Tuesday, June 28.

FIRST DIVISION.

[Lord Low, Ordinary.

PRINGLE *v.* PRINGLES.

(*Ante*, vol. xxviii., p. 702; 18 R. 895.)

Entail—Disentail — Valuation of Expectancies—Entail Amendment Act 1875 (38 *and* 39 *Vict. cap.* 61), *sec.* 5—*Valuation of Estate—Deduction of Burden—Bond of Annual Rent—Entail Act* 1882 (45 *and* 46 *Vict. cap.* 53), *sec.* 6, *sub-sec.* (4).

By section 6, sub-sec. (4), of the Entail Act 1882 an heir of entail in possession is empowered, where one-fourth of a capital sum of improvement expenditure borrowed upon the security of a terminable rent charge is defrayed, to substitute for the bond of annual rent a bond and disposition in security for the remaining three-fourths of such capital sum.

In a petition for disentail—*held* that in estimating the value of the next heirs' expectancies, the whole of a capital sum of improvement expenditure, charged upon the estate by bond of annual rent, fell to be deducted from the valuation of the estate in so far as not repaid at the date of valuation.

Entail—Disentail — Valuation of Expectancies—Entail Amendment Act 1875 (38 *and* 39 *Vict. cap.* 61), *sec.* 5—*Whether Succession Duty should be Deducted.*

The amount of succession duty which a substitute heir of entail would have to pay on coming into the estate is not a proper deduction from the value of his expectancy.

Whether Exceptional Health to be Taken into Account.

Opinions by the Lord President and Lord Adam that in estimating the value of a substitute heir's expectancy, circumstances tending to show that his chance of life is above the average, form a proper subject of inquiry. *Opinion* by Lord M'Laren *reserved.*

Averments by a substitute heir of entail of circumstances tending to show that his chance of life was above the average, which were *held* too indefinite to be made the subject of inquiry.

Date of Valuation — Whether Interest should be Allowed on Ascertained Value.

Held (1) — following *Macdonald* v. *Macdonalds*, 7 R. (H. of L.) 41—that the proper date at which to estimate the value of a substitute heir's expectancy is the date of the instrument of disentail; and (2) that the Court has no authority under the statute to allow interest on the ascertained value.

This was a petition for disentail presented by Alexander Pringle, heir of entail in possession of the estates of Whytbank and Yair under an entail dated in 1820, for authority to disentail these estates. The petitioner was born in 1837. The three heirs next entitled to succeed to the entailed estates were (1) Robert Pringle, who consented to the disentail; (2) Robert Keith Pringle; and (3) Alexander Pringle, Captain in the Bombay Native Infantry.

A remit having been made to Mr M'Lauchlan, actuary, to ascertain the value in money of the expectancies of the second and third substitute heirs of entail, he reported, *inter alia*, as follows:—"In fixing the sum to be taken as the value of the estate at the time when the above-mentioned Robert Keith Pringle and Alexander Pringle may be expected to come into possession of it, the actuary has deducted a sum of £1673, 16s. 3d. in respect of the drainage rent charges, being three-fourths of the amount originally advanced. He finds that by the year 1898 one-fourth of all the sums borrowed in consideration of these rent charges will have been repaid, and assumes that the heir in possession will thereafter (in terms of section 6 (4) of the Entail (Scotland) Act 1882) substitute for the rent charges a bond and disposition in security over the estate for the sum mentioned above. . . . The actuary has made an allowance in his calculations for the fact that in consequence of the third heir's occupation and residence, his life is exposed to more than the average risk, the effect of such allowance being to reduce the value of his interest by £305. This is based on the assumption that this heir will be ten years more in India, and that the extra risk of death to which he will be subject during the whole remainder of his life is correctly represented by an extra premium at the rate of 1 per cent. per annum payable during these ten years. It may be stated that the practice of the Life Assurance Society, with which the actuary is himself connected, is to charge an additional premium for military service in India in time of peace at the rate of 30s. per cent. per annum, and this of course includes a margin for expenses and contingencies. The rate of 1 per cent. has been confirmed by a comparison with the mortality experienced by the Standard Life Assurance Company among this class of lives between the years 1870 and 1885. The actuary has also taken into account that the third heir will have to pay succession duty on coming into possession of the estate, a deduction of £17 being made from the value of his interest in respect of such duty."

It was objected for the petitioner that in fixing the value of the estate the actuary ought to have deducted the whole amount of the improvement expenditure charged under the bond of annual rent in so far as not repaid at the date of valuation.

Robert Keith Pringle and Alexander Pringle made the following objections to the report of the actuary—(1) In respect the actuary had estimated the value of their expectancies as at the date of the petition, viz., 29th July 1890. They submitted that the value of their interests should have been ascertained as at the present date, or otherwise, that interest should be added to the ascertained value

from 29th July 1890 until the money was consigned in bank. (2) In respect the actuary had deducted £305 from the value of the interest of the third heir, on the assumption that he would be ten more years in India. (3) In respect the actuary had deducted £17 in name of succession duty.

On 13th April 1892 the Lord Ordinary (Low) pronounced this interlocutor:—"Finds that in estimating the value in money of the expectancies or interests of the second and third heirs of entail, there falls to be deducted from the valuation of the estate the capital sum of improvement expenditure charged upon the estate by way of annual rent, in so far as the said capital sum had not been repaid by the heir of entail in possession at the date when the valuation of the estate fell to be made, and the value of the expectancies or interests of the next heirs ascertained: Allows the third heir, the respondent Alexander Pringle, to lodge in process a statement of any circumstances which he considers to be material, in view of the deduction which the reporter has made from the value in money of his expectancy or interest, in respect of his residence in India: To the above extent and effect sustains the objections stated at the bar to said report, and *quoad ultra* approves of the report, except in so far as regards the said deduction from the value of the expectancy or interest of the said Alexander Pringle, and reserves the question whether the said deduction falls to be made in whole or in part, and continues the cause."

The following statement was thereafter lodged for the third heir—"He has held his commission in India for twenty years. He is about to return home on furlough, and he may then marry and remain in this country. He will be entitled to the rank of major in December next. His father served thirty years in India, and is now in the ninety-first year of his age. Captain Pringle is in good health, and it is submitted that no deduction ought to be made, either on the ground of residence in India or assumed further residence of ten years there, in the absence of proof of actual bad health and an injured constitution. In any view, it is submitted that it should be assumed that he may soon be in this country on furlough, and may remain thereafter at home. It would not be fair to Captain Pringle to assume that his life has undergone an average shortening of the lives of Europeans in India, which would put upon him a share of the injured and shattered constitutions due to original weakness, disagreeing with the climate, or indiscretions and bad habits on the part of some who go from this country to India. It should be assumed that the expected duration of his life is at least equal to the average of those whose constitutions are good and agree with the climate of India, and have not suffered from any indiscretions or bad habits."

A remit having been made to the actuary to report on the above statement, he reported as follows—"In obedience to the prefixed interlocutor, the actuary has carefully considered the statement for the respondent Alexander Pringle, referred to hereafter as D. If what is stated on behalf of D is correct, it follows that before we can say what deduction (if any) ought to be made from the value of his interest on account of his being an officer in the Indian Army, a variety of facts personal to himself must be inquired into, such as his family and personal history, the present condition of his health and constitution, and his habits and mode of life, also his prospects of being employed on dangerous service, or, on the other hand, of retiring and coming home. The actuary is of opinion that such a course would be contrary to the practice invariably followed in the usual case of the valuation of the expectancy or interest of an heir resident in this country, and engaged in an ordinary civil occupation. In that case, in the absence of any allegation that the life is a damaged one, the practice of actuaries is, he believes, to calculate the value on the footing that the heir is an average life of his age: the probabilities of life used being taken from a table which represents the mortality in a body of mixed lives, containing persons in all varieties of condition as regards health. It is probable that if all the persons on whose lives any particular interest or expectancy in an entailed estate depended for its value could be got to submit to medical examination, and to furnish any other information and evidence that might be required in regard to their prospects of longevity, the value of such interest might be ascertained with greater exactness than is done by assuming, according to the usual practice, that each of these lives is an average life of his age. There is, however, no means of compelling all the parties concerned to submit to medical examination, or to furnish the other information mentioned above; and the introduction of the principle of a separate investigation into the prospects of each of the parties concerned would very greatly increase the labour and difficulty of valuing the interests in an entailed estate, and introduce a considerable element of uncertainty into the results. The fact which probably more than any other would effect in D's individual case the amount of extra risk to which his life will in future be subject is the chance of his early retirement. This is a matter as to which it would probably be very difficult to get evidence, as it presumably depends, in the main, on his own wishes and intentions. These, again, might be affected by the circumstance that he is about to receive the considerable sum of money representing the compensation payable to him in connection with the present disentail; and this last circumstance is, in the judgment of the actuary, not one that ought to be allowed to affect the value of D's interest. Having regard to what is stated above, the actuary is of opinion that the course followed by him in making his calculations is the proper one—namely, to assume (1) that D is an average life of his age; (2) that

his health and constitution have suffered and will continue to suffer the average amount of deterioration from the effect of residence in India; (3) that he will, while he remains on the active list of the Indian Army, be subject to the average risks of military service; and (4) that he will retire at the average age of retirement for officers of his age and rank."

On 13th May 1892 the Lord Ordinary approved of the actuary's report: Found that the value in money of the expectancy of Robert Keith Pringle, the second heir, was £68 sterling, and that the value in money of the expectancy or interest of Alexander Pringle, the third heir, was £5781 sterling.

"*Opinion.*—In my opinion the fact that the respondent Captain Pringle is and has for many years been resident in India cannot be left out of view in estimating the value of his interest in the entailed estate. I do not think that it can be disputed that the probability of life of a person residing in India is less than that of a person resident in the United Kingdom. Insurance companies certainly act upon the assumption that that is the case, and protect themselves against the risk of persons insured going to a tropical climate.

"In dealing with Captain Pringle's case the actuary has assumed that he has the average prospects of life for a man of his age; that his prospects of life have been diminished to the average extent by his residence in India, and that he will retire from the army and cease to reside in India at the usual time for officers in his position. Unless there are special circumstances taking Captain Pringle's case out of the ordinary rule, it appears to me that the principle adopted by the actuary is sound.

"When the case was last before me I allowed Captain Pringle an opportunity of stating any special circumstances which would necessitate his case being dealt with as an exceptional case. He has lodged a statement, but I do not think that it contains any averment of fact which necessitates further inquiry. He admits that he has been for twenty years in the Indian army, and although he says that he may retire at an early date, he does not dispute that in the ordinary course of his profession he may serve for other ten years. The case therefore, upon Captain Pringle's own showing, appears to me to be the ordinary case of an officer serving in the Indian army, which can, I think, only be dealt with as an average case.

"I was also asked to delay the case in order that further communication might be had with Captain Pringle. I do not think that any further delay can be granted. The petition was brought in July 1890, and therefore there has been ample time to obtain from Captain Pringle all necessary information.

"The next question is, at what time is the value of the interest of Captain Pringle to be ascertained? That seems to me to be settled by the case of *Macdonald* in the House of Lords. The date fixed in that case was the execution of the instrument of disentail, and I do not find that that date was taken on account of any special circumstances in the case. I think that the learned Lords intended to lay down a general rule, and this was the view of the decision taken by Lord Kinnear in the case of *Sprot*, 19 S.L.R. p. 738. It was contended, however, for Captain Pringle that if the value of his interest is fixed as at the date of the instrument of disentail he is entitled to interest upon the amount until it is consigned or secured. *Prima facie* the request is not an unreasonable one, but I find no warrant for it in the statute. The statute directs the Court to ascertain the value in money of the interest of the heir whose consent is required, and on that being done, to direct 'the sum so ascertained' to be paid into bank or secured. Thus *Macdonald's* case settles that the value of the interest is to be ascertained at the date of the instrument of disentail, and the statute directs the Court to order the sum so ascertained, and no greater sum, to be consigned or secured. I am therefore of opinion that I have no power to allow interest."

The respondent heirs reclaimed, and argued —1. The Lord Ordinary was wrong in holding that the whole capital sum charged on the estate by way of annual rent should be deducted from the valuation of the estate, as the petitioner was only entitled to charge three-fourths of that sum permanently on the estate—Entail (Scotland) Act 1882, sec. 6, sub-sec. 4. The extent of the burden, so far as it affected the interests of the next heirs, was therefore only three-fourths of its total amount. 2. Facts bearing on the value of the life of a substitute heir should be taken into account in ascertaining the value of his expectancy—*Macdonald* v. *Macdonalds*, March 12, 1880, 7 R. (H. of L.) 41. In that case it was held by the House of Lords that circumstances which affected the value of a substitute heir's life unfavourably should be taken into account, and it followed that circumstances which raised the value of such heir's life above the average should also be taken into account—*Macdonald* v. *Macdonalds*, January 16, 1879, *per* Lord Gifford, 6 R. 536. The tables of insurance companies were not true guides in such matters, as they did not give the full value of the lives with which they dealt, but only such value as it was safe for insurance companies to allow. 3. The proper date at which to estimate the value of expectancies was not the date of the execution of the instrument of disentail, but the date of its being recorded. Otherwise, where the proceedings were protracted, the value of the expectancy might have changed materially before the consent of the heir was dispensed with. The statute was silent on the point, and though no doubt there were *dicta* by Lord Hatherley in *Macdonald's* case to the effect that the expectancy should be valued as at the date of the execution of the instrument of disentail, this point did not form part of the decision of the House of Lords, as the date of the instrument was there taken as the date of valuation by consent of parties. In *Sprot's* case Lord Kinnear

decided no more than that the opinion expressed by Lord Hatherley applied to that case. At all events, if the expectancy was to be valued as at the date of the execution of the instrument of disentail, then it was necessary, to prevent injustice being done, that interest should be paid on the ascertained sum from the date of the instrument of disentail until consignation. There was nothing in the statute to forbid this being done, and it was usual for interest to run on sums fixed by the Court where time elapsed before payment. In *Macdonald's* case a sum was consigned to await the result of the litigation. The amount of succession-duty was not a proper deduction from the value of the expectancy. The result of such a deduction was to transfer to the heir of entail in possession a sum to which he had no claim, but would ultimately have been payable to the Crown.

Argued for the petitioner—1. The whole amount secured under the bond of annual rent at the date of the application should be deducted from the value of the estate as the present value of the land was so far reduced—Entail Amendment Act 1875, sec. 5 (2) (*a*); *Baird* v. *Baird*, July 15, 1891, 18 R. 1184. Section 23 and the following sections of the Act of 1882 seemed to favour this view, and the contrary view would make it necessary to value the rental at a future period, which would introduce an element of uncertainty into the valuation. To deduct only part of the burden would be unfair to the heir in possession, as the subsequent heirs got the benefit of the expenditure in the improved value of the estate. The whole of a sum of improvement expenditure was deducted in *Macdonald* v. *Macdonalds*, July 16, 1879, 6 R. 521, 526. 2. The statement lodged for the third heir was irrelevant. It set forth no facts which could be taken into account as definitely affecting the value of the third heir's expectancy. 3. As regards the date at which an heir's expectancy should be valued, it was settled by authority that the proper date was the date of the execution of the instrument of disentail—*Macdonald* v. *Macdonalds*, March 12, 1880, 7 R. (H. of L.) 41, especially *per* Lord Hatherley, p. 47; *Sprot*, June 27, 1882, 19 S.L.R. 738. Further, there was no warrant in the statute for allowing interest on the ascertained value of the expectancy. 4. Succession-duty was properly deducted from the value of the heir's interest, as he would have had to pay that duty on coming into possession of the estate.

At advising—

LORD PRESIDENT—Four points have been argued under this reclaiming-note.

1. The reclaimers challenged the first finding in the Lord Ordinary's interlocutor. Certain rent charges affect the estate, and the Lord Ordinary holds that the actual amount of this is to be deducted in estimating the value of the estate. The alternative course contended for by the reclaimers, and stated by the actuary, is to deduct only three-fourths of the amount, inasmuch as by 1898 one-fourth of the money will have been repaid, and he assumes that the heir in possession will substitute for the rent charges a bond and disposition in security for the reduced amount. This latter, however, is to assume that something will be done which may or may not be done, and the Lord Ordinary seems to judge rightly in deducting present burdens from present values.

2. The claim of the reclaimers that interest should be allowed on the values of the expectancies from the date of their ascertainment is met by the conclusive answer that the statute gives no warrant for giving interest on the ascertained value. The more plausible contention of the reclaimers was that the values should be ascertained as at the date of recording the disentail, and in the present case that the original calculations should be rectified so as to bring them down to date. Of this proposal, however, it is to be observed that the suggested calculation would necessarily be conjectural and approximate as applying to an uncertain future date, and although the margin of uncertainty might not be great, this is an objection to the soundness of the suggestion as matter of statutory explication. But the decision of the House of Lords, and particularly the opinion of Lord Hatherley in the case of *Macdonald*, seem to settle the question in favour of the date of the instrument of disentail. It is to be observed that the substitute-heirs are not deprived during the interval between the commencement or the termination of the disentail procedure of any right which they had previously enjoyed, for during that period they have exactly what they had before, viz., the chance of succession. There does not therefore seem any unfairness in the operation of what must be taken to be the rule fixed by the House of Lords.

3. The next point is as to the loading of Captain Pringle's expectancy by reason of his residence in India. In so far as the objections of that gentleman relate to the chances of his staying in or returning from India, I think they touch matters too speculative to be dealt with otherwise than by the rough rule of average adopted by the actuary. The subject of his health is in a different region. If there had been specific statements that certain exceptional elements of strength of constitution gave him a chance of life above the average, I should have thought that on the principle of the case of *Macdonald* he would be entitled to have this ascertained. But when the averments actually made are examined they fall much short of such a case, and come to no more than a vague statement that he is above the inferior lives which depress the average. I think the Lord Ordinary, having given the objector a special opportunity of defining the case he desired to make out, and nothing better being presented, acted rightly in disregarding it.

4. We are asked by Captain Pringle to strike out a deduction of £17 which under the report of the actuary is made from the value of that heir's expectancy as repre-

senting the succession duty which he would have to pay. I think this should be altered. The Court is not called on to consider all the expenses which would attend or ensue the succession of the substitute-heirs. He would no doubt have to pay succession duty if the law remained the same as it is now, and he would also have to make up his title, and this would cost money also. But the payment of the succession duty is a sequel of the succession, and is not a proper deduction from the value of the thing succeeded to.

LORD ADAM—The first question, it seems to me, in logical sequence is, at what date are the values of the next heirs' expectancies to be ascertained? In this case I see that the petition was presented on 29th July 1890, and no doubt the instrument of disentail was presented along with it, and a remit was made on 29th August to ascertain the value of the estate. No particular date was specified as at which the value was to be ascertained, that being in conformity with the usual practice. It appears to me that it would be odd if the reporter were desired to ascertain the value of the estate at some future date, which was not and could not be then known. But I think also that the matter was under the consideration of the House of Lords in the case of *Macdonald*, and though it was not one of the subjects of appeal, it is quite clear from the opinion of Lord Hatherley that his opinion was that the proper date for the ascertainment of the value of the estate was the date of the execution of the instrument of disentail. Practically that is the same date as the presentation of the petition. No doubt, however, it might be the case that after the instrument of disentail was executed a considerable time might be allowed to elapse before the beginning of the process, and accordingly I consider that the date at which the value of the next heirs' expectancies should be ascertained is the date when the instrument of disentail is produced in process and the matter becomes litigious. With that observation I concur in the opinion expressed by Lord Hatherley.

With regard to the question whether interest should be paid on the ascertained value of the expectancies, I agree with the Lord Ordinary that he has no power to order any further sum than the ascertained value to be paid into bank.

As regards the capital sum of improvement expenditure charged upon the estate by way of annual rent, I confess that I do not quite understand the view of the actuary on this matter. He says—"In fixing the sum to be taken as the value of the estate at the time when the above-mentioned Robert Keith Pringle and Alexander Pringle may be expected to come into possession of it, the actuary has deducted a sum of £1673, 16s. 3d. in respect of the drainage rent charges, being three-fourths of the amount originally advanced. He finds that by the year 1898 one-fourth of all the sums borrowed in consideration of those rent charges will have been repaid, and assumes that the heir in possession will thereafter (in terms of section 6 (4) of the Entail (Scotland) Act 1882) substitute for the rent charges a bond and disposition in security over the estate for the sum mentioned above." It seems to me that the actuary has set himself a question which is not at all the question which he had to solve. What he had to do was to ascertain the present value of the estate, and if the estate is burdened with this rent charge it is worth so much the less, and his duty was to deduct the value of the burden from the estate. I therefore think that the Lord Ordinary's decision is quite right on this point.

With regard to the deduction made from the value of Captain Pringle's expectancy in respect of his residence in India, I agree with the Lord Ordinary. His Lordship has treated the life as an average life, subject to the ordinary risks of an officer in the Indian service. The manner in which such questions are to be treated is discussed in *Macdonald's* case, and the rule laid down is that in the general case the life is to be taken as an average life, but that if averments are made tending to show that there are exceptional circumstances affecting the life, that these should form the subject of inquiry. The averments made by Captain Pringle in this case are, however, of a very indefinite kind. He says that "he may marry and remain in this country." Such possibilities do not admit of calculation, and the averments are not in my opinion of a nature to be sent to proof.

On the remaining question—as to the succession duty—I agree with your Lordship.

LORD M'LAREN—The subject which the Court has to value with the assistance of the actuary is, the interest or expectancy of the heir who is to be compensated. That interest may be resolved into three elements—the value of the estate, the probability of the heir surviving to enjoy the succession, and the possibility of the birth of nearer heirs. All these elements are matters of opinion, and that opinion must be based on an examination of the averages established by an examination of a large number of similar cases. The method of averages is employed just as much in the valuation of land as in the valuation of life, because as the estate is not put up for sale, one can only judge of its value by making a comparison of values determined by actual sales of similar lands. Now, whether the valuation is of land or of life, expectation of all elements having a substantial bearing on the result ought to be taken into account, over refinements being avoided in making the calculation. This case offers an illustration of what I mean by refinement, in the proposal to take account of the succession duty which might be chargeable against the heir. This is clearly not a legitimate element in the calculation, and I should regard any attempt to estimate the value of land at a future date as of the same character, be-

cause we have no means of ascertaining what will be the value of land in future. While, then, I agree that all circumstances substantially affecting the result ought to be taken into account, and while we have the authority of the House of Lords that weight must be given to elements which tend to shorten life, such as disease or an unhealthy constitution, or, as in this case, an unfavourable climate, I should wish to reserve my opinion as to whether the case of a person who avers that he is of exceptionally good health can be treated as a special case. My reason for doubting whether effect should be given to such averments is, that no materials exist for determining the weight to be given to such a specialty. We are not bound by the practice of insurance companies, who, as we know, never take into account the fact that a man enjoys exceptionally good health, or comes of a very long lived family. But in the absence of tables of expectancy applicable to exceptionally good lives, I do not see how this element is to be introduced into the calculation.

On all the other points I agree with your Lordship.

LORD KINNEAR—I am of the same opinion. I think the case of *Macdonald* lays down a general rule as to the date at which the value of the heir's expectancy is to be ascertained. But if there were no such guide, I cannot see, after listening attentively to the argument, what other rule could be adopted. Perhaps there may be cases outside the general rule, but I have not been able to figure them. The two other dates suggested are the dates of the approving and the recording of the instrument of disentail. Both are inadmissible under the statute, because the statute requires the value in money of the next heir's expectancies to be ascertained and paid before the consents are dispensed with. It is therefore illogical and out of the question to say that their value is not to be ascertained until the interlocutor dispensing with their consents is pronounced.

On the other points I agree with your Lordship, and have nothing to add.

The petitioner asked for expenses since the date of the Lord Ordinary's last interlocutor, and argued—While a respondent heir would not be found liable in the expenses of a discussion in the Outer House upon questions properly raised by him, that rule did not apply to expenses incurred upon an unsuccessful reclaiming-note by him. The opinion of Lord Gifford in *Macdonald's* case did not apply to Inner House expenses. Here the respondents had been in the main unsuccessful, and they should therefore be found liable in expenses.

The respondents referred to the opinion of Lord Gifford in *Macdonald* v. *Macdonald*, June 7, 1879, 6 R. 1011, and submitted that they should not be found liable in expenses, as it could not be said that they had indulged in any unreasonable litigation, and further that this was a case of divided success.

At advising—

LORD PRESIDENT—I think that no expenses should be found due. The success has been divided, though no doubt the balance is on the side of the petitioner, but all the questions argued were fairly and properly raised. I do not wish to imply that a party is entitled to take the opinion of the Inner House on any question which may be raised in an entail petition. In many cases his proper course is to abide by the judgment of the Lord Ordinary.

LORD ADAM concurred.

LORD M'LAREN—I think it is a sufficient protection against vexatious litigation in proceedings of this kind that the party raising questions has to bear his own expenses. I think the rule applied by the Second Division in *Macdonald's* case is a sound one.

LORD KINNEAR concurred.

The Court varied the Lord Ordinary's interlocutor of 13th May by adding to the value of the third heir's interest the amount of the succession duty deducted by the Lord Ordinary, and *quoad ultra* adhered: Found neither party entitled to expenses in the Inner House, and remitted to the Lord Ordinary to proceed.

Counsel for the Petitioner — Dundas — C. K. Mackenzie. Agents—Hope, Mann, & Kirk, W.S.

Counsel for the Respondents—Mackay—Salvesen. Agents—Gill & Pringle, W.S.

Tuesday, June 28.

FIRST DIVISION.

[Lord Kincairney, Ordinary.

M'GINTY AND ANOTHER *v.* M'ALPINE.

Husband and Wife — Wife's Separate Estate—Earnings of Wife in Business—Married Women's Property Act 1877 (40 *and* 41 *Vict. cap.* 29), *sec.* 3.

Section 3 of the Married Women's Property Act 1877 excludes the *jus mariti* and right of administration of the husband from the wages and earnings of every married woman, acquired by her after 1st January 1878, "in any employment, occupation, or trade in which she is engaged, or in any business which she carries on under her own name."

A man married a woman who had for some time carried on the business of fish-hawking. After the marriage the husband gave up the business of carting which he had previously carried on, and took to the business of fish-hawking, and by request of both spouses the dealers who had previously supplied the woman charged their accounts to the husband's name. The two carts used in the business both