# HOUSE OF LORDS.

*Thursday, May* 15, 1902.

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

## LORD ADVOCATE *v.* SPROT'S TRUSTEES.

(*Ante*, February 1, 1901, vol. xxxviii. p. 318, and 3 F.440.)

*Revenue—Estate Duty—Settlement Estate Duty—Entailed Estate—Entailed Money —Money Held in Trust for Purchase of Lands in Scotland or England to be Entailed—Entail—Finance Act* 1894 (57 *and* 58 *Vict. c.* 30), *sec.* 23.

Where money was held by trustees under a direction to apply it in the purchase of lands in Scotland or England to be entailed upon a certain series of heirs, *held* that this money was not "entailed estate" within the meaning of section 23 of the Finance Act 1894, and was consequently not liable to estate duty and settlement estate duty under sub-section 16 of that section.

Judgment of the First Division *affirmed*, but upon a different ground.

*Opinions per* Lord Macnaghten, Lord Brampton, Lord Robertson, and and Lord Lindley (*differing* from the judgment of the First Division) that money held in trust for the purchase of lands in Scotland to be entailed under the law of Scotland is "entailed estate" within the meaning of section 23 of the Finance Act 1894, and is consequently liable to estate duty and settlement estate duty under sub-section (16) of that section.

*Opinion per* Lord Shand *contra*.

This case is reported *ante ut supra*.

The Lord Advocate, on behalf of the Inland Revenue, pursuer and respondent in the Court of Session, appealed to the House of Lords.

The question in the appeal was whether certain money held under a trust for the purpose of purchasing lands to be entailed was liable as "entailed estate" to estate duty and settlement estate duty in virtue of section 23, sub-section (16), of the Finance Act of 1894.

The trust-disposition and settlement under which this money was so held directed the purchase of lands in Scotland, and that the lands so purchased should be entailed "according to the law of Scotland."

At the hearing on the appeal the attention of the House was directed to a codicil which had not been brought under the notice either of the Lord Ordinary or the First Division. This codicil was as follows:—"I, James Sprot, Esquire, the granter of the foregoing trust-disposition and settlement, do hereby empower my trustees thereunder, if in their discretion they shall consider it desirable to do so, in place of purchasing land in Scotland to be entailed as therein provided, to purchase land in England for the purpose of being entailed on the same series of heirs as is provided for in my said trust-disposition and settlement; and in the event of my trustees so purchasing land in England, I direct them to have the same entailed according to the law of England, as they may be advised by counsel learned in the law of that country."

At delivering judgment—

LORD CHANCELLOR—I do not think it necessary in this case to say more than this, that the question is whether a sum of money resulting as a balance from certain investments in Scotland is or is not entailed estate within the meaning of the Finance Act.

I suppose no one apart from some interpretation clause would say that it was entailed estate, nor do I think it important to consider that the Court of Chancery in this country, where money has been irrevocably devoted to the purchase of land, may apply to it the considerations which would apply to it if it were land itself.

The questions which have been argued in the Scottish Courts have been applied only to the first hypothesis I have suggested, and the division of opinion appears to have arisen on the question whether a technical phraseology applicable to Entail Acts is supposed to run through all the Entail Acts where they are enacted to be read together, or whether the technical phraseology is only to be so interpreted as to belong to the particular statute in which it is found.

I hesitate to express any opinion on that question, because I think it is inaccurate to say that that question arises here. The sum which was devoted by a trust in the first instance in trust for purchasing lands in Scotland to be entailed in accordance with the directions of the testator's will, was materially altered from the disposition originally made by a codicil to his will, the effect of which never seems to have been suggested as influencing the discussion to which I have referred in the Scottish Courts.

To my mind that codicil has completely altered the question. The codicil permitted the money in trust to be invested at the discretion of the trustees in England, to which of course the interpretation clause of the Scotch Act does not attach. That discretion and the consequence of it appears to me to dispose of the argument, and I am prepared therefore to move that the appeal be dismissed, though, as I have said, without determining the question which appears to have been decided by the Scotch Courts without reference to the matter to which I have referred.

LORD MACNAGHTEN—The question in this case is whether the unexpended balance of the estate of Mr James Sprot, who died on the 5th of July 1882, is or is not "property held under entail" and "entailed estate" within the meaning of the Finance Act 1894 as applied to Scotland.

Mr James Sprot, by a trust-disposition dated the 17th of May 1879, gave a large

sum of money, afterwards reduced by a codicil to the sum of £100,000, in trust for the purpose of purchasing land in Scotland to be entailed in accordance with the directions of his will.

The Lord Ordinary held that the unexpended balance of this sum (now about £60,000) was "entailed estate." The First Division on appeal held that it was not.

Unfortunately the attention of neither Court was called to the provisions of the codicil of the 17th of May 1879, which authorises the trustees (if in their discretion they should think it desirable), in place of purchasing land in Scotland to purchase land in England to be entailed according to English law.

The effect of this codicil was that the money was no longer dedicated to the sole purpose of purchasing lands in Scotland to be entailed according to the law of that country, and therefore it seems to me impossible to hold that the money, or so much of it as for the time being remains uninvested in land, comes within the meaning of the expression "entailed estate" in the provisions of the Finance Act applicable to Scotland. Under the directions of the codicil the trust to purchase lands in Scotland ceased to be imperative. On this ground I think the decision of the First Division must be upheld.

Inasmuch, however, as the question on which the Courts in Scotland were divided was argued at length at the bar, it seems to me that it would not be right to pass it over in silence. On this point I agree with the Lord Ordinary, for the reasons which will be stated presently by my noble and learned friend Lord Robertson. It seems to me that when you have to construe a technical expression introduced into the legal vocabulary by a series of statutes forming one code, you naturally turn to the code for light and help. And the key to the true meaning of the expression will, I think, be found in the latest development of legislation rather than in its earliest effort.

I think the appeal must be dismissed, with costs.

LORD SHAND—I am also of opinion that the interlocutor should be affirmed, on the ground that, as the testator has provided that his money may be invested in England to be entailed according to the law in England, it cannot be said that this makes the property "entailed estate" within the meaning of the Finance Act 1894, as applicable in its provisions to Scotland.

But I must add that, apart from the provision of the codicil of 1879, I should arrive at the same result, for I agree with the views expressed by the First Division of the Court in reversing the judgment of the Lord Ordinary.

The question is one of difficulty, having regard to the provisions of the Entail Acts of 1875 and 1882, but I find nothing in these statutes which makes money directed to be invested in the purchase of land "entailed estate" in the ordinary acceptance and meaning of that term, or which can be held to enact that the words "entailed estate" shall, except for a defined and limited purpose, be held to include such money, which is otherwise personal estate. Such money is not entailed. It is money which, in the first place, must be converted into land, for money does not admit of being entailed. Again, even after land has been purchased, it does not become entailed estate till the land purchased has been entailed by a deed of strict entail, which has been duly registered as such in the appropriate register of entails.

In this case lands were not even acquired, much less entailed by the necessary deed duly registered. The direction to convert the money into land and to entail the land did not, and, as I think, could not, entail the money, which remained purely personal estate, though directed to be used in a particular way.

What, then, is the effect of the provisions of the entail statutes? Not, I think, to convert personalty into realty, and to entail that realty by enactment, but merely that for the purposes of these statutes in disentailing and otherwise providing that the property of entailed proprietors may, with the requisite consent of expectant heirs, be made free from the restrictions of entails, money which has been directed to be converted and employed in the purchase of lands to be entailed shall be treated as if these directions had been carried out and lands had been bought and entailed. In short, that the entire estate, land entailed and money, shall be treated in the same way and under the same conditions as one estate. I agree in the judgment of the First Division that the statutes enact only that in these statutes, and only for the purpose of these statutes in their provisions (which are really intended and calculated to break down entails and not to enforce or enlarge their provisions), money which is there called "entailed money" shall be regarded as "entailed estate." The words of the statute of 1882 are that, "*In this Act* the following words shall have the meanings hereby assigned to them." The enactment to that limited effect is made very properly to apply to the proceeds of entailed land which has been sold, and money ordered to be invested in land to be entailed, which money is made subject to the same provisions for obtaining freedom from the fetters of the entail as the entailed lands themselves. There is no such general provision, and one could scarcely conceive of such a provision, that in all circumstances, *e.g.*, in contracts and in all future statutes, the words "entailed estate" shall include in its meaning money directed to be converted into land to be thereafter entailed. The Entail Act of 1875 does not seem to me to be in any way different in the effect of its provisions from the Act of 1882.

On the whole, then, I am of opinion that the words "entailed estate" in the Finance Act of 1894 must be taken in their ordinary and proper signification as referring to estate which has been entailed, and not to money intended and directed to buy lands

to be entailed, and that the later entail statutes give a wider meaning to these words only where used in these statutes, and only for the special purpose of making such money liable to be dealt with, as the lands really entailed may be dealt with, under the general provisions of these statutes.

LORD BRAMPTON—I also am of opinion that this appeal should be dismissed. I should be content if necessary to rest my judgment upon the facts that by the combined effect of Mr Sprot's will and codicil his trustees were empowered and directed to apply the sum of £100,000 in the purchase of lands, either in Scotland or in England, at their discretion, to be strictly entailed according to the law of Scotland or of England, where the lands were situate; that although they had applied a portion of that money to the purchase of an estate in Scotland, as to which no question arose, the remainder, £60,000, is still uninvested, and is not, and possibly never may be, chargeable with the settlement estate duty claimed by the Lord Advocate.

I have read with great attention the clear and convincing judgment about to be delivered by my noble and learned friend Lord Robertson. I concur so entirely in his conclusions and his reasons that I could add nothing with satisfaction to myself.

LORD ROBERTSON—The proposition maintained by the appellant, affirmed by the Lord Ordinary, and negatived by the First Division, is that money held in trust and directed to be laid out in land to be strictly entailed is entailed estate in the sense of the Finance Act 1894. Subject to one limitation, that proposition seems to me to be sound, but the limitation in my opinion excludes from the proposition the money now in dispute. In order to be entailed estate in the sense of the Finance Act, the money must be directed to be laid out in land to be strictly entailed according to the Scotch law of entail, and therefore in Scotland. This, as it seems to me is not merely the necessary condition of the doctrine maintained by the appellant, but is its foundation, and without it the doctrine seems to me to have no support at all. Yet this condition renders the doctrine inapplicable to the appellant's case. His whole argument (which I think sound) is founded on Scotch statutes which form part of the land laws of Scotland, and have no application to land or to entails outside Scotland. But it turns out that in a due exercise of the discretion of the trustees who hold this money it need never go into Scotch land at all. In order to show the limitation of the doctrine in question it is necessary to examine its origin and ascertain its merits.

No one has denied that the only power to execute an entail, using that word in the only operative sense of the term, must be found in the Act of 1685, or has asserted that under that statute you can entail money. I fully allow that this is a good beginning to the argument against the appellant, and the Statute of 1685 is regarded by the First Division as the proper criterion of the meaning of the words in question. Again, it is quite true, as far as it goes, that all the Entail Statutes subsequent to 1685 have gone towards breaking down rather than towards constructing entails. But when from this fact the inference is drawn that those statutes are unlikely to contain the means of determining the scope of the term entailed estate, my assent is less readily given. We are in search of the sense in which those words are used in a statute in 1894; the vocabulary of that day is to be looked to, and if, as is the case, the words entailed estate and their equivalents are now in fact more in use in relation to relaxing than to constructing entails, that does not invalidate the criterion to which appeal is made. The purpose for which men speak of a thing is immaterial if they have occasion to speak of it. Now, the case of the appellant is that in 1894 the word "entailed" had come to be applied to moneys which stood in certain relations to entailed land, either as being its proceeds and standing under the same trusts, or as destined and held in trust for the purchase of land to be entailed. I think this is true in point of fact, and I must say that I think the Act of 1882, let alone the Act of 1875, demonstrates this. The 27th section declares that the price of an entailed estate shall be entailed estate within the meaning of the Entail Acts; the 28th assumes (which is even more than asserting) that an entailed estate may consist of money, and that this assumption is not rested on the 27th section is manifest, for the 28th is applying the provisions of the 27th to other entailed estates than those which fall under its terms. Not less significant is the use, without any explanation or apology, of the words "entailed money" in both the 4th and the 5th subsections of section 23.

The Act of 1882 has this double significance in the present question; it was in 1894 the latest expression of the Legislature on Scotch entail (and there is none since 1894), and it gathers up and brings together all the preceding statutes. But when we go seven years back, to the Act of 1875, we find that the term entailed estate had been already expressly extended to include all money held in trust for the purposes of being entailed. Now, I am willing to assume, as is quite justly pointed out, that this is (and it could hardly be otherwise) for the purposes of that Act (observing only that the same criticism can hardly be applied to the Act of 1882 in view of its 2nd section). But the Act of 1875 covers a large area of the law of entail, and accordingly the use in their wider sense of the words "entailed estate" became from 1875 onwards correspondingly frequent, and made the additional sanction and stimulus given to that use in 1882 all the more decisive.

If, as the learned counsel for the appellant invited us to do, we observe the progress of legal thought antecedent to 1875 as illustrated in judicial decisions, we see evidence that the working of the earlier of the

modern Entail Acts, particularly that of 1848, had fully prepared men dealing with those matters to call moneys so situated (as they were in fact being treated) entailed estate. Accordingly, the legislative appellation or description in the Acts of 1875 and 1882 of such moneys as entailed estate is not a case of the Legislature calling one thing by the name of another, but is a recognition of the fact that for practical purposes those moneys had come to possess the attributes of entailed lands so far as such now remained. This topic might be more fully developed, but the matter does not admit of dispute.

What I deduce from these considerations is, that if the existing state of the law, especially as exhibited in its most unmistakeable form, legislation, be the proper criterion of the meaning of words descriptive of legal rights, entailed estate did in 1894 include moneys directed to be applied in purchase of lands to be entailed. The principle that in statutes words are to be taken in their legal sense has, as Lord Stormonth Darling points out, a special cogency when the words in question represent only legal conceptions. The popular use of such words does not represent the primary meaning of the words, but some half-understanding of them. I say this because I observe that in the judgment delivered by Lord M'Laren some reliance is placed on the "ordinary use of language." Now, it seems to me that this would prove too much in the present case. If the phrase in question represents anything definite in popular use, I suspect the meaning is determined quite as much by a misuse of the word "estate" as equivalent to landed property, as by any intelligent use of the term "entailed," and that popular use would reject the words if applied to anything else than a landed property. Yet it is perfectly certain that other estate than landed property may be the subject of entail, as for instance, a right to salmon-fishing.

In what I have hitherto said it has been assumed that the words to be construed in the Finance Act are "entailed estate," and that the Act itself gives no further aid in the construction of that term. This, however, is to understate the appellant's case. The words directly descriptive of "settled property" (which is the appellation under which the respondents seek to claim exemption) are those in the fourteenth sub-section of section 23—"The expression 'settled property' shall not include property held under entail;" and then in sub-section 15 occurs the phrase "entailed estate," manifestly used as equivalent to what is in sub-section 14, the indefinite article "an" entailed estate being inserted because the form of illustration postulates an individual estate in relation to an individual proprietor.

The matter, however, may be brought to a much sharper point. In the face of the express and direct enactments in the Acts of 1875 and 1882 which I have cited, I am at a loss to see how it can be affirmed of money directed to be applied in purchase of land to be entailed that it is not entailed estate, at least in some sense and to some effect. And if this be so, then *quomodo constat* that it is not in the sense of this Finance Act?

I have not myself realised in what sense it is not entailed estate, except that some of the many provisions about entails do not apply to it. But this again proves a good deal too much. Some of the empowering Entail Acts assert that it would be for the public benefit if villages were built on entailed estates. Now, exactly the same reasoning as the respondent advanced would deduce from this that salmon-fishings do not fall within the scope of the Entail Acts, because you cannot build villages on salmon-fishings or the right to salmon-fishings.

But when we are told that at all events a Finance Act cannot be supposed to view as entailed estate moneys situated as those which I have been considering, I completely fail to see the reason. Even if a more rationalistic method be applied than is permissible in Taxing Acts, I should have thought that in a definition (section 23 (14)) the object of which is to distinguish something from settled property, the subject-matter of the rights, as land or money, was very much less relevant than the quality and correlation of the rights in that subject-matter, and so far as these are concerned it is just because they are practically identical in the one case and in the other that land and money are now massed under the common denomination entailed estate.

From the somewhat detailed examination now made of the question argued in the Court of Session it is at least apparent that the argument of the appellant begins and ends in the Scotch Entail Statutes. The third section of the Act of 1875, which puts at its sharpest the appellants' contention, requires that money in order to be entailed estate must be "invested in trust for the purpose of purchasing land to be entailed." The whole theory of the identification of such money with land is that it is directed and destined to be put into land, and its inevitable fate is merely anticipated in order to prevent circuity of procedure. But if, instead of it being so inevitably destined, the trustees may or may not so apply it, the whole ratio of those enactments is gone. Now, it seems to me that the combined effect of Mr Sprot's will and his first codicil was simply to make it discretionary and optional to the trustees whether they bought Scotch land or English land, and the mere circumstance that the will "directed" Scotch land to be bought has no effect at all in saving that direction from being reduced to an option by the codicil.

The appellants vainly endeavoured to save the situation by relying on the direction to "entail" whether the land was in Scotland or in England. But an English entail is one thing and a Scotch entail is another. And the whole argument of the appellant on the main question rests not on the word "entail" but on statutes which have no application to England.

On this sole ground I am of opinion that the appeal must fail.

LORD LINDLEY—Section 23 of the Finance Act 1894 relates to the application of the Act to Scotland, and clause 14 declares that "the expression 'settled property' shall not include property held under entail." Whatever difficulty there may be in determining whether these words include money directed to be laid out in land in Scotland and to be entailed according to the laws of that country, the expression "property held under entail" in a section relating solely to Scotland cannot, in my opinion, apply to land in some other country, nor to money to be laid out in the purchase of land in some other country, even although such land is to be held upon trusts creating interests similar to those created by a Scotch entail.

Now, the trust-disposition or will in this case undoubtedly created a trust to lay out money in the purchase of land in Scotland to be held under entail according to Scotch law, but the direction contained in this will was very materially altered by the codicil. The two instruments together impose upon the trustees an obligation to lay out money in land, but that land need not be in Scotland, it may be in England. The trustees are to exercise their own judgment, not only as to when they will invest the money in land, but as to the country in which the land to be bought shall be situate. Even if, therefore, the money can be regarded as converted into land, it is, in my opinion, impossible to treat it as converted into land before it is actually invested or agreed to be invested in such land. In other words, the money whilst uninvested cannot be regarded as "property held under entail" within the meaning of section 23 (14) of the Finance Act, nor can money be regarded as "an entailed estate" within the meaning of clause 16 of the same section.

It is so well settled that there is no conversion of land into money or of money into land, if the trust for conversion is not imperative, that it is quite unnecessary to cite authorities on the point. They will be found collected in Lewin on Trusts, pp. 1158 and 1163, edition 10. I do not understand that there is any difference between the law of Scotland and the law of England on this subject, and consistently with this principle the money in question in this case cannot be regarded as land in Scotland.

In this view of the case it becomes unnecessary to determine the more difficult question whether, if the original trust-disposition had not been varied by the codicil, the money thereby directed to be invested in land in Scotland and to be entailed would or would not have been "property held under entail" within the meaning of section 23, clause 14, of the Finance Act 1894. I have, however, carefully considered this question, and I concur in the conclusion arrived at and expressed by my Lord Robertson in his judgment, which has removed the doubts I at one time entertained on this part of the case.

I am of opinion that the appeal fails, and ought to be dismissed with costs.

Interlocutor appealed from *affirmed*, and appeal *dismissed* with costs.

Counsel for the Pursuer (Respondent and Appellant) — Solicitor - General (Dickson, K.C.)—A. J. Young. Agents—Solicitor for Inland Revenue for England, and Solicitor for Inland Revenue for Scotland.

Counsel for the Defenders (Reclaimers and Respondents)—Dean of Faculty (Asher, K.C.)—J. C. Lorimer—R. G. Seton. Agents Martin & Leslie, and Blair & Cadell, W.S.

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*Thursday, May* 15.

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

## PARISH OF RUTHERGLEN *v.* PARISH OF GLASGOW.

(*Ante*, March 19, 1901, vol. xxxviii. p. 528, and 3 F. 705.)

*Poor—Settlement—Residential Settlement—Deserted Wife—Acquisition of Residential Settlement by Deserted Wife.*

*Held* (*rev.* decision of the Court of Session) that while the marriage continues undissolved the deserted wife of a man who has a settlement in Scotland cannot acquire an independent residential settlement for herself.

*Gray* v. *Fowlie*, March 5, 1847, 9 D. 811, *approved* and *followed.*

Subsequent authorities *reviewed* and *commented on per* Lord Robertson.

This case is reported *ante ut supra.*

The parish of Rutherglen, pursuers and appellants in the Courts below, appealed to the House of Lords.

At delivering judgment—

LORD CHANCELLOR—The one question which appears to me to be cardinal in the determination of this appeal is whether it is true to say that when a husband deserts his wife she can until the dissolution of the marriage acquire a settlement different from that which was her husband's at the time he deserted her. I am of opinion that she cannot.

The line of authorities quoted by the respondents are for the most part irrelevant to this question, inasmuch as with one exception they were cases in which the husband had no settlement at all—either no settlement or no settlement in proof before the Court.

That a wife upon her marriage acquires her husband's settlement cannot be disputed, and while the marriage continues that settlement must remain. It is obvious therefore that if I am right in treating the authorities quoted to your Lordships as being applicable to cases where the husband either had none or was assumed to have