Counsel for the Respondents James Mylne and Others—Guthrie, K.C.—Cullen. Agents—Balfour & Scott, W.S.

Counsel for other Respondents—Craigie — Younger — W. Wallace. Agents — Duncan Smith & M'Laren, S.S.C.—Robert Fleming, S.S.C.—Dundas & Wilson, C.S.

Friday, February 1.

FIRST DIVISION.

[Exchequer.

LORD ADVOCATE *v.* SPROT'S TRUSTEES.

Revenue—Entailed Estate—Entailed Money—Estate-Duty—Settlement Estate-Duty—Entail—Finance Act 1894 (57 *and* 58 *Vict. c.* 30), *sec.* 23, *sub-sec.* 16, *and sec.* 5.

Money held in trust for the purchase of lands to be entailed is not "entailed estate" within the meaning of the Finance Act 1894, section 23, sub-section (16), and is not liable under that sub-section to estate-duty and settlement estate-duty.

Opinion reserved upon the question whether the existence of separate life interests in such a fund makes it a settlement of personalty, and as such liable to settlement estate-duty under section 5.

By his trust-disposition and settlement and relative codicils James Sprot of Spott, who died on 5th July 1882, directed his trustees to hold the sum of £100,000 for the purchase of lands to be entailed in favour of his nephew Edward William Sprot, and the heirs-male of his body, whom failing certain substitutes. Pending the purchase of lands he directed that the income of the said sum was to be paid by the trustees to Edward William Sprot, whom failing to the substitute of entail who would have been entitled to the rents had a deed of entail been executed. In pursuance of these directions the trustees purchased the estate of Drygrange with part of the £100,000 held by them, and by deed of entail dated 28th January and 2nd and 6th February 1888 conveyed it to Edward William Sprot and the substitutes of entail. The balance of the said sum of £100,000, amounting to about £60,000, was retained by the trustees, and the income thereof was paid to Edward William Sprot. Edward William Sprot died on 1st February 1898, and his son Edward Mark Sprot succeeded as heir of entail to the estate of Drygrange, and to the income of the entailed money held in trust. He was born before the date of the entail, and was therefore not entitled to disentail without consent.

On the death of Edward William Sprot a question arose as to liability for estate-duty and settlement-estate-duty under section 23, sub-section (16), of the Finance Act 1894 in respect of the money held in trust.

The Finance Act 1894 (57 and 58 Vict. c. 30), sec. 23, sub-sec. (16), enacts as follows:—"When an entailed estate passes on the death of the deceased to an institute or heir of entail who is not entitled to disentail such estate without either obtaining the consent of one or more subsequent heirs of entail, or having the consent of such one or more subsequent heirs of entail valued, and dispensed with, settlement estate-duty as well as estate-duty shall be paid in respect of such estate." The expression "entailed estate" is not defined in the Finance Act.

The trustees paid estate-duty and settlement estate-duty on Drygrange, and also estate-duty on the balance of moneys in their hands, but afterwards reclaimed the estate-duty so paid upon said balance. They declined to pay settlement-estate-duty in respect of said balance, and accordingly the present action was raised against them by the Lord Advocate on behalf of the Inland Revenue. The pursuer concluded for decree ordaining the trustees to deliver to the Commissioners of Inland Revenue an account of the money held in trust by them, and to pay the sum of £600, or such other sum as should be found to be due as settlement-estate-duty in respect of such money.

The trustees lodged defences, and pleaded —"(1) The balance of legacy being 'settled property' within the meaning of the Finance Act 1894, and the trust-deed having taken effect before the commencement of that Act, the defenders are not liable to settlement estate-duty. (2) The balance of legacy not being entailed estate within the meaning of the Finance Act 1894, settlement estate-duty is not due."

On 18th July 1900 the Lord Ordinary (STORMONTH DARLING) pronounced an interlocutor, by which he ordained the defenders to deliver the account called for in the summons.

Opinion.—"Mr Sprot of Spott, who died in 1882, left £100,000 to be applied by his trustees in the purchase of lands, which were to be entailed on his nephew Edward William Sprot and a series of heirs. Until the purchase should be made and the entail executed, the income or rents, as the case might be, were to be paid to Edward William Sprot, whom failing to the substitutes of entail. In pursuance of these directions the trustees spent part of the sum entrusted to them in the purchase of the estate of Drygrange, and they conveyed that estate to Edward William Sprot and the substitutes of entail in 1888. Edward William Sprot died on 1st February 1898, at which date there remained unexpended a balance of about £60,000, which is still held in trust for the purchase of lands in terms of James Sprot's will.

"On the death of Edward William Sprot his son succeeded to Drygrange and to the income of the entailed money. Estate-duty and settlement-duty were paid on Drygrange in February and September 1899. Estate-duty was also paid on the unexpended balance of £60,000, but the defenders explain that they made this payment in error, and that they are re-claiming it from the Crown. The present

question therefore, although it relates in form only to settlement-estate-duty, is truly whether estate-duty and settlement-estate-duty are exigible in respect of the unexpended balance of £60,000, just as they are admittedly in the case of Drygrange.

"Now, if this unexpended balance is 'entailed estate' within the meaning of the Finance Act of 1894, the answer to this question must be in the affirmative, because section 23 (16) of that Act provides, "Where an entailed estate passes on the death of the deceased to an institute or heir of entail, who is not entitled to disentail such estate without either obtaining the consent of one or more subsequent heirs of entail, or having the consent of such one or more subsequent heirs valued and dispensed with' (and that is the position of the present heir) 'settlement estate-duty as well as estate-duty shall be paid in respect of such estate.' This provision is to be found in the part of the Act which relates to Scotland, and it precisely meets the present case if, as I have said, the expression 'entailed estate' includes what for convenience may be called entailed money. It is perhaps unfortunate that that expression is not defined in the Act itself, even by way of reference to the Entail Statutes. The defenders say that the omission of any such reference is all the more marked, because section 22 (*i*), in defining the word 'settlement,' does refer to the English Settled Land Act of 1882. But I have come to think that where an artificial expression like 'entailed estate' is used, there must of necessity be implied a reference to the statutes which created the legal conception of which it is the expression. Entails having no existence apart from statute, it is difficult to see how there can be any such thing as a popular meaning attached to them. And if so, you cannot solve the meaning of 'entailed estate' by going to a dictionary, or inquiring how the phrase is used in common conversation—you must go to the Entail Acts, and to these alone.

"If I am right so far, there cannot be much doubt of the construction which the phrase must receive. From the time of the Rutherfurd Act downwards it has been the policy of the Legislature to provide that—if I may quote the words of the rubric of section 27 of the Rutherfurd Act—'money vested in trust for the purchase of land to be entailed may be dealt with as if it were the entailed land.' It is true that not till the Act of 1875 was there a distinct provision (by section 3) that 'entailed estate' should include 'all money or other property, real or personal, invested in trust for the purpose of purchasing land to be entailed,' but in the latest Act of all (the Act of 1882) it is provided by section 2 that the Entail Acts 'shall for all purposes and to all effects to be read as one Act.' I admit that there are passages in these Acts where the context requires that the phrase 'entailed eestate' shall be read in its more restricted meaning of landed property held under entail; but nevertheless the effect of the sections I have referred to is to make the phrase cover entailed money, and that is, of course, enough for the Crown's argument in this case.

"The main contention for the defenders is that you do not require to go outside the Finance Act itself, because this money answers the description of 'settled property' as there defined, and by the combined effect of section 21 (1) and (4), neither estate-duty nor settlement estate-duty shall be payable in respect of personal property settled by a will or disposition made by a person dying before the commencement of this part of the Act, at least as regards estate-duty, where inventory-duty has already been paid (as was the case here in 1882), unless the deceased was at the time of his death competent to dispose of the property. But then section 21 must be read along with section 23 (14), which provides that 'settled property shall not include property held under entail,' and with section 23 (15), which provides that 'an institute or heir of entail in possession of an entailed estate shall, whether *sui juris* or not, be deemed for the purposes of this Act to be a person competent to dispose of such estate.' It is thus impossible, even on the view presented by the defenders, to avoid coming to a conclusion as to whether this unexpected balance is 'entailed estate' or not. If it is, the Finance Act forbids its being treated as 'settled property,' and declares that the late Mr Edward Sprot was competent to dispose of it. Accordingly, the question comes back to that with which I have already dealt, and makes the whole thing depend on whether you are to interpret 'entailed estate' according to the definition in the Entail Acts, or according to some popular meaning which the words are supposed to bear, but which, in my opinion, has and can have no existence except as derived from these Acts.

"I do not know that considerations of hardship have much bearing on the construction of a Revenue statute; but it did at first sight strike me as unfair that the Crown should claim to tax this money on the same footing as the land which has actually been purchased and entailed, and at the same time exact from it a considerable sum (£1789) of legacy-duty, which Drygrange has not borne anything corresponding to. It appears, however, that this apparent inequality of treatment arises from the special provision in the Finance Act (section 1 and Schedule I.), whereby payment of estate-duty exempts from payment of succession-duty in the single case of the duty of 1 per cent. payable on the succession of the lineal issue or ancestor. But for this provision Drygrange would have paid succession-duty, and the only inequality would have been in the rate (3 per cent. as against 1 per cent.), which again arises from the very special terms of the Legacy Duty Act of 36 George III. c. 52. But considerations of that kind, while they may dispose one to adopt a construction of a Revenue statute as favourable for the subject as the language will admit of, can have no place if the language

is clear; and here I think the language fairly answers that description."

The defenders reclaimed, and argued—The trust money was unquestionably "settled property" unless it was an "entailed estate," and so fell within the scope of section 23, sub-section 16 (*quoted supra*). As "entailed estate" was not defined in the Finance Act, its meaning must be sought in its ordinary interpretation as a legal phrase. So interpreted, the phrase could only refer to land, and not to money, whether held in trust for entail or not, because at common law, and under the Act 1685, cap. 22, by which entails were made effective, only lands could be entailed. An entail of money was quite ineffective—*Baillie* v. *Grant*, May 21, 1859, 21 D. 838; *Kinnear* v. *Kinnear*, June 5, 1875, 2 R. 765, and March 20, 1877, 4 R. 705. At common law and under that statute the expression "entailed estate" had acquired an established meaning, and connoted an estate in land. The provisions in the later Entail Acts, referred to in the opinion of the Lord Ordinary, by which "entailed estate" was defined as including entailed money, were applicable only to the Entail Acts themselves, and did not affect the interpretation of a statute in which they were not referred to. The interpretation proposed by the defenders was according to the system by which money left to be entailed had been dealt with in previous Revenue statutes, *i.e.*, it paid or escaped duty according as it had or had not been actually invested in land—*Lord Advocate* v. *Dunlop's Trustees*, January 12, 1894, 21 R. 348.

The argument for the respondent sufficiently appears from the opinion of the Lord Ordinary *supra*.

At advising—

LORD M'LAREN—The trustees of the late Mr James Sprot, who died in 1882, are possessed of an unexpended balance of £60,000, which they hold in trust to be applied towards the purchase of lands to be entailed. The income of this fund is in the meantime payable to the person who would be institute of entail if the trust were now executed. This action is brought by the Lord Advocate, as representing the Commissioners of Inland Revenue, and concludes for an accounting, and for payment by the defenders, Sprot's Trustees, of the sum of £600 "as settlement estate-duty in respect of the said moneys (the £60,000) remaining invested" in their hands. The Lord Ordinary has made an order for delivery of an account, on the ground, as explained in his Lordship's opinion, that settlement estate-duty is due in terms of the 23d section of the Finance Act 1894.

On the best consideration I have been able to give to the very careful examination of the question by the Lord Ordinary I am unable to agree with his Lordship. I think the question is correctly stated by the Lord Ordinary when he observes that "where an artificial expression like 'entailed estate' is used, there must of necessity be implied a reference to the statute which created the legal conception of which it is the expression." But then I think that the statute which created the conception of entailed estate as we understand it is the Scottish Statute of 1685, and according to that statute an entail is a settlement of lands. Such imperfect entails as were possible at common law were also confined to lands. Money standing in the name of trustees in trust for the purchase of lands to be entailed is not entailed estate, because the fee or capital is vested in the trustees, and until a suitable purchase is found the prospective institute of entail has no other right at common law except the right to receive payment of the interest of the money from the trustees. This is a very different right from that of an institute or heir of entail who is a fiar or proprietor subject to no other restrictions except such as are laid upon him by the conditions of the deed of entail. If the meaning of the expression "entailed estate" is to be gathered from the Statute of 1685, which enabled proprietors to make effective entails of their lands, it is I think perfectly clear that this sum of £60,000 is not an entailed estate.

It is proper to notice that the Finance Act 1894 does not profess to give a new definition of "entailed estate" for the purposes of the Act. The enactment is (section 23, 16)—"Where an entailed estate passes on the death of the deceased to an institute or heir of entail who is not entitled to disentail such estate without either obtaining the consent of one or more subsequent heirs of entail, or having the consent of such one or more subsequent heirs valued and dispensed with, settlement estate-duty as well as estate-duty shall be paid in respect of such estate." In the absence of a special definition I think the expression "entailed estate" must receive its legal signification.

The judgment of the Lord Ordinary, as I understand, is founded on the provisions of the Entail Amendment Acts, and especially the 3rd section of the Act of 1875, section 3, which provides that "entailed estate" shall include "all money or other property, real or personal, invested in trust for the purpose of purchasing land to be entailed." Now this is a definition for the purposes of the Act in which it occurs. The powers given by the Act of 1875 are to extend to money held in trust as well as to land, but I am unable to see that this definition, which is only introduced for the purpose of avoiding repetition, throws any light on the construction of the Finance Act 1894. Definition clauses as they are now termed, are nothing more than interpretation clauses, which is the older and I think the better name for them. They are aids to the interpretation of the statute in which they occur, and cannot affect the construction of other statutes, prior or subsequent. In some modern statutes these definitions have a very wide scope, and include subjects and things which have very little in common with the word defined. According to a recent Act of Parliament a ship is identified with a factory for the purposes of the Act, but

it would not follow that other statutes relating to shipping are to be applied to factories. Indeed, the usual form of such clauses is that "in this Act" the words quoted shall have the meanings assigned to them.

The Lord Ordinary also points out that in the latest of the Entail Amendment Acts it is provided by section 2 that the Entail Acts specified in the schedule "shall for all purposes and to all effects be read as one Act." The schedule of Acts enumerated begins with the Scottish Statute of 1685, and this creates a difficulty, but as I think only an apparent difficulty. For many purposes of construction it may be convenient that a series of statutes should be construed as one Act. But there must be some limit to this convenient rule; because in each statute of the series something in the previous legislation is repealed or altered, and it is not possible to construe two inconsistent provisions as one. Each of the Entail Amendment Acts has an interpretation clause of its own. I of course except the "Act concerning Tailzies," which is not an Amendment Act. These definitions, however, are not identical. I can hardly think that even within the system of the Entail Acts it would be sound construction to read a definition contained in one Act into another. If the definition of "entailed estate" which is found in the Act of 1875 is to be read into the Statute of 1685, then it would be lawful to any owner of personal estate, stocks, partnership estate, pictures, or chattels, to entail these subjects by deed of heritable title, recorded in the Register of Sasines and Register of Entails. This of course could not be intended; what is meant by reading the Act of 1685 along with the modern statutes is that when reference is made in these to the rights of an heir of entail, his disabilities, the order of succession, and the title, we are referred to the Scottish statute to see what these rights were, and what was the character of the succession according to the notion of an entail as originally constituted.

Giving the largest possible construction to the clauses on which the Lord Ordinary's judgment is founded, I do not think they will bear the meaning that in all future Acts of Parliament, whatever the subject of these Acts might be, the expression "entailed estate" should include money held in trust for the benefit of heirs of entail in their order. The definition in the 3rd section of the 1875 Act does not bear to be prospective in its operation. The 2nd section of the Act of 1882 does to some effects make the definition retrospective, but does not make it prospective, and the Finance Act of 1894 (which was not passed until twelve years later) could not be within the contemplation of the Legislature which gave its sanction to either of the Entail Acts referred to.

I am therefore of opinion that in construing the Finance Act 1894 the expression "entailed estate" must be construed according to the ordinary use of language, and it has not the special meaning attributed to it. It follows, according to my view, that the defenders should be assoilzied from the action.

I wish to add that the only question argued for the Crown was the question which I have considered, viz., whether the money held in trust is, or is not "entailed estate." I therefore offer no opinion on the question whether the existence of successive life interests in this fund makes it a settlement of personalty, and as such liable to settlement-estate-duty.

The LORD PRESIDENT, LORD ADAM, and LORD KINNEAR concurred.

The Court recalled the interlocutor of the Lord Ordinary, and assoilzied the defenders from the conclusions of the action.

Counsel for the Reclaimers—Lorimer. Agents—Blair & Cadell, W.S.

Counsel for the Respondent—Sol.-Gen. Dickson, K.C.—A. J. Young. Agent—P. J. Hamilton Grierson, Solicitor for Inland Revenue.

Friday, February 1.

SECOND DIVISION.

[Sheriff-Substitute at Glasgow.

BARCLAY, CURLE, & COMPANY, LIMITED *v.* M'KINNON.

Reparation — Workmen's Compensation Act 1897 (60 *and* 61 *Vict. c.* 37), *sec.* 7 (1) *—Employment "about" a Factory.*

A workman who was employed as a rivetter by a firm of shipbuilders at their ship-repairing premises, which were a "factory," but were not a "shipbuilding yard," received injuries, which resulted in his death, while he was at work on board a steamer which was being repaired by his employers, and which was lying in a public dock at a berth distant about a mile by road and about 550 yards in a direct line from the premises of his employers.

Held that the employment at which the deceased was engaged at the time of the accident was not employment "about" a factory within the meaning of the Workmen's Compensation Act 1897, section 7 (1), and that accordingly he was not entitled to compensation under that Act.

This was a case stated by the Sheriff-Substitute at Glasgow (BOYD) in an arbitration under the Workmen's Compensation Act 1897, between Barclay, Curle, & Company, Limited, shipbuilders, Whiteinch, appellants, and Mrs Janet Osborne or M'Kinnon, widow of John M'Kinnon, rivetter, claimant and respondent, with regard to a claim made by Mrs M'Kinnon for compensation in respect of the death of her husband.

The facts stated as proved or admitted were as follows:—"That John M'Kinnon, husband of the respondent, a rivetter, was in the employment of the appellants in their boiler-