meanour, and that seems to confirm the view I expressed that section 9 meant to limit this power of deviating from the general rule that a prisoner must obtain full notice of the crimes with which he is charged only where the prosecution is one for rape, or for one of the felonies referred to in section 4 of the Act.

The second point upon this section the complainer took was that the prosecutor had not followed the procedure figured by the section. What the section contemplates is that the accused is to be acquitted of the common law charge, and that thereafter the jury may convict of an offence under one of the sections. But according to the record before us there was no charge upon which they could convict, because before they were asked by the prosecutor to return a verdict under the Act of 1885, he had withdrawn from them altogether the charge as laid at common law. Accordingly it seems to me that on the second point also the complainer's argument is well founded.

The other matter to which we were referred—and on which I agree with your Lordship that the complainer should also succeed—is on the verdict the jury were asked to return under the Statute of 1885. One finds from the record of the proceedings that the prosecutor asked them to return a verdict of a contravention of section 5 of the Act of 1885, and it is recorded that they unanimously did so, and accordingly the accused was found by the jury to have contravened section 5 of the Act of 1885. Now, as has been pointed out, that section consists of two sub-sections, and each sub-section deals with a different offence. It is a fundamental rule that a man whose liberty is at stake should know both what he is being tried for and for what he is being convicted, and it seems to me that as the accused was given no definite information on either of these points he is entitled to succeed on this ground also.

Therefore on the whole matter I agree with your Lordships.

The Court passed the bill of suspension, and quashed the conviction and sentence complained of.

Counsel for the Complainer — Garson. Agent—W. A. Farquharson, S.S.C.

Counsel for the Crown—Mitchell, A.-D. Agent—Sir W. S. Haldane, W.S., Crown Agent.

COURT OF SESSION.

Tuesday, March 3.

FIRST DIVISION.

[Lord Cullen, Ordinary.

INLAND REVENUE *v.* MONTGOMERY'S TRUSTEES.

Revenue — Estate Duty — Succession Duty —Exemption — Finance Act 1894 (57 *and* 58 *Vict. cap.* 30), *sec.* 2 (*i*) (*b*)—*Finance Act* 1896 (59 *and* 60 *Vict. cap.* 28), *sec.* 15 (*i*)—*Succession Duty Act* 1853 (16 *and* 17 *Vict. cap.* 51), *sec.* 2.

By an antenuptial contract of marriage a trust fund was created for payment of the annual revenue thereof to the husband during his life, and thereafter to the wife in the event of her surviving him. The marriage having been dissolved by the divorce of the husband the life interest passed to the wife. The wife died survived by the husband, whereupon the life interest in favour of the husband revived. The Commissioners of Inland Revenue claimed estate duty on the trust fund as "property passing on the death of the deceased" within the meaning of the Finance Act 1894, section 2 (i) (b), and it was admitted that a claim for succession duty under the Succession Duty Act 1853, section 2, would be exigible if that for estate duty were upheld. The trustees under the antenuptial marriage contract, however, maintained that the forfeiture by his divorce of the husband's life interest in the trust fund for the benefit of the wife was a "disposition," and so fell within the exemption granted by the Finance Act 1896, section 15 (i). *Held* (Lord Johnston *diss.*) that the forfeiture by the husband on the divorce was not a "disposition," and accordingly that the claim of the Inland Revenue was well founded.

The Finance Act 1894 (57 and 58 Vict. cap. 30), which by section 1 grants a duty called "Estate Duty" on property "which passes" on the death of any person, in section 2 (i), enacts—"Property passing on the death of the deceased shall be deemed to include the property following, that is to say . . . (*b*) property in which the deceased or any other person had an interest ceasing on the death of the deceased, to the extent to which a benefit accrues or arises by the cessor of such interest."

The Finance Act 1896 (59 and 60 Vict. cap. 28), section 15 (i), enacts—"Where, by a disposition of any property, an interest is conferred on any person other than the disponer for the life of such person or determinable on his death, and such person enters into possession of the interest and thenceforward retains possession thereof to the entire exclusion of the disponer or of any benefit to him by contract or otherwise, and the only benefit which the disponer retains in the said property is subject

to such life or determinable interest, and no other interest is created by the said disposition, then, on the death of such person after the commencement of this part of this Act, the property shall not be deemed for the purpose of the principal Act to pass by reason only of its reverter to the disponer in his lifetime."

The Succession Duty Act 1853 (16 and 17 Vict. cap. 51), sec. 2, enacts—"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 dying . . ., either immediately or after an interval, either certainly or contingently, and either originally or by way of substitutive limitation, and every devolution by law of any beneficial interest in property or the income thereof upon the death of any person dying, . . . 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.'" Section 10 grants duties on "successions."

On 16th June 1913 the Inland Revenue, *pursuers*, raised an action against Sir Robert Drummond Moncreiffe of Moncreiffe, Bart., and another, *defenders*, the trustees acting under an antenuptial contract of marriage between Basil Templer Graham Montgomery, Esq. (now Sir Basil), second son of Sir Graham Graham Montgomery of Stanhope, Bart., and Miss Mary Katherine Moncreiffe, daughter of the late Sir Thomas Moncreiffe of Moncreiffe, Bart.

By the *antenuptial contract of marriage* the trustees were to hold the husband's trust fund, for, *inter alia*, the following purposes, viz:—(1) For payment of the clear annual revenues thereof to the said Basil Templer Graham Montgomery during his life, and that allenarly as an alimentary provision; (2) after his death, for payment of the said clear annual revenues to the said Mary Katherine Moncreiffe, in the event of her surviving him, during the remainder of her life, and that allenarly as an alimentary provision; and (3), subject to the foresaid purposes, to hold the capital for the child or children of the marriage.

The marriage between the said Basil Templer Graham Montgomery and the said Mary Katherine Moncreiffe took place on 26th October 1880. On 15th February 1905 the said marriage was dissolved by decree of divorce pronounced by the Court of Session on the ground of the adultery of the said Sir Basil. In consequence of the said decree the liferent of the said husband's trust fund enjoyed by Sir Basil under the marriage contract was forfeited by him, and Lady Montgomery became entitled to and received the liferent of the said fund in terms of the second purpose of the said marriage contract. Lady Montgomery died on 30th July 1910, survived by Sir Basil and the two children of the marriage. Upon her death the liferent in favour of the said Sir Basil revived; and the defenders now held the said fund as trustees for him in liferent and the issue of the marriage in fee.

The pursuers *contended* that the said husband's trust fund under the said contract of marriage was property passing on the death of the said Lady Montgomery within the meaning of the Finance Act 1894, sec. 2 (i) (b), and was chargeable with estate duty thereunder, and that the defenders as trustees under the said marriage contract were accountable for the estate duty thereunder. They further contended that it was a "succession" within the meaning of the Succession Duty Act 1853, section 2, and therefore chargeable with succession duty under section 10 of that Act. The defenders contended in reply that the forfeiture of Sir Basil's life interest for the benefit of Lady Montgomery was a "disposition," and Sir Basil was the "disponer" within the meaning of section 15 (1) of the Finance Act 1896, and consequently that the said husband's trust fund was not property passing on the death of Lady Montgomery within the meaning of the Finance Act 1894, nor was it a "succession" within the meaning of the Succession Duty Act 1853, and accordingly was not chargeable with estate duty or succession duty thereunder, nor were the defenders accountable therefor.

The Lord Ordinary (CULLEN) found that estate duty and succession duty were payable by the defenders.

Opinion.—"The defenders in this action are the trustees under an antenuptial contract of marriage between Sir Basil Graham Montgomery and Miss Mary Katherine Moncreiffe, who were married in 1880. By said contract the husband's father settled certain moneys (called the 'husband's trust fund') in trust, *inter alia*, (1) for payment of the income to the husband during his life, and (2) after his death for payment of the income to the wife, should she survive him, during her life.

"On 15th February 1905 Lady Montgomery obtained in this Court decree of divorce against her husband in respect of his adultery. As a legal consequence of the decree she became entitled to the income of the said husband's trust fund in the same way as if Sir Basil had died. She died in 1910, whereupon Sir Basil became again entitled to said income.

"In the present case the Crown claims, in the first place, estate duty in respect of the passing of the right to said income to Sir Basil on Lady Montgomery's death. It is conceded by the defenders that under the provisions of the Finance Act 1894, taken by themselves, the claim would lie. They contend, however, that it falls under the exception enacted by section 15 (1) of the Finance Act 1896. In the application of that section to the circumstances of this case the defenders argue that the passing of the right to the income of the trust fund to Lady Montgomery consequent on the decree of divorce must be held to have taken place under a 'disposition' made by Sir Basil within the meaning of the section, and that, similarly, there was a 'reverter to the disponer' when Sir Basil's right to the income re-opened on Lady Montgomery's death.

"It is, no doubt, true, as the defenders say, that the word 'disposition,' occurring

in the section, is not there used in any technical or narrow sense. It may include any effectual act of disposal of property by a person having power to so dispose, without regard to the form which the act of disposal takes. But *esto* this is so, I am unable to see that when the right to the income of the husband's trust fund opened to Lady Montgomery as a consequence of the decree of divorce, it did so by virtue of a disposition or act of disposal thereof by Sir Basil. Sir Basil committed a matrimonial offence. This did not dispose of, or in itself alter, the right to the income of the trust fund. His wife, however, chose to divorce him in respect of his offence. As a legal consequence of the decree of divorce Lady Montgomery became entitled to the income of the trust fund in the same way as if he had died. She took it by virtue of the settlement made by her husband's father as affected by the legal consequences of the decree of divorce which she obtained, and not by any act of disposal by her husband. I am accordingly of opinion that the case does not fall under the exception provided by section 15 (1) of the Act of 1896. And if this be so it is not disputed by the defenders that a claim for estate duty lies.

"The Crown further claims succession duty in respect of the same facts. The defence here made is the same in its nature as that advanced against the claim for estate duty. It turns on the terms of the Succession Duty Act of 1853. The excepting words used in that Act are not identical with those used in the Finance Act of 1896. But counsel for the defenders conceded that for the purpose of the present claim there was no material difference between the two cases, and that both turned on the question whether, in the statutory sense, Lady Montgomery took the income of the trust fund after the decree of divorce by virtue of a 'disposition' thereof made by Sir Basil. From what I have said regarding the claim for estate duty it follows that, in my opinion, she did not; and on that footing it is conceded that a claim for succession duty lies.

"Following these views I shall make an order for the accounts called for."

The defenders reclaimed, and argued—This was not property "passing" in terms of the Finance Act 1894 (57 and 58 Vict. cap. 30). The general law as to the effect of divorce on the passing of property was laid down in *Dawson* v. *Smart*, July 20, 1903, 5 F. (H.L.) 24, Lord Robertson at 29, Lord Davey at 27, 40 S.L.R. 879 (*sub. v. Gavin's Trustees* v. *Johnston's Trustees*). The general effect was that divorce merely operated as a transfer of the husband's right to the wife and not of the property. Sir Basil's property was merely temporarily suspended. The Finance Act 1896 (59 and 60 Vict. cap. 28), section 15 (1), contemplated the case of property vested in one person being temporarily transferred to another and reverting back to the original holder. Such was the case here. The trend of cases indicated that "disposition" was not used in any technical sense, but meant any kind of alienation — *Duke of Northumberland* v. *Attorney-General*, [1905] A.C. 406, Lord Macnaghten at 410. Even were the property transferred there might be a reversion afterwards. The property reverted to Sir Basil, not under devolution of law but under the marriage contract. The terms of the Successive Duty Act 1853 (16 and 17 Vict. cap. 51) freed the fund from succession duty even though it were held liable for estate duty. By section 12 of that Act Sir Basil had merely created a charge or interest in favour of Lady Montgomery.

Argued for the respondents—The Act of 1894 was comprehensive in its terms and only admitted of certain exceptions, to none of which the present case could be assigned—*Earl Cowley* v. *Inland Revenue Commissioners*, [1899] A.C. 198, Lord Macnaghten at 210. For a disposition in the sense of section 15 (1) of the Act of 1896 one must have a disponer to whom the property reverted. Divorce never operated as a transfer of property, but only extinguished an interest, and therefore the liferent of the wife took effect — *Harvey* v. *Farquhar*, February 22, 1872, 10 Macph. (H.L.) 26, Lord Westbury at 32, Lord Chancellor (Hatherley) at 28, 29, 9 S.L.R. 421; *Dawson* v. *Smart* (*supra*), Lord Shand at 26, Lord Davey at 27. From the time it was executed it was known that the law attached certain conditions to the marriage contract, and accordingly divorce gave rise to an interest contemplated under it. Sir Basil could not dispone under the marriage contract. Lord Macnaghten's opinion in *Duke of Northumberland* (*supra*) was no authority for the view that disposition included what passed by operation of law. To defeat the Crown's interest defenders must say either (1) that no benefit had accrued to Lady Montgomery, or (2) her interest did not cease at her death. On the death of his wife Sir Basil took by operation of law.

At advising—

LORD PRESIDENT—I am of opinion that the claim of the Commissioners of Inland Revenue here is well founded, and that defenders must pay estate duty.

The question in controversy is crystallised by the pursuers where they say "the said husband's trust fund under the said marriage contract, amounting as aforesaid to over £20,000, was property passing on the death of the said Lady Montgomery within the meaning of the Finance Act 1894." Can that statement, not of fact but of law, be supported? I am of opinion that it can.

Lady Montgomery died on 30th July 1910, and at the date of her death she was in the enjoyment of property which is described in the summons. At her death her interest in that property ceased and passed to Sir Basil, and estate duty therefore became payable under the second section, first subsection (*b*), of the Finance Act of 1894, which in terms applies to the case. But the defenders say the claim is excluded by the provisions of section 15 (1) of the Finance Act of 1896, which reads as follows—". . . *quotes, v. sup.* . . ."

Can we interpret this as meaning that

Sir Basil Montgomery conveyed the life interest of the property in question to Lady Montgomery, and that at her death it reverted to him as disponer of the property? If we can, the clause applies, and the claim for estate duty is excluded. It is conceded that Sir Basil Montgomery made no such disposition, and that the property therefore by no possibility could revert to him as disponer. But then it is contended that inasmuch as on the 19th February 1905 his marriage with Lady Montgomery was dissolved by decree of divorce pronounced by the Court of Session on the ground of adultery, therefore he must be held to have disponed the property within the meaning of section 15 (1) of the Statute of 1896.

Now the effect of decree of divorce is indisputable according to the law of Scotland. It is admirably stated by the defenders themselves in this case, where they say that "in consequence thereof"—in consequence of the decree of divorce—"Sir Basil's liferent interest in the husband's trust fund was forfeited for the benefit of Lady Montgomery until her death on 30th July 1910." That, in the defenders' own words, is an accurate statement of the effect by the law of Scotland of a decree of divorce in circumstances such as we have here. And if that be so, it cannot, I think, be maintained that it was by any disposition granted by Sir Basil that Lady Montgomery came to the enjoyment of the life interest of this trust fund. It was, I think, by no act or deed of his that that result came about, but it was solely by virtue of and as the direct consequence of the decree of divorce pronounced in an action in which she was the pursuer and he was the defender, which action, for aught that appears here, he may have resisted to the last.

If any authority were required in support of that proposition it will be found in the case of *Harvey* v. *Farquhar*, 10 Macph. (H.L.) 26. There, as here, the husband was divorced on the ground of adultery. There, as here, it was claimed that in consequence he had forfeited his rights under the marriage contract; and there, as here, it was contended that the result had come about by the act or deed of the erring husband who had committed the matrimonial offence. There, as here, it was pointed out that, by his marriage contract he was expressly forbidden to alienate the trust funds. So that the question raised was identical with the question raised in the present case. And here is the judgment of the House of Lords on that part of the case—I read from the opinion of Lord Chelmsford from page 32 of the report—"A rather extraordinary argument was addressed to us on behalf of the appellant, to prove that there was no forfeiture of his rights by the divorce. It is provided by the marriage contract that the sums of money falling under the trust shall not be subject or liable to his 'debts or deeds or the legal diligence of his creditors.' It was said that the 'deeds' here means acts, and that the divorce was the act of the appellant, because his adultery was the cause of it. Now though the word 'deeds' may mean every act of the appellant by which the trust moneys may be transferred from him, I am at a loss to see how the divorce can be an act of this character attributable to him, since it is not his act at all, but only a consequence of his act, and the loss of his interest in the trust funds is the legal consequence, not of his adultery, but of the decree of divorce."

Every word of the opinion which I have just read is, I think, applicable in terms to the present case. The defence, in my opinion, rests upon a fundamental misconception of the law of Scotland relative to these divorce proceedings. Therefore I am for affirming the Lord Ordinary's interlocutor.

LORD JOHNSTON—If this question had depended on the Finance Act of 1894, I think that there would be no defence to the claim of the Revenue. I do not need to quote section 2 (1) (*b*) of that Act. Its terms leave no possible doubt on the subject. But a quite different question arises under the Finance Act of 1896. It is very much of an omnibus Act, but as regards section 15 in particular it is a relieving or remedial Act. While it may be properly said that a taxing Act has to be interpreted literally, according to its terms, without regard to the good sense of the provisions or to the object and intent of the Legislature, it is, I think, different with a remedial Act. Section 15 of the Act of 1896 deals with a special case of an interest in property, which, it says, shall not be deemed for the purpose of the principal Act—*i.e.*, the Act of 1894—to pass on the death of a deceased. It makes this particular case an exception from the universality of the terms of sections 1 and 2 of the Act of 1894. It subsumes a hardship and it provides a relief. In order to determine the extent of the relief I think that we are bound to consider the hardship intended to be relieved. The hardship was that under the main Act, if a person provided a limited interest to another for the life of such other, retaining the reversion, then under the terms of sections 1 and 2, should the reversion return to the granter, he would be liable in estate duty upon what had originally been and was his own property. It was felt that, as it was in no sense a case of succession, this should not be, and that the exception of section 3 of the Act of 1894 required to be extended to cover the case. Accordingly section 15 of the Act of 1896 provided this remedy, that on the death of the person in whose favour the interest had been created "the property shall not be deemed, for the purpose of the principal Act, to pass by reason only of its reverter to the disponer in his lifetime."

Whether the defenders can avoid estate duty on the property settled in Sir Basil Montgomery's marriage-contract, the life interest in which was forfeited by Sir Basil in 1905 on his being divorced by Lady Montgomery, enured to Lady Montgomery, and was enjoyed by her until her death in 1910, when it returned to Sir Basil, he surviving, depends on whether the provision of section 15 of the Act of 1896 applies

in the circumstances. There is no doubt that the situation created by the circumstances is just such as the section sets out to remedy, viz., the reverter to the owner of the property in which another has enjoyed a temporary life interest, the radical right having remained all along in the owner. It is of no importance that Sir Basil's own interest was only a liferent, and that what enured to his wife was a life interest in that liferent, the radical right in which remained in Sir Basil. It was property in the sense of the Act. But the statute introduces the subject by presuming "a disposition" and a "disponer" thus "when by a *disposition* of any property an interest is conferred on any person other than the *disponer* for the life of such person or determinable on his death." And it is said that there is neither disposition nor disponer in the circumstances in question. Literally there are not. And if I felt myself bound to construe the statute as a taxing Act, I should admit that the objection was formidable. But that is not the situation, and I do not think that the remedy is confined to the letter of the provision without regard to its intendment. The terms "disposition" and "disponer" are nowhere defined in the Act. I think that they are general words used to denote something which confers an interest and some one from whom that interest flows. Had there been no alimentary condition in his marriage-contract, Sir Basil might have effected precisely the same result by a renunciation or assignation of his life interest to his wife, so long as they both lived, to return to him if he were the survivor. The statute would have applied in terms. I cannot think that it is so limited in its scope by the use of the words "disposition" and "disponer," as not to reach the case, in which precisely the same result is brought about by operation of law. The same interest is conferred by the effect of the decree of divorce and flows from Sir Basil. In the case of *Dawson* v. *Smart*, 5 F. (H.L.), at p. 30, Lord Robertson says—"What the decree of divorce did was simply to give back that right to the wife just as she might have got it by assignation." He was speaking of an interest in a wife's own settled property opening to her on her obtaining decree of divorce. But the same would apply to an interest in the husband's settled property opening to her, as in the present case, in the same circumstances.

I think it not inapposite here to refer to the law of England. I have always understood that on divorce or separation in England the offending husband may be compelled to make a settlement on his wife. He makes it under compulsion of the decree of Court. I do not pretend to know precisely how it is done, but the language used indicates that the husband is obliged to execute something, which may be properly described as a disposition of property, and which, from the nature of the case, must create a life interest with reverter to the husband. To such circumstances the words of this relieving clause, section 15 of the Act of 1896, exactly apply. It would be a strange result that because the husband in England is compelled by the Court when granting divorce to make a provision, while in Scotland exactly *in pari casu* a similar provision enures by operation of law on decree of divorce being pronounced, this statute should apply in the former case and not in the latter. I do not think that when the statute is regarded from the point of view of the defect or hardship, which it was passed to remedy, the Court in its construction is compelled to such a narrow view of its provisions as would bring about that result. I need not say that I entirely accept the authority of the case of *Harvey* v. *Farquhar*, 10 Macph. (H.L.) 26, referred to by your Lordship. The judgment is common ground between the parties to the case. But the question still remains, whether in applying this statute the term "disposition" occurring in its clauses must be construed in this case as the term "deeds" occurring in Mr Harvey's marriage-contract was construed by Lord Chelmsford in *Harvey* v. *Farquhar*. Accordingly I am of opinion that the Lord Ordinary's judgment on this point is ill-founded and ought to be recalled.

Looking to the admission of the learned Solicitor-General, I shall not delay your Lordships by considering the question under the Succession Duty Act.

LORD GUTHRIE—I agree with your Lordship in the chair that the respondent's contentions, both in regard to estate-duty and in regard to succession-duty, must be sustained, in accordance with the Lord Ordinary's judgment. In regard to estate-duty it is unnecessary to consider whether the present claim is covered by section 1 of the Finance Act 1894, because section 2 (1) (*b*) of the same statute in terms applies to the present case. The appellants, indeed, instanced a number of cases to which the first section might be applied, and argued that it was unnecessary and would be dangerous to hold that it applied to the present case, because it would follow that an indefinitely large number of other cases would necessarily be included. This mode of reasoning seems to me inapplicable to a taxing statute. The only question is whether the words of the statute fit the case before the Court, and it seems to me to be clear that they do.

The strength of the appellant's case depends on the exception contained in section 15 of the Finance Act 1896. When decree of divorce was passed in 1905, and when by operation of the common law the right created by the late Sir Graham Montgomery in his son's marriage contract in favour of the late Lady Montgomery came into operation, was Sir Basil a disponer, and did the right in Lady Montgomery flow from a disposition? I assume with the Lord Ordinary that the word "disposition" is not used in any technical sense and is open to construction, and the same may be said of the word "disponer." But it is clear that if the present case falls within the exception the word "disponer," which is used four times in section 15, can only refer to Sir Basil. I am unable to see how he can be so described. He committed a matrimonial offence and

did nothing more. As was pointed out by Lord Chelmsford in the case of *Harvey* v. *Farquhar*, (1872) 10 Macph. 32, the divorce was not his act, but was the act of the Court on the initiative of Lady Montgomery, and his forfeiture of his rights as in a question with her, which is not the same thing as a transfer of property, was the common law consequence of the divorce. Under the marriage contract he had nothing to transfer, and he was debarred from affecting any of the provisions in the contract by his deeds.

But if Sir Basil was not a disponer, and if there was no reverter to a disponer—for it must be noticed that the statute provides for a reverter to a disponer, not to an owner or to an owner of a radical right—can the word "disposition" be read as referable to some transaction in which he was not the disponer, and which was not his act but only the consequence of his act? I think this would be a strained construction of the exception, and one which the words used will not reasonably bear, for the words can receive an obvious application without employing them as proposed by the appellants. I may add that the impression which I at first formed in the appellants' favour from the words used by Lord Macnaghten in the case of *Duke of Northumberland* v. *Attorney-General*, [1905] A.C. 410, was removed by Mr Candlish Henderson's reference to the words of section 2 of the Succession Duty Act 1853. Lord Macnaghten, referring to that section, says—"It is clear that the terms 'disposition and devolution' must have been intended to comprehend and exhaust every conceivable mode by which property can pass, whether by act of parties or by act of the law." The appellants' counsel claimed this statement as a definition of the word "disposition" which would include not only, as the respondents maintain, an act of a party, but also an act of law such as we are considering in the present case. But on reference to the section with which Lord Macnaghten was dealing it appears that he had to consider two separate things—a disposition and a devolution by law. The passage on which the appellants relied, instead of being in their favour, seems to be in favour of the respondents, because Lord Macnaghten limits the scope of the word "disposition" to an act of parties.

It was admitted that if the appellants are liable in estate-duty they cannot escape payment of succession-duty.

The Court affirmed the Lord Ordinary's interlocutor.

Counsel for Pursuer and Respondent—The Solicitor-General (Morison, K.C.)—R. Candlish Henderson. Agent—Sir Philip J. Hamilton Grierson, Solicitor of Inland Revenue.

Counsel for Defenders and Reclaimers—Cooper, K.C.—Jameson. Agents—Lindsay, Howe, & Company, W.S.

Tuesday, March 3.

FIRST DIVISION.

(Before Seven Judges.)

COCHRANE'S TRUSTEES *v.* COCHRANE.

Succession—Accretion—Joint or Separate Bequest—Direction to Divide in Certain Proportions—Legatees' Mentioned nominatim.

A testatrix directed her trustees to pay to each of her three daughters respectively the income of one-third of the residue of her estate, and on the death of each to pay, divide, and convey the corresponding one-third of the capital "in the proportions following," viz., to four sons and one daughter, *nominatim*, "each two shares," and to a granddaughter "one share." She further provided that the issue of such as predeceased the terms of payment should take their parent's share, that vesting should be postponed until the period of payment, and that the interests "conferred on or accruing to" females should belong to them exclusive of the *jus mariti* or right of administration of their husbands. There was no clause of survivorship. One of the liferentrices having died predeceased by certain of the residuary legatees, the survivors contended that the shares which would have fallen to the predeceasers if alive had accresced to them (the survivors) in proportion to the original shares left to them under the settlement.

Held (*diss.* Lord Mackenzie) that the testatrix intended not a joint bequest but a series of separate bequests, and that, accordingly, the shares which the predeceasers would have taken had they survived did not accresce to the survivors, but became intestate succession of the testatrix.

Paxton's Trustees v. *Cowie*, July 16, 1886, 13 R. 1191, 23 S.L.R. 830, *followed.*

On 22nd November 1912 Archibald Cochrane, Abbotshill, Galashiels, and others, the testamentary trustees of the late Mrs Janet Lees or Cochrane, widow of Walter Cochrane, manufacturer, Galashiels, *first parties*; the said Archibald Cochrane and others, *second parties*; and John Chapman, solicitor, Galashiels, and others, the testamentary trustees of the late Adam Lees Cochrane, Kingsknowes, Galashiels, and others, *third parties*, brought a Special Case as to their respective rights in the one-third share of the estate liferented by the late Miss Jane Cochrane, a daughter of the testatrix.

By her *trust-disposition and settlement* Mrs Cochrane provided, *inter alia*, as follows—"With regard to the free residue and remainder of my means and estate hereby conveyed, my said trustees and executors shall pay over to each of my said three daughters, Jane, Mary, and Jessie respectively, the annual produce of one-third part of the said residue of my means and estate