

2 Ves. 471; *De Tastet v. Rucker*, 4 Exch. Rep. 156; on which costs, as a separate claim, no interest would be allowed. 14 Vin. Abr.

are used. It is not, "I give Alexander one-half of my estate on condition, that he lays out the sum of — in the complete education and maintenance of his brother, at some approved school," or, "I will, that the part of my estate devised to Alexander be charged with the expense of providing a good education to his brother, and likewise completely maintaining him at some approved school." No! it is, "my will and desire is, that my son Alexander do, out of his part of the estate, expend so much money as will be sufficient to give my son John Alexander a good education." It is apparent, from the whole will, setting aside this disputed part, that the testator contemplated perfect equality between his two sons; except, that he gave Alexander, the eldest, choice of two equal parts, and makes him executor: which is just what was reasonable, &c. Now, by changing the disposition of the words, and putting "out of his part of the estate," at the end of the clause, it stands perfectly consistent with that intended equality; and it is well observed by the counsel, that transpositions are frequently made for the purpose of supporting a rational construction of the whole. It may be observed, that there are few men, who, in speaking or writing, do not express themselves in such a manner that, if you understand them according to the strict rules of grammar, you make them speak contrary to their intention.

It is alleged, without proof, that Alexander was burthened with the education of his brother on account of his, the said Alexander's, having already received a good education; and that by so charging him, equality was preserved. But it is not so. In such a case, the eldest son would be educated at the charge of the whole estate, and the younger at the charge of the elder's part. For illustration, suppose the whole estate to be £4,000; and that £500 had been expended in educating Alexander more than had been expended on John. To make them equal, it ought to be directed that £500 shall be expended on John, and the residue divided between them. In that case, they will have been educated at equal expense, and the share of each will be £1,750. But, according to the construction contended for, they will have been educated at equal expense, and John will get £500 more than his brother; that is, they each share £2,000 out of the £4,000. John has his part clear; but £500 is taken from Alexander to educate and maintain John. When the contemplation of equality is so apparent; when an easy, obvious transposition will support that equality; and when, without the transposition, such inequality takes place, it is impossible to admit the claimant's construction of the will. "My will and desire is, that my son Alexander, out of his part of the estate, shall expend so much money," &c., as already has been observed, is strange language to constitute a charge on Alexander's part. "My will and desire," are words very significant: "to expend so much money," are equally so. In short, the meaning of the whole clause was: that Alexander, the executor, should be authorized to lay out as much of John's part of the personal estate as would suffice to give him a liberal education. Without this provision in the will, John's education might be defective. The guardian, whom he might choose, or who might be appointed, without the provision, might not think proper to expend so much money as might suffice; particularly, if the annual profits should not correspond with the profits in the cause, or might happen, in some years, to fall short.

In addition to all this: supposing us compelled to take his for Alexander's, it may be asked whether good education must comprehend maintenance: or