Wednesday, December 20.

Justiciary Cases — Murder — Procedure — Precognition of Witnesses.

Opinion per Lord Justice-Clerk, that it is the duty of witnesses on both sides to give aid either to the Crown or to the defence in every case where the interests of the public in the punishment of crime, or the interests of a prisoner charged with crime, call for ascertainment of facts.

Professor Matthew Hay of Aberdeen University was examined as a witness for the defence.

In cross-examination Dr Hay admitted that by the express direction of the prisoner's legal advisers he refused to give any information to the Crown.

The SOLICITOR-GENERAL—It had been the practice, so far as he knew, in such cases, that witnesses on each side should be allowed to be precognosced by the other side, for the express purpose of ascertaining what the witnesses had to say; and the witnesses on each side being intimated, it had always been the practice hitherto that orders were at once given to the Crown, and also to the advisers of the defence, that they should be submitted to precognition. In this case there was a correspondence about it, and the position was deliberately taken by the advisers of the defence that no such precognition should be made. He thought it very desirable, therefore, that some authoritative statement should be made with regard to what occurred in this matter for future guidance.

Mr COMRIE THOMSON—The statement was perfectly correct. They did not desire to precognosce the medical witnesses for the Crown, and did not attempt to do so. But, Friday week before last, Dr Hay was asked to go to the Procurator-Fiscal in Aberdeen late in the afternoon—an official who had no acquaintance with the case. He communicated with his advisers here by telegraph, asking what he should do, and they took upon themselves to say—as they did not wish a precognition of the Crown witnesses, and he was wanted in Edinburgh next day, in view of the trial beginning on the Tuesday—it was thought undesirable that he should submit to precognition. There had been no precognition on either side.

The SOLICITOR-GENERAL—The same refusal applied to the doctor who was resident in Edinburgh, who was asked to attend in the Procurator-Fiscal's office in Edinburgh. In this case they are absolutely without precedent. The witnesses on either side had not been examined. It seemed to him that the Crown Office should know the exact position for the future.

LORD JUSTICE-CLERK—It seems to me that nothing could be done more prejudicial to either side than that in a criminal case before a jury the advisers of a party should direct their witnesses not to allow themselves to be precognosced. I think it is a grievous mistake. I consider it to be the duty of every true citizen to give such information to the Crown as he may be asked to give in reference to the case in which he is to be called; and also that every witness who is to be called for the Crown should give similar information to the prisoner's legal advisers if he is called upon and asked what he is going to say. I do not say there is any blame attaching to anyone connected with this case, and the witness was quite right to do as he was told. I have no doubt that the legal advisers of the prisoner acted conscientiously. But I have been asked to express my view, and it is that every good citizen should give his aid, either to the Crown or to the defence, in every case where the interests of the public in the punishment of crime, or the interests of a prisoner charged with crime, call for ascertainment of facts.

Counsel for the Crown—The Solicitor-General (Asher, Q.C.) — Strachan, J. A. Reid, Lorimer, Baxter, Advocate-Deputes. Agent—The Crown Agent (John Cowan, W.S.)

Counsel for the Panel—Comrie Thomson —John Wilson—Findlay. Agents—Davidson & Syme, W.S.

COURT OF SESSION.

Friday, January 12, 1894.

FIRST DIVISION.

[Lord Wellwood, Ordinary.

LORD ADVOCATE *v.* DUNLOP'S TRUSTEES.

(*Ante*, February 6, 1892, vol. xxix, p. 393, and 19 R. 461).

Revenue — Legacy-Duty — Moveable Estate Directed to be Invested in Purchase of Land, and Actually so Applied—Moveable Estate Applied by Testator's Directions in Erection of Mansion-House—Act 36 Geo. III. c. 52, sec. 19—Act 9 and 10 Vict. c. 76, sec. 4.

The Act 36 Geo. III. c. 52, sec. 19, provides "that any sum of money or personal estate directed to be applied in the purchase of real estate shall be charged with and pay duty as personal estate, unless the same shall be so given as to be enjoyed by different persons in succession, and then each person entitled thereto in succession shall pay duty for the same in the same manner as if the same had not been directed to be applied in the purchase of real estate unless the same shall have been actually applied in the purchase of real estate before such duty accrued, but no duty shall accrue in respect thereof after the same shall have been actually applied in the purchase of real estate for so much thereof as shall have been so applied." . . .

A testator directed his trustees to

accumulate the rents, interests, and profits of the residue of his estate, and out of the accumulations or capital, if necessary, to apply a sum not exceeding £12,000 in the erection of a mansion-house. The trustees were further directed to realise the residue of the moveable estate, and invest the same in the purchase of land to be entailed on A and a series of heirs, but a discretion was given them to delay the realisation of the estate, it being declared, however, that at the end of the six years the institute or heir of entail entitled to possess the lands to be purchased should be entitled to receive the interest and proceeds of the entire residue. During the six years the trustees applied £21,000 in the purchase of land, and £12,000 in the erection of a mansion-house. At the end of the six years, A, under the authority of the Court, acquired the lands and the residue of the moveable estate held by the trustees in fee-simple. The Crown then claimed legacy-duty from the trustees upon the whole residue of the moveable estate, and this claim was sustained, and the trustees were ordained to render an account of the testator's moveable estate. In the account rendered by them the trustees deducted the two sums of £21,000 and £12,000 above mentioned, and the Crown objected to these deductions. *Held* (1) (*aff.* Lord Wellwood) that the sum of £21,000 having been applied in the purchase of land before A's right thereto emerged, was not subject to legacy-duty; but (2) (*rev.* Lord Wellwood) that legacy-duty was chargeable upon the sum of £12,000 which had been applied in the erection of a mansion-house.

By the 5th purpose of his trust-disposition and settlement Alexander Dunlop of Carnduff and Doonside directed his trustees to retain and accumulate for six years after his death the whole rents, interests, and profits of the residue of his estate, and out of the accumulations or capital, if necessary, to apply a sum not exceeding £12,000 in the erection of a mansion-house at Doonside, and to pay an annuity of £800 a-year during the said period of six years to W. H. Dunlop, the institute of the entails thereinafter mentioned, whom failing to the heir of entail for the time being who should be entitled to succeed under the destination thereinafter expressed to the lands and others to be entailed as directed.

The 6th purpose was as follows:—"During the said period of six years my said trustees shall sell and realise the whole of the residue and reversion of my moveable estate of every kind, and of the whole of my heritable bonds, feu-duties, and ground-annuals, and my house and other heritable property in Glasgow and out of the United Kingdom" (with certain specified exceptions), "and my said trustees shall look out for and purchase with the proceeds of said residue and reversion such lands or landed estates in Scotland as they may consider proper, and shall entail the same and my other landed estates as after mentioned. . . . Declaring, however, that although it is my wish and desire that my said trustees should realise the residue and reversion of my said estates, and purchase the said lands or estates during the said period of six years, I hereby declare that they shall be entitled to use their own discretion as to this, and if they consider it necessary they shall be entitled . . . to delay the said realisation, and also the said purchase or purchases in such time or times as may seem to them most convenient and suitable for such realisation and purchases: Declaring, however, that after the said period of six years have expired, the institute or heir of entail in possession, or entitled at the time to possess the lands and estates to be purchased as aforesaid under the destination hereinafter written, shall be entitled to demand and receive the interest and proceeds of the entire residue and reversion of my said estates, heritable and moveable, hereby conveyed, but under deduction always of such expenses as may be incurred by my said trustees in the management and execution of the trust until the said lands and estates are purchased and entailed, and the whole purposes of the trust fulfilled."

By the 7th purpose the trustees were directed, as soon as convenient after the said period, to execute a deed or deeds of strict entail of the lands to be purchased, and of any other properties which might belong to the testator at the date of his death, in favour of William Hamilton Dunlop and the heirs-male of his body, whom failing to other substitutes in succession.

The truster left moveable estate to the value of about £350,000.

During the period of six years following his death the trustees purchased the estate of Sauchrie at the price of £21,000, but made no other purchases. They also expended the sum of £12,000 on the erection of a mansion-house at Doonside.

At the end of the six years William Hamilton Dunlop applied to the Court for authority to acquire in fee-simple the whole heritable estates and the residue of the moveable estates vested in the trustees. This petition was granted on 22nd November 1890.

Thereafter the Lord Advocate brought an action against Alexander Dunlop's trustees for payment of legacy-duty on the moveable estate acquired by William Hamilton Dunlop in fee-simple, and on 6th February 1892 the First Division adhered to an interlocutor pronounced by Lord Wellwood, finding that William Hamilton Dunlop having become absolutely entitled to the clear residue of said moveable estate, legacy duty was chargeable on the capital thereof at the rate of five per cent.—(*Ante* vol. xxix, 393, and 19 R. 461).

On 22nd June 1892 the Lord Ordinary ordained the defenders, the trustees of Alexander Dunlop, to deliver to the Board of Inland Revenue an account of the whole personal estate of the deceased; and on 17th March his Lordship allowed the residuary account to be received, and ap-

pointed the pursuer to lodge objections thereto.

The pursuer lodged two objections. He objected (1) to a deduction of £12,000 made on account of the "sum directed by deceased's settlement to be expended in erection of mansion-house at Doonside;" and (2) to the deduction of £21,015 on account of the price of the estate of Sauchrie.

The defenders denied that the said sums were chargeable with legacy-duty, in respect that they had been applied during the period of six years mentioned in the settlement, and before William Hamilton Dunlop acquired any vested right in the residue of the deceased's estate.

The Act 36 Geo. III. cap. 52, section 19, enacts "that any sum of money or personal estate directed to be applied in the purchase of real estate shall be charged with and pay duty as personal estate, unless the same shall be so given as to be enjoyed by different persons in succession, and then each person entitled thereto in succession shall pay duty for the same in the same manner as if the same had not been directed to be applied in the purchase of real estate, unless the same shall have been actually applied in the purchase of real estate before such duty accrued; but no duty shall accrue in respect thereof after the same shall have been actually applied in the purchase of real estate, for so much thereof as shall have been so applied: Provided, nevertheless, that in case before the same or some part thereof shall be actually so applied, any person or persons shall become entitled to an estate of inheritance in possession in the real estate to be purchased therewith, or with so much thereof as shall not have been applied in the purchase of real estate, the same duty which ought to be paid by such person or persons, if absolutely entitled thereto as personal estate by virtue of any bequest thereof as such, shall be charged on such person or persons, and raised and paid out of the fund remaining to be applied in such purchase."

Section 4 of the Act 8 and 9 Vict. cap. 76, enacts "that from and after the passing of the Act every gift by any will or testamentary instrument of any person, which by virtue of any such will or testamentary instrument is or shall be payable, or shall have effect or be satisfied out of the personal or moveable estate or effects of such person, or out of any personal or moveable estate or effects which such person hath had or shall have had power to dispose of, . . . whether such gift shall be by way of annuity or in any other form, and also every gift which shall have effect as a donation *mortis causa*, shall be deemed a legacy within the true intent and meaning of all the several Acts granting or relating to duties on legacies in Great Britain and Ireland respectively, and shall be subject and liable to the said duties accordingly." . . .

On 13th June 1893 the Lord Ordinary (WELLWOOD) repelled the objections.

"*Opinion.* — The previous judgment of the Court in this case related to personal estate of the late Alexander Dunlop, which the testator directed his trustees to invest in the purchase of land to be settled by deed of strict entail upon a series of heirs. Before this purpose had been carried into effect, and while the bulk of the personal estate remained uninvested in land, and no entail had been executed, the person named as institute in the trust-deed, Mr W. H. Dunlop, carried through a disentail, and thereby became entitled absolutely to the clear residue of the heritable and personal estate of the deceased Alexander Dunlop. According to the view which I took, and which was affirmed by the Inner House, the concluding proviso of section 19 of 36 Geo. III, c. 52, applied in terms to the only question then considered, and it was decided that legacy duty was chargeable on the capital of the clear residue of the personal estate of Alexander Dunlop at the rate of 5 per cent.

"It then became necessary to ascertain the amount of the personal estate, and I accordingly ordered the defenders to lodge a residuary account, which they have done. The pursuer has lodged two objections. He objects to the deduction of (1) a sum of £12,000, being a sum directed by the deceased's settlement to be expended in erection of mansion-house at Doonside, and (2) a sum of £21,015 being the price of the estate of Sauchrie purchased by trustees on 11th November 1885, in virtue of the directions in the deceased's settlement. The pursuer maintains that both these sums are liable in legacy duty as personal estate. I may mention at this point that it is admitted that the heritable subjects at Doonside and Sauchrie, on the improvement and purchase of which those sums were expended, were included in a succession duty account delivered in June 1890, and passed in July 1890.

"These objections raise a question which was not directly involved or decided in the former discussion—one of those puzzles which the 19th section of 36 Geo. III, c. 52, is so prolific in producing. The leading object of that section was, for Revenue purposes, to invert the rule of law that, *quoad* succession, money directed to be invested in the purchase of land is regarded as heritage or real estate. Otherwise at the date of the Act 1796 money so bequeathed would have escaped duty. The leading provision of the 19th section is—'That any sum of money or personal estate directed to be applied in the purchase of real estate shall be charged with and pay duty as personal estate.' Then follows the exception—'Unless the same shall be so given as to be enjoyed by different persons in succession, and then each person entitled thereto in succession shall pay duty for the same in the same manner as if the same had not been directed to be applied in the purchase of real estate, unless the same shall have been actually applied in the purchase of real estate before such duty accrued, but no duty shall accrue in respect thereof after the same shall have been actually applied in the purchase of real estate for so much

thereof as shall have been so applied.'

"Before considering the application of that exception to the present question it is necessary to refer to Mr Alexander Dunlop's settlement in order to ascertain the precise nature of Mr W. H. Dunlop's rights when the succession opened to him. Mr Alexander Dunlop died on 30th September 1883. By the direction in his settlement (fifth purpose) the trustees were directed to retain and accumulate the rents, interests, and profits for six years after his decease, and the only interest which Mr W. H. Dunlop took during these six years was that the truster directed his trustees to pay '£800 sterling per annum during the said period of six years to William Dunlop, solicitor, Ayr, the institute of the entails hereinafter mentioned, whom failing to the heir of entail for the time being who shall be entitled to succeed under the destination hereinafter expressed to the lands and others to be entailed as after directed.' The provisions of the sixth purpose of the trust-deed show, in my opinion, that the expiry of the six years from the date of the truster's death is the *punctum temporis* upon which the present question depends. At that time, and not till then, right vested in the person who was then institute, or other heir called, either to demand that the estates purchased should be entailed as directed, or, if the trustees were not prepared at that time to carry out those directions, to call upon them to pay over to him the interest and proceeds of the residue, heritable and moveable. After stating that the trustees shall be entitled in their discretion to delay realisation and purchase, there is this declaration:—'Declaring, however, that although it is my wish and desire that my said trustees should realise the residue and reversion of my said estates, and purchase the said lands or estates during the said period of six years, I hereby declare that they shall be entitled to use their own discretion as to this; and if they consider it necessary, they shall be entitled and are hereby empowered to delay the said realisation and also the said purchase or purchases till such time or times as may seem to them most convenient and suitable for such realisation and purchases: Declaring, however, that after the said period of six years have expired the institute or the heir of entail in possession, or entitled at the time to possess the lands and estates to be purchased as aforesaid under the destination hereinafter written, shall be entitled to demand and receive the interest and proceeds of the entire residue and reversion of my said estates heritable and moveable hereby conveyed, but under deduction always of such expenses and charges as may be incurred by my said trustees in the management and execution of the trust, until the said lands or estates are purchased and entailed and the whole purposes of the trust fulfilled.'

"The six years from the death of Alexander Dunlop ran out on 30th September 1889. Till then no right vested in any of the heirs called, and the rate of duty could not be fixed or the amount calculated. By that time the two sums in question had been expended in the improvement and purchase of land to be entailed under the truster's directions. The person entitled at that date was the institute named in the settlement, Mr W. H. Dunlop; but his right was not an absolute right to the *corpus* of the estate, it was merely a right as first of a series of heirs to enjoy the real estate, if purchased, as heir of entail in possession, or, pending the purchase of lands and execution of a deed of entail, to demand from the trustees the interest and proceeds of the entire residue and reversion of the truster's estates, heritable and moveable, under deduction of expenses and charges of management and execution of the trust.

"Mr W. H. Dunlop did not commence proceedings for the purpose of disentailing until January 1890, and the disentail was not carried through until the end of that year.

"Turning now to the 19th section of the Act 1796, I shall consider whether Mr W. H. Dunlop was in the position to which the exception which I have quoted applies. I think it is clear that, at the time when the right opened to him, it opened to him as the first of a series of persons by whom, according to the will, the land to be purchased was to be enjoyed in succession. If any of the money at that date was not invested in the purchase of land, duty fell to be calculated by way of annuity, and paid just as if the money had not been directed to be applied in the purchase of real estate; and if, after the right opened, but before the money had been so applied, he acquired (as he did) absolute right to it, legacy duty, under the express terms of the section, fell to be paid just as if from the first he had an absolute right to it. But it seems to me that the statute makes a marked distinction where money, directed to be applied in the purchase of real estate to be enjoyed by different persons in succession, has actually been so applied before right of succession opens to any of the series of heirs; or even, perhaps, when it is so applied when the heir entitled to be in possession for the time has not yet acquired an absolute right to the estate. This distinction runs through the whole section. Each person entitled in succession is to pay duty on the personal estate so destined 'unless the same shall have been actually applied in the purchase of real estate before such duty accrued,'—that is, before that person's right emerged. The Act then proceeds to provide:—'But no duty shall accrue in respect thereof after the same shall have been actually applied in the purchase of real estate, for so much thereof as shall have been so applied.' The meaning of these provisions seems to be that if, during the lifetime of any of the persons entitled for the time to enjoy the estate in succession, land is purchased under the directions of the will, legacy duty will not fall to be paid on the succession of the next heir. Further, though it is perhaps not necessary to decide this, it

would seem that if the money is applied in the purchase of land before all the instalments due by the heir in possession or entitled to be in possession are paid, liability for future instalments of legacy duty ceases. Again, while it is directed that if any person becomes entitled to an estate of inheritance in possession, he shall pay as if he had been originally absolutely entitled, that provision is expressly confined to the case of his acquiring an absolute right before the money has been actually applied in the purchase of land; and legacy duty is only payable in respect of so much of the money as has not been then applied in the purchase of land. I therefore think that looking to the language used in the statute, it must be held that Mr W. H. Dunlop's case *quoad* the two sums in question falls within the exception or qualification in the 19th section. I do not think that any solid distinction can be taken between the case of the institute or first person called and subsequent heirs. The statute says—'Each person entitled thereto in succession shall pay duty,' &c.

"The question is one of some subtlety, because it may be suggested that from the expiry of the six years from the death of Mr Alexander Dunlop, Mr W. H. Dunlop had a potentiality of acquiring the estate in fee-simple, and actually did acquire it before it was conveyed to him, and that thus from the first the trustees held for him absolutely. But the money having been actually applied in the purchase of land before the succession opened to Mr W. H. Dunlop, I think the direct words of the 19th section are too strong to admit of this refinement, and that it would not be safe to rely on the analogy of other statutory enactments dealing with other cases, such as section 21 of 16 and 17 Vict. c. 51, on which the case of *Lord Lilford* v. *The Attorney General*, L.R., 2 Eng. & Ir. (H. of L.) App. 63, was decided. My opinion, therefore, is that the objections must be repelled; and even if the matter were more doubtful than I hold it to be, I should feel bound to give the defenders the benefit of the doubt.

"As I have already mentioned, succession duty has already been paid, and I think that is all that the Crown is entitled to claim. The difference is stated to be about £1200.

"I do not proceed at all upon the third and fourth answers for the defenders, which I think are unfounded."

The pursuer reclaimed, and argued—The claim of the Crown was not founded on section 19 of the Act of Geo. III., and was therefore not affected by the exception in that section. The sums deducted were part of a gift payable out of moveable estate, and were therefore subject to legacy-duty—8 and 9 Vict. c. 76, sec. 4. The duty was chargeable upon accumulated interest in the same way as upon capital—*Attorney-General* v. *Cavendish*, June 1819, Wightwick, 82; *Advocate-General* v. *Oswald*, May 20, 1848, 10 D. 969. In any view the exception in section 19 of the Act of Geo. III. did not apply to the sum of £12,000, as that sum had been applied, not in purchasing land, but in erecting a house—*In re Parker*, 4 H. & N. 666.

Argued for the defenders—The claim of the Crown was excluded by the exception in section 19 of the Act of Geo. III. The duty did not accrue until the expiry of six years from the testator's death, and by that time the sums deducted had been expended either in purchasing land or in building a mansion-house. The building of a house was equivalent to the purchase of a house—*Sprot's Trustees* v. *Sprot*, March 11, 1830, 8 S. 712.

At advising—

LORD M'LAREN—This case relates to the liability of money, directed to be invested in the purchase of land, to payment of legacy-duty. The late Alexander Dunlop having conveyed his personal estate to testamentary trustees, directed that the rents, interest, and profits of the residue of his estate should be accumulated for six years after his death, and that the residue increased by such accumulations should be applied in the purchase of lands to be entailed on a series of heirs. It may be here noticed that under the powers of the deed of trust the trustees might have purchased land for the purpose of being entailed within the period of six years following the truster's death, but it is only after the expiration of the period of six years that the heirs of the destination have a right to demand and receive the full income of the residue, which is thereafter treated as entailed money waiting investment. During this period of six years the right of the institute or heir is restricted to an annuity of £800 per annum.

Mr William Hamilton Dunlop, the institute of entail, in the exercise of his statutory powers, elected to disentail the estate; and under a previous reclaiming-note we held, affirming Lord Wellwood's judgment, that as Mr William Hamilton Dunlop had by arrangement between him and his three minor children and their curators, become entitled absolutely to the clear residue of the personal estate of the deceased Alexander Dunlop, legacy-duty was chargeable on the capital thereof at the rate of five per cent.

It then became necessary to ascertain the amount of the personal estate. An account was given in for the Lord Ordinary's consideration. To this account two objections were stated by the Lord Advocate as representing the Inland Revenue department, which objections have been repelled by the Lord Ordinary in the interlocutor which is under review. I shall consider these objections in their order.

1. In the residue account given in the defender proposes to make a deduction of the sum of £12,000 under the head "Sum directed by deceased's settlement to be expended in erection of mansion-house at Doonside." The Lord Advocate objects to the deduction in so far as the sum expended is derived from the personal estate. The Lord Ordinary has allowed the deduction, but I am not quite sure on what ground.

Apparently, in the argument in the Outer House, this expenditure had been treated as equivalent to the expenditure of residue in the purchase of land, and therefore as raising a question under the 19th section of the Act 36 Geo. III. cap. 52, which I shall have to consider with reference to the second objection. Now, in a question of private right, depending on the constructive conversion of money into land under the operation of a power, there is evidently a strong analogy between the cases of a power or direction to purchase land and a power or direction to add to the value of the land by building on it. But I believe your Lordships are all of opinion that the operation of a taxing-statute cannot be extended analogically, and that the expenditure of £12,000, or whatever may be the sum derived from personalty in the erection of a mansion-house at Doonside, is not a case within the contemplation of the 19th section, which deals only with the case of a "purchase of real estate."

I am free to say that I do not see any good reason why this sum of £12,000, or so much of it as was personalty, should not be treated as a part of the clear residue, and subject as such to legacy-duty under the general provisions of the Act 36 Geo. III. But any doubt that might be raised on this subject is removed by the 4th section of the Act 8 and 9 of the Queen. The terms of that section appear to me to be sufficiently comprehensive to include within the category of things which are subject to legacy-duty a sum of money which is directed to be applied to the erection of a house or building, and the case of *Parker*, 4 H. & N. 666, is an authority in point.

2. I pass to the second objection under which the Lord Advocate objects to the deduction of £21,015 on account of "Price of Estate of Sauchrie, purchased by the trustees on 11th November 1885, from Alexander Mitchell, in virtue of directions in deceased's settlement." Now, the truster Alexander Dunlop died on 30th September 1883; this purchase was made about two years later; the six years of accumulation expired on 30th September 1889, and the proceedings for the purpose of disentailing the succession were only commenced in January 1890, and were carried through during that year. In these circumstances the defender says that the purchase falls within the general scope of the 19th section of 36 Geo. III. cap. 52, but that in this particular case no duty attaches.

The purpose of the 19th section is to regulate the payment of duty in respect of money to be applied in the purchase of real estate. It begins with general words imposing duty; then follows an exception or qualification, and to this again there is a sub-exception. 1st. It is enacted, "That any sum of money or personal estate directed to be applied in the purchase of real estate shall be charged with and pay duty as personal estate." The qualification is, "Unless the same shall be so given as to be enjoyed by different persons in succession, and then each person entitled thereto in succession shall pay duty for the same in the same manner as if the same had not been directed to be applied in the purchase of real estate,"—that is, I presume, according to the provisions of the 12th section. I pause here to inquire what would have been the right of the Inland Revenue in relation to this sum of £21,000 supposing the lands of Sauchrie had not been purchased, and the capital sum was still unexpended but entailed? It was common ground that until the expiration of the six years ending 30th September 1889 no duty accrued. Until that date the institute of entail was not ascertained, no right to the enjoyment of the entailed money vested in anyone, and as the Lord Ordinary points out, the rate of duty could not be fixed or the amount calculated. Immediately thereafter the institute Mr William Hamilton Dunlop would, in the case supposed, be liable to pay duty on the value of his life interest, according to the tables appended to the Act of Parliament, and if he died before a purchase was made (the money being still entailed) the next heir would pay legacy-duty on his life interest, and so on. I pass to the sub-exception of the 19th section which (like the chief exception) is introduced by the word "unless" *i.e.* "Unless the same shall have been actually applied in the purchase of real estate before such duty accrued; but no duty shall accrue in respect thereof after the same shall have been actually applied in the purchase of real estate for so much thereof as shall have been so applied."

Keeping in view that at this time and for many years thereafter land was altogether exempted from succession-duty or death-duty of any kind, I think the meaning of this sub-exception is very plain. So soon as the money shall be *de facto* converted into land, it is to be exempt from future taxation. Until an investment is found the heirs in succession must pay duty as for a pecuniary legacy, but after an estate is purchased and the trust so far executed the legacy account closes, future heirs are heirs to landed property, and it is not intended that the estate in their hands should be subject to duty.

The peculiarity of the present case is that the estate was purchased before a right to its value vested in anyone. Before the purchase was made it was not possible to find a person liable in duty as having a limited interest, and after the purchase was made, then by the express words of the last exception no duty accrues.

It is certainly a curious result of the statutory provisions that this capital sum although left by the testator in the form of money escapes taxation altogether under the Legacy-Duty Act. But it can hardly be said that it escapes liability, contrary to the policy of the Act, when it is observed that this is the result of the money being converted into land soon after the testator's death, and before the acquisition of a vested interest by an institute. We were informed that succession-duty under the Act of the present reign has been paid on this sum.

I ought not to conclude without taking

notice of the argument founded on the proviso to the 19th section which was the subject of consideration under the previous reclaiming-note, under which any person who shall become entitled to an estate of inheritance in possession is to pay duty as if absolutely entitled. Now, this proviso begins with these words, "In case before the same, or some part thereof" (that is, of the money), "shall be actually so applied, any person or persons shall become entitled to an estate of inheritance in possession," &c. Now, in the present case the defender did not disentail before this money was applied in the purchase of land, and so did not in the language of the statute become entitled to an estate of inheritance before the money was so applied. Accordingly I agree with the Lord Ordinary that this proviso has no application to the subject of the second objection.

If your Lordships agree with me, the Lord Ordinary's interlocutor will be altered as regards the first objection, and the first objection to the account will be allowed in so far as the sum of £12,000 proposed to be deducted is derived from personal estate of the deceased Alexander Dunlop. As regards the second objection, I propose that we should adhere to the Lord Ordinary's interlocutor, which repels this objection.

LORD KINNEAR — I am of the same opinion, and I should not have thought it necessary to add anything, were it not that observations I am reported to have made in the previous case were referred to in argument as supporting the view that Mr Dunlop's right from the moment it vested in him was an absolute right to the residue of this estate. The argument is that nothing following the words "unless the same shall be so given as to be enjoyed by different persons in succession" is applicable to a legatee having from the first an absolute right. It is inaccurate to say that Mr Dunlop's right was absolute from the first. But he had from the first—that is, from the time when his interest vested—a capacity to acquire such a right, and he did in fact acquire it before any question of duty arose. What I said was intended to apply only to the circumstances of the case which we were then considering. The condition of the argument was that while the money was still unpaid and unapplied in the hands of the trustees, the institute had acquired right but in fee-simple. It appeared to me that liability for legacy-duty must be determined by reference to the interest which the legatee actually takes under a will rather than by what the will *ex figura verborum* may purport to bequeath, and therefore that Mr Dunlop could not at the same moment claim immediate payment of the whole residue in his own right, and also maintain that the residue so to be paid to him absolutely had been given to be enjoyed by a series of heirs in succession so as to exempt him from legacy-duty. Whether that was right or wrong it has no application to the present question.

The facts on which that question depend are clearly stated by the Lord Ordinary. The testator directed the residue of his estate to be applied in the purchase of land to be entailed on a series of heirs. Before any right had vested in the institute, the trustees in the execution of their trust had laid out £21,000 in the purchase of the lands of Sauchrie to be entailed according to the directions of the testator. The institute Mr Hamilton Dunlop cannot demand payment of that portion of the residue in money, because no interest in the money had vested in him until after it had been converted into land in due performance of the trust. But when the right vested, it was, as the Lord Ordinary points out, not an absolute right to the estate of Sauchrie, but only a right to demand a conveyance under the fetters of an entail, although by disentailing he has now right to demand a conveyance in fee-simple. The meaning of the enactment appears to me to be, first, that money left by will to be laid out in the purchase of land is to be chargeable with legacy-duty as personal estate except where it is so given as to be enjoyed by different persons in succession; 2ndly, that in this excepted case each successive owner is to pay duty by way of annuity, unless and until the money is actually laid out in the purchase of land, after which no duty would accrue under the Act of Geo. III., although the land so purchased may be chargeable under the later statute. I think the money now in question falls within the exception, because when it was applied in the purchase of land, it was subject to a trust for the benefit of a series of heirs in succession, and because it had been actually laid out before the duty accrued.

I entirely concur with Lord M'Laren both upon that point and also upon the second point as to the money expended in building upon the estate of Doonside. I find it unnecessary to add anything.

The LORD PRESIDENT concurred.

LORD ADAM was absent.

The Court recalled the interlocutor of the Lord Ordinary *quoad* the first objection, and sustained the same, and *quoad ultra* adhered to the Lord Ordinary's interlocutor.

Counsel for the Pursuer—Sol.-Gen. Asher, Q.C. — Comrie Thomson. A. J. Young. Agent—The Solicitor of Inland Revenue.

Counsel for the Defenders—D.-F. Pearson, Q.C. — Pitman. Agents — J. & F. Anderson, W.S.