GLENDONWYN (OR SCOTT), ... APPELLANT.

MAXWELL, ... RESPONDENT.

15*th*, 16*th*, 19*th*, 22*nd June* 1854. Interlocutors affirmed with costs. The question was one of conjunct fee and life-rent, so well ruled by previous decisions, that Lord *St. Leonards* "declared he had never seen an appeal with less foundation; and he regretted that it had been brought." The decision below is reported in the Sec. Ser., vol. xii., p. 932. In delivering his opinion, Lord *St. Leonards* referred to the case of *Newlands* v. *Newlands*, Morrison's Dictionary, p. 4295, "where Lord Chancellor *Loughborough* is reported (but on what authority does not appear), to have expressed a wish that 'the Court would, in some future case proper for the purpose, reconsider the principle of their judgment in this case (*Newlands* v. *Newlands*), of which I have not the courage to venture on a reversal, when I am told by a person of high authority that the effect of such reversal would be to put numerous settlements in a situation in which they were not understood by the makers of them to stand. In consequence of this, I think it more safe for the present to let this judgment remain unaltered, in the hope that the question may afterwards come again before the Court to be maturely settled.' The Reporter then adds a very cogent note: 'It cannot well be conceived how in any future case the Court could be at liberty to decide in opposition to their former precedents and practice, and to this decision of the House of Lords.' This shows one thing with reference to a point which has been in controversy between myself and a noble friend of mine, not now present (Lord *Campbell*), as to the power of this House, not of reversing its own decisions, but of correcting an error in law in future cases. It is quite clear that Lord *Loughborough* considered, that if this House went wrong in point of law in a particular case, although it could not reverse its decision, yet it was not bound to persevere in error. That opinion I still entertain."

N.B.—With the most profound deference it may be suggested that a decision pronounced by the House of Lords on an Appeal or Writ of Error is necessarily law, simply because it emanates from the highest tribunal. There can be no inquiry as to its rectitude, for there is no test by which to examine it. It binds all, except the legislative power, which, no doubt, may alter it; but how? by altering the *law*, which the House itself cannot do. The theory of the Constitution seems to be that the ultimate appellate jurisdiction is infallible. It cannot err. Its decisions are to be obeyed, not

criticised. The well-known case of *Reeve* v. *Long*, Salk. 227; 2 Cruise's Dig. 336, seems in point. There the reversal by the Lords was against the opinion of all the Judges. A general Act was passed (10 & 11 Will. III. c. 16) altering the law laid down by the House. The principle on which the Act proceeded would appear to have been that what the Court of last resort decides, however inconvenient or unjust, is *law*, and to be set right only by Parliament. Hence even where the law Lords differ in opinion—where they are equally divided in giving judgment—and where, consequently, as some may irreverently imagine, the soundness of their final determination may be questioned, it will nevertheless be as good law as if the Peers had all cordially concurred in voting it. Thus in the *Queen* v. *Millis*, 10 Cla. & Fin. 534, Lord *Lyndhurst*, Lord *Cottenham*, and Lord *Abinger*, were of one mind; Lord *Brougham*, Lord *Denman*, and Lord *Campbell*, of another. The decision was said to have been but a *negation*, proceeding upon the ancient rule of the law semper præsumitur pro negante. But the Court of Exchequer, in the case of *Catherwood* v. *Caslon*, 13 Mee. & Wel. 261, treated this as a light mode of dealing with a judgment of the House of Lords. They looked to the result, and there they found that the House, *as a House*, had given a judgment; and then they said, by the mouth of the learned Baron *Parke*, "that authority binds us." The contrary doctrine Lord *Campbell* holds would endanger titles. Notwithstanding all this, it must be owned that one or two well-known decisions of the House have been *tabooed* by the profession; not, however, by holding them to be *wrong*, but by making out invariably that they have no application to other cases. I think, however, it will be found that the House itself has never revoked what it has once deliberately laid down on an Appeal or Writ of Error. Suppose the Lords were now, in 1855, to entertain misgivings respecting the principle on which they decided the great *Bridgewater case*, in August 1853;—is there any power short of a statute that could alter the law of that celebrated adjudication? And is not the House itself as much bound to conformity as the other Courts of the country?