HOUSE OF LORDS.

Tuesday, November 14, 1893.

(Before the Lord Chancellor (Lord Herschell), and Lords Watson, Ashbourne, Shand, and Bowen.)

(*Ante*, May 28, 1891, vol. xxviii., p. 662, and 18 R. 855.)

ABERDEEN JOINT PASSENGER STATION COMMITTEE AND THE GREAT NORTH OF SCOTLAND RAILWAY COMPANY *v.* NORTH BRITISH RAILWAY COMPANY.

Railway—Use of Joint Station by Third Party—Running Powers—Statute—Construction—Acts 27 *and* 28 *Vict. c.* 11, *and* 29 *and* 30 *Vict. c.* 211.

A railway station, declared by statute to be the joint property of the Scottish North-Eastern and the Great North of Scotland Railway Companies, was built by them in 1864, and was placed under control of a joint committee of the two companies.

The Act of 1866, 29 and 30 Vict. c. 211, which transferred the rights, interest, and estate of the North-Eastern Company to the Caledonian Railway Company, by section 106 provided that "the North British Railway Company may, for the purpose of conveying Scottish East Coast traffic" (which included traffic *via* North British lines), "run over and use with their engines, trucks, and carriages of every description, the Scottish North-Eastern lines, or any part thereof, and the stations, waterplaces, works, and conveniences upon and connected with the Scottish North-Eastern lines."

The North British Railway were also entitled to the "joint and separate use of the offices, warehouses, stations, sidings, and other accommodation at the several stations, wharfs, stopping, loading and unloading places, sidings, and junctions of the Scottish North-Eastern lines, including, in so far as the Caledonian Company lawfully may, the station at Aberdeen and all conveniences therewith connected."

Held (*rev.* the decision of the First Division) that the defenders were not entitled without the consent of the Great North of Scotland Railway Company, part-owners thereof, to use the joint-passenger station or any part thereof, or the conveniences connected therewith, for the purposes of their traffic, or to run over or use with their engines, trucks, or carriages of any description the said station or the railway through the same, or the sidings, accesses or works extending for 200 yards on each side of the passenger shed of the said joint-passenger station, or any part of the same.

This case is reported *ante*, vol. xxviii., p. 662, and 18 R. 855.

The Aberdeen Joint Passenger Station Committee and the Great North of Scotland Railway Company appealed.

At delivering judgment—

LORD CHANCELLOR—My Lords, this is an appeal from a judgment of the Inner House affirming an interlocutor of the Lord Ordinary. No question of general principle is involved, the case turning entirely upon the construction of certain statutory provisions and the rights thereby conferred.

The question in dispute is this. In the year 1864 an Act was passed under which a joint passenger station was constructed at Aberdeen by and for the use of the Scottish North-Eastern and the Great North of Scotland Railway Companies. It is not necessary to trouble your Lordships with the terms upon which the expense of constructing that station was contributed by the two railway companies; it is sufficient to refer your Lordships to the rights of the parties in the station when constructed. The station was to be "jointly and equally the property of the company and of the Great North Company." "The lines from the centre of the station to the junction of the Great North of Scotland Railway" were for the purpose of "tolls, rates, and charges to be deemed part of the Great North of Scotland Railway, and the lines from the centre of the station to the Scottish North-Eastern Railway" were "for the same purposes to be deemed parts of the Scottish North-Eastern Railway." The station "when made" was to "be under the control and management of a joint committee" representing the two railway companies. "Each of the companies" was to "be entitled to the free use of the joint passenger station for through and local passenger traffic, and in proportion to their traffic to an equal amount of accommodation therein." And then it was provided that "for all through and local passenger traffic" the stations down to that time used by the two companies respectively were to be abandoned. "The tolls and rates charged by the two companies respectively for the use of their respective portions of the railway and for the use of the joint passenger station" were to "be paid over to the joint committee monthly, subject to a deduction of 40 per cent. for working expenses," and "the sums so paid to the joint committee" were to "be deemed profits and divided into four equal parts, and three of such four parts were to be paid to the Great North Company," and the remaining fourth" to the Scottish North-Eastern Company. My Lords, the only other provision with which I need trouble your Lordships was that the expenses attending the joint committee and the maintenance, management, and control of the joint passenger station were to "be paid by the said companies as the joint committee or the arbitrator should from time to time direct according and in proportion to the

use made of the same by those companies respectively."

Now, my Lords, in the year 1866 the Act was passed upon which the present question turns, but I think it is desirable to pause for a moment before looking at the terms of that Act in order to see what was the position of the two companies with regard to the passenger station. It is perfectly clear that it was joint property; it is equally clear that although the joint committee might specially appropriate a particular part of it for certain purposes to the one company, and another particular part for certain purposes to the other, the statute did not contemplate any general separate appropriation, nor, so far as we know, was any such general appropriation of one part of the station to the one company and the other part to the other company carried out, but there was to be a free use of the station except so far as any portion was specially appropriated, fairly allotted between the two companies in proportion to their traffic. It is conceded by the learned counsel who argued this case on behalf of the respondents that neither of these joint owners could have brought in a third company to participate in the use of that station without the consent of the other. The utmost right that either company had in it was a joint ownership and a right to a joint use.

Under these circumstances in the year 1866 the Scottish North-Eastern Railway Company, one of these two companies, went to Parliament to promote an amalgamation of the Scottish North-Eastern with the Caledonian Railway Company; upon that amalgamation the Scottish North-Eastern was to become absorbed in the Caledonian and all the rights of the Scottish North-Eastern were to pass to the Caledonian, and the Scottish North-Eastern was to cease as a separate corporation to exist. Now, no doubt it was perfectly competent for the Scottish North-Eastern Company to transfer to another corporation such rights as it had, under any agreement for joint use or such rights as arose out of its joint interest. Of course an amalgamation of this sort could not be carried into effect without an application to the Legislature, but there would be nothing at all out of the usual course in the Legislature, if it thought fit to allow such an amalgamation, passing to the Caledonian Company all the rights which the Scottish North-Eastern had previously possessed, including its rights as joint owner and joint user of the station. But when the amalgamation was sought between the Scottish North-Eastern and the Caledonian Companies the North British Company naturally desired to have a voice in the settlement of matters as between the Scottish North-Eastern and the Caledonian, or at all events a voice as regards the terms upon which that amalgamation was to be permitted, because down to that time the Caledonian and the North British had been competing lines to the point at which they came into contact with and in communication with the Scottish North-Eastern, and from that point the Scottish North-Eastern had carried alike traffic which had come along the North British lines, and traffic which had come along the Caledonian lines. From that point to Aberdeen the whole of the traffic had been strictly speaking Scottish North-Eastern, although it may have had its origin on the North British line, or may have had its origin on the Caledonian line. It was obvious that if the Scottish North-Eastern was allowed to be absorbed in the Caledonian so that this line which had formed a link between Aberdeen and the termini of the Caledonian and the North British lines was to come into the ownership of one of these two competing companies, there might not unreasonably be an anticipation that the North British Company might be unfairly dealt with as regards its traffic, because whereas the Scottish North-Eastern might be supposed to hold an even hand between them, the Caledonian Company would naturally be disposed to prefer its own traffic. The interest of the North British Company of course was obvious, and it is clear that the provisions which are to be found in the Act were inserted for the protection primarily of the North British Company. As regards the Caledonian, of course it was a matter of indifference to them, they would have been quite content, I have no doubt, to continue running their own traffic through and at the same time taking traffic which had its origin upon the North British line to Aberdeen, in the same way as the Scottish North-Eastern had done. But the North British Company naturally enough were not content to trust to that, consequently it is impossible to regard the provisions to which I shall have presently to refer otherwise than as provisions primarily intended for the protection of the North British Company.

My Lords, the North British Company obtained under the Act running powers over the lines which had been Scottish North-Eastern, so that they could themselves take their traffic over those lines, and not only take their traffic over those lines, but use the stations upon those lines. That undoubtedly was a part of the scheme of the Act, and in so far as those lines belonged exclusively to the Scottish North-Eastern or to the Caledonian there was no difficulty in the matter. Of course it was perfectly competent to either of those railway companies to bargain with the North British and to confer upon the North British the right to use to any extent they pleased both their lines and their stations. But no such bargain was possible as regards their joint line. Neither the Scottish North-Eastern Company nor the Caledonian as its successor could have a right to confer upon the North British Company any power to enter this station, and to use it as of right. That is not disputed; the sole question, is whether the Legislature has conferred that right upon the North British Company.

My Lords, that depends upon the construction of the 106th section of the Act of 1866, and I propose to refer to the words

themselves by which the right is supposed to have passed, and to consider first of all their construction both apart from the arguments derived from the supposed object of the Act which is relied upon as stated in section 99, and apart from the force of the argument that it is not likely that the rights of the Great North Company would have been bargained away behind their backs. I say that I shall altogether put aside for the moment those arguments and look merely on the words, of course bearing in mind in construing the language what was the legal position of the parties, that this was not a station belonging to the Scottish North-Eastern Company, and that the right to use that station was a right which they had no legal power to confer.

The 106th section is this—"The North British Railway Company may for the purpose of conveying Scottish East Coast traffic run over and use with their engines, trucks, and carriages of every description the Scottish North-Eastern lines or any part thereof, and the stations, watering-places, works, and conveniences upon and connected with the Scottish North-Eastern lines."

Now, I think that the natural construction to be put upon that would be, if it stood alone, to confine it to the lines which belonged to the Scottish North-Eastern Company and the stations belonging to them and as to which they were in a position to confer the right, and that it would not be the natural construction to extend it to property which did not exclusively belong to them and as to which they were not in a position to confer the right. But however that may be, and without dwelling upon the words "connected with the Scottish North-Eastern lines," which were much relied upon, I would observe that the whole section must be read together, and that it will not do to stop there and to consider what would be the effect of these words if they stood alone, because the North British Company were to "be entitled to the conveniences and privileges, and be subject to the regulations and obligations hereinafter mentioned;" and if those conveniences and privileges, regulations, and obligations relate to some of the matters which are covered by the earlier general words of the statute, it is obvious that upon all sound principles of construction you cannot first of all ask what would have been given them by the general words if they had stood alone and then look to see whether it is also given by these special words. The whole section must be read together.

Now, the portion of the section which deals with the use of the stations is the 4th sub-section, and amongst the "privileges and conveniences" conferred is "the joint or separate use of the offices, warehouses, stations, sidings, and other accommodation at the several stations, at the wharves, stopping, loading, and unloading places, sidings, and junctions of the Scottish North-Eastern lines."

Well, if the matter had stood there it might have been open to argument, one way or the other, that the stations of the Scottish North-Eastern lines included this joint station. I confess, my Lords, that my impression would have been to the contrary if there had been nothing more than that, having regard to the legal position of the parties as to this joint station. But then the clause proceeds to say, "including, in so far as the company lawfully may, the station at Aberdeen."

Now, everybody agrees that that expression is elliptical, that something is to be supplied, but it appears to me that when you have an ellipsis of this description, there is on the one hand a natural and grammatical supply of that which is left wanting; and there is, on the other hand, an arbitrary and gratuitous supply, and certainly the natural and grammatical supply is to be preferred unless there is reason for rejecting it.

Now, it appears to me that the words "in so far as the company lawfully may," are obviously a limitation or qualification of the word "including." What, then, is to be supplied after the word "may?" "Including in so far as the company lawfully may include it," seems to me to be the natural reading of the sentence, unless there is some strong reason for reading it otherwise, or perhaps as you are dealing with the joint or separate use of the station, "including in so far as the company lawfully may include it, the use of the station at Aberdeen." Now, if either of those be the correct method of supplying what is left elliptical, it is obvious that it is really fatal to the argument of the learned counsel for the respondents, and to the view taken by the Court below, because the company could not lawfully include the station at Aberdeen to the extent of giving the North British Company a right to come in as against the Great North of Scotland Company, nor could they include the use of it to that extent lawfully, and it was only "in so far as the company lawfully may" that it was to be included.

My Lords, what is the construction contended for by the respondents? It is said that you are to read it thus, "including in so far as the company lawfully may use it, the station at Aberdeen." It seems to me that that is not the construction, and that to put in a verb in that way is not supplying an ellipsis in any ordinary and grammatical sense; it is putting in the words that are wanted in order to confer the right which it is suggested that the Legislature meant to confer for reasons to which I will allude to in a moment.

My Lords, the judgment of one of the learned Judges in the Court below certainly proceeded very much upon the ground to which I have alluded, and I think it was that view which was substantially contended for by the learned counsel who appeared at the bar for the respondents. The Lord President, indeed, took a different view; he did not regard these words as very important, because the view which he took, although I confess with all deference that I am unable to understand how he arrived at that conclusion, was that supposing that the North British Company

had the right which they contended for, nothing more had been given to them than the Caledonian Company lawfully could give. No doubt if that were the conclusion you do not need any words of construction such as are now suggested by the learned counsel for the respondents. Then the case is a very plain one. It is quite certain that anything that the Caledonian Company could lawfully give was to be given as regards the use of the station as well as of others, and I have no doubt myself that these words would be effectual to prevent the Caledonian Company interposing any difficulty, if the North British could arrange with their co-proprietors the Great North of Scotland Company. To that extent I do not doubt that it is effectual.

Therefore, my Lords, putting quite aside any argument derived from the improbability that the Legislature would behind the back of a railway company interfere with its rights in a private Act, which really embodies a parliamentary contract—I say putting that aside altogether, and looking at nothing but the plain ordinary and grammatical interpretation of the language, it seems to me to be conclusive against the argument of the respondents.

But, my Lords, reliance was placed by the learned Judges in the Court below, and to some extent has been placed by the learned counsel for the respondents here upon this. They say that section 99 shows that the Legislature intended to create, or to give the means of a complete and free competition between the Caledonian and North British Companies as far as Aberdeen, and that this free competition which is said in section 99 to be one of the purposes of the succeeding sections, would not be effectually given if the Caledonian Company could succeed to the Scottish North-Eastern Company's right in the station at Aberdeen, and if the North British Company could not insist on a similar right. Well, my Lords, it may be that it would prevent the competition being as effectual as was contemplated, but it comes to no more than this, that the fact that that competition could not be made complete without some arrangement with a proprietor outside, all the provisions of this Act had been overlooked, which of course is a perfectly possible case—at all events, I do not think that any inference can be drawn from this purpose exhibited in the language of section 99 sufficient to justify what to my mind is a violation of the natural and ordinary construction of section 106. And this, I think, is to be observed that the preamble of the whole Act makes no reference to any such purpose at all. The preamble of the Act makes reference only to the amalgamation of the Caledonian and Scottish North Eastern Companies, and to the benefits likely to result from such amalgamation. But, my Lords, if there were any force, or whatever force there be in the argument derived from that section, and however great that force is, as I say, it does not seem to me to be possible to contend that it would justify your overriding the natural construction of the language used in the subsequent section. It is difficult to deny that there is at least equal force in any argument the other way, namely, that it is not according to the ordinary practice that in an Act of this description the rights of third parties, who are in no way within the purview of the Act, who are nowhere contemplated in the Act, and in no way came before the mind of the Legislature, should be held to be dealt with by the language used. It does not need authority for the purpose of establishing the proposition that if there be two constructions which are equally open (I am putting it at the very lowest), and the one construction would allow of the rights of third parties being completely preserved, while the other would involve their being infringed, the former is the construction to be preferred; that, I think, can hardly be denied. But, my Lords, when of the two constructions that which would preserve the rights of third parties is the more natural and grammatical, it seems to me that any argument in favour of an interpretation which would put that aside on account of the supposed intention of the Legislature indicated in other parts of the statute, is far more than counterbalanced by the argument derived from the improbability that the Legislature would have so intended.

For these reasons, my Lords, I submit to your Lordships that the interlocutor appealed from must be reversed, and I would suggest to your Lordships that the best course would be to reverse the interlocutor and to "declare that the defenders are not entitled, without the consent of the Great North of Scotland Railway Company, part-owners thereof, to use the joint passenger station or any part thereof, or the conveniences connected therewith, for the purposes of their traffic, or to run over or use with their engines, trucks, or carriages of any description the said station or the railway lines of the same, or the sidings, accesses, or works extending for 200 yards on each side of the passenger shed of the said joint passenger station, or any part of the same" (as to those last words, I should have thought that it was hardly necessary to say that, because that is within the definition of "passenger station"), and then to remit the cause to the Court below with that declaration, so that your Lordships should not pronounce immediately any interdict, but should leave the Court below to pronounce the interdict, and to deal with it upon the basis of that declaration.

LORD WATSON—My Lords, whilst I agree with all the observations which have been made by the Lord Chancellor, I am of opinion that section 106, sub-section 4, of the Act of 1866, according to its just construction, is absolutely conclusive against the respondents' case. It appears to me to enact in terms that the joint station is only to be included in the arrangement with regard to running powers which that section sanctions if and provided that the Caledonian Company have power to include it, and that it is to stand excluded from the

scope of the agreement if the Caledonian Company have not that power. Now, it is exceedingly plain to my mind—indeed it is not disputed—that apart from the terms of the Act of 1866 the Caledonian Company could have no power to communicate the use of the joint station to the North British Company or any other company without the consent of the other joint owner of the station, namely, the Great North of Scotland Company. That consent not having been obtained, the joint station is beyond the terms of the statute of 1866 until such consent has been duly obtained, when it will become operative against the Caledonian Company in terms of the 106th section, and operative against the Great North of Scotland Company in respect of the consent which they will then have given.

LORD ASHBOURNE—My Lords, I concur. The question is one on the construction of private Acts of Parliament. Here it is sought to interfere with or affect the rights of a railway company which was no party to the Act of 1866 by a construction sought to be imputed to its 106th section. I do not assent to that construction, and concur in the views of my noble and learned friend on the woolsack.

It would be very dangerous in the case of such Acts of Parliament to assent to the arguments of the respondents. The sections of these Acts are often inserted to give effect to private arrangements between the promoters and other persons who are desirous of making a good bargain for themselves. When it is sought to stretch the construction of such sections so as to affect the rights of third parties, they must be read with great caution, and often *fortius contra proferentem*. Here the construction which would preserve the rights of third parties is the more reasonable and natural, and no difficulty really arises.

LORD SHAND—My Lords, agreeing as I do with the opinions which have fallen from your Lordships, I only venture to add a few words with reference to the opinion of a learned Judge—Lord Adam—who has gone very fully into the consideration of the clauses which have formed the subject of the argument. His Lordship's judgment appears to me to be based upon two views, upon each of which I venture to differ from the statement he has made.

In the first place, the main point in the case is really to determine the meaning of sub-section 4 of section 106 of the Statute of 1866. In dealing with that sub-section I find that his Lordship says, with reference to the words upon which practically the whole question between the parties turns — I mean the words "including in so far as the company lawfully may the station at Aberdeen, and all conveniences therewith connected." Now, what is the meaning of the words "in so far as the Caledonian Company lawfully may?" It is an elliptical form of expression, but I think the meaning is that they are to be entitled to the use of the joint station so far as the Caledonian Railway Company may themselves lawfully use it—that is to say, that the North British Railway Company were to have exactly the same privileges and uses as the Caledonian Railway Company. My Lords, if that had been so, there might be a basis — there probably would be a basis—for the judgment which the Court of Session has pronounced, but I agree with the Lord Chancellor and with your Lordship in thinking that that is not the true construction, or even the meaning, according to the grammatical construction of the words which have been used. It appears to me to be clear that the force of these words "including in so far as the company lawfully may the station at Aberdeen," is this—including the use of the joint-station in so far as the Caledonian Company may give such use. The preliminary part of the section deals with use only, and I think that this part of it refers to the use only. If therefore all that is given, all that is included, is such use as the Caledonian Company can give, then you are simply thrown back to the question—"Can the Caledonian Company, they being themselves only one of two joint-owners of the station, and one of two parties entitled to use it, give any use of it without the consent of the other party being obtained." Upon that point it is, as the Lord Chancellor has observed, conceded that as between two joint-owners no such use can be given.

My Lords, the other observation which I desire to make is with reference to the succeeding passage of Lord Adam's opinion in which he refers to the clauses of the Act of 1864, which provided for a certain appropriation of the accommodation at the joint-station. His Lordship in this seems to assume that substantially there was to be an appropriation of one part of the joint-station to one of the companies, and of another part to the other company, so that the Great North of Scotland Company might have one part of the station, and the Scottish North-Eastern, or the Caledonian, as succeeding them, the other part of the station. His Lordship says—"That is to say, that the companies who built this station, and whose joint-property it was, were to have it appropriated for their accommodation; in other words, part of it in proportion to their traffic is to be set aside for the particular use of the Great North of Scotland Railway Company, and part of it is to be set aside for the use of the Caledonian Railway Company."

My Lords, if that had been the state of matters, I think there would have been a great deal to be said for the view that the Caledonian Company having a part of that station set aside for their exclusive accommodation might introduce a third party into that part of the station; but when we look at the provisions of the Act of 1864, I think it is clear that the great bulk of that station was intended to be used for joint-accommodation—an accommodation in which the two parties were to be equally interested, as it was joint-property — and that being so, there being not two

separate stations, as there would be in the case supposed, but substantially one station for joint-accommodation, I think, with great deference to Lord Adam, that this reasoning of the learned Judge in support of his judgment fails. I have merely ventured to add these observations to what your Lordships have said in order to show that so far as I am concerned I have very carefully considered the elaborate opinion which his Lordship has delivered in this case.

My Lords, I have only further to add, that if the canon of construction which has been applied in so many cases, that you are not to interfere with the rights of third parties in a private personal and local Act such as this is, public though it be—if it is to be applied here—there can be no possible doubt upon the case. But, my Lords, even taking it upon the footing that the Great North of Scotland Company had appeared before the committee which passed this Act and that upon their intervention these words "in so far as the Caledonian Company have the power to give such use" had been inserted, I should have been prepared to hold that the result must be the same, because I think that the North British Company have failed to show that the Caledonian Company had any power whatever to give the use of the station for which they have here contended.

I therefore agree with your Lordship in thinking that the decision must be reversed.

LORD BOWEN—My Lords, I concur both in the reasoning of the noble and learned Lords who have already spoken, and in the result to which that reasoning has led them, and I have really nothing which I could usefully add to the observations which have been already made.

Their Lordships decided that the interlocutor appealed from be reversed; that it be declared that the defenders are not entitled without the consent of the Great North of Scotland Railway Company, part-owners thereof, to use the joint-passenger station or any part thereof, or the conveniences connected therewith, for the purposes of their traffic, or to run over or use with their engines, trucks, or carriages of any description the said station or the railway through the same, or the sidings, accesses, or works extending for 200 yards on each side of the passenger shed of the said joint-passenger station, or any part of the same; and that the cause be remitted with this declaration to the Court below to proceed therein as is just. That the respondent do pay the costs both here and in the Court below.

Counsel for the Appellants—Sir Henry James, Q.C.—A. Graham Murray, Q.C.—James Ferguson. Agents—Dyson & Company, for T. J. Gordon & Falconer, W.S.

Counsel for the Respondents—The Lord Advocate (Balfour, Q.C.)—Solicitor-General for Scotland (Asher, Q.C.)—Sir R. Webster, Q.C.—Finlay, Q.C. Agents—Loch & Company, for James Watson, W.S.

COURT OF SESSION.

Tuesday, February 20.

FIRST DIVISION.

[Lord Low, Ordinary.

TURNER *v.* GAW.

Succession—Vesting—Conditional Institution—Vesting subject to Defeasance.

A person left her whole heritable estate to her daughter J in liferent for her liferent use allenarly and to the heirs of her body in fee, whom failing to her three sons and another daughter equally, share and share alike, and the respective heirs of their bodies in fee. J died in 1890 unmarried, predeceased by her brothers, one of whom had made up a title to a fourth share of their mother's heritable estate and had disponed it to A. After J's death, her sister and the eldest son of each of her three brothers each made up a title to a fourth of the heritable estate and then disponed their shares to B.

Held—following *Bell* v. *Cheape*, May 21, 1845, 7 D. 614—that no part of the estate vested until J's death, and accordingly, that the conveyance to A was inoperative and the whole estate now belonged to B.

Observed—following the opinion of Lord President Inglis in *Steele's Trustees* v. *Steele*, December 12, 1888, 16 R. 204—that vesting subject to defeasance can only apply where the destination of a fee of an estate, failing the issue of the liferenter, is to persons named or ascertained at the death of the testator, without any ulterior destination to their executors, heirs, or assignees, as conditional institutes.

Question—Whether the principle of vesting subject to defeasance is applicable to the case of a direct disposition of a heritable subject without the intervention of a trust.

Mrs Janet Allison or Miller died infeft in certain heritable subjects in the parish of Dunoon. She left a general disposition and settlement dated 27th November 1865, by which she assigned and disponed her whole heritable estate to her daughter Janet Miller in liferent for her liferent use allenarly, and to the heirs of her body in fee, whom failing to her sons Matthew, John, and Alexander, and her daughter Margaret Millar or MacDougald equally between them, and share and share alike, and the respective heirs of their bodies in fee.

Janet Miller, the daughter, enjoyed the liferent until she died unmarried on 31st October 1890.

Her brother Matthew, who predeceased her, after making up a title to the one-fourth part *pro indiviso* of the fee of the heritable subjects left by his mother, sold and disponed this part in 1883 to James William Turner, Solicitor, Greenock. After Janet's death her sister Margaret