

[16th July 1833.]

JAMES ADAMSON and others, Appellants.—*Knight*—*Murray*. No. 34.

Mrs. MARGARET STORMONTH OF DARLING and others, Respondents. — *Lord Advocate (Jeffrey)*. — *Solicitor General (Campbell)*.

Testament — Clause — Minor.—Question, 1, As to the construction and effect of a clause in a deed of settlement, as to a party being bound to deduct a certain sum, in the event of succeeding to a bond, from a provision in a deed of settlement; and, 2, Whether a minor was sufficiently bound so as to prevent her resiling from an agreement by her legal guardians.

THE late Mr. James Stormonth was proprietor of the estates of Lednathy, Inverchroskie, and Whitefield, and was the uncle of the appellant Adamson, and of the respondent Mrs. Margaret Stormonth or Darling. He held an heritable bond for 2,400*l.* granted in 1803 by the late Lord Meadowbank, which he had taken payable to himself in life-rent, whom failing, to his natural son Charles Stormonth, also in life-rent, and his issue in fee; whom failing, to Adamson in life-rent, and his issue in fee; reserving power to alter this destination. In virtue of that power he executed, on 16th February 1805, a deed, in which he set forth, “being satisfied that the
“ said James Adamson, my nephew, will act with pro-
“ priety in the management of the said sum of 2,400*l.*

2D DIVISION.
—
Lord Fullerton.

No. 34.
 16th July
 1833.
 ADAMSON
 and others
 v.
 DARLING
 and others.

“ sterling, in case of the death of the said Charles Stor-
 “ month without issue, or such issue being extinct, I,
 “ in terms of the power of alteration conferred on me by
 “ the said bond, have resolved to remove the restriction
 “ of the said James Adamson’s right to the said principal
 “ sum to a life-rent, and hereby destinate and appoint the
 “ said principal sum, in the event of the said Charles Stor-
 “ month dying without issue, or of such issue, although
 “ once existing, being extinct before receiving payment,
 “ to be paid to the said James Adamson, or the heirs of
 “ his body ; whom failing, to James Stormonth Darling,
 “ second son of the said Margaret Stormonth, and the
 “ heirs male of his body ; whom failing, to the other
 “ persons called to the succession of my lands and
 “ estate of Lednathy in their order ; whom all failing,
 “ to my heirs or assignees whomsoever ; and for ren-
 “ dering this alteration effectual, I hereby assign, make
 “ over, and convey to the said Charles Stormonth,
 “ during all the days of his life, the annual rent of the
 “ said sum of 2,400*l.* sterling ; and in case of his death,
 “ and leaving lawful issue of his body, the said principal
 “ sum, with such interest as may be then due thereon,
 “ to such issue, share and share alike ; and, failing such
 “ issue, to the said James Adamson, and the heirs of
 “ his body ; whom failing, to the said James Stormonth
 “ Darling, and the heirs male of his body ; whom fail-
 “ ing, to the other persons called to the succession of
 “ the said lands of Lednathy in their order ; whom all
 “ failing, to my heirs and assignees whatsoever.”

On the 18th of the same month he executed a trust disposition and deed of settlement, by which he conveyed his estates of Lednathy, Inverchroskie, and Whitefield to Mr. and Mrs. Darling, and to Adamson, and others, in

trust for various purposes, and in particular to convey Lednathy to the eldest son of Mrs. Darling, and with power to sell the lands of Inverchroskie and Whitefield, declaring that “ upon such sale taking place, my said “ trustees are hereby appointed to pay off all the debts, “ legacies, and donations which may be then resting ; “ and after deduction thereof, and of the expense of “ management, shall account for and pay over to the “ said James Adamson one fourth part of the residue of “ the price of the said lands, and pay and divide the “ remainder of said three fourth parts of said prices “ amongst the children of the said Margaret Stormonth, “ other than the said James Stormonth Darling, or any “ other son of the said Margaret Stormonth who shall “ succeed to me in the said lands of Lednathy, share “ and share alike ; but declaring that in the event of “ the said James Adamson succeeding to the sum of “ 2,400*l.* sterling contained in and due by a bond “ granted to me by the Honourable Allan Maconochie “ of Meadowbank, one of the senators of the College of “ Justice, and Alexander Maconochie, his son, in con- “ sequence of a conveyance thereof executed by me on “ the 16th of February current in favour of Charles “ Stormonth, and the heirs of his body, and failing them, “ the said James Adamson, he shall be obliged to dis- “ count and allow out of his fourth share of the price “ of said lands settled on him as aforesaid the one half “ of what he shall recover upon said bond and convey- “ ance thereto, which, in that event, shall be paid to “ and divided amongst the children of the said Margaret “ Stormonth, along with the three fourth parts of the “ prices to be got for the said lands in the county of “ Perth, appointed to be sold in manner foresaid ; and

No. 34.

 16th July
 1833.

 ADAMSON
 and others
 v.
 DARLING
 and others.

No. 34.

16th July
1833.

ADAMSON
and others
v.

DARLING
and others.

“ also declaring, that if any of the children of the said
 “ Margaret Stormonth shall be under age when any of
 “ these sums come to be divided, my said trustees are
 “ to lend out the shares of such children as may be
 “ under age, for their behoof, and to apply the interest
 “ thereof, or such part of the capital as they may think
 “ proper, for promoting said children in trades or mar-
 “ riage, as to them shall seem proper.”

He afterwards conferred on Mrs. Darling a power of dividing the provisions made in favour of her younger children in such proportions as she should see fit.

By another deed dated the 25th August 1812, he disposed to Adamson, and to the heirs of his body, the lands of Inverchroskie and Whitefield, and all other estates, heritable and moveable, then belonging to him, or which might belong to him at his death, under certain exceptions ; and he named Adamson to be his sole executor and universal intromittor with his personal estate. He also bequeathed a life annuity of 50*l.* to Mrs. Darling, and a legacy of 6,000*l.* to her children, carrying interest from his death and payable within twelve months thereafter.

This deed contained the following clause:—“ And I
 “ hereby revoke and recal all deeds and settlements
 “ which I have at any time previous hereto made or
 “ executed in favour of and for behoof of the said
 “ Margaret Stormonth (Mrs. Darling) and her chil-
 “ dren, or either of them, and also all annuities, legacies,
 “ and provisions which I have at any time previous
 “ hereto made or settled upon them or either of them ;
 “ and specially I do hereby revoke the whole annuities
 “ and provisions made and settled upon them or for
 “ their behoof by the said trust disposition and settle-
 “ ment executed by me upon the 18th day of February

“ 1805, and codicils thereto subjoined; but excepting
 “ always from this revocation the said trust disposition
 “ and settlement and codicils, in so far as they relate
 “ to my said lands of Lednathy and the annuity of
 “ 50*l.*, with which these lands are burdened, to the said
 “ Margaret Stormonth.”

No. 34.
 16*th* July
 1833.
 ADAMSON
 and others
 v.
 DARLING
 and others.

Mr. Stormonth died in October 1817, and on the 27*th* of that month an agreement was entered into between Mr. and Mrs. Darling, on behalf of themselves and their children, on the one part, and Adamson on the other, which was in these terms:—“ The said James Adamson stated that, according to the wish of the said Margaret Stormonth and her family, he agreed that they should succeed to the three fourths of the lands of Inverchroskie and Whitefield, which were settled on them by the said trust settlement dated 18*th* February 1805, in terms of and under the conditions and provisions and burdens contained in said trust settlement and codicils thereto; provided they agreed to renounce in his favour the benefit of the provisions settled on them by the said disposition and settlement of the said James Stormonth, dated 25*th* August 1812; and also provided they agreed to claim no more from the tenants as arrears of rent than what the said James Adamson should certify to be due by them. To all which the said James Darling and Margaret Stormonth for themselves, and as taking burden on them for their children, consented and agreed; and the said James Adamson, and Margaret Stormonth and James Darling for themselves, and as taking burden on them for their said children, severally became bound to execute and to get executed all deeds and writings necessary for carrying this

No. 34.

16th July
 1833.

 ADAMSON
 and others
 v.
 DARLING
 and others.

“ agreement into effect. It being thus agreed that the
 “ succession to the lands of Inverchroskie and White-
 “ field should be regulated solely by the said trust set-
 “ tlement of the said James Stormonth, dated 18th
 “ February 1805, and codicils thereto, whereby the
 “ said James Adamson has right to the remaining fourth
 “ part thereof, the said James Darling and the said
 “ James Adamson hereby accept of the office of trustees
 “ under the said deed, and they request that Mr. Thomas
 “ Watson, who is appointed a trustee by the said
 “ deed, will also accept of the office of trustee, and
 “ act along with them. The parties appoint the before-
 “ mentioned deeds to be put on record, and extracts
 “ to be thereof obtained.”

Infestment was thereafter taken in virtue of the deed of 1805.

In 1827 Mrs. Darling and her children raised an action against Adamson and Watson, the trustees, libelling, inter alia, on the two dispositions and deeds of settlement executed by Mr. Stormonth on the 18th of February 1805 and the 25th of August 1812, and the minute of agreement, dated 27th October 1817; and concluding, inter alia, “ that the said Thomas Watson
 “ and James Adamson, as having accepted of and acted
 “ under the said trust, should be ordained to concur
 “ with the said James Darling and Margaret Stormonth,
 “ or the survivor of them, in selling the said lands of
 “ Inverchroskie and Whitefield, and applying the price
 “ in the way and manner pointed out by the said trust
 “ deed and settlement, and to do or cause to be done
 “ at the sight of the said Lords whatever might be ne-
 “ cessary for rendering the titles of the trustees valid
 “ and sufficient; and to subscribe and execute articles

“ of roup, missives of sale, and dispositions or other
 “ conveyances of the said lands to the purchasers
 “ thereof; and also to concur with the said James Dar-
 “ ling and Mrs. Margaret Stormonth or Darling, or
 “ survivor of them, in applying the prices of the said
 “ lands in the manner directed by the foresaid trust
 “ deed and the codicils thereto.”

No. 34.

 16th July
 1833.

 ADAMSON
 and others
 v.
 DARLING
 and others.

Lord Fullerton, on the 11th March 1830, pronounced this interlocutor:—“ Finds, that by a trust
 “ disposition and settlement, dated 18th February 1805,
 “ the late James Stormonth conveyed to the defenders
 “ alongst with the pursuer Margaret Stormonth or
 “ Darling, and her late husband, the lands of Inver-
 “ chroskie and Whitefield in trust for certain purposes
 “ therein specified: Finds, that by the said trust deed
 “ the trustees were directed upon expiry of the then
 “ current tacks to sell the lands, and to bind the
 “ grantor in absolute or other warrandice: Finds, that
 “ exclusively of an annuity of 50*l.* to the pursuer Mar-
 “ garet Stormonth or Darling, and of certain other an-
 “ nualities, the trustees were directed to apply the rents
 “ of the lands and the prices, when sold, to the extent
 “ of three fourths for behoof of the children of the said
 “ Margaret Stormonth and the said James Darling,
 “ and to pay the remaining fourth of the said rents and
 “ prices to the defender James Adamson: Finds, that
 “ by another deed executed on 25th August 1812 the
 “ said James Stormonth revoked the foresaid trust deed,
 “ in so far as it contained the foresaid annuities and
 “ provisions in favour of Margaret Stormonth or her
 “ children, and conveyed the lands of Inverchroskie and
 “ Whitefield to the defender James Adamson under
 “ burden of a life-rent annuity to Mrs. Darling of 50*l.*”

No. 34.

16th July
1833.ADAMSON
and others
v.DARLING
and others.

“ and a legacy of 6,000*l.* to her children : Finds, that
 “ the last disposition and settlement contained neither
 “ procuratory of resignation nor precept of sasine :
 “ Finds, that after the death of Mr. Stormonth the
 “ defender James Adamson on the one part, and
 “ Margaret Stormonth and her late husband James
 “ Darling, as taking burden on themselves for their
 “ children, on the other part, entered into a written
 “ agreement by which both parties passed from their
 “ rights under the deed 1812 in reference to the said
 “ lands of Inverchroskie and Whitefield, and to the
 “ foresaid annuity and legacy therein contained respec-
 “ tively, and recurred to the deed 1805 as fixing their
 “ rights with regard to these lands of Inverchroskie and
 “ Whitefield ; and that the parties ‘ became bound to
 “ ‘ execute and get executed all deeds and writings ne-
 “ ‘ cessary for carrying this agreement into effect :’
 “ Finds, that in consequence of this agreement infest-
 “ ment was taken on the trust deed 1805 by the defen-
 “ ders Adamson and Watson, and that since that
 “ period possession has been held and intromission
 “ with the rents taken place by the defenders, as trus-
 “ tees, or their factor, in virtue of the said trust deed,
 “ and that payments have occasionally been made to
 “ account of the purposes of the trust : Finds, that in
 “ these circumstances, and according to the fair con-
 “ struction of the deed of agreement, the pursuers are,
 “ on the one hand, bound to discharge their claims
 “ under the deed 1812 ; and, on the other, the defenders,
 “ James Adamson and the other trustees, are bound to
 “ account for the rents, in terms of the trust deed 1805 :
 “ Finds, that the defenders are also bound to proceed
 “ immediately to carry the trust deed into effect, by

“ selling the lands in terms of and with the benefit of
 “ the warrandice authorised by the said trust deed
 “ 1805; and with the view of implementing the said
 “ agreement, and effecting the said sale, remits the case
 “ to Mr James Jollie, writer to the signet, to adjust the
 “ terms of the discharge to be executed by the pursuers,
 “ of the deeds or deed which may be necessary to re-
 “ move any objections to the title of the trustees arising
 “ from the revocation contained in the deed 1812, and
 “ the terms of the articles of roup of the said lands, and
 “ to report upon the same *quam primum*.”

To this judgment the Court adhered on the 17th November 1830. In obedience to the remit, Mr. Jollie prepared the draft of a deed, containing mutual discharges and renunciations between Mrs. Darling and her children and Mr. Adamson; and a trust disposition and conveyance by Mr. Adamson, and Mr. Watson and Mr. Adamson, to Mrs. Darling and themselves. By the draft of this deed power to sell the lands was given as in the deed of 1805, and then there was the following clause:—“ In the sixth place, upon such sale taking
 “ place, that the said trustees may, after the deduction
 “ of the expense of management, account for and pay
 “ over to the said James Adamson one fourth part of
 “ the residue of the price of the said lands, and out of
 “ the remaining three fourth parts of the said price set
 “ aside and lend out, on such security as they shall
 “ approve of, a capital yielding an interest sufficient to
 “ satisfy the foresaid *liferent* annuity of 50*l.* to the said
 “ Mrs. Margaret Stormonth or Darling; and thereafter
 “ to pay over to, and divide among, the children of the
 “ said Mrs. Margaret Stormonth or Darling, other
 “ than the said James Stormonth Darling, (excepting

No. 34.

16th July
1833.ADAMSON
and others
v.
DARLING
and others.

No. 34.
 16th July
 1833.

ADAMSON
 and others
 v.
 DARLING
 and others.

“ in so far as the said James Stormonth Darling is or
 “ may be interested in any share of the remainder of
 “ the three fourths of the said price, as one of the
 “ nearest of kin of the said deceased Elizabeth Darling,
 “ his sister,) the remainder of said three fourth parts
 “ of said price, in such shares and proportions as the said
 “ Margaret Stormonth or Darling may appoint to be
 “ paid to each of them by a writing under her hand ;
 “ but in case the said Margaret Stormonth or Darling
 “ shall fail to execute such writing, then an equal
 “ division among said children is to take place ; and, in
 “ the event of the said annuity ceasing, the capital set
 “ aside for answering the same shall be paid and divided
 “ by the same proportions ; but declaring, as by the
 “ said trust disposition and settlement of the said James
 “ Stormonth it is declared, that in the event of the said
 “ James Adamson succeeding to the sum of 2,400*l.* con-
 “ tained in, and due by, a bond granted to the said
 “ James Stormonth by the deceased Honourable Allan
 “ Maconochie of Meadowbank, formerly one of the
 “ senators of the College of Justice, and Alexander
 “ Maconochie, now one of the senators of the said Col-
 “ lege of Justice, in consequence of a conveyance thereof,
 “ executed by the said deceased James Stormonth on
 “ 16th day of February 1805, in favour of Charles
 “ Stormonth and the heirs of his body, and failing
 “ them, the said James Adamson, he the said James
 “ Adamson shall be obliged to discount and allow out
 “ of his fourth share of the price of said lands set-
 “ tled on him as aforesaid the one half of what he shall
 “ recover upon said bond and conveyance thereto,
 “ which, in that event, shall be paid and divided amongst
 “ the children of the said Margaret Stormonth, along

“ with the three fourth parts of the prices to be got for
 “ the foresaid lands appointed to be sold in manner
 “ foresaid ; and also declaring, that if the said Ellen
 “ Stormonth Darling, the youngest child of the said
 “ Margaret Stormonth or Darling, shall be under age
 “ when any of these sums come to be divided, the
 “ trustees shall lend out her share or shares for her
 “ behoof,” &c.

Several objections were taken by the appellants to this report, and in particular that the clause relative to the rights of Adamson to the bond for 2,400*l.* should be expunged, and a reference made to the clause in the deed of 1805, so that the rights of parties should be regulated by it ; and, 2d, that as Ellen Stormonth Darling was minor, security was not afforded so as to bind her effectually to ratify the deeds on attaining majority. On considering these objections Lord Fullerton pronounced the following interlocutor on the 8th July 1831 :—“ Repels the objections to Mr. Jollie’s
 “ report, approves thereof, and also of the drafts of
 “ the deeds prepared by him, and referred to in
 “ said report ; and of new remits to him to get the
 “ said deeds extended and executed by the parties :
 “ Farther finds the defenders liable to the pursuers in
 “ the expenses occasioned by their objecting to said
 “ report ; and remits the account thereof, when lodged,
 “ to the auditor, to tax the same, and report.

“ *Note.*—The only point attended with any difficulty is
 “ the proposed clause relative to the bond for 2,400*l.* But
 “ the Lord Ordinary thinks, in the first place, that the
 “ point does admit of being decided under the present
 “ summons, as the summons contains an express con-
 “ clusion for the application of the price to be obtained

No.34.

 16th July
 1833.

 ADAMSON
 and others
 v.

 DARLING
 and others.

No. 34.
 16th July
 1833.
 ADAMSON
 and others
 v.
 DARLING
 and others.

“ for Inverchroskie and Whitefield, by making pay-
 “ ment to the defender, Adamson, of one fourth of said
 “ price, under the declaration expressed in the trust
 “ deed above narrated, being the very declaration in
 “ the deed 1805 relative to this bond. 2d, It appears
 “ to the Lord Ordinary that the point is decided by the
 “ general finding in the interlocutor of 11th March
 “ 1830, that by the agreement of 1817 ‘ the parties
 “ ‘ recurred to the deed 1805, as fixing their rights
 “ ‘ with regard to the lands of Inverchroskie and White-
 “ ‘ field,’ as the pursuer in her summons, and her first
 “ plea in law, clearly called for the division of the price
 “ according to the deed 1805, under the declaration
 “ therein contained regarding the bond ; while the de-
 “ fender contented himself in his pleas with denying in
 “ general the effect ascribed to the agreement by the
 “ pursuers, of setting up the deed of 1805, without
 “ putting in any special plea in relation to the declara-
 “ tion as to the bond for 2,400*l*. 3d, Even if the ques-
 “ tion were open it appears to the Lord Ordinary that,
 “ as the declaration respecting the bond in the deed
 “ of 1805 truly formed, according to that deed, a con-
 “ dition affecting the division of the price of the lands
 “ of Inverchroskie and Whitefield, the agreement of
 “ 1817, according to the fair construction of its
 “ terms, which, as an onerous transaction, it is entitled
 “ to receive, necessarily revived the deed 1805 in
 “ this particular, as well as all the others fixing the
 “ interests of the different parties in the price of the
 “ lands.”

The appellants reclaimed to the Inner House, and
 prayed the Court to alter, and in particular “ to find that,
 “ in the event of Mrs. Darling exercising the power of

“ division conferred on her by Mr. Stormonth’s trust
 “ settlement of 18th February 1805, before the deed of
 “ ratification by Ellen Stormonth Darling is delivered
 “ to the defender James Adamson, she is bound to set
 “ apart for Ellen Stormonth Darling as much of the price
 “ of the lands as will be equal to her claims against the
 “ said defender, under Mr. Stormonth’s settlement of
 “ 25th August 1812.” The Court, however, adhered
 on the 9th December 1831.*

No. 34.

16th July
 1833.

ADAMSON
 and others.
 v.
 DARLING
 and others,

Adamson and others appealed.

Appellants.—1. The destination made by the testator of the bond for 2,400*l.* to Charles Stormonth in life-rent, and to his issue in fee, whom failing, to the appellant; Mr. Adamson, in fee, was never altered or revoked. The object of the qualification in the trust deed of 18th February 1805 was to equalize the succession of the testator at his death, between his nephew, Mr. Adamson, and the family of his niece, Mrs. Darling. With that view he provided for the contingency that Charles Stormonth might predecease him, whereby the equality of succession at the testator’s death might be disturbed by Mr. Adamson receiving the full sum of 2,400*l.* In that event, to equalize the division, he was required to “ dis-
 “ count and allow ” half the amount of the bond out of his share of the price of the lands. But Mr. Adamson was not required to pay back to the family of Mrs. Darling any share of the bond received after the death of the testator, and in the event of succeeding at some distant period to Charles Stormonth and his issue.

* 10 S. & D., p. 119.

No. 34.
 16th July
 1833.

ADAMSON
 and others
 v.

DARLING
 and others.

It is also inconsistent with the agreement of 1817 to hold that Mr. Adamson was to remain bound contingently to pay money to the respondents; because, as Mr. Charles Stormonth had by that time succeeded to the bond for 2,400*l.*, Mr. Adamson could “discount and allow” nothing on account of it out of his share of the testator’s funds then divisible. Accordingly, by the terms of the minute of agreement, Mr. Adamson was held absolutely entitled to a fourth share of the lands of Inverchroskie and Whitefield; and the succession to the bond for 2,400*l.* was also thereby held to be regulated by the deed of 16th February 1805. But the deed which is proposed to be executed will preclude the appellant from maintaining any such plea, and therefore matters should be allowed to rest on the terms of the deed of 1805.

2. It is unjust to require the appellants to sign a deed binding them instantly to sell the lands of Inverchroskie and Whitefield, and to divide the price among the children of Mrs. Darling who are of age, reserving only such sum as she may think fit to direct for the share of her youngest daughter, without security being given that this daughter will be satisfied with that share, and will not at majority reject it, and exact payment (which she will be entitled to do) of her sixth share of 6,000*l.*, and interest from her grand-uncle’s death, as settled on her by his deed of settlement of 1812.

Respondents.—1. The interlocutors, in so far as they find that in the event of Mr. Adamson succeeding to the bond he must discount from his one fourth of the price of the lands a half of whatever he may recover under the bond, are in precise conformity with the deeds libelled. By the terms of the bond itself, and of the subsequent deed

of Mr. Stormonth, it stands destined to Mr. Charles Stormonth, whom failing without issue, to the appellant Mr. Adamson and the heirs of his body. But by an express clause in the trust deed of 1805 it is provided, that in the event of Mr. Adamson succeeding to this bond he must deduct one half of his recoveries under it from his fourth share of the price of the lands to be sold under the trust deed. Though the trust deed was recalled by the disposition of 1812, yet it was by the agreement of the parties expressly revived or restored, to the effect of having the succession to the trust lands regulated or divided “in terms of and under the conditions and provisions and burdens contained in said trust settlement.” The declaration as to the bond formed an important condition or provision in the trust deed, and that condition was by the terms of the agreement completely preserved. But the new trust deed prepared by Mr. Jollie necessarily contains the condition or provision in the original trust deed as to this bond. If Mr. Adamson shall ultimately succeed to the bond, then he will, in virtue of this declaration in the trust deed, be bound to discount one half of the sum recovered under the bond from his fourth share of the price of the lands. It may be very improbable that Mr. Adamson will ever succeed to the bond; and if he should not, then the condition in the deed will never come into operation.

2. The power of division in favour of Mrs. Darling is not conferred upon her by the deed prepared by Mr. Jollie. She received that power solely from the trust deed of 1805, which has been specially confirmed by Mr. Adamson. The case supposed by Mr. Adamson can never occur, and no claim against him can ever arise. Mrs. Darling is a party to the proposed deed, and she is specially taken bound amongst

No. 34.

16th July
1833.ADAMSON
and others
v.
DARLING
and others.

No. 34.

16th July
1833.

ADAMSON
and others
v.DARLING
and others.

with the other obligants to procure a ratification from her daughter on her attaining majority; and Mrs. Darling likewise comes under an obligation of absolute warrandice of the discharge and renunciation to Mr. Adamson. Mrs. Darling, therefore, could never exercise the power of division to the effect supposed. That would be a direct violation of her own obligation in the present deed. Any such division would not only be ineffectual as in a question between Mr. Adamson and Mrs. Darling, but it would also be invalid to Mrs. Darling's children as in a question with Mr. Adamson. He is quite secured against the fancied claim by the terms of the proposed deed; for, first, he has the conjunct warrandice, as well as an express obligation to procure ratification, by the curator of Miss Darling, and of nine other obligants, all of whom are perfectly responsible; and, secondly, by the deed the trustees are taken specially bound to lend out Miss Ellen Stormonth Darling's proper share of the price during her minority. The appellants form a majority of the trustees, and they will consequently have the entire direction as to the investment of the minor's share of the price. They have in this way a farther and sufficient security in their own hands.

LORD CHANCELLOR.—My Lords, in the case of Adamson v. Stormonth there were two points; and upon one of those points, the first, I expressed at the time my opinion that the appellant was precluded from taking his objection; but that even if he were not, and he could go into it, I was inclined to the same opinion to which the Lord Ordinary and the Court came. Upon the second point, entertaining some doubt, I wished for further time. The doubt I entertained was,

whether the parties were not entitled to further indemnity; if so, it should be now directed, without altering the judgment in any other respect, and that would only go to the question of the costs of the appeal. It was for the purpose of considering this matter, whether or not they had a right to further indemnity, and if so, what your Lordships might be advised to do upon it, that the case was postponed; and upon further consideration, I do not feel that the point arises properly here. I am of opinion, therefore, that this judgment should be affirmed with costs.

No. 34.

 16th July
 1833.

 ADAMSON
 and others
 v.

 DARLING
 and others.

The House of Lords ordered and adjudged, That the said petition and appeal be and is hereby dismissed this House, and that the interlocutors, so far as therein complained of, be and the same are hereby affirmed: And it is further ordered, That the appellants do pay or cause to be paid to the said respondents the sum of one hundred and fifty pounds for their costs in respect of the said appeal.

SPOTTISWOODE and ROBERTSON—RICHARDSON and
 CONNEL,—Solicitors.