sidered. He saw her only once on 15th November. The mental condition in which he then found her was one, he says, which he would expect would come on gradually, and that he should think it extremely improbable that on the 27th of October she could have been in a fit state to manage her own affairs, and, in answer to the Lord Ordinary, he says that it is impossible to be absolutely dogmatic, but taking the general condition in which she was when he saw her, he should have thought it very unlikely she would have been able to make a valid will three months before.

Notwithstanding Dr Clouston's evidence as to the improbability of Mrs Macfarlane being able to make a valid will within such time, I think that the evidence in this case discloses that Mrs Macfarlane, up to the end of October, was quite intelligent, and as far as her mind was concerned capable of managing her own affairs, but that, from whatever cause, on the 1st of November there was a distinct change for the worse in her mental condition. Up to that date she suffered from no delusions, at least no one observed any. Her servants noticed no change in her mental condition. Her friends Dr Cuthbertson and Mr Stuart noticed no change. Her agent transacted some business with her on the 25th and her banker on the 27th, and he says that it never occurred to him that there was anything wrong with her mind. Subsequent to 1st November, however, she constantly suffered from delusions, and became gradually worse till she died. I therefore concur with the Lord Ordinary in thinking that it is not proved that she was facile in mind at the time when she made the second donations in question.

I also concur with the Lord Ordinary that there is no sufficient evidence to show that these donations were impetrated from her by improper means.

That Mrs Miller and Mrs Lawrie were very willing to receive these donations from Mrs Macfarlane is clear enough, but I see no reason to think that the motive she had in making them was other than the affection and regard which she entertained towards them.

Had Mrs Macfarlane been free to test as she pleased on the means and estate, I think it is probable that the benefits she conferred upon them would have taken the place of legacies, and in that case I do not think anybody could have said that they were otherwise than right and proper.

On the whole matter I agree with the Lord Ordinary.

LORD KINNEAR was absent.

The Court adhered.

Counsel for Reclaimers—H. Johnston, Q.C.—Constable. Agents—Dundas & Wilson, C.S.

Counsel for Respondents—Campbell, Q.C. —Graham Stewart. Agents — Mylne & Campbell, W.S.

Wednesday, July 20.

OUTER HOUSE.

[Lord Pearson.

MARQUESS OF NORTHAMPTON, PETITIONER.

Entail—Provisions to Younger Children—Free Rental—Policies—Rent of Policies Let as Grass Parks.

In estimating the free rental of an entailed estate, for the purpose of fixing provisions to younger children, *held* that the rent derived from the policies of the mansion-house was not to be included, notwithstanding that the mansion-house was in a ruinous condition and the policies were let as grass parks from year to year.

This was a petition at the instance of the Marquess of Northampton, heir of entail in possession of the lands and barony of Kirkness, Kinross-shire, for authority to restrict a provision of £6000 granted by his father, the late Marquess, in favour of his younger children not succeeding to the entailed estate, and to fix the amount of said provision at £1472, 0s. 9d. The said provision of £6000 bore to be granted as a sum equivalent to three years' free rental of the said entailed estate, but from a statement lodged on behalf of the petitioner it appeared that this sum had been fixed under a misapprehension, and that the free rental for the year in which the granter of the provision in question died amounted only to £490, 13s. 7d. That statement excluded from the free rental the rent of the mansion-house £10, the policies £99, 10s., and of certain woodland adjoining the policies, £12, 13s. 6d.

On 4th June 1898 the Lord Ordinary (PEARSON) remitted to Mr John Rutherford, W.S., to report on the petition. Mr Rutherford presented a report, in which he made the following remarks:—"A question arises with reference to the deduction of 'policies' in this case. The mansion-house is stated to be almost ruinous, and is occupied partly by an overseer and partly let, its whole value being entered as £10.

"The policies are entered at £99, 10s., which is actual rent derived from letting the fields as grass parks; the fields extend to 55 acres. They would naturally form the policy ground if the mansion-house were properly kept up, but are and for many years have been in use to be let from year to year as grass parks separately from the farms. They are not described as policies in the entry of the estate in the valuation of the county, but are there entered under their names as House Park, Doll Park, Bankhead Park and Highgreen Park.

"The deduction of the value of policies from the rental is not prescribed by the words of the 4th section of the Aberdeen Act. Indeed, that section in specifying the amount of the provisions to younger children declares that they shall not exceed certain proportions of the free yearly rents

or free yearly value of the whole of the entailed lands and estates after deducting public burdens and other yearly charges on the rent. The deduction of the value of policies proper (as also of mansion-house and offices) from the free rental is however matter of established practice and was settled to be correct by the case of *Leith* v. *Leith* (June 10, 1862, 24 D. 1059). It may be noticed, however, that Lord Ormidale in his opinion remarked that if 'in this or in any other case it appeared that these particular subjects were incommensurate with the rest of the estates, or were otherwise of an extraordinary description, the question might present a different aspect and lead to a different conclusion;' and Lord Curriehill said that 'if they afford clear yearly value to the granter of the provisions at the time of his death it is not easy to see why such value should not be taken into computation in terms of the statute.' His Lordship added, 'At the same time, in practice, so far as I can learn, the statute has never been so construed;' but he afterwards says that 'it may be assumed that the right to possess the bare walls of an unfurnished house, with the burden of keeping it and also the gardens and policies in habitable condition, is to be held as being of no clear yearly value to the occupant in the meaning of the statute.'

"In the circumstances above set forth, the mansion-house not being habitable by the heirs of entail, and the fields not being kept up as policies but let as ordinary grass parks, it appears doubtful whether the rent obtained for the fields forms a proper deduction in the present instance.

"Woodlands entered at £12, 13s. 6d. are also claimed as a deduction. The woodlands, it is understood, surround the fields in question, and would form a natural part of the policies if properly kept up. But if the fields are not to be regarded as policy the woodlands by themselves could hardly be so. The two entries should therefore, it is thought, stand or fall together.

"In considering the whole question it is to be kept in view that in course of the procedure to follow on this petition a bond and disposition in security will fall to be granted by the petitioner in terms of the 21st section of the Rutherfurd Act and the 7th section of the Entail Amendment Act of 1851. The former Act provides that it shall be lawful for the heir of entail in possession to charge the fee and rents of the estate, *other than the mansion-house, offices, and policies thereof*, with the amount of provisions to younger children granted by any former heir of entail. Should policies be disallowed as a deduction from the rental, one of two courses might be followed in framing the bond—either the usual exception can be made, in which case the rental of the lands conveyed in security would be less than the rental on which the provision was calculated, or policies might be omitted from the exception in the bond on the ground 'that there being no policies none can be excepted.' It should be mentioned that a bond and disposition in security for £500, being a younger child's provision (then being paid off), which bond still forms a charge upon the entailed estate, was granted in 1864 by Charles, Marquess of Northampton, the heir of entail then in possession. Under this bond, which was granted at the sight of the Court and under the statutes of 1848 and 1853, the lands and barony of Kirkness are disponed in security to the lender, 'but excepting always therefrom the manor or mansion-house of Kirkness, offices, and policies thereof.' The narrative of the proceedings contained in the bond bears that the Lord Ordinary, after a remit to a reporter on receipt of his report, found, *inter alia*, that the free yearly rental of the estate for the year 1827, after making the deductions required by the said Act (*i.e.*, the Aberdeen Act) amounted to £817, 18s. 7d. It does not appear from this narrative that any question as to policies had been raised."

In addition to the authority mentioned by the reporter, the cases of *Macpherson* v. *Macpherson*, 1834, 1 D. 794, and *Grierson, Petitioner*, 1887, 25 S.L.R. 544, were cited.

On 20th July 1898 the Lord Ordinary granted the prayer of the petition.

Opinion.—"I think the heir is entitled to make this deduction here. I take it as matter of fact that these parks were part of the old policy of the estate, and are now, as the mansion-house is dilapidated, let to tenants. This state of facts seems to me to approach more nearly to the facts in the cases of *Leith* and *Grierson* than to those in the case of *Macpherson*, though perhaps it lies between them. On the information before me I hold that the house (which is partly inhabited) and the parks are still in law the mansion-house and policies of this estate. The question is not so much what is a rent-producing subject, as what can the heir let for a longer period than his own life. These grass parks are, I have no doubt, let in the usual way from year to year, and I think they are rightly so let, because they fall under the description of 'policies,' which the heir could not lease for a longer period than his own life. I think, therefore, they are to deducted in computing the free rental under the Aberdeen Act."

Counsel for the Petitioner—Blair. Counsel for the Younger Children — Gloag. Agents—Strathern & Blair, W.S.