

BAILLIE, APPELLANT.

DAME MARGARET MACDONALD }
 LOCKHART, } RESPONDENT.

1855.
 April
 20th and 23rd.

Apportionment Act, 4 & 5 Wm. 5. c. 22.—Executor and heir of entail.—A Scotch tenant in tail, though in legal contemplation an owner or fiar, is, nevertheless, within the meaning and operation of the Apportionment Act.

Sir Norman MacDonal Lockhart died on the 9th May 1849, and was succeeded by his eldest son, the present Sir Norman Macdonald Lockhart, who is now seised and in possession, as heir of entail, of the family estates, under a deed bearing date 2d February 1693. The trustees and executors of the late Sir Norman brought the present action, to recover 6,786*l.*, “being the proportion of the rents, feu duties, and other annual proceeds of the aforesaid estates, from the 11th November 1848 to the 9th May 1849 ;” and in virtue of the Apportionment Act, the 4 & 5 Will. 4. c. 22. they contended that they were entitled to a decree. The defence of the heir of entail in possession was that the Apportionment Act did not apply, for that an heir of entail was, in legal contemplation, owner of the property. The Lord Ordinary (*Rutherford*) decided in favour of the pursuers ; and to this decision the Inner House (Second Division), on the 27th November 1852, adhered. The heir in possession appealed by his tutor *ad litem*, Mr. Baillie.

Mr. *Roundell Palmer* and Mr. *Anderson* for the Appellant.

The Act does not apply to the case of rents payable to an heir of entail, for such heir is fiar, not liferenter. *Blaikie v. Farquharson* (a), *Brown v. Amyott* (b).

(a) 18 July 1849. 11 D. 1456. Lord Cockburn’s Note.

(b) 3 Hare, 173. See 1 Swan. 337.

The *Solicitor General* and Mr. *Rolt* for the Respondent This case is decided. *Blaikie v. Farquharson* is conclusive. It is said that the estate of a Scotch tenant in tail does not determine by death ; but the words in the Statute are not "Estates," but "Interests." A Scotch tenant in tail, though called a *fiar*, has no *jus disponendi*. This question is not one of feudalities. The question is, what was in the contemplation of the Legislature when it passed this Act. The case is clear ; too clear to require authorities.

BAILLIE
v.
DAME MARGARET
MACDONALD
LOCKHART.

The LORD CHANCELLOR (a) :

*Lord Chancellor's
opinion.*

My Lords, I have no doubt that the Statute applies to a tenant in tail. The evil prior to the Statute was, that if the tenant in tail died indebted, and the rents were nearly accruing due, all those accruing rents would go to the successor. To remedy that evil the Statute was passed. I cannot doubt, upon the construction of the Statute, that the question here is really not a question of feudal law, but a question of the meaning of the Legislature. There is nothing determined by this case but the general applicability of the Statute.

I have, therefore, to move your Lordships that the interlocutor of the Court below be affirmed, and the Appeal dismissed with costs.

Interlocutors affirmed with costs.

RICHARDSON, LOCH, AND M'LAURIN.—ROBERTSON AND
SIMSON.

(a) Lord Cranworth.