

shareholders would have derived the very same amount of benefit from the presence of the new shareholders, and yet it cannot be maintained by Mr Smith that he would have had any remedy, because the statute does not contemplate anything like a repayment by one set of shareholders to another, or any adjustment of their rights *inter se* unless there is a surplus.

"It would be a strange and anomalous result if the new shareholders were entitled to get entire repayment of all that they have paid merely through the accident of there being a surplus. That is a result which one would be very slow to arrive at on the construction of the statute, and, for my part, I am of opinion that section 109 affords no warrant for such a construction. It is under that section alone that the present question now arises, and this Court has no power to distribute the surplus except in terms of the Act of Parliament. The provisions of that section are that the Court shall adjust the rights of the contributories and distribute any surplus that may remain amongst the parties entitled thereto. If Mr Smith's contention had been correct I should have expected that the rich and varied experience of the English Courts would have afforded some example of the course which he contends for having been followed. But admittedly there is no such instance in the books. I do not say that that is conclusive, but I say, upon the best consideration which I have been able to give to the words of the 109th section, that what is there contemplated is the adjustment of the rights of contributories in their character as such. If the constitution of the company gives any kind of preference to one set of shareholders over another, that preference ought to receive effect in the final distribution, or if any sum is due to any contributory in his character as a member of this company for which he could not get credit while the outside creditors were unpaid, such sum may be taken into account at the final adjustment of the rights of contributories among themselves. But the section does not contemplate anything like an adjustment of collateral questions among the contributories. The ground upon which a preference is asked here is that the directors were truly the agents of the old shareholders, and that the old shareholders are now proposing to take benefit by the fraud which their agents committed. Now, that is a matter entirely outside the constitution of the company, and antecedent to the position of the new shareholders as contributories. I am by no means satisfied that the directors were the agents of the old shareholders. They were agents of the company, but the company has, except for purely technical purposes, ceased to exist, and I do not see that the old shareholders as individuals can be said to be responsible in law for the fraud of the directors, although the company itself while it was a going concern may have been. Both on principle, therefore, and upon the construction of the

statute, it seems to me that the course which Mr Smith proposes is altogether inadmissible, and that the mode of distribution which the liquidators propose is the proper one."

Counsel for Rev. Anderson Smith—Sym. Agents—Pringle, Dallas, & Company, W.S.

Counsel for the Liquidators—C. Scott Dickson—John Wilson. Agents—Morton, Smart, & Macdonald, W.S.

Counsel for Wood—Ure—Guy. Agent—George A. Munro, S.S.C.

## HOUSE OF LORDS.

Tuesday, March 6.

(Before the Lord Chancellor (Lord Herschell), and Lords Watson, Ashbourne, and Morris.)

THE LORD ADVOCATE *v.* BOGIE AND OTHERS (METHVEN'S TRUSTEES).

(*Ante*, February 28, 1893, 20 R. 429, and 30 S.L.R. 454.)

*Revenue—Inventory Duty—Double Duties—Legacy to Deceased Person's Executors, whether Two Duties Claimable—48 Geo. IV. cap. 149, secs. 13 and 38—55 Geo. III. cap. 184, sec. 37—8 and 9 Vict. cap. 76, sec. 4—23 Vict. cap. 15, sec. 4—44 Vict. cap. 12, sec. 32.*

A testatrix bequeathed the residue of her moveable estate to R M, and other two persons "equally, share and share alike, and failing all or any of them by their predeceasing me, to their several and respective executors and representatives whomsoever, whom I do hereby appoint to be my residuary legatees." R M predeceased the testatrix leaving a will by which he nominated executors and directed them to invest the residue of his estate for the life of his brother, and thereafter to divide the fee among certain charities.

On the testatrix's death her executors paid inventory and legacy-duty on R M's share of residue, on the footing that it was a direct bequest from her to his executors, but the Crown claimed the same duties from R M's executors, on the ground that the third of the residue had been disposed of by his will.

*Held (aff.)* the judgment of the First Division) that the one-third share of residue was not chargeable with a second duty as a legacy under R M's will, in respect that he was not empowered by the will of the testatrix to dispose of her estate.

This case is reported *ante*, vol. xxx. p. 454, and 20 R. 429.

The Lord Advocate appealed.

At delivering judgment—

LORD CHANCELLOR—My Lords, the question raised in the present case is, whether inventory-duty and legacy-duty are to be paid in respect of a certain part of the estate of Miss Scott which passed to the executors of Mr Robert Methven?

Robert Methven left a trust-disposition and settlement and died. By this trust-disposition and settlement the defenders were his trustees and executors, and became entitled to his heritable and moveable estate. Miss Scott, who had made a trust-disposition in the lifetime of Robert Methven, by that disposition provided with regard to the free residue of her whole moveable estate and effects in these terms—“I leave and bequeath the same to the said Robert Methven, Robert Russell, and James Russell, equally between and amongst them, share and share alike, for their own use and behoof, and failing all or any of them by their predeceasing me, to their several and respective executors and representatives whomsoever, whom I do hereby appoint to be my residuary legatees.” Of course there is no question that inventory-duty must be paid upon the third of the residue which is now in question passing under Miss Scott's will, and there is no question that legacy-duty must be paid in respect of the disposition to which I have just called your Lordships' attention. The question is, whether a second duty is payable?

Miss Scott survived Robert Methven, and therefore the gift to him personally never took effect. At the time from which her will must be regarded as speaking, Robert Methven was dead. His estate had passed under this trust-disposition to his executors, and was then ascertained. It has been held—and it is not now in dispute—that the effect of Miss Scott's trust-disposition was not to vest in the executors of Robert Methven, the defenders and the respondents here, a beneficial interest in the property left by Miss Scott, namely, one-third of her residue, that what they took they took as executors, and that they were bound to deal with this third of the residue in precisely the same way as they had to deal with the estate which had passed to them under Robert Methven's will.

Under these circumstances it is contended on behalf of the Crown, who are the appellants at your Lordships' bar, that inventory-duty is payable in respect of the moneys which thus came to the executors of Robert Methven as part of Robert Methven's estate, and that legacy-duty is payable by the beneficiaries under Robert Methven's will, who of course will take by virtue of this disposition of Miss Scott's the money which so passes to the executors of Methven.

My Lords, it may be that under circumstances such as I have detailed to your Lordships, it would be neither unreasonable nor unjust that this second duty, as it is called, should become payable, but with that your Lordships have not to deal. It can only be payable if it falls within the

taxing provisions which have been enacted by the Legislature with reference to inventories and legacies.

The Stamp Duties Act of 1815 defines as the estate liable to inventory-duty or probate-duty “the personal estate and effects of any person deceased.” Now, the contention on behalf of the appellants is that the effect of Miss Scott's disposition, coupled with Methven's, was to make this third of the residue of Miss Scott's estate part of the personal estate and effects of Robert Methven. Of course it had never belonged to Robert Methven; at the time of his death it could in no sense be said to be his or any part of his estate. The contention is that the effect of Miss Scott's disposition is to add it to his personal estate, and to make it as much a part of his personal estate as if it had belonged to him in his lifetime. The only question which your Lordships have to consider is, whether it has been in that sense so completely made a part of his personal estate as that within the words of the Stamp-Duties Act, which I have read, it must be regarded as part of “the personal estate and effects of the deceased.”

My Lords, the will of Miss Scott, as I have said, must be taken as speaking from the time of her death, and it appears to me to be precisely the same as if she in her lifetime had given the money to the executors of Methven to be used by them as executors in the same way as the other money which came to them as executors. I cannot think that there is any difference because she made this disposition by will, because in her will she had made Robert Methven himself a beneficiary in case he had survived her. One must look at the state of things at the time from which the will speaks.

Now, I think that the effect of her disposition was so to vest this money in the persons who were to administer Robert Methven's estate as that they would have to administer it precisely as if it were part of Robert Methven's estate. I will go so far as to assume that, so far as it was possible for her to do so, she made it a part of his personal estate. But admitting all that, it does not follow that the legal effect of what she did was to make it for the purposes of this statute that which it really was not, a part of “the personal estate of the deceased,” which, *prima facie*, means the personal estate which has been his. For many purposes it would no doubt be regarded in precisely the same way, but the learned Lord Advocate said that the question was whether it was impossible for her to make it so. It seems to me, however, that the question rather is, whether what she has done necessarily has the effect of making it a part of the personal estate of the deceased within the meaning of the statute. If it has, of course the duty follows; but I cannot think that this is the result. It seems to me that the effect cannot be said to be more than this—it is to be held by the same persons and administered in the same way, dealt with altogether as if it were part of the

personal estate, but I do not think that it makes it part of the personal estate, or could make it part of the personal estate within the meaning of this statute. And, my Lords, it seems to me difficult to resist that conclusion when it was admitted (or perhaps I should hardly say admitted) by the Lord Advocate that if different words, having precisely the same effect, had been used by Miss Scott, a duty would not have been payable; he admitted that if she had described in different words what is said to be the legal effect as to the persons to administer, the mode of administration and the persons who would benefit, it would have been difficult to contend that it would then have become a part of his personal estate. It seems to me that the only difference which can be suggested would have been that in the one case the duty would have been payable, and in the other it would not, although precisely the same legal result had been brought about by the use of different words.

My Lords, I think that the view which I have put before your Lordships is strongly confirmed by the statutes to which attention has been called. So far as I am aware, the first statute which made an inventory obligatory is the 48th of Geo. III. cap. 149, section 38, which provides in respect of any person dying after the 10th October 1808 having personal or moveable estate or effects in Scotland, that before they are dealt with there shall be "a full and true inventory" on oath, containing a statement "of all the personal or moveable estate and effects of the deceased already recovered or known to be existing." Of course that would have been satisfied in this case by an inventory made out shortly after Robert Methven's death and before Miss Scott's death upon obtaining confirmation. The statute proceeds to deal with cases which of course would frequently occur, in which, although a full statement was made of all the estate and effects of the deceased then known, it should be afterwards discovered that there was some property forming part of that estate which had not been known at the time when the inventory was made.

Then the statute proceeds in these terms—"If at any subsequent period a discovery shall be made of any other effects belonging to the deceased, an additional inventory of the same shall be in like manner exhibited," and there are very considerable penalties imposed if that is not done. The statute therefore appears to contemplate that all that is required to supplement an honest statement of the property of the deceased in the first instance, is a further statement of any property subsequently discovered "belonging to the deceased." Now, my Lords, whatever may be the case with regard to the expression "personal estate and effects of the deceased," which can conceivably be regarded as an entity that may be added to, it seems to me impossible to contend that the words "belonging to the deceased" could have any application to a property

which never belonged to him, and which was, as is suggested, added to his personal estate after his death. Those words occurring in the later part of the section appear to me to be very cogent in the interpretation of the earlier words of the section, which indicate the nature of the property that is to be included in the inventory, and strongly support the view that it would not include that which a person took steps to make, and intended to make, so far as could be done, a part of the personal estate and effects of the deceased.

In the subsequent Act, the Act of 1881, which provides also for the payment of further probate-duty, it is enacted in section 32 that "if at any time it shall be discovered that the personal estate and effects of the deceased were, at the time of the grant of probate or letters of administration, of greater value than the value mentioned in the certificate," then "the person acting in the administration of such estate and effects shall within six months after the discovery deliver a further affidavit." There, again, the test is made "the personal estate and effects of the deceased at the time of the grant of probate," and that provision would clearly be inapplicable to the case, where, after the grant of probate owing to the dispositions of the will of another person, money or property was, in the way suggested, added to the personal estate, because of course, it would not come within the words "were at the time of the grant of probate of greater value than the value mentioned in the certificate."

My Lords, for these reasons I think that the taxing clauses do not apply to the portion of Miss Scott's estate which came to the executors of Mr Methven; and all the illustrations which have been put and all the questions which have been asked, really seem to me to depend upon the answer to that question. If, within the Act, it has become part of the personal estate and effects, then no doubt probate would be required to make title to it. If it has not so become part of the estate, then probate would not be required to make title. When once that question is answered, all the other questions seem to be answered fully and without difficulty.

I will not detain your Lordships more than a moment upon the suggestion that if it is not within the words of the statutes I have quoted, it is within the words of the Stamp-Duties Act of 1860. It seems to me impossible to say that it was any part of "the personal or moveable estate and effects which" a person "shall have disposed of by will under any authority enabling such person to dispose of" as he thought fit.

The only question remaining is, whether the beneficial interest can be regarded as subject to the payment of legacy-duty by the beneficiaries. That depends upon the construction of the Stamp-Duties Act of 1845, which defines as a legacy liable to duty "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." It seems to me impossible to say that any moneys which may be received by virtue of the dispositions which have been under consideration, by the persons who are named as beneficiaries in Mr Methven's will who in consequence of Miss Scott's disposition would take certain further benefits, are received as gifts by Mr Methven's will, which by virtue of that will are payable out of any personal estate of his, or any "personal estate" over which he had "power to dispose of."

For these reasons I move your Lordships that the judgment appealed from be affirmed, and the appeal dismissed with costs.

LORD WATSON—My Lords, I also am of opinion that the judgment appealed from ought to be affirmed. I do not wish to suggest that Miss Scott could not have made such a disposition by her will in favour of the beneficiaries under the executory of Robert Methven as would have entitled the Crown to claim payment of duty. She unquestionably could have directed the trustees of Methven, whom she made her executors, to pay these duties to the Crown; and that direction would have been as imperative as any other direction to be found in her bequest. I do not think it is necessary to speculate how far she could have accomplished that object of making the Crown entitled to these duties by an endeavour to give her estate in such terms as would make it an estate which had belonged to the deceased at the time of his death, or would make it so much a part of the estate which he left as to put it in the same position under these statutes as if it had in point of fact belonged to him. I am satisfied that none of these things was either done or attempted here. Miss Scott created, according to my view, a new trust in the persons of Methven's executors, the purpose of the trust being not that the fund which she committed to them should become part and parcel of the deceased's estate—Methven's estate—or to suggest that it had ever belonged to him, but in order that it might be administered by the trustees as a separate estate, separate from his but in the same manner and subject to the same conditions as if it had originally been the property of Methven himself.

LORD ASHBOURNE—My Lords, I entirely concur. The claim of the Crown is practically for the recovery of a double duty, and for the reasons stated by the Lord Chancellor, I think their case has entirely failed.

LORD MORRIS—My Lords, I concur.

Their Lordships affirmed the judgment appealed from, and dismissed the appeal with costs.

Counsel for the Appellant—The Lord Advocate (J. B. Balfour, Q.C.)—The Solicitor-General (Sir John Rigby, Q.C.)—Patten - Macdougall. Agent—Sir W. H. Melville, Solicitor for England of Board of Inland Revenue, for P. J. H. Grierson, Solicitor for Scotland of the Board.

Counsel for the Respondents—Sir Henry James, Q.C.—Lorimer—T. Shaw—James S. Henderson. Agent—D. E. Chandler, for William Black, S.S.C.

## COURT OF SESSION.

Tuesday, March 20.

### FIRST DIVISION.

[Court of Exchequer.

M'DOUGALL (SURVEYOR OF TAXES)  
v. SUTHERLAND.

*Revenue—Income-Tax—Income-Tax Act 1842 (5 and 6 Vict. cap. 35), sec. 167, Schedules A and E—Customs and Inland Revenue Act 1876 (39 and 40 Vict. cap. 16), sec. 8—Emolument—Abatement on £120 on Incomes under £400.*

The minister of a Free Church of Scotland who had an income of £364, 10s., occupied rent free a manse, the annual value of which was £50. He was entered in the valuation roll as proprietor of the manse, although in point of fact the manse was vested in trustees for behoof of the congregation. If the annual value of the manse was added to his income it exceeded £400, but if otherwise, it was only £364, 10s., on which income (less £15 for life insurance) he was assessed under Schedule E. He appealed against this assessment. He maintained that the annual value of the manse was not part of his "income" in the sense of the Income-Tax Acts, that his income was therefore less than £400, and therefore that he was entitled to the abatement on £120 allowed by these Acts on incomes under £400.

*Held* that the annual value of the manse did not fall to be included in reckoning his income, that therefore it did not exceed £400, and that he was entitled to the abatement.

*Tenant v. Smith*, March 14, 1892, 19 R. (H. of L.) 1, *followed*.

The Customs and Inland Revenue Act 1876 (39 and 40 Vict. cap. 16), sec. 8, provides—  
"The following relief or abatement shall be given or made to a person whose income is less than four hundred pounds—that is to say, any person who shall be assessed or charged to any of the duties of income-tax granted by this Act, or who shall have paid the same, either by deduction or otherwise, and who shall claim and prove in the