the action were, or whether they now were the same or different. There was no analogy in the case of the agent-disburser.

LORD JUSTICE-CLERK—This motion is as far as I know unprecedented. Certain people called the Commissioners for the Harbour of Dumfries are summoned into Court. They are summoned *qua* Commissioners. They are not named in the summons, and no one can discover from the record who they are. The persons who were Commissioners when the action was raised may all have ceased to be so in the course of the litigation. The judgment of the Sheriff was against the defenders and they appealed. This Court affirmed the judgment of the Sheriff, and the defenders were found liable in expenses in this Court, for I think that a finding that the pursuers were entitled to expenses is just the same thing as a finding that the defenders were liable in expenses, so that as far as this Court is concerned the cause is virtually at an end. The only thing that remains to be done is to remit the pursuers' account of expenses to the Auditor in order to ascertain the amount of the expenses for which the defenders have been found liable, and to pronounce decree for the amount so ascertained, and now when the case comes up for approval of the Auditor's report the pursuers ask the Court to give decree, not against the Commissioners as such, but against certain individuals of whom the Court do not know, and cannot know, anything. I think that it is out of the question to grant such a motion against persons who are not before the Court. In any view I should have been of opinion that the motion comes too late. Mr Spens suggested the analogy of decree for expenses in the name of the agent-disburser. I think that this suggested analogy is no analogy at all. Decree in the name of the agent-disburser is a matter of ordinary practice, a practice which has existed from time immemorial, in accordance with which the agent, who presumably has disbursed the expenses out of his own pocket, is held entitled to obtain decree for expenses in his own name. That is not a matter *in causa* at all. On the whole matter I am of opinion that we should refuse the motion.

LORD STORMONTH DARLING, LORD LOW, and LORD ARDWALL concurred.

The Court pronounced this interlocutor—

"The Lords approve of the Auditor's report on the pursuers' account of expenses: Ordain the defenders to make payment to the pursuers of the sum of £182, 17s. 7d. sterling, and decern: Further, find the pursuers liable to the defenders in the sum of £3, 3s. of modified expenses for to-day's discussion of the terms of the decree for expenses, for which sum decern."

Counsel for the Pursuers and Respondents—Spens. Agents—J. & J. Ross, W.S.

Counsel for the Defenders and Appellants—Macmillan. Agents—Beveridge, Sutherland, & Smith, S.S.C.

Wednesday, March 20.

FIRST DIVISION.

[EXCHEQUER CAUSE.]

[Lord Johnston, Ordinary.

INLAND REVENUE *v.* DICK'S TRUSTEES.

(*Vide* also *Walker* v. *Reith*, Jan. 12, 1906, reported 43 S.L.R. 245, and 8 F. 381.)

Revenue—Legacy Duty—Trust to Carry on Testator's Business—Percentage of Profits Given under the Trust to Employees Carrying on the Business—Gift or Remuneration—Legacy Duty Act 1796 (36 *Geo. III. cap.* 52), *sec.* 6—*Revenue Act* 1845 (8 *and* 9 *Vict. cap.* 76), *sec.* 4.

By a deed of arrangement forming part of his testamentary writings a testator provided for his business being carried on and eventually being acquired by certain of his employees, the heads of departments. The trustees signed cheques, arranged salaries, might dismiss employees, or decide as to winding up. After paying depreciation and interest on the testator's capital, 90 per cent. of the profits was to be retained in certain shares on behalf of the employees and used as a fund to pay out the testator's capital, and the remaining 10 per cent. was to be paid to them in the same shares. As soon as the testator's capital was paid out the business was to belong to the employees, but no interest was to vest in them till then. The business having been carried on for some years, and a large sum paid to the employees under the 10 per cent. provision, the Inland Revenue claimed from the trustees legacy duty thereon.

Held that legacy duty was due, the sum being a gift under the will of the testator, and not remuneration. *In re Thorley* [1891], 2 Ch. 613, *applied* and *followed.*

The Legacy Duty Act 1796 (36 Geo. III., cap. 52), sec. 6, enacts that "the duties hereby imposed shall in all cases in which it is not hereby otherwise provided be accounted for, answered, and paid by the person or persons having or taking the burthen of the execution of the will or other testamentary instrument or the administration of the personal estate of any person deceased . . . upon delivery, payment, or other satisfaction or discharge whatsoever of any legacy or any part of any legacy, or of the residue of any personal estate or any part of such residue to which any other person or persons shall be entitled."

The Revenue Act 1845 (8 and 9 Vict. cap. 76), by sec. 4, enacts—"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 . . . 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 5th July 1906 the Lord Advocate, on behalf of the Commissioners of Inland Revenue, raised an action against Sir W. C. Copland, C.E., and others, the testamentary trustees of the deceased James Dick, Glasgow, in which he concluded for delivery of "an account of the moneys paid or payable since the death of the said deceased James Dick, in terms of his testamentary deed of arrangement, executed by him on 4th and recorded 11th March 1902, as being 10 per cent. of the free profits of his business of R. & J. Dick, Greenhead, Glasgow, the said account being required in order that the legacy duty due and payable in respect of the said moneys may be ascertained," and for payment of £1700 in name of such legacy duty.

The defenders pleaded—"(1) The action is irrelevant. (2) The provisions of the said deed of arrangement for payment to the deceased's employees of 10 per cent. of the profits of the business being designed by the deceased and accepted by the employees in the business as remuneration for service rendered to the deceased's estate, and not being of the nature of a bequest, no legacy duty is due to the pursuer, and the defenders should be assoilzied from the conclusions of the summons"

The *facts* are given in the opinion of the Lord Ordinary (JOHNSTON), who, on December 11, 1906, ordained the defenders to deliver the account called for.

Opinion.—"Under his settlement of 4th March 1902 the late James Dick, sole partner of the firm of R. & J. Dick, gutta-percha shoe and belt manufacturers, Glasgow, who died on 7th March 1902, conveyed his estate to trustees. Of even date with his trust settlement Mr Dick executed a relative deed of arrangement with regard to his manufacturing business, and accordingly in the second head of his settlement he specially directed and instructed his trustees to give effect to the said deed of arrangement. After leaving very considerable legacies, Mr Dick, by the last purpose of his settlement directed his trustees to realise the whole residue of his estate 'at such time or times and from time to time as they may think proper, and always having special regard to the arrangements for carrying on the business of R. & J. Dick' in conformity with the said separate deed of arrangement, and to distribute the proceeds among charitable institutions in Scotland. All legacies were to be paid free of legacy duty.

"In the present action we are more specially concerned with the deed of arrangement regarding the business, executed with reference to the settlement. This deed proceeds on the preamble that Mr Dick considered it desirable to make arrangements, to take effect after his decease, regarding his said business, and that the best method which had suggested itself to him 'of continuing the business is by giving the heads of the various departments and others in my employment a prospective interest in the profits, and power to acquire the business after my decease.' Accordingly he made the following arrangements:—

"*First.*—He nominated fifteen of his employees and directed that they should, in certain shares from and after his death, have each 'a prospective interest in the profits of the business and in the business itself, if acquired by them in proportion to the shares allotted to them respectively.' He further specially provided and declared 'that the provisions under these presents in favour of the employees shall not become vested interests until the whole of my capital and interest has been paid out as after mentioned.' And he debarred his said employees from disposing of their interest 'in the profits or in the business itself under these presents,' and declared any act done in contravention of this stipulation to be null and void. And he then declared that 'in the event of any of said persons ceasing to be an employee or leaving the business, the share of the profits of the business allotted to him and his interest therein shall, unless I otherwise direct, from and after the date of his so ceasing or leaving accresce to and be divided amongst the remaining employees in proportion to their said shares.'

"*Second.*—He directed the books of the business to be brought to a balance at the date of his death, and his capital in the business to be ascertained, and from the date of his death interest at 3 per cent. per annum to be paid to his trustees in cash to the 31st of December in each year on the amount of his capital in the books of the business or on so much thereof as might remain unpaid at the annual balances which were to take place at that date in each year, and he then directed, with regard to the whole profits of the business after allowing for these payments, and for provision for depreciation, that they should be divided amongst the surviving employees in proportion to the shares allotted to them or to which they might acquire right under these presents, 'and 10 per centum of such profits shall be paid over to them in cash, and the remaining profits shall not be drawn by the employees but credited to their respective accounts in the books of business until the whole of my capital or interest in the said business is paid out, and the said remaining profits allotted to the employees as aforesaid shall be accumulated without adding interest, and form a fund available for the paying out of my capital in the said business.' In the event of loss arising in any year, such loss was to be carried forward until wiped out by future profits.

"*Third.*—He provided that on the death or bankruptcy of any employee his interest in the profits of the business and in the business itself should cease, and that his

representatives should only be entitled to be paid the amount standing at his credit in the books at the previous balance, but postponed to the paying out of Mr Dick's own capital with interest as before provided, and that his remaining employees should be entitled to the interest and prospective share of profits which would have fallen to the deceasing or bankrupt employee, *pro rata*, according to their own prospective shares.

"*Fourth.*—He provided for the carrying on of his business in such manner as left his trustees with the ultimate control, and with power to remove from the business any of the employees, though nominated in the will to a share in the business and profits, while at the same time for the business being carried on by the employees as it was carried on by him at the date of his death. It has already been decided, *Walker* v. *Reith*, 1906, 8 Fr. 381, that the employees remain servants of Mr Dick's testamentary trustees.

"*Fifth.*—He provided that, out of the amount of profits standing at the credit of his employees in the books of the business, his trustees should be entitled to take payment, *pro tanto*, of the sums standing to their credit on capital account, until the whole of his capital with interest should have been fully paid to his trustees; that they should then pay out of the accumulated profits the amount appearing in the books as due to the representatives of deceased or bankrupt employees, or to retired employees, or arrange for such payment being made by the surviving employees in such manner as to them should seem fit; and that his trustees should thereupon convey to the employees who might be surviving at that date the whole business, including the stock-in-trade and other assets, and goodwill thereof, according to the shares allotted to them respectively, or to which they might have right, as appearing from the books of the business.

"*Sixth.*—He provided that, notwithstanding the arrangements above written, his employees should be entitled to purchase, and that the trustees were empowered to sell at any time, his business, for the capital sum standing at the credit of his estate at the time of such purchase.

"The business of R. & J. Dick, which has been carried on under the aforesaid deed of arrangement since Mr Dick's death on 7th March 1902, has been eminently successful. The profits have averaged more than £40,000 a-year, and the deceased's capital in the business, which amounted to £350,000, is in process of being paid out in terms of the deed of arrangement. At the same time the 10 per cent. of the profits directed to be distributed among the employees has amounted to a substantial sum in each year.

"The Crown now claim legacy-duty upon these shares of annual profit paid to the employees remaining in the business from the trustees of Mr Dick's settlement, as responsible for settling the death-duties on his estate. The question thus raised depends upon the sixth section of The Legacy-Duty Act 1796, in conjunction with the fourth section of The Stamp Act 1845. For the purposes of the sixth section of the Legacy-Duty Act, which imposes the duty, the term 'legacy' is practically defined by the fourth section of the Stamp Act, as 'a gift by 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,' &c.

"First, then, is the 10 per cent. of the profits of the business of R. & J. Dick, provided by Mr Dick by his deed of arrangement, to be paid to certain of his employees, to have effect or be satisfied out of his personal or moveable estate? I think that it is. Mr Dick's business, including under that term not merely the capital at his credit in its books and the premises and plant, but also the goodwill, was certainly his. And that it remains an asset of his estate as long as profits continue to be divided among certain of his employees, by virtue of his settlement, has already been practically determined by the decision in *Walker* v. *Reith*, *supra*. It was open to him to direct that his business should continue to be carried on for the benefit of his estate, just as he might have directed that shares in an industrial company, constituted under the Companies Acts, should be retained and the dividends applied in some particular way for a series of years. So long as the business was carried on by his trustees the profits formed part of his estate, and it was open to him to direct, by his testamentary instructions, what was to be done with them.

"Now, the deed of arrangement was not only of a testamentary nature in itself, but is adopted by reference by Mr Dick in his settlement as part of his testamentary writings. Are, then, the shares in the profits of the business to be taken by his employees as gifts, and therefore legacies by virtue of the deed of arrangement, or on some other footing? It was contended by Mr Clyde for the trustees that Mr Dick's deed of arrangement was an offer to sell his business to his employees at a price fixed by the amount of capital at his credit in the books, with facilities of a most generous nature to enable them to provide the price. But I cannot so regard what he has done. It is difficult to decide this question without committing oneself to some extent on the further questions, viz., whether the remaining 90 per cent. of the profits, and whether, ultimately, the power to acquire the goodwill of the business, are not also of the nature of legacies. But assuming that Mr Dick, at the point of time at which his capital has been paid out, and the accumulated profits credited to deceased, bankrupt and retired employees has been provided for, either makes a gift of his business to his surviving employees, or offers it to them for sale with such facilities that he has already provided them with the price, I am quite clear that he does not do either the one or the other as at

his death. And it seems to me that every dividend of profits, either paid to or credited to his employees, is a pure gift, which vests in them respectively at the date of the division. For I do not think that the clause regulating vesting can be taken literally. It is true that these shares of profits are in addition to the salaries of his employees earned in the business, and in a sense are an inducement to them to continue their services, so that his capital may be worked out of the business gradually and applied to other purposes, but they are not salaries, and though subject to a condition are none the less gifts. I cannot distinguish the case from *in re Thorley*, L.R. (1891), 2 Ch. 613, in which judgment I should have entirely concurred.

"Accordingly, I think that the 10 per cent. of profits which is annually to be paid in cash to the surviving employees, being a gift, is a legacy, and liable to legacy-duty.

"I am not impressed by the consideration that as it is not possible to distinguish between the 10 per cent. to be paid in cash and the 90 per cent. to be credited in the books, and as the proceeds of the 90 per cent. are to go back to the estate to be distributed as residue, the same sum will apparently pay legacy-duty twice over. I think this is only apparent. The asset of the testator's estate is the business and all that that covers. Mr Dick might have directed annuities to be paid out of the profits for a certain number of years, and they would have been legacies and dutiable. Instead, he directs the whole profits to be divided among the objects of his bounty for an indefinite but terminable period. The sums so divided are as much legacies as the annuities would have been. By means of the 90 per cent. of the divisible profits bequeathed to them as a gift, and therefore dutiable, the objects of his bounty are put in funds at a future date to acquire the business, and when they have done so the business is realised and the proceeds become realised residue, to be applied in payment of his residuary bequests, and such realised residue also will then be properly liable in legacy or its equivalent residue duty. Whether at the date of such realisation there is any further gift to the objects of Mr Dick's bounty in respect of the good will of the business is a matter which I am not called to decide. It is a question which may still fall to be raised.

"I shall therefore direct an account as craved, and find the defenders liable in expenses."

The defenders reclaimed, and argued—The deed of arrangement was a scheme for getting the testator's capital paid out of the business by granting certain facilities to the employees to earn money for its purchase. They got a right to buy the business and, so to speak, help by a loan of money for the purchase at less than the market rate, or, put in another way, a lease on a hire-purchase agreement. These facilities might be dutiable, but their value could not be ascertained in this action, and the onus was on the pursuer to prove their worth. The business was carried on by the employees, not by the trustees. The 10 per cent. share of profits to the employees was remuneratory and was a safeguard to the trust against depreciation of the business. It was increased salary and an inducement to the employees to remain on in the service where their responsibility had been increased by the present arrangement and where their supervision was of great value if not indispensable. The benefit really accrued to the testator's capital in the hands of his trustees. The deed of arrangement was not a gift but an executry contract of sale, the price being what the testator deemed a fair equivalent for the business, and the property did not pass till conditions of sale had been fulfilled. Thus the case was distinguished from *in re Thorley*, [1891] 2 Ch. 613, where the question was of a gift with a condition adjected, that to the trustees being gratuitous since they were bound to discharge the office without reward, and was also distinguished from *The Attorney-General* v. *Sharpe*, 7 T.L.R. 165, for the same reason. The 10 per cent. share of profits here was remuneration springing from a contractual relation in the sense of *Willis* v. *Kibble*, 1 Beavan 559, and no gift. The Lord Ordinary's interlocutor should be recalled.

Argued for the pursuer and respondent—The questions here were—(1) Was this a gift by will? (2) Did it fall to be satisfied out of the testator's moveable estate? The 10 per cent. share of profits paid to the employees was not remuneration but a gift, being a conditional legacy of future profits with one condition, viz., that the employees should remain in the service. The employees were the servants of the trustees, who owned the business, and dismissable at pleasure—*Walker* v. *Reith*, January 12, 1906, 8 F. 381, 43 S.L.R. 245. As such their services were amply compensated by their salaries, which were calculated and regulated on a basis independent of the ten per cent. share of profits. The 10 per cent. and the 90 per cent. were both gifts, differing only in this, that the former had attached one condition and the latter two, viz., the same condition as to remaining in the service, and a second that the fund should be used to purchase the business. It was immaterial that the estate was benefitted as well as the employees. This was a bequest of future profits which but for this provision would have been merely prospective. That a more immediate benefit was given did not change its character. This case was *a fortiori* of *in re Thorley*, *ut supra*, which ruled it, as did *Sweeting* v. *Sweeting*, 1 Drew. Ch. Cas. 331. The interlocutor of the Lord Ordinary should be sustained.

At advising—

LORD PEARSON—The late Mr James Dick, who died in 1902, was the sole partner of the firm of R. & J. Dick, gutta-percha boot and shoe and belt manufacturers in Glasgow. By his will, dated a few days before his death, he conveyed his whole estate to trustees, and of even date with his will he

executed, as part of his testamentary settlements, a deed of arrangement with regard to carrying on his business, to which he directed his trustees to give effect.

The business had been highly successful, and at Mr Dick's death his capital in it amounted to upwards of £351,000. In order to realise this large sum for his estate it was necessary that the business should be either carried on or sold; and as he had confidence in the heads of the various departments of the business, he devised a scheme by which they were to have a prospective interest in the profits and an opportunity of acquiring the business itself upon paying out this capital.

This was embodied in his deed of arrangement, by the first clause of which he named certain of his employees, to the number of fifteen, to each of whom he allocated a specified number of shares (making one hundred shares in all); and he declared that the provisions of the deed in their favour should not become vested interests until the whole of his capital and interest had been paid out, and that it should not be competent for them to sell or dispose of their interest in the profits or in the business itself on any ground whatever. Further, he directed that if any of them should cease to be an employee, his share should accresce to and be divided among the remaining employees. By the second clause, he directed that interest at the rate of 3 per cent. should be paid to his trustees yearly on the amount of his capital standing in the books; and after allowing for this and for depreciation, the profits were to be divided among the employees in proportion to their shares, "and 10 per centum of such profits shall be paid over to them in cash, and the remaining profits shall not be drawn by the employees but credited to their respective accounts" until the whole of the testator's capital and interest was paid out. It was declared that these remaining profits, being 90 per cent. of the whole, should be accumulated without interest, and form a fund available for the paying out of his capital from the business. By the subsequent clauses it was provided that on the death or bankruptcy of any employee his interest in the business should cease, and that his representatives should only be paid the amount standing at his credit in the books, but postponed to the paying out of Mr Dick's own capital with interest. It is of importance to note the position of the testamentary trustees under this arrangement. While the employees were to carry on the business as it was carried on at the testator's death, the trustees were vested with the exclusive right of granting authority to sign the firm name, of appointing managers and superintendents, and of settling questions as to salaries and wages. To them also was reserved the right to determine how much should be left in the business as working capital, to remove any of the employees from the business, and to decide whether it could no longer be carried on at a profit and ought to be wound up. It was contemplated that ultimately the whole business should be handed over to the employees, but not until the whole of the testator's capital and interest had been fully paid to the trustees, subject to a discretionary power in the trustees to lend part of the capital on the security of the business and assets.

Since the testator's death in 1902 the business has been carried on successfully under this deed of arrangement. The average yearly profits have exceeded £40,000; the testator's capital, which as I have said amounted to over £351,000, is in course of being paid out, and the 10 per cent. of the free profits, amounting to £16,760, has been paid to the employees in cash, over and above their fixed salaries such as they had been when the testator was alive.

It is in these circumstances that the Inland Revenue authorities make the present claim against the testamentary trustees for legacy-duty upon the amount of the 10 per cent. of free profits already paid. The claim is founded on the sixth section of the Legacy Duty Act 1796, read in connection with section 4 of the Stamp Act 1845, a legacy being thereby defined as a gift by the will of any person, which by virtue of such will shall have effect or be satisfied out of the moveable estate of such person. The Lord Ordinary has decided, and in my opinion has rightly decided, that the fund here in question falls within that definition, and that legacy duty is payable by the trustees.

In the first place, it cannot be disputed that the employees take their shares of that fund by and through the will of the testator, for not only does the deed of arrangement itself bear all the characteristics of a testamentary writing, but it is declared to form part of the settlement of his affairs as if it had been embodied in the trust-disposition and settlement, which again in its second purpose refers to the deed of arrangement as a separate testamentary deed, and directs the trustees to carry it out.

Again, the payment has effect and is satisfied out of the moveable estate of the testator. Whatever view may be taken as to the vesting of interests under the settlement, the business, including the goodwill, was and still remains an integral part of his estate, and is carried on by his trustees in pursuance of his testamentary directions. It is true that it is in a sense carried on by the employees. But from the description I have already given from the deed of arrangement, as to the relative positions of the employees of the trustees, it is clear that the business remains vested in and controlled by the trustees, and that the employees are still their servants, and will so remain until the event fixed not by the trustees but by the testator shall arrive and the business shall be transferred. This being so, I cannot accept the argument which was pressed on us by the trustees that the arrangement initiated by the testator is truly an offer of the business for sale to the employees, on favourable terms, and with generous facilities for its acquisition. I think that this view is not maintainable on the facts of the case, and that

it is inconsistent with a sound construction of the deed of arrangement. And I may add that it was distinctly negatived by the other Division of the Court in the case of *Walker* v. *Reith* (1906, 8 F. 381) upon the construction of the same testamentary writings of Mr Dick, which their Lordships had to consider on a question of income-tax.

Then it is said that, assuming the fund in question to be fruits of the testator's estate, it cannot be regarded as a gift, seeing that it is part of the emoluments of the employees, who draw the 10 per cent. of profit only so long as they remain in the service of the firm and draw it year by year as salary. It is pointed out that these employees were in the service of the deceased during his life, and it is said that this new arrangement really amounts to an increased remuneration proportioned to their success in keeping the business going. Now, it must be kept in view that this participation in the profits is arranged not by the trustees but by the testator himself, and is operative by his will; and further, that any employee may leave when he pleases. They find that this very advantageous arrangement has been made for them by the testator to the effect that over and above their former salaries they shall be entitled to this proportion of the net profit so long as they continue at their posts. In other words, they are to share in the profits subject to the condition that they remain in the management of the departments. They draw their share not under any contract with the trustees but under and by virtue of the will, and it is none the less a legacy because it is coupled with a condition. This has been so held in England in a case very similar to the present—the case of *in re Thorley* (1891, 2 Ch. 613), referred to by the Lord Ordinary. In that case a manufacturer by his will directed his trustees to carry on his business in conjunction with his son, each receiving an annual sum of fixed amount out of the profits while they did so. It was held by the Court of Appeal, affirming the judgment of North, J., that the amounts so received were legacies and subject to legacy duty, and it was laid down that there was no difference in such a matter between an annual payment and a lump sum, such as a gift by will to executors for their trouble in performing the trusts of the will, which, it is well settled, is dutiable as a legacy.

For the reasons I have stated I am of opinion that the Lord Ordinary is right, and that we should adhere to his interlocutor.

LORD KINNEAR—I concur.

LORD M'LAREN—The LORD PRESIDENT authorised me to say that he concurred. I myself did not hear the case.

The Court adhered.

Counsel for the Defenders (Reclaimers)—Clyde, K.C.—Cullen, K.C.—Scott Brown. Agent—Henry Robertson, S.S.C.

Counsel for the Pursuer (Respondent)—The Solicitor-General (Ure, K.C.)—A. J. Young. Agent—The Solicitor of Inland Revenue.

Wednesday, March 20.

FIRST DIVISION.

[EXCHEQUER CAUSE.]

[Lord Johnston, Ordinary.

INLAND REVENUE *v.* THE EARL OF BUCHAN.

Revenue—Succession Duty—Entail—Propulsion of Estate—Disentail following on Propulsion—"Devolution by Law"—Extinction of Prior Interest—Succession Duty Act 1853 (16 *and* 17 *Vict. cap.* 51), *secs.* 2 *and* 15.

A, an heir of entail in possession under an old entail, in 1872, for certain considerations and in pursuance of an agreement, granted a deed of propulsion of the entailed estate in favour of B, his son, the heir apparent, born after 1848. In 1875, when B attained the age of twenty-five, on the application of A and B, and the narrative that A had propelled the estate, and that B consented, the Court authorised a disentail of the estate.

After the death of A in 1898, the Crown having claimed succession duty on B's succession to A in respect of the estate so propelled—*held* (*rev.* the Lord Ordinary, Johnston) that a succession had been established by devolution of law under the entail, and that succession duty was payable thereon in terms of the Succession Duty Act 1853, secs. 2 and 15.

Earl of Zetland v. *Lord Advocate*, February 12, 1878, 5 R. (H.L.) 51, 15 S.L.R. 373; and *Northumberland* (*Duke of*) v. *Attorney-General* [1905], A.C. 406, *commented on* and *applied*.

Entail—Succession—Propulsion of Estate—Deed of Propulsion.

Examination of the *history*, *nature*, and *legal effect* of a deed of propulsion.

The Succession Duty Act 1853, which by section 1 provides that the term "succession" shall denote any property chargeable with duty under the Act, enacts—Section 2—"Every past or future disposition of property, by reason whereof any person has or shall become beneficially entitled to any property or the income thereof upon the death of any person, . . . and every devolution by law of any beneficial interest in property or the income thereof upon the death of any person . . . to any other person in possession or expectancy, shall be deemed to have conferred or to confer on the person entitled by reason of any such disposition or devolution, a 'succession,' and the term 'successor' shall denote the person so entitled, and the term 'predecessor' shall denote the settler, disponer, testator, obligor, ancestor, or other person from whom the interest of the successor is or shall be derived." Section 15—"Where . . . any reversionary property expectant on death shall be vested, by alienation or other derivative title, in any person other than the person who shall have