satisfied that the judgment of the learned Judges in the Court of Session, rested as it is upon the proviso in section 19, is not sound and sufficient for the decision of the case.

LORD RUSSELL—My Lords, I agree.

LORD CHANCELLOR — My Lords, your Lordships in the course of the argument indicated somewhat clearly that the other point taken by the appellants was wholly untenable (I ought to have alluded to it before), the question being whether money which was expended in building a house upon land can be treated as coming under the words "purchase of real estate." It seems to me that whatever argument may be used for the purpose of showing that the result is the same as if the land with the house on it had been purchased and that it is hard that the incidence of the tax should be different, it must be remembered that in construing a taxing statute such as this your Lordships have to be guided by the words used, and it would be doing them violence almost amounting to an outrage if the words were held to cover such a case as this.

The House affirmed the decision of the First Division and dismissed the appeal with costs.

Counsel for the Appellants—Sir R. Webster, Q.C. — Henry Johnston — Pitman. Agents—Grahames, Currey, & Spens, for J. & F. Anderson, W.S.

Counsel for the Respondent—The Lord Advocate (J. B. Balfour, Q.C.)—Solicitor-General for Scotland (T. Shaw, Q.C.)—Patten-Macdougall. Agents—Sir W. H. Melvill, for P. J. H. Grierson, Solicitor for the Board of Inland Revenue in Scotland.

Monday, June 4.

(Before Lords Watson, Ashbourne, Macnaghten, Morris, and Shand.)

HAMILTON *v.* RITCHIE.

(*Ante*, p. 374, and 21 R. 451.)

Succession—Vesting—Substitution—General Disposition—Special Destination.

A died leaving a holograph settlement entitled "Notes of intended settlement," by which he gave the liferent of his whole estate, heritable and moveable, to his widow. By the said deed he also left to his nephew B his estate of Bankhead, but wished it to be expressly understood that in the event of B dying without leaving any lawful male heir of his body, then and in that event the lands of Bankhead were to revert to his nephew C.

B survived A, and died leaving a widow, but without issue. By his trust-disposition he conveyed to trustees for the purposes therein mentioned "all and sundry the whole means and estate, heritable and moveable, real and personal of every kind and description, and wherever situate, at present belonging or that may belong to me at the time of my decease.

Held (*aff.* the decision of the Second Division) that the estate of Bankhead had vested in B *a morte testatoris*, and was conveyed to B's trustees by his trust-disposition.

This case is reported *ante*, p. 374, and 21 R. 451.

Hamilton appealed.

At delivering judgment—

LORD WATSON — This appeal raises a question upon the construction of a clause in the settlement of the late Mr Walter Whyte of Bankhead. The general scheme of that instrument is that Mr Whyte upon his death, which occurred in 1873, gave the liferent of his entire estate, heritable and moveable, to Mrs Margaret Pollok or Whyte, his spouse, who survived him. The interest of the widow was burdened by an annuity of £300 in favour of Mrs Hamilton, one of the testator's sisters. After that bequest he provides that on the death of his wife the annuity to Mrs Hamilton is to cease, and that in lieu of that annuity she is to take a liferent of two properties which are destined, one to her son John, the appellant in this case, and the other to her son James Hamilton, in fee. I do not think it has been seriously disputed that the fee which is destined to the two Hamiltons vested in them *a morte testatoris*.

Then follows the clause which we have to construe. That, again, is followed by a direction, that at the death of his wldow his moveable estate shall be equally divided between the families of his two sisters Mrs Watson and Mrs Hamilton.

The clause which has given rise to the present litigation is in these terms—"I also leave to my nephew James Francis Watson, presently residing at Ardmore House, in the parish of Cardross, Dumbartonshire, my estate of Bankhead, situated in the parish of Rutherglen and county of Lanark; but I wish it expressly understood, that in the event of my said nephew James Francis Watson dying without leaving any lawful male heir of his body, then and in that event my said lands of Bankhead are to revert back to my said nephew John Hamilton.

The circumstances which have occurred are these—James Francis Watson survived the testator, but predeceased his widow, and when the widow's liferent came to an end by her decease, the estate of Bankhead was claimed by the present appellant upon the footing that James Francis Watson's predecease of the widow prevented his taking any interest whatever, in the succession, and also that these words, "then and in that event my said lands of Bankhead are to revert back to my said nephew John Hamilton," ought to be read, not as a clause of reversion intended to bring back an estate which had been taken during his lifetime by James Francis

Watson, but as being intended to operate as a simple gift over upon the widow's death in the event of Watson having predeceased that term.

When the clause is taken by itself, nothing can be clearer to my mind than the intention of the testator. I do not say that a testator who writes his own will, and is not a lawyer, is in all cases to be held to have rightly apprehended the meaning of technical words which he may have used on the occasion of making his will; but I think it is plain that a testator who uses words which have an intelligible conventional meaning is not to be held as having used the words with any other meaning unless the context of the instrument shows that he intended to do so.

In this case nothing can be more simple than this clause of the will. It commences with an unqualified bequest, making no reference to the time at which it is to operate, of the estate of Bankhead in favour of Watson. I need hardly say that where such a bequest occurs it must take effect *à morte testatoris*, except in one or other of these two cases—namely, where to give effect to it from that date would disturb any of the provisions already made in the will, or where the testator has clearly indicated, either by express words or by plain implication, that he did not intend it to operate until a later period—the death of the widow.

Then, so far as regards the condition attached, introduced by the words, "I wish it expressly understood," they refer to one period, and one period only—the death of Watson; and upon his death, without mention of any other death or any other event which is to be taken into computation along with it, there is a provision that the property shall revert. I need not say that, in the absence of any context to control the meaning of these words, "revert back," they plainly point to the case where, a beneficiary having taken under the will, the estate which he took is not to descend to his heir-at-law, or to a person appointed by his will, but is to go back to some person favoured by the testator. Accordingly, in order to give the meaning to this clause which is requisite if the appellant is to succeed, I find from the very able and elaborate arguments which have been addressed to us by the learned counsel on his behalf, that it is absolutely necessary, in the first place, to discharge from the clause the ordinary meaning of some of the words which it employs, and, in the second place, to introduce into the clause words which are not to be found in it, and are not connected with it by reference to other parts of the deed. The gloss which they desire to put upon it, according to one of several constructions more or less plausible which they suggest, is, "I also leave to my nephew James Francis Watson, at the death of my widow, my estate of Bankhead; but I wish it expressly understood that in the event of my said nephew James Francis Watson dying during the life of my widow without leaving any lawful male heir of his body;" and when you come to the latter part of the clause, you are required to do this violence to the text, that instead of making the estate go back from one who has taken it already, it is to go to a substitute because the institute has failed to take.

These are very considerable alterations.

I do not intend to refer to any other of the theories put forward; but they appear to me conclusively to shew that it is impossible to adopt the construction which has been suggested by the appellant without doing extreme violence, in the first place, to the meaning of some words in the text, and, in the second place, by bringing in words from outside the instrument which are not to be found within it. After giving the liferent of the entirety of his estate to his widow, the testator declares, "at the death of my wife said annuity to cease." It is perfectly plain that these words are introduced into that part of the text of the will for the purpose of indicating the time at which Mrs Hamilton's annuity, chargeable upon the widow's liferent, is to cease, and her new right as a liferenter of the lands which are given in fee to her sons is to begin. I cannot for a moment suppose that those words were intended to apply to all the subsequent clauses of the deed. I find that the remaining bequests are stated as distinct and substantive gifts, entirely independent of that reference to time as affecting the annuity of Mrs Hamilton. And then when he has concluded this destination of the estate of Bankhead to James Francis Watson, the testator proceeds to deal with the division of his moveable estate: and it being necessary to specify a time, he again introduces the words, "at the death of my said wife my moveable estate is to be equally divided."

Various theories of construction have been discussed, some of them not very much akin to the question which we have to decide in the present case. I think that the whole substance of the grounds upon which I am prepared to recommend your Lordships to affirm the judgment appealed from is to be found in a single sentence of Lord Rutherfurd Clark's opinion—"I think that it came into operation from the testator's death; there is no other time assigned."

I do not think it necessary to trouble your Lordships with any reference to that class of cases of which the most recent is *Glendonwyn* v. *Gordon*, Law Reports 2 H. L., Sc. 317. It refers to a rule of the law of Scotland to the effect that a general conveyance is not in all cases held to carry estates settled by special destination. But the rule goes no further than this: that a general disposition will presumably carry all lands previously settled under a special destination which the truster or testator has power to dispose of. In order to deprive his general disposition of that effect it is the duty of the litigant who says that the special destination has not been defeated, to show to the satisfaction of the Court, either by the terms of the testator's settlement or by other documents to which it is

legally competent to refer, that it was not the intention of the testator to disturb the standing investiture.

I move that the interlocutors appealed from be affirmed, and the appeal dismissed with costs.

The Lord Chancellor has requested me to state that he agrees with the conclusion at which your Lordships have arrived

LORDS ASHBOURNE, MACNAGHTEN, and MORRIS concurred.

LORD SHAND—I am also of the same opinion, and I venture only to add a few words in confirmation of what has fallen from my noble and learned friend Lord Watson. The practical question in the case is whether under the testator's settlement vesting took place *a morte testatoris* or was postponed until the death of the liferentrix. In the former case the only question that would remain is whether the property having so vested has been carried by the general trust-disposition and settlement of Mr James Francis Watson. If there was no vesting until the death of the liferentrix, confessedly the appeal must succeed.

Now, on the question of vesting, I have to observe in the first place that there is no trust here created. Though we have not technical words of conveyance, such as the word "dispone," or any other word to that effect, there is a word "leave," which is sufficient to convey the right; so that the will, in the words of Lord Rutherfurd Clark, was "a conveyance or equal to a conveyance." Then it is quite settled that the mere existence of a liferent, or a direction that annuities shall be paid by a liferenter, has not the effect of suspending vesting. And finally there is no specification of any time in this deed other than the death of the liferentrix at the period of vesting.

My Lords, I think that there are further circumstances which confirm the general view of the deed now stated. There are several properties here dealt with. It is admitted that in the case of John Hamilton, one nephew to whom certain lands are conveyed, subject to the widow's liferent, the vesting is *a morte testatoris*. It is conceded that in the case of another nephew James Hamilton, to whom other lands were conveyed, there was vesting *a morte testatoris*. There is every presumption that the same result should follow in the case of a third nephew, and indeed it is admitted that were it not for a few words beginning with the clause "but I wish it expressly understood," and so on, it is clear that there would have been vesting *a morte testatoris* in the case of James Francis Watson also.

I am unable to gather from the clause which has been founded upon that there was any suspension of vesting so long as the liferent subsisted, As my noble and learned friend has pointed out, it is necessary to insert words in the deed in order to give it the effect which is contended for by the appellant. The words are—"I wish it expressly understood that in the event of my said nephew James Francis Watson dying without leaving any lawful male heir of his body." These words would naturally mean dying at any time without leaving any lawful male heir of his body, in which case this would be, as I think it is, simply the provision of a substitution. In order to give them any other effect you must add, "in the event of my said nephew James Francis Watson dying during the lifetime of the liferentrix." There are no such words there, and I see no warrant for inserting such words.

But, my Lords, the remaining part of the clause seems to me, as it does to my noble and learned friend, to throw much light also upon this question of vesting, if anything further were needed, because that is a clause of reversion of the property—a declaration "that in the event of James Francis Watson dying without leaving any lawful male heir of his body the lands of Bankhead are to revert back." The conception of that clause is that the lands had first vested in James Francis Watson, and that from him they were to revert or descend to someone else. That, I need not say, is a strong confirmation of the view which I think is to be found generally throughout the deed as a whole, that the vesting was to be *a morte testatoris*. It is no doubt true, as was observed by Lord Young, that the testator contemplated a distribution of his personal estate on the death of the liferentrix; but with great deference to his Lordship's opinion, I do not think that any further distribution of the heritable estate was provided for beyond that which occurs in the ordinary case of a liferenter and fiars, in which case the liferenter's right is merely a burden on the fee, though the fiars' right to a beneficial possession arises only on the liferenter's death.

My Lords, with regard to the second branch of the case, I agree with what has been said by my noble and learned friend Lord Watson as to the effect of the trust-disposition and settlement of James Francis Watson, the general terms of which were clearly sufficient to convey the lands now in question.

LORD RUSSELL concurred.

The House affirmed the decision of the Second Division, and dismissed the appeal with costs.

Counsel for the Appellant — Moulton, Q.C.—C. K. Mackenzie. Agents—Grahames, Currey & Spens, for Campbell & Smith, S.S.C.

Counsel for the Respondent — Graham Murray, Q.C.—J. G. Butcher. Agent—Andrew Beveridge, for Webster, Will, & Ritchie, S.S.C.