

passes to the tenant for life but the ordinary and proper dividends of such stock. (*w*)

It is clear, from the proofs, now adduced, that the trustees themselves, with the knowledge and acquiescence of *Margaret R. Clerklee*, the tenant for life, considered those accumulations of the legacy, which they received from the executors, as a part of its capital; and actually invested them, as such, for the benefit of all, as well for the tenant for life, as for those in remainder; and that the late trustee *William Dawson*, by the expression, 'some interest since the death of Major *Clerk*,' had no allusion whatever to any dividends to which *Margaret R. Clerklee*, the tenant for life, was exclusively entitled; but to certain accumulations of interest which had been received from the executors, and which had been invested as a part of the capital of the legacy itself. And from the whole of the proofs, it is now clear, that *Margaret R. Clerklee*, the late tenant for life, must have received all the interest or dividends to which she was in any manner entitled; and that she had received from those trustees no dividends or interest which had not then come to their hands for her use, and which they ought now to be allowed to retain. And consequently, that the sum which the late trustee *William Dawson*, specifies as the amount of the proceeds of the sale of the stock is formed altogether of that in which the capital of the legacy itself had been regularly invested; and for the whole amount of which his representative, the defendant *Eleanor Dawson*, is chargeable.

It is objected, by one of the exceptions of the defendant *Eleanor Dawson*, that if she was liable for interest at all, it could only be from the death of *Margaret R. Clerklee*, which happened on the 23d of November, 1818, and not on the 15th of October of that year. The only proof in relation to the time of the death of *Margaret R. Clerklee*, is that she died in the fall of the year 1818. The long established rule of the court, in this respect, is, that where it becomes necessary to determine the price or value of any thing, and the witnesses differ, to strike an average, and to take the mean as the true price or value, or where, as in this instance, it becomes necessary to ascertain the exact date of an event, and it is only proved to have happened within a certain designated space of time, that the medium shall be assumed as the true date

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(*w*) *Wilson v. Harman*, 2 Ves. 673; *Hamilton v. Lloyd*, 2 Ves. Jun. 416; *Paris v. Paris*, 10 Ves. 185; *Witts v. Steere*, 13 Ves. 363; *Clancy's Husb. & Wife*, 387.