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work at home, it is held as executed upon the personal credit of the owner alone, and not upon the security of the ship. 2d. What has been found to be expedient and advantageous to the commercial law of England, cannot be hurtful to the commerce of Scotland; and as the commercial law of the two countries acknowledges the same origin, the rules of the one must apply to the other.

After hearing counsel, it was

Ordered and adjudged that the interlocutors be affirmed.

For Appellants, *T. Erskine, W. Grant.*

For Respondent, *Ilay Campbell, Alex. Wight.*

PATRICK CRAWFORD BRUCE, and PHILIP  
 SAMUEL MAISTER, Esqs., Executors of  
 the deceased CHARLES STEWART, and  
 ALEXANDER DUNCAN, their Attorney, } *Appellants;*  
 JAMES STEWART, Sheriff-Substitute of  
 Kinross, and GEORGE GRAHAM and  
 Others, his Trustees, . . . } *Respondents.*

House of Lords, 3d March 1790.

SUCCESSION—GIFT.—A party had made his will in India, appointing executors in this country to execute the same after his decease. Previous to his death, he had expressed a desire to remit a certain sum, £1000 to his father, by a friend who was intending soon to return to this country, and whom he wished to take home the money to his father. This friend ultimately got the sum to take home for that purpose, but accounts of the donor's death reached England before delivery of the money. In this case, the executors under the will claimed the same; Held that the father was entitled to the money, the gift being absolute and complete during the life of the donor.

Charles Stewart had, for several years prior to 1783, been settled at Bombay, in the Civil Service of the East India Company. Having a prospect of bettering his fortune, from being appointed paymaster to the army then proceeding against Tippo Saib, he made his will, leaving and bequeathing the whole he might be possessed of, to and for the use of his two infant natural children, and appointed the appellants as his executors.

When attending this expedition, he met an old friend, Captain Dundas, who bargained with him for some sandal wood. Mr. Stewart, in return, asked Captain Dundas to take home a sum of money to his father in Scotland, which he agreed to do. This sum of money, 9600 Rupees, (£1079. 18s.) was thereafter handed over to Captain Dundas' purser, Mr. Dorin, to be taken to Captain Dundas, who soon after sailed for England with the money. In the meantime, the expedition against Tippo Saib had become a failure. The English army was invested, and the officers taken prisoners; in which Mr. Stewart, along with others, lost their lives.

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A demand having been made for the money, both by the father of Mr. Stewart and the appellants, the executors under his will, a multiplepinding was raised, to settle which had best right to the sum, and, upon proof of the above special destination and gift of the money to the father: the Lord Ordinary pronounced this interlocutor. "Having considered the depositions of Captain Dorin and Captain Dundas, prefers the said James Stewart to the sum in the hands of the raiser of the multiplepinding, and decerns in the preference against the raiser accordingly." On reclaiming petition to the Court the Lords adhered.

Feb. 9, 1788.

Aug. 5, 1788.

Against these interlocutors the present appeal was brought.

*Pleaded for the Appellants.*—The appellants, as the personal representatives and executors of Charles Stewart, must be entitled to the money in question, in competition with the respondent, Stewart, unless he can show that the testator, in his lifetime, made an absolute gift of it to him. The evidence makes it only probable that Charles Stewart once intended the money to be put in to the respondent's hands, and perhaps he might have intended that some benefit was to result to him from the remittance; but it is clear, from his reference to written instructions, to be given thereafter, that he died without completing any gift or absolute disposal of the sum in question.

*Pleaded for the Respondents.*—Where money is contended to be given to another, the intention of the donor, whether that intention be manifested by parole or by writing, if attended by sufficient evidence, makes the gift complete. The most essential, and the strongest proof of the intention of the donor, is the delivery of possession, by which the gift becomes effectual in law against all mankind, unless it be prejudicial to creditors, though made without

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any consideration ; and it is not in the donor's power, much less in that of his executors, to retract it. It is impossible to doubt the nature of the evidence that has been adduced to support the delivery of the gift, because that evidence clearly shows, not only that Charles Stewart formed the resolution of sending a sum of money to his father by Captain Dundas, but that resolution was in fact carried into execution by the actual delivery of the box of rupees to Mr. Dorin for the use of his father the donee. Every thing therefore which law requires to make a complete gift, has been shown to have taken place, and, consequently, the respondent James Stewart is entitled to recover the money.

After hearing counsel, it was

Ordered and adjudged that the interlocutors be affirmed.

For Appellants, *E. Bearcroft, Wm. Alexander.*

For Respondents, *J. Anstruther, Jas. Allan Park.*

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JAMES ROCHEID of Inverleith, Esq.,	<i>Appellant ;</i>
SIR DAVID KINLOCK of Gilmerton, Bart.,	<i>Respondent.</i>

House of Lords, 22d March 1790.

ENTAIL—CLAUSE.—A lady made an entail of her estate in favour of a certain series of heirs, under this condition, that her sister Elizabeth “ shall execute a tailzie of her half of the estate, according to the same order of succession.” She executed an entail, but not to the same series of heirs. A declarator being brought : Held, by the Court of Session, that the condition was virtually complied with. Reversed in the House of Lords ; and held, that the entail executed by Elizabeth Rocheid, did not sufficiently comply with the condition, and that the fourth part, held by Mrs Kinlock, must therefore be free from the fetters of her entail.

Sir James Rocheid of Inverleith and Darnchester, died in 1737, leaving his estates, held by him in fee simple, to descend to his four daughters as heirs portioners.

One of these daughters was married to Sir Francis Kinlock of Gilmerton. She was entitled to one fourth ; her sister, Mrs Elizabeth Rocheid, had two fourths, or *one half* of these estates, (from having acquired the fourth of a sister deceased, and the other fourth descending to her in her own