He does not mean that these are her property, from which he is to get a loan. He speaks peremptorily, and says, "let there be no difficulty or delay about the matter, otherwise I shall be put to considerable inconvenience and not a little displeased." That is not the language of a man who has gifted any of the bonds to his wife, and put them beyond his control. His Lordship then read some of the other correspondence in the case, and continued—These letters seem to me inconsistent with the notion that the bonds had ever been made over, or meant to be made over, to Mrs Henderson.

But then comes another proceeding in 1856, which bears on the question. The bonds are again deposited in bank, and on this occasion Dr Henderson writes to his banker:—"I have lodged with this bank 19 City of Edinburgh bonds of annuity for £3 each, and one bond of annuity of £18, with the relative interest coupons. Likewise, an Eastern Counties Railway Company mortgage for £500. . . . . The interest to be received as it becomes due, and placed to the credit of Mrs Mary Henderson's account, and the bonds and mortgage to be at the disposal of myself and Mrs Henderson, or either of us." Not only the bonds purchased with the money of Mrs Henderson's mother are here, but those purchased by Dr Henderson's own money. They are all lodged together. It seems to me that, if the defender depends on this letter as indicating an intention to make a gift to her, it proves too much, for it proves not noly that she got a gift of the 18 bonds, but also of this mortgage of the Eastern Counties Railway Company.

I think, therefore, that these letters are strong evidence against the claim.

It would appear that Dr Henderson had made a settlement shortly before that date. He writes to his agent that he wished to add to this settlement a clause about his son James, and then he says, "Mary's Horse Wynd Property she may do with as she pleases. If it is necessary I shall give my sanction to her doing so in any form you may point out." Surely when he was so dealing with the separate estate of his wife, it would occur to deal with the bonds if he meant them to be her property. But there is no word about the bonds. After this he made a new settlement in November of the same year, and there again there is nothing to indicate any intention like that contended for. That is the evidence in the case. There is very little to be got out of the documents. I think there is no sufficient evidence of donation. Nothing can be clearer than that the money was at the commencement, Dr Henderson's, *jure mariti*, and no gift of it has been proved.

But there remains the question of the Birkenhead bonds. There was originally but one bond for £1000, and the question is, was that the property of Mrs Henderson? Now the £1000 invested in that security belonged to the husband. But it must be kept in mind that at that time the spouses were living in London, and were there not on a visit merely, but they were settled there. Dr Henderson made up his mind to take an English investment, and the bond which he took was not a mere formal document as in the case of the city of Edinburgh bonds. It was not such a bond as the Birkenhead Corporation would have granted if left to themselves, and therefore the terms must have been dictated by Dr Henderson. The document bears that the commissioners, in consideration of £1000 paid to them by Andrew Henderson and Mary Henderson, his spouse, both then residing at No. 335 Strand, London, thereby granted, bargained, sold, and assigned unto the said Andrew Henderson and Mary Henderson, their executors, administrators, and assigns, &c., to be had and holden unto the said Andrew Henderson and Mary Henderson, their executors, administrators, and assigns, until the said sum of £1000 and interest should be paid. It is impossible not to see that in taking such a security, Dr Henderson must have taken advice, and any one whom he consulted would tell him the effect of such a document by the law of England. We now know what advice he would have obtained, and it is clearly stated in the opinion of Mr J. Anderson, Q.C., who says that "the limitation to Andrew Henderson and Mary Henderson, &c., creates a joint tenancy, one of the properties of which is that on the death of either joint-tenant the interest accrues to the survivor. This is clear at common law." And he adds, "all this would be free from any doubt were the law of England exclusively to govern the question, as I think it does." I think so too, and that the law of England must govern the question, for when a man residing in England takes a deed in these technical terms, he must be presumed to know the effect of it, and to intend that effect.

The result is, that this bond must be separated from the City of Edinburgh bonds, for here there is satisfactory evidence that Dr Henderson intended to make a gift of the money. I therefore agree with the Lord Ordinary as to the first branch of the case, and differ from him as to the second.

The other Judges concurred.

Agents for Trustees—M'Naughton & Finlay, W.S.

Agents for Defender—D. Curror, S.S.C.

Friday, March 20.

WESTERN BANK AND LIQUIDATORS, PETITIONERS.

Public Record—Deed—Foreign—Proof. Petition for authority to Sheriff-clerk to deliver up deed recorded in Sheriff-court books, for transmission abroad, *refused*, there being merely an affidavit by foreign lawyer that an office copy of the deed was not competent evidence by the law of the country where the deed was to be produced, but no proof that production of the original document was essential, or that the copy might not be made competent evidence if supported by parole.

This was a petition to the Court for authority to the Sheriff-clerk of Lanarkshire to deliver up to the petitioner a power of attorney recorded in the books of the Sheriff-court of Lanarkshire, for the purpose of exhibiting the same in the Supreme Court of New York. The ground of the application was, that the factor appointed by this power of attorney had accepted bills for his constituent; that these bills now belonged to the liquidators; that they were trying to enforce payment thereof in New York where the constituent lived. He denied liability on the ground that the factor had no right to grant these bills. This rendered production of the power of attorney in New York necessary, and an affidavit was produced to the effect that an office copy of that document was not competent evidence by the law of the State of New York. Therefore the present application was made for authority to

get the principal document delivered up, to be sent to New York.

The Sheriff-clerk of Lanarkshire, in whose custody the document was, did not object, but pointed out that the petitioners were not parties to the deed. They were not the only parties interested therein. The factor might have granted other obligations, and the creditors therein had a material interest in the safety of these documents. Besides, the affidavit did not show that an office copy would not be competent in New York if the principal could not be obtained. Reference was made to the cases of *Young*, 4 Macph. 344; *Jolly*, 2 Macph. 1288; *Dunlop*, 24 D. 107; *Duncan*, 4 D. 1517.

At advising—

Lord President—I am clearly of opinion that this application cannot be granted. This is a deed in which a great many people not only may be but are, in point of fact, interested, and the petitioner is in no greater degree interested than many others. Now I know no case in which the Court granted authority to take a deed out of the country on grounds so slender as are here alleged. The cases referred to have very little application. The case of *Jolly* received great consideration in the other Division, and it was not without much hesitation that we granted the application. The question in the Court of Dublin related to the signature of a very old man who very seldom signed his name at all. The last signature he had been known to make was to this deed, and it was said that by production of this deed it would be demonstrated that the signature founded on by the other party was a forgery. That was a strong reason for allowing the deed to be transmitted out of the country. In the circumstances a copy would have been of no use. Nothing but the deed itself was of any avail. In the last case the authority is all the other way. In the present case there is no ground for the application. The affidavit is framed in the most meagre way. The attorney in New York says that an office copy of that document will not be competent evidence by the law of the State of New York. Now I don't know what that means. If it means that, by the law of New York, when it is impossible to get the principal deed, the contents cannot be proved in any other way, all I shall say is that I don't believe that to be the law either of New York or of any civilised country. Therefore I am for refusing the petition.

Lord Curriehill—I am very clearly of the same opinion. When a deed is put on record for preservation, parties having an interest in it trust that it will be found there when it is wanted, and nothing would have a greater tendency to shake the confidence of the public in our records, that, if when they went to find the deed, they were to discover that it had been sent across the Atlantic as is here proposed. No precedent has been shown for our granting the prayer of this petition, and if there had, I should have submitted that the matter required very careful consideration. The modern practice is, that when the production of a deed is indispensable, an official is sent with it, in order that he may produce it when required.

Lord Deas—I am of the same opinion. It has not been shown to me that this document could not be made competent evidence. All that is shown is that an office copy will not be competent evidence. That may be quite true, but it may be easy to make an office copy competent by parol evidence, and there would be nothing out of the way in that, for it would be just what we do ourselve in many cases.

Lord Ardmillan—I concur. This is not like the case of *Dunlop*. Many parties are interested in this deed, and one of them asks to have it sent accross the Atlantic, and merely because of this affidavit. Supposing it to be true that the copy, *per se*, is not competent evidence, the question is, whether, if it is proved in the Court of New York that the principal document will not be transmitted, and if the authenticity of this copy is proved, and our judgment refusing to send the principal is produced, the copy will not be received as sufficient evidence? I should be surprised if in that case the proved copy would be of no avail. The case of *Jolly* was an exceptional case, and has no application to the present circumstances.

Agents for Petitioner—Hamilton & Kinnear, W.S.

Agents for Sheriff-clerk—Neilson & Cowan, W.S.

Friday, March 20

TAYLOR & CO., *v.* MACFARLANE & CO.

(*Ante*, vol. iv., p. 33).

Interest—Liquid and Illiquid Claims—Verdict—Bill of Exceptions—Appeal. Motion by holder of a verdict—in a case which was carried to the House of Lords by appeal on a Bill of exceptions and against interlocutor settling the issues, and in which the appeal was dismissed, —for interest from date of the verdict, *refused.* Observed that the Court had a discretion to award interest in a case of unreasonable litigation.

In this case, which was an action to recover damages for breach of contract, in consequence of the defender having used logwood for colouring a cargo of spirits shipped to the West Coast of Africa, (thereby injuring the marketable quality of the spirits), the pursuers, in January 1867, obtained a verdict, and the damages were assessed at £3000. The defenders presented a bill of exceptions to the judge's charge, which was unanimously disallowed, but the case was considered one of some difficulty, and the judges delivered separate opinions. An appeal was then presented to the House of Lords against the interlocutor disallowing the bill of exceptions, and also against the interlocutor settling the issues, but both the interlocutors were affirmed and the appeal was dismissed.

Gifford, for the pursuers, now moved to have the verdict applied and decree pronounced for the damages awarded, with interest from the date of the verdict, founding upon the case of *Lenaghan* v. *The Monklands Iron & Steel Co.*, 20 D. 848

J. M'Laren, for the defenders, contended that interest ought only to be given from the date of the interlocutor applying the verdict, citing *Hurlet & Campsie Alum Co.* v. *Earl of Glasgow*, 13 D. 370.

The Court were of opinion that they had a discretion, under the last mentioned case, to give or withhold interest. Strictly speaking, the claim could not be held to be liquidated until the verdict was applied, because, until then, the decision of jury was not final; but where a party created delay by improper litigation, interest might be given from the date of the verdict in which he ought to