think the railway company must be held to have made both purchases on exactly the same terms as to accesses.

This view is confirmed by the whole other circumstances in the case. The railway company have not only access to the ground taken, I mean to the rectangle from the railway itself and from the spare ground at its side used as a loading bank and otherwise—that is, along the whole south side of the purchase, but they have also the whole property to the west of the rectangle, I mean the property facing Moodie's Court. I cannot doubt upon the evidence that the railway company could easily form accesses to the ground in question even although it should not ultimately be used for railway purposes. But as to this point we really know nothing. The railway company have nearly ten years to decide to what use they will finally put the property, and whether they will include all of it or what part of it in their permanent railway works. For aught that appears, it will all be needed for permanent railway use, and if so the only natural and the only statutory access will be from the railway or from the railway ground which adjoins it on two complete sides. Even if ultimately disposed of as superfluous, it will naturally fall to be disposed of along with the Moodie Court property of which it has really become a part.

No doubt the rectangle is not quite in the same position as the original triangle, for the rectangle was purchased at the instance or request, so to speak, of Mr M'Laren; but Mr M'Laren's demand was not that the railway should take the rectangle, but that the railway should take his whole property, including the front Stockwell tenement and all its pertinents. Had they done so, this question would not have arisen, but I cannot doubt that had the railway intimated that they demanded an access through the front tenement, Mr M'Laren would have insisted that that front tenement should be purchased, and it seems clear enough that he would have been successful in that demand.

Viewing the case therefore as a proper case of railway purchase of a portion of the pursuer's property, whether to the full extent compulsory or not, and as a case of railway purchase without any stipulation for and without any necessity of an access through the untaken portions of the pursuer's property, I am of opinion that no such access has been purchased, and I am for adhering to the Lord Ordinary's judgment.

The Court adhered.

Counsel for Pursuer (Respondent)—Asher—H. Johnston. Agents—Morton, Neilson, & Smart, W.S.

Counsel for Defender (Reclaimers)—Balfour—Jameson. Agents—Murray, Beith, & Murray, W.S.

Friday, July 12.

FIRST DIVISION.

[Lord Adam, Ordinary.

MACLAINE *v.* RANKEN (CAMPBELL'S TUTOR AD LITEM).

Entail—Process—Expenses of an Application for Authority to Charge Lands Entailed after 1848 *with Improvement Expenditure—Entail Amendment Act* 1875 (38 *and* 39 *Vict. cap.* 61), *sec.* 7, *subsec.* 6, *and sec.* 12, *subsec.* 6.

In a petition to charge entailed lands with improvement expenditure where the entail is dated subsequently to 1848, the Entail Amendment Act 1875, and specially sec. 7, subsec. 6, and sec. 12, subsec. 6, makes no provision for granting to the petitioner the expenses of his application, and gives no power to make the expenses of the application a charge upon the entailed estate.

Murdoch Gillian Maclaine, heir of entail of the lands of Lochbuy and others in Mull, under a deed of entail dated in 1874, presented a petition to the Junior Lord Ordinary (ADAM) for authority to charge the entailed lands with Montgomery improvement expenditure. The petition, *inter alia*, prayed for decree for the expenses of the application in these words—"together with such sum as your Lordships may find to have been the actual or estimated amount of the expenses of this application, and the proceedings therein, and of obtaining the loan and granting security therefor."

The Lord Ordinary granted the prayer of the petition, except in so far as related to expenses, and on this point added the following note to his interlocutor of 12th June 1878:—

"*Note.*—The Lord Ordinary has refused the petitioner's motion for expenses, because he thinks he has no power under the statutes to grant it. The 6th subsection of the 12th section of the Entail Amendment Act 1875 was founded on in support of the motion, but there is no entailed estate out of which the Lord Ordinary can decern for payment of the expenses. No doubt the expenses might be made a charge on the entailed estate, but that appears to the Lord Ordinary to be a different thing from decerning for payment of them, and to be limited to cases under the 6th subsection of the 7th section of the Act, where power is expressly given to charge such expenses on the estate where the estate is held under an entail dated prior to 1st August 1848, which is not the case here."

The petitioner reclaimed, and Mr R. B. Ranken, *tutor ad litem* to Donald Maclaine Campbell, one of the three next heirs entitled to succeed, opposed the reclaiming note on behalf of the pupil.

The petitioners founded on the 6th subsection of the 12th section of the Entail Amendment Act 1875 (38 and 39 Vict. c. 61), and argued that the expenses of the application might justly be made a charge on the estate in the same manner as was provided in the 6th subsection of the 7th section of the same statute. The Court was there empowered to authorise an heir of entail, holding under a deed of entail dated prior to 1st August 1848 to borrow money to defray the cost of improvements on the entailed estate, and subsection

6 went on to say "that the Court shall in every case, in fixing the amount to be borrowed, add to it the actual or estimated amount of the cost of the application, and the proceedings therein, and of obtaining the loan and granting security therefor."

Argued for the respondent—It was not in the power of the Court to make the expenses of the application a charge on the estate in the manner prescribed in section 7, as that was limited to cases of entails dated prior to August 1848, and, secondly, the lands being in *forma specifica*, it was impossible to decern out of the estate. Further, the 12th section, subsec. 6, merely gave power to decern for the expenses of process, which would not include all the expenses allowed for in the 7th section, viz., the expense of raising the loan and granting security therefor.

At advising—

Lord President—The history of the question raised in the present reclaiming note as regards statute is this—Improvements of the nature of Montgomery Improvements, for which there is no decree in the terms of the Montgomery Act, may, under the 16th section of the Rutherfurd Act (11 and 12 Vict. cap. 36), be made chargeable on the estate, and the manner of so doing is there prescribed; but that enactment is confined to entails prior to 1st August 1848. It was by the subsequent Statute of 31 and 32 Vict. cap. 84 (Entail Amendment Act 1868), that the provisions of that section were extended to entails of a later date. That places all entails in the same position as regards the competency of charging improvements against the estate. So stood the matter till 1875. There was nothing in either of the preceding statutes regarding the expenses of the application or the expenses of raising the loan. But by the 7th section of the Act 38 and 39 Vict. c. 61 (Entail Amendment (Scotland) Act 1875), it is provided that on the application of an heir of entail in possession of an entailed estate holden by virtue of any entail prior to 1st August 1848, it shall be lawful for the Court to grant authority to such heir of entail to borrow money to defray the cost of improvements on such estate—and then follow certain subsections containing further provisions with regard to the power conferred by this section. One of these, No. 6, is as follows:—"In every case the Court shall, in fixing the amount to be borrowed under their authority, add to the actual or estimated amount of the cost of the improvements the actual or estimated amount of the cost of the application, and the proceedings therein, and of obtaining the loan and granting security therefor."

The 7th section, as I have said, applies only to cases of entails prior to August 1848, and there is no corresponding provision applicable to more recent entails; the subsection can only therefore apply in its terms to early entails, of which this is not one. The direct application of the section is accordingly out of the question.

But it is said that there is another section, viz., the 12th, under which the application may be granted. Now, that section does not apply to improvements or to charging the estate with the expense of improvements, but has to do with procedure generally under the statute. It says that the provisions in the subsections "shall have effect with reference to all applications to the Court under this or any other Entail Act;" and then subsection 6 goes on to say—"In every application it shall be competent to decern for payment of expenses of process against any of the parties to the proceedings, or to decern for payment thereof out of the entailed estate concerned, or out of the money consigned under the application." Now, this is a rule of a very extensive kind, and is intended to meet a variety of cases where authority is given to apply to the Court. The petitioner argues that under it that may be done in recent entails which section 7 specially authorises to be done in older entails. Now, I think that that is a contention to which we cannot listen. It cannot be said that in section 12 the same thing is authorised regarding Montgomery improvements in the case of an entail dated subsequently to 1848 as is authorised by section 7 in the case of an entail dated prior to 1848.

The only thing allowed by this subsection is that the expenses of process may be decerned for. Now, in the first place, the expenses of process do not embrace the most important part of the expenses, namely the raising of the loan, &c., and on the other hand it is not possible to give decree in the terms of the section. We cannot decern "out of the entailed estate;" it is not possible to do so, for that means out of the fee of the entailed estate, not out of the rents, for as the petitioner himself is in possession he could have no possible interest in getting such a decree against himself, and to decern for expenses out of the lands while they exist in *forma specifica* is a thing we have no power to do. It seems to me to be a *casus improvisus* under the estate. I think that the Lord Ordinary is right in the conclusion at which he has arrived.

Lords Deas, Mure, and Shand concurred.

The Court adhered.

Counsel for Petitioner (Reclaimer)—Murray. Agents—Tods, Murray, & Jamieson, W.S.

Counsel for Respondent—Maconochie. Agents—T. & R. B. Ranken, W.S.

Friday, July 12.*

OUTER HOUSE.

[Lord Curriehill, Exchequer Cause.

INLAND REVENUE *v.* STRANG.

Revenue—Income-Tax—Income-Tax Acts, viz., 5 *and* 6 *Vict. cap.* 35, *secs.* 146 *and* 188, *and* 16 *and* 17 *Vict. cap.* 34, *Scheds. D and E—Voluntary Gift by Congregation to their Clergyman.*

A clergyman of the Established Church received at Christmas time a pecuniary gift of £100, raised by voluntary subscription among his friends, the majority being members of his congregation. He had received a similar gift at the same time each of the two previous years that he had held the charge. No receipt was granted, and the contributors were under no obligation to repeat the payment. *Held* (by Lord Curriehill) that as the sum in question was a payment made to him in respect of his office or employment of profit as clergyman, it was

* Decided June 14, 1878.