

IRELAND.

APPEAL FROM THE COURT OF CHANCERY.

MARIA ARABELLA Dowager Marchioness of Lansdowne } *Appellant.*
 The Most Noble HENRY Marquis of LANSDOWNE, and WILLIAM Earl of WYCOMBE, a Minor, by the said HENRY Marquis of LANSDOWNE, his Father and Guardian } *Respondents.*

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POWER in a marriage settlement to grant to a wife any annual sum of money, or yearly *rentcharge to be tax-free, and without any deduction, and to be issuing out of and chargeable upon lands in Ireland*, so that such *rentcharge* do not exceed, in the whole, the yearly sum of 3000*l. of lawful money of Great Britain*. Held—that a *rentcharge* appointed under this power is payable in Ireland in the currency of England. But that the appointee is not entitled to have the sum transmitted to England free of the charge of conveyance and exchange properly so called. The *lex loci contractûs* and the law applicable to cases of money charged as a rent payable out of land, where no provision as to the place of payment is made by the instrument, are inapplicable to a case where the instrument itself furnishes the means of interpretation.

In ambiguous contracts the domicile of the parties, the place of execution, the purpose and the various provisions and expressions of the instrument are material to be considered in the construction.

Courts of equity are not bound to adopt the opinion of the courts of law to which a case is sent for advice.

THIS was an appeal against an order and decree of the Court of Chancery in Ireland, in a suit instituted by the Appellant, for recovery of the arrears of her jointure charged upon the *lands* of the Respondents.

William Marquis of Lansdowne, the father of the Respondent, Henry Marquis of Lansdowne, being seized, for the term of his life, of several estates situate partly in England and partly in Ireland, with a remainder in tailmale to John Henry Petty, commonly called Earl of Wycombe, his eldest son, by deeds * of lease and release, bearing date the 16th and 17th days of May, 1794, and made between the said William Marquis of Lansdowne, of the first part; the said John Henry Petty, Earl of Wycombe, of the second part; John Cross, of Lansdowne House, in the county of Middlesex, gentleman, of the third part; John Willmott, of Bedford Row, in the said county, Esq., and Sir Francis Baring, of London, of the fourth part; and the Right Honourable Henry Richard Lord Holland, and Benjamin Vaughan, of London, Esq., of the fifth part; the greater part of the Lansdowne family estates, situate *partly in England* and partly in Ireland, (except certain lands in the barony of Ballycowen and King's County, Ireland,) were limited and assured, subject to certain incumbrances, then and still affecting different parts thereof,

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16th and 17th
May, 1794.
Settlement of
the Lans-
downe estates.

To the use of trustees, for a term of five hundred years, upon certain trusts thereby declared, with a proviso, that the said term should cease when the trusts thereof should be satisfied;

* It has been thought expedient to set forth this settlement with particulars as to the parties; their description, and domicile, and parts of the limitations and provisions not immediately in question, which, at first sight, may appear superfluous. The reason and excuse, for so full a statement, will be found in the arguments adduced in support of the judgment.

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which trusts have since been satisfied: and subject to the said term:

To the use of the said William, then Marquis of Lansdowne, and his assigns for his life, subject to impeachment for waste, except such waste in cutting down timber as should be committed with the consent of his son, then Earl of Wycombe, previously given by writing under his hand:

Remainder

To trustees to preserve contingent remainders:

Remainder

To the use of the said John Henry Earl of Wycombe, and his assigns, for his life, without impeachment of waste:

Remainder

To trustees to preserve contingent remainders:

Remainder

To other trustees, for a term of years, to raise portions for the younger children of the said Earl of Wycombe:

Remainder

To the first and other sons of the said Earl of Wycombe successively in tail male:

Remainder

To the Respondent, Henry Marquis of Lansdowne, then Lord Henry Petty (second son of the said William Marquis of Lansdowne, and half-brother of the same John Henry Earl of Wycombe), for his life;

Remainder

To trustees, to preserve contingent remainders:

Remainder

To the first and other sons of the said Lord Henry Petty successively in tail male, with divers remainders over.

Recital in the settlement of 1794, making

In this settlement, after reciting, in effect, that 22,150*l.* remained due to the said Marquis, on

account of certain purchases, valuations, and expenses therein mentioned or referred to (*and which purchases, valuations, and expenses were all calculated and made according to the currency of money in England*), it is further recited :

“ That the said Marquis and Earl had valued
 “ the manor of Readingstown, otherwise Rahan,
 “ the towns and lands of Ballineur, and other
 “ lands, situate, lying, and being in the barony
 “ of Ballycowen, in the King’s County, in the
 “ kingdom of Ireland, theretofore the estate of
 “ Robert Reading, Esq. at the sum of 28,000*l.*
 “ of *lawful money of Ireland, of the value of*
 “ 25,846*l.* 3*s.* 1*d.* *English*: and that the said
 “ Marquis of Lansdowne and Earl of Wycombe
 “ had agreed that the said premises in the said ba-
 “ rony of Ballycowen, so valued as aforesaid,
 “ should be conveyed to the said Marquis of Lans-
 “ downe, his heirs and assigns, in discharge of the
 “ sum of 22,150*l.* remaining due to him, subject
 “ to the sum of 3696*l.* the surplus of the said sum
 “ of 25,846*l.* for which the said premises were va-
 “ lued as aforesaid, beyond the said sum of 22,150*l.*;
 “ and that the said sum of 3696*l.* should be se-
 “ cured to trustees, to be by them applied in such
 “ manner as the said Marquis of Lansdowne and
 “ Earl of Wycombe shall direct.” And the pre-
 mises were accordingly so conveyed.

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a distinction
 between Irish
 and English
 money.

The settlement also contained recitals and confirmations of two mortgages both of lands in Ireland: the one to the Drapers’ Company to secure the repayment of 30,000*l.* advanced by them, and secured upon lands in Limerick; the other to a

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The Earl of
Wycombe's
power of join-
turing in the
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Mr. Mills, to secure 12,000*l.* advanced by him, and secured upon lands in Kerry.

The powers to appoint by way of jointure, upon which the immediate question in this case arose, appear in the following terms :

“ Provided also, and it is further declared by
“ and between the said parties to these presents,
“ that notwithstanding any of the uses or limi-
“ tations hereinbefore limited or contained, it
“ shall and may be lawful to and for the said Earl
“ of Wycombe from time to time, and at any
“ time or times either before or after his inter-
“ marriage with any woman or women he may
“ happen to marry, by any deed or deeds, instru-
“ ment or instruments in writing, to be sealed
“ and delivered by him in the presence of, and to
“ be attested by, two or more credible witnesses,
“ or by his last will and testament, to be signed
“ and published by him in the presence of, and to
“ be attested by, three or more credible witnesses,
“ to grant, limit, or appoint to or to the use of
“ any woman or women with whom he the said
“ Earl of Wycombe shall intermarry or take to
“ wife, for the life or lives of such woman or wo-
“ men, and in full, or in part only, of or in the
“ nature of her or their jointure or jointures, and
“ in bar of her or their dower, to take effect im-
“ mediately after the death of the said Earl of
“ Wycombe, *any annual sum or sums of money, or*
“ *yearly rentcharge or rentcharges, to be tax-free*
“ and without any deduction, and *to be issuing out*
“ *of, and chargeable upon, all or any part of the*
“ *said manors, messuages, farms, lands, tenements,*

“ hereditaments, and premises, hereinbefore men-
 “ tioned, and intended to be hereby granted and
 “ released, *which are situate in the said kingdom of*
 “ *Ireland* (other than and except the said manors,
 “ hereditaments, and premises in the said county
 “ of Kerry, mentioned in the said second schedule
 “ hereunto annexed, or hereunder written), so
 “ that such rentcharge or rentcharges do not,
 “ during the lifetime of the said Marquis of Lans-
 “ downe, exceed in the whole the yearly sum of
 “ two thousand pounds *of lawful money of Great*
 “ *Britain*, and do not, after the decease of the
 “ said Marquis of Lansdowne, exceed in the whole
 “ the yearly sum of *three thousand pounds of*
 “ *lawful money of Great Britain*, and so that
 “ such rentcharges be subject, and without pre-
 “ judice to, the aforesaid term of five hundred
 “ years, and the trusts thereof. And it is hereby
 “ further provided and declared, that in case the
 “ said Earl of Wycombe shall, by virtue of the
 “ power hereinbefore to him reserved, grant, limit,
 “ and appoint to or for the use of any woman or
 “ women with whom he may happen to inter-
 “ marry, any such rentcharge or rentcharges,
 “ annual sum or annual sums, as aforesaid, he the
 “ said Earl of Wycombe shall have full power, by
 “ the same or any other deed, or by his last will,
 “ as aforesaid, to give or grant to such woman or
 “ women, and her and their assigns, the usual
 “ powers and remedies, by distress and entry, for
 “ recovery of such rentcharge and rentcharges
 “ when in arrear, and to limit all or any of the
 “ said manors, messuages, farms, lands, tenements,

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“ hereditaments, and premises, chargeable there-
“ with, to any trustee or trustees for any term or
“ number of years, for the better securing the
“ payment of such rentcharge or rentcharges as
“ aforesaid, as to him the said Earl of Wycombe
“ shall seem meet; so as such term and terms of
“ years, in case any such shall be limited, shall be
“ made defeazable on the full payment of the rent-
“ charge or rentcharges thereby secured, and all
“ arrears thereof, and all costs and charges relat-
“ ing thereto.” *

To this settlement were annexed three sche-
dules, containing the names of the tenements con-
veyed, and of the occupiers, and the rents at
which they were respectively held, valued in Irish
and English currency. This settlement was exe-
cuted in England.

May, 1805.
William Mar-
quis of Lans-
downe died.

William Marquis of Lansdowne died in May,
1805; and upon his death, John Henry, Earl of
Wycombe, became Marquis of Lansdowne, and
succeeded to the family estates under the limita-
tions of the settlement.

John Henry
Marquis of
Lansdowne
married the
Appellant.

20th February,
1809.
His appoint-
ment under
the settlement
of 1794, of

John Henry Marquis of Lansdowne married
the Appellant in his father's lifetime. By a
deed of appointment, bearing date the 20th of
February, 1809, executed by him in the presence
of, and attested by, two witnesses, after reciting
the settlement of 1794, and the power of join-
turing contained therein, and also reciting that he
had resolved to exercise the said power of jointur-
ing, and by virtue thereof to settle upon the Ap-

* The settlement also contained a power for Lord Henry
Petty to charge lands in *England or Ireland*—with, &c.

pellant during her life, if she should happen to survive him, a clear annuity or yearly rentcharge of three thousand pounds English money for her jointure, and in bar of dower and freebench; and to secure the payment thereof, by the means and in the manner therein mentioned: it was witnessed, that the said John Henry Marquis of Lansdowne, in consideration of his love and affection for the Appellant, his wife, and to make a suitable provision for her maintenance and support, if she should happen to survive him, and by virtue and in exercise of the power or authority given or reserved to him by virtue of the said settlement, and of any other power or authority whatsoever vested in, or enabling him in that behalf, did grant, limit, and appoint, that from and after the death of him the said John Henry Marquis of Lansdowne, the Appellant, his wife (in case she should happen to survive him), or her assigns, should and might have, receive, and take, during the term of the natural life of her the said Appellant, and for her jointure, and in lieu, bar, and recompense of her dower and freebench, of and in all or any of the freehold, customary, or copyhold estates of the said John Henry Marquis of Lansdowne, one annuity or yearly rentcharge of *three thousand pounds of lawful money of Great Britain, to be issuing out of, and charged and chargeable upon, all and every the manors, messuages, towns, lands, tenements, and hereditaments whatsoever, which the said John Henry Marquis of Lansdowne had power to charge with a jointure, under, or by vir-*

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3000l. a year,
of lawful mo-
ney of Great
Britain, for
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tue, or in pursuance of the said settlement of 1794 (except such hereditaments contained in the said settlement, if any, as had been sold or exchanged, in execution of the power in that behalf contained in the same settlement): to be payable and paid to the Appellant, or her assigns, at the common dining-hall of Lincoln's Inn, in the county of Middlesex, by four equal quarterly payments, &c. in every year, tax-free, and without any deduction; the first payment thereof to begin and be made on such of those days of payment as should happen next after the death of the said John Henry Marquis of Lansdowne: and also, that in case and so often as the said annual rent or clear yearly sum of 3000*l.* or any quarterly payment thereof, should happen to be behind or unpaid, in part or in all, by the space of fourteen days next after any of the said days of payment whereon the same ought to be paid as aforesaid, then and from time to time, as often as it should so happen, it should and might be lawful to and for the Appellant and her assigns to enter into and distrain upon all and singular the said hereditaments and premises thereby charged with the same yearly rentcharge or sum of 3000*l.* or intended so to be, and every of them, or any part or parts thereof, in like manner as in the case of distress taken for rent, reserved by landlords on common demises for years; to the intent that the Appellant and her assigns might be fully satisfied and paid the same annual rent or clear yearly sum of 3000*l.* and every part thereof so in arrear

and unpaid, and all costs, damages, and expenses attending the taking such distress and distresses, or to be sustained by reason of the non-payment thereof, contrary to the true intent and meaning of the said appointment.

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And for the considerations before expressed, and for the more effectually securing the payment of the jointure, the said John Henry Marquis of Lansdowne, in further exercise and execution of the power given or reserved to him by the settlement of 1794, did, by the deed now stating, grant, limit, and appoint, that all the manors, messuages, towns, farms, lands, tenements, hereditaments, and premises thereinbefore charged with the said annual rent or sum of 3000*l.* or intended so to be, with their and every of their rights, members, and appurtenances, should, from and immediately after the death of him the said Marquis, remain and be (subject nevertheless and charged with the said annual sum or yearly rent, and the said powers and remedies for recovering the same) to the use of Sir Thomas Tyrwhitt Jones and John Dent therein described, their executors, administrators, and assigns, for the term of three hundred years, to commence and be computed from the death of him the said Marquis, upon certain trusts thereby declared, for better securing the payment of the jointure on the days whereon the same was thereinbefore made payable.*

* The appointment also contains the usual power of entry and perception of rents in the event of the jointure being unpaid for twenty-one days.

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The jointure
deed executed
in England,
and all the
parties resi-
dent there.

14th Novem-
ber, 1809.

John Henry
Marquis of
Lansdowne
died without
issue, leaving
the Appellant
his widow.

25th Octóber,
1813.

Appellant filed
her bill in the
Court of
Chancery in
Ireland;

stating that
she had only
received 4350l.
on account of
four years join-
ture;

and that she
had applied to
the Respon-
dent, Henry
Marquis of
Lansdowne
for the arrears,
which he had
declined to
pay.

This deed also was executed in England; and at the time of the execution thereof all the parties interested therein were domiciled and resided in England.

John Henry Marquis of Lansdowne died without issue on the 14th November, 1809, leaving the Appellant his widow; and upon his death Lord Henry Petty, now Marquis of Lansdowne, his half-brother, succeeded to and entered upon and took possession of all the said estates in Ireland, under the settlement of 1794, the net rents of which estates produced about 30,000l. a year.

On the 26th day of October, 1813, the Appellant filed her bill of complaint in the Court of Chancery in Ireland against the said Henry Marquis of Lansdowne, William Earl of Wycombe, his eldest son, the Right Honourable Richard Lord Holland, and Benjamin Vaughan, Esq. Sir Thomas Tyrwhitt Jones, and John Dent, Esq. setting forth the deed of settlement, the appointment, and facts beforementioned, and stating (among other things) that, since the decease of the said John Henry Marquis of Lansdowne, four years of the said jointure of 3000l. had become due to the Appellant under the said deed of appointment of the 20th day of February, 1809; and that all payments which the Appellant had hitherto been able to obtain on account of it amounted only to a sum of 4350l.: and further stating, that the said William Earl of Wycombe was tenant in tail, under the said deed of the 17th of May, 1794; and that the Appellant had frequently requested the said Henry Marquis of

Lansdowne to pay the arrears of her said jointure, which he had declined doing; and that the Appellant had requested the said Sir Thomas Tyrwhitt Jones and John Dent, to raise and pay the arrears of the said annuity: and charging that the said William Marquis of Lansdowne, and the said John Henry, late Marquis of Lansdowne, resided in England at the time of the execution of the said deed of the 17th of May, 1794, and had always resided, and then intended to reside there, and used the words lawful money of Great Britain where they occur in the deed of settlement in their strict technical meaning; and also charging that in and by the same deed, where mention is made of certain lands in the King's County, which were assigned to the then Marquis of Lansdowne, at a valuation made in Ireland, the amount of the said valuation is expressed to be money of Ireland, in contradistinction to money of Great Britain; and it was by the bill submitted, that, if there be any ambiguity on the face of the said deed, the same ought to receive a liberal construction in favour of the Appellant, and of the powers given to the said late Marquis, who was the owner of the said estates; and that the said William Marquis of Lansdowne and the said late Marquis must have contemplated that the widow of the said late Marquis would continue to reside in Great Britain, and therefore have intended that her jointure should be payable there, and should not be chargeable with the costs of remittance or other expenses attending the payment of it in Ireland; and that, had they intended to depart from the usage,

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Prayer of the
bill.

they would have expressed their intention so to do: and therefore praying, that the Appellant might be decreed entitled to the said jointure of three thousand pounds, as money is valued in Great Britain, and to be paid in London, according to the currency of that part of the said United Kingdom called England; and that the jointuring power created by the said deed of the 17th of May, 1794, might be decreed to be well executed by the late John Henry Marquis of Lansdowne, by the said deed of the 20th of February, 1809; and to that end, that it might be referred to one of the Masters of the said Court of Chancery in Ireland, to take an account of what was due to the Appellant upon the foot of her said jointure, of 3000*l.* yearly; and that the said Henry Marquis of Lansdowne might, by the decree of the same Court, be compelled to pay the same to the Appellant, when so ascertained; and that the said Sir Thomas Tyrwhitt Jones and John Dent might be compelled to aid and assist the Appellant in recovery of her just rights, according to such powers as they should have, or to permit the Appellant to proceed in their names, as she should be advised, indemnifying them against all costs; and that a receiver might be appointed to receive the rents, issues, and profits of the lands and premises in the said deed mentioned, or a competent part thereof, for payment of the Appellant's said jointure; and that, if necessary, the lands so subject to the Appellant's said jointure, or a competent part thereof, for the said term, might be sold for payment of the said arrears so due to the

Appellant; and that all necessary parties might join in making out a title to a purchaser.

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The Respondent, Henry Marquis of Lansdowne, by his answer, admitted the marriage of the Appellant with the said John Henry late Marquis of Lansdowne, and the due execution of the settlement of 1794; and he believed that a deed appointing a rentcharge to the Appellant, by the said John Henry late Marquis of Lansdowne in 1809, had been executed in pursuance of the power given him by the said settlement of 1794, and that the same deeds were respectively to the purport stated in the Appellant's bill; and he further admitted, that, on the death of the late Marquis in 1809, he became possessed of the said settled estates, the net profits of which amounted to a considerable sum, and more than sufficient to answer the demand of the Appellant; and that applications had been made to him to pay in British money the charge claimed by the Appellant: and the said Respondent further admitted, that the said Earl of Wycombe, deceased, resided in England when the said deed of 1794 was executed, but denied that he had always resided there.

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The answer of
the Respon-
dent the Mar-
quis of Lans-
downe.

The Respondent, the Earl of Wycombe (the first tenant in tail of the said estates, under the settlement of 1794, expectant on the decease of his father, the said Henry Marquis of Lansdowne), being an infant by his answer submitted his rights to the protection of the Court.

The answer of
the Respon-
dent the Earl
of Wycombe.

The answers having been replied to, and issue being joined in the cause, witnesses were examined on behalf of the Appellant and Re-

Issue joined
and witnesses
examined.

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May 27, 1814.
Order on hear-
ing, under
which the par-
ties were to
obtain the opi-
nion of the
Court of Com-
mon Pleas in
Ireland, whe-
ther the Ap-
pellant's joint-
ure was pay-
able in English
or Irish cur-
rency, and
where.

Michaelmas
Term, 1814.
Case argued.

spondents respectively, to prove the execution of the deeds, out of which the question arises, the marriage of the Appellant, and the domicile of the parties.

The cause came on to be heard before the Lord High Chancellor of Ireland, on the 27th of May, 1814, when his Lordship was pleased to order and direct, "That the cause should stand over, with liberty for the parties to proceed to obtain the opinion of the Court of Common Pleas in Ireland, on the question, whether the annuity or jointure so payable to the Appellant, were payable in English or Irish currency, and where the same was to be paid."

A case was accordingly prepared, and argued before the Court of Common Pleas in Michaelmas Term, 1814; and the judges of the said Court, during the same Term, certified their opinion as follows:

Judges' certi-
ficate that the
jointure was
payable in
Irish currency,
and in Ireland.

"That the jointure of the said Marchioness of Lansdowne, in the said case mentioned, being a rent charged on lands in Ireland, is payable in Irish currency; and that the same is payable in Ireland."

Dec. 8, 1814.
Cause heard on
the judges' cer-
tificate.

The cause came on to be heard before the Lord Chancellor, on the certificate of the judges of the Court of Common Pleas, upon the 8th day of December, 1814, when his Lordship made the following decree:

Decree, that
the jointure
was payable in
Irish currency
in Ireland, and
not elsewhere.

"That, according to the true intent and meaning, and the legal operation of the deed of the 17th of May, 1794, in the pleadings mentioned, the Appellant is entitled to be paid the rent-

“ charge of three thousand pounds per annum;
 “ therein mentioned, according to the currency
 “ of money in Ireland, and not according to the
 “ currency of money in Great Britain, and is en-
 “ titled to be paid the said rentcharge in Ireland,
 “ and not elsewhere; and the Defendant having,
 “ by his answer, offered to pay the same, it was
 “ referred to the Master to take an account of
 “ what was due upon the foot of the said rent-
 “ charge, after all just allowances; and it was fur-
 “ ther ordered, that all parties should abide their
 “ own costs.”

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Against this decree, and the order upon the original hearing, the appeal was brought praying that the House would so far reverse the said decree, as to direct, “ That, according to the true construction of the said deed of the 17th of May, 1794, the Appellant shall be paid her said jointure of *three thousand pounds yearly, according to the currency of money in England,* and not according to the currency of money in Ireland, and that she shall be paid the *same in England.*”

Appeal against
 the decree.

For the Appellant—*The Attorney General and Mr. Heald.*

It is a general rule, supported by many authorities, that money is to be paid according to the currency of, and at the place where, the contract is entered into, unless the parties to the contract specially agree otherwise.

Argument,
 May 3.

In this case the parties to the deed of 17th May, 1794, so far from specially agreeing otherwise, have thereby provided that the annuity shall

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be paid in lawful money of Great Britain, which must mean English currency. That they had their attention directed to the difference between English and Irish currency, appears from some of the provisions of the deed.

The annuity being charged on lands in Ireland, does not alter the rule before stated; if so, the 14th Geo. III. c. 79,* would appear to be unnecessary. Contracts must be interposed according to the law of the place where they are executed.

John Henry Earl of Wycombe was a purchaser under the deed of 1794, for valuable consideration; and such deed is to be construed in the manner most beneficial to him.

The contract in this case, it must be presumed, had a reference to the country where the parties resided, and for that special reason the words "Great Britain" were introduced. The marriage was, in part, in consideration of the power, and the appointment was according to the power. The Court below seems to have considered the single circumstance that it was a rentcharge payable out of lands in Ireland. They disregarded the fact that the parties were resident in England, and

* The act was passed to remove doubts which had arisen from the statute, 12 Anne, St. 2, c. 16, as to the legality of contracts made between parties resident in Great Britain, for monies lent at interest beyond 5 per cent. upon the security of lands, &c. in Ireland and the West Indies and the assignment of such securities. It enacts that such contracts and assignments made and executed in Great Britain shall be as valid as if executed in the place where the lands, &c. lie—provided the money lent does not exceed the value of the lands, &c. mortgaged—and it provides that no penalties under the statute of 12 Anne shall be incurred upon such contracts for interest at the rate established in the country where the mortgaged premises lie.

and gave no effect to the words “ of Great Britain.”

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The Lord Chancellor. Have you the case sent to the Court of Common Pleas in Ireland? If it states no more than the printed cases it was not worth sending. The deed of settlement speaks of sterling English money, and of money of Ireland, showing an advertence to the distinction. Whatever may be the effect of the *lex loci contractus*, or that the money is to be paid, as a rent-charge issuing out of lands, in cases where no provision is made by the deed, or instrument of contract: the rules of law arising out of those circumstances are inapplicable to a case where the instrument itself furnishes the means of interpretation. Upon looking at the various expressions of the deed, the first striking question which occurs is, whether *sterling English* and *lawful money of Great Britain* do not mean the same thing?

Lord Redesdale. The provision with respect to the 22150*l*, and the same for 3696*l*, the surplus of the valued estate is clearly English money. There is one respecting the money payable out of the Buckinghamshire estate, which is not expressed to be either English or Irish.

For the Appellant. The contract may be, and apparently is, for lawful money of Great Britain payable in Ireland. By this construction the distinction taken in *Phipps v. Lord Anglesea* * is

* 5 Vin. Abr. Condition Q. b. 8. v. post, p. 88.

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avoided. The *Lord Chancellor* of Ireland was of opinion that the money ought to be paid in English currency, but thought himself bound by the certificate of the judges of the Common Pleas. No one of the sums to be paid under the settlement were of Irish currency. The only passage, in which the expression occurs, is in the valuation of lands, where nothing is expressed as to currency. In the provisions for younger children, and power to jointure wives resident in England, it is to be implied that the parties meant English money. In the absence of special provision, it might as well be argued, that the English money lent in England, upon the mortgage to M. is to be repaid in Irish currency. What will be said of the power to Lord H. Petty, which extends over English as well as Irish estates. That cannot be construed to mean Irish currency, and how lawful money of Great Britain can be so construed is difficult to conceive.

Lord Redesdale. There is no lawful money of Ireland; it is merely conventional. There is neither gold nor silver coin of legal currency—nothing but copper.

For the Appellant. The valuation of the lands having been made in Irish currency by Irish surveyors, was afterwards, for the purposes of the settlement, calculated in English currency: that fact appears by the deed itself.

For the Respondents—*Mr. Horne* and *Mr. Abercrombie*.

The question turns entirely on the power.

Lord Redesdale. What is the difference between lawful money of Great Britain and sterling money? In the statute,* under which the Lord Chancellor receives his salary, the amount is fixed in English money, which is called sterling: that amount is afterwards computed and expressed to be 10,833*l.* 6*s.* 8*d.* Irish currency. There is no such thing as Irish money; it is Irish currency.

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For the Respondents. No distinction is to be taken between lawful money and sterling money. In the case of *Phipps v. Lord Anglesea*, the clause, providing the jointure for the wife, directed† that the payment should be *without abatement*, which words are omitted in the provision‡ as to portions for the daughters; and that part of the case was decided upon the ground that it was to be considered as a sum in gross, and not as a rent *issuing out of the lands.*§

The question is not always decided by the place of contract. In *Robinson v. Bland*,|| where the question was upon a bill of exchange, a contract

* 42 Geo. III. c. 105, s. 1.

† This appears only by allegation, *arguendo*, of the counsel for the Defendants, in the case cited, who represent it to be “a rent to be paid at London without any deduction for exchange.”—See 5 Vin. Abr. 209.

‡ The portions for the daughters were to be raised by a term vested in trustees for that purpose.

§ But Parker, C. who decided the case, commences his judgment, by saying, “the portion ought to be paid here where the contract was made and the parties resided, and not in Ireland where the lands lie charged with the payment;” and he relies upon the intention of the parties.

|| 2 Burr. Rep. 1077.

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of a transitory nature, the judges held, that it was demandable only in England, because the parties had a view to payment in England. In this case, it appears, from the very circumstance of limiting the power of charging to lands in Ireland, that the parties had a view to payment in Ireland, although they were resident in England. In *Wallis v. Brightwell*,* the testator demised his lands in Ireland to a trustee for a term of years, in trust, to pay to his wife, during her life, 80*l.* a year out of the rents. A trust, to pay a sum out of rents, is materially different from a charge upon lands; and in that case there was, moreover, the specialty noticed in the judgment, that the testator, upon leases of part of his Irish estates, had reserved rent to be paid in London tax-free, which was just sufficient to pay the annuities given by his will. In *Saunders v. Drake*,† the testator residing in Jamaica at the date of his will, but having friends in England as well as Jamaica, gave some legacies to be paid in sterling money; others he gave generally; and *Lord Hardwicke* decided that the general legacy was payable in the currency of Jamaica. No place of payment being specified in the deed giving the power, the default, if made, and the consequent remedy, could only be in Ireland. They might (and if that had been the intention, would) have provided that the money should be payable in England: not having done so, the case is left to the general operation of the law.

* 2 P. W. 88.

† 2 Atk. 465.

By the general rule of law,* an annual sum chargeable on lands is payable on the land, and in this respect differs from a sum in gross secured on land which is payable to the person, where no place of payment is expressly appointed. In this case the legal effect of the contract is, that the money which the parties to the deed had power to charge upon lands situate in Ireland only, is payable in Ireland, and in Ireland only. There is no personal obligation to pay, nor personal remedy to enforce payment; the power is to charge certain lands, situate in Ireland, with a rentcharge. The whole subject-matter is local by the very nature of the contract. The grantee of a rentcharge (and the appointee of a rentcharge is as such grantee) is to demand it where he can find his remedy; that is to say, upon the land.† It was argued for the Appellant, that the rule of law is, that contracts are to be judged according to the law of the country where such contracts were made, and that this deed, having been executed in England, was to be construed accordingly; but that rule extends only to personal contracts, and is confined to contracts to be performed within the country where they were made. It is a rule as general and recognised,‡ that contracts entered into with an express view to the law of another country, and to be performed in another country, are to be judged of according to the law of that

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* Co. Lit. 210 (b.) 211 (a.)

† Gilb. on Rents, 8vo. Irish edition.

‡ Or an exception to the general rule before stated.

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country wherein they are to be performed. *Consuetudo, et statuta loci in quem est destinata solutio respicienda sunt.** In this sort of contract the parties contracting to settle or limit lands in England and Ireland, and giving the power in question to charge lands in Ireland only, must be implied to have contracted with a view to the law of that country where the lands lie, and upon which the contract was to be performed, and their contract ought to be construed accordingly. Such was the rule according to the civil law. “*Verum tamen non ita præcise respiciendus est locus in quo contractus est initus, ut si partes alium in contrahendo locum respexerint, ille non potius sit considerandus. Nam contraxisse unusquisque in eo loco intelligitur in quo ut solveret se obligavit.*” †—*Lord Mansfield* adopts the same distinction in *Robinson v. Bland*. ‡ In delivering his judgment, he says, “The parties had a view to the laws of England. The law of the place can never be the rule where the transaction is entered into with an express view to the law of another country, as the rule by which it is to be governed;” and in reasoning on the

* Sir John Davies’ Reports, Case of mixed money, in the last resolution near the end. The passage quoted is from Budelius de re Nummaria, l. 2, c. 21, and it is there applied to contracts between merchants.

† Hub. lib. i. tit. 3, n. 10. The passage quoted occurs in the title “De conflictu Legum,” and is specially applied in that place to the subject of marriage contracts. Its general application seems to be borne out by the authority of the last resolution in the “Case of mixed moneys.”

‡ 2 Burr. 1078.

circumstances in that case, he observes, “ Now
 “ here the payment is to be in England: it is an
 “ English security, and so intended by the par-
 “ ties,” and adopts the reasoning of counsel—
 “ That Sir John Bland could never be called upon
 “ abroad for payment of this bill, till there had
 “ been a wilful default of payment in England.
 “ The bill was drawn by Sir John Bland, being in
 “ Paris, *upon himself in England*, payable ten days
 “ after sight.” So in *Sir John Champant v. Lord*
Ranelagh.* “ A bond made in England was sent
 “ over to my Lord’s correspondent in Ireland, *and*
 “ *the money to be paid there*, and it was not men-
 “ tioned what interest should be paid, and the Lord
 “ Keeper was of opinion that it should carry *Irish*
 “ interest.” Upon a careful review of all the
 cases, it will be found that whenever the law of
 the place of contract has been allowed to influence
 the construction of the instrument, there was no-
 thing local in the terms of the contract as to its
 performance.

As to the argument raised upon the words
 “ lawful money of Great Britain.” British money
 is current in England; so is it current in Ire-
 land; but not at the same rate. The same con-
 stitutional prerogative, which stamps its cur-
 rency in England at one rate, ascertains its cur-
 rency in Ireland also at another rate. Money,
 by the law of Ireland, ought not to be current
 at one rate, and payable at a different rate,
 respecting a contract to be there performed.
 That mixed money, does not import English

* Prec. Chan. 128.

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currency, appears from “The case of mixed money;” * which has established the construction uniformly since given to these words in Ireland, as not denoting money according to *English currency*, but merely money of *English coinage*. In Ireland these words have a definite meaning.

In granting a power to create a rentcharge to a given amount, the parties cannot well be implied to have intended that a greater rentcharge might be created under the words used, than could be levied by distress on the lands, according to the law of the country where the lands lie; and it is clear law in Ireland, that under a distress and avowry for a rentcharge of 3000*l.* lawful money of Great Britain, no more could be levied than 3000*l.* of Irish currency, although the party might insist upon payment in money of *the coinage of England*. The common printed forms of bonds and other instruments used in Ireland are in these terms; and yet it never has been attempted to recover upon these instruments according to *English currency*; so well ascertained is the meaning of the words “lawful money of England.” In truth, a different decision on these words would operate to improve considerably the situation of all obligees in Ireland, and to injure that of obligors, who have in all cases signed bonds for payment of lawful

* Davies’ Rep. *qua supra*. The case of “mixed moneys” is more favourable to the Respondent’s argument than it is here represented. For, upon a contract to pay 100*l. sterling*, lawful money of *England*, it was held in the Privy Council, upon the opinion of the judges, that a tender of mixed moneys was sufficient.—See a short abstract of that case in a note at the end of this case.

money of Great Britain, upon the general understanding and hitherto received legal construction, that these words did not import the currency, but the coinage of the money.

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This annuity being charged on Irish land, it must be intended to be Irish money; it could only be recovered by process in Ireland.

These parties certainly understood, and took the distinction between English and Irish money, as appears by the recital of the valuation of part of the lands; but in the clause in question the language is varied. The jointure is limited to 3000*l.* *lawful money of Great Britain*; but there is no direct power to charge the estate with lawful money of Great Britain. The power is merely to charge; and the words tax-free, and without deduction, relate to the taxes of Ireland.

The Attorney General in reply. The attention of the parties having been called to the distinction, as appears by the valuation, what could they mean, by using the words lawful money of Great Britain, but to distinguish it from Irish currency?

The Lord Chancellor. How would they deal with a recital, that a man having advanced 12,000*l.* sterling, it is provided that he shall receive 12,000*l.*? Would they contend he must receive so much less?

The Attorney General. That is precisely the case upon the mortgage to Munday, which is for 30,000*l.* This is no question between landlord and tenant upon a distress for rent. If the power had been to charge dollars, no objection could be raised on the part of the tenant. Is the power given? That is the sole question.

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The Lord Chancellor. The power is clearly to charge an annuity of 3000*l.* lawful money of Great Britain. If the donee had exceeded the power, the appointment would have been void at law—in equity it might have been good except for the excess. But what has a court of law to do with that question?

The Attorney General. It was not argued in Ireland that the appointment exceeded the power, which must have been the case if their construction is right.

*The Lord Chancellor.** It is difficult to imagine how this case found its way into a court of equity, except on the ground of calling upon the trustees to act. If the Appellant is entitled, as grantee of a rentcharge, she might have proceeded to enforce her legal remedy by distress. It is stated that the Lord Chancellor of Ireland, after the return of the certificate from the Common Pleas, retained an opinion contrary to that certificate, but made the decree according to it, from deference to the judges of the Common Pleas. In that surely there must be some mistake. For, although it is highly useful in legal questions to resort to the assistance of the courts of law, yet it must be well known to those experienced in the practice of courts of equity, that they are not bound to adopt the opinion of the courts of law to which they send for advice. It has occurred to me to send the same case successively to the Courts of King's Bench and Common Pleas, and not to adopt the opinion (though highly to be respected) of either of those courts.

* At the conclusion of the reply.

If this were the case of a simple charge of 3000*l.* on lands in Ireland, the place of contract, the domicile of the parties, the place appointed for payment, and other circumstances, might require consideration, and would furnish the ground for the decision of the case: but the instrument itself must, in this case, give the rule of decision,—a settlement making various arrangements, some like to the provision in question, others different from it. It was impossible that the Court of Common Pleas should have given a satisfactory opinion upon the question, if the case was sent nakedly to them without a statement of the deed. It will be proper that we should carefully inspect every part of the deed before we decide whether the judgment ought to be affirmed or reversed.

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The Lord Chancellor. This is a question, whe- May 5.
 ther, under an instrument purporting to be an appointment, according to a power, of an annuity of lawful money of Great Britain, the sum is to be paid in lawful money of England, at the rate of English or of Irish currency.

Before I state the instrument containing the power, I ought to observe, that, upon looking at the settlement, I perceive it was expedient and proper to raise this question in equity; because, by the deed of settlement, various terms of years were created for various purposes, and the remedy in a court of law might have been defeated, if those terms had been set up to obstruct such proceeding.

The Lord Chancellor of Ireland, it is said, was of opinion that the annuity was payable in English currency; but thought fit, nevertheless, to direct a case for the opinion of the Court of Common

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Pleas, in which the question raised, was, whether the annuity or jointure was payable to the Appellant in English or Irish currency, and where payable. The Court, whose opinion was desired, certified, that the jointure being a rentcharge upon lands in Ireland was payable in Ireland, and in Irish currency. The reason for this opinion is to be collected only from the certificate, namely, that it is a charge upon lands in Ireland. We are not informed of any other reason. If that were the simple case, the matter is clear according to settled principles of law. But in this case the question is to be decided by the intention expressed in the deed of settlement. The meaning is to be collected from the words immediately applicable to the point, from the context, and from *all parts of the settlement*.

This is a power to charge the lands with a jointure of "lawful money of Great Britain." The appointment is made according to the authority, and in the words of the power. The question is whether these words can be said to mean Irish currency. In the naked case of a charge upon lands the law is clear and settled; but upon wills and instruments of marriage contract all the cases cited authorise a distinction. In such cases the intention of the person making the will, and of the parties to the contract, is to be collected from the different parts of the instrument. The case of *Phipps v. Earl of Anglesea* is to be found in three books,* but is most fully reported in Viner's Abridgment.

* 5 Vin. Abr. 209, part 8. 2 Eq. Ca. Abr. 220, part 1, 754, part 3. 1 P. W. 696.

According to that report, by a settlement made upon the marriage of the Earl of Anglesea with the daughter of the Countess of Dorchester, a term of five hundred years was created in trust to raise 12,000*l.* for the portions of daughters. The parties to the settlement resided in England, and upon a bill filed in Chancery by a daughter, the sole issue of the marriage, and her husband, to have the portion, with the rest of her fortune settled, the first point raised in Court, was whether the 12,000*l.* portion charged by means of the term of years upon lands in Ireland should be paid in England without any abatement or deduction for the exchange from Ireland to England. After hearing arguments, which, in many respects, were similar to those urged in the present case, the Chancellor of that day was of opinion that the portion ought to be paid where the contract was made and the parties resided, and not in Ireland where the lands lay charged with the payment, for that it was a sum in gross, and not a rent issuing out of land; that it was certainly the intention of the parties that the portion should be paid in England, and not to send the young lady into Ireland to get her portion. In that case, as the facts are stated in the report, it was a question simply upon a charge of a sum of money for a portion upon estates in Ireland, there were no such words as *sterling*, or, as in this case, *lawful money of Great Britain*.*

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* It is singular, that, although (in Viner's Report) nothing appears in the statement of the facts of the case, nor in the report of the judgment, of any specification as to the kind of money to be paid, but simply that 12,000*l.* is to be raised; yet,

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It is true, that, in *Phipps v. Lord Anglesea*, the distinction is taken in the judgment which was urged in this case at the bar, that there it was a sum in gross, and not a rent issuing out of land: but that seems to be in answer to that part of the argument in that case, which is founded on the different expressions of the settlement as to the jointure of the wife, and the portions of the daughters. As to the former, which is by name a rentcharge, it is provided that it shall be paid in London *without deduction for the exchange*; whereas, in the declaration of the trust of the term created for raising the portion these words are omitted, and it is only said in trust to raise 12,000*l.* Upon this point of the argument the Court seems to have been of opinion, that, in the case of a rentcharge, the addition of such words might be necessary; but that the question as to a sum in gross, (which the portion in that case was considered to be) was to be decided on circumstances, and accordingly the decision rests, in substance, upon the domicile and the presumed intention of parties resident in England, that a portion secured for a daughter should be, paid to her in England. That case decides nothing which can rule the present case; and although it may be inferred from that case that the Court thought, that, in the simple case of a rent charged upon lands in Ireland, it would be payable in Ireland, and in Irish currency, yet nothing in the argument for the defendant, where the language of the settlement is discussed, and the provisions as to the jointure and the portions are contrasted, this passage occurs: "*It is only said*" (as to the term for raising the portions) in trust to raise and pay "out of the premises the sum of 12,000*l. of good and lawful*" "*money of England, &c.*"

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is to be concluded from the case as to what the judgment would have been in the case of a rent-charge of lawful money of Great Britain.

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The case of *Saunders v. Drake*,* shows, that whatever the rule may be in the simple case of a rent-charge,—in a devise the construction must be according to the intention. In that case the testator being domiciled, and, making his will in Jamaica, gave, in the first place, certain legacies to be paid in *sterling money*, and immediately after two legacies are given by the will, without any direction that they should be paid in sterling money. The person who claimed one of the latter legacies filed a bill claiming payment of his legacy in English currency. *Lord Hardwicke*, in that case, was of opinion, that the residence of the person devising must decide the question as to the legacies given generally; but where directed to be paid in sterling money, they ought to be paid in the currency of England, although the testator resided in Jamaica. So, if the question now before us had occurred upon an Irish will, the rule established in *Saunders v. Drake* would authorise our deciding that a legacy, given in the words contained in this power, must be paid in the lawful money of Great Britain, that is, in the currency of England.

In *Wallis v. Brightwell*,† again, it appears, that intention is to furnish the rule of decision. There the testator living with his wife in England, by his will, made in England, devised his lands in Ireland to a trustee for five hundred years in trust, out of the rents and profits to pay 80*l. per annum* to his wife for life. It was argued, in that case,

* 2 Atk. 465.

† 1 P. W. 88.

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that no place being appointed for payment, and the fund being in Ireland, the annuity ought to be paid in Irish currency, or subject to the charge of remittance; but the *Lord Chancellor* decided, that the will being made in England, where all the parties to the contract resided, and this being a provision for a wife, it should be intended that the provision was estimated in the money of the country where the will was made. He added, that if one, by will made in England, gives a legacy of 80*l.* it must be intended of English money, and it will be the same thing though charged on lands in Ireland. In that case, although the words are simply to pay out of rents, &c. 80*l.* the intent presumed from domicile and other circumstances prevailed. Must we not, *à fortiori*, where the words are to grant a rentcharge of 3000*l.* lawful "*money of Great Britain*," presume a similar intent under similar circumstances?

So again, in *Pearson v. Garnett*,* *Lord Kenyon* said, he was tied down by the authorities; and held that unascertained or general legacies must be paid in the currency of the country where the will is made.

If this be the rule of law in the case of a legacy, where the party must claim under the voluntary benefaction of the testator, will it not, *à fortiori*, apply to a case where the party is a purchaser? In this case, it must be remembered, the appointment, under a power given by contract, is of a sum of 3000*l.* a year, lawful money of Great Britain; and such sum must be paid in such lawful money, unless the instrument of contract, in

* 2 Bro. C. C. 38, 46, 226, Prec. in Chanc. 201, n.

all its other parts, manifests a clear intention to the contrary. Now, without going through the provisions of the settlement, it is enough to say, there is not a page of it in which it does not appear that the annuity to be charged is payable in lawful money of Great Britain.

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True, it is a rentcharge, but upon that the only question will be what is the quantum of the rentcharge? How it is reserved is immaterial, whether in guineas, sovereigns, or dollars. It need not be in money at all. If it had been in loaves or oatcakes, the principle of decision would have been the same. There are throughout the settlement charges on English as well as Irish estates. Can it be said, as to any of these charges, that a different sum is to be paid to the person entitled, according to the site of the estates out of which the money is drawn? In those instances, where Irish estates only are charged, the situation and conduct of the parties, and the language of the instrument of contract, show that they meant English currency. In the schedule annexed to the settlement, the Irish estates are valued according to Irish currency, and then it is reduced to English. If the parties have, in the schedule, recognised the distinction, and shown an intention to compute in English currency, how can I understand that they make no distinction, or have a different meaning in the body of the deed? Even in the body of the deed the distinction is taken and acted upon with respect to the compensation given to the Marquis of Lansdown.

The question, looking at the whole deed, is whether the power is duly exercised by granting a

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rentcharge of 3000*l.* of lawful money of Great Britain. If the power gave him authority to do so it is sufficient.

It is said to be the practice in Ireland, (but I never heard of a decision to the effect,) that a bond given for 3000*l.* lawful money of Great Britain could be discharged by paying 3000*l.* of Irish currency.

In this case the decision must be grounded upon the construction of the instrument before us.

There is a point remaining to be noticed, which did not form part of the argument at the bar of the House, although it is included in the certificate, and adopted by the Court of Chancery; namely, the question, whether the annuity is to be paid in England or in Ireland. Upon this, it is to be observed, that the power is to charge Irish lands with so much lawful money of Great Britain. It is not, however, such a power, that it is necessarily to be inferred that the money must be paid in England. The appointment directs it to be paid in Lincoln's Inn Hall; but we can only decide that the power is well executed, so far as it charges on the lands a sum of 3000*l.* lawful money of Great Britain. As to the cost of exchange, the appointee may be liable to that deduction. I found my opinion upon the short reason, that, by the appointment, 3000*l.* of lawful money of Great Britain is given according to the power, and that such a provision, from the expressions and the whole frame of the contract, seems to have been contemplated by the parties.

Lord Redesdale. There is no doubt, that, according to the intention of the parties, and the legal operation of the appointment made under

the power, this rentcharge is to be paid in lawful money of Great Britain, and at the rate of English currency.

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No part of the deed of settlement furnishes a ground to infer that the money to be charged should be paid in Irish currency. As to exchange the case is different. The currency is always the same: the rate of exchange depends on circumstances, which may cause a gain or loss upon payment in either country. If the proceeding had been by distress, a tender of 3000 sovereigns would have put an end to the distress, and the tender must have been where the proceedings took place. The right of demand and payment was certainly in Ireland. In that part of the appointment, which directs payment in Lincoln's Inn Hall, the donee has exceeded his power. The proceeding in equity, and not by distress, was necessary in this case, because the term of five hundred years might have been interposed and defeated the distress; but a court of equity could only decree payment of the sum charged into court, or to the individual, suing by his agent, in lawful money of Great Britain. The court could not decree that 3000 sovereigns should be sent to the claimant in England. There is, therefore, no doubt that the money is payable in Ireland. The question then is, whether the money is payable in Irish currency which is not expressed, or in lawful money of Great Britain which is expressed in the deed? In all cases of a similar description upon legacies, where the word "sterling," or some word equivalent has been used, the money has been held payable in English cur-

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rency, even although the testator was resident out of England. In some particular cases * it has been inferred, from circumstances, that the money was payable not only in English currency but also in England: but there is no ground for such inference here. The decree itself drops the words “lawful money of Great Britain,” which was a necessary omission to make it consistent. To have said that 3000*l.* of lawful money of Great Britain should be paid in the same sum of lawful currency of Ireland, would have been contradictory, for the one would exceed the other by eight and a half *per cent.*

The decree orders that all parties shall abide their own costs, which is contrary to the provision of the deed; but no alteration can be made here in that respect, as it is not made the subject of appeal.

Lord Lauderdale. If lawful money of England is paid in Dublin, the only deduction to be incurred would be the price of the purchase of a bill, or the cost of conveyance. There is a great difference between paying a sum in English money in Dublin, and paying the same sum in Dublin, according to the difference of exchange, in which the value of the Irish currency is computed.

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The Lord Chancellor. Upon looking at the cases, it appears that the appeal extends to the question of costs; and as the term given, according to the power to secure the annuity, provides for the payment of all “costs and charges relating thereto,” we think the reversal ought to be with costs. As to the other points it will be sufficient to reverse the decree on further directions. The reference to

* *Phipps v. Lord Anglesea, Wallis v. Brightwell, qua supra.*

the Court of Common Pleas was according to the course of a court of equity, and ought not to be impeached.

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Lord Redesdale. Care should be taken, in framing the cases, to show what are the points of appeal. No one could have imagined, from reading these printed cases, that the reference to the Common Pleas was a ground of appeal.

July 3, 1820.—Ordered and adjudged, that the decree of the 8th of December, 1814, so far as it orders, adjudges, and declares, that according to the true intent and meaning, and the legal operation of the deed of the 17th of May, 1794, in the pleadings mentioned, the Appellant, is, and she was thereby decreed, intitled to be paid the rent charge of 3,000*l.* per annum therein mentioned, according to the currency of money in Ireland, and not according to the currency of money in Great Britain, and so far as it orders, adjudges and decrees that, the Respondent having offered to pay the said rent charge accordingly, it should be referred to one of the masters of the said court of chancery, to take an account of what is due on the foot of the said rent charge after all just allowances, and that all parties should abide their own costs; be and the same decree is hereby so far reversed. And it is declared, that according to the true intent and meaning, and the legal operation of the said deed of the 17th of May, 1794, the rent charge therein mentioned, of 3,000*l.* of lawful money of Great Britain, is to be deemed a rent charge of 3,000*l.*, according to the currency of money in Ireland, and that according to the express words of the said deed of the 17th of May, 1794, the term of years thereby authorised to be created for better securing the payment of such rent charge, was to be made defeasible only on full payment of such rent charge, and all arrears thereof, and all costs and charges relating thereto: and it is further ordered and adjudged, that the Appellant is entitled under the deed of the 20th of February, 1809, to an annuity, or yearly rent charge of 3,000*l.* of lawful money of Great Britain, to be issuing out of and chargeable on the lands in the said deed mentioned, and to all costs and charges sustained by non-payment thereof, and the Respondent having offered to pay the said rent charge as a rent charge of 3,000*l.* according to the currency of money in Ireland, and not as a rent charge of 3,000*l.* of lawful money of Great

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Britain, it is further ordered, that it be referred to the master to whom the said cause stands referred, to take an account of what is due to the Appellant, on the foot of the said rent charge, as a rent charge of 3,000*l.* of lawful money of Great Britain, after all just allowances, and of all costs and charges sustained by non-payment thereof, and particularly so much of the costs of this suit as have been occasioned by non-payment of the said rent charge: And it is further ordered and adjudged, that so much of the said decree as declares that the Appellant is entitled to be paid the rent charge to which she is entitled, in Ireland, and not elsewhere, be affirmed, and that as to so much of the costs of this suit as have been occasioned by her claim to be paid the said rent charge in England, the parties do bear their own costs.

In the case of mixed monies, as reported by Sir John Davies, the contract was by bond, upon condition to pay at a future day 100*l. sterling*, current and lawful money of *England*, at the tomb of Earl Strongbow, in Christ Church, Dublin. The bond was executed in April, 43^o Eliz. upon a purchase of wares, by a merchant of Drogheda, from one Gilbert, of London, and at a time when *the pure coin of England* was current in Ireland. Before the day of payment specified in the bond, Queen Elizabeth, in order to pay the troops of the royal army which had been many years employed in Ireland, in the suppression of Tyrone's rebellion, caused a great quantity of mixed monies, with the stamp of the Arms of the Crown, and the inscription of her Royal style, to be coined in the Tower of London, and transmitted to Ireland, and a proclamation was issued, bearing date the 24th of May, 43^o Eliz. declaring those mixed monies to be lawful and current money in *the realm of Ireland*, and commanding all her subjects and others using traffic and commerce *in that kingdom* to receive those monies in payment of debts, &c. Brett, the obligor, tendered the mixed monies in payment, and whether the tender was sufficient to save the forfeiture of the bond, was the question, which was brought before the *privy council*, where Gilbert, being a merchant of London, exhibited a petition against Brett, for the speedy recovery of his debt. Upon advice of the judges, the council resolved that the tender was sufficient.

See 1 Eq. Ca. C. 36 (E). Under that title, pl. 2. the correctness of the Report in 2 Vernon 395, of the case of Lord Ranelagh v. Sir J. Champant, is doubted, and in Prec. in Ch. 108, where the same case is reported; it is said that Irish interest was allowed. See the Authorities on this head, collected in Mr. Raithby's Edition of Vernon, ii. 395.