courts are perfectly concurrent on these points; that in both, the intention of the testator is equally attended to, and the same latitude admitted in the *construction* of words: that where the testator uses technical words *only*, their technical meaning must be adopted, but where it can be sufficiently collected from the context that he means them in any other sense, his intention shall prevail against their technical import; and therefore a limitation to *heirs*, without farther explanation (the ancestor taking an estate of freehold by the same instrument), can never give an estate by purchase, as decided by *Colson* v. *Colson*, 2 Atk. 246, the objections to which case do not tend to prove, that the testator used the words "heirs of the body" in any other than their technical meaning, but merely, that he intended an estate for life only to the ancestor, and an estate by *purchase* to the heirs of the body; which the law would not permit; whereas, had the *former* intention been demonstrable, it should have prevailed (see note to *Thomas* v. *Bennet*, ante, 342), the rule of law *not being applicable to the construction of words, but to the nature and operation of the estate or interest devised.* (See the other cases on this subject in *Bale* v. *Coleman*, ante, 1 vol. 142.) But the distinction, which has been made between trusts *executed* and *executory*, seems to have occasioned greater difference of opinion. Vide *Lord Glenorchy* v. *Bosville*, Ca. temp. Tal. 3. *Roberts* v. *Dixwell*, 1 Atk. 607. *Wright* v. *Pearson*, Fearn's Cont. Rem. 4th edit. 187, and Amb. 358, S. C.; S. C. 1 Eden, 119. *Austen* v. *Taylor*, Amb. 376. *White* v. *Carter*, Amb. 670; S. C. 2 Eden, 366. *Bagshaw* v. *Spencer*, 1 Vez. 152. *Bastard* v. *Proby*, 2 Cox, 6. *Dodson* v. *Hay*, 3 Bro. C. C. 404. *Leonard* v. *E. of Sussex*, 2 Vern. 526. *Exell* v. *Wallace*, 2 Vez. 323. This distinction appears to be now fully established. *Countess of Lincoln* v. *Duke of Newcastle*, 12 Ves. 227. *Stratford* v. *Powell*, 1 Ba. & Be. 1. *Green* v. *Stephens*, 17 Ves. 64. *Blackburn* v. *Stables*, 2 V. & B. 367. *Synge* v. *Hales*, 2 Ba. & Be. 499. *Jervoise* v. *Duke of Northumberland*, 1 Jac. & W. 559. *Lord Deerhurst* v. *Duke of St. Albans*, 5 Madd. 232.

Case 151.—LAUNDY *versus* WILLIAMS. [1728.]

Lord Chancellor King.

1 Eq. Ca. Ab. 299, pl. 3; 2 Eq. Ca. Ab. 561, pl. 9; 8 Vin. Ab. 404.

If I devise a legacy of £100 to *A.* payable at his age of 21, and *A.* dies before 21, *A.'s* executors or administrators shall not have that legacy till such time as *A.* (had he lived) should have attained 21, and my executors shall have the interest in the mean time. But if I give a legacy to *A.* of £100 payable at his age of 21, and if he dies before, then to *B.*, and *A.* dies before 21, *B.* shall have the legacy presently, and not stay till such time as *A.* should have come to 21.

Samuel Laundy having several children, by will dated the 8th of *November* 1721, devised to his son *Samuel Laundy* £230, *to be paid at his age of twenty-one*; to his son *Whitmore Laundy* £210 at his age of twenty-one; to his son *Edward Laundy* (yet an infant) £210 at his age of twenty-one; to his daughter **[479]** the plaintiff *Anne Laundy* £150 at her age of twenty-one, and made his wife the defendant *Rebecca* executrix and residuary legatee. There was a clause in the will, *that if any of his sons and daughters should die before his, her, or their respective ages of twenty-one, then the legacy or legacies of him, her, or them so dying, should be paid to the survivors or survivor of such children.* The daughter was paid her legacy of £150, having attained her age, also the plaintiff *Samuel* having attained his age of twenty-one received his legacy of £230. *Whitmore Laundy* died at the age of eleven, and now the plaintiff *Samuel Laundy* the eldest son and *Anne* the daughter, who had attained their ages of twenty-one, brought this bill against the executrix *Rebecca*, to have their two-thirds of *Whitmore Laundy's* £210 paid over to them, *Edward Laundy* the other son being yet an infant of about twelve years old.

For the defendant it was insisted, that the plaintiffs came before their time, forasmuch as they ought to stay for their share of the deceased infant's legacy of £210 until the deceased infant should have come to the age of twenty-one years, in case he had lived. For 1*st*, the word [then] if any of the children should die before twenty-one, *then* the legacy of him, her or them so dying should go to the survivors or survivor, must be intended, in such case, or if such fact happened, and was not to be construed in relation to any time, or to signify, that on the death of any of the children, then

at that time the legacy was to be paid. 2*dly*, Legatees over, in case any of the first legatees should die before twenty-one, were only substituted, and could not be in a better condition than the original legatees were; consequently, as these could not take till their ages of twenty-one, by the same reason they that came in their places should not take until the original legatees might **[480]** (had they lived) have attained that age. 3*dly*, It was to be presumed the testator had considered with himself when and at what respective times his estate would bear the payment of these several legacies, and that he had determined the legacies to his children should be paid at their ages of twenty-one, and in the mean time the residuary legatee should have them, and that it was unreasonable the death of one of the legatees under the age of twenty-one should accelerate the payment, or prejudice the residuary legatee, who otherwise would certainly have had the benefit of the interest, until the deceased infant should have come to twenty-one.

And of this opinion was the *Lord Chancellor*, who pronounced his decree accordingly.

But on the following day Mr. *Solicitor General* mentioning the matter again, and insisting that it had been determined otherwise, and that the difference was betwixt the executor or administrator of the first legatee, and the devisee over; if I give a legacy to *A.* payable at his age of twenty-one, and he dies before, his executors or administrators claiming under such legatee, and standing in his place, shall not be entitled to this legacy until such time as the infant legatee would have attained his age of twenty-one, if he had lived; and that this had been solemnly determined as well on an appeal to the House of Lords, 2 Vern. 199, as also by the two Chief Justices and the *Master of the Rolls* upon an appeal to the King in Council from a decree in *Antigua* (ante, 337).

But where I devise a legacy of £100 to an infant at his age of twenty-one years, and if the infant dies before twenty-one, then to *J. S.*, here *J. S.* does not claim under the infant, but the devise over to him, is as a new substantive bequest, and is **[481]** to be paid on the death of the infant under the age of twenty-one. Vide 1 Anderson, 33, also 2 Vern. 283, *Papworth* v. *Moor*, express in point.

Wherefore on these authorities *Lord Chancellor* varied the decree which he had before pronounced, and ordered two thirds of this £210 to be paid to the two plaintiffs (the brother and sister of the dead legatee *Whitmore Laundy*) and gave interest for their two thirds from the death of the said infant; for though it was objected that this being a new legacy, the executrix ought to have a year's time for the payment of it, yet the Court held that must be intended to be from the death of the testator; whereas in this case the testator had been dead several years. (Reg. Lib. B. 1727, fol. 424.)

Note: The rule in equity seems by this resolution to be settled accordingly.(1)

(1) Vide *Harrison* v. *Buckle*, 1 Stra. 238. *Chester* v. *Painter*, ante, 337. *Boycot* v. *Cotton*, 1 Atk. 556. *Roden* v. *Smith*, Amb. 588. *Green* v. *Pigot*, 1 Bro. C. C. 105. *Crickett* v. *Dolby*, 3 Ves. 10. Sed quære where the legacy is payable out of *land*. *Feltham* v. *Feltham*, ante, 271. And where the legacy carries interest, the executor of the deceased legatee shall have the legacy presently. *Fonnereau* v. *Fonnereau*, 1 Ves. 118. But the effect of a direction for maintenance is not equivalent to a gift of the interest. *Pulsford* v. *Hunter*, 3 Bro. C. C. 416. *Hanson* v. *Graham*, 6 Ves. 239.

Case 152.—ANONYMUS. [1728.]

At the Rolls.

The defendant is in contempt to a serjeant at arms for not answering, and then puts in an insufficient answer. If the plaintiff's clerk in Court accepts the costs, it purges the contempt; but if the costs be not accepted, the plaintiff may go on in his process of contempt where he left off, for a further answer.

If a man be in contempt to a serjeant at arms for want of an answer, and then puts in an insufficient answer and the clerk in Court accepts the costs of the contempt, this acceptance does remit and purge the contempt, and in the process of contempt for the second answer, the plaintiff must begin again with an attachment (the first process), and cannot begin where he left off; but if neither the plaintiff nor his