which is left undivided. That seems to me to be an effective answer against the appellant's construction.

I desire to say for myself that I think the case of *Miller's Trustees* v. *Miller*, December 19, 1890, 18 R. 301, 28 S.L.R. 236, which has recently been confirmed in the Court of Session in the case of *Yuill's Trustees* v. *Thomson*, May 29, 1902, 4 F. 815, 39 S.L.R. 668, was decided upon a sound principle, but I do not think that that principle has anything to do with the present case. That principle is this—that where a man gives an estate in fee and then attempts to clog it by some disposition for the fiar's benefit, that provision is repugnant to the idea of an estate in fee and is therefore void. That has nothing whatever to do with fixing the period of time at which the testator may direct the share of the estate to be ascertained. If it is ascertained and given to a fiar, the fiar is entitled to receive it although the testator may postpone the period until he has attained the age of 24 or 25 or some other time. But in the present case the difficulty of the Solicitor-General is this—that he has no present right to receive the share of the estate, and that the share of the estate to which he is entitled cannot according to the directions of the will be ascertained until the death of the ladies.

In the same way I do not think, with all deference to the Inner House, that the case of *Haldane's Trustees* v. *Haldane*, December 12, 1895, 23 R. 276, 33 S.L.R. 206, has anything to do with the present case either. I think that case was decided on a perfectly sound principle. There were three children I think; the testator gave to one of them £18,000 and to two others £8000, and then divided the residue. There appears to have been some doubt whether the estate at the time of the distribution pointed out by the testator would be sufficient to provide all the legacies. Of course the one legatee would not be entitled to receive his legacy at once and leave possibly a deficient fund to provide the legacies for his sisters. The observations which are quoted in the appellants' case from the judgment of my noble and learned friend, who was then the President of the Court of Session which decided that case seem to me to explain entirely what the decision really was in that case.

Therefore I think on the words of this will the decision is perfectly right.

With regard to the statute, Mr Campbell has made it perfectly plain that the statute has nothing to do with this case. The statute apparently (I express no opinion upon what may be the construction of it) converts a person with a limited interest into one holding a larger interest, and says that the trustees, notwithstanding any directions to the contrary in the will, are to transfer his share to him; but it says nothing at all as to the time when it is to be transferred, nor is there anything in the statute which in the least degree overrides any apt and competent provisions in a will for the purpose of fixing the period.

LORD ROBERTSON—I entirely agree.

LORD LINDLEY—So do I. As regards the costs I do not know whether in Scotland any question will arise, and whether if the appeal is simply dismissed with costs the costs will come out of the estate. We do not intend that. As I understand the Lord Chancellor's view the appellant is to pay the costs himself.

Appeal dismissed with costs.

Counsel for the First Parties (Respondents)—Campbell, K.C.—Cullen. Agents—John Kennedy, W.S., Westminster—Bell & Bannerman, W.S., Edinburgh.

Counsel for the Second Party (Appellant)—Solicitor-General for Scotland (Dundas, K.C.)—Craigie. Agents—Graham, Currey, & Spens, Westminster—Strathern & Blair, W.S., Edinburgh.

Tuesday, November 24.

(Before the Lord Chancellor (Halsbury), Lord Macnaghten, Lord Shand, Lord Davey, Lord Robertson, and Lord Lindley.)

EARL OF GALLOWAY *v.* DOWAGER COUNTESS OF GALLOWAY.

(*Ante*, October 30, 1902, 40 S.L.R. 82, and 5 F. 48.)

Entail—Provisions—Widow—Free Yearly Rental — Deductions — "Burdens" — Upkeep — Management — Restriction of Widow's Annuity — Statute — Construction—Entail Provisions Act 1824 (*Aberdeen Act*) (5 *Geo. IV. c.* 87), *sec.* 1.

In a petition presented by an heir of entail in possession for the restriction of a liferent annuity granted by his predecessor to his widow under the Entail Provisions Act 1824 (Aberdeen Act), *held* (*aff.* judgment of the Second Division) that the petitioner was not entitled, for the purpose of calculating the amount of the annuity as allowed by the Act, to deduct from the gross rental the expenses of (1) upkeep of estate buildings and fences, and (2) management and superintendence of the estate.

This case is reported *ante ut supra*.

The petitioner and reclaimer, the Earl of Galloway, appealed to the House of Lords.

Counsel for the respondent, the Dowager Countess of Galloway, were not called on.

At delivering judgment—

LORD CHANCELLOR—The question here at issue is a very narrow one and the considerations that apply to it appear to me to lie within very narrow limits. The language of the statute is, I think, remarkable. The cardinal words are in the proviso—"Provided always that such annuity shall not exceed one-third part of the free yearly rent of the said lands and estates where the same shall be let, or of

the free yearly value thereof where the same shall not be let, after deducting the public burdens, liferent provisions, the yearly interest of debts and provisions, including the interest of provisions to children hereinafter specified, and the yearly amount of other burdens of what nature soever affecting and burdening the said lands and estates, or the yearly rents or proceeds thereof, and diminishing the clear yearly rent or value thereof to such heir of entail in possession, all as the same may happen to be at the death of the grantor."

As I have said, I think the discussion lies within very narrow limits, and I am not disposed to extend those limits. I am very loth to get out of the actual language of the statute into what may be considered more reasonable provisions, if one were drawing the statute oneself. Such phrases as are here selected by the Legislature seem to me intentionally to exclude the deductions which are insisted upon. I do not mean to say that it is a conclusive argument against a construction of a statute to say that the Legislature might have used clearer words if they had intended such and such to be the construction. I am afraid one cannot always say that statutes are passed with such a degree of logical precision that that argument is conclusive. But when you have the Legislature here selecting words which I think it cannot be denied are in their ordinary acceptation inappropriate to the deductions now claimed, and when the thing meant according to the construction contended for by the appellant was so obviously capable of being very readily expressed in simple language, such as "deducting all reasonable outgoings," or something of that sort, an argument may be drawn from the absence of such words, and the special emphasis which the statute appears to place on the word "burdens," "the yearly amount of other burdens of what nature soever affecting and burdening the said lands and estates." I cannot help thinking that language of that sort must have been used intentionally, and must have been used with the intention of excluding the very thing we are discussing. One need not go further into the inquiry when one has come to the conclusion that those words do not include the deductions claimed, but I can conceive that it may have been in the mind of the Legislature that to use such phrases as "reasonable outgoings and expenditure upon the estate" might introduce an amount of litigation on these questions which it was not desirable in the interests of the State should be promoted.

However that may be, I only make that observation in passing to enforce what I consider to be the canon of construction of a statute. I am always disposed to read a statute very strictly. I must take the language as it is, and taking it in the sense in which any lawyer, Scotch or English, reading those words would interpret them, I think these deductions would not fall within it. That really is the whole of my reasoning upon the subject. I am governed by the force of the language itself; I cannot go out of it; I do not desire to go out of it. What has been suggested, and very fairly suggested, as a more reasonable statute to pass, is not a guide to the interpretation of this statute which is passed. I must therefore adhere to the language of the statute as it is, and under those circumstances I think your Lordships ought to affirm the judgment of the Court below and dismiss the appeal with costs.

LORD MACNAGHTEN—I am of the same opinion. I do not see my way to differ from the judgment of the majority of the Court below. With regard to the argument of Mr Blackburn, that according to the construction which they have placed upon the words of the statute the expression "free" is unnecessary, I think that possibly is so. I think probably the proviso would have had the same meaning if the word "free" had been left out; but I think, reading the whole of that section, it is pretty clear that the words which follow were intended to explain what was meant by "free rent" or "free value." I think the Legislature has carefully chosen those words so as to exclude these outgoings which it would, no doubt, have been perfectly reasonable to have provided for; I think the framers of the statute, as the Lord Chancellor said, deliberately determined to exclude them.

LORD SHAND—I am entirely of the same opinion.

LORD DAVEY—I also am of the same opinion. I cannot myself get over the word "burdens"—"the yearly amount of other burdens of what nature soever affecting and" (not "or") "burdening the said lands and estates or the yearly rents or proceeds thereof." I cannot say that these expenses are "burdens" which "burden the said estates" in any legitimate use of those words.

LORD ROBERTSON—I am also of opinion that the upkeep of the estate buildings and the management and superintendence of the estate are not, in the sense of the statute, "burdens affecting" either the estate or its rent. This is a statute relating to Scotland, and in the legal phraseology applicable to Scotch landed estates these expenses are not burdens and do not affect the rents. They are simply contract debts. In Scotch legal language they would be properly described as expenses or outgoings, and the outgoings now in question figure so largely in the practical aspect of questions of jointure that it is impossible to suppose that if they were intended to be deducted the Legislature, not usually so parsimonious in language, should have veiled them under words primarily at least descriptive of entirely heterogeneous subjects.

On the appellant's other argument I shall only say one word. The word "free" seems to me to do no more than describe the sum to be handled after deduction of the burdens, which are enumerated in more or less com-

prehensive terms. The theory of the appellants involves that the statute describes as "free rents" rents from which there have not yet been deducted even public burdens, which come first of all. This I think out the question.

LORD LINDLEY—I am of the same opinion, and have nothing to add.

Appeal dismissed with costs.

Counsel for the Petitioner, Reclaimer, and Appellant—Solicitor-General for Scotland (Dundas, K.C.)—Blackburn. Agents—Grahames, Currey, & Spens, Westminster—Russell & Dunlop, W.S., Edinburgh.

Counsel for the Respondent—Lord Advocate (Dickson, K.C.)—Cullen. Agents—Nicholson, Patterson, & Freeland, London—Strathern & Blair, W.S., Edinburgh.

COURT OF SESSION.

Wednesday, November 25.

FIRST DIVISION.

TAIT'S TRUSTEES *v.* NEILL.

Trust—Marriage-Contract—Fee and Liferent—Liferent with Power of Testamentary Disposal—Power to "Devise"—Obligation of Trustees to Denude.

In an antenuptial marriage-contract the wife's father conveyed a sum of money to trustees for the liferent use of the spouses and the survivor, with the declaration that in the event (which happened) of the wife's surviving without issue the trust funds should be paid "to the nearest of kin" of the wife "according to the law of Scotland, or to whomsoever she may have devised the same by a deed or writing under her hand."

In a special case presented by the wife and the marriage-contract trustees, *held* (1) that the wife had only a liferent and not a fee in the trust funds, and (2) that the trustees were not bound to denude of the trust and make over the trust estate to her upon her executing a renunciation of her liferent interest and an appointment of the capital of the estate in her own favour.

This was a special case presented by John Sprot Tait, sometime Captain in the 12th Lancers, and others, trustees under the antenuptial contract of marriage between the late Captain James Alexander Tait and Miss Mary Anne Smith Cuninghame, first parties; and the said Miss Mary Ann Smith Cuninghame or Tait (now by a second marriage Neill), widow of Major Neill, second party, raising the question of the interpretation of the aforesaid marriage-contract.

The case set forth that certain sums were conveyed to the marriage-contract trustees by the parents of the contracting parties, and, *inter alia*, by William Cathcart Smith Cuninghame, the truster's father. The disposition of the trust funds in the event (which happened) of there being no children of the marriage was as follows:—"(*First*) the trustees shall make payment of the annual rent or interest of the trust funds to the said James Alexander Tait and Mary Anne Smith Cuninghame during their joint lives, and on the death of one of them to the survivor during his or her lifetime;" and *second*, in the event of there being no issue of the marriage, and of the second party being the survivor of the spouses, then on her death, in the event of a certain provision of £10,500 undertaken by or for behoof of the said James Alexander Tait having been previously received by the trustees, for payment thereof to such person or persons as the said James Alexander Tait might have devised the same by a deed or writing under his hand, and failing such destination thereof to make payment of the same to his nearest in kin according to the law of Scotland, and "for payment of the remainder of the trust funds to the nearest in kin of the said Mary Anne Smith Cuninghame according to the law of Scotland, or to whomsoever she may have devised the same by a deed or writing under her hand."

After the death of the said James Alexander Tait (there being no children of the marriage), the second party called upon the trustees to pay over the trust funds to her, and offered them a composite deed consisting of a renunciation and a discharge of her liferent of the trust fund, and a deed of direction and appointment directing and appointing the first parties to make payment of the funds to herself, and a full and complete discharge of the first parties as trustees and of said trust, and of all claims against them thereanent in any manner of way, or, if preferred by them, to grant separately the said several deeds before specified, the deed or deeds to be granted being always in common form. The trustees declined to comply with her demand.

The trust funds consisted of £17,100 2½ per cent. preference stock of the Midland Railway Company and £5000 preferred ordinary stock and £5000 deferred ordinary stock of the Glasgow and South-Western Railway Company. These stocks represented the funds which by said marriage-contract the said William Cathcart Smith Cuninghame obliged himself to assign and transfer to the trustees thereunder, and formed the "remainder of the trust funds" above mentioned.

The following were the questions of law:—1. Are the first parties bound instantly to denude of the trust and make over the trust estate to the second party upon her executing a valid renunciation of her whole liferent interest therein and an appointment of the capital of the estate in her own favour, and granting to the first parties a valid discharge therefor? 2. Are the first parties bound to keep up the trust until the decease of the second party?"

Argued for the first parties—The second party had not the fee, but only a liferent