future in all such cases, because they found that such provisions of conquest were only effectual after the husband's decease, and did not hinder him either to contract debt or to affect the same during his lifetime." Now, that has been a "practique" ever since, and decisions are scattered over the dictionary, under various heads, giving effect to that principle. Accordingly, Erskine (iii, 8, 43) gives the rule alluded to, and says—"*Thirdly*, An obligation of conquest does not bind the father so strongly as a special provision; for both our judges and lawyers have looked upon it as little better than a simple destination; so that the subject may be affected, not only by the father's onerous or rational deeds, but even gratuitous, provided they be granted for small sums, perhaps to a child of another marriage." These authorities relate to the interests of children under such a clause, but the principle is equally applicable to the rights of wives; and that was settled even twenty years earlier than the decision I have referred to in the time of *Stair*. I refer to the case of *Oliphant*, 10th February 1629 (M., 3066). His Lordship then read the reports of *Oliphant*, and continued—Therefore I don't quote any subsequent cases, for the principle runs on through two centuries. I have already said that there is no question here that the sums which were employed in payment of the premiums were not the property of Mr Duncan at the time of the marriage. Even if they had been, that would have made no difference. The result of my opinion is, that neither according to the literal nor technical meaning can the sum in the policy belong to Mrs Duncan's representatives.

Lord Deas and Ardmillan concurred.

Lord President—I adopt all the grounds of judgment of Lord Currichill, and, in particular, I agree with his exposition of the fixed technical meaning put by the law of Scotland on clauses of conveyance or obligation in such terms as now before us. I also concur on the other point. I don't think that, in any view, the representatives of Mrs Duncan can claim the sum in dispute, because it is to be observed that the provision of conquest is that the general estate of the spouses, whaetver that may be, shall, at the death of the longest liver, be divided into two equal shares, one to go to the heirs of the husband, and the other to the heirs of the wife; reserving to both parties power to bequeath or assign the fee of said shares. It may very well be that the representatives of Mrs Duncan are entitled to one-half of the estate in value, but not to any specific subject; and if they get one-half of the value of the estate, that is the full extent of their claim. On the other hand, the assignees of the policy will be preferable to the executors of the husband, and they will be entitled to take that as part of the husband's estate. It is quite impossible here in this competition to sustain the claim of the representatives of Mrs Duncan.

Interlocutor of Lord Ordinary recalled, and, of new, the claim of the assignees sustained, and the claim of Mrs Duncan's representatives repelled.

Agent for Reclaimers—J. N. Forman, W.S.
Agent for Respondents—Robert Hill, W.S.

OUTER HOUSE.
(Before Lord Barcaple.)

MAXWELL *v.* PRESBYTERY OF LANGHOLM.

Manse—Garden Wall—Heritors—Presbytery. Held (by Lord Barcaple, and acquiesced in) that a minister of a parish was entitled to have his garden inclosed with a wall. Presbytery instructed to require heritors to erect wall in conformity with report and estimate prepared by architect to whom Lord Ordinary had remitted.

This was a suspension at the instance of Sir John Heron Maxwell, Bart., of Springkell, against the Presbytery of Langholm, of deliverances by the presbytery in reference to the erection of a garden wall round the manse garden of the parish of Half Morton.

It appeared that the garden attached to the manse of Half Morton has, since 1840, when the manse was erected, been inclosed by a hedge. In 1866 the present incumbent of Half Morton applied to the presbytery to ordain the heritors of the parish to build a wall round the manse garden. After certain procedure (the heritors not having complied with the presbytery's orders), the presbytery approved of specifications for the erection of said wall, and decerned against the heritors (who are only two in number—the suspender being proprietor of nearly the whole parish) for the cost of the same, the suspender's proportion thereof being £147.

The suspender averred that the hedge presently surrounding the garden is a good and sufficient fence, and more suitable as an inclosure for the garden than a stone fence. He also averred that stone fences as inclosures for gardens are not adopted, and are all but entirely unknown in the district of Half Morton.

On the law, the suspender pleaded that, in the absence of any statutory enactment rendering it incumbent on the heritors of a parish to inclose the manse garden with a stone wall, the Presbytery were not entitled to ordain such an enclosure to be built; and further, that the stone wall ordained by the presbytery to be built was of a much more expensive description than was warrantable.

For the presbytery it was averred that the hedge was not a sufficient fence, and did not protect the minister's garden from the ravages of hares and rabbits. The presbytery also averred that every manse garden within the bounds of the presbytery was surrounded by a wall except the manse garden of Half Morton.

On the law, the presbytery pled that the accommodation of a garden wall was allowed to the parochial ministers throughout the country, and was necessary for the beneficial occupation of the manse garden of Half Morton.

After hearing parties, the Lord Ordinary, before answer, and without inquiry as to whether the hedge was a sufficient fence for the garden, remitted to Mr James C. Walker, architect, Edinburgh, to examine *inter alia* the specifications and estimate approved of by the presbytery, and to report whether the same were "more costly than is proper and necessary for the erection of a suitable, wall for the manse garden at Half Morton, and, if so, to report a specification of such wall as he is of opinion would be suitable, having regard in his report to the usual style of such walls to manse gardens in rural parishes."

Mr Walker reported that the plan and specification of the wall approved of by the presbytery "was more costly than was proper and necessary for the garden, and the offer or estimate was extravagantly high." He also reported that he had obtained an estimate from a respectable local tradesman to do the same for between £50 and £60 less than the estimate decerned for by the presbytery.

Along with his report Mr Walker lodged a specification of such a wall as he considered would be suitable.

The Lord Ordinary having made avizandum with Mr Walker's report, pronounced an interlocutor and note in the following terms:—

"The Lord Ordinary having heard counsel for the parties, and resumed consideration of the process, with the report by Mr Walker, No. 22 of process, Finds that the minister of the parish of Half Morton is entitled to have his manse garden inclosed with a wall; but that the wall decerned for by the Presbytery is of a more expensive description than is necessary or proper. Remits to the respondents, the Presbytery of Langholm, to recall their deliverances complained of, in so far as they relate to the approval of specifications and estimates for, or in reference to, the erection of a wall round the manse garden occupied by the respondent, the Rev. William Burnett, or to any assessment for or in connection with the estimated cost thereof; and with instructions to require the heritors of the parish of Half Morton to erect a wall round the garden of the manse of Half Morton, as recommended in Mr Walker's said report, and in conformity with the specification prepared by him, No. 24 of process, and that within such time as to the presbytery shall appear fitting and reasonable: Provided always, that the work, if undertaken by the heritors, shall be executed by them at the sight and to the satisfaction of the presbytery; and with instructions to the presbytery that, failing such undertaking and performance on the part of the heritors, the presbytery shall receive such estimates as may be necessary towards the erection of the said wall, in conformity with said report and specification by Mr Walker, and thereafter to proceed further according to law, and decerns accordingly, and finds neither party entitled to expenses.

(Signed) "E. F. MAITLAND.

"*Note.*—The suspender objects to the competency of the deliverance of the presbytery, on the ground that it did not proceed upon a report that a garden was expedient or necessary. The Lord Ordinary is of opinion that in a case like the present, where there never was a garden wall, such a preliminary report was not necessary in order to entitle the presbytery to procure specifications and estimates and proceed upon them. At the debate the suspender took a separate objection to the presbytery's deliverance of 27th February, on the ground that it remitted to the architect to prepare specifications and estimates 'in terms of the report given in by him at last meeting,' while, in point of fact, his former report did not refer to the garden wall at all. This is undoubtedly an inaccuracy in the deliverance, but the Lord Ordinary does not think it is of such a kind as to invalidate the action of the presbytery in the matter if otherwise competent.

"The Lord Ordinary does not think that the existence of a common thorn hedge, without a wall of any kind, can be held to fulfil the obligation upon the heritors to inclose the manse garden—Connell Par., 292; Ersk. ii, 10, 57. That obligation being, as he thinks, unfulfilled, he is of opinion that the proper course is to require the heritors to erect a suitable wall, of a permanent kind. But there seemed to be room for question as to whether the wall for which the presbytery decerned was not of a more costly description than heritors can be legally compelled to erect, and a remit was made to Mr Walker to report on that matter. His report shows that the proposed wall was of a considerably more expensive kind than the minister is entitled to require.

"No expenses are given to either party. The complainer has been unsuccessful in his main contention that the minister was not entitled to a garden wall; but the present proceedings have given him a substantial remedy which he could not otherwise have procured. (Initd.) "E. F. M."

Parties acquiesced.

Counsel for Suspender—J. M. Duncan. Agents—Jardine, Stodart, & Frasers, W.S.

Counsel for Respondents—A. S. Cook. Agents—Paterson & Romanes, W.S.

(Before Lord Ormidale.)

LORD ADVOCATE *v.* HOME DRUMMOND.

Revenue—Succession Duty Act—Entail. An estate was entailed on A and the heirs whatsoever of his body, whom failing on B (A's sister), whom failing on C *nominatim*, her eldest son, and the heirs whatsoever of his body &c. A died without heirs of his body and B succeeded. B died and C took the estate. In a claim by the Crown for succession-duty, *held* (by Lord Ormidale, and acquiesced in), that C being a *nominatim* substitute, the case of *Lord Advocate* v. *Sultoun* applied, and that C, as taking by disposition from the maker of the entail, was liable in duty at the rate of 3 per cent.

This was a special case presented to the Court for judgment on the amount of succession-duty on the lands of Ardoch, payable, on the death of Mrs C. S. Moray or Home Drummond, by George Stirling Home Drummond, Esq., her eldest son, and her successor in the entailed estate of Ardoch.

The case narrated that in 1849 William Moray Stirling, of Abercairney and Ardoch, executed an entail of the lands of Ardoch, the destination being "to myself and the heirs whatsoever of my body; whom failing, to the said Mrs Christian Moray or Home Drummond," (his sister, and wife of Henry Home Drummond, Esquire of Blair-Drummond); "whom failing, to the said George Home Drummond, her eldest son, and the heirs whatsoever of his body; whom failing, to the said Charles Home Drummond, second and youngest son of the said Mrs Christian Moray or Home Drummond, and the heirs whatsoever of his body; whom failing, to Her Grace Anne Duchess of Atholl, my niece, only daughter of the said Mrs Christian Moray or Home Drummond, and wife of His Grace George Augustus Frederick John Duke of Atholl, and the heirs whatsoever of her body."

William Moray Stirling died in November 1850, without heirs of his body, and Mrs C. S. Moray or Home Drummond, the first substitute in the entail, was served heir of tailzie and provision in special of the entailer, and was infeft in January 1852. She died in November 1864, and the defender, George Stirling Home Drummond, thereafter presented a petition to the Sheriff of Chancery at Edinburgh, upon which the Sheriff, narrating the said petition, found, *inter alia*, that "the petitioner is the eldest son and nearest lawful heir of tailzie and provision in special of the said Mrs Christian Stirling Moray or Home Drummond, his mother," and therefore the Sheriff served him "nearest lawful heir of tailzie and provision in special of the said Mrs Christian Stirling Moray or Home Drummond, his mother, in the lands and others above described."