The Court answered the question in the case in the affirmative, and remitted to the Sheriff to award compensation.

Counsel for the Appellant—Watt, K.C.—A. Moncrieff. Agents—Simpson & Marwick, W.S.

Counsel for the Respondents—Salvesen, K.C.—W. Thomson. Agents—W. & J. Burness, W.S.

Thursday, October 30.

SECOND DIVISION.

BILL CHAMBER.

[Junior Lord Ordinary.

EARL OF GALLOWAY, PETITIONER.

Entail—Provisions—Widow—Free Yearly Rental—Deductions—Upkeep—Management—Restriction of Widow's Annuity—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* (*diss.* Lord Young) 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 was a petition at the instance of the Right Honourable Randolph Henry Earl of Galloway, &c., heir of entail in possession of the entailed estates of Galloway, Baldoon, and Newton-Stewart, for restriction of an annuity affecting said entailed estates.

The Entail Provisions Act 1824 (Aberdeen Act) (5 Geo. IV. c. 87), enacts, sec. 1—"It shall and may be lawful to every heir of entail in possession of an entailed estate under any entail already made or hereafter to be made in that part of Great Britain called Scotland, under the limitations and conditions after mentioned, to provide and infeft his wife in a liferent provision out of his entailed lands and estates by way of annuity, 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 granter."

By bond of annuity dated 27th December 1873 and duly recorded the late Earl of Galloway granted to his wife the Right Honourable Mary Countess of Galloway a free yearly annuity of £3000 payable out of the entailed estates of Galloway, Baldoon, and Newton-Stewart, subject to all the conditions and limitations contained in the Aberdeen Act.

The late Earl of Galloway died on 7th February 1901 survived by his wife, and was succeeded in the entailed estates by the present petitioner.

The petitioner prayed the Court to find that the utmost amount with which the late Earl could competently burden the said entailed estates as an annuity to his widow under the Aberdeen Act was £2113, 4s. 6d., and that the annuity of £3000 granted by the late Earl should be restricted to £2113, 4s. 6d, and to order, declare, and restrict accordingly.

The gross rental of the entailed estates, exclusive of the mansion-house and policies, for the year current at the date of the late Earl's death, was stated in the petition to be £26,594, 1s. 6d., and the free rental, as alleged by the petitioner (after deducting assessments, public burdens, interest on heritable debts, and certain other items, including certain deductions for upkeep of estate buildings and fences, and for management and superintendence of the estate) £6339, 13s. 5d., one-third whereof, viz., £2113, 4s. 6d., was the sum to which the petitioner maintained that the annuity fell to be restricted.

Answers were lodged for the Countess of Galloway, the annuitant, objecting to the deductions sought to be made by the petitioner in estimating the free yearly rent out of which the annuity was payable. In particular she objected to the deduction of (1) a sum of £1796, 7s. 9d. for upkeep of estate buildings and fences, and (2) a sum of £1013, 5s. 10d. for management and superintendence of the estate.

On 31st March 1902 the Lord Ordinary (PEARSON) pronounced this interlocutor—"Finds that the petitioner is not entitled in the calculations for fixing the widow's annuity to make the deductions claimed for upkeep of estate buildings and fences, or for management and superintendence of the estate, and on the motion of the petitioner grants leave to reclaim."

Opinion.—"This is a petition by an heir of entail in possession to restrict the amount of an annuity of £3000 payable to the widow of the preceding heir. It is said that the free rental, calculated in terms of the Aberdeen Act under which the annuity was granted, will only warrant an annuity of £2113, 4s. 6d. The questions in dispute have regard to the deductions which fall to be made from the rent or value in the course of ascertaining the rental available for the annuity. To a certain extent the parties are agreed as to these deductions. Public burdens, feu-duties, annual rents, interest of heritable debts, and children's provisions are all admitted to be proper

deductions. But the petitioner also claims deduction for certain other items numbered 7 to 11 in the petition, none of which so far as I know or have heard have ever been allowed before.

"In the determination of such questions it has been usual to have regard to the practice which has prevailed since the Act was passed in 1824. I should have been disposed to follow the usual course, and remit at this stage to a man of business to report. But the parties concurred in asking me to hear argument regarding the deductions which are in dispute on the general question whether they are to be taken into account at all on a sound construction of the statute.

"In particular, the discussion had regard mainly to the two most important of the deductions which are now challenged, namely, £1796 for upkeep of estate buildings and fences, and £1013 for management and superintendence of the estate. I was asked to deal with these first, because, as I understand, if they are disallowed, the full annuity of £3000 will be payable.

"Now, the first section of the Aberdeen Act enumerates certain deductions which have to be made in the course of the calculation, and it was argued for the petitioner in the first place that the two deductions now immediately in question could be brought within those statutory deductions. I think this attempt fails. It is true that the enumeration is followed by the general words, '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.' And it is argued that while the upkeep of estate buildings and fences and the cost of managing the estate do not form burdens on the lands, they do 'affect' the yearly rents in the way of diminishing them in the hands of the heir in possession. In one sense they may be said to do so, but I think it clear that by no process of construction can they be regarded as 'burdens affecting and burdening the said lands and estates or the yearly rents or proceeds thereof' within the meaning of this section. These words seem to me to point to charges of quite a different nature.

"But the main contention of the petitioner is this—Assuming that the deductions in dispute cannot be brought within the enumerated deductions, it is argued that those which are enumerated are to be deducted from the *free* yearly rent or *free* yearly value, and the contention is that this 'free yearly rent' requires for its ascertainment a previous calculation in which you start with the gross rent, and then by deducting the expenses of management, upkeep, and the like, which are necessary to earn it, you arrive at the 'free rent.'

"Now, considering the matter first apart from authority and practice, I cannot say that that is an impossible construction. I think there are three possible constructions of the clause. The first is to regard the words 'after deducting the public burdens,' &c., as exegetical of the word 'free,' as if it had been 'the free yearly rent'—that is to say, 'the yearly rent after making the following deductions, and no others.' Or it might mean 'the free yearly rent after making at all events and among others the following deductions.' Or thirdly, it might mean what the petitioner contends for as first explained. Of these constructions I should myself prefer the first on a perusal of the section and of the Act as a whole, although I admit that it makes the word 'free' in a sense superfluous, as the same meaning would be reached without it. It appears to me that one difficulty in adopting the petitioner's construction arises from the circumstance that 'public burdens' are in the list of the express deductions, for I should have thought that these were in any view deductible before 'free rent' was arrived at, and therefore, on the petitioner's construction, need not have been mentioned at all.

"But even if the clause were more ambiguous than I think it is, the petitioner's view is discredited by the fact that so far as I know or was informed there is neither practice nor authority in its favour since the passing of the Act in 1824, and that such authority as exists is against it. It is true that hitherto the main disputes regarding the deductions warranted by the Act have been whether the enumerated deductions did or did not include this or that item of expenditure, and not whether the expression 'free rent' involved a prior calculation at an earlier stage with its own appropriate deductions. But I have a strong impression that all the cases have proceeded on the assumption that the list of deductions as set forth in the statute (including the general words at the end of the list) was exhaustive, and that when these had all been made, according to the sound construction of the words used, you had arrived at the 'free rent' on which the annuity was to be calculated. There is very little authority on the point more immediately raised by the petitioner, and indeed the only decision to which I was referred which bears directly on it is the case of *Grierson*, 1887, 25 S.L.R. 549. That, however, is a distinct authority for disallowing the proposed deduction, and as it appears to me to be sound in itself and in line with the other decisions on this section, I propose to follow it, notwithstanding that the cases there referred to by the reporter in support of his opinion may admit of being distinguished from the case he was dealing with.

"I think the fallacy of the petitioner's view lies in this, that he looks at the matter too exclusively from the commercial point of view, as if the heir in possession were running a business, and the purpose of the calculation was to ascertain the nett profits. The statute regards the estate as a subject let or lettable. If it is let, the rents received are the basis of the calculation, and the deductions to be made are those specified in the statute. The matter is well illustrated by taking the alterna-

tive case of the estate being partly in the proprietor's own hands, including farms, and, it may be, mineral workings. Thus, in the case of *Leith*, 1862, 24 D. 1059, the home farm was not let, and the question was, how was its yearly value to be ascertained for calculating children's provisions? It was held that parties were not bound to accept the valuation roll as conclusive on that matter, and the Court remitted to a land valuator to report 'as to the proper yearly value or rent' of the farm for the year current at the death. It is plain, both from the reference to the valuation roll and from the terms of the remit, that what the Court were in search of was the true occupation-rent of the subjects. I think this also furnishes a reply to the petitioner's observations on the possible case of minerals being worked by the heir in possession. It was argued that if the respondent's view were sound, the provisions would have to be calculated on the gross output of the pits without deduction for oncost, or for the expenses of winning and raising the minerals. That, however, is not so if the lettable value is taken as the standard of 'yearly value,' for a tenant would take account of all such expenses before fixing the rent he was willing to pay.

"I therefore find that the petitioner is not entitled to claim the deductions specified under heads nine and ten in the petition, and since, if these are disallowed, the free rental is more than sufficient to yield the annuity claimed, it is not necessary to go further."

The Earl of Galloway reclaimed, and argued—The sums disallowed by the Lord Ordinary were proper deductions. The words of the Act were "free yearly rent . . . after deducting the public burdens," &c. The word "free" was important, and must be given effect to, otherwise it would be meaningless. Therefore, before deducting the public burdens and other items enumerated in the section, the "free" rent must first be ascertained by deducting from the gross rental the expenses of upkeep and management. In the case of a mineral estate the expense of working the pits was deducted—*Lord Belhaven and Stenton, Petitioner*, January 23, 1896, 23 R. 423, 33 S.L.R. 299. In estimating a composition the expense of upkeep was deducted. If the lands were unlet, the yearly value was taken, not necessarily the value in the valuation roll, and that implied the deduction of expenses and management—*Leith* v. *Leith*, June 10, 1862, 24 D. 1059. The only decision on the point was an Outer House case, and therefore not binding, viz., *Grierson, Petitioner*, June 16, 1887, 25 S.L.R. 549, and the cases relied on by the Reporter in that case, viz., *Cochrane* v. *Cochrane*, November 25, 1846, 9 D. 173; *Dunbar* v. *Dunbar*, December 7, 1872, 11 Macph. 200; 10 S.L.R. 109; and *Macpherson* v. *Macpherson*, May 24, 1839, 1 D. 794, aff. 5 Bell's App. 280, only showed that the deductions enumerated in the Aberdeen Act were real burdens. The case of *Macpherson, cit. supra*, was one dealing with a permanent improvement, and was not therefore in point.

Argued for the respondent—The expression "free yearly rent" meant the rent ascertained by deducting the burdens specified in the Act. The words "after deducting the public burdens," &c. were exegetical of the word "free." Practice had been uniformly against the contention of the appellants, and the case of *Grierson, cit supra*, was in accordance with practice. This was the first time that rule of practice had been questioned. The provision in the Entail Amendment Act of 1868 (31 and 32 Vict. c. 84), sec. 6, was analogous and bore the same construction. The case of *Cochrane, cit supra*, was in point in the present case, especially the opinion of the Lord Justice-Clerk (Hope), at p. 185. There were two serious objections to the argument of the reclaimer, viz., (1) No directions are given as to how the free yearly rent ought to be arrived at, and (2) the expression "free yearly rent" would be applied to a rental from which, *ex hypothesi*, there were still to be deducted public and real burdens, the very things that naturally fell to be deducted first of all in estimating free rental.

At advising—

LORD JUSTICE-CLERK—The question in this case is whether, in ascertaining the amount payable from the rental of an entailed estate to meet an annuity payable to the widow of the last heir of entail, certain charges are to be deducted from the rental as being properly included among the deductions allowed by the Statute 5 Geo. IV. c. 87. By that Act it is declared that an annuity to the widow of an heir of entail "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, life-rent 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 and 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 granter."

Under the Act the late Earl of Galloway made a provision to his widow of £3000 a-year, and the question in the case is whether that annuity must not suffer diminution, in respect that if certain proposed deductions fall within the Act the annuity if paid would absorb more than the proportion authorised by the Statute.

The actual matters in question are (1) a sum for upkeep of estate buildings and fences, and (2) a sum for management and superintendence of the estate. There are others, but as parties are agreed that if these two are not to be deducted there is sufficient to meet the full annuity, it is not necessary to consider such other suggested deductions.

The first question is, can these things or either of them be brought within the

category of the statutory deductions? They are plainly not within those enumerated, and therefore if they are to be held included it must be under the alternative head "other burdens of what nature soever." But in my opinion the attempt to bring them under this head must also fail. For the deductions under this head are also expressly limited to such as are "affecting and burdening the said lands and estates," &c. I am quite unable to see how the deductions claimed can be brought into this category. The words are apposite to define a well known class of burdens on landed estates, and quite inappropriate for application to such matters as are here in question.

But, then, the petitioner endeavours to make good a reading of the clause by which such deductions as he now claims must be taken off the gross rental first of all, and that it is after these have been taken off and the "free yearly rent" thus ascertained that the "burdens" are to be taken off. This appears to me to be not a true reading of the clause. I think the sound reading is that "free yearly rent" means the rent after the deductions with which the lands are burdened have been taken off. I cannot read it as meaning "free" after making certain unnamed deductions which do not constitute a burden on the lands. Although it may be true that the same meaning could have been expressed without the use of the word "free" at all, that word is I think quite naturally used to express the meaning that the rent is freed to be applied to the enjoyment of those entitled to participation in it, when the amount required to meet the burdens affecting the lands has been separated and applied to that purpose.

There is not much authority touching this point raised by the petitioner, and that is not matter for surprise. For, so far as can be seen, the contention that such items of proprietor's outlay as are here matter of dispute fall to be deducted primarily before ascertaining and dealing with burdens on the lands is novel. This strengthens me in the view I have taken. For it is scarcely conceivable that such a question should arise for the first time three-quarters of a century after the passing of the Act if it could have been contended with any prospect of success that such a reading of the clause was natural. I have been unable to hold that it is, and I therefore concur in the conclusion at which the Lord Ordinary has arrived, and would move the Court to affirm his interlocutor.

LORD YOUNG—By section 1 of the Aberdeen Act it is provided that the annuity thereby authorised to be granted shall not exceed one-third part of the free yearly rent (or value) of the entailed estate "as the same may happen to be at the death of the granter." The heir in possession of the estate is of course the obligant who is bound to pay the annuity termly as it falls due, and the intention of the Legislature was, I think, very clearly that he should not be required to pay yearly to the annuitant more than one-half the amount of free rent which after such payment remained free for his own use, or in other words, that he should have for the maintenance of himself and family and the upholding of his position as head of the family not less than twice the amount which his predecessor was permitted to grant to his widow by way of annuity.

The thing which has to be divided into parts is the "free yearly rent" of let land or value of unlet land. The term "free" is plainly used in contra-distinction to "gross," and the deductions which will make *gross rent free* rent are specified, both particularly and generally, in the clause of the Act to which I am referring. The whole language of the clause satisfies me that the meaning of the term "free yearly rent" as there used is so much of the gross rent as, after payment of all lawful and necessary charges or burdens thereon, remains free for the use and enjoyment of the proprietor—that is, in the case of an entailed estate, "the heir of entail in possession." The language of the general and very comprehensive specification of deductions, which follows the more particular, seems to me to exclude any reasonable doubt that this is the true meaning. That language is, "and the yearly amount of other burdens of *what nature soever* affecting and burdening the said lands and estates *or the yearly rent 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 granter." The reasons for requiring, as the Act certainly does, that the clear yearly rent or value of the estate to the heir of entail in possession shall be taken "as the same may happen to be at the death of the granter" of the bond of annuity are manifest. In the first place, it was proper that the amount of the annuity, if disputed, should be determined as soon as possible after the granter's death; and, in the second place, it was manifestly expedient in the interest of both parties that the amount should be conclusively fixed once and for all, and so to avoid subsequent and it might be numerous periodical inquiries regarding rise or fall in the rents of farms, the increase or diminution of public burdens, including every variety of local rates, and, in short, of any estate expenses which must be paid by the heir in possession before the rents drawn by him can be characterised as "free rents."

Another commendation of this provision is that under it the amount of the free yearly rent, and consequently of the annuity, must, if disputed, be determined without any possible reference to any conduct—action or omission, in the management of the estate—of the heir in possession who has to pay it.

The granter of the annuity in question died on 7th February 1901, and the question is whether or not the amount (£3000) exceeds one-third part of the free yearly rent of the estate as it happened to be "at the death of the granter."

The parties are, I understand, agreed upon the amount of the gross yearly rent

at that time, and upon many and large deductions which must be made before it can be characterised as free yearly rent. However this may be, they differ about two large and important deductions which the Lord Ordinary has disallowed by the interlocutory judgment now by leave reclaimed against. Our judgment must be confined to the conflict regarding these deductions, and indeed nothing beyond was argued to us.

The first of these deductions consists of expenses for the upkeep of estate buildings and fences—the sum of £1796, 7s. 9d. Whether that is a large average amount, having regard to the extent and character of the estate, we do not know. It is not a question of law. The estate is certainly large. It extends over large portions of two counties, embracing numerous parishes and some towns and villages. The gross rental is £26,540. It happens to be heavily burdened, and the expenses incurred in producing that rental must be judged according to the character of the estate and governed greatly by the amounts of the different rents and the extent and character of the different holdings. I suppose it will appear to everyone that this rental—£26,500—could not be recovered on such an estate without the buildings and fences which are let with the land being upheld, so that the upholding of these buildings and fences is necessary to the production of the gross rental. And that upkeep of the buildings and fences must be made by the heir of entail in possession, and paid out of the gross rent. He must pay them, and unless they are paid the rent would not be produced. Why then are these not to be deducted before the rent available for division is ascertained —that is, the "free rent"? The only reason suggested by the Lord Ordinary in his interlocutor is that they are not heritable burdens upon the land. Did it ever occur to any one that such charges were to be met by the proprietor of an estate otherwise than out of the rental? It seems to me a weak suggestion that the Legislature contemplated that the only burdens upon the heir of entail in possession, which were to be deducted in fixing the jointure to his predecessor's widow, were such as in the feudal sense of the term were real burdens on the heritage. That appears to me untenable to the extent of being extravagant. The language which I have read from the Act specifies generally all burdens of whatever character which affect the rental and diminish the free amount or value thereof to the heir of entail in possession. That is the plain meaning of it, for the object of the whole enactment is to ascertain how much of that free rental may be claimed by the widow of the deceased proprietor, thereby diminishing the return from the estate which the successor to the estate, as proprietor of it, and as head of the family, is to have for his own maintenance. I may have something more to add upon that point afterwards. In regard to the amount of the deduction I am now considering I have perhaps said enough, but I may point out that the cost of the upkeep of houses and fences will vary from year to year, and vary in different parts of the estate—vary indeed upon different farms. But I have no doubt that it can be ascertained with reference to any estate in Scotland what is the average yearly cost to the proprietor for the upkeep of buildings and fences. What number of years would be taken in order to ascertain an average we have not in this case to consider, for the statute, as I have pointed out, excludes the necessity of considering it, by providing that if it is a legitimate charge at all it is to be taken at the amount at which it happens to stand at the death of the granter of the bond, the Legislature being satisfied that that was a fair way of dealing with the matter, having regard to the interests of both parties. It might be exceptionally low, it might be exceptionally high, but the Legislature has provided that it shall be taken as the standard.

I now proceed to consider the other disputed deduction, which is for the management and superintendence of the estate. Now, what is the suggestion here? That this is not a real burden upon the land but merely a burden upon the heir in possession. It is suggested that such an estate as this, producing a rental of over £26,000 a-year, can be managed by the noble Earl, who happens to be the heir in possession, without incurring any expense of management, that he can himself select proper tenants to whom the land may be let, that he can determine what are the fair rents exigible, with a reasonable certainty of payment, and himself look after and see that the tenants perform their duties and cultivate the land properly and as prescribed; in short, that the heir in possession should be able to manage the estate without having recourse to any professional experience, assistance, or advice. It would not occur to me as a reasonable view to take and to be imputed to the Legislature, or that it has been provided by the statute, that the proprietor should pay these charges out of his own pocket, and that the annuity should be free from them. The purpose which we attribute to the Legislature is, that the annuity should not exceed one-third of the "free rental," or in other words, that at least twice as much as the widow of the late heir gets for her own maintenance shall remain for the maintenance of the succeeding heir and his wife and family. But nothing remains for him until all these things have been paid or provided for.

In conclusion, I venture to put a case of I trust not frequent but certainly by no means unknown occurrence—that of an entailed estate so heavily burdened with debt that the gross yearly rent after deducting therefrom the yearly taxes and interest of debt was not more than sufficient to meet the cost of upkeep and management, so that when that cost was paid nothing remained for the use and enjoyment of the heir of entail in possession. Suppose, further, that the immediately preceding heir in possession had under the Aberdeen Act granted

a bond of annuity to his widow, and that the facts as to rental, &c., as they happened to be at the time of his death, were exactly as I have stated them in this illustratively put case—Would the widow be entitled to any annuity under the bond, and if so, of what amount, and by whom, and with what funds to be paid? I am therefore of opinion that the Lord Ordinary's interlocutor disallowing these deductions ought to be altered, and that the deductions claimed are in their nature right, the particular sums stated in the petition being hereafter, and as the result of further inquiry by the Court, shown to be correct, and also as these deductions happened to be at the "death of the granter of the annuity."

LORD TRAYNER—Under the provisions of the Aberdeen Act (5 Geo. IV. c. 87) an heir of entail in possession is authorised to provide for his wife a liferent provision by way of charge on the entailed estate, such provision not to exceed one-third of the free yearly rent of the estate. In pursuance of this statutory authority the late Earl of Galloway (the petitioner's predecessor in the estates) provided his wife (the respondent) with an annuity or liferent provision of £3000, and the purpose of the present petition is to have that annuity restricted, on the ground that it exceeds the amount of one-third of the estates' free rental. It was argued for the petitioner that the language of the statute did not authorise a provision in favour of the wife of an heir in possession equal to one-third of the free rental, but of one-third of the *free* rental after deducting from it public burdens, &c. I think this reading of the statute is not admissible. The plain meaning of the statute, in my opinion, is that the liferent provision to be made for a wife shall not exceed a third of the free rental, that free rental being ascertained by the deduction from the gross rental of the several burdens on the estate which the statute specifies. The free rental of the estate is so ascertained. But what the petitioner contends for is that the free rental should be ascertained by deduction of the burdens from the gross rental, and that the same burdens should again be deducted from the free rental so ascertained, and that the provision in favour of the heir's wife should not exceed one-third of the rental appearing after these deductions had been twice made. I think that is a perversion of the statutory provision, and quite inconsistent with the construction thereof received and acted on ever since the Aberdeen Act was passed.

In addition to the general argument on the words of the statute the petitioner maintains that in acertaining the amount of the free rental there should be deducted from the gross rental certain charges (1) for upkeep of estate buildings and fences, and (2) for management and superintendence. These deductions the Lord Ordinary has disallowed, and I agree with him that they should be disallowed. It will be observed that the statute allows as deductions in ascertaining the free rental those charges which burden and affect the lands (and through them, and only through them, the rents), and the burdens specified in the statute show that the burdens referred to are only such as burden or affect the lands and estate in the sense that they are such as the lands and estate may be made answerable for, or, in other words, debts and obligations exigible from the lands for which the lands might be attached. Now, the deductions sought to be made by the petitioner are not of that character at all. An heir of entail in possession is not bound to do anything, however little, towards keeping up the estate buildings and fences. Any debt he might incur in doing so would be a personal debt for which the entailed estate could not be made answerable—such debt could not affect or burden the lands. The same may be said about the expenses of management. The heir in possession may manage the estate for himself, in which case he certainly could not claim as regards the estate any consideration for doing so, or the estate may be left without management. But, in any case, the extent of management and expenses so incurred, if any (which is a matter entirely in the discretion of the heir in possession), cannot burden or affect the lands so as to make them answerable therefor. I think therefore that the Lord Ordinary was right in disallowing the deductions, and that his judgment should be affirmed.

LORD MONCREIFF was absent.

The Court adhered.

Counsel for the Petitioner—Dundas, K.C.—Blackburn. Agents—Russell & Dunlop, W.S.

Counsel for the Respondent—Ure, K.C.—Cullen. Agents—Strathern & Blair, W.S.

Wednesday, November 12.

SECOND DIVISION.

A *v.* B.

Minor and Pupil—Custody — Legitimate Children — Question between Parents—Father Convicted of Theft—Husband and Wife—Parent and Child.

In a petition presented by a father for the custody of the child of the marriage, a girl of one year and nine months, and for an order on the mother to deliver her up to him, the petitioner admitted that about a year previously he had pleaded guilty to a charge of theft of sums amounting to £12, and had been sentenced to four months' imprisonment. He stated that on coming out of prison he had obtained his present situation, which had been kept open for him by his employers, and that his wages were 27s. per week. The wife did not deny the truth of this last statement, and made no specific charge of dishonesty or bad conduct against the petitioner since he came out of prison.