said cause, of even date herewith: And it is further ordered, That the Court to which this remit is made, do require the opinion of the Judges of the other Division, in the matters and questions of law in this case, in writing; which Judges of the other Division are so to give and communicate the same: And after so reviewing the said interlocutor complained of, the said Court do and decern in this cause as may be just.

July 10, 1817.

QUEENSBERRY LEASES.

IRELAND.

APPEAL FROM THE COURT OF CHANCERY.

KNATCHBULL and others—*Appellants.*
KISSANE and others—*Respondents.*

K. HOLDING certain premises under a lease made in 1769, for three lives at 300*l.* rent in 1802, obtains from G. tenant for life of the premises, with power of leasing at the best rent, then under age, and in embarrassed circumstances, by the offer of immediate payment of a year's rent then due, but by the custom of the country not payable till half a year after, and by a promise to plant on the premises 10,000 trees for the benefit of the landlord, and to make over to him those already planted, a new lease of the lands at the old rent, substituting instead of the two of the old lives, two young lives:—the lease, however, containing nothing about the trees planted, and no covenant to plant the 10,000 trees, but only an agreement endorsed on the lease to plant them. The old lease still retained by K. and no trees planted by him; but immediately after execution of the new lease of 1802, he assigns that lease upon trust to secure a provision for a wife whom he then marries; and soon

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after, by will, secures the provision upon other property, in case the lease should be evicted.—G. after he came of age, accepts the rent, and gives receipts for it. K. dies. Bill against his son, the widow, and her trustees, by G. and his trustees (the remainder-men not made parties) to have the new lease delivered up to be cancelled, as being fraudulent and void—and the bill dismissed below. But the decree *reversed* by the House of Lords declaring that the lease, as between the lessor and lessee, was such as ought to be cancelled, but remitting to the Court below to proceed, with respect to relief as against the widow and her trustees, as should be just.

Bill filed, 1807.

THE bill, filed in the Court of Chancery in Ireland, in 1807, stated that a lease of certain lands, in the county of Tipperary, was granted by one Mathew, the proprietor in fee, to William Kissane,

Old lease, 1769.

in 1769, for the lives of the said William Kissane, and of Leonard Doharty and John Bray, and the survivor of them, at the annual rent of 300*l.* 5*s.* payable half yearly, that the lease was duly enrolled, and that Kissane continued in possession till his death, which happened in 1804.

Title.

The bill then stated a sale and conveyance of the lands in fee, in 1783, to George Goold, who, by will, dated 1787, devised the lands to his grandson, Henry Michael Goold, for life, remainder to his issue male in such proportions as he should, by deed or will, appoint; and for want of such appointment to the testator's eldest son, with remainders over: and with a power to the said Henry

Power.

Michael Goold to lease for three lives, or thirty-one years, to commence in possession, at the most improved yearly rent and without fine. The tes-

tator died in 1789, H. M. Goold being then of the age of six years.

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The bill then stated that Henry Michael Goold had been very extravagant, and had contracted debts to a large amount at a very early period of life: that in 1802 he visited his estates in the county of Tipperary, and was then, while still under age, prevailed upon by Kissane to execute a new lease of the lands at the old rent, though the lands had trebled in value, substituting the life of Elizabeth Chadwick, then eighteen years of age, whom Kissane was about to marry, and the life of his son William Kissane, then of the age of sixteen years, instead of the lives of Doharty, who was then above sixty years of age, and of Bray, who was dead, though Goold was kept in ignorance of that fact; the inducement held out by Kissane, being a promise to pay immediately a year's rent, which was then due, but, by the custom of the country, not payable till half a year after; a promise to plant 10,000 trees, and to make over to Goold those already planted. That Goold executed the lease without perusing it, that he had nobody to advise him at the time, that he was ignorant of the value of the lands, that the lease did not contain any grant of the trees on the premises, and that, in point of fact, there were none on the premises; that Kissane did not deliver up the old lease, alleging that it was then in Dublin, and that he did not pay the year's rent immediately, but only gave a bill of exchange for it payable forty-one days after date.

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New lease, 1802.

The bill further stated that, the lease having

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been executed on the 2d October, 1802, Kissane, in the same month and year, being then seventy years of age, on his marriage with the said Elizabeth Chadwick, by indentures of settlement assigned the lands upon trust to secure a provision or jointure of 250*l.* a-year to the said Elizabeth, and by will, dated March, 1804, he devised and bequeathed all his property real and personal upon the trusts therein mentioned, charging the jointure on other lands, in case the said demised lands should be insufficient for the payment of it, and he directed his trustees to raise certain sums of money to make a provision for his wife in case the lease should be set aside. Kissane died soon after. The bill further stated that Goold having attained his age of twenty-one years in 1803, and, continuing to be embarrassed in his circumstances, in 1804, conveyed his estates to trustees, who, along with him, filed the bill against the representatives of Kissane, and those interested under his will,

Prayer.

praying that the lease of October, 1802, might be declared fraudulent and void, and might be cancelled, or, if necessary, that the same might be reconveyed; and, that Elizabeth Chadwick and her trustees, if ignorant of the fraud, might be indemnified out of the other property of Kissane in respect of her marriage portion, and that an account, if necessary, might be taken of the personal estate of Kissane, &c.

Answers.

In the answers it was insisted that the new lease was obtained without fraud on the part of Kissane, who was then only sixty-three years of age, and not seventy, as alleged in the bill, in consideration

of the undertaking, endorsed on the lease, to plant 10,000 trees for the use of Goold, which he would have done, had he not discovered that Goold had practised a fraud on him, by representing that he had power to make the lease, and that he was of age at the time; and that this was the reason for making a provision for the wife, by way of caution, in case the lease should be set aside; that both Doharty and Bray were living, and in good health, at the time of putting in the answers; and Elizabeth Chadwick and her trustees alleged that they were purchasers for valuable consideration without notice. It was admitted that the lands were worth about 600*l.* a-year, and that no trees had been planted.

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Evidence was given on the part of the Plaintiffs (Appellants), that Goold, at the time of executing the lease, was under age; that the lands, on a lease for three lives, were worth, in 1802, from 600*l.* to 900*l.* a-year. A witness who was present at the execution of the lease, deposed that nothing was then said as to Goold's age; that Goold was greatly embarrassed in his circumstances when the new lease was executed, and that Kissane knew it; that the lease was produced by Kissane ready for execution, at the time of the agreement with Goold; and that Kissane alleged, as a reason for not delivering up the old lease, that it was then in Dublin, and that, in fact, it was not delivered up.

Evidence.

The Defendants produced Bray and Doharty as witnesses, who said they were in good health in 1802, and were, at the time of their examination, of the respective ages of fifty and forty-seven years.

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One witness deposed that Goold represented himself as of age previous to October, 1802, and several receipts for rent paid to Goold and his receiver for the premises subsequent to 1802, and the lease of 1802, and endorsement thereon, by which Kissane agreed to plant the 10,000 trees, were proved.

Bill dismissed below, 1814. Appeal.

The cause having been heard on the 11th July, 1814, the Court below dismissed the bill with costs, and from this decree the Plaintiffs appealed.

Sir S. Romilly and *Mr. Roupell* (for Appellants). The lease of the 2d October, 1802, was obtained from the Appellant, Henry M. Goold, fraudulently, by misrepresentation and concealment, and without consideration. The fraud is evidenced by the transactions themselves. The Appellant was a very young man, not even of age, inexperienced in matters of business, ignorant of the value of land, and who had, by his extravagance, involved himself in debt, and was raising money by the most improvident means. This was known to Kissane, who was a very old proprietor and occupier of land in that part of Ireland, and well acquainted with the value of land there. The bargain was made by Kissane with the Appellant, Henry M. Goold, himself then a minor, and who had no professional or other assistance.—The lease of 1769, which was then subsisting, was held on two lives, both of which were persons far advanced in years, and for which two lives were substituted, the lives of two young and healthy persons; this advantage

too was obtained by Kissane, without any consideration whatever paid or given by him to the Appellant, for the rent reserved by the new lease was the sum of 300*l.* 5*s.* and no more, being the same rent as had been reserved thirty-three years before, by the old lease, and which was grossly inadequate, in point of value, as land in the county of Tipperary had, in the year 1802, when the new lease was granted, risen in value to three times the amount of what it was in the year 1769, when the old lease was granted; the only colour or pretence of consideration was, that Kissane should plant 10,000 trees on the said premises, and assign them to the Appellant, but which it is admitted he did not do, and that he should assign such trees as he had then already planted; it appears, however, that no trees had then been planted, and it is, therefore, obvious that Kissane had deceived the Appellant, Henry M. Goold, by falsely representing to him that he, Kissane, had planted trees on the said demised premises, which were to be so assigned. The inducement which the Appellant had, and the temptation held out to him by Kissane, to agree to such new lease, was the promise of immediate payment of a sum of money, for a year's rent, which the Appellant was entitled to at the time, but which, notwithstanding such promise, was not paid in money, but by a bill of exchange at a long date; and the Appellant, Henry M. Goold, has not confirmed the lease of 1802, since he came of age; and the only remedy which the Appellant had, was in a court of equity; for the old lease was not delivered up, nor were the lives extinct, and it

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might have been set up as a bar to the trial of the validity of the second lease, at law.

He who afterwards received the rents for Goold was present at the execution of the lease, but he was, at that time, neither agent nor receiver, but a mere stranger. Then it may be said if the lease is void you need not the aid of equity. But it is quite common for equity to interfere to compel the delivering up of deeds invalid at law—*Underhill v. Horwood*, 10 Ves. 209—*Bromley v. Holland*, 7 Ves. 3; and the reason is, that they may not remain with those who can make no legal use of them, and continue a cloud on the title.

Mr. Wetherel and *Mr. Wingfield* (for Respondents).—The bill was defective for want of parties, the remainder-men who had an interest in the subject not being before the Court. The bill too did not offer to replace the interest under the old lease; and these defects might be relied on as grounds for dismissing the bill, in case the decree could not be supported on the principle about to be stated.

1st. With respect to Goold, no deception is here charged; and direct fraud being absent, supposing him to have been under age, the lease is not void but voidable, as in *Zouch v. Parsons*, 3 Burr. 1794; and the lease was confirmed by him, by his acceptance of rent under it after he was of age. The rule is the same in equity as at law. Here it is clear, that rent was accepted by him three or four years after he came of age. Suppose, then, that fraud is absent, though the landlord may, from

folly or improvidence, have let his lands at half the rent which they are worth; and if, though under age at the time, be after he becomes of age, confirms the transaction, the lease is good.

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2d. Then, with respect to the remainder-men, they say, that it is unnecessary to make them parties, because the lease cannot bind the remainder-men, as the lands are not let at the best rent. But if the lease is valid as against the tenant for life, the objection to it is premature. The title of the remainder-men has not accrued, and they are not parties: and equity never acts by anticipation. This is said to have been the ground of the decision below. Equity will not cancel the lease by anticipation, and *non constat*, but the *cestui que vies* may be dead before the title of the remainder-men accrues. The delivering up the instrument, lest it should be a cloud on the title, does not here apply; for the lease is not void with respect to Goold.

Suppose the lives in the old lease were dead, the remainder-men might have an interest to contend that the new lease was a good one, and were necessary parties. It is common to order deeds to be delivered up to be cancelled; but we are not litigating that point generally, but whether, under the peculiar circumstances of this case, the lease ought to be delivered up, and *Bromley v. Holland*, 7 Ves. 3. is no authority in this case. It was said to be essential, if bad as to the remainder-men, that it should be challenged by Goold.—Why? It is merely a question of time. If he was a minor at the time, the lease is only voidable, and he con-

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firmed it by clear acts. The rent must have been received, not under the old, but under the new lease; for he was a party to the new lease, and could receive the rent in no other way or character without an express reservation. The consideration is the planting of 10,000 trees, and there is a covenant, or at least an agreement, that Kissane would plant them. It is observable, too, that the receiver was present at the execution of the lease, and that there were laches in filing the bill. It appears, from the evidence of Mr. Humphries, a very skilful English attorney, that he was sent to Ireland, in 1803, to investigate the state of Mr. Goold's affairs, by the trustees afterwards appointed by Goold by the deed of 1804, one of whom died before 1807. The bill however is not filed till 1807. But if there had been no laches, and the bill had been filed before the death of the other trustee, then evidence might have been given of consideration in money, services, &c. which did not appear on the face of the deed, for parole evidence, collateral to, but not contradicting the deed, might be given.

They cannot succeed unless they establish gross misrepresentation. But there is no such thing; and there are repeated acts of confirmation.

Lord Eldon (C). There is no want of parties here; for the lease is void at law as to the remainder-men, because it is a bad execution of the power, which requires that the most improved rent should be reserved.

Sir S. Romilly (in reply). They say there is no

fraud; but I do not know what fraud is, unless taking advantage of the folly and improvidence of a youth under age, and getting from him a lease at a rent of 300*l.* a-year for lands which were worth 900*l.* a-year, without consideration, without coming under any obligation, is fraud. But if it were necessary to show direct actual fraud, that is proved by the promise to plant 10,000 trees, a mere pretended consideration, which was not introduced as an obligation in the lease; and for the performance of which promise there was no security, except the memorandum on the back of the lease. As to the confirmation, suppose he had confirmed the lease, though it would then have been good at law, it would still remain subject to be set aside in equity for fraudulent circumstances. Besides, the receipts were merely for rent, which might have been paid under the other lease, so that they were at least equivocal. As to the laches, the bill was filed as soon as the circumstances could be investigated; and then it should be remembered, that the two leases were retained. Kissane himself by his settlement showed, that he was aware that the new lease could not be supported.

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Lord Eldon (C). This is an appeal from a decree of the Court of Chancery in Ireland, and the Appellants represent that they filed their bill in that Court in May, 1807, stating that Thomas Mathew being seized in fee simple of the towns and lands of Knockballymaloe and Kilross, in the county of Tipperary, he, in July, 1769, granted a lease thereof to William Kissane now deceased;

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the said premises containing about 332 acres of land, plantation measure, to hold unto the said William Kissane, his heirs and assigns, for his (Kissane's) own life, and the lives of Leonard Doharty and John Bray, and the life of the survivor of them, at the annual rent of 300*l.* 5*s.* payable half yearly: and that the indenture of lease was duly enrolled, and that William Kissane entered into possession of the premises, and continued in the possession thereof until his death, which happened in the year 1804. And further stating, that John Bray, one of the lives, was dead; that Leonard Doharty was living; and that the said Thomas Mathew was dead; and that Francis Mathew, his eldest son and heir at law, in the month of June, 1782, sold and conveyed the said premises to John Carrol, in trust for Michael Aylmer, Esq. who, in the month of February, 1783, sold and conveyed the inheritance of the said premises to George Goold, deceased, in fee; and that the said George Goold, deceased, by his will duly attested, made in the month of June, 1787, devised the said estate and premises unto the Appellant, Henry Michael Goold, for and during the term of his natural life, and after his decease to go and belong to his issue male, in such shares and proportions as he should, by deed or will, appoint; and for want of such appointment, then to his eldest son, with divers remainders over: and the testator, by his said will, empowered the Appellant, Henry Michael Goold, to grant leases of the said estates for three lives or thirty-one years, to commence in possession, at the most improved yearly

Title not disputed.

rent and without fine. And further stating, the death of the said George Goold in the month of March, 1789, when the Appellant, Henry Michael Goold, was of the age of six years or thereabouts; and that the said Appellant's guardian received the rent of the premises from the said William Kissane, until the time after mentioned.

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I observe here, before proceeding further with the statement, that the reasoning and the objection, founded on the want of the remainder-men as parties, cannot be sustained; as the lease from Goold to Kissane is clearly proved not to have been let at the most improved rent, and therefore is and must be void as against the remainder-men if they choose to quarrel with it.

Remainder-men not necessary parties.

And further stating, that the Appellant H. M. Goold had been very extravagant, and had contracted debts to a large amount at a very early period of his life,—which was very probably the case, he being like many young men, who, being extravagant and in debt, are reduced to difficulties, and led by their embarrassments into improvident contracts: and then they complain that they have been imposed upon, and sometimes take as much advantage of others, as they say others have taken of them.

And further stating, that Goold being, in the year 1802, in the county of Tipperary, the said William Kissane, who was then far advanced in years; I pass over the other allegations that he was crafty, and so on—and skilled in the value of lands, and ready to take advantage of a young man, formed a design to impose on the Appellant, Henry Michael Goold, who was thoughtless and inconsiderate, to

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obtain from him a renewal of his interest in the said land; and that accordingly the said William Kissane, who owed the Appellant, Henry Michael Goold, a year's rent, and which, by the custom prevailing in that part of the country, the Appellant imagined was not to be paid until another half year's rent became due, some time in the month of October, 1802, requested the Appellant, Henry Michael Goold, to substitute the life of Elizabeth Chadwick, a young lady of the age of eighteen years or thereabouts, with whom the said William Kissane was then about to marry, in the room of one of the original lives in the lease of July, 1769: and that to induce the said Appellant, Henry Michael Goold, to comply with such request, the said William Kissane promised to pay the Appellant, Henry Michael Goold, the year's rent then due without the customary allowance of time (and the offer of ready money usually meets with a ready acceptance); and he further promised to plant 10,000 trees, and to make over to the Appellant those which had been already planted; and that so great was the folly and indiscretion of the Appellant, Henry Michael Goold, and such his want of ready money, that although the said lands had then trebled in their value, as the said Appellant has since discovered, since the year 1769, and although the said John Bray, one of the lives in the said lease, was dead, but of which the Appellant was then ignorant, and was assured to the contrary by the said William Kissane, and although the said Leonard Doharty was above sixty years of age, and the said William Kissane himself above seventy, the Appellant, Henry

Michael Goold, agreed to substitute the life of the said Elizabeth Chadwick in the room of the said John Bray; and that thereupon the said William Kissane produced a parchment writing to the Appellant, Henry Michael Goold, who had not then attained his age of twenty-one years, and who had no person to advise him, and was ignorant of the value of the said lands, and the said Appellant executed the same, and the said William Kissane executed a counterpart, which is dated the 2d of October, 1802.

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Your Lordships will permit me to notice, that the matter, stated by way of allegation in a bill is not always true; but often the mere coinage of the imagination of the drawer of the bill; and as to the alleged death of Bray, if he was the same Bray who was examined as witness, he must have been alive: and he says, in his evidence, that instead of being dead in 1802, he was then alive, and in good health—"and is now of a good healthy constitu-" tion; and is now about the age of fifty years." And Leonard Doharty, who was stated to have been in 1802 above the age of sixty years, says, that instead of having been then above the age of sixty, "he was in a right good state of health and " constitution in the month of October, 1802; and " is now of the same good state of health and con-" stitution, and is now of the age of forty-six or " forty-seven years."

I suppose it may be taken for granted, that these persons were the same mentioned in the bill; and though perhaps they somewhat under rated their ages, as we are all apt to do, yet alive they certainly

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were when they were examined as witnesses. To be sure, when you consider that they were named as the *cestui que vies*, in 1769, and when you recollect the lapse of time from 1769 to the time at which they gave their evidence, you cannot help suspecting that they were a little more advanced than the full vigour of youth, or that Kissane must have had very great confidence in the strength and vigour of their constitution when they were little children; and, that the vigour and strength which they had when they came into the world, would probably continue, and that they would live long.

However, we must take the representation to be correct for the purposes of this cause.

And further stating, that the Appellant's, Henry Michael Goold's, execution of the said parchment writing was procured from him by a fraudulent representation and suppression; that the Appellant never read the said parchment writing, and that the said William Kissane had, unknown to the said Appellant, caused the said lease to be filled up with his, the said William Kissane's own life, with that of the said Elizabeth Chadwick, and also with the life of the said William Kissane's son, who was then of the age of fourteen years or thereabouts; and at the annual rent of 300*l.* 5*s.* being the same rent as had been reserved forty-six years before; and that such new lease did not contain any grant of the trees then on the premises, but which had turned out to be immaterial, as the said William Kissane had not planted any thereon, and that the said William Kissane had kept the original lease in his possession,—alleging that the

same was in Dublin, and that the said William Kissane kept the said original lease in his possession to protect himself and his representatives at law, in the possession of the said premises. And further stating, that the said William Kissane did not pay to the Appellant Henry Michael Goold the rent which was then due, but gave the said Appellant a bill of exchange, payable forty-one days after date, and which was not paid until a considerable time after the same became due.

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Your Lordships then see how the case stands. Young Goold goes to Ireland in 1802, and grants this lease in the way which has been stated. Whether he was then embarrassed and involved in debt or not, he seems to have been, at least, so much in want of ready money, that it was material to him to have a year's rent paid down, instead of waiting for the usual time of payment, according to the custom of the country. And accordingly a bill of exchange, payable in December, 1802, was drawn; and on looking at the original bill you find a writing on the front of it, which they call an endorsement. That is not usually the manner here, where generally an endorsement is made on the back, and not on the face of the bill. Kissane was then in possession under the old lease held for these lives, in the full vigour of their youth and constitution; and when the new lease was made, therefore, if this had been perfectly fair on all sides, the new lease would be granted in consideration of the surrender of the old lease. But, as one has heard of on other occasions, it was thought safest to have two strings to the bow: and

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it so happend, that he had left the old lease in Dublin: and he kept both in his possession since 1802: so that one finds it difficult to say, that the surrender of the old lease was part of the consideration for the grant of the new lease. The rent was the same as that which was reserved in 1769; and the lessor had then no right to bind the inheritance, except by a lease in possession, and at the best rent that could be got, and that was nearly double the old rent. They said that it was true, that as against the remainder-men it was not good; but that it was good as against Goold. But then recollect that he covenants that it was valid as against the inheritance, and that he bound himself to make good the value in case the lease should be evicted.

The old gentleman, although we must not say that he was so crafty as he was represented in these papers to be, was, at least, very provident, for the next week after the execution of the lease he settled it on the lady whom he married. It does not appear that they made any provision as to the issue; and it so turned out, as might have been expected, that there was no issue of that marriage.

Then after the settlement on the lady, he seems to have been casting his eye back upon the transaction, with respect to the execution of the lease, and to have had some doubts whether they were not such as rendered its validity rather questionable; perhaps, as it has been represented, because Goold had not told him that he was only tenant for life, with a power of leasing at the best rent. But however that was, he, in his will, devises all his

estates real and personal, in trust for the benefit of his children born before his marriage with this lady. And then the bill states, that the said William Kissane, after reciting in his said will that since his marriage it had been apprehended that the lease by virtue of which he held the lands might be evicted, and might therefore not be considered a sufficient security for the provision which he had made for this lady; therefore, in order the better to secure a provision for his said wife, in case the lease should be evicted or determined, he ordered and directed his trustees to raise certain sums of money for that purpose.

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The way in which Knatchbull and the other Appellants became interested was by a trust deed from Goold.

The bill charges that the lease was made at a gross under value, and that it was proved that the premises were worth a great deal more rent; that Goold had never been in Ireland before, and was unacquainted with the value of the property; although it is admitted that Cooke, who was afterwards his receiver, was present at the execution of the lease. And, on the whole matter, the bill prayed that the lease might be set aside, without offering the conditions which Kissane would be entitled in equity to have annexed to that determination.

We called for the original lease. I do not know whether timber is of any value in the county of Tipperary, but Kissane agrees to plant 10,000 trees, which were to be suffered to grow for the benefit of the landlord. The lease, however, was drawn

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in such a hurry, that this little *policy*, as we would call it in the north of England, was forgot: except that there was a little endorsement respecting it on the back of the lease. I do not call that a covenant; for unluckily it would not do as an English covenant, not being under seal; and it could at most only amount to a parol agreement, on which perhaps an action might be brought.

The Lord Chancellor of Ireland was of opinion, and I beg to be understood as never speaking of his opinions but with the greatest respect, that the bill should be dismissed, leaving matters as they were before. Now it is impossible that it could be right simply to dismiss the bill, because, if the lease of 1802 was valid, the decree ought to have directed the old lease to be delivered up: and if that had been objected to, because the remainder-men were not parties, and they might be interested to set aside the new lease; or because Kissane did not know that Goold was only tenant for life; still such an arrangement might have been made as would have protected Kissane in the possession to the extent of the interest under the old lease, as far as Goold could have protected him; so that it was impossible it could be right as it stood.

Fraud.

Then another question is whether, without using the word *fraud*, which is often misunderstood when lawyers use it, this is a lease that can be sustained. It was contended by my learned friend at the bar (Mr. Wetherel) that there was not sufficient charge of fraud to get rid of the lease on that ground. But I think he will agree with me that if there is that in the bill which, in

construction of law, amounts to a fraud, in the legal sense of that term, it is not necessary that the plaintiff should apply that term to it in the bill.

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Want of consideration.

Now, attending to the absolute want of consideration in this case, equity cannot but feel a strong disposition to set aside the lease. He has a lease for his own life, and those of Doharty and Bray; and however stout these might be, they were less valuable lives than the life of this lady, eighteen years of age, and of Kissane's son, fourteen or sixteen years of age, which were the lives substituted in the lease of 1802. And how can it be contended that the substituting, for a lease for three old lives, a lease for one old life and two young ones, at the same rent, when the lands were worth double the old rent, was a transaction in which valuable consideration was given by Kissane? And then Goold covenants absolutely for the validity of the lease; and, though he got nothing, he was liable for the value with his purse, and even with his person if he could not pay: and further, the old lease remains in the hands of the lessee as a shield; I do not say it was intended as a fraud; but there is enough to show that Kissane was anxious, in case Goold had quarrelled with the new lease, to have the old lease to set up against him. And when you consider the temptation of an immediate sum of money held out to a young man greatly in want of ready money; and then the notion of wood being given to him, of which there was not a stick on the property; and that you do not find inserted in the lease what was agreed upon as to the planting of trees; it does appear to me

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that this is a lease without consideration, giving value for nothing: and from these and the other circumstances, I cannot agree that this bill should be dismissed generally, or that the lease of 1802 is a subsisting lease at all.

I am always afraid, when dealing with these Irish cases, that I may overlook some peculiarity in the mode of proceeding in that country. But I am authorized to say, that this case has been considered by a Noble and Learned Lord well acquainted with the Irish practice, and that he concurs with me in this opinion. But if we order the lease of 1802 to be delivered up, we must take care that justice is done, and that the enjoyment shall continue under the old lease, and that Kissane's representatives should be relieved from the obligations of the new lease.

Alleged acts of confirmation.

I do not rest much upon the alleged acts of confirmation in receiving the rent. If the old lease had been delivered up, they would have been much more material. And without entering into the question about leaving a cloud on the title, the circumstance of Kissane's having the old lease in his possession is one which establishes the jurisdiction; for, whether he was an infant at the time of executing the lease, and afterwards confirmed it, if it was in his power to confirm, or an adult, he could never have gone to law; for they would have pulled out the old lease, and have said—we hold by this title.

Lease void as between Kissane and Goold,

Then what I propose is, that the lease of 1802 be declared void as between Kissane and Goold, without prejudice to the old lease.

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Then there is another point, as to which I wish to know, whether the parties desire that there should be any further proceeding. Kissane seems to have thought that his chance for the lady would be increased if he got the new lease: he weds the lease, and then, *eo instanti*, he marries Miss Chadwick, and settles it on the wife. Now whether the lease is bad, as against Kissane, and whether it is bad as against her, a purchaser for the most meritorious consideration, that of marriage, are different questions: and though this point did not require attention in the previous state of the proceedings, it may be material now.

State of the case as between the wife and Goold.

This is not much worth her agitating; but if she wishes to agitate that matter, as the Court has not considered this before, I apprehend the cause ought to be remitted with a declaration as to these points, and so calling the attention of the Court to the state of the case as between her and Goold. But if the lease is bad as between Kissane and Goold, it does not appear important for her to carry it further, regard being had to the provisions of the will and the equities of Goold.

The Judgment of the House, after the usual recitals, was in these terms:

Decree below reversed. Remit.

"That the said decree complained of in the said "appeal dimissing the Appellant's bill with costs, "be and the same is hereby reversed: and it is "hereby declared that the lease of the 2d Oct. "1802, prayed by the bill to be declared fraudulent "and void and to be cancelled, is a lease which "ought, as between the lessor and lessee, and those

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"claiming under the lessee as volunteers, to be de-
"livered up and cancelled: but it being repre-
"sented to the Lords that the Court of Chancery
"in Ireland, having dismissed the bill, did not pro-
"ceed to take into consideration whether the relief
"or any and what part of the relief prayed by the
"bill, in case the lease was to be considered as in-
"valid as between the lessor and lessee, and such
"volunteers ought to be granted as against Eliza-
"beth Chadwick, now Elizabeth Armstrong, and
"her trustees, or any other points arising in the
"said cause in such cases as aforesaid: it is there-
"fore ordered that the cause be remitted back to
"the Court of Chancery in Ireland to proceed
"therein as may be just, and as is consistent with
"this Judgment."

SCOTLAND.

APPEAL FROM THE COURT OF SESSION.

CAMPBELL AND ANOTHER—*Appellants.*
ANDERSON AND CO.—*Respondents.*

Feb. 9, March 16, 1818.

JURISDICTION OF THE COURT OF SESSION, &c.—IRREGULARITY.—PLEADING.

DECREET in October, 1807, by justices of peace against Anderson and Co. tanners, finding them liable in a penalty, and condemning stock on their premises seized in August or September, 1807, by an excise officer, made without evidence, on complaint of a collector of excise that Anderson and Co. carried on the trade of curriers as well as tanners at the same time, contrary to law. The goods sold under the decreet, and purchased up by Anderson and Co. who brought their action in