aside the settlement, and made the son a liferenter. Now, as against that opinion the appellants relied on three propositions—first, that the power was not intended to be exercised over the heir, but only over the other children. If not formally abandoned, however, that point was not seriously insisted in. The second proposition, in which there was considerably more probability, was that the truster intended that the power should be exercised during the minority of his children only, and not after their majority. It was said that although the codicil postponed the time at which the estate was to be conveyed to his eldest son from his attaining majority, as provided by the settlement, until he had attained the age of twenty-five years, it did not follow that it was intended also to extend the time during which the power might be exercised to the same period. I was at one time considerably impressed with that argument, but have since seen that it was not well grounded. Had the will declared that the power should only be exercised up to majority, the codicil would not have extended its exercise beyond that period; but the will speaks of that power only with reference to the time at which the estate is to be conveyed. It therefore follows that, according to the true construction of this settlement and codicil, the time for the conveyance of the estate having been extended to the son's attaining the age of twenty-five years, the time during which the power might be exercised was extended to the same period. Now, in the third place, as to the effect of the approval of the trustees. It is quite clear that by the law of England the trustees could not divest themselves of the power, and I believe there is no difference in the law of Scotland. It certainly seems a very strange proposition that a power which is given to trustees for children could be given up by them. I pass on, however, from this, because I think the trustees never did divest themselves of this power. They consented to the settlements, but what are they? Why, simply a conveyance by the eldest son of all his interest under the trust-settlement of his father. On these short grounds I beg to advise your Lordships to affirm the interlocutor, and to dismiss the appeal with costs.

Lord CHELMSFORD—I entirely agree with the Lord Ordinary and the majority of the Judges of the First Division. Three propositions have been submitted in opposition to it. First, that the exercise of the power was not to extend over the eldest son—a point which was not insisted upon. Secondly, to what time was the exercise of this power limited? The settlement declared that time to be the son's majority; but then came the codicil, which declared that the estate should not be conveyed to the son till he had attained the age of twenty-five. It was argued that though the term for conveying the estate was thus postponed, the exercise of the power was not extended. But the time at which the trustees were to divest themselves of the estate was that at which they were to determine whether it should be conveyed to the son in liferent or in fee. Nor does there seem any reason why it should have been in the power of the trustees to exercise the power finally before the son had attained majority. His conduct up to that time might have been such as to resolve them to confine his interest to a liferent; while before he reached twenty-five and could take the estate his conduct might have been of a perfectly opposite character. The most important question, however, which arises is, whether the trustees *could* divest themselves of their right to exercise this power, and if so, whether they did do so in fact. I am of opinion that such a power as this—a power coupled with a duty—could not, under any circumstances, be surrendered by them. Even assuming that they could, however, I think they did not consent to that settlement, their names as consenting parties having been purposely omitted. Even if they did so consent, however, that would make no difference, because all the parties knew that these settlements were subject to a contingency. I therefore agree that the interlocutor should be affirmed.

Lord KINGSDOWN—I concur.

Interlocutor affirmed, and appeal dismissed with costs.

COURT OF SESSION.

Tuesday, Feb. 27.

FIRST DIVISION.

THORBURN *v.* THORBURN.

Husband and Wife—Expenses. Although a husband is liable for his wife's expenses in an action against himself, he is not liable to pay the expense of unnecessary litigation on her part.

Counsel for Pursuer—Mr Fraser, Mr Mair, and Mr Rampini. Agent—Mr William Officer, S.S.C.

Counsel for Defender—Mr Alexander Blair. Agents—Messrs Hunter, Blair, & Cowan, W.S.

This is an action of aliment by a wife against her husband. The pursuer claimed £100 a year, and the defender alleged that in consequence of the intemperate habits and violence of his wife he had been obliged about a year ago to remove her from his house, and that he had since paid her £1 a week which was sufficient for her comfortable support and maintenance as his wife. The pursuer pleaded that the defender's statements as to her intemperance and violence were irrelevant. The Lord Ordinary (Mure) repelled this plea *hoc statu* "reserving to consider, when the proof is being led, whether any portion of the defender's statement is irrelevant or not pertinent to the defence." The pursuer reclaimed, but the Court adhered.

On the motion of the defender the Court farther found that the expenses incurred by the pursuer since the date of the Lord Ordinary's interlocutor should not form a charge against the defender, the Lord President observing that though a husband must pay his wife's expenses in such actions as this, that was no reason why he should be made to pay the expense of unnecessary litigation on her part.

BRITISH FISHERIES SOCIETY *v.* HENDERSON.

Police Assessment—Exemption. Suspension of a general police assessment in a county on the ground that the parties charged appointed and paid, under special Acts, police constables of their own, *refused*, there being no exemption in their favour either express or implied.

Counsel for Suspenders—Mr Clark and Mr Duncan. Agents—Messrs Horne, Horne, & Lyell, W.S.

Counsel for Respondent—The Solicitor-General and Mr Millar. Agent—Mr G. L. Sinclair, W.S.

This is a suspension of an assessment sought to be levied from the complainers as owners of the harbour of Pulteneytown by the Commissioners of Supply for the county of Caithness, in virtue of the powers conferred by 20 and 21 Vict., cap. 72, to establish a police force in the county. The ground of suspension was that under various private Acts under which the complainers are incorporated, they had the power to appoint, and had in point of fact appointed, police constables of their own. But neither the private Acts nor the public Act conferred any exemption on the complainers from the assessment complained of, and the Lord Ordinary (Jerviswoode) refused the suspension, there being no presumption in favour of special pleas of exemption from taxation. He was unable to observe any statutory provision adequate to secure the exemption claimed. It might be that under this view the complainers were more heavily burdened as respects the matter of police than others around them; but the local causes, the existence of