—if that means that the spouses may revoke during their joint lives, it is futile, for they already had power to do so. Accordingly it seems to me that however this clause is regarded, it is impossible to hold that it is unequivocally referable to the ultimate disposition in the mutual deed. A proper illustration of that class of thing is to be found in the case of *Corrance* (*cit. sup.*), where there was a clause providing that the survivor might revoke *quoad* the one-half destined to his or her relatives respectively. All that is absent here. I think therefore there was a power in the survivor of the spouses to revoke the provisions which had been made in favour of the ultimate beneficiaries, and that Mr Crawford was within his right in doing so. I am therefore for sustaining the claim of the United Free Church.

LORD KINNEAR—I am of the same opinion.

LORD MACKENZIE—I agree.

LORD M'LAREN and LORD PEARSON were sitting in the Extra Division.

The Court recalled the Lord Ordinary's interlocutor and sustained the first alternative claim for the reclaimers.

Counsel for the Pursuers and Real Raisers—W. Thomson. Agents—Balfour & Manson, S.S.C.

Counsel for the Claimants the Rev. Dr M'Crie and Others (Reclaimers)—Macphail—Dunbar. Agents—Millar, Robson, & M'Lean, W.S.

Counsel for the Claimants the Misses Black (Respondents)—W. Thomson—Candlish Henderson. Agents—Balfour & Manson, S.S.C.

HOUSE OF LORDS.

Thursday, December 3.

(Before the Lord Chancellor (Loreburn), Lord Robertson, and Lord Collins.)

INLAND REVENUE *v.* EARL OF BUCHAN.

(In the Court of Session, March 20, 1907, 44 S.L.R. 572, and 1907 S.C. 849.)

Revenue—Succession Duty—Entail—Propulsion, with Subsequent Disentail—Succession Duty Act 1853 (16 *and* 17 *Vict. cap.* 51), *sec.* 15.

The Succession Duty Act 1851, sec. 15, enacts—"Where the title to any succession shall be accelerated by the surrender or extinction of any prior interests, then the duty thereon shall be payable at the same time and in the same manner as such duty would have been payable if no such acceleration had taken place."

An heir of entail in possession of an entailed estate under an entail dated prior to 1848, in 1872 transferred his interest to his son, the next heir, born subsequent to 1848 and not yet twenty-five, for the purpose of certain family arrangements with a view to borrowing money. In 1875, on the son's attaining twenty-five, the father and son applied for power to disentail, and disentailed. The son continued to possess the estate, and in 1905 the Crown claimed Succession Duty in respect of the succession on the father's death, which had occurred in 1898.

Held that, under section 15 of the Succession Duty Act 1853, succession duty was exigible.

This case is reported *ante ut supra.*

The Earl of Buchan, defender (respondent in the Court of Session), appealed to the House of Lords.

At delivering judgment—

LORD CHANCELLOR—This is one of those cases in which a conclusion seems clear as soon as the real significance of the facts is appreciated. We have to consider whether or not duty is payable on a succession under the Act of 1853, an Act which is so framed as to cover the system of disposition both of England and Scotland. The language of the Act is framed for that purpose, and must be construed, as has been pointed out by authority, so as to meet the substance of each case that arises.

Looking at the substance, and avoiding technical terms, what happened was as follows—Lord Buchan was entitled to enjoy these properties during his life. Whether he held in fee, though under fetters, or for an estate for life as understood in England, seems to me to signify nothing. His eldest son, Lord Cardross, was entitled to enjoy them after his death, and others also were, or would be, entitled to succeed Lord Cardross in due course, according to the entail. In these circumstances, Lord Buchan, during his lifetime, in 1872, transferred, by a process admittedly valid under Scottish law, his interest to Lord Cardross, for the purpose of making provision by the raising of money to meet debts and incumbrances. Part of the family arrangement was that when Lord Cardross reached the age of twenty-five he should disentail these properties. This he did in 1875, with the concurrence of Lord Buchan. Thenceforth Lord Cardross enjoyed the properties. If he did not alter the destination, then they would descend under the original entail to the persons destined by the entail. He did not alienate them, if that matters. In 1898 Lord Buchan died and the Crown claimed that Succession Duty was payable on that death. In my opinion the Crown is right in that contention.

Had there been no transfer in 1872, beyond question there would have been duty payable on a succession when Lord Buchan died. And it seems to me that section 15 of the Act of 1853 provides in unmistakable terms that the duty shall be paid notwithstanding the transfer. The title of Lord Cardross was accelerated by the surrender

or extinction of Lord Buchan's prior interest, and the duty became payable at the same time and in the same manner as if no acceleration had taken place. As to the disentailing in 1875, it does not affect the case at all. In fact, Lord Cardross continued to hold under the entail though he held free from its fetters.

I do not refer to the discussion by the learned Judges in the First Division of the origin and meaning of propulsion in the law of Scotland. The doctrines there laid down have not been disputed at the Bar. And whatever view had prevailed on that subject, it would not have altered my opinion as to the construction and effect of the Act of 1853. To my mind the principles acted upon by this house in the *Duke of Northumberland's* case in 1905 would furnish authority for this case, if authority were needed.

LORD ROBERTSON—In my opinion the appellant is liable under the 15th section of the Act of 1853. To me it is clear that he had a "title" to this "succession," capable of being "accelerated"; that this title was accelerated by the deed of propulsion, and that by that deed his father extinguished his own "prior interest."

The *media* upon which I proceed are few and simple; and the case admits of brief discussion. I say this, because the very elaborate examination of the history of deeds of propulsion contained in the judgments of the First Division has given to the controversy an appearance of complexity which does not belong to it. It is perfectly clear law, that deeds of propulsion are within the powers of heirs of entail, and in particular that this deed of propulsion was legal. As to its effect, the deed tells its own story, so far as is necessary to support the judgment under review. On its face it vests the appellant with the fee of the estate, subject to the conditions of the entail. That it could not have done otherwise is of course perfectly true; but this does not advance the present argument.

Well now, what was the character of the right which the appellant held before he got the deed of propulsion? It is a serious understatement of his rights to say that he had a mere *spes successionis*. He was the eldest son of his father and the next heir designated by the original deed of entail. He had, therefore, a *jus crediti* to enforce the conditions of the entail; and the lands could not be disentailed without his consent, or without his interest being valued and paid for. His title, however, was, in its nature, one to take the estate at some time in the future. It seems to me, therefore, that he had such a title as falls within the terms of section 15 and was capable of being accelerated. That it was accelerated by the deed of propulsion is certain, for by it he got the estate, more than thirty years before the death of his father. So far as the father's interest in the estate was concerned, the statutory word "extinction" describes the result with precise accuracy, and the word "interest," while aptly applied to inferior rights, is sufficiently comprehensive to include the rights of an heir of entail in possession.

It was urged that the disentail which followed, and the onerous conditions which preceded the deed of propulsion, alter the result. Now, so far as the disentail is concerned, it did not affect the destination in the old entail; that destination stood unaltered and was the governing destination at Lord Buchan's death; and the appellant, but for the deed of propulsion, would have made up his title under that destination.

So far as the terms of the family arrangement go, I do not see how they affect the result. The essential fact is that, in the sequel, the appellant got the estate. I do not see that it would be better or worse if the arrangement had been made for the benefit of the appellant, or of both father and son.

LORD COLLINS—I agree.

Their Lordships dismissed the appeal with expenses.

Counsel for Appellant (Defender)—Dean of Faculty (Scott Dickson, K.C.)—Danckwerts, K.C.—Chree. Agents—J. C. Brodie & Sons, W.S., Edinburgh—Neish, Howell, & Haldane, London.

Counsel for Respondent (Pursuer)—Attorney-General (Sir W. Robson)—Solicitor-General for Scotland (Ure, K.C.)—Austen Cartmill—Munro. Agents—Solicitor of Inland Revenue (Hamilton Grierson), Edinburgh—Solicitor of Inland Revenue (Sir F. Gore), London.

HIGH COURT OF JUSTICIARY.

Monday, November 9.

(Before the Lord Justice-Clerk.)

H. M. ADVOCATE *v.* BAXTER.

Justiciary Cases—Indictment—Relevancy—Crime—Attempt to Procure Abortion—Sending Drugs by Post to One Person, to be Administered to Another, which were not Either Received or Used.

A was charged on an indictment, which set forth that he had obtained and sent by post to B certain drugs for the purpose of causing C, a woman, to abort, together with a letter containing instructions for the use of the same, and "did thus attempt to procure abortion of C." The drugs were neither received by B, nor administered to C.

Held, sustaining an objection to the relevancy of the indictment, that the charge did not constitute an attempt to commit a crime at common law.

Alexander Baxter was charged in the High Court in Edinburgh on an indictment in the following terms:—". . . . The charge against you is that Elizabeth Radcliff, residing at 68 North Park Street, Glasgow, having become pregnant, you did,