

land, to the trustees of the legacy, and paid by them; fifth, because no allowance is made for the loss upon that portion of the legacy invested by William Dawson, in the stock of the City Bank of Baltimore; but his estate is charged with the whole sum so invested; sixth, because no credit is given for the amount of the legacy loaned to Mrs. Clerklee; seventh, because said report and accounts are in many other particulars erroneous and not warranted by the proof and proceedings in the case.

BLAND, C., 26th January, 1830.—This case standing ready for final hearing, and having been submitted, without argument, the proceedings were read and considered.

On reviewing the order of the 14th of April last, and considering the proofs taken under it, as reported by the auditor with his statements, it appears, that a question has arisen, which was not at all contemplated by the reasoning and explanations with which the case was sent to the auditor.

The late trustee William Dawson, in his letter of the 9th of July, 1818, speaking of the sale of the British stocks, in which the legacy had been invested, says, “that by the advance in the price of the funds, and some interest since the death of Major Clerk, the amount paid to my banker, is £2,406 14s. 2d. sterling.” When this case was last under consideration, there was no proof by which the allusion of this expression, “and some interest, since the death of Major Clerk,” could be shewn to apply to any other than the dividends arising from the investment made by the trustees; and which belonging to Margaret R. Clerklee, as tenant for life of the legacy, could not be awarded to those of her children who were parties to this suit. I therefore directed the amount of such interest to be ascertained by proof, to be laid before the auditor; and that the defendant Eleanor Dawson should be charged with the principal of the amount for which the British stock sold; intending thereby to exclude from the sum to be divided among these legatees \* in remainder all interest or dividends received by  
**297** the trustees from the investment, and to which Margaret R. Clerklee had become entitled.

But it now appears by an account between the late trustees and their agent, reported by the auditor as part of the proofs laid before him, that a large amount of interest on the legacy of £1,500 had accumulated in the hands of the executors of the testatrix Ann Russell, which had been paid by them, with the principal, to the trustees who had invested the whole accordingly as capital, after deducting the costs and charges of the transaction. These additional facts give rise to the objection, that the interest, which accrued upon the legacy from the death of the testatrix to the time of the investment, belonged exclusively to Margaret R. Clerklee the tenant for life; and, not being a part of the capital, directed