

amount allowed to him as commission by the order confirming the auditor's report. (*h*)

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 proofs 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 whether, to prevent the great inequality in favour of a younger son, education might not mean barely the price of tuition, books, &c. lodging, food, and clothing, must be had whether at school or at home; and, therefore, it might be said, that he who is charged with education is not, of course, charged with those articles of necessity. In construing a will, it is notorious, that the judges have never considered the question as a mere point of grammar. The question ever is, 'what was the intent of the testator,' to be collected from the whole of his words. Amongst grammarians, there is no doubt, that *his* is considered, in propriety, as referring to the antecedent, if there be one, and not to a subsequent. It may, indeed, in this case, be contended, that the testator was not aware of any antecedent, or any rule of grammar. It is probable, that he was no grammarian. Let it just be supposed, that he had appointed *two* executors; and had said 'my will and desire is, that *my executors*, instead of saying *my son Alexander*, do, out of *his* part of my estate, expend, &c. &c. Is there even a rigid grammarian, who would say, that the testator violated the rules of grammar.

(*h*) *Brown v. Wallace*, 29th February, 1816, post.