means to be assumed that where there is a school building given to half-time children a parent can insist on his child, who is a half-timer, being received at the whole-time school. Be that as it may, without expressing any definite opinion on the rights of the parent, what we are here concerned with is not the rights of the parent but the interests of the child, which are alone considered in the statute. It seems to me that, when it was proved to the Sheriff-Substitute that means of instruction were open to this child, and that the child was not receiving instruction, he had no option under the statute but to make the proper attendance-order, and I am therefore of opinion that this appeal should be dismissed and the order of the Sheriff affirmed.

LORDS ADAM and KINNEAR concurred.

The Court affirmed the order.

Counsel for the Appellant — Christie. Agent—James Hepburn, S.S.C.

Counsel for the Respondent — Clyde. Agents—Henry & Scott, W.S.

COURT OF SESSION.

Tuesday, June 11.

FIRST DIVISION.

[Lord Moncreiff, Ordinary.

LORD ADVOCATE *v.* GORDON.

Revenue—Succession-Duty—Action for Reduction of Will—Compromise—Assignation of Succession.

By his trust-disposition and settlement James Dalrymple directed his trustees to hold one-half of the residue of his estate, including the estate of Wester Langlee, for behoof of his daughter in liferent and her issue in fee. In the event of Miss Dalrymple having no issue, she was given power to dispose of her share by *mortis causa* deed, and failing her doing so, her share was to fall to the testator's grandson, Gordon, to be held by trustees for his behoof in liferent. In exercise of the power of disposal conferred upon her, Miss Dalrymple executed a trust-disposition and settlement, whereby she directed the trustees thereby appointed to convey the estate of Wester Langlee to Mrs Durrant (a stranger in blood) in liferent and her son Christopher in fee, and to hold the residue of her estate, and pay the annual income to Mrs Durrant during her life, and on her death to realise and pay the proceeds to her children. Gordon brought an action for reduction of this settlement, but the action was compromised in terms of an agreement between the parties, which provided that Mrs Durrant and her son should assign to Gordon their whole right and title to the estate of Wester Langlee under the settlements of James Dalrymple and Miss Dalrymple; that, as regarded the remainder of Miss Dalrymple's estate, her settlement should receive full force and effect; that the reasons of reduction should be repelled, and that the defenders should be assoilzied from the conclusions of the action. This agreement was duly implemented.

The Crown thereafter claimed succession-duty from Gordon "in respect of the succession of Mrs Durrant to the liferent of the estate of Wester Langlee."

Held that, as Miss Dalrymple's settlement had been held to be unchallengeable, Mrs Durrant had in virtue of its provisions succeeded to the liferent of Wester Langlee; that the defender's right thereto was derived by assignation from her; and therefore that, as Mrs Durrant was a stranger in blood to Miss Dalrymple, duty at the rate of 10 per cent. was due by the defender on the value of her succession.

James Dalrymple of Langlee, Roxburgh, died in 1877, leaving a trust-disposition and settlement dated 27th October 1875, whereby he directed that the residue and remainder of his estates, heritable and moveable, should be divided between his daughter Miss Lavinia Georgina Dalrymple, and his grandson Arthur Dalrymple Forbes Gordon, the estate of Wester Langlee being included in his daughter's share. In regard to Wester Langlee the trustees were directed to hold it for behoof of Miss Dalrymple in liferent for her liferent use allenarly and for her issue in fee. In the event of her dying without issue, the estate of Wester Langlee and any other portions of residue undivided, were to fall to the grandson, and were to be held for him by the trustees in the same way as was directed with regard to his own share, which the trustees were directed not to pay over to him until he attained the age of twenty-five.

By a codicil dated 26th January 1876 the truster declared that in the event of his daughter dying without issue, his estate held in trust for her should in the first place fall to such person or persons as she by any *mortis causa* deed should direct, she for that purpose having full power of disposal, to take effect after her death. Failing such deed the said estate was to be disposed of as before directed by the settlement; that is, it was to be held for the testator's grandson, and paid over to him when he attained the age of twenty-five, but, as regarded the lands falling to the truster's grandson in terms of the settlement, the codicil provided that the same should, on his attaining the age of twenty-five years, not be conveyed to him absolutely, but in liferent only for his liferent use allenarly and the heirs of his body in fee, whom failing to the testator's own heirs. A second codicil provided that the share of residue destined to the testator's grandson should not be paid to him when he attained twenty-five years of age, but should be held by the trustees for his liferent use,

and for the heirs of his body in fee, whom failing for the testator's own heirs.

Miss Dalrymple died on 21st June 1888, leaving a trust-disposition and settlement, whereby she directed that Mr Forbes Gordon should have an opportunity of purchasing the estate of Wester Langlee, but failing his doing so, she directed her trustees to convey it and the whole of her other heritable estate to Mrs Durrant in liferent, and to her son, Christopher Durrant, in fee, and to hold the whole residue of the trust-estate, including the price of Wester Langlee if sold, and pay the annual income to Mrs Durrant, and after her death to realise and divide the proceeds among Mrs Durrant's children.

In May 1889 Mr Forbes Gordon raised an action of reduction against Miss Dalrymple's trustees, Mrs Durrant and others, for reduction of Miss Dalrymple's trust-disposition on the ground of facility, fraud, and undue influence. Defences were lodged and issues adjusted, and the cause was put down for jury trial. Parties, however, came to an extra-judicial arrangement embodied in a minute of agreement dated 23rd July 1890, in which it was stipulated (first) that Mrs Durrant and her family should convey to Mr Gordon all their rights under Miss Dalrymple's trust-disposition and settlement to the estate of Wester Langlee; (second) that with regard to the remainder of Miss Dalrymple's estate, the trust-disposition and settlement of Miss Dalrymple shall receive full force and effect in the same way as if it had never been challenged; and (fourth) that the action should be taken out of Court by joint-minute withdrawing all imputations against the defenders, and consenting to the reasons of reduction being repelled and the defenders assoilzied, with expenses to neither party.

On 20th July 1893 decree was pronounced, on Mr Gordon's motion, in terms of this agreement. In June 1891 Miss Dalrymple's trustees, Mrs Durrant, and her children, in terms of the 2nd article of the agreement, granted an absolute assignation and conveyance of all their rights, title, and interest, as from the date of Miss Dalrymple's death, in and to the lands of Wester Langlee, under the settlements of Mr and Miss Dalrymple, to Mr Forbes Gordon, and his heirs and assignees, and thereafter Mr Dalrymple's trustees executed a disposition of the estate in Mr Gordon's favour.

On February 14th 1895 an action was raised against Mr Forbes Gordon by the Lord Advocate on behalf of the Board of Inland Revenue, for declarator that the defender was bound to make payment to him of £750, or such other sum as might be ascertained to be the amount of the eight half-yearly instalments of succession-duty, payable "in respect of the succession of Mrs Durrant . . . to the liferent of the said lands and estate of Wester Langlee" on Miss Dalrymple's death, and for decree ordaining him to pay that amount with interest at the rate of four per cent. on the instalment from the dates on which they respectively became payable.

The pursuers averred—"(Cond. 2) Mrs Durrant and her son, who were respectively entitled to the liferent and fee of Wester Langlee, were strangers in blood to Miss Dalrymple, under whose trust-settlement they took their right. Through their assignation in his favour, the defender, Mr Forbes Gordon, has acquired a full right of fee. This right has come to him as their assignee, and not as Miss Dalrymple's heir-at-law. Mr Dalrymple's trustees, in granting a disposition in Mr Forbes Gordon's favour, have proceeded on the footing that Miss Dalrymple's settlement was effectual. Had her settlement been set aside, Mr Dalrymple's trust-deed would have regulated the destination of the property, and accordingly Mr Forbes Gordon would have had only a liferent after he was 25 years of age. (Cond. 12) Succession-duty is now payable at the rate of ten per cent. in respect of Mrs Durrant's succession to the liferent of Wester Langlee; and Mr Forbes Gordon, being fully vested in the property, under the disposition recorded on 24th December 1894, is in right of Mrs Durrant." . . .

The pursuer pleaded—"(1) Miss Dalrymple's will not having been set aside, succession-duty is due on account of the free annual value of the liferent thereby given to Mrs Durrant. (2) The defender having acquired Mrs Durrant's liferent of the lands of Wester Langlee by the assignation in his favour, is liable for the succession-duty payable in respect of her succession thereto."

The defender averred that he acquired his rights under the deeds before mentioned from Miss Dalrymple's trustees, and not from Mrs Durrant or her children, who never took any right in the estates of Wester Langlee under Miss Dalrymple's settlement, and that accordingly he was only liable for succession-duty at the rate of three per cent., which he had offered and was willing to pay.

On 23rd May 1895 the Lord Ordinary pronounced the following interlocutor—"Finds and declares that the defender is bound to make payment to the pursuer of succession-duty at the rate of ten per cent. in respect of the succession of Mrs Elizabeth Martin Cockburn or Durrant to the liferent of the lands and estate of Wester Langlee: *Quoad ultra* continues the cause," &c.

The defender reclaimed, and argued—The action of reduction was treated as successful *quoad* the Langlee estate, and Mrs Durrant never had any interest in it. She would have a good defence on this ground were she sued for duty now, having had no succession to it at all for the purposes of the statute. The compromise had been made by Miss Dalrymple's trustees, and the defender had acquired his rights from them, and he was therefore only liable to pay duty at the rate of three per cent.

Argued for the pursuer—Upon Miss Dalrymple's death Mrs Durrant had become "beneficially entitled" to the liferent of Wester Langlee in the sense of section 2 of the Succession Duty Act of 1853. The right of the defender to the estate depended on

the assignation of it to him; he thus fell precisely under section 42 of the Act as claiming in right of the successor. A stranger in blood having succeeded, duty at the rate of ten per cent. was due, and under section 42 of the Act it was exigible from the defender as the successor's assignee.

At advising—

LORD PRESIDENT—Under the settlement of Mr James Dalrymple, Miss Lavinia Dalrymple had power to dispose of the estate of Wester Langlee by *mortis causa* deed. If she did not exercise or validly exercise that power, then certain rights to that estate passed on to Arthur Dalrymple Forbes Gordon. Miss Dalrymple executed a *mortis causa* deed by which she conferred the liferent of this estate of Wester Langlee upon Mrs Durrant, the fee being given to that lady's son. Mr Arthur Dalrymple Forbes Gordon has taken from Mrs Durrant a conveyance in his own favour of the liferent of Wester Langlee, and he at the same time obtained a conveyance of the fee from Mrs Durrant's son or his guardians. Mr Forbes Gordon is now called upon, as being in possession of these lands, to pay the succession-duty which was due by Mrs Durrant in consequence of the succession which she took from Miss Dalrymple, and he refuses to pay upon the ground that certain proceedings were taken by him in the Court of Session for the purpose of setting aside the *mortis causa* disposition of Miss Dalrymple in favour of Mr Durrant. But then, the result of these proceedings in the Court of Session was that, by agreement between Mr Arthur Dalrymple Forbes Gordon and Mrs Durrant, Mrs Durrant was assoilzied from the conclusions of reduction which were the substance of that action; and the result of that necessarily was that she was judicially found to have had a succession open to her under the deed of Miss Dalrymple. Mr Arthur Dalrymple Forbes Gordon now says that you are to construe that agreement in the light of the other terms of the bargain, the other terms of the bargain being that, while there was absolvitor pronounced in favour of Mrs Durrant, she became bound to convey to Mr Arthur Dalrymple Forbes Gordon certain but not all of the property covered by Miss Dalrymple's will.

It seems to me that that statement of the case which I put into the mouth of the present defender,—and I think it fairly represents his argument,—is destructive of his present contention; because it amounts to this—that, while he came into Court to assert his right to take under the will of Mr James Dalrymple on the ground that Miss Dalrymple had not executed a valid deed, he renounced that right in favour of Mrs Durrant by consenting to an absolvitor which negatived his contention, and agreed in place of that to become her assignee of certain of her rights. That is merely another way of saying that Mr Arthur Dalrymple Forbes Gordon has taken from Mrs Durrant what *ex hypothesi* she only got by succession from Miss Dalrymple. It seems to me, therefore, that, not in form merely but in substance, the transaction between these parties set up—judicially set up—the succession of Mrs Durrant to Miss Dalrymple in order that she might give to Mr Arthur Dalrymple Forbes Gordon what he now enjoys. I am therefore for adhering to the Lord Ordinary's interlocutor.

LORD ADAM concurred.

LORD M'LAREN—I agree with your Lordships. I think that in cases of succession-duty the form and title under which the interest is taken may sometimes be very material to the incidence of the duty, and that it is so in this case. If, for example, a special legatee or heir of provision should decline the bequest or provision (which he might do if he thought it an inequitable will, and had ample means of his own), and if, in consequence of such declinature, the bequest became merged in the residue or larger estate. I should not, as at present advised, think that the Crown would have a claim for duty from the heir or residuary legatee at a higher rate than that which belonged to his relationship to the ancestor. If a special legatee consents to a decree of reduction being passed as regards his interest in the succession, I should think it would be very much the same case as if he voluntarily surrendered his interest. But that is not what happened here. I suppose the case between Mrs Durrant and Mr Forbes Gordon might have been settled by allowing reduction to pass as regards the heritable estate, but apparently there were reasons against that course. The parties did not wish that any discredit should be thrown upon the settlement on the grounds that had been put forward, and so the actual contract is that the deed shall be held to be unchallengeable, but that, in consequence of the consent of Mr Arthur Dalrymple Forbes Gordon to the deed in favour of Mrs Durrant, he is to receive by assignation from Mrs Durrant what he would otherwise have taken as heir-at-law—in fact he is to be in a better position, because he is also to receive, in certain events, an assignment of the childrens' interest. I think it must therefore be taken that Mrs Durrant did acquire a right of succession under the instrument in question, Miss Dalrymple's will, and that the present defender has no title to the liferent estate except what he receives from the assignment by Mrs Durrant. It is true that in point of form it was necessary to take a feudal conveyance from the grandfather's trustees, but the trustees had no power to make it, except in virtue of the mandate which they got from Mrs Durrant, and therefore it is in truth and in substance by a conveyance from Mrs Durrant that the defender derives his right. I therefore agree with the Lord Ordinary and your Lordships that the duty attaches as claimed.

LORD KINNEAR concurred.

The Court adhered.

Counsel for the Pursuer—Asher, Q.C., A. J. Young. Agent—Solicitor of Inland Revenue.

Counsel for the Defender—C. S. Dickson—A. S. D. Thomson. Agent—Andrew Newlands, S.S.C.

Thursday, June 13.

FIRST DIVISION.

CROLLS' TRUSTEES *v.* STARK AND OTHERS.

Husband and Wife—Marriage-Contract—Mutual Trust-Disposition and Settlement—Power of Survivor to Revoke—Succession.

By antenuptial contract of marriage intending spouses mutually conveyed to each other, in case of survivance, and to the heirs of the survivor, their whole respective estates. Subsequent to the marriage the spouses executed a mutual trust-disposition and settlement by which they severally conveyed the whole estates which should respectively belong to them at their deaths to trustees, directing them to pay the annual income of the estate of the predeceaser to the survivor, and on his or her death, after paying certain specified legacies, to divide the whole residue of the estates conveyed into four equal parts, and pay one part to each of four residuary legatees, who were relatives of the spouses. Power was reserved by the spouses "by any joint writing under our hands to revoke or alter these presents," but it was declared "that, so far as not altered or revoked as aforesaid, the same shall remain effectual."

The marriage was dissolved (without issue) by the death of the wife, and after her death the husband executed a settlement dealing with his own estate, and altering the provisions of the mutual settlement.

Held that the provisions of the marriage-contract were contractual; that in consenting to execute the mutual settlement, and thus surrender their rights under the marriage-contract, the spouses did so on the condition that the substituted provisions should receive effect; and therefore that, the husband was not entitled after the wife's death to alter the provisions of the mutual settlement even as to his own estate.

Mr and Mrs Croll were married in 1864. At the time of the marriage they were both about fifty years of age.

Shortly before the marriage they had executed an antenuptial contract of marriage whereby they mutually conveyed, each of them to the other, in the case of his or her survivance, and to the heirs and assignees of the survivor, the whole heritable and moveable estate that might belong to either of them at the dissolution of the marriage.

On 31st January 1890 the spouses executed a mutual trust-disposition and settlement, whereby each conveyed to the trustees named in the deed the whole means and estate "which shall belong to me at the time of my decease" for the following purposes:—(1) Payment of debts; (2) the spouses directed the trustees to pay to the survivor of them the free annual income of the estates of the predeceaser hereby conveyed; (3) on the death of the survivor the trustees were directed to pay certain legacies; and (4) with regard to the residue of the estates conveyed, the trustees were directed, upon the said event, to divide the same into equal parts, and pay one part to Mrs Helen Low, sister of Mr Croll, whom failing to her children; another part to Mrs Elizabeth Munro, also a sister of Mr Croll, whom failing to her children; a third part to John Adam Ewart, a relative of Mrs Croll, whom failing to his children; and the remaining part to Francis Stark, a nephew of Mr Croll, whom failing his children. It was declared that, should any of the residuary legatees above named predecease the survivor of the spouses without leaving lawful issue, then, and in that event, the share which such predeceaser would have taken by survivance should fall into and form part of the residue of the estates thereby conveyed, and the whole residue should then be divided among the remaining residuary legatees *per stirpes et non per capita*. Power was reserved to the spouses "by any joint writing under our hand to revoke or alter these presents, but declaring that in so far as not altered or revoked as aforesaid, the same shall remain effectual."

Mrs Croll died on 25th April 1893, survived by Mr Croll, but without issue of the marriage. She left estate to the value of several hundred pounds.

Mr Croll died on 8th October 1894, leaving a trust-disposition and settlement executed by him on 10th January 1894, by which he conveyed to trustees his whole estate, which amounted at his death to about £1850. He directed the trustees, after paying certain legacies to divide the residue of his estate into two equal parts, and pay one part to Mrs Helen Low, and the other part to Mrs Elizabeth Munro. He further revoked "all writings of a testamentary nature executed by me heretofore."

Questions having arisen as to the validity and effect of this trust-disposition, a special case was presented by (1) the trustees under the mutual trust-disposition and settlement; (2) and (3) the special legatees under the mutual deed; (4) and (5) Francis Stark and John Adam Ewart, two of the residuary legatees under the mutual deed; (6) the trustees under Mr Croll's settlement; (7) Mrs Low and Mrs Munro, who were two of the residuary legatees under the mutual deed, and were the sole residuary legatees under Mr Croll's settlement; (8) a legatee under Mr Croll's settlement.

The opinion of the Court was asked upon the following question—"Was it within the power of Mr Croll after the