nary shareholders. But if the preference dividend can be paid in full, then the company in paying the Colonial income tax only represents the ordinary shareholders, from whose share of the profits the whole Colonial income tax is in that case paid, their profits being proportionately diminished, and to whom the whole income of the company, whether derived from ordinary trading or from a windfall like this allowance, belongs so far as it is not necessary for payment of current or previous unpaid preference dividend. The second parties plausibly argued—taking what they called a large view of the statute—I should prefer to call it a jury view—which, of course, is inadmissible in construing a Revenue statute—that because the company pays the 5s. United Kingdom income-tax as and for all its shareholders, it equally collects recoupments as and for the whole body. But if I am correct in my interpretation of the statement of the facts, the recoupments are only allowed to those shareholders, or to the company as representing those shareholders, who have paid the Colonial income tax, and the second parties, the company's preference shareholders, have not done so directly or indirectly.

For these reasons, whether regard be had to the purpose of the Statute of 1916, its spirit, or its terms, I think the first parties acted rightly in deducting 5s. per £ when they paid the preference shareholders their four per cent. dividend.

LORD SALVESEN was not present.

The Court answered the first alternative of the question in the affirmative and the second in the negative.

Counsel for the First Party—Lord Advocate (Clyde, K.C.)—Sandeman, K.C.—C. H. Brown, K.C.—Douglas Jameson. Agents—J. & J. Ross, W.S.

Counsel for the Second Party—D.-F. Murray, K.C.—Macmillan, K.C.—A. C. Black. Agents—Cowan & Dalmahoy, W.S.

Friday, October 24.

SECOND DIVISION.

CRAW'S TRUSTEES *v.* BAIRD AND OTHERS.

Succession — Testament — Construction of Testamentary Writings — "Property"—"Residue"—Inclusion of Heritage—Titles to Land Consolidation (Scotland) Act 1868 (31 *and* 32 *Vict. cap.* 101), *sec.* 20.

By her holograph will a testatrix left pecuniary and specific legacies and also a bequest in the following terms:—"My dear friend Miss Annie Comrie of Stenhouse for the kindness she has to me I leave the residue of my property." The testatrix owned a house which she did not live in, but she was aware that she owned it, and she was also aware of the amount of her moveable estate. The total amount of the pecuniary legacies was greater than the amount of the moveable estate. *Held* that the words "the residue of my property" were habile to convey the heritage, and in the circumstances did include the house in question.

Peter Jolly Purves and others, trustees and executors of Mrs Jane Blacklock or Craw, *first parties*, Miss Mary Baird and others, legatees, *second parties*, Miss Annie Comrie, residuary legatee, *third party*, and Donald Blacklock, heir-at-law, *fourth party*, brought a Special Case to determine whether the holograph will of Mrs Craw applied to a house left by her.

Mrs Craw died on 1st December 1917 leaving a holograph will and codicil in the following terms:—"I hereby revoke my former will. I have already given instructions about my interment. I wish £400 (pounds) to be given to my good friend Miss Mary Baird, or failing her sister Grace Baird, both of 17 Hatton Place, free of legacy duty, also my eight-day clock. £100 (pounds) to be given to Mrs Blacklock (my sister-in-law) of 66 Brunswick St., also free of legacy duty. £10 (pounds) to Miss Bella Gray in recognition of her devotion to her mother, my dear friend, also free of legacy duty. Mrs Brodie, 30 Sciennes Rd., to get all the things on the top of the bureau, also tea-caddy on top of bookcase. My rings on my left to Mrs Brodie, also bracelet on my arm. Miss Grace Baird to get rings on right hand, also my gold chain and appendages. My small work table (at my bedside) to Mrs Purves, 24 Howard Place, small table with china with contents above and below. Also bookcase and contents to her husband, my good friend, with boxes on top, also large china plate, also china cabinet with contents, also the things on top. All my pictures to Mr Purves, with 2 miniatures and brooch and china ornament, also silver candlesticks. Three old chairs to Mrs Purves. Three vases on mantelpiece with my three brooches to Miss Grace Baird, along with my bureau. The rent and taxes to be paid in the house I die in, and Miss Henderson to get the option of staying on. Also she gets all my other belongings in the house which she has got already in lieu of the small salary she has got from me. My dear friend Miss Annie Comrie of Stenhouse for the kindness she has to me I leave the residue of my property. Omitted on previous page: flower stand with contents to Mrs Brodie, and lace flounce (my own work) sewed on curtain to Mrs Purves, 24 Howard Place. Written 31st March 1917. 7 Roseneath Ter. JANE CRAW (Mrs).

"3rd April 1917.

"*Codicil to my Will.*

"Omitted. Old-fashioned chest of drawers in bedroom to the aforesaid Mrs Purves, also my silver tea set and 6 dessert and 1 table spoon, silver, to Mrs Purves, also large flower-pot on floor in room. 6 dessert spoons to Miss Grace Baird. Residue of furniture to Miss Henderson. Mr Purves, 44 Queen St., trustee and executor. Miss Grace Baird, co-trustee. JANE CRAW."

The Special Case set forth—"2. The testatrix was at the date of her death possessed of moveable estate amounting in value to £266, 18s., of which £110, 19s. represented the value of her furniture, silver plate, china, and household effects, leaving £155, 19s. as the value of her other moveable assets, subject to payment of debts, estate duty, &c. She was also the owner of the house 25 Grange Road, Edinburgh, which according to the provisional valuation thereof was of a gross value of £900. . . . 4. All the legatees mentioned in the said will and codicil are strangers in blood to the testatrix, but the said Margaret Haggart or Blacklock is the widow of one of the testatrix's brothers, and the said Peter Jolly Purves is a relative of the first wife of the said John Craw, the testatrix's husband. The testatrix had no children. She was survived by a brother Richard Blacklock and a sister Mary Annie Blacklock, but by her said will and codicil she left no bequest to either of them. 5. The first parties accepted office as trustees and executors under the said holograph will and codicil, and were duly confirmed as executors conform to testament-testamentar by the Sheriff of the Lothians and Peebles in their favour, sealed 8th February 1918. They realised two Commercial Bank shares belonging to the testatrix, paid the Government duties and most of the testatrix's debts and funeral expenses, and delivered to the legatees to whom the same were bequeathed by the said will and codicil the household furniture, silver plate, china, and other moveable articles specifically bequeathed to them respectively. 6. The said pecuniary legacies amount together to £510. The testatrix was aware that her moveable estate amounted to about £266, 18s. So far as known the testatrix did not consult any law agent in regard to her will, and did not have any professional assistance in the preparation thereof. 7. The question has now arisen whether the said will and codicil are habile to convey the house 25 Grange Road, Edinburgh, to the first parties for the purposes thereof or to the said Annie Comrie. The said Annie Comrie does not dispute that if the said house falls to her as part of the residue of the testatrix's estate it does so subject to the payment of the pecuniary legacies bequeathed by the testatrix to the second parties in so far as the testatrix's moveable estate is insufficient to pay the same."

The *questions of law* were—"1. Are the terms of the testatrix's will habile to convey her heritage? or 2. Is the fourth party, as the testatrix's heir *ab intestato*, entitled to the said heritable estate?"

Argued for the second and third parties—It was not necessary that there should be a direct conveyance of heritage. It was sufficient if the language of the will imported a conveyance of the heritage. The word "property" implied a conveyance of the heritage. "Property" was the word ordinarily used by laymen to describe heritage. If a testator declared his mind with respect to his "property" or "estate," it was reasonably certain that he meant to dispose of his heritable property if he had any—M'Laren, Wills and Succession, vol i, p. 333; *Oag's Curator* v. *Corner*, 1885, 12 R. 1162, 22 S.L.R. 784, *per* Lord Young at 12 R. 1163, 22 S.L.R. 785. The present case was a stronger one than *Smith's Executors* v. *Smith*, 1918 S.C. 772, 55 S.L.R. 716 (*v.* especially the opinion of Lord Guthrie at 1918 S.C. 780, 55 S.L.R. 720). There was a strong presumption against intestacy. All the pecuniary legacies were to strangers. From this fact it must be inferred that the testatrix did not wish her relatives to benefit, but if the heritage were held to be undisposed of estate, it would fall to the heir-at-law. *Urquhart* v. *Dewar*, 6 R. 1062, 16 S.L.R. 602; *Bryden* v. *Cormack*, 1913 S.C. 209, 50 S.L.R. 76; and *Woodard's Judicial Factor* v. *Woodard*, 56 S.L.R. 214, were referred to.

Argued for the fourth party—The result of the decisions was that neither the word "residue" nor the word "property" necessarily implied that heritage was disposed of. If a testator were dealing with moveable property in the antecedent part of a will, the word "remainder" meant "remainder of moveable property." The word "residue" was not generally applied to heritage in an estate consisting of both heritage and moveables unless there was a power to sell the heritage—*Bell and Others* v. *Bell and Others*, 1906, 14 S.L.T. 244, *per* Lord Ardwall at p. 246. The word "property" had a narrower meaning than the word "estate," and it must be discovered from the antecedent clauses what the word was meant to cover—*Urquhart* v. *Dewar* (*cit.*), *per* Lord President (Inglis) at 6 R. 1032, 16 S.L.R. 605; *Crowe* v. *Cook*, 1908 S.C. 1178, 45 S.L.R. 904, *per* Lord M'Laren at 1908 S.C. 1183, 45 S.L.R. 907. If the word "property" were coupled with the word "remainder," or, as here, the word "residue," the word "property" meant moveable estate. The clause containing the conveyance occurred amongst clauses dealing with moveables, and accordingly there was an inference that the conveyance was a conveyance of moveables — *Woodard's Judicial Factor* v. *Woodard*, and *Bryden* v. *Cormack*.

LORD DUNDAS—The opinion I have formed in this case is that the will is habile to convey heritage. It is a holograph one and begins by revoking her former will. Then there are a number of pecuniary legacies left amounting to £510, followed by a number of bequests of furniture, plate, china, and so on. Then comes this clause—"My dear friend Miss Annie Comrie of Stenhouse for the kindness she has to me I leave the residue of my property." The codicil merely contains certain gifts of specific articles, the residue of furniture to Miss Henderson, and Mr Purves is appointed trustee and executor, and Miss Barr co-trustee.

Now according to the agreed facts the moveable estate amounted in value to £266, 18s., of which £110 represented the value of the furniture and effects. It is not stated in the Case, but I rather understood from the bar, that the whole of the furniture and effects was dealt with by the will, and if so the balance of the moveable

estate would be only £155 odds, but at the most the moveable estate amounts to not more than £266 odds. The lady was also owner of a house in Edinburgh, which was valued at £900, and the question is whether or not that house is carried by the will.

It appears that she did not herself live in the house, but we are told, though I do not think it is actually stated in the Case, that it was a source of revenue to her, being let during her lifetime. It is further stated in the Case that the testatrix was aware that her moveable estate amounted to about £266, 18s., and no more.

On these facts it appears that if the house was not intended to be carried by the testament there would be at most between £200 and £300 available to meet the actual money legacies of considerably over £500, and no residue would be left. It seems to me that a very strong inference arises — a very strong presumption indeed—that the testatrix did intend to deal with her heritage by the will which she left.

The word "property" undoubtedly comprehends, though it is not necessarily confined to, heritage. Some cases were referred to, but I doubt if one gets very much light from them, because after all they are only illustrations of how general principles of law, well enough recognised, have been applied to varying conditions, sometimes very peculiar conditions, of wills and the facts surrounding their execution.

My opinion therefore is that we ought to answer the first question in the affirmative and the second in the negative.

LORD SALVESEN—I agree. I think it is quite plain what the testatrix intended, and I think the words she used in the course of her holograph will are sufficient to enable us to give effect to her intention.

LORD GUTHRIE—I agree. I think if you take the words by themselves without reference to the results and without reference to the context the expression "I leave the residue of my property," or "I leave all my remaining property or estate," would cover heritage as well as moveables. For instance a will expressed thus, "I order my trustees to pay my debts, and I leave the residue or remainder of my estate to A B," would cover heritage as well as moveables, because there is no context there to induce any other view, and I am assuming no surrounding circumstances to disturb that reading. The facts in this case convince me that any other result than that at which your Lordships propose to arrive would defeat the intention of the testatrix.

The LORD JUSTICE-CLERK was absent from the Division, being engaged in the Privy Council.

The Court answered the first question in the affirmative and the second in the negative.

Counsel for the First, Second, and Third Parties — Garrett. Agents — Mitchell & Baxter, W.S.

Counsel for the Fourth Party—Macgregor Mitchell. Agent—W. S. M'Blain, Solicitor.

HIGH COURT OF JUSTICIARY.

Thursday, October 30.

(Before Lord Dundas, Lord Salvesen, and Lord Guthrie.)

FYFE *v.* JOHN MENZIES & COMPANY, LIMITED.

Justiciary Cases—Statutory Offence—Shops Act — Weekly Half-Holiday — Sale of Tobacco and Smokers' Requisites—Railway Bookstall—Shops Act 1912 (2 *Geo. V, cap.* 3), *sec.* 4 (1), (2), *and* (6), *and Second Schedule.*

A company which carried on the business of railway bookstalls included in the articles sold by them tobacco and smokers' requisites. In pursuance of their powers under the Shops Act 1912 the local authority for the district where one of the bookstalls was situated made an Order extending the provisions of section 4 (weekly half-holiday) to shops within the area in which the sale by retail of tobacco and smokers' requisites was carried on. The Second Schedule to the Act expressly exempted from its operation the business carried on at a railway bookstall. *Held* that the company's business was not affected by the Order.

The Shops Act 1912 (2 Geo. V, cap. 3) enacts —Section 4—"(1) Every shop shall, save as otherwise provided by this Act, be closed for the serving of customers not later than 1 o'clock in the afternoon on one week day in every week. (2) The local authority may by order fix the day on which a shop is to be so closed (in this Act referred to as 'the weekly half-holiday'), and any such order may either fix the same day for all shops, or may fix — (*a*) different days for different classes of shops . . . : Provided that . . . no such order shall be made unless the local authority, after making such inquiry as may be prescribed, are satisfied that the occupiers of a majority of each of the several classes of shops affected by the order approve the order. . . . (6) This section shall not apply to any shop in which the only trade or business carried on is trade or business of any of the classes mentioned in the Second Schedule to this Act, but the local authority may, by order made and revocable in the manner hereinafter provided with respect to closing orders, extend the provisions of this section to shops of any class exempted under this provision if satisfied that the occupiers of at least two-thirds of the shops of that class approve the order. . . ." Second Schedule—"Trades and businesses exempted from the provisions as to weekly half-holiday. . . . . The sale of newspapers and periodicals. . . . . The sale of tobacco and smokers' requisites. The business carried on at a railway bookstall on or adjoining a railway platform."

In pursuance of their powers under section 4 (6) above quoted the Corporation of the City of Glasgow made the following Order: — "1. The provisions of section 4