Feb. 23. 1830. 1819, (F. C.) Maxwell, June 7. 1822; 1. Shaw and Dunlop, No. 520. Kennedy, Feb. 19. 1825; 3. Shaw and Dunlop, No. 378. Dewar, Feb. 5. 1821; affirmed May 5. 1825, 1. Wilson and Shaw, No. 161.

A. DOBIE—MACDOUGALD and CALLENDER,—Solicitors.

No. 6.

TRUSTEES of JOHN BROWN, Appellants.

MARY BROWN, Respondent.

Foreign—Res Judicata.—Judgment having been pronounced in a competent Court in the United States of America, finding a Scotch legatee entitled to a legacy under a settlement executed in the United States of America by a Scotchman domiciled there;—Held, (affirming the judgment of the Court of Session), That, under the circumstances, an offer to prove by the opinion of American Counsel, that the clause in the settlement conveying the legacy did not import a right of fee, but only of liferent, was inadmissible.

Agent and Principal.—Circumstances under which it was held, (affirming the judgment of the Court of Session), That a party receiving money as attorney of another was bound to lay it out at interest within six months thereafter, and was liable in 5 per cent for all money not so laid out; and that he was entitled to a commission of 2½ per cent on the money received by him.

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1ST DIVISION. Lords Alloway and Eldin.

WILLIAM BROWN, a Scotchman, domiciled in the United States of North America, died at Richmond in Virginia in 1811. He was survived by his father and mother, James and Mary Brown, and by three sisters, Jean (Mrs Muir), Isabella (Mrs Black), and the respondent Mary Brown, all residing in Scotland. By a will dated in 1805, he declared, that 'the remainder of my 'estate, after deducting therefrom the above legacies, is to be di- 'vided in the following manner: viz. To my father and mother, 'James and Mary Brown of Kirkcudbright, North Britain, 'I leave one-fourth share of the balance of my estate, to them or 'the survivor of them. To my sister Jean Muir, Kirkcormick, 'in Galloway, Scotland, I leave one-fourth share of the balance 'of my estate, at her death to be equally divided between her chil- 'dren. To my sister Isabella Black, of Castle Douglas, Scot- 'land, I leave one-fourth of the remainder of my estate, to be at 'her death equally divided between her children. To my sister 'Mary Brown, Kirkcudbright, North Britain, I leave the remain- 'ing one-fourth share of the balance of my estate, at her death to 'be equally divided between her children, should she have any.' He had also a nephew, John Brown, the natural son of a deceased brother, to whom he left a small special legacy.

The will was regularly proved in America, and the testator's father and mother administered to some funds which he had in

England. In February 1815 the father and mother executed a deed of settlement, by which they conveyed to the survivor their right and interest in the will. In February 1816 the father died. About the same time the respondent Mary, and her sister Jean with her husband, instituted a suit in the federal Chancery Court of the United States for the Virginia district, in which a decree was pronounced on the 24th of May 1816, setting forth that the defendants, 'John Brown (the nephew), and Margaret 'Brown (the mother), administratrix, with the will annexed, 'of the said William Brown, being out of this country, and 'the plaintiffs appearing to have proceeded against them in the 'mode prescribed by law against absent defendants; and they still 'failing to appear, on motion of the plaintiffs by Counsel, the 'Court doth take their bill for confessed as to these defendants; 'and the said cause coming on to be heard this day as to the 'other defendants upon the bill, their answers and an exhibit was 'argued by Counsel. On consideration whereof the Court is of 'opinion, that the said Jean Muir, Mary Brown, and Isabella 'Black, by the will of the said William Brown, the exhibit referred 'to, are entitled each to one-fourth of the estate remaining of the 'said William Brown, after the payment of the just debts, and the 'legacies, amounting to ten thousand dollars, bequeathed to others; 'but that the payment of the share of the said Jean Muir and Isa- 'bella Black ought not to be made, unless security be given that 'at their respective deaths their said shares should be divided 'amongst their children, as provided by the will of the said testa- 'tor; and doth accordingly adjudge, order, and decree, that the 'defendants, Archibald Robertson and William Black, surviving 'executors of the said William Brown, do pay to the said Mary 'Brown one-fourth of the residuary estate of the testator, and to 'the said Robert Muir and William Black, in right of their re- 'spective wives, each one-fourth of the said residuum, upon their 'severally executing, in person or by their attorney, bond, to be 'deposited with the clerk of this Court, payable to the said sur- 'viving executors, in the penalty each of seventy thousand dollars; 'with condition, that at the deaths of their said wives their said 'legacies shall be divided amongst their children, as provided by 'the will of the said testator: and liberty is reserved to the parties 'to apply to the Court for a settlement of the account of adminis- 'tration of the executors of the said William Brown, and such 'further directions as may be necessary; and the Court doth fur- 'ther adjudge, order, and decree, that the cost of this suit be paid 'out of the residuum of the said testator's estate.'

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In the course of the same month, the mother had consulted an English Counsel, (Sir Arthur Pigott), as to whether the bequest to Mary conferred on her the fee or liferent of the fourth share of the residue; and he gave his opinion, 'that Mary Brown took 'only the interest for her life. If she never had, and will not now 'have any children, the share of which she took only the interest 'for her life is undisposed of, and seems therefore to have vested 'in the testator's father, subject to being divested on the contin- 'gency of the birth of a child or children of Mary Brown, at any 'time during her life, or in due time afterwards.'

In October of the same year, Mary and her mother executed a power of attorney in favour of Archibald Robertson, (one of the executors in America), and John Brown, (the nephew), each for her respective right under the settlement, and taking them bound to account directly for their intromissions.

On the 24th May 1817, the mother made a deed of settlement, by which—on the assumption that the share bequeathed to Mary had vested in her husband, and now belonged to her under their joint deed of settlement—she conveyed to John Brown 'all 'my right and interest to the fee of the said one-fourth share of 'my said son William's property, conveyed to my said daughter 'Mary, and that failing her having a child or children.' Under the power of attorney, John Brown obtained payment of about L.5000 of Mary's share by remittances from America, and of L.1652 of funds in England from the mother, as her son's administratrix. For this latter sum, Mary, along with John Brown (with whom she resided), concurred in granting a discharge on the 11th November 1817 to the mother, in which Mary was described 'as liferenter,' and John as 'claiming right to the fee in 'virtue of settlements executed by the said James Brown and 'Margaret his spouse.' Three days thereafter she subscribed a deed, by which she discharged John Brown of the above sum of L.1652, on condition of his paying to her an annuity of L.50. This proceeded on the narrative, that according to the opinion of English Counsel she had merely a liferent; and that being addicted to the intemperate use of spirituous liquors, she might be defrauded by some designing persons. It was declared, that the annuity should only be payable while she resided with him. At this time she was about fifty years of age.

In March 1818, an action of declarator of marriage was raised against her by one Johnstone, from which she was assoilzied both by the Commissaries and by the Court of Session, in respect that,

being in a state of intoxication, she was unable to give a valid consent.* March 3. 1830.

In 1819, the decree of the United States having been brought under review, John Brown was (according to the form of that country) again called as a party; but not having appeared, it was affirmed as to Mary's share, but reversed on other points.

Pending the proceedings at the instance of Johnstone, Mary Brown raised an action against John Brown, calling on him to count and reckon for the sums received by him on her behalf, both from America and from England, as her share of her brother's succession.

In defence he pleaded, 1. That as the funds (if truly her's) belonged to her husband Johnstone, she had no title to pursue; and that at all events the action ought to be sisted till the issue of the declarator; but the Lord Ordinary (Alloway) repelled the plea, 'in respect the pursuer is entitled to take any measures for the se-'curity and recovery of her property, and especially what is neces-'sary for her own subsistence, and cannot be barred from doing 'so until her alleged assignation by marriage be established;' and to this judgment the Court, on the 23d May 1822, adhered.† Thereafter John Brown died, leaving a trust-deed, and his trustees (the appellants) were sisted in his place. They then maintained, 2. That under the will she had merely a liferent, as appeared from Sir Arthur Pigott's opinion; and that at all events they would prove that such was the case by the opinion of American lawyers. 3. That she was barred from maintaining that she had right to the fee, because she had admitted that she had only a liferent, both in the discharge to the mother and in the deed of annuity. 4. That with regard to the L. 1652, she had assigned it in respect of the annuity to John Brown: and, 5. That he was entitled to a commission on all the money received by him, to an allowance for general trouble, and to a sum for her board while residing with him. The Lord Ordinary 'found, that by the plain import and meaning of the words of the 'testament, as well as by the judgment of the competent Court in 'Virginia, where the testator died, (obtained to regulate the con-'duct of the executors), and which stands unchallenged and unal-'tered, the fee of the legacy in question is vested in the pursuer, 'Mary Brown, who, by the assent of both parties, is long past the 'period of having children: That the construction of this Ameri-'can will cannot be affected by the opinion of any English Coun-'sel, as it must be judged of solely by the laws of America: That

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* 2. Shaw and Dunlop, p. 495.

† See 1. Shaw and Dunlop, No. 483. p. 426. where, for Mary Proven, read Mary Brown.

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'the defenders, as the representatives of the late Mr Brown, are 'accountable for the whole amount of the principal sums drawn 'by him as attorney for Mary Brown, in virtue of this American 'settlement; and they must account for the principal sum, and 'the legal interest thereof, from the time the same came into 'Mr Brown's hands, allowing him a reasonable time for stocking 'out the same: That with regard to the L. 1652, for which it is 'alleged that an annuity of L. 50 was granted, as it is said that this 'bond was put upon record, and an extract of it has been produced, 'it is necessary for the pursuer to raise a summons of reduction of 'that bond, as even the strong objections stated thereto cannot be 'received ope exceptionis; therefore, quoad this sum, sists pro-'cedure until this summons of reduction can be brought and re-'mitted to the present process: That the defenders are entitled to 'charge a reasonable and moderate commission upon all the sums 'which the late Mr Brown received as the attorney for Miss Brown, 'in consequence of the power of attorney under which he acted: 'That they are also entitled to charge a moderate sum for Miss 'Brown's board during the time that she resided at Netherwood: 'That they are likewise entitled to charge such a sum for expenses 'and postages, as have been incurred by the late Mr Brown during 'the time he acted in virtue of the power of attorney from the pur-'suer, and which have not been fully indemnified by the charge 'for commission: That with regard to the agent's accounts, dis-'bursed by the late Mr Brown on account of the pursuer, the de-'fenders are entitled to deduction thereof: That the pursuer is 'entitled to insist that the whole of these shall be taxed by the 'auditor, as betwixt agent and client;' and remitted to an ac-countant to report on these principles. To this judgment the Court, on the 23d June 1825, adhered.*

In the meanwhile, Mary Brown brought an action of reduction of the deed of annuity, in which Lord Eldin, after recalling an order by Lord Kinneder that the opinion of English Counsel should be taken, pronounced this interlocutor:—'Finds, That if the opi-'nion of any foreign lawyer were necessary or useful, the opinion 'of an American lawyer, as being best acquainted with the Ame-'rican law, ought to be taken; and the Lord Ordinary sees no 'reason whatever to presume that the English lawyers are profes-'sionally acquainted with the laws of America. On the contrary, 'the Lord Ordinary has very strong reasons to believe, that the 'American law has, since the establishment of American inde-

* See 4. Shaw and Dunlop, 108.

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'pendence, been mixed and involved with so many new rules and 'institutions, that it may now be considered as a system totally 'different from that of the English law: Finds, That from the 'nature of William Brown's settlement, which is very simple and 'clear, the construction put upon it by the respondents is appa- 'rently false, absurd, and incredible: And finds, that it has been 'asserted by the representer, that the settlement was regularly 'brought before an American Court of law, which gave judgment 'in the representer's favour; and finds, that no sufficient answer 'has been made to that assertion. Therefore, in the reduction, 'reduces, decerns, and declares, at the instance of the representer, 'in terms of the reductive conclusions of the original libel.' To this judgment his Lordship adhered, but substituted the words 'ill founded,' for 'false, absurd, and incredible;' and the Second Division, on the 27th May 1825, refused a reclaiming note.*

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* See 4. Shaw and Dunlop, 42.

The following opinions, as delivered in that case, were laid before the House of Lords:—

Lord Justice-Clerk.—Had there been no proceedings in America, the proper course would have been to ascertain what the law of that country was; and as that was the place where the deed was executed, it should be regulated by the law of that country. All that is said here is, that the matter was to be brought under review of that Court; and this gentleman (John Brown) went out to America, in order, I presume, to give in a reclaiming petition, or get a re-hearing; but whether it has been given in, or whether he has been heard, I cannot say. At any rate, as the Courts there have decided in Miss Brown's favour, and the trustees have produced no evidence of a reversal of that decision, I have no difficulty in adhering to the interlocutor of the Lord Ordinary.

Lord Robertson.—The question here depends upon the interpretation which you think proper to put upon William Brown's deeds. I agree with my Lord Eldin and my Lord Alloway; and the pursuer, and indeed all parties agree, that the fee of this is vested simply and absolutely in Mary Brown herself; and the deed under reduction is apparently disposing of that fee; and that is, and what was represented in America. I agree with Lord Eldin, that no satisfactory answer is made to Miss Brown's assertion, that the settlement was regularly brought before an American Court of law, which decided in her favour. As to the opinion of English Counsel,—this gentleman, (Sir A. Pigott), no doubt stands very high in his profession as an English lawyer; but I do not conceive that the opinion of any English lawyer whatever can regulate the law of America; and I think his Lordship did right in recalling that part of Lord Kinneder's interlocutor that ordered a case to be prepared and made up for the opinion of English Counsel. There is an argument which is dwelt upon a good deal, which is, that, at all events, this lady is barred personali exceptione from insisting in her action. I confess I was somewhat surprised to find a plea of this kind maintained by the representatives of John Brown; for his knowledge of his relative was, that she was given to no common propensities and habits of intemperance; and it certainly, if true, affords sufficient evidence of the facility of this lady; and yet the representatives of this Mr John Brown contend that she is barred, personali exceptione, from insisting in this action, in consequence of having granted this deed, when, at the same time, they bring

March 3. 1830. Thereafter, the Lord Ordinary, on advising the accountant's report in the action of count and reckoning, with objections, found, 'that six months is a proper and sufficient allowance of time for 'stocking out the money: That no interest can be charged against 'the defenders till the lapse of that period after the receipt of 'that money; but that interest at five per cent is thereafter due: 'That, in terms of the accountant's report, two and a half per cent 'is a sufficient commission on the sums recovered, and that 100 'guineas fall to be charged as an allowance for Mr Brown's 'management of the pursuer's other concerns: That the defenders 'are entitled to charge Miss Brown's board at the rate of L. 150 'yearly, of consent of the defenders; and of new remitted to the 'accountant, to make up an exact state of the sums due, accord-

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forward evidence of the facilities by which she might have been induced to grant any deed.

Lord Pitmilly.—I am entirely of the same opinion; and I need not take up your time in going over what has already been stated, as the ground upon which I have formed that opinion. I think the decree is quite decisive.

Lord Alloway.—I take the same view of this case with the rest of your Lordships, and shall only express my opinion upon another branch of it. I agree with your Lordships, that this case was decided in the most formal and regular manner in 1816. The American Court proceeded on bill and answers, (which, until very lately, your Lordships know, were the very terms formerly used in this Court, being synonymous with petition and answers), and Counsel were also heard for both parties. Now, the decree of this foreign Court is completely established in this way:—This judgment was pronounced in 1816; and they say they were to bring the sentence again under the review of the American Court; but they never attempted it. There is a letter, so late as in March last year, which mentions that they have never attempted to get it altered; and I must say, it is quite a singular coincidence in the case, to found on a deed granted by this woman, whereby she gives up no less a sum than L. 1653 for an annuity of L. 50 per annum, and to say that is sufficient to bar this action. If there was no other ground to shew her facility than this, this of itself is quite sufficient, viz. the acceptance of an annuity of L. 50 a-year for this sum, which annuity, in the circumstances, is not worth two years' purchase. As an annuity, therefore, it is impossible to state that it is not a most atrocious and injurious transaction to this poor woman; and, after stating and alluding to the state of facility which this lady was under, which is done in the narrative of the bond, to raise a plea of homologation on that deed, shews no small hardihood in the trustees. But your Lordships will pay no regard to it. No doubt, when I was in the Outer House, I was quite clear with regard to the ground of proceeding—that, as Lord Ordinary, I had no power to reduce that deed without a formal process of reduction; and, accordingly, I sisted that part of the case, till a formal reduction should be brought. But, upon the whole, my Lord, I never saw a more hopeless case than this, and, from the way in which it was connected with the former proceedings, a more atrocious.

Lord Robertson.—And, my Lord, the bond also declares that the annuity should be forfeited if she did not remain at Netherwood.

Lord Alloway.—It was not to be supposed that she would reside long there.

'ing to his report, as modified and altered by the findings in this 'interlocutor.' March 3. 1830.

Afterwards, in terms of the accountant's second report, the Lord Ordinary decerned against the defenders (appellants) for payment of L.4350. 14s. 10½d. with full expenses; and the Court adhered, but modified the expenses to L.200.

John Brown's trustees appealed.

Appellants.—The respondent was only a liferentrix, and had no right to the fee of the fourth share left to her by William Brown. Such, the appellants averred, was the construction of William's settlement by the law of America. Lawyers of that country, therefore, ought to have been consulted on the question. The judgment in the Court of Chancery was pronounced in absence, and was not intended to ascertain this precise point. Besides, the respondent is barred by homologation; and the judgments were erroneous in charging the appellants with 5 per cent interest, and allowing a commission of only 2½ per cent.

Respondent.—The fee of the legacy was vested in the respondent. The opinion of English Counsel is plainly incorrect and irrelevant, and is contradicted by the opinion of American Counsel.* But the point has already been decided in the Court of Chancery; and if John Brown was absent, he had afterwards, if he disputed that judgment, an opportunity to have been heard. Under the circumstances of the case, the acts of homologation imputed to her are of no consequence. On the other points the judgments are quite correct.

LORD CHANCELLOR.—My Lords, There was a case argued some time since at your Lordships' Bar, in which Robert Gordon and others,

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* Mr Johnston, a Virginian Counsel of eminence, gave his opinion thus:—'I think 'that the intention of the testator was to give to his sister, Mary Brown, this legacy, 'without any other limitation than that which depended on the contingency of her having 'children. The generality of the words giving the legacy, would have carried the 'whole interest of the legatee, but for the contingent limitation, should she have any; 'and it seems to me, that no implication fairly arises from the limitation, which, on the 'failure of the contingency, would restrain the bequest to the life of the legatee. The 'difference between the case of Mary Brown and her sisters is this:—The sisters had 'children at the time of the bequest, who took a vested interest at the death of the tes-'tator. Mary Brown had no children: the testator was aware of it; he was aware 'also of the uncertainty of her having any; and therefore employs a conditional phrase, 'in limiting her legacy to her children at her death.'

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the trustees of John Brown, were the appellants, and Mary Brown was the respondent. This, my Lords, was the case of an appeal from certain interlocutors of the Lord Ordinary and the First Division of the Court of Session in Scotland. The main question in the cause arose out of the will of William Brown, who appears to have been by birth a Scotchman, but he had resided a considerable time at Lynchburgh in Virginia. Being domiciled in that country, he had made his will in 1805, and died in the year 1811. By that will he bequeathed as follows:—(His Lordship then read the clause already cited, supra, p. 28.) James Brown was the grandfather of John Brown. John Brown was the illegitimate son of a younger son of James Brown by Margaret his wife. James Brown, in the year 1815, by a deed granted by himself and by Margaret, conveyed to John Brown all his interest in the one-fourth share that he had under the will of William Brown his son, together with any other interest that he might be entitled to under that will, or in right of representation or otherwise of his son William. James Brown died in 1815; and after his death Margaret Brown, who was his widow, executed in 1817 a deed of confirmation of the former deed of disposition of the property made by her conjunctly with her husband James Brown.

Some time after the death of William Brown, a suit was instituted in the Chancery Court of the Virginia district in America, by the present respondent and one of her sisters, Jean Muir, who was one of the residuary legatees under the will. In that suit, in the month of May 1816, a decree was pronounced, and the decree, as far as is necessary to state it, or to adhere to it for the purpose of the present cause, was in these terms. It decreed, that in consideration of the premises, 'the Court is of opinion that Jean Muir, (one of the sisters, 'and one of the plaintiffs in that suit), Mary Brown, and Isabella 'Black, by the will of the said William Brown, the exhibit referred 'to, are entitled each to one-fourth of the estate remaining of the 'said William Brown, after payment of the just debts, and the lega-'cies, amounting to 10,000 dollars, bequeathed to others; but that the 'payment of the share of the said Jean Muir and Isabella Black' (both of them having children) 'ought not to be made, unless security 'be given, that, at their respective deaths, their said shares should be 'divided amongst their children, as provided by the will of the testa-'tor; and doth accordingly adjudge, order, and decree, that the de-'fendants, Archibald Robertson and William Black, surviving execu-'tors of the said William Brown, do pay to the said Mary Brown 'one-fourth of the residuary estate of the testator, and to the said 'Robert Muir and William Black, in right of their respective wives, 'each one-fourth of the said residuum, upon their severally executing 'in person, or by their attorney, bond, to be deposited with the clerk 'of Court, payable to the surviving executors, in the penalty each of '70,000 dollars, with condition, that on the death of their said wives 'their legacies shall be divided amongst their children.' So that,

according to this decree, as far as related to the present respondent, she having no children, it was directed that she should have her one-fourth share of the residue paid to her absolutely; but as to the other sisters, they having children, and with reference to the terms of the will, it was directed that the executor should pay them also their fourth shares, or that he should pay the husbands their fourth share, on security being given that, on their deaths, those shares should be divided among their children, agreeably to the dispositions of the will. This decree was pronounced in the month of May 1816. March 3. 1830.

In the month of October in the same year, a power of attorney was executed by the present respondent, Mary Brown, authorizing John Brown, and Robertson, one of the executors, to receive on her account the money that she should be entitled to under the will of the testator; and in pursuance of that power of attorney, and in conformity with the decree to which I have adverted, the money was afterwards, to the amount, I believe, of between four and five thousand pounds, (the precise amount is not material), paid over to John Brown, as the attorney for Mary Brown. It seems, therefore, extremely difficult to say that Mary Brown is not, under these circumstances, entitled to an account against John Brown for the money he has so received—money received in pursuance of a decree of a competent Court in America, pronounced upon the subject of this will in a suit instituted for that purpose, directed to be paid over, and received by John Brown, under a power of attorney for that purpose from Mary Brown. It is said, however, that Mary Brown is entitled only to a life interest in this property; and, that she being entitled only to a life interest in this property, that the residue was disposed of, and that it would pass therefore to James Brown, the father, and through that father, by virtue of the dispositions to which I have adverted, namely, the settlement made by him and Margaret Brown, and the subsequent confirmation by Margaret Brown, that it would pass to John Brown. For the purpose of establishing that that was the true construction of the will, a document was offered in evidence—the opinion of an English lawyer upon that subject, and an English lawyer undoubtedly of eminence in this country;—but the Court in Scotland justly observed, that they had nothing to do with the law of England; and that there was no evidence in the cause to shew that the law of Virginia corresponded with the law of England, with regard to the matter in question, with respect to the rules by which an instrument of that kind was to be construed; and therefore they paid no attention to the opinion relied upon on the part of the appellants.

It was farther urged, and a petition was presented for that purpose, that the opinions of American lawyers of that particular district of America should be taken, for the purpose of guiding the consideration of the case. The Court, however, rejected that petition; and I think they were right in doing so, under the circumstances of this

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case. The question with respect to the construction of the will had been before the Court in America. In the year 1816, they had pronounced in effect a judgment as to the construction of that will; for they had decreed that Mary Brown was entitled absolutely to this property—they had directed that property to be paid to her; and it was paid accordingly to her agent, appointed by her to receive that which she was entitled to under the will. It seemed, therefore, under these circumstances, and after so long an interval of time, not right again to postpone the cause, for the purpose of taking further evidence as to the real and proper construction of the will.

It was urged, however, that John Brown ought not to be bound by that decision: he was a party to that suit, his name was upon the record; but the decree was made in his absence—he was in England at the time the decree was pronounced. Although your Lordships, sitting here, cannot be apprised precisely of what the law of America is in this respect; yet it is not unreasonable to suppose, that if what John Brown alleged is correct—that the decree was made in his absence—he might have gone to America, and obtained a re-hearing of that decree. It is not suggested in these papers, that John Brown was not apprised of that decree at the time it was pronounced in the year 1816: he had received from the executor the money under that decree; he had taken no steps from the year 1816, for a period of ten years, to call that decree in question; and therefore I think the Court below rightly judged, that they might take that decree as the foundation of their judgment, and decide accordingly.

My Lords, there was another point also insisted upon, to which I shall beg leave also shortly to advert. It was stated, that Mary Brown had herself admitted, that she was in fact only entitled to a life interest of this property. The facts of the case, as far as they relate to this point, are very shortly these:—A part of the property of William Brown was in England. Administration, with the will annexed, was taken out by Margaret Brown, the mother, in regard to that property, and the surplus of that property, after discharging liabilities, amounted to L. 1650; and that L. 1650 was paid over to Mary Brown, or rather was paid into the hands of John Brown. At the time when that transaction took place, a deed was executed between John Brown and Mary Brown, in the recital of which it was undoubtedly stated, that Mary Brown was entitled only to a life interest; and she conveyed the whole of her interest in this property to John Brown, for an annuity during her life of only L. 50, with this clause and condition, that that annuity should be payable to her only during the time that she resided with him. It is a part of the case on behalf of the respondent, that she was a woman of weak understanding, liable to be controlled and governed and imposed upon by persons round her; and there are circumstances, to which it is unnecessary for me to advert at present, with respect to her having gone away with a man of inferior condition of life, imposed upon, and

induced to enter into a marriage, afterwards considered null by the Court in Scotland, to which I will not particularly advert; but it is quite evident that she was a woman of weak understanding, and the Court below judged that transaction to be a fraud practised upon her by John Brown, and not growing out of the deed itself. The L.1650 were, by the terms of that deed, to be absolutely assigned to John Brown, in consideration of the equivalent of only L.50 a-year; that payment of L.50 to be suspended in the event of her not residing with John Brown. I think, therefore, that the Court judged rightly in considering this transaction as fraudulent, and that the recital in the deed ought not in any degree to operate to the prejudice of Mary Brown. My Lords, I presume that, under these circumstances, your Lordships will be disposed, as to this part of the case, to be of opinion that the Court of Session came to a right conclusion, in considering that John Brown, and afterwards his trustees upon his death, were liable to account for the money which had been so received from the executors of William Brown under the will to which I have adverted.

My Lords, there were other subordinate points in the cause, consisting of matter of detail in the progress of it, particularly with respect to the mode of taxing the account, as to the allowances to be made on the one side and the other, as to the costs, as to the charges, and other matters of that description, which were argued at great length at your Lordships' Bar. I confess, that at the time the argument was going on, I had little doubt as to the propriety of the decision of the Court of Session as to those matters. I have since looked through the whole, and I see no reason to depart from the opinion I entertained at that time. I shall, therefore, under these circumstances, humbly recommend to your Lordships, that the judgment of the Court of Session, consisting of these various interlocutors pronounced by the Lord Ordinary, and the interlocutors pronounced by the First Division of the Court of Session, should be affirmed; and, under the circumstances of this case, with your Lordships' permission, I would recommend that they should be affirmed with certain costs.

The House of Lords accordingly ordered and adjudged, that the interlocutors complained of be affirmed, with L.50 costs.

A. GORDON—A. DOBIE,—Solicitors.