Shaw in the fourth last paragraph of his opinion in the case of *Bradford*.

LORD SALVESEN was not present.

The Court adhered to the Lord Ordinary's interlocutor, and remitted to the Lord Ordinary to proceed with the proof.

Counsel for the Pursuer (Respondent) — M'Clure, K.C. — Scott. Agents — Ross & Ross S.S.C.

Counsel for the Defenders (Reclaimers)— Sandeman, K.C. — Mackay. Agents — J. & R. A. Robertson, W.S.

Wednesday, December 12.

FIRST DIVISION.

[Exchequer Cause.

INLAND REVENUE *v.* HAMILTON.

Revenue — Succession Duty — Succession Duty Act 1853 (16 *and* 17 *Vict. cap.* 51), *secs.* 1, 2, *and* 10—*Finance* (1909-10) *Act* 1910 (10 *Edw. VII, cap.* 8), *sec.* 58—"*First Succession under the Disposition.*"

The Finance (1909-10) Act 1910, sec. 58, increases succession duty in certain cases, and provides that that shall take effect "in the case of a succession arising under a disposition, only if the first succession under the disposition arises on or after" 30th April 1909. *Held* that "the first succession under the disposition" meant the first taking under the disposition which involved liability for payment of duty under the Succession Duty Act 1853.

The Succession Duty Act (16 and 17 Vict. cap. 51) enacts — Section 1 — "The term 'succession' shall denote any property chargeable with duty under this Act." 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 dying after the time appointed for the commencement of this Act, either immediately or after any 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 after the time appointed for the commencement of this Act, 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 10—"There shall be levied and paid to Her Majesty in respect of every such succession as aforesaid, according to the value thereof, the following duties:— That is to say . . . where the successor shall be a brother or sister of the father or mother or a descendant of a brother or sister of the father or mother of the predecessor, a duty at the rate of five pounds per centum upon such value."

The Finance (1909-10) Act 1910 (10 Edw. VII, cap. 8), enacts—Section 58—"(1) Any legacy or succession duty which under the Stamp Act 1815, or the Succession Duty Act 1853, or any other Act, is payable at the rate of three per cent., shall be payable at the rate of five per cent., and any legacy or succession duty which under the said Acts is payable at the rate of five per cent. or six per cent. shall be payable at the rate of ten per cent. on the amount or value of the legacy or succession. . . . (3) In this section the expression 'deceased' means in the case of a legacy the testator (including a person making a donation *mortis causa*) or intestate, and in the case of a succession arising through devolution by law the person on whose death the succession arises, and in the case of a succession arising under a disposition the person on whose death the first succession thereunder arises; and the expression 'legacy' includes residue and share of residue. (4) This section shall take effect in the case of legacy duty only where the testator by whose will the legacy is given, or the intestate on whose death the legacy is payable, dies on or after the thirtieth day of April Nineteen hundred and nine, and in the case of a succession arising through devolution of law, only where the succession arises on or after that date, and in the case of a succession arising under a disposition only if the first succession under the disposition arises on or after that date."

The Lord Advocate, on behalf of the Commissioners of Inland Revenue, *pursuer*, brought an action against Miss Louisa Zaida Hamilton, *defender*, concluding for decree against the defender to produce an account of her succession to the lands and estates of Pinmore, Daljarroch, and others, in the County of Ayr, to the Commissioners of Inland Revenue so that the amount of succession duty payable by her upon the death of Hugh Hamilton of Pinmore on 15th August 1910 in respect of the lands and estates referred to might be ascertained, and for payment of £5000 of succession duty in respect of the lands and estates referred to.

The defender pleaded, *inter alia*—"1. In respect that the defender succeeded to her father in the entailed lands, duty is only payable at 1 per cent. 2. Alternatively, in respect that the defender's succession was not the first succession within the meaning of section 58 (4) of the Finance Act 1910, duty is only due at the rate of 5 per cent."

On 24th January 1917 the Lord Ordinary (CULLEN) decerned and ordained the defender to deliver the account sued for, and granted leave to reclaim. To that interlocutor was appended the following opinion, from which the *facts* of the case appear:—

Opinion.—"By disposition and deed of tailzie, dated 11th October 1823, Hugh Hamilton of Pinmore disponed his lands of Pinmore and others in strict entail to him-

self and the heirs whatsoever of his body whom failing to Alexander West Hamilton (his cousin) and the heirs-male of his body, whom failing to the heirs-female of his body, whom failing to the other heirs-substitutes specified in the deed.

"The said Hugh Hamilton died in 1829 leaving no heirs of his body. Thereupon the said Alexander West Hamilton succeeded to the entailed lands. He died in 1838. His eldest son Hugh Hamilton (secundus) thereon succeeded him in the entailed lands as heir-male of his body. Hugh Hamilton died in August 1910 leaving no heir-male of his body. He was thereon succeeded in the entailed lands by his eldest daughter, who is the present defender. The defender so succeeded under the branch of the tailzied destination which is in favour of the heirs-female of the body of Alexander West Hamilton, failing an heir-male of his body. A succession among heirs-portioners was excluded by the deed of entail.

"The first question in this case relates to the rate of succession duty payable by the defender in terms of the Succession Duty Act 1853. The defender maintains that she took the succession 'by devolution of law' as heir of her father as her 'predecessor,' and so is liable in duty at the rate of 1 per cent. The Crown maintains that the defender took the succession by virtue of 'the disposition' made by the entailer, and that as a descendant of a brother of the father of the entailer she is, in the first place, liable to duty at the rate of 5 per cent. under the Act of 1853. I was favoured with a citation of all the cases bearing on the question. It has long been settled by decision of supreme authority — whatever may be thought about the reasoning leading to the result—that within the meaning of section 2 of the Act of 1853 a person may take a succession 'by devolution of law' who takes it solely *provisione hominis* by virtue of the arbitrary and conventional terms of a disposition made by a deceased disponer. The artificiality of this general rule so established has given rise to some difficult questions as to the conditions under which a succession accruing *provisione hominis*, by virtue of the terms of a disposition, is or is not to be deemed to be a succession accruing 'by devolution of law' within the meaning so imposed by decision on the Act of 1853. It appears to me that the question in the present case is ruled by the decision of the First Division of this Court in the case of *Lord Advocate* v. *M'Culloch*, 1895, 22 R. 356, 32 S.L.R. In that case an entailer destined lands to himself and to D his only son, and the heirs-male of his body, which failing to the heirs-female of his body, etc. W, who was the last surviving heir-male of the body of D, died without issue, whereupon the succession under the entail opened to C as the nearest heir-female of the body of D, her great-grandfather. The question in the case was whether for the purposes of the Act of 1853 C was to be regarded, according to the authorities, as having taken the lands 'by disposition' from her lineal ancestor the entailer as her 'predecessor,' or as having taken them 'by devolution of law' from W, her uncle, as her 'predecessor'? It was held that she had taken them 'by disposition' from the entailer and as the first of a new series of heirs under the destination, and that she was thus liable only for the lower rate of duty. The ratio was that when the heirs-male of the body of D failed, on the death of W, the chain of succession 'by devolution of law' snapped, and that it was necessary to return to the deed of entail for a fresh start, which was found in the destination to the heirs-female of the body of D on the failure of the heirs-male of his body. I am unable to distinguish that case from the present. So long as the succession here might have continued down the line of the heirs-male of the body of Alexander West Hamilton each heir succeeding would according to decision have fallen to be regarded as succeeding 'by devolution of law' from the preceding heir. But this particular chain of succession from Alexander West Hamilton broke with the death of the defender's father, so that the defender, like C in *M'Culloch's* case (*cit.*), had to go back to the deed of entail to find a fresh start in the destination. The difference in the practical result is that whereas C was a lineal descendant of the entailer, the defender is descendant of a brother of the father of the entailer in the present case.

"I am therefore of opinion that the defender is under the Act of 1853 liable in succession duty at the rate of 5 per cent.

"The next question in the case arises under section 58 of the Finance (1909–10) Act 1910.

"Sub-section 1 of section 58 enacts—'Any legacy or succession duty which under the Stamp Act 1815, or the Succession Duty Act 1853, or any other Act, is payable at the rate of 3 per cent., shall be payable at the rate of 5 per cent., and any legacy or succession duty which under the said Acts is payable at the rate of 5 per cent. or 6 per cent. shall be payable at the rate of 10 per cent. on the amount or value of the legacy or succession.'

"If this enactment had stood unqualified, then if I am right in the view I have expressed that the rate of duty payable by the defender under the earlier Acts is 5 per cent., it would have followed that the rate payable under the said enactment would have been 10 per cent.

"Sub-section 4 of section 58, however, provides—'This section shall take effect in the case of legacy duty only when the testator by whose will the legacy is given or the intestate on whose death the legacy duty is payable dies on or after the 30th day of April 1909, and in the case of a succession arising through devolution by law, only when the succession arises on or after that date, and in the case of a succession under a disposition, only if the first succession under the disposition arises on or after that date.' The question here is as to the application of the last part of this provision to the present case.

"What is the meaning of the words 'the first succession under the disposition'? The opposing views are as follows:—On the one

hand the defender contends that the words refer in a general legal sense to the first occasion on which anyone succeeds to or takes the property settled under the disposition in question. In this sense the words would attach themselves in the present case to the year 1829, when the entailed lands were first taken from the entailer under his disposition by Alexander West Hamilton. The Crown on the other hand contends that the words 'the first succession under the disposition' refer to the first occurrence of a taking under a disposition whereby the property taken is dutiable under the Act of 1853. In this sense the words would attach themselves in the present case to the date 15th August 1910, when the defender took the entailed lands under the disposition on the death of her father.

"I have felt the question raised to be attended with some difficulty. At first sight I was inclined to adopt the defender's view. On further consideration I am of opinion that the view contended for by the Crown is the right one.

"The topic of the part of the enactment in question is succession duty under the Acts imposing such duty. Section 58 of the Finance (1909–10) Act 1910, *inter alia*, raises the scale of succession duty in certain cases. Its language falls therefore to be read and understood in harmony with the language used in the earlier Acts regulating succession duty, and in particular the Act of 1853, which originally imposed it and still controls its incidence apart from subsequent statutory modifications.

"Viewing the matter from the point of view of the language used in the Act of 1853, one inquires what is the meaning of a 'succession under a disposition' within the scope of that language? It cannot be taken as including every occasion on which any person has taken or has succeeded to, in a general legal sense, property by virtue of a deed of disposition made by somebody else. The occurrence of a 'succession' within the meaning of the language used in the Act is limited to cases where, under the conditions of the Act, a claim for succession duty as imposed by the Act arises. Section 1 defines the word 'succession' for the purposes of the Act. The definition is as follows:—'The term "succession" shall denote any property chargeable with duty under this Act.' It involves a reference in point of date to 19th May 1853, which was the date when the Act came into operation. If one proceeded to read this definition into the part of section 58 (4) of the Finance (1909–10) Act 1910 now in question, the reading of the latter enactment would be as follows:—'And in the case of property chargeable with duty by the Succession Duty Act 1853, under a disposition, only if the first property chargeable with duty by that Act under the disposition arises on or after 30th April 1909.' As regards this reading the literary criticism presents itself that it would make the enactment speak of property 'arising,' whereas the word 'arising' more naturally refers to an event. This being so the Crown goes on to refer to section 2 of the Act of 1853, which lays down the nature of a 'succession conferred' within the meaning of the Act. One may I think legitimately apply the terms of section 2 by way of speaking of a succession being taken or occurring within the meaning of the Act. And under section 2 the occurrence of a 'succession conferred' within the meaning of the Act brings in as a limiting condition the date of the commencement of the Act, viz., 19th May 1853. That is to say, the occurrence of a 'succession' within the meaning of the Act must take place after that date. The Act is not retrospective. No taking of property under a disposition or otherwise which occurred before 19th May 1853 constitutes a 'succession' within the meaning of the Act.

"Now putting section 1 and section 2 of the Act of 1853 together, and taking it, as I think it must be taken, that the language of section 58 of the Finance (1909–10) Act 1910, raising the scale of succession duty in certain cases, falls to be read in harmony with the language used in the original Act of 1853 to which it bears relation, I am unable to resist the conclusion that when section 58 (4) speaks of a 'succession arising' it means the same thing as a succession conferred and taken within the application of the language used in the Act of 1853—that is to say, that it means to refer to the occurrence of such a taking of property as makes the property subject to duty under the Act of 1853.

"I must, however, advert to a particular argument advanced by the defender as to the construction of the words 'a succession arising under a disposition' used in said section 58 (4). It is founded on the reference in section 58 to the Stamp Act 1815, and is to the effect that this reference shows that the words 'a succession arising under a disposition' are to be understood in a general legal sense and not with particular reference to the Succession Duty Act 1853.

"Now what one is here concerned with is the case of 'a succession arising under a disposition.' On a perusal of the Stamp Act 1815 I am unable to find within the language of its provisions any statutory category or definition of 'successions arising under dispositions.' The first part of the Act makes to cease and determine, *inter alia*, pre-existing duties 'on legacies and successions to personal estate upon intestacies,' and announces the intention of the Legislature to grant new duties in lieu thereof. The new duties so granted bear on grants of probate and of letters of administration. I am unable to see that the terms of the Stamp Act 1815 have any material bearing on the meaning to be attached to the words 'a succession arising under a disposition' as used in section 58 of the Finance (1909–10) Act 1910. I think, as I have said, that these words bear reference to the Succession Duty Acts, and that, in consonance with the language of the Act of 1853, they fall to be construed as designating an occasion on which property subject to duty under that Act is conferred and taken under a disposition within its meaning.

"I accordingly am of opinion that the claim for the Crown falls to be sustained."

The defender reclaimed, and argued—The Lord Ordinary's interlocutor should be recalled. The defender's succession was not the first succession under the disposition in the sense of section 58 (4) of the Finance (1909-10) Act 1910 (10 Edw. VII, cap. 8). That sub-section dealt with legacies and successions by devolution of law. In those cases the increased succession duty was payable only when the granter died after 30th April 1909. Thus the date of the cesser of interest in the predecessor was made the criterion in those cases. The same criterion should be applied to the case of a succession arising under a disposition, and if so the cesser of interest in the granter of the deed of entail was long before 1909. That construction made the sub-section uniform in its principle. Further, the defender was liable in the increased duty only if her succession was a first succession arising under the disposition. Those words obviously referred to an event, not an estate, and they were not equivalent to first succession subject to duty under the Succession Duty Act 1853 (16 and 17 Vict. cap. 51), for "succession" was defined by that Act as "property chargeable with duty under" that Act (section 1), and to substitute these words for succession in section 58 (4) of the Act of 1910 made the provision absurd. Further, if the Lord Ordinary was right one whose predecessor took in 1854 would pay the lower rate, while one whose predecessor took in 1852 would pay the higher rate.

Argued for the pursuer (respondent)—Prior to 1853 legacy and succession duties were in existence. Those were duties upon personal property devolving under a will or upon intestacy respectively—Act of 1815 (55 Geo. III, cap. 184), Schedule, Part III. Those duties were charged upon the value of property in question. In 1853 duties payable "in respect of the acquisition" of property were imposed. Those new duties were not in addition to the duties known as legacy and succession duties prior to that date, but were in substitution for them—Succession Duty Act 1853 (16 and 17 Vict. cap. 51), section 18. Those new duties were really succession duties, and as a result the former duties known as legacy and succession duties came to be known as legacy duties, although the old succession duty was payable in intestacy. Thus the duties payable prior to 1853 were all regarded as being imposed by the Legacy Duty Acts—Act of 1853, section 1—and were always called after that date "legacy duties," the term "succession duties" being thereafter used for the duties imposed by the Act of 1853. The essence of these duties was that they were imposed in respect of the act of acquisition. That accounted for the definition of succession "as property chargeable with duty under" that Act—1853 Act, section 1—and a succession arose or was conferred in the sense of section 2 of that Act whenever there was property chargeable with duty under that Act. Hence the legacy duty referred to in section 58 (4) of the Finance (1909-10) Act 1910 (10 Edw. VII, cap. 8) was the legacy duty payable prior to 1853 upon property devolving by will or upon intestacy, and the reference to "a succession arising under a disposition" was to the succession duty imposed by the Act of 1853, and the "first succession" was the first act of acquisition under a disposition upon which the duty imposed by the Act of 1853 was payable. If so the defender's succession was a first succession, and the enhanced duty was payable. *Floyer* v. *Banks*, 1863, 3 De G. J. & S. 306, was referred to.

At advising—

LORD PRESIDENT—The question in this case relates to the rate of duty payable by the defender upon her succession to the lands and estate of Pinmore. First, is it 1 per cent. or 5 per cent.? That depends upon whether she took "by devolution of law" or "by disposition." The Lord Ordinary has held that she took "by disposition," following the authority of the decision in this Division of the Court in the case of *Lord Advocate* v. *M'Culloch*, (1895) 22 R. 356, 32 S.L.R. 266. His judgment on this part of the case was not challenged before us, but counsel for the reclaimer expressed the desire that the question be kept open lest it be thought advisable at some later stage to take the judgment of a higher tribunal upon it.

Next, was the rate of duty 5 per cent. or 10 per cent.? The answer to that question depends upon the just interpretation of the 58th section, 4th sub-section, of the Finance (1909-10) Act 1910, which runs as follows in so far as applicable to the present case:—"This section shall take effect . . . in the case of a succession arising under a disposition, only if the first succession under the disposition arises on or after" the 30th of April 1909. I agree with the Lord Ordinary's interpretation of the meaning of these words, and with the very careful chain of reasoning by which he reaches his conclusion. Does "succession" in the clause I have just read mean dutiable succession, or, in other words, succession within the meaning of the Succession Duty Act 1853? I think it does, and if so, then the duty must be 10 per cent. In short, the words which I have read constitute, in my view, an amendment of the Succession Duty Act 1853, and thus read the first succession arose on the 15th August 1910. If so, succession duty then became payable at 10 per cent. The defender must deliver the account called for. I am for adhering.

LORD JOHNSTON—As to whether 5 per cent. is payable, I think that the Lord Ordinary was bound to follow the case of *M'Culloch*, 1895, 22 R. 356, 32 S.L.R. 266, and I understand that all that is desired is to keep this matter open in case the defenders should seek to obtain review of that judgment.

As to whether the duty has been raised from 5 per cent. to 10 per cent. I have experienced very great difficulty. In order to reach that conclusion it is necessary to discard the natural meaning of the expression "if the first succession under the dis-

position arises on or after 30th April 1909," and to give to these words an unnatural and far-fetched meaning. It is generally assumed that in imposing a tax a statute must use clear expressions, and that while the Court does not seek to strain expressions to support freedom of taxation, it will not adopt unnatural interpretations in order to make more effective the statutory imposition of a duty. But after considering the Lord Ordinary's reasoning I am not prepared, whatever my views may have been, to differ from his conclusion, which is also that of your Lordships.

LORD MACKENZIE—It was admitted for the purpose of the argument before us that *M'Culloch's* case, 1895, 22 R. 356, 32 S.L.R. 266, applies, and that the defender is liable under the Act of 1853 in succession duty at the rate of 5 per cent.

The point insisted in by the reclaimer was that section 58 (1) of the Finance (1909-10) Act 1910 does not have the effect of doubling the succession duty in her case, because it applies "in the case of a succession arising under a disposition, only if the first succession under the disposition arises on or after" 30th April 1909. The first succession, it was contended, in the present case arose in 1829, when the entailed lands were first taken from the entailer. I am unable, on a construction of the statutes, to take this view, and agree with the Lord Ordinary for the reasons given in his opinion. I think section 58 (4) of the 1910 Act, and section 1 of the 1853 Act, are here linked together. The latter runs thus—"The term 'succession' shall denote any property chargeable with duty under this Act." There is no doubt an awkwardness of language in importing this definition clause of the 1853 Act into section 58 (4) of the 1910 Act, as the word "arise" is made to apply to a thing and not to an event. I think, however, that this is got over by the language of section 2 of the 1853 Act, which limits the meaning of "succession conferred" within the meaning of that Act to one which takes place after 19th May 1853, the date of the commencement of the Act. The meaning of "succession arising," as used in section 58 (4) of the 1910 Act, and of "succession conferred" in section 2 of the 1853 Act, appears to me to be the same. The result of this is to hold that the first succession here was on 15th May 1910, and that duty at the rate of 10 per cent. is exigible.

LORD SKERRINGTON—As regards the only question which was argued to us, I agree with the result at which the Lord Ordinary has arrived, and that for the reasons which he so fully and carefully stated in the note to his interlocutor.

The Court adhered.

Counsel for the Appellant (Defender)—Moncrieff, K.C—Pitman. Agents—J. & F. Anderson, W.S.

Counsel for the Respondent (Pursuer)—The Lord Advocate (Clyde, K.C.)—R. C. Henderson. Agent—Sir Philip J. Hamilton Grierson, Solicitor of Inland Revenue.

HIGH COURT OF JUSTICIARY.

Friday, December 21.

(Before the Lord Justice-General, Lord Mackenzie, and Lord Skerrington.)

SCOTT *v.* KNOWLES.

Justiciary Cases—Statutory Offence—Food and Drugs Acts—Milk—Sale of Food and Drugs Act 1875 (38 *and* 39 *Vict. cap.* 63), *sec.* 6—*Sale of Food and Drugs Act* 1899 (62 *and* 63 *Vict. cap.* 51), *sec.* 4 (1)—*Sale of Milk Regulations* 1901, *sec.* 1.

Milk, as it left the cow, was placed in a can, fitted with a tap at the bottom, where it remained for three hours, when the can was taken out for delivery of the milk. A sample of the milk taken from the tap and supplied to a purchaser of "warm or sweet" milk was found on analysis to be deficient in milk-fat to the extent of 23 per cent. The whole of the milk in the can was sold. There had been no tampering with the milk by the addition of any foreign substance or by the abstraction of cream, but the milk at the bottom of the can was of poorer quality as regards fat than the milk at the top owing to the rising of the cream.

Held, in a complaint charging the seller of the milk with selling sweet milk which was not genuine in respect that it was deficient in milk-fat, that, in the absence of a finding to the effect that it was the practice to restore by some well-known method the milk to its original condition as regards distribution of fats, no contravention of the Sale of Food and Drugs Acts 1875 to 1899 had been proved.

Opinion per Lord Mackenzie that if the complaint was intended to charge failure to restore the milk to its original condition as regards distribution of fats, it was wanting in specification.

The Sale of Food and Drugs Act 1875 enacts—Section 6—"No person shall sell to the prejudice of the purchaser any article of food or any drug which is not of the nature, substance, and quality of the article demanded by such purchaser, under a penalty of not exceeding twenty pounds. . . ."

The Sale of Food and Drugs Act 1899 enacts—Section 4—"(1) The Board of Agriculture may, after such inquiry as they may deem necessary, make regulations for determining what deficiency in any of the normal constituents of genuine milk . . . or what addition of extraneous matter or proportion of water in any sample of milk . . . shall for the purposes of the Sale of Food and Drugs Acts raise a presumption, until the contrary is proved, that the milk . . . is not genuine, or is injurious to health, and an analyst shall have regard to such regulations in certifying the result of an analysis under those Acts."

The Sale of Milk Regulations 1901, made in virtue of the foregoing power, provide—Section 1—"Where a sample of milk (not being milk sold as skimmed or separated or