but he can send a claim for compensation to the railway company, and if they refuse the application he can go to the Sheriff to have the amount due to him settled.

LORDS DEAS, MURE, and SHAND concurred.

The Court adhered.

Counsel for Pursuer (Reclaimer) Asher—Reid. Agents—Ronald & Ritchie, S.S.C.

Counsel for Defenders (Reclaimers)—Balfour—Pearson. Agent—Adam Johnston, Solicitor.

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* *Friday, June* 21.

FIRST DIVISION.

[Lord Rutherfurd Clark.

HOME SPEIRS *v.* SPEIRS AND OTHERS (SPEIRS' TRUSTEES)—CULCREUCH ENTAIL.

Entail — Validity of Entail — Where the Irritant Clause did not Extend to Cardinal Prohibitions— "Acts and Deeds" in Irritant Clause.

The prohibitory clause of a deed of entail was as follows:—"Neither A (the institute) nor any of the heirs aforesaid shall dispone, sell, wadsett, or alienate the lands and others before mentioned, or any part of them, or contract debt thereupon, or impignorate, or in any shape burden the same, or to do any act or deed whatsoever whereby the said lands and others before mentioned may be affected, adjudged, or evicted in whole or in part from the succeeding heirs of tailzie." The irritant clause, which was framed on the principle of enumeration, then provided—"In case the said A or any of the heirs hereby called to the succession shall do in the contrary in any of the above particulars, either as to altering the order of succession, possessing upon any other title, allowing the lands to be in non-entry, failing to purge adjudications and other diligences, or selling, contracting debt, alienating or disponing, or doing any other act or deed whereby the estate may be affected, adjudged, or evicted, as already said, then and in all or any of such cases the acts or deeds so done, or that shall happen to follow thereon, shall *ipso facto* be void and null."

It was objected to the validity of the entail (1) that the declarations of nullity did not extend to any of the cardinal prohibitions of the entail; and (2) that the irritant clause, which was framed upon the principle of enumeration, made no reference to "wadsetts, impignorations, or burdens," which were all specially mentioned in the prohibitory clause. *Held* that neither objection could be sustained.

Observed, the words "contracting debt" used in the irritant clause applied to and embraced both voluntary and judicial securities.

Entail—Irritant Clause — Obligation to use Name and Arms.

When a deed of entail was recorded a portion of an irritant clause intended to enforce the obligation of using a certain name and arms was omitted. *Held* that that fact did not affect the validity of the entail.

Entail—Objection to Validity—Where Erasures in Clause Dealing with Children's Provisions.

Held, upon the principles laid down in the case of *Gollan* v. *Gollan*, July 28, 1863, H. of L. 4 Macq. 485, that erasures occurring in the clause applicable to children's provisions in a deed of entail were no good objection to its validity.

Entail—Objection to Validity of Entail where Witness to Deed Obscurely Designated.

In the testing clause of a deed of entail granted by two sisters one of the instrumentary witnesses was designed as "their house-servant," "their" being without any grammatical antecedent. *Held* that as the inaccuracy was merely verbal, and as the meaning was plain from the context, it did not affect the validity of the entail.

This was an action brought by Dame Anne Oliphant Home Speirs, wife of Sir George Home, Baronet, Sheriff-Substitute of Argyleshire, heiress of entail of the entailed lands of Culcreuch and Colquhoun Glins, against the trustees of Alexander Graham Speirs of Culcreuch, for reduction of a trust-disposition executed on 22d March 1877 by him, in which he disponed to these trustees for certain purposes therein named the fee of the above-mentioned estates on the narrative that he had been advised that by reason of defects in the deeds of entail under which he held the lands he was in fact fee-simple proprietor. Mr Speirs had held under a deed of entail dated 13th September 1780, and executed by Alexander Speirs of Elderslie in favour of Peter Speirs, his second son, and a certain series of heirs therein named.

The deed of entail provided that "the said Peter Speirs and the heirs of his body, and the whole other heirs-substitute as above, whether male or female, and the descendants of their bodies, succeeding to the foresaid lands and estate according to the foresaid destination, should be holden and obliged to assume and constantly retain the surname, arms, and designation of 'Speirs of Culcreuch,' as their own proper surname, arms, and designation in all time after my decease."

The prohibitory and irritant clauses were as follows:—"That it shall at no rate be leesome or lawfull to the said Peter Speirs, or to any of the heirs aforesaid, to alter, innovate, or change the destination or order of succession before specified, or to do any other deed, directly or indirectly, whereby the same may be in any shape altered, innovated, or changed; and the said Peter Speirs and the other heirs above specified shall enjoy, bruik, and possess the said lands and estate by virtue of this present right and destination, and by no other right or title whatsoever; and they shall be obliged to obtain themselves timeously entered, infeft, and seased in the said lands and estate, and not to suffer the same to be in non-entry, nor any feu, or other duties or casualties, or public burdens, teind duties or other burdens or prestations payable furth of the said lands and teinds to remain unsatisfied, so as the lands and others foresaid may be apprised, adjudged, or evicted from them, but shall immediately, or at least within six

* Decided June 14.

months after leading such adjudication, apprising, or other diligence, or after their succession to the estate, purge and redeem the same; and neither the said Peter Speirs nor any of the heirs aforesaid shall dispone, sell, wadsett, or alienate the lands and others before mentioned, or any part of them, or contract debt thereupon, or impignorate, or in any shape burden the same, or to do any act or deed whatsoever whereby the said lands and others before mentioned may be affected, adjudged, or evicted in whole or in part from the succeeding heirs of tailzie: And in case the said Peter Speirs or any of the heirs hereby called to the succession shall do in the contrary in any of the above particulars, either as to altering the order of succession, possessing upon any other title, allowing the lands to be in non-entry, failing to purge adjudications and other diligences, or selling, contracting debt, alienating or disponing, or doing any other act or deed whereby the estate may be affected, adjudged, or evicted, as already said, then, and in all or any of such cases, the acts or deeds so done, or that shall happen to follow thereon, shall *ipso facto* be void and null, and of no force, strength, or effect, sicklike and in the same manner as if the said acts and deeds had not been done, acted, or committed."

The lands of Colquhoun Glins were held under a deed of entail dated 24th January 1850, executed by Misses Helen and Joanna Isabella Speirs in favour of Alexander Graham Speirs mentioned above, and others. The testing clause of that deed was in the following terms:—"In witness whereof, these presents, written . . . by James Lowson, . . . are subscribed (together with the marginal addition on page fifth hereof, also written by the said James Lowson), by us, the said Helen Speirs and Joanna Isabella Speirs, at Polmont Park, on the twenty-fourth day of January Eighteen hundred and fifty years, before these witnesses, Andrew Scott Myrtle, Doctor of Medicine, Polmont, and Walter Stewart, their house-servant, witnesses also to our subscribing the marginal addition on this page, also written by the said James Lowson." Mr Alexander Graham Speirs, heir of entail in possession of these estates as above stated, on 22d March 1877 executed a trust-disposition by which, *inter alia*, he directed his trustees, as soon as might be convenient after the decease of Mrs Mary Buchanan Murray or Speirs, his wife, to convey the estates to Peter Alexander Speirs, his nephew, and the heirs-male of his body, whom failing to such heirs as he (the said Peter Alexander Speirs) might call to the succession, and which he was thereby empowered to do, whom failing to the series of heirs called to the succession of the lands and estates by the deeds of entail thereof before referred to.

Mr Alexander Graham Speirs died on July 23, 1877, and the defenders, the trustees under his trust-disposition, immediately entered into possession of the entailed estate, and infeft themselves therein by recording the disposition granted in their favour. Dame Anne Oliphant Home Speirs, the heir entitled to succeed under the two deeds of entail, immediately raised this action of reduction against the trustees under the trust-disposition, and, pending the litigation, upon her application, a judicial factor was appointed by the Court over the estate (see *Speirs* v. *Speirs' Trustees*, Nov. 6, 1877, *ante*, p. 53).

The defenders stated, *inter alia*—"(1) The deed of entail of Culcreuch and others founded on is defective and invalid as a deed of strict entail. The irritant and resolutive clauses are not applicable to, and do not strike against, contraventions of the prohibitions of the said deed against alteration of the order of succession, alienation, and contraction of debt. (2) The said deed of entail is erased, and, in particular, in the clauses as to provisions to wives and children, which erasures are not authenticated in the testing-clause. Further, the entail has not been duly recorded in the Register of Entails, there being several omissions and discrepancies in the record. The operative words of the clause of forfeiture applicable to the obligation to assume the surname and arms of 'Speirs of Culcreuch' have been omitted from the record. (3) The said deed of entail of Colquhoun Glins and others is not valid or probative, one of the witnesses to the subscription thereof not being designed in the testing clause." Their pleas were in terms of these statements.

The Lord Ordinary decerned in terms of the conclusions of the summons. He added this note:—

"*Note.*—This case turns on the validity or invalidity of the entails under which the late Mr Speirs held the estate of Culcreuch. They are two in number, the one being dated in 1780, and the other in 1850.

"*First*, as to the entail in 1780.

"The first objection is, that the irritant clause is framed on the principle of enumeration, and that as it does not enumerate 'wadsetts, impignorations, or burdens' which are not mentioned in the prohibitory clause, it does not cover voluntary securities.

"There is no doubt that the clause is framed on the principle of enumeration. But in the opinion of the Lord Ordinary the enumeration is complete. It comprehends altering the order of succession, contracting debt, and alienating; and the words contracting debt cannot, it is thought, be limited to such personal debts as result in adjudications, but must be extended to all so as to embrace voluntary as well as judicial securities.

"The second objection is that the irritant clause does not strike at the cardinal prohibitions, but only at the 'other acts or deeds whereby the estate may be affected, adjudged, or evicted.'

"Assuming the judgment of the Lord Ordinary on the previous objection to be well founded, the clause begins by a universal hypothesis—"In case the said Peter Speirs,' &c., 'shall do in the contrary in any of the above particulars either as to altering the order of succession,' &c., 'or doing any other act or deed whereby the estate may be affected,' &c. It is to be observed that the acts of contravention are enumerated under the phrase 'do in the contrary,' and that the enumeration is closed with general words 'doing any other act or deed whereby,' &c. The use of the word 'other' shows that the contraventions previously enumerated were regarded as acts or deeds, as they necessarily are from being under the government of the verb 'do.'

"Having completed his enumeration of possible contraventions, the entailer goes on, 'then and in all or any of such cases' altering the order of succession, contraction of debt, and alienation are each specified as a possible case of contravention; and the entailer proceeds to specify what is to happen in the event of the entailer being contra-

vened in any of these ways. The only question therefore is, whether the words by which irritancy is declared comprehend the enumerated contraventions. The words are the 'acts or deeds so done.' The defenders contend that the only proper antecedent is to be found in that part of the clause in which the same words occur. The Lord Ordinary cannot assent to that view. The relatives 'so' and 'such' have the same antecedent, and that antecedent is the whole of the preceding clause. The words 'acts or deeds' are not words of limited signification. Indeed it has been seen that the entailer by the use of the word 'other' shows that he regarded every contravention as an 'act or deed.'

"The third objection was founded on certain erasures which occur in that part of the deed containing power to grant provisions to children. But whatever importance these erasures may have on the exercise of that power, they cannot affect the validity of the entail. It is proper to observe that by a clause which contains no erasure the provisions to children are limited to two thousand pounds.

"Lastly, it was urged that the entail was not well recorded. But this objection was founded on nothing more than this, that in the record there is omitted a portion of an irritant clause intended to enforce on the heirs the obligation of using the name and arms of Speirs of Culreuch.

"*Second*, as to the entail of 1850.

"The objection is to the testing clause. It is said that one of the instrumentary witnesses is not designed, viz., Walter Stewart. He is designed as 'their house-servant,' and the defenders maintain that there is no antecedent to the word 'their.' The clause is no doubt inaccurately framed. But in the opinion of the Lord Ordinary it is a mere verbal inaccuracy, and the pronoun 'their' has its antecedent in Helen Speirs and Johanna Isabella Speirs, the granters of the deed."

The defenders reclaimed.

The point dealing with the erasures found in the clause relating to the children's provisions was not insisted in.

Reclaimers' authorities—*Horne* v. *Rennie*, Mar. 13, 1838, 3 Sh. and Macl. 142; *Adam* v. *Farquharson*, Sept. 5, 1844, 3 Bell's App. 295; *Innes* v. *Innes' Trustees*, Hume's Dec. 911; *Lang*, M'Lean and Robinson's H. of L. Apps. 871; *Ogilvy* v. *Airlie*, March 27, 1855, 2 Macq. 260; *Udny* v. *Udny*, March 16, 1858, 20 D. 796.

Respondent's authorities—*Drummond* v. *Hay*, Feb. 3, 1872, 10 Macph. 451; *Gilmour* v. *Gordon*, March 24, 1853, 15 D. 587; *Murray* v. *Graham*, May 3, 1849, 6 Bell's App. 441; *Barclay* v. *Adam*, May 1821, 1 Sh. App. 24; *Scott* v. *Scott*, Dec. 6, 1855, 18 D. 168; *Earl of Kintore* v. *Lord Inverurie*, April 16, 1863, 1 Macph. (H. of L.) 32, 4 Macq. 670; *Preston* v. *Heirs of Valleyfield*, Jan. 28, 1845, 7 D. 305; *Thomson* v. *Milne*, Feb. 27, 1839, 1 D. 592; *Malcolm* v. *Kirk*, June 21, 1873, 11 Macph. 722; *Callander* v. *Callander*, Dec. 17, 1863, 2 Macph. 29; *Graham* v. *Grierson*, M. 16,902; *Percy* v. *Meikle*, Nov. 25, 1808, Fac. Coll.; *Knight* v. *Knight*, Dec. 1, 1842, 5 D. 221.

At advising—

Lord Mure—In this action the validity of two entails of two separate estates is challenged on different grounds. The first of these entails relates to the estate of Culcreuch, and is called in question on the ground—First, that the irritant clause is defective, because it does not strike against any of the cardinal prohibitions, and while it is framed on the principle of enumeration, it does not strike against all the things mentioned in the prohibitory clause, and in particular, against wadsets or impignorations; Secondly, that in the clauses regulating the provisions to wives and children there are erasures not noticed in the testing clause; and Thirdly, that it is not duly recorded, because certain words applicable to the obligations to assume the surname and arms of Speirs of Culcreuch have been omitted from the record. The other entail relates to the estate of Colquhoun Glins, which is said to be invalid and improbative because one of the witnesses to the subscription is not properly designed in the testing clause. This entail is not challenged on any other ground. The Lord Ordinary has held that none of these objections are well founded, and it is now for your Lordships to say whether the Lord Ordinary is right in coming to that conclusion.

As regards the estate of Culcreuch, the objection relative to the recording of the entail was not insisted on at the discussion, and I am of opinion with the Lord Ordinary that it is not well founded. I do not think it necessary to say anything more upon this point, because I am unable to comprehend the grounds in law upon which an erasure of this sort in the record can be held to invalidate the deed which is recorded.

The first and most important of the other objections, viz., the objection that the irritant clause does not strike against the cardinal prohibitions, is rested on the allegation that what has been described at the discussion as the operative part of the clause is limited to the "acts or deeds" mentioned in the latter part of the prohibitory clause, "whereby the said lands and others may be affected, adjudged, or evicted in whole or in part from the succeeding heirs of tailzie," and it was maintained that neither sales, contraction of debts, nor alteration of the order of succession were covered by this irritant clause. The prohibitory clause of the entail is complete in itself. No objection is taken to it; and it is in the following terms:—"And neither the said Peter Speirs nor any of the heirs aforesaid shall dispone, sell, wadsett, or alienate the lands or others before mentioned or any part of them, or contract debt thereupon, or impignorate, or in any shape burden the same, or to do any act or deed whatsoever whereby the said lands and others before mentioned may be affected, adjudged, or evicted in whole or in part from the succeeding heirs of tailzie." And the irritant clause, which is framed on the principle of enumeration, goes on to provide as follows:—"And in case the said Peter Speirs or any of the heirs hereby called to the succession shall do in the contrary in any of the above particulars, either as to altering the order of succession, possessing upon any other title, allowing the lands to be in non-entry, failing to purge adjudications and other diligences, or selling, contracting debt, alienating or disponing, or doing any other act or deed whereby the estate may be affected, adjudged or evicted as already said, then and in all or any of such cases the acts or deeds so done, or that shall happen to follow thereon, shall *ipso facto* be void and null."

Now, what the defenders maintain is, that under

this clause nothing is declared to be null and void except "acts or deeds whereby the estate may be affected, adjudged, or evicted," and that this declaration of nullity cannot on sound construction be held to extend to any of the cardinal prohibitions. I am, however, unable so to read this clause. I agree with the Lord Ordinary in thinking that the words "acts or deeds" are not in themselves words of limited signification, and are not so used in this clause of the entail, but have reference to all and every act and deed enumerated in the irritant and prohibitory clauses. The irritant clause here repeats all the cardinal prohibitions. But if it had been framed without the repetition of these prohibitions, it would, I conceive, have been beyond question a valid and effectual irritant clause. It would have run thus:—"And in case the said Peter Speirs or any of the heirs hereby called to the succession shall do in the contrary in any of the above particulars, then and in all or any of such cases the acts or deeds so done and all that shall happen to follow thereon shall be void and null." A clause so framed would, I think, have necessarily covered every act and deed mentioned in the prohibitory clause. It begins with the words:—"If any of the heirs shall do in the contrary in any of the above particulars," which shows very clearly that the entailer's intention was to reach the whole prohibitions; and it concludes with the equally distinct declaration that "then, and in all or any of such cases, the acts or deeds so done, or that shall happen to follow thereon, shall *ipso facto* be void and null." As regards the construction of the latter part of this clause, I concur with the Lord Ordinary in thinking that the relatives "such" and "so" have the same antecedent; and that that antecedent is the whole of the things which may be done "in the contrary in any of the above particulars," viz., the particulars in the prohibitory clause.

This was the ground on which, as I apprehend, this Court mainly proceeded in disposing of the cases of *Gilmour* v. *Gordon*, March 24, 1853, 15 D. 587, and *Drummond* v. *Hay*, February 3, 1872, 10 Macph. 451, which were referred to by the pursuers at the discussion in this case. In both of these cases the prohibitory clause, as here, contained at the end of it, after setting forth the three cardinal prohibitions, a prohibition against doing "any other acts or deeds" whereby the lands might be apprised or evicted, immediately preceding and in juxtaposition to the irritant clause; and the irritant clauses in both those entails were framed in general terms. In the former of these cases the words "such acts and deeds" in the irritant clause were held to refer to the introductory words of that clause "if any of the heirs shall act or do in the contrary," *i.e.*, in the contrary of the whole prohibitions. And in the latter case, that of *Drummond*, the words "such facts and deeds" were held to refer to the words at the commencement of the clause, "in case any of the heirs shall contravene the premises," *i.e.*, the provisions of the prohibitory clause. Now, if I am right in this conclusion as to what the import and effect of the clause would have been when read without the enumeration of the prohibitions contained in the prohibitory clause, I can see no good grounds for holding that the insertion after the words "in any of the above particulars," and before the words "then and in all or any of such cases"—words which I think amount substantially to a repetition of the whole provisions of the prohibitory clauses—can have the effect of depriving the words "in all or any of such cases" of the meaning and effect which they would otherwise have had. Such appears to me to be the fair, natural, and grammatical construction of the clause, whether read as a whole or examined in detail. While, on the other hand, to adopt the restricted construction contended for by the defenders would, I think, to use the words of Lord Rutherfurd in the case of *Ogilvy* v. *Lord Airlie*, 15 D. 255, be "to make a constrained construction against the natural and grammatical meaning of the words in order to limit the fettering clauses, and so cut down the entail."

I am therefore of opinion that this objection should be repelled, and in coming to this conclusion I have endeavoured to keep carefully in view the import of the decisions mainly relied upon by the defenders, and the rules of construction there laid down. These were the cases of *Lang*, of *Ogilvy*, and of *Udny*, which are, I think, distinguishable from the present in important respects, and particularly in this, that in each of them in the irritant clause, debts or the contraction of debts, one of the leading cardinal prohibitions, was specially dealt with, whereas the other cardinal prohibitions against sales or alteration of the order of succession were omitted from the clause. It was upon that ground that the irritant clause in the case of *Ogilvy*, March 27, 1855, 2 Macq. 260, was held not to be a good irritant clause as against sales and alteration of the order of succession. In the prohibitory clause there was an express prohibition against alteration of the order of succession, and against selling, and against the contraction of debts, and there was another clause at the end against doing or committing "any other act or deed whereby," &c.; and the irritant clause was in these words—"In case it shall happen that the said heirs shall do or commit any such deed or contract such debts, the same shall be null and void." There was thus a special mention after the words "such deed" of the contraction of debts, so that that cardinal prohibition was properly fenced. But then there was nothing said about alteration of the order of succession or about sales, and it was this omission which, in my apprehension, led to the entail being declared invalid both in this Court and in the House of Lords. At the conclusion of Lord St Leonards' opinion his Lordship points out the manner in which the prohibitory clause was framed, and how it related to four different things, viz., the three cardinal prohibitions and a fourth general prohibition against "other facts and deeds, civil or criminal," &c., and adds with reference to the irritant clause—"It is impossible in my apprehension that there can be any doubt about the construction of it, because the irritant and resolutive clauses, instead of beginning in the order in which you find the acts in the prohibition, which begins with altering the succession, and so on, are so framed as to take up the last act, namely, 'the doing or committing any act or deed' (which would be those deeds to which I have referred which would lead to a forfeiture), 'civil or criminal, or contract such debts.' Where do you find that in the prohibition? Why, immediately before the last clause prohibiting the doing or committing any other fact or deed, civil or criminal; so that, instead of

beginning with the things prohibited in the order in which you find them in the prohibitory clause, this clause takes up the last act prohibited, goes back to the one immediately preceding it, and there stops; and therefore, the prohibitions being numbered one, two, three, four, they prohibit number four, they go back to number three, and they prohibit that, and they forget or do not mean to prohibit number two and number one."

Now, having regard to the rule thus laid down and applied, it is plain, I think, that what the above opinion proceeded upon was this, that a clause framed upon the principle of enumeration, but which omitted two of the leading cardinal prohibitions, while it dealt expressly with the third, must be held as not irritating the prohibitions which were omitted, and was therefore a bad irritant clause. The irritant clause in the case of *Lang* was, I think, framed substantially in similar terms. The case is reported in the House of Lords in Maclean and Robinson, August 15, 1839, p. 871. There the heirs of entail were neither "to sell off or dispone upon any part of the lands and subjects before transmitted, nor to contract debt, or do any other deed whereby the said lands may be adjudged or evicted from the subsequent heirs of entail, or their hopes of succession thereto in any manner evaded;" and then the irritant clause provides "and if they do in the contrary, then all such debts and deeds shall be intrinsically null and void." This clause therefore repeats debts, and it repeats deeds, and it irritates both, but it says nothing about irritating sales or alterations of the succession; and it so falls within the category of cases where mention is made of one of the cardinal prohibitions without mentioning the others, and it was therefore held to be a defective irritant clause.

In the case of *Udny*, March 16, 1858, 20 D. 796, the prohibitory clause was to the effect that it shall not be lawful to alter or infringe, sell, alienate, or dispone, or "contract debt, or to do any other deed or deeds" whereby the estate might be evicted; and the irritant clause provided—"And if it shall happen that the heirs shall 'do in the contrary, then and in that case all and every such debts and deeds' shall be null and void." So that there, in the same way, debts being one of the cardinal prohibitions, and deeds, which were respectively numbers three and four of the things prohibited, are expressly struck at, as in the case of *Ogilvy*, by the irritant clause, while numbers two and one, being sales, and alteration of the order of succession, were omitted. In these three cases it is, I think, pretty clear that it was the collocation and combination of the word "debts" with the word "deeds" in the irritant clause, coupled with the omission of any mention of sales or of the alteration of the succession, which led to the judgment; whereas in the cases of *Gilmour* and of *Drummond* the word "debts" did not occur in conjunction with "deeds" in the irritant clause. It was "facts and deeds" in one of these cases, and "acts and deeds" in the other. There is therefore, as I conceive, a very material distinction between the terms of the irritant clause here in question and those in the cases which I have examined where the irritant clauses were held to be defective. Because in the present case each of the three cardinal prohibitions are specially mentioned in the clause, and the words founded on by the defenders are not "debts and deeds," but "acts and deeds," which are not words of limited signification, but have in many cases been held sufficient to cover the whole cardinal prohibitions, and must, in the view I take of them, be so read here. On these grounds I have come to the conclusion that the Lord Ordinary is right in the view he has taken of this part of the case.

The other objection to the irritant clause, as I understand it, is this, that whereas the prohibitory clause mentions wadsets and impignorations, the irritant clause is bad because it does not specially mention either wadsets or impignorations. But it appears to me that this is not a good objection, and that the Lord Ordinary is right in thinking that the words "contracting debt" in the irritant clause necessarily included and covered every mode of contracting debt, or of affecting land with or for debt mentioned in the prohibitory clause, and wadsets and impignorations are, I conceive, among those modes. The decision he has thus come to is, I think, borne out by the principle of the rule applied by this Court and the House of Lords in the case of *Murray* v. *Murray*, 4th September 1844, 3 Bell's Appeals, 100. The entail in that case contained a prohibitory clause not unlike the one we have here, as it deals with "wadsets" separate from the "contracting of debt," and selling, alienating and disponing were all specially prohibited. But in the irritant clause the words alienate and dispone were alone used, while the word selling was dropped out; and the objection raised was that the prohibition against selling was not properly fenced, because the irritant clause having been framed upon the principle of enumeration, the omission of the word "selling" made it a bad irritant clause. But this Court and the House of Lords held that the objection was not a good one, and that the word "alienate" and the word "dispone" were quite sufficient to cover sales. Now, applying that rule to the objection here taken, I think the Lord Ordinary is right in holding that the irritant clause, which expressly irritates the contracting of debt, was sufficient to cover wadsets and impignorations, which are modes of contracting debt. The word "wadset" in this case is rather peculiarly placed in the prohibitory clause, for it is put alongside of alienation and disponing. The clause runs "shall dispone, sell, wadset, or alienate." Now a wadset may be *ex facie* absolute, and bear on the face of it to be a disposition of the lands without reversion, that being provided for by a separate paper, and in that case it might be held to fall under the word "dispone." If, on the other hand, it bears to be a disponing of the estate in security for a debt contracted, then it is covered by the words "to contract debt," just as in the case of *Murray* the word "alienate" was held to cover "sale."

As regards the erasures, the decision the Lord Ordinary has come to upon that point appears to me to be borne out by the principles applied by the House of Lords in the case of *Gollan*, 4 Macq. 484, mentioned at the discussion. They are erasures in the clause applicable to the provisions to children, and are not in any of the clauses relating to the three cardinal statutory prohibitions; and even if the clauses in which they occur were struck out, the entail would still be good as an entail. These are all the objections applicable to the entail of the estate of Culcreuch.

As regards the entail of the estate of Colquhoun

Glins, the only objection there raised is as to the peculiarly awkward expression of the testing clause, which runs thus:—"By us the said Helen Speirs and Joanna Isabella Speirs, at Polmont Park, on the 24th day of January 1850 years, before these witnesses, Andrew Scott Myrtle, Doctor of Medicine, Polmont, and Walter Stewart, their house-servant, witnesses also to our subscribing the marginal addition on this page." I, however, think it very plain on the face of this clause that although the third person is used in the description of the servant, it is the servant of the ladies who executed the entail that is meant. I cannot see that there can be any doubt about that, and I think the conclusion the Lord Ordinary has arrived at is borne out by the case of *Innes* in Hume's Decisions, 911, where the description of a witness was challenged as having been ungrammatically expressed, but was held to be a good description.

Upon the whole matter I am of opinion that the Lord Ordinary's judgment is well-founded.

Lord Deas—As Lord Mure has observed, there is only one objection stated against the entail of the smaller estate, viz., the entail dated in 1850, and that is, that the designation of the witness Walter Stewart as "their house-servant" is indefinite, and consequently not a good designation. That is an objection to be dealt with in this deed of entail on the same principle as would be applied to it in any other kind of deed. The rules of strict construction applicable to the fettering clauses of an entail do not apply to it. The question is, Whose house-servant is naturally to be understood as being here meant? Now I think it is perfectly clear that "Walter Stewart, their house-servant," means Walter Stewart, the house-servant of the granters of the deed; and if that be the meaning, the designation is obviously quite sufficient. No doubt the word "our" is used in place of "their," but that arises simply from the writer of the deed, in filling up the testing-clause, inadvertently speaking in his own person in place of in the person of the granters, but the meaning is nevertheless quite plain.

As to the other deed, there are two objections upon which it really is not necessary for me to say anything—the one as to the erasures, and the other as to the deed not being well recorded. I can have no doubt at all that both of these objections are untenable.

The case turns upon what the Lord Ordinary treats as two objections:—First, that while the irritant clause of the entail is framed on the principle of enumeration, the enumeration is imperfect; and second, that the irritant clause does not strike at the cardinal prohibitions against selling, contracting debt, and altering the order of succession. Now, these two really resolve into one question, which comes to be, whether the acts and deeds struck at by the irritant clause do or do not include the whole acts and deeds prohibited by these three cardinal prohibitions?

I can have no doubt that in dealing with that question we must apply the principles of strict construction as these principles have been settled by a long course of decisions. But in doing that we are not excluded from considering whether the construction proposed to be put upon the irritant clause by the objecting party is a construction which in any sense it can reasonably bear. It is not, however, in my opinion necessary to push this far in the present case, for the defender's construction appears to me to be a construction contrary to the plain and grammatical meaning of the clause when read, as we are entitled to read it, in connection with the prohibitory clause which immediately precedes it.

There is no objection taken to the prohibitory clause. Selling and contracting debt are expressly prohibited, and it has not been suggested that there is any defect in the prohibition against altering the order of succession. The words prohibiting "any act or deed whatsoever" whereby the lands may be affected, adjudged, or evicted from the succeeding heirs of tailzie, are not, as they were in some of the previous cases, consequential words connected with selling or burdening, but substantive and absolute prohibitory words; and accordingly, as I have said, there is no objection taken to the prohibition against altering the order of succession any more than to the other two cardinal prohibitions. On the contrary, the first article of the defenders' statement of facts and their second plea-in-law in the record proceed upon the footing and acknowledgment that the three cardinal prohibitions are complete, the sole objection taken being that the irritant clause does not apply to all or any of these prohibitions.

Now, the objection taken by the defenders upon the irritant clause really resolves into this, that the only acts and deeds irritated are acts and deeds whereby the estate may be affected, adjudged, or evicted, and consequently it is said the words do not cover the three cardinal prohibitions. But this depends entirely on where we find the antecedent to the words "acts or deeds." The objectors say that we are to go back to the words "any act or deed," where they are used in the singular in the closing branch of the prohibitory clause, and this would no doubt disconnect them from, at all events, the prohibitions against selling and burdening, if not from the whole three cardinal prohibitions. But it is very material to observe that before we come to the declaration in the irritant clause that the acts and deeds so done shall be void and null, we have, by the use of the word "other," selling, contracting debt, and alteration of the order of succession all described as "acts and deeds" in the sense in which the entailer was then using these words. When he says, if any of the heirs shall do in the contrary of any of the above particulars (that is, the particulars prohibited) "either as to altering the order of succession," or "selling, contracting debt, alienating or disponing, or doing any other act or deed whereby the estate may be affected, adjudged, or evicted as already said" (that is, affected, adjudged or evicted in whole or in part from the succeeding heirs of tailzie), it is, I think, quite plain that he speaks of altering the order of succession, selling, and contracting debt, as acts and deeds (and we all know they are so in the ordinary language of entails), and when he at once proceeds to say that then, and in all or any of such cases (that is, in all or any of such events), "the acts or deeds so done shall *ipso facto* be void and null," it seems to me to admit of no doubt that he means the nullity to apply to and include the acts and deeds he had just mentioned of "altering the order of succession, selling," and "contracting debt," and this meaning he intensi-

fies by adding "sicklike and in the same manner as if the said acts and deeds had not been done, acted, or committed."

If this be a sound construction of the irritant clause it follows that the resolutive clause is to be construed on the same footing, and that the entail is unobjectionable. That accordingly is my opinion, in accordance with the interlocutor of the Lord Ordinary, which I think should be adhered to.

Lord Shand—I am of the same opinion. I think the natural and grammatical reading of the irritant clause, upon which the only serious objection to my mind has been raised against this entail, is that adopted by the Lord Ordinary, and I concur in the reasons which the Lord Ordinary has given in support of that reading, and in the views which have been stated by Lord Mure and Lord Deas. Taking the clause as a whole, it appears to me that the proper and natural antecedent to the words "such cases" and "acts and deeds so done" is to be found, not in the immediately preceding part of the clause, but in the words of the irritant clause as a whole. I think it is only by a strained and unnatural construction, such as ought not to be adopted, that you can possibly limit the relatives "such cases" and "deeds so done" to the words which occur in the immediately preceding clause. The Lord Ordinary has expressed this I think very satisfactorily in a few words in his note, in which he says—"The relatives 'so' and 'such' have the same antecedent, and that antecedent is the whole of the preceding clause. The words 'acts or deeds' are not words of limited signification. Indeed it has been seen that the entailer by the use of the word 'other' shows that he regarded every contravention as an 'act and deed.'"

To this I would add, that I think the construction which supports the entail is strongly confirmed by the use of the distributive words "then and in all or any such cases." It appears to me that the natural and grammatical application of these words, and particularly of the words "in all such cases," is to read them as applying to all the different particulars of contravention which had been enumerated in the irritant clause, and that they cannot reasonably be limited as distributive words to the immediately preceding words "any other act or deed whereby the estate may be affected, adjudged or evicted." Accordingly, I think the judgment of the Lord Ordinary upon this objection to the entail is well founded.

I agree with what Lord Mure has said in regard to the prior cases. This case is clearly distinguishable from the cases of *Ogilvy*, *Lang*, and *Udny*. In each of these cases the word "debts" occurred with the words "act or deed," and the presence of the word "debts" in the particular position which that word occupied showed that the entailer was in each case referring back to the previous part of the irritant clause in the entail in which he had enumerated alienations, alterations of the order of succession, and debts. The construction of the entail there was that the special mention of debts in the concluding part of the irritant clause showed that the entailer had intended in the concluding part of the clause to resume consideration of what had occurred before. He failed, however, to complete the enumeration thus begun, and the entails were bad because of the bad attempts to enumerate. The decision in these cases turned upon this, that debts having been expressly mentioned, showed that enumeration was attempted, while alienation and alteration of the order of succession were omitted in the enumeration—an omission which was fatal to the entails. In the present case there is no such objection. The words which occur here are "acts or deeds so done." There is no attempt to separate debts as a particular class from contraventions of the prohibitions in other forms. The words "acts or deeds," according to their grammatical meaning as they here occur, refer to every act or deed which is specified in the previous part of the irritant clause. I think it unnecessary to say anything in regard to the other objections which have been stated to this entail, or to the subsequent entail, as I concur entirely in the opinions which your Lordships have expressed in regard to them.

The Lord President concurred.

Lord Deas—In illustration of what I have said about the language used in this entail, I should like to allude to the case of the Valleyfield entail (*Preston* v. *Heirs of Entail*, January 28, 1845, 7 D. 305), which has not been commented on at the bar, probably because the result in the House of Lords seems (somewhat remarkably I think) to have been omitted to be reported. The distinction between that case and the case of the Ardovie entail (*Speid* v. *Speid*, February 21, 1837, F.C., and 15 D. 618), was so shadowy that it is difficult to say that the same principle of construction was applied to both. In *Speid's* case each prohibition was held to be a separate provision, and consequently it was held that an irritant clause directed against the heirs "who shall act and do in the contrary of the provision above set forth," or who shall alter the order of succession, could neither be held to comprehend both of the preceding prohibitions against selling and contracting debts, nor applied to either of them in particular. In the *Valleyfield* case it was provided and declared that it should not be lawful for the heirs to sell "nor to contract debts, or do and commit any other fact and deed, civil or criminal, whereby the samen lands and estate may be evicted, adjudged, forfaulted, or any otherways affected in defraud or prejudice of the saids heirs of tailzie and provision and of this present right of succession to the said estate, or do any deed whatsomever whereby the foresaid destination and order of succession may be any ways inverted, altered, or prejudged, and which provision immediately above written if any of the forenamed persons or heirs, male or female, hereby appointed to succeed to the said lands and estate shall happen to contraveen," they should not only lose and amitt the right of succession" "but also all such facts, deeds, debts, or obligements in contravention of the foresaid provision are hereby declared *ipso facto* void and null." It was not questioned either in argument or on the bench that the word "provision" might, and often did, mean "prohibition," and that if the words "provision immediately above written" were to be read as synonymous with "prohibition immediately above written" the resolutive and irritant clauses were defective. But it was held by a majority of eight to four of the whole Court that having regard to the entailer's language

in the Valleyfield entail (distinguishing it from the entailer's language in the Ardovie entail) the words "which provision immediately above written" meant the matter of the whole preceding clause which embodied all the cardinal prohibitions, and therefore that the entail was good. Having pleaded that case both in this Court and at the bar of the House of Lords, I am in a position to say that such was the nature of the case, and that the judgment of the majority of this Court was affirmed. The principle of that judgment illustrates, I think, the importance of the observation I have made that according to the language of the present entailer the antecedent to the acts and deeds referred to in the irritant clause must be held to be the whole matter of the prohibitory clause embodying the three cardinal prohibitions.

The Court adhered.

Counsel for Pursuer (Respondent)—M'Laren—Mackintosh. Agents—Hope, Mann, & Kirk, W.S.

Counsel for Defenders (Reclaimers)—Kinnear—Keir. Agents—A. & A. Campbell, W.S.

Saturday, June 22.

SECOND DIVISION.

[Circuit Court of Justiciary, Glasgow.

WILSON *v.* GLASGOW TRAMWAYS AND OMNIBUS COMPANY (LIMITED).

Process—Appeal against Small-Debt Court Decision—Incompetency and Want of Jurisdiction—Small Debt Act 1837 (1 *Vict. c.* 41) *sec.* 3.

A party, in accepting employment as conductor of a tramway company, entered into a written agreement with them under which certain persons named were constituted the sole judges of any dispute arising between them, and were further entitled to discharge him without notice or reason assigned, and to declare forfeiture of money deposited by him and wages. The jurisdiction of courts of law is excluded.

He was dismissed by the company, and thereafter brought a small-debt action for payment of wages, &c., in answer to which the agreement above narrated and an award following upon it was pleaded. The Sheriff granted decree, and an appeal under the 31st section of the Small Debt Act having been taken "on the ground of incompetency, including defect of jurisdiction on the part of the Sheriff," the Court (*dub.* Lord Ormidale, who thought there should be inquiry as to the proceedings in the Sheriff Court) *held* that there was nothing in the case to justify appeal on such a ground, and that as they could not inquire into the merits of the cause upon which the Sheriff had proceeded it fell to be refused.

Process—Sheriff Court Act 1877 (40 *and* 41 *Vict. cap.* 50, *sec.* 11)—*Applicability of, to Small-Debt Court, where objection is raised tending to a reduction.*

Opinion (*per* the Lord Justice-Clerk and Lord Gifford) that the 11th section of the Sheriff Cout Act 1877 (40 and 41 Vict. cap. 50) is not restricted in its application to the Sheriff's Ordinary Court, but extends to the Small-Debt Court, which is not technically a separate jurisdiction; and (*per* Lord Gifford) that even apart from that Act, the Sheriff in the Small-Debt Court is not precluded from inquiry into the validity of a formal writing by any rule that such an objection can only be taken by an action of reduction.

Master and Servant—Employers and Workmen Act 1875 (38 *and* 39 *Vict. cap.* 90), *sec.* 3, *sub-sec.* 2, *and sec.* 10—*Does "Workman" include Tramway Conductor.*

Sub-section 2 of section 3 of the Employers and Workmen Act 1875 empowers a Sheriff to "rescind any contract between the employer and the workman upon such terms as to the apportionment of wages," &c., as he shall think fit.

Opinion (*per* the Lord Justice-Clerk and Lord Ormidale) upon a consideration of clause 10, where "workman" is defined, that the conductor was a "workman" in the sense of the statute.

This was an appeal to the Circuit Court of Justiciary, Glasgow, certified by that Court to the Second Division. John Wilson, when he took employment with the Glasgow Tramway and Omnibus Company Limited, as conductor, entered into a written agreement, dated 11th April 1875, with them, which *inter alia* bore that he, the second party, might be discharged "at any time without previous notice or any reason assigned." It was a stipulation that in consideration of his employment he had deposited £2, "which, together with all wages for the week current, or other moneys which may be due to him from time to time, he hereby agrees shall be retained by the said company in security for his good conduct and honesty, and for his obedience to the company's rules and the said bye-laws and regulations, and also for all damages, if any, caused by his neglect." The agreement thereafter proceeded — "Commander Francis Clifford de Lousada, R.N., managing director, and the said John Duncan, secretary, both of the said company, or either of them, shall be the sole judge or judges between the company and the second party; and they or either of them shall be entitled to proceed either upon their or his own personal knowledge or observation, or upon such information or inquiry as they or he shall think proper to obtain or make, and of the competency and sufficiency of which they or he shall be the sole judges or judge; and if the second party violates the said rules and regulations, or the said bye-laws and regulations, or any additional rules and regulations or orders which may be issued and in force from time to time, the said managing director or secretary shall be entitled and is hereby expressly empowered to declare all or any part of the monies due by the said Company to the second party to be absolutely forfeited to the Company, and a certificate under the hand of the managing director or secretary shall be binding and conclusive evidence between the said Company and the second party in all Courts of law in regard to all questions arising under this agreement, or under the rules or regulations in force for the time, or under the said bye-laws and regulations,