the personal property out of the original trust-disposition, leaving the heritage still comprised in it.

What then is the import of the declaration "all monies belonging to me, or due to me from any source (over and above the sum of £8000 sterling already settled on my wife), I wish to be equally divided between my wife Frances Marianne Gibson Carmichael, and my mother the Hon. Anne Gibson Carmichael?" I cannot interpret the clause to mean that his wife and mother had the whole personal estate bestowed on them, leaving the £8000 to be paid out of the heritage, and the residuary disponees to get any balance over of the proceeds of this heritage. Such conclusion I think to be at variance at once with the words and the fairly presumable intention of the testator. What I think he meant was, that so far as the monies included in the personal estate went beyond the sum necessary to pay the provision of £8000 to his wife, the surplus should be divided between his wife and mother. I can put no other rational construction on this clause of the codicil. This of course implies that if the personal estate did not amount to £8000 no benefit resulted under this bequest. It equally implies that the personal estate should be primarily applicable in payment of this £8000. If the bequest fails, in consequence of the personal estate not amounting to £8000, there will be no practical occasion to draw any distinction between heritable and moveable, for both will be indiscriminately applicable in the primary payment of this sum, as under the original deed.

I am of opinion that the first question in the Amended Case should be answered affirmatively, the others in the negative.

LORD PRESIDENT gave no opinion, having been absent during the debate.

The following interlocutor was pronounced:—

"2*d March* 1871.—In answer to the first question, find that the two deeds, dated respectively 12th December 1850 and 12th November 1853, constitute together the testator's settlement; and that, according to a sound construction thereof, his personal estate, with the exception of articles specifically disposed of, falls in the first place to be applied, so far as it will go, towards payment of the £8000 provided to his wife, and the remainder of that provision falls to be paid out of the proceeds of the two heritable securities held by him at his death, leaving the balance, if any, arising from the said heritable securities to be disposed of in terms of the clause in the deed of 12th December 1850, which provides that, after payment of the said £8000, the remainder of the residue shall go to the testator's brothers and sisters or their issue, subject to the contingencies and conditions therein expressed. And, as regards the remaining two questions, answer each of them in the negative; and decern."

Agents for First Parties—Mackenzie & Black, W.S.

Agents for Second Parties—Gibson Craig, Dalziel & Brodies, W.S

Saturday, March 2.

DUKE OF HAMILTON, PETITIONER. JOHN GRAHAM BARNES GRAHAM, RESPONDENT.

(*Vide ante*, vol. vi., 658, and in the House of Lords, 9 Macph., p. 98.)

Process—Appeal—Expenses.

Where a judgment of the House of Lords reversed that of the Court of Session, and remitted back to that Court to assoilzie the defender in the action, and to find him entitled to the expenses incurred by him in the said Court,—*Held* that the defender was entitled to the expenses of the petition to apply this judgment of the House of Lords.

In this case the judgment of the House of Lords, of date 28th July 1871, was in the following terms:—"It is ordered and adjudged by the Lords spiritual and temporal, in Parliament assembled, that the said interlocutor of the Lords of Session in Scotland of the First Division, of the 5th of July 1869, complained of in the said appeal, be, and the same is hereby, reversed, and that the cause be, and is hereby, remitted back to the Court of Session in Scotland, with instructions to that Court to assoilzie the appellant (defender in the action in the said Court) from the whole conclusions of the libel, reserving right to the respondent (pursuer in the said action) to challenge, upon any competent ground, any operations upon the surface of the said lands by the appellant (defender) or his tenants or successors, and to them their defences thereanent; and to find the appellant (defender) entitled to the expenses incurred by him in the said Court, and to do further in the said cause as shall be just and consistent with this judgment."

The defender, the Duke of Hamilton, presented a petition to have this judgment of the House of Lords applied, and, *inter alia*, asked the expenses of the said petition to apply the judgment.

KEIR, for him, contended that, where the application of a judgment was necessary in order to the successful party obtaining the benefit of it, he was entitled to the expenses of the petition. Authorities—*Collins* v. *Young*, May 31, 1853, 15 D. 702; *Pitt*, June 4, 1864, 2 Macph. 1153; and *Fleeming* v. *Howden*, Nov. 6, 1868, 7 Macph. 79.

WATSON for the respondent.

The Court allowed the expenses of the petition in conformity with the previous practice.

Agents for Petitioner—Tods, Murray, & Jamieson, W.S.

Agents for Respondent—Graham & Johnston, W.S.