it seems to me that the master of the "Thorsa," knowing the facts which existed and in the circumstances which had been observed by him, acted as reasonably as a seaman could, and did not fail in his duty in any way whatsoever.

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

LORD WATSON—Was the master of the "Thorsa" when he ported a second time justified in assuming that the action of his helm would be sufficient to determine the risk of collision with the "Otto" without the necessity of stopping and reversing? The decision of this appeal one way or another depends, in my opinion, upon the answer to be given to that question. I have no difficulty in answering the question in the same way as the learned Judges of the Second Division have practically done. I do not think the master of the "Thorsa" was bound to assume that the "Otto," though she had disregarded his first would pay no attention to his second signal, and would not keep out of the way by going to the starboard. Upon the evidence, which on that point is all one way, I see little reason to doubt, that had the "Otto," after the second signal from the "Thorsa," kept on her course, the vessels would have passed clear of each other. The collision was in my opinion entirely due to the unseamanlike navigation of the "Otto;" and I am therefore of opinion that the judgment appealed from ought to be affirmed.

LORD HALSBURY—I am of the same opinion. There are two vessels practically on opposite courses, both intending to pass the lightship at about the same point; and the only blame that can be properly attributed to the "Thorsa" is that she did not stop and reverse in time to prevent the collision. That of course is a question which must always depend upon the circumstances of the particular case, and I am not helped by any canon which has been laid down beyond this, that people must behave reasonably with respect to the course they are pursuing when they come into proximity to each other, which may be the result of the course they are following. Looking at what the "Thorsa" did, it appears to me that she acted reasonably throughout. There was no reason why she should not keep on the course she was pursuing; and when she gave a signal which was not attended to, and gave a second signal, I think she might calculate that a seaman using ordinary care would attend to it. The time of course becomes very material. So far as I can form a judgment of the time that elapsed, when at last it was apparent to the master of the "Thorsa" that the master of the "Otto" was going to manœuvre as he ought not to have done, the former did what he ought to have done—he stopped and reversed; but it was too late to prevent the collision, which I think was caused by the persistent conduct of the master of the "Otto" throughout.

LORD ASHBOURNE, LORD MACNAGHTEN, and LORD MORRIS concurred.

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

Counsel for the Appellants—Sir Walter Phillimore—Aspinall. Agents—Pritchard & Sons, for J. & T. W. Hearfield & Lambert.

Counsel for the Respondents — Sir R. Webster, Q.C.—Salvesen. Agents—Thomas Cooper & Company, for Beveridge, Sutherland, & Smith, S.S.C.

Friday, June 1.

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

MACFARLANE AND OTHERS (DUNLOP'S TRUSTEES) *v.* THE LORD ADVOCATE.

(*Ante*, vol. xxix. p. 393, and 19 R. 461.)

Revenue — Legacy-Duty — Moveable Estate Directed to be Invested in Land—Entail —"Estate of Inheritance in Possession in the Real Estate"—Act 36 Geo. III. c. 52, secs. 12 and 19.

The Act 36 Geo. III. c. 52, sec. 12, provides—"That the duty payable on a legacy or residue or part of residue of any personal estate given to . . different persons in succession, who shall be chargeable with the duties hereby imposed at one and the same rate, shall be charged upon and paid out of the legacy or residue or part of residue so given, as in the case of a legacy to one person; and where any legacy or residue or part of residue shall be given to . . . different persons in succession, some or one of whom shall be chargeable with no duty, or some of whom shall be chargeable with different rates of duty, so that one rate of duty cannot be immediately charged thereon, all persons who under or in consequence of any such bequest shall be entitled for life only, or any other temporary interest, shall be chargeable with the duty in respect of such bequest in the same manner as if the annual produce thereof had been given by way of annuity."

Section 19 provides—"That any sum of money or personal estate directed to be applied in the purchase of real estate, shall be charged with and pay duty as personal estate, unless the same shall be so given as to be enjoyed by different persons in succession, and then each person entitled thereto in succession shall pay duty for the same in the same manner as if the same had not been directed to be applied in the purchase of real estate, unless the same shall have been actually applied in the

purchase of real estate before such duty accrued; but no duty shall accrue in respect thereof after the same shall have been actually applied in the purchase of real estate, for so much thereof as shall have been so applied: Provided, nevertheless, that in case before the same, or some part thereof, shall be actually so applied, any person or persons shall become entitled to an estate of inheritance in possession in the real estate to be purchased therewith, or with so much thereof as shall not have been applied in the purchase of real estate, the same duty which ought to be paid by such person or persons if absolutely entitled thereto as personal estate by virtue of any bequest thereof as such, shall be charged on such person or persons, and raised and paid out of the fund remaining to be applied in such purchase."

A testator directed his trustees during the six years succeeding his death to realise and invest his moveable estate in land, and to entail the same at the end of that period on W. H. D. and a certain series of heirs. The testator declared "that after the said period of six years have expired, the institute or the heir of entail in possession or entitled at the time to possess the lands and estates to be purchased as aforesaid under the destination hereinafter written, shall be entitled to demand and receive the interest and proceeds of the entire residue and reversion of my said estates, heritable and moveable, hereby conveyed, but under deduction always of such expenses and charges as may be incurred by my said trustees in the management and execution of the trust, until the said lands or estates are purchased and entailed, and the whole purposes of the trust fulfilled." A large portion of the moveable estate was not invested in land.

On the expiry of the six years, W. H. D., the person who would have been institute if the entail had been executed, having by private arrangement obtained the consent of the three next heirs and their curators, acquired in fee-simple, under petition to the Court, the whole real and personal property of the testator, under reservation of certain sums for Government duties and other purposes.

Of the £350,000 dealt with by the testator, the trustees had only laid out about £21,000 in land before the six years had expired, and another sum of £12,000 in building a mansion-house.

The Crown claimed from the trustees legacy-duty at 5 per cent. upon the capital of the whole residue of the moveable estate.

Held (*aff.*, but not on the same grounds, the judgment of the First Division) that the Crown was entitled to the duty, for, first, the words "shall become entitled to an estate of inheritance in possession in real estate," must be taken to apply to a person who would become entitled if real estate were purchased, to an estate of inheritance therein, and W. H. D. was in that position, for if land had been purchased he could have claimed a conveyance to himself which would have vested in him an estate of inheritance in possession; secondly, the compensation paid to the three next heirs of entail did not fall to be deducted before the duty was paid; and thirdly, neither did the sum of £12,000 expended on building a mansion-house, that not being a specific purchase of land.

Opinion per the Lord Chancellor that W. H. D. (if it were necessary to decide the point) was liable under the latter part of section 12.

This case is reported *ante*, vol. xxix. p. 393, and 19 R. 461.

Macfarlane and others appealed.

At delivering judgment—

LORD CHANCELLOR (HERSCHELL)—My Lords, the question raised by this appeal is, whether the Crown are entitled to legacy-duty upon the residue of the estate of the testator, who died in the year 1883, having made a trust-disposition by which the income of his estate or part of it was to be accumulated for a period of six years, and then to be laid out in the purchase of land by the trustees, the land purchased being settled as soon as convenient after the expiry of the six years by the trustees executing a deed or deeds of strict entail of the lands purchased, among others, "to and in favour of William Hamilton Dunlop, and the heirs-male of his body lawfully begotten according to their seniority," whom failing the heirs-female of his body lawfully begotten, whom failing to his brother Hamilton Dunlop and the heirs-male and female of his body lawfully begotten, with an ultimate provision failing those heirs to the testator's own nearest heirs and assignees whomsoever.

The moneys forming part of the residue, the duty upon which is now claimed, had not at the time in question been applied in the purchase of land; they were still in the hands of the trustees. A residuary account was sent in by the trustees, and William Hamilton Dunlop, who would have been interested under the deed of entail if executed, took proceedings, as he was entitled to do, under the Acts which enable a disentail to be effected by which the interests of the three next heirs were to be ascertained and valued, and subject to those interests so valued he became entitled to the residue without the money being expended upon the purchase of land and settled in the manner provided by the trust-disposition. There is no dispute that it was perfectly competent to William Hamilton Dunlop to take this course, that it was one which the law sanctioned, and that the effect of his having taken it was that which I have described.

The Crown claim the duty upon the whole of this residue under the provisions of 36 Geo. III. cap. 52, or the provisions which have been substituted, but which do

not materially alter some of those enactments. The statute, in the first instance, imposes legacy-duty upon all legacies above a certain amount, and upon all residue or share of residue which may pass to a beneficiary under a will. In the 12th clause, upon which reliance is placed by the appellant, it is provided "That the duty payable on residue or part of residue of any personal estate" (it applies to legacies also, but as this is a case of residue it is not necessary to refer to that part) "given to or for the benefit of or so that the same shall be enjoyed by different persons in succession who shall be chargeable with the duties hereby imposed at one and the same rate, shall be charged upon and paid out of the residue or part of residue so given, as in the case of a legacy to one person." So that even where successive interests are created by the trust-disposition, if the persons entitled to those successive interests are of the same degree of consanguinity, so that the duty would be payable at the same rate, the duty is to be paid out the residue first, as if there had been a bequest to one person alone.

The next part of the section deals with the case where a legacy or residue or part of a residue is "given to or for the benefit of or so that the same shall be enjoyed by different persons in succession, some or one of whom shall be chargeable with no duty, or some of whom shall be chargeable with different rates of duty, so that one rate of duty cannot be immediately charged thereon." It was to meet that particular case that a departure was permitted from that which is the principle of the Act, clearly indicated by the 2nd section and the earlier part of the 12th section, that where there was a bequest of residue the duty should, *prima facie*, be paid out of that residue on the whole sum which would pass from the trustees to the beneficiary before distribution. In the case where those different rates of duty would become chargeable there was of course a difficulty in providing for that course being adopted, and therefore where persons under such a settlement became entitled for life only, or to a temporary interest, they were to be "chargeable with the duty" "in the same manner as if the annual produce had been given by way of annuity." But the section concludes by providing that "All and every person and persons who shall become absolutely entitled to any such legacy or residue or part of residue so to be enjoyed in succession, shall, when and as such person or persons respectively shall receive the same or begin to enjoy the benefit thereof, be chargeable with and pay the duty for the same or such part thereof as shall be so received, or of which the benefit shall be so enjoyed, in the same manner as if the same had come to such person or persons immediately on the death of the person by whom such property shall have been given to be enjoyed." So that the scheme of the section was that where you could only charge in succession you were to do so, but in that case whenever any person or persons became entitled to an absolute interest, then the duty was to be paid upon the whole sum.

My Lords, that is followed by section 19, which deals with the class of case which this House has now to consider. It enacts that any sum of money or personal estate directed to be applied in the purchase of real estate shall be charged with and pay duty as personal estate. That is the leading idea of the section. Then, it continues, "Unless the same shall be so given as to be enjoyed by different persons in succession, and then each person entitled thereto in succession shall pay duty for the same in the same manner as if the same had not been directed to be applied in the purchase of real estate unless the same shall have been actually applied in the purchase of real estate before such duty accrued." The word "unless," with which that clause commences, is certainly not very happily chosen, because the enactment first being that the sum of money to be applied in the purchase of real estate shall be charged with the same duty as personal estate, the word "unless" would seem the proper mode of introducing some exception, but the words which follow "unless" do not introduce any exception at all; on the contrary, they provide that where it is to be enjoyed by different persons in succession, the duty is to be paid in the same manner as if it had not been directed to be applied in the purchase of real estate. That refers to the cases dealt with by section 12.

Then the section proceeds to say, "But no duty shall accrue in respect thereof after the same shall have been actually applied in the purchase of real estate for so much thereof as shall have been so applied. Provided, nevertheless, that in case before the same or some part thereof shall be actually so applied, any person or persons shall become entitled to an estate of inheritance in possession in the real estate to be purchased therewith, or with so much thereof as shall not have been applied in the purchase of real estate, the same duty which ought to be paid by such person or persons if absolutely entitled thereto as personal estate by virtue of any bequest thereof as such shall be charged on such person or persons, and raised and paid out of the fund remaining to be applied in such purchase."

My Lords, it is not disputed that if the case is within the proviso which I have just read the appeal must fail, and the judgment of the Courts below must be affirmed. The question is, whether the residue had been actually applied in the purchase of land before the person became entitled to an estate of inheritance in possession in the real estate to be purchased therewith? At the time when this dispute arose the money had not been applied to the purchase of land at all, but remained as money in the hands of the trustees. It is obvious that the words "in case any person or persons shall become entitled to an estate of inheritance in possession in the real estate" cannot be literally applied, because no person can become entitled to an estate of inheritance in possession in real estate

which is to be purchased in the future. It is obvious that the words need construction, and that their meaning must be—a person shall become entitled, if real estate is purchased, or as and when real estate is purchased, to an estate of inheritance and possession therein.

Now, was Mr William Hamilton Dunlop in the present case in that position? Supposing the land had been purchased, could he have claimed a conveyance to himself which would have vested in him an estate of inheritance in possession? Now, the land which was to be purchased was to be conveyed and settled to and in favour of William Hamilton Dunlop and the heirs-male of his body lawfully begotten, with other provisions to which I have already called attention. Was the estate which undoubtedly would have been vested in him if the land had been so settled an estate of inheritance in possession? My Lords, the words "an estate of inheritance" are, I understand, not words of art in the law of Scotland. One has to consider their meaning, therefore, without reference to any technical rule. Is a person who is instituted heir of entail the owner of an estate, or possessed of an estate, of inheritance? My Lords, as far as I understand the law of Scotland, the heir of entail is the owner of the land. That land will descend to the heirs under the entail and the limitations upon his ownership are fetters introduced for securing that the land shall descend to the heir. Under those circumstances it certainly appears to me that when one once arrives at what the position of an heir of entail is, there is no difficulty in coming to the conclusion that a person enjoying such right and having such a title and such ownership does possess an estate of inheritance. Indeed, it seems to me difficult to define an estate of inheritance better than as an estate which does not terminate with the life of the possessor, but which passes to his heirs. It is quite clear that a tenant in tail in England according to the English law is possessed of an estate of inheritance, and it is equally clear that the position of an heir of entail in Scotland and that of a tenant in tail in England do not for any particular purposes in view of the question of their possessing an estate of inheritance differ in quality the one from the other. I do not of course mean to say that the rights of a tenant in tail in England and of an heir of entail in Scotland are precisely the same; they are not, but in considering whether it should be said of the one as of the other that he possesses an estate of inheritance it seems to me that every reason which makes that language appropriate in the one case makes it appropriate in the other. For myself, therefore, I own it seems to me that quite apart from the disentailing proceedings effected by Mr William Hamilton Dunlop his case comes within that proviso, and that the intention of the proviso was to meet such a case, and that where a person under a trust-disposition took such an estate or would have taken such an estate if the land had been purchased as Mr Dunlop would have taken in the present case, he should be treated for the purposes of the legacy-duty as the absolute owner just as much as if the bequest had been made to him absolutely.

My Lords, that really is sufficient to dispose of the present case. But even if that view were not well founded I should not be satisfied by the arguments of the learned counsel for the appellants that they would be entitled to judgment. The effect of the statutes in reference to disentailing is to enable the first heir of entail to have the interest or expectancies of the three next heirs in circumstances such as the present valued, and to insist that instead of the entail continuing and instead of the land being purchased and settled in the manner prescribed they according to their several interests shall have paid over to them or be entitled to enjoy the money which was destined by the testator to be laid out in land. Where such a disentail has taken place it is obvious that all succession or idea of succession is at an end. The money in the hands of the trustees is no longer to be settled, there is no longer to be a succession of interests or any land to be purchased, there will be an absolute title to have that money handed over free of restriction. How under those circumstances ought it to be dealt with for the purposes of legacy-duty? My Lords, it is not necessary to express any opinion upon that after the view which I have invited your Lordships to take upon the effect of the proviso, but I own it seems to me that there is no difficulty in such a case in applying the language of the 12th section of the Act, or, if that be inappropriate, even of the 2nd section of the Act, which is the charging section. If it is not a case of succession at all, then the 2nd section applies. The 12th section only comes in where successive interests have been created and have to be dealt with. Of course if section 2 applies, or that which is now substituted for it, there is an end of the case. If section 12 applies, then under the earlier part of the section the case does not differ. The whole argument has been based upon the suggestion that the case is one of successive interests within the second part of section 12, and that therefore all that Mr William Hamilton Dunlop ought to do is to pay upon the basis of his having a life interest. But, my Lords, all those successions, whatever they were, which were intended to be created by the testamentary disposition, were created subject to the law relating to entail; they were created subject to a statutory power of sweeping them away, and the result of their being swept away is that there are now no successive interests which can be charged, but that there are absolute interests, and absolute interests only, in the money. My Lords, under those circumstances I certainly have no difficulty in applying to them the language at the end of section 12, which provides that although there were to be successive interests, yet whenever the successive interests come to an end, and there comes to be an absolute title in the person

or persons, then the duty shall be paid in the manner provided at the end of that section. My Lords, as I say, it is not necessary absolutely to come to any determination upon that point, because the case is really concluded against the appellants by the view which I first presented to your Lordships. I therefore move that the interlocutors appealed from be affirmed and the appeal dismissed with costs.

LORD WATSON—My Lords, in this case it is hardly necessary for me to add anything to what has been said by the Lord Chancellor. Whatever view be taken of this case, whether it be regarded as one in which nothing ought to be looked at except the terms of the trust-deed of the late Mr Dunlop, or whether it be assumed that the fact of the disentail with all its consequences ought to be taken into account, the result appears to me in either case to be precisely the same. With regard to the first of these views, I entertain a very clear opinion that according to the Scotch law, apart altogether from any considerations which may be derived from the English system, the expression "estate of inheritance" occurring in the proviso to the 19th section of the Act 36 Geo. III. ought to be construed as including the right and interest of a Scotch heir of entail in possession; the words are not technical, but they appear to me very aptly to describe that right and interest. A Scotch heir of entail in possession is vested with the full fee of the land. He is the only person who can have the slightest pretence to the position of owner, and it does not appear to me that that position is detracted from in any way by the circumstance that he is subject to certain restrictions, because the sole object and purpose of these restrictions is to protect and strengthen the right of inheritance which is created by the deed of entail, and to make the estate descend in succession to those heirs who are called by the terms of its destination.

But, my Lords, in this case it is unnecessary to rely solely upon that view, because this is a Taxing Statute applicable equally to real estate in Scotland and in England, and accordingly following the principles which were laid down by the noble and learned Lords who in this House decided the appeal of *Lord Saltoun* v. *Her Majesty's Advocate General*, it is clear that if the interest of an heir of entail can by any fair interpretation be brought within the words "estate of inheritance" it ought to be so brought. As I have already said, these words are quite apt to include it. I need hardly repeat that in England the interest of a tenant in tail, which bears, I will not say a close, but a fair analogy to the interest of an heir of entail in Scotland, would clearly fall within the sweep of the Act. Then, according to that view, Mr Dunlop at the time when he proceeded to present the petition of disentail was within the predicament of the proviso, and had rendered the money liable to be assessed simply as if it had been personal estate. I have had some difficulty in making up my mind whether that is the right ground upon which to rest the decision in this case or whether the alternative view which has been presented is the right one. If you are to take the disentail into account at all, it appears to me that it must be upon the footing that the Legislature has by the provisions of the Entail Acts altered and modified the meaning and effect of such a direction to invest and entail as is directed in this case in the deed of the late Mr Dunlop. Now, if you give effect to that view, the substantial result of the entail legislation beginning in 1848, and terminating (because it is probably not necessary to go further) in the year 1882, has been to prescribe that a direction in these terms shall in certain circumstances—namely, those circumstances which have occurred in the present case—not operate according to its own precise terms, but shall operate in those circumstances as an absolute and direct bequest to Mr Dunlop, who is institute of entail, and to certain other of the heirs. In that view it seems to me to be very immaterial whether the case falls under the proviso or condition in the end of section 12 of the statute or under the general taxing words of the Act. It becomes in substance a direct bequest of residue to the persons whom I have named.

My Lords, I have only to say in addition that the Court of Session appear to me rather to have erred in assuming that if the last view be the correct one and you are to read the direction in the light of the Entail Acts, and to hold that it directs in conformity with these Acts the payment of the money in fee, that case would be within the proviso at the end of section 19. I do not think that that is so; I think that the proviso at the end of section 19 is confined to the case where the money is not to be paid over but is to be invested by the trustees in land, and that land is to be conveyed to the beneficiaries indicated in the deed. I am bound to say, however, that that error (it is not a serious one) on the part of the learned Judges of the Court below has been, if not wholly due to, at least in great part induced by the form in which the Crown chose to present its case for the consideration of the Court.

LORD ASHBOURNE—My Lords, I concur.

LORD MACNAGHTEN—My Lords, I agree. Apart from the disentailing proceedings, and the right flowing therefrom, I think this case clearly falls under section 19 of 36 Geo. III. I think the words in the proviso at the end of that section, though not framed in the technical language of the Scotch law, describe the actual position of William Hamilton Dunlop as institute of the entail created under the testator's trust-disposition, as aptly and as accurately as they would describe the position of a tenant in tail in possession in England.

LORD MORRIS—My Lords, I concur.

LORD SHAND—My Lords, I also concur, and I am of opinion with your Lordships that this decision should be affirmed upon the grounds stated by my noble and learned friend the Lord Chancellor, and my noble and learned friend opposite (Lord Watson). I desire to add, however, that I am not

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