states the law plainly. "The life of any person being "taken away, the damage of those who were entertained "and maintained by his life, as his wife and children, may "be repaired."—Inst. B. I. ix. § 4. The reparation so given by the law to the widow and children of one who loses his life, is founded upon exactly the same principle with the reparation given to the person himself who suffers a maim in consequence of such negligence.

It is said that assythment is only due where the fact of slaughter is brought home to the defender directly, not where the death is a consequence only of his negligence. The respondents have no occasion to inquire, whether this doctrine be correct respecting a proper process of assythment; because their action is not what is technically called an assythment, but is an action for reparation and damages for the injury they have suffered *quasi ex delicto* of the appellant.

After hearing counsel,

It was ordered and adjudged that the appeal be dismissed, and the interlocutors complained of be, and the same are hereby affirmed, with £200 costs.

For Appellant, *M. Nolan, W. G. Adam.*
For Respondents, *J. P. Grant, Fra. Horner.*

(Mor. App. "Deathbed," No. 5.)

GEORGE RANKEN of Whitehill, . *Appellant;*
HUGH GOODLET CAMPBELL, Esq., . *Respondent.*

House of Lords, 24th February 1812.

DEATHBED— REDUCTION EX CAPITE LECTI. — A feu-disposition was sought to be reduced on the head of deathbed, to which it was answered, that the heir at law was excluded by a previous deed executed in *liege poustie*—namely, a minute of sale which sold to him these lands, and that the subsequent deed was only in implement of that transaction. Held, that as the subsequent deed was in its nature a new transaction, the previous sale must have been departed from and abandoned by both parties, and held by them as an incomplete transaction; and, therefore, the law of deathbed applied.

This was an action of reduction brought by the respond-

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ent, as heir at law of Hugh Logan of Logan, Ayrshire,* against the appellant to set aside a feu-disposition of the lands of Burnhead and Hylar, executed by his uncle, on the following grounds:—1. That it was executed upon death-bed, the deed having been executed on 23d January 1802, and Mr. Logan having died upon the 12th March 1802, within forty-eight days of its date; and, 2. On the ground of incapacity.

This feu-disposition, which stipulated a price of £2000, with an annual feu-duty of £10 per annum, had been preceded by a minute of sale, signed by the parties some six months before Mr. Logan's death, stipulating the sum of £2000 as the sole purchase price; and action was brought by the appellant to compel Mr. Campbell to implement that minute of sale. These two actions were conjoined; and, afterwards, in consequence of a suggestion by the Court, a second reduction was brought also by the respondent of the minute of sale. The minute, while it sold the lands in question, contained a clause entitling the seller to borrow £1500 on the lands on bond, and the other £500 was to be paid to his heirs, and executors or assignees, at the first term of Martinmas after his death. The ground of reduction was, that the minute of sale was in law to be presumed to have been abandoned by the parties for the feu-disposition subsequently executed; and having been so abandoned for a new deed, totally different in its nature, it could no longer be founded on. In short, that the minute of sale was an incomplete and unconcluded transaction, which, before it had been carried into legal effect, was broken off and departed from. A condescendence was ordered of the facts. From these, it appeared that the deceased Mr. Logan had been very improvident in the management of his estate. Endowed with a vein of wit and humour, and his society universally courted, these qualities engendered expensive and improvident habits. The consequence was, that he had got into debt, and the appellant, it appeared, in many instances, had assisted him to get out of his difficulties, had helped him in pecuniary transactions, and had, finally, been of great service in the management of his affairs. Mr. Logan at one time had resolved to sell part of his property, namely, that part now in question, but had declined

* "The Laird of Logan, or Wit of the West," is supposed to celebrate this personage.

to take less than £3000 for it. It not being sold, part was let on lease to the appellant at a yearly rent of £110; the other part, inclusive of coal, yielded a rent of £40. In all £150 per annum. Sometime thereafter, and under an avowed desire to reward the appellant for his services, he came to the resolution of selling it to the appellant for £2000, stating, that he meant the difference as a compensation for Mr. Rankine's trouble in his affairs. When his Edinburgh agent was asked to prepare the disposition, he declined, stating that the title-deeds of Logan's lands of Burnhead and Hylar prohibited "him from gratuitously "disposing of these lands, or altering the order of succes- "sion. Logan may, no doubt, sell these lands to an oner- "ous purchaser for a fair price. I am totally ignorant of "the value of the lands; and I mentioned to Mr. Logan, as "well as to Mr. Ranken, that they should avoid any trans- "action, which, under the colour of a sale, might afterwards "be considered as a collusive bargain, to counteract the "prohibition in the titles. I rather imagine, that a feu- "right (where the feu-duty is so small) can be considered "in no other light than a sale. *It is a pity Logan would* "*not fall upon some other less hazardous mode of rewarding* "Mr. Ranken's services. This is my opinion of the matter, "and I mentioned it formerly both to Logan and Mr. Ran- "ken." This letter was adressed to Mr Gavin Hamilton, Mr. Logan's agent in the country, who had drawn out the minute of sale. In consequence of the doubts expressed by Mr. Mackenzie, it appeared from the correspondence that the parties changed the form of the transaction as intended by the minute of sale. In a letter written by Mr. Logan to Mr. Mackenzie, he says,—"*I was quite certain it was wrong* "*to mention any price, so must have all done over again, and* "*will write you on that account.*" These facts were proved by correspondence; but a proof was allowed generally. The proof on the subject of incapacity failed, it being proved that he was sensible and in possession of all his faculties at the time he executed the deed, but having at intervals lethargic fits which did not last any time. The Lord Ordinary reported the case to the Court.

Upon considering the pleadings, and hearing counsel, the Court seemed all agreed that the respondent's plea, founded on the state of the titles, was ill grounded, in respect that the old destination was cut off by prescription, Mr. Logan having possessed the estate upon titles altogether independ-

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ent of that destination; and therefore the question was disposed of on the validity of the feu-disposition and the minute of sale.

Nov. 15, 1805. The Court, by a majority, pronounced this interlocutor:—"The Lords having considered the mutual memorials for "the parties, with the proof adduced, and writings produced, and advised the whole, allow the supplementary summons of reduction of the minute of sale to be repeated, "and conjoined with the mutual actions of reduction and "implement betwixt the parties already conjoined; and "conjoin the whole of these actions accordingly; sustain "the reasons of reduction of the said minute of sale, and "also of the disposition, both produced and founded on by "the defender, George Ranken, and reduce, decern, and "declare accordingly; sustain the defences for Hugh Goodlet Campbell in the action of implement; assoilzie him "from the conclusions of that libel, and decern; and remit to the Lord Ordinary to hear parties further on the "other conclusions of the libel at the instance of the said "Hugh Goodlet Campbell, and to do therein as he shall "think just."

Dec. 6, 1805. On reclaiming petition the Court adhered.

Against these interlocutors the present appeal was brought to the House of Lords.

Pleaded for the Appellant.—Assuming, upon the opinions delivered by the judges of the Court of Session, that the late Hugh Logan had the power to dispose of his lands at pleasure, and that the respondent, his heir at law, is bound to fulfil the obligation Mr. Logan came under by the contract or minute of sale with the appellant, if it be a subsisting deed; and assuming that Mr. Logan was in possession of all his faculties, and that his intention was to reward the appellant for his valuable services, while no vestige of fraud appears, the only question then for consideration is, Whether the contract or minute of sale was abandoned or given up by the parties? And if it was *not*, Whether it be still an efficient instrument, affording action to the appellant, did it stand alone? Either the respondent is barred from challenging the disposition on the head of deathbed, by want of interest, seeing that deed was not to the prejudice of the heir at law, but more favourable to him than the contract which was executed *in liege poustie;* or if he chooses not to concede this, but to insist on his privilege, then he is bound to fulfil the contract *in terminis*, and the decree reducing it

is erroneous. But the respondent, in order to get out of this dilemma, maintains that the contract or minute of sale never was complete or binding, or if binding, was passed from by the parties, and a new transaction or bargain entered into, which latter transaction is reducible on the law of deathbed. But there is no ground for maintaining that the minute of sale was not a complete and binding transaction. The clause in the minute of sale, declaring that it was to be placed in the hands of Mr. Logan's agent, (Mr. Mackenzie), and that he was not to part with it, but upon the joint order of the parties, does not prove this but the contrary. Again, if the minute of sale was abandoned, why was it not destroyed? The fact is, that every thing concurs to show that there was no such intention to abandon it. Mr. Logan, as the letters prove, was most anxious, from first to last, that the lands should be conveyed in the way set forth in the minute; and it was only when Mr. Mackenzie threw out doubts as to the validity of a sale in that form, that the feu disposition was resorted to, in order to make Mr. Ranken's right to the estate more secure. And it is therefore impossible to suppose it ever entered into Mr. Logan's mind to do away with the minute of sale he had voluntarily executed. The disposition was evidently meant to corroborate and fulfil it on his part, so far as he imagined he had power to do. No doubt much stress was laid on an expression in one of Mr. Logan's letters, after learning Mr. Mackenzie's scruples, he says, "It *must be all done over again*," but from the context of that very letter, as well as from the tenor of Mr. Logan's other letter in evidence, it is clear that he only meant an alteration in form and not in substance. The minute of sale therefore ought to be held as a valid subsisting deed, sufficient to protect the disposition from the objection of deathbed.

Pleaded for the Respondent.—The feu-disposition granted by the late Mr. Logan of Logan, in favour of the appellant, on the 23d of January 1802, is reducible *ex capite lecti*, this deed having been subscribed by the late Mr. Logan within less than sixty days of his death, and after he had contracted the disease of which he died. The only answer attempted to be made to this plea is, that the respondent is alleged to have been excluded from the succession, by the previous minute of sale of the lands, executed on the 16th September 1801, when Mr. Logan was in *liege*

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poustie; and hence it is contended, on the authority of a variety of decisions, that the respondent has neither title nor interest to set aside the feu-disposition. But to this it is replied, that the minute of sale was an unfinished bargain, which the parties had abandoned and given up; so that the respondent's title and interest to set aside the feu-disposition are unquestionable; and the authorities referred to are inapplicable to the present case. 2. The feu-disposition being set aside *ex capite lecti*, the appellant has it not in his power to recur to and found upon the minute of sale of 16th September 1801, as his title to the lands. This minute of sale was merely the commencement of an intended bargain, which was broken off by the parties themselves, and entirely put an end to, from a belief that the proposed bargain could not be carried into effect, and that it was necessary to enter into a totally new and altogether different and independent contract. 3. The lands conveyed to the appellant were, besides, held by Mr. Logan under an entail, which restrained him from making any such conveyance thereof to the prejudice of the heirs of entail. This entail, which had been executed by Mr. Logan's father, Hugh Logan the elder, in the year 1739, and upon which his brother George was infeft in 1745, was not indeed an entail of the strictest kind, but it was an entail that effectually limited the heirs succeeding, from doing any gratuitous deed to the prejudice of the subsequent heirs; and the conveyance here was clearly a gratuitous act, because it gave away the estate for little more than one-fourth of its value. 4. Besides, the transaction, in so far as the value was concerned, and the incapacity of Mr. Logan, was a most unequal bargain, and ought therefore not to stand.

After hearing counsel, it was

Ordered and adjudged that the interlocutors complained of be, and the same are hereby affirmed.

For the Appellant, *David Boyle, D. Cathcart.*

For the Respondent, *Wm. Adam, Matthew Ross, David Monypenney.*