His Lordship observes (3 Ves. 95), "It is impossible to reconcile the authorites, or range them under one sensible, plain, general rule. There can be no ground in the construction of legacies for a distinction between legacies out of personal and out of real estate. The construction ought to be precisely the same. I do not see more importance in reality in the distinction between conditions precedent and subsequent. The case of all these questions is plainly this: In deciding questions that arise upon legacies out of land, the Court very properly followed the rule that the Common Law prescribes, and common sense supports, to hold the condition binding where it is not illegal. Where it is illegal the condition would be rejected, and the gift pure. When the rule came to be applied to personal estate, the Court felt the difficulty, upon the supposition that the Ecclesiastical Court had adopted a positive rule from the Civil Law upon legatory questions, and the inconvenience of preceding by a different rule in the concurrent jurisdiction (it is not right to call it so), in the resort to this Court instead of the Ecclesiastical Court upon legatory questions, which, after the Restoration, was very frequent, in the beginning embarrassed the Court. Distinction upon distinction was taken to get out of the supposed difficulty." His Lordship then proceeds, in no measured terms, to condemn the folly of importing the rules of the Civil Law into the Ecclesiastical Courts,* and ended by observing, "the authorities stand so well ranged that the Court would not appear to act too boldly whichever side of the proposition they should adopt."

With regard to the rival merits or demerits of the Civil and the Common Law, we do not hold so decided an opinion as Lord Rosslyn. On the contrary, we have every desire to encourage the spirit of compromise. We do not, we confess, entertain such an exalted opinion of the excellence of the Canon Law or the Common Law as to regard the complete triumph of either system in the light of a highly desirable event. We think that either system might, with advantage, accept of modification from the other, but we are unable to adopt the rough and ready form of compromise instituted by the Judges as a satisfactory settlement of their relative claims. It would, we humbly conceive, have been preferable to amalgamate the two systems of Law instead of allowing each of them to exercise more or less undisputed sway in its own allotted domain. Indeed, we venture to submit that almost anything would have been better than the present ludicrous anomaly of construing different passages in the same will according to antagonistic rules of construction. By whatever legal subtleties such a result may be defended, we are afraid that to the lay mind it will always appear strange that a condition in one part of a will should be interpreted to mean something quite different from an identically similar condition in another part. This result does not seem to have been brought about by reason of any overweening regard on the part of the Chancellors for the sanctity of every jot and title of the Canon Law; on the contrary, on the partial adoption of that Law they did not scruple to introduce amendments of their own, some of which we cannot conscientiously designate as imdesignate as improvements. For instance, the Canon Law recognised no distinction between conditions subsequent and precedent in restraint of marriage, and attached no importance to the circumstance of a bequest over, two very considerable variations from the doctrine of the Court of Chancery. Although, therefore, we are inclined to agree with Lord Rosslyn in thinking that the Chancellors felt themselves, in some degree, hampered and embarrassed by the concurrent jurisdiction in the matter of legacies assumed by the Ecclesiastical Courts; still, in the face of the wide differences which were permitted to continue, we suspect that the concessions made on their part were not such as they regarded with any great aversion. We are strongly of opinion that the different construction of conditions, according as they affect gifts of realty or personality, may be explained without having recourse to the supposition of undue clerical influence. A devisee stands on quite a different footing in the estimation of the Court of Chancery from a legatee. While legacies affect only the next-of-kin, devises are in-

* It is remarkable that his Lordship, while praising the Common Law and condemning the Canon Law, should have found fault with the distinction between condition precedent and subsequent, which is a creature of the Common Law.