craignethertie, sicuti in præsenti per Joannem Walker posses- 'sa, Oldtown seu Husbandtown de Netherdale, et parte de Coble- 'house, per Alexandrum Roberts, Coblehouse, et cymba ejus- 'dem, per Johannem Courage, Harperhill et Broadgate, et parte 'de Oldtown de Netherdale, per Alexandrum Sim,' &c.; 'et 'portio secunda earundem, de prædio et molendino de Nether- 'dale et Windyedge,' &c. By a clause of dispensation, sasine was allowed to be taken, 'ad maneriei locum de Netherdale, 'maneriei locum de Pittendriech, vel super fundo ullius partis 'vel portionis dict. terrarum de Netherdale aut Pittendriech, 'vel supra ulla parte terrarum aliorumque in hac antea dispo- 'sit. per traditionem terræ, et lapidis fundi earundem tantum.'

Mrs Innes, on the 9th June, executed a disposition, in favour