[13*th April* 1835.]

JOHN NAPIER, Appellant. — *Dr. Lushington.*

Miss XAVERIA GLENDONWYN and the Representatives of Alexander Crombie, assignee of Lady Gordon or Glendonwyn, Respondents. — *A. Wood.*

Right in Security—Husband and Wife.—A husband was proprietor of an estate subject to payment of the price to three heirs portioners, one of whom was his wife; he granted an heritable bond and disposition in security to a creditor, and the wife assigned in farther security her one third share and interest thereof. The husband having become bankrupt, and there being a deficiency in the price, held, in a question between the two heirs portioners, and the creditor as assignee of the wife, (affirming the judgment of the Court of Session,) that the two heirs portioners were preferable to the interest of her third share, to the effect of recovering full payment of their respective shares.

1ST DIVISION.
Lord Newton.

WILLIAM GLENDONWYN of Glendonwyn was proprietor of the estate of Parton, and acquired by marriage the estate of Crogo, both situated in the Stewartry of Kirkcudbright. Of this marriage there were three daughters, Mary Lucy Elizabeth, who was married to Sir James Gordon of Letterfowrie, Ismene Magdalina, married to William Scott, and Miss Xaveria Glendonwyn. On the 22d of April 1809 Mr. Glendonwyn, by

a minute of salesold to Mr. Scott the estate of Parton for 60,500*l.*[1] By the minute of sale it was declared "that, during the life of the said William Glendonwyn, "no interest shall be payable by the said William Scott "upon the remaining sum of 10,000*l.* sterling; which "principal sum of 10,000*l.* sterling is to be secured to "the said William Scott and Mrs. Magdalina Glendon-"wyn, and spouse of the said William Scott, in manner "following, viz. the interest of the said sum is to be "liferented by the said William Scott and Mrs. Ismene "Scott his spouse, during their lives, and during the "survivor of them; and the said principal sum of "10,000*l.* to be the property of and divisible amongst "the issue of the marriage, male and female, as the "said parents may jointly direct by any settlement "under their hands; and in default of such direction, "amongst the issue as the survivor may direct by deed "or will; and in default of issue, as the said Mrs. Is-"mene Magdalina Glendonwyn alias Scott may direct "by her own will and settlement: And further, the said "William Glendonwyn promises, out of the said "interest, to pay to his daughter, the said Mrs. Ismene "Magdalina Scott, during his life, the sum of 200*l.* "sterling yearly, for her own separate use, free from "the debts and control of her present or any future "husband, as in the nature of pin-money: And further, "that the said sum of 200*l.* sterling is to be secured to "the said Mrs. Ismene Magdalina Glendonwyn Scott "in like manner, by the principal sum of 4,000*l.* sterling "being retained out of the said sum of 30,000*l.* sterling;

---

[1] He had previously sold to Mr. Scott the estate of Crogo at the price of 12,000*l.*; but the question at issue arose out of the sale of Parton.

NAPIER v. GLENDONWYN and others. 13th Apr. 1835,

" and the said sum of 4,000*l.* sterling shall be the abso-
" lute property of the said Mrs. Ismene Magdalina
" Glendonwyn Scott, and which she shall have the
" power of conveying and settling at her pleasure, to
" take effect after her death; declaring always, that the
" disposition to be granted by the said William Glen-
" donwyn, of his lands and estates in the parish of Par-
" ton, shall be specially burdened with the payment
" of the foresaid price of 60,500*l.* sterling, and all
" interest to become due thereon, payable in manner
" before stipulated, and the same shall remain a real
" lien and nexus over the said lands and estates, and
" preferable to all other debts and deeds."

Mr. Glendonwyn died soon thereafter, and in the month of September 1811 his three daughters as heirs portioners executed a disposition in favour of Mr. Scott in terms of the minute of sale; and which contained this declaration: " But declaring always, as it is hereby ex-
" pressly provided and declared, that the whole foresaid
" lands, lying in the parish of Parton, and before dis-
" poned, are so disponed under the express burden of
" the said sum of 60,500*l.*, being the purchase money
" of the said lands and estates, with interest of the said
" sum from and since the said term of Whitsunday 1810,
" and in time coming; but always subject to such other
" arrangements as shall be made thereanent by the said
" Lords of Council and Session, under the reservation
" of the foresaid decree, owing to the said William
" Scott having been kept out of the possession in manner
" foresaid; and which sum of 60,500*l.* sterling, and
" interest to become due thereon, shall be, and is ex-
" pressly declared to be, a real burden affecting the
" whole subjects before disponed; and which burden is

" hereby appointed to be engrossed in the infeftments " to follow hereon, and in all the future transmissions " and investitures of the said lands, under this express " condition, that those infeftments in which this burden " shall be omitted shall be void and null, and which " condition shall remain in force until the said price " shall be paid up." In virtue of this disposition, Mr. Scott was duly infeft in the same month.

A question having arisen between the three daughters as to the right to that portion of the price which, after deduction of the special sums otherwise allotted, was payable to Mr. Glendonwyn's heirs and assignees, it was decided that it belonged to each of the daughters equally.

Mr. Scott became indebted to the appellant John Napier esq., of Mollance, in the sum of 15,000*l.*, and granted to him on the 14th of November 1812, an heritable bond and disposition in security over the estates of Parton and Crogo for payment of that sum, and on which Mr. Napier was duly infeft. On the 19th of the same month Mrs. Scott, with the consent of her husband, executed in favour of Mr. Napier a deed which proceeded on the narrative of her right to one third of the residue of the price, and set forth:—" considering that " John Napier esq., of Mollance, manager for the " Galloway banking company at Castle-Douglas, has, " at the request of me the said Ismene Magdalena Glen- " donwyn otherwise Scott, and on the faith of my " granting these presents, advanced and lent to the said " William Scott, my husband, the sum of 15,000*l.* " sterling, all in terms of and in conformity to a bond " and disposition under reversion, granted by him in " favour of the said John Napier, dated the 14th day of

NAPIER v. GLENDONWYN and others.

13th Apr. 1835.

" November current, over the whole lands, teinds, and " others before described; and in further security and " more sure payment for which I promised and engaged, " as an heritable creditor, in terms before recited, not " only to declare my one third share or portion of the " foresaid sums of 60,500*l.* sterling, and 12,000*l.* ster- " ling, to be a postponed debt, and a second or after " security to his said bond of 15,000*l.*, interest, and " penalties, as contained in the said bond and disposition " under reversion granted by my said husband, of the " date foresaid, but also as a collateral and additional " security to dispone, assign, and convey to the said " John Napier, and his foresaids, my aforesaid one third " share or portion of the foresaid sums of money, and " interest thereof, heritably secured as aforesaid, all in " terms and to the effect underwritten: therefore wit ye " me, the said Mrs. Ismene Magdalena Glendonwyn " otherwise Scott (with consent aforesaid) as an herita- " ble creditor over the lands, teinds, and others foresaid, " for one third share or portion of the foresaid sums of " 60,500*l.* and 12,000*l.* sterling, all as before specified, " to have acknowledged, confessed, and declared, as I " hereby acknowledge, confess, and declare, that the " aforesaid sum of 15,000*l.* sterling, interest, and penal- " ties, contained in the bond and disposition under " reversion, granted by the said William Scott my hus- " band in favour of the said John Napier, of the date " foresaid, shall, in all competitions with himself only, be " held, admitted, and considered by me, my heirs, exe- " cutors, and successors, as a prior and preferable debt " and security to my aforesaid one third share or portion " of the foresaid sums of 60,500*l.* and 12,000*l.* sterling, " and interest due and to become due thereon; and he

" the said John Napier shall rank primo loco as a
" preferable creditor to me accordingly: And moreover
" wit ye me, with consent foresaid (for the causes fore-
" said), to have disponed, alienated, and conveyed, as I
" hereby dispone, alienate, and convey to and in favour
" of the said John Napier, his heirs and assignees what-
" soever, not only my aforesaid one third share or portion
" of the aforesaid sums of 60,500*l.* and 12,000*l.*, and all
" interest due and to become due thereon; and the fur-
" ther sum of 4,000*l.* sterling of preference secured to
" me out of the price of the said estates of Parton
" and Crogo, over and above my said one third share
" or portion of the capital sums before specified, and
" interest thereof, payable furth of all and whole the
" foresaid lands and barony of Parton, comprehending,"
&c. " And I hereby make, constitute, and ordain
" the said John Napier, and his heirs and donators,
" my lawful cessioners and assignees, not only in and to
" my aforesaid one third share or portion of the foresaid
" sums of 60,500*l.* and 12,000*l.* sterling, and all interest
" due and to become due thereon; as also my aforesaid
" sum of 4,000*l.* sterling of preference, and interest
" thereof, secured to me as aforesaid, all heritably se-
" cured, and declared to be a real burden and nexus
" affecting the lands, teinds, and others before described,
" all as specified and contained in the foresaid dispo-
" sition in favour of the said William Scott, and in-
" strument of sasine following thereon, whole tenor
" and contents thereof, in so far as the same are
" granted and conceived, or can be construed or in-
" terpreted in my favour, and all diligence, action,
" instance, and execution competent to me or my
" heirs for recovery of the same, or any part thereof;

NAPIER v. GLENDONWYN and others.

13th Apr. 1835.

"but also in and to the aforesaid disposition first "above recited in favour of the said William Scott, "and the instrument of sasine following thereon them- "selves, in so far as I have right and interest therein as "aforesaid: Surrogating and substituting the said John "Napier in my full right, title, and place of the pre- "mises, with full power to him and his foresaids to "sue for, recover, and discharge my foresaid one third "share or portion of the foresaid sums of 60,500*l.* "sterling and 12,000*l.* sterling, and all interest due "and to become due thereon; as also my foresaid "sum of 4,000*l.* sterling of preference, and interest "thereof, secured to me as aforesaid; and generally "to do every other thing thereanent that I could have "done myself before granting these presents; declaring "always, that the said John Napier, on his recovering "payment from the said William Scott of the foresaid "sum of 15,000*l.* sterling, interest, and penalties, con- "tained in the bond and disposition under reversion "before mentioned, shall be bound to retrocess me and "my foresaids in the full right and title of my said one "third share or portion of the sums of money, and "interest thereof above assigned; and the said sum of "4,000*l.* sterling, and interest thereof, of preference "secured to me as aforesaid, all as contained in the dis- "position in favour of the said William Scott first above "recited." The deed also contained a clause of abso- lute warrandice, and an acknowledgment by Mr. Scott that his subscribing it should be equivalent to lawful intimation.

In the month of January 1813 Mr. Scott granted another heritable bond and disposition in security for 10,000*l.* in favour of Mr. Napier over the same

estates; and Mrs. Scott granted a relative deed in similar terms to the one which she had previously executed.

Mr. Scott having thereafter become bankrupt, an action of ranking and sale of his estates was in the year 1817 brought before the Court of Session, in the course of which the estate of Parton was sold at a price which, after deducting the provisions specially appropriated in the original minute of sale, left a deficiency to pay the full amount of the shares respectively due to the three heirs portioners.

In this process various claims were entered; in particular, 1. A claim was made by the children to be preferred to the sum of 10,000*l.* mentioned in the minute of sale.

2. Mrs. Scott claimed to be preferred on the death of her husband to the interest of that 10,000*l.*, to the sum of 4,000*l.* as in her own exclusive right, and to one third share of the residue as one of the heirs portioners. Mr. Napier as a rider on her interest made a similar claim, except as to the interest of the 10,000*l.*, this sum not being conveyed to him by the deeds which had been executed by Mr. and Mrs. Scott.

3. Lady Gordon and Miss Glendonwyn each claimed one third part of the residue of the price as two of the heirs portioners; and they also eventually claimed to be preferred to the interest of the 10,000*l.* and of the 4,000*l.*, and the interest of Mrs. Scott's share during her husband's life as an heir portioner, to the effect of receiving full payment of their respective shares of the residue of the price.

In regard to the 10,000*l.* the Court, on the 24th of June 1825 pronounced this interlocutor: "Find, that the

NAPIER
v.
GLENDONWYN
and others.

13th Apr. 1835.

" fee of the sum of 10,000*l.* provided by the late Wil-
" liam Glendonwyn esq., in the instrument mentioned
" in process, dated 22d of April 1809, belongs to
" William Glendonwyn Scott and the other children
" of the said William Scott and Ismene Magdalena
" Glendonwyn his spouse: Find, that John Napier has
" no right to the said sum, and repel his claim thereto;
" sustain the objection made by the said William Glen-
" donwyn Scott, and the other children, and their tutor
" ad litem, to the ranking proposed by the common
" agent; and find they are entitled to be ranked upon
" the fund in medio, preferably to the heirs portioners
" of the said deceased William Glendonwyn, and those
" deriving right from them, for the said principal sum
" of 10,000*l.* payable at the death of the last survivor
" of their said parents, with the lawful interest thereof
" during the not-payment, and ordain them to be
" ranked accordingly; and decern: Repel the objec-
" tions made by the said Alexander Crombie to the
" ranking of the said Ismene Magdalena Glendonwyn
" for the sum of 4,000*l.* sterling, and 200*l.* per annum of
" interest thereon, as proposed by the common agent,
" reserving all questions between her and the said
" John Napier, relative to these and other sums, and
" decern."

This interlocutor was affirmed by the House of Lords on the 14th of May 1827[1]; thereafter, on the 7th of July, Lord Newton pronounced this interlocutor:—" Ranks
" and prefers Mrs. Ismene Magdalena Glendonwyn
" alias Scott, spouse of the common debtor, in virtue of
" her interest produced, subject to the reservation after

---

[1] 2 W. & S. 550.

" mentioned, for payment of the interest due on the " sum of 4,000*l.*, and in time coming during her life; " and for the said principal sum of 4,000*l.* itself, to " be disposed of by her at her pleasure, to take effect at " her death, the said interest to be calculated at the " rate of 4½ per cent. from the 26th day of May to " the 18th day of June 1810 years, and thereafter " at the rate of 5 per cent.; reserving all questions " between the said Mrs. Ismene Magdalena Scott and " the said John Napier, relative to these and other " sums: And in terms of the foresaid judgment, ranks " and prefers the said William Glendonwyn Scott, and " any other child or children of the marriage between " the said William Scott and Mrs. Ismene Magdalena " Scott, for payment to them of the sum of 10,000*l.*, " provided by the late William Glendonwyn esq. in " the instrument mentioned in process, dated the 26th " day of April 1809, payable at the death of the last " survivor of their said parents, with the lawful interest " during the not-payment, tertio loco, out of the price " of the said lands: And with regard to the interest of " the said principal sum of 10,000*l.* from the day of the " death of the said William Glendonwyn to the term of " payment before mentioned, ranks and prefers the " party who shall be found to have right thereto also " tertio loco, upon the said price, but reserves to the " division all questions regarding the right to the said " interest."

A remit was also made to an accountant to prepare a scheme of division, and objections being made, Lord Newton, on the 11th of July 1829, pronounced this interlocutor: — " Repels the objections to that " part of the report which assigns to the heirs por-

NAPIER v. GLENDONWYN and others.

13th Apr. 1835.

" tioners of the late Mr. Glendonwyn the interest due, " or which may become due, during Mr. Scott's life, on " the sum of 10,000*l.*, belonging in fee to his children " by Mrs. Scott: Finds, that as the right of the heirs " portioners to this interest arises from the failure of " Mr. Scott to pay them the stipulated price, which is " declared a real burden on the lands, the interest, as " coming in place of the price, must be held to be real " in their persons, so that Mrs. Scott's share of the same " does not fall under her husband's jus mariti; there- " fore repels the claim of Mr. Crombie and Miss Glen- " donwyn to Mrs. Scott's share of the said interest; " sustains the objection to that part of the report which " proposes that one third part of the said principal sum " of 10,000*l.*, to be paid to Mr. Crombie, be retained " by him during Mr. Scott's life; and finds, that as " this sum must continue in the meantime to be a real " burden on the lands, Mr. Napier and Miss Glendon- " wyn are entitled to retain the respective proportions " allocated to their prices, on granting heritable bonds " in security of the same; the bond by Mr. Napier to " be for payment to the children, at the death of the " longest liver of Mr. and Mrs. Scott, of the principal " sum of 6,666*l.* 13*s.* 4*d.*, and for payment, during " Mr. Scott's life, of one moiety of the interest to " Mr. Crombie, as assignee to Lady Gordon, and of " the other moiety to Mrs. Scott or her assignees: and " in the event of Mrs. Scott surviving her husband, for " payment to her or her assignees of the whole interest " of the said principal sum from the time of Mrs. Scott's " death till the termination of her liferent; and the " bond by Miss Glendonwyn to be for payment to the " children, at the death of the longest liver of Mr. and

" Mrs. Scott, of the principal sum of 3,333*l.* 6*s.* 8*d.*
" and for payment of interest only for the time subse-
" quent to Mr. Scott's death, which interest, if
" Mrs. Scott survive him, shall be payable to her or
" her assignees so long as she lives; reserving con-
" sideration of the new claim made by Mr. Crombie
" to the interest of the sum falling to Mrs. Scott as
" heir portioner, till the issue of the question be-
" twixt her and Mr. Napier as to the validity of his
" assignation.

" Note.—The Lord Ordinary has reserved consider-
" ation of the claim of the interest of Mrs. Scott's share
" as an heir portioner, because it appears to him, that,
" unless she shall succeed in reducing her assignation
" to Mr. Napier, he, as having right to the principal
" sum under this assignation, will have right also to the
" interest, so that the latter will not fall under
" Mr. Scott's jus mariti, the sole foundation of
" Mr. Crombie's claim to it."

Miss Glendonwyn and Mr. Crombie (as in right of Lady Gordon) having reclaimed, the Court, on the 26th of January 1830. recalled " that part of the Lord
" Ordinary's interlocutor complained of; and find that
" Mr. Crombie and Miss Glendonwyn are entitled to
" the whole interest of the sum of 10,000*l.* sterling, which
" has accrued or may accrue during the life of Mr. William
" Scott; and that neither Mrs. Scott, nor her disponee
" Mr. Napier, are entitled, during the life of the said Wil-
" liam Scott, to draw any part thereof, until the debts of
" the petitioners are paid." This judgment was affirmed by the House of Lords on the 3d of October 1831.[1]

[1] Napier v. Gordon, 5 W. & S. 745.

NAPIER
v.
GLENDONWYN
and others.

13th Apr. 1835.

Miss Glendonwyn and Mr. Crombie then insisted that they were entitled to draw the interest of Mrs. Scott's third share of the price during the life of Mr. Scott, to the effect of operating full payment of their respective shares as heirs portioners. This they did on the ground that the interest belonged to Mr. Scott jure mariti, and that he could not draw any part of it till the debt due by him to them was fully liquidated. Mr. Napier resisted this motion [1], in respect that the jus mariti did not apply to interest which had not become payable, and that Mrs. Scott having transferred to him her share of the price with the interest thereon he could not be affected by any claim which the other two heirs portioners might have against Mr. Scott; besides, Mrs. Scott, as an heir portioner, was as much entitled to be indemnified for any loss arising on her share as her two sisters. The Court, on advising cases and minutes, pronounced on the 12th of June 1833 this interlocutor [2]:

"Find that Miss Glendonwyn and Lady Gordon are "entitled to the whole interest of the reversion of the "fund in medio, set apart or to be set apart in the "division, as the share falling to Mrs. Scott as one of "the three heirs portioners of her father, which has "accrued or may accrue during the life of Mr. William "Scott: and that Mr. Napier, as disponee of Mrs. Scott, "is not entitled, during the life of Mr. Scott, to draw "any part of the said interest till the debt due by "Mr. Scott to Miss Glendonwyn and Lady Gordon

---

[1] Mrs. Scott had in the meanwhile withdrawn from the discussion, having entered into a transaction with Mr. Napier, under which she abandoned all challenge of the deeds which she had granted to him.

[2] 11 S., D., & B., 707.

"shall be paid: Find Mr. Napier liable to Miss Glen-
"donwyn and Lady Gordon in the expence of this part
"of the discussion."

NAPIER
v.
GLENDONWYN
and others.

13th Apr. 1835.

Napier appealed.

Appellant.—1. The judgment proceeds on an erroneous conception, and application of the law with regard to the rights of a husband over the property of his wife. A husband has no right to the heritable property which belongs to his wife, and in the present case it is admitted that the share of the price due to Mrs. Scott is of that nature. He has merely a right to that which is either actually moveable or in law regarded as such. He is entitled jure mariti to the rents of his wife's estates, or the interest of her heritable funds, when they are actually due and payable; but he has no such right to the future rents, or to interests, which are not yet payable. The wife may sell her estate, and her disposition will effectually vest the future rents in the purchaser. In consenting to such a disposition the husband does not do so on the footing that he has right to the rents, but merely as her guardian or administrator in law. He is a mere consenter, not exercising any act of disposition or assignation.[1] In like manner the wife is entitled to assign any heritable funds which belong to her, and the interest thereof which shall subsequently arise will belong to the assignee and not to the husband.[2] In the present case Mrs. Scott had undoubtedly right to one third share of the price, and the interest to arise thereon; this she transferred to the appellant, and consequently all the future interests

[1] 1 Ersk. 6. 12. & 13; 1 Bell, 61. [2] 1 Bankton, 583.

NAPIER
v.
GLENDONWYN
and others.

18th Apr. 1835.

became vested in his person. But the Court have proceeded on the footing that the interest belonged and will belong to Mr. Scott during all the days of his life; and on that erroneous principle they have held that the other two heirs portioners are entitled to be preferred to that interest in the same way as if the appellant were claiming in right of Mr. Scott. But his claim is not made through Mr. Scott; it is founded on the assignation granted by Mrs. Scott, and which was intimated to Mr. Scott. The previous judgment as to the interest of the 10,000*l.* is not applicable to the present question, because neither that sum nor the interest of it were conveyed to the appellant.

2. But, in the next place, it is contrary to equity not to give to Mrs. Scott as an heir portioner the same equitable benefit which has been adjudged to her two sisters and heirs portioners. It is assumed that there is a deficiency arising on the shares of the price payable to each of them, and it is not apparent on what ground the two sisters should be found entitled to draw full payment of their respective shares, and that Mrs. Scott should not receive the same measure of justice.

Respondents.—1. It is necessary to attend to the peculiar position in which Mr. and Mrs. Scott stood, in whose rights the appellant makes his claim. Mr. Scott was indebted in the sum of 60,500*l.* and the interest arising thereon; and both the principal sum and interest were heritably secured over the estate. To the interest arising on one third part he had right jure mariti; but in a question with the respondents he would not, so long as their shares of the price were not fully paid, draw any part of the interest. His want of right to do

so formed an important part of the respondents' security; and if he could not draw the interest directly he could not by any act or deed defeat this security by concurring with his wife in transferring the interest either to a third party for his own behoof or for a valuable consideration paid to him. Such a transfer could not affect the security which the respondents previously had in virtue of the real burden on the estate. If no such security had previously existed, then the claim of the appellant might have been well founded. But, in the case as it actually stands, there was a pre-existing claim to the interest, founded in and arising out of Mr. Scott's title. If, for example, a husband granted a security to a creditor by assigning to him the rents payable out of his wife's estate, and a party subsequently got a conveyance of the estate from the wife, he can only take it subject to the security which had been granted in favour of the creditor. In point of principle the case in question is precisely the same. Accordingly, the previous judgments relative to the 10,000*l.* and the 4,000*l.* are founded upon that principle. Mr. Scott had right, both as disponee and jure mariti, to the interest of these sums, and although the appellant contended that he was entitled to them, at all events to the interest of the 4,000*l.*, yet that plea was repelled, and the interest of both sums was found to belong to the respondents.

2. If the respondents be correct in the preceding argument, it is obvious that it disposes of the second plea maintained by the appellant. If no deed had ever been executed by Mr. and Mrs. Scott, and if she had been claiming right to the interests, the answer would have been that they belonged as they fell due to her

NAPIER
v.
GLENDONWYN
and others.

13th Apr. 1835.

husband jure mariti, and therefore that he alone could be the claimant. But a claim by him could not be sustained in a question with the respondents so long as he remained indebted to them in any part of the price. The interest must therefore be payable exclusively to the respondents.

LORD BROUGHAM:—My Lords, it is unnecessary for me at present to go particularly into this case, as I should wish for time to consider it before your Lordships proceed to adjudication, more particularly because it is represented to involve points of importance. It has been supposed that this question is connected with a case which was three or four years ago decided by your Lordships, and it is necessary to see how far the two cases are so connected. There are other questions into which I do not feel it necessary to enter now. I apprehend that if there were no lien at all upon the interest, it would be competent to a married woman, notwithstanding the jus mariti, to part with her estate to a creditor of her husband, or a creditor of her own, or to a stranger, for a valuable consideration, provided it were a bonâ fide transaction; and that the consent of the husband would not only enable her to part with the reversionary interest in that estate itself upon the decease of the husband in her lifetime, but also, if it is a personal fund, and falling distinctly within his marital right, to part with the interest during the subsistence of the marriage. But that is not the ground upon which the Court below proceeded. I was a little alarmed when I heard it stated that they had proceeded on the negative of that position. I do not apprehend that either Dr. Lushington or Mr. Wood have put the case at all on such a

ground, but they put it on the ground of the existence of a lien or claim upon the interest, independently of the reversionary right, or the distinction between the reversionary right on the demise of the husband or other termination of the marriage, and the interest during the subsistence of the marriage. My Lords, it may be necessary that the fact should be ascertained before a decision of that question should be made; and I shall look farther into the case before I call upon your Lordships to decide it. I am sorry to say I do not find very great assistance given us in the report of the case in the Court below. I do not mean to say that there is any blame attached upon learned judges for not giving their reasons; their first duty is to see that they do justice between the parties,—that they are right in their decision. Their giving reasons is undoubtedly very useful, especially where the case is carried to a higher Court, because, on the appeal, it prevents any misunderstanding of the grounds on which they have decided; but I repeat, no person has a right to complain if he does not find reasons stated. I have referred to the reports of this case in the Court below; and unfortunately we are left in uncertainty as to the grounds of the decision; because merely affirming that the one party's reasons are wrong or the other's right does not show us in what respect and why they are so. I move your Lordships that the further consideration of this case be adjourned.

My Lords, I have, since the argument, fully considered this case, and I am of opinion that the judgment of the Court below ought to be affirmed, with costs; I do not feel it to be necessary to trouble your Lordships by going into the particulars of the case.

NAPIER
v.
GLENDONWYN
and others.

13h Apr. 1835.

The House of Lords ordered and adjudged, "That the "said petition and appeal be, and are hereby dismissed "this House; and that the interlocutor therein complained "of, be, and the same is hereby affirmed: And it is further "ordered, That the appellants do pay or cause to be paid "to the respondents the cost incurred in respect of the said "appeal; the amount thereof to be certified by the clerk "assistant."

A. H. MACDOUGALL—JAMES DUTHIE,—Solicitors.