$323.75. And in addition to the said balance, the said John Shipley, as next friend, claims to be re-imbursed his legal costs of suit, and also, the sum of $40 as an additional fee to his solicitor, which was in the opinion of the auditor a reasonable fee.

The plaintiff, Larkin Shipley, excepted to the account of the trustee Stockett, designated by the auditor as the second account. And also to the auditor's account, filed on the 15th of November, 1827, in the case of Jones and wife, which by the interlocutory decree of the 5th of November, had been consolidated with this case. 1. Because, in the account filed on the 15th of November, 1827, the expenditures and commissions of the said Stockett, were allowed out of the principal sums received by him; whereas, they ought, to have been allowed out of the interest due on his mortgage annually. 2. Because, in the second account, filed on the 4th December, Stockett was charged with simple interest on his mortgage; whereas, the interest being payable annually, ought to have been paid in the discharge of the annuity due to Jones and wife; or, otherwise laid out for the benefit of the estate, which not having been done, compound interest ought to be charged.

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BLAND, C., 28th January, 1830.—This case, as consolidated, standing ready for hearing, and having been submitted on the notes of the solicitors of the parties, the proceedings were read and considered.

The original plaintiffs, Jones and wife, seem to have taken some very erroneous views of their case, which it may be well here to notice, lest improper inferences should otherwise be deduced from them. They have roundly affirmed, that they alone were interested in the investment of this legacy of $7,000.

This positive and comprehensive allegation, to say the least of it, could only have proceeded from inattention to the express language of the will under which they claim; by which, it unequivocally appears, that although the testator says, I give to my niece Ann Shipley, the sum of $7,000; yet he does so, upon the express condition, that no more than "the annual interest thereof, shall be paid to her yearly during her natural life." By which the testator, in this peculiar and mixed disposition of that amount of his estate, in effect, gave her nothing more than a legacy in nature of an annuity, constituted of only such profits as might be safely derived from $7,000 so disposed of. *Franks* v. *Noble*, 12 *Ves.* 490. And consequently the plaintiff Samuel Jones, became entitled only in right of his wife, to that indefinite annuity, during her life. But the testator directs, that, after her death, the $7,000 shall go to her lawful issue; and therefore, her children by Jones and by any other husband stand alike and next in remainder; and on her leaving no lawful issue, to go over to others. Therefore, so far