bank and the apartments occupied by its accountant, and also such identity of occupation as make it impossible to dissociate the two floors, and to treat the business premises as a separate tenement in the sense of the 13th section of the Act of 1878.

The LORD PRESIDENT, LORD ADAM, and LORD KINNEAR concurred.

The Court affirmed the determination of the Commissioners.

Counsel for the Appellants — Dundas, K.C.—Pitman. Agents—J. & F. Anderson, W.S.

Counsel for the Respondents—A. Jameson, K.C.—A. J. Young. Agent—P. Hamilton Grierson, Solicitor of Inland Revenue.

Tuesday, March 5.

SECOND DIVISION.

[Exchequer Cause.

[Lord Stormonth-Darling, Ordinary.

LORD ADVOCATE *v.* WATHERSTON'S TRUSTEES.

Revenue—Legacy Duty—Legacy Duty Act 1796 (36 *Geo. III. cap.* 52), *secs.* 21 *and* 23—*Legacy Free of Duty — Compromise — Legacy Taken under Will or Compromise.*

The Legacy Duty Act 1796, sec. 21, enacts, "that if any direction shall be given by any will or testamentary instrument for payment of the duty chargeable upon any legacy or bequest out of some other fund, so that such legacy may pass to the person or persons to whom or for whose benefit the same shall be given free of duty, no duty shall be chargeable upon the money to be applied for the payment of such duty, notwithstanding the same may be deemed a legacy to or for the benefit of the person or persons who would otherwise pay such duty."

Section 23 enacts—"Where any legacy or part of any legacy, . . . whereon any duty shall be chargeable by this Act . . . shall be released for consideration or compounded for less than the amount or value thereof, then and in such case the duty shall be charged and paid in respect of such legacy or part of legacy . . . according to the amount taken in satisfaction thereof, or as the consideration for release thereof or composition for the same."

A testatrix by various testamentary writings bequeathed a number of legacies, of which some were declared to be free of legacy duty, and others were not. Questions having arisen as to the validity and effect of the said testamentary writings, all the parties claiming an interest in the deceased's estate entered into a deed of agreement and compromise, whereby they agreed that the said writings should be construed as if they formed a valid will by which the deceased bequeathed the legacies specified in the agreement, and that she should be held to have died testate to that effect, and further declared that all the legacies were to be free of government duties of whatever kind. The legacies payable under the agreement were in each case of about half the amount bequeathed by the deceased. The legatees received payment of the sums so agreed on free of legacy duty, which was paid by the trustees out of other funds in their hands. In an action by the Crown claiming legacy duty from the trustees upon the sums paid by them as duty upon the said legacies, the trustees tendered payment of legacy duty in respect of the sums paid as duty upon those legacies which the deceased had not expressly declared to be duty free, but resisted the claim made in respect of the sums paid as duty upon those legacies which the deceased had declared to be duty free.

Held (*rev.* Lord Stormonth-Darling, Ordinary) that it was by virtue of the testamentary writings of the testatrix that the legatees took their legacies as reduced in amount under the agreement, that consequently, notwithstanding the compromise and the provisions of section 23, section 21 applied to the sums paid as duty upon those of the legacies which the testatrix had declared free of legacy duty, and that accordingly the Crown's claim for legacy duty upon these sums could not be sustained.

Opinion (*per* Lord Young) that the exemption provided by sec. 21 was equally applicable to all the legacies, whether declared by the testatrix to be duty free or not.

This was an action at the instance of the Lord Advocate, on behalf of the Commissioners of Inland Revenue, against James Balfour-Kinnear, W.S., and another, trustees and executors of the late Miss Christian Elizabeth Watherston, in which the pursuer claimed a sum of £250, 7s. 6d., being legacy duty alleged to be due by the defenders as trustees.

Miss Watherston died unmarried on 11th January 1898, predeceased by her parents, leaving three testamentary writings dated respectively 25th October 1896, 17th December 1896, and 18th January 1897, by which she bequeathed a number of legacies, some free of legacy duty and others not. She died possessed of heritable and moveable estate of which she was the absolute owner, and at the time of her death she was entitled to dispose by will of the estate placed in trust by her father's trust-conveyance, dated 27th February 1886, and also of the residue of his estate under his trust-disposition and settlement dated 20th May 1895.

On Miss Watherston's death the validity and effect of her testamentary writings were challenged by her next-of-kin and others. Ultimately the questions which were thus raised were settled, all the par-

ties interested having entered into a deed of agreement and compromise, which was recorded in the Books of Council and Session on 28th July 1898. The parties of the first part to the agreement were the deceased's heir-at-law and next-of-kin, who were also, in the event of her intestacy, entitled as ultimate beneficiaries to the funds under her father's trust of 1886. The parties of the second part were those who, in the case of the deceased's intestacy, were entitled to the residue of her father's estate as ultimate beneficiaries under his trust of 1895. The third parties were persons claiming right under the deceased's testamentary writings.

The said deed of agreement and compromise provided as follows:—"(*First*) The said three writings left by the said Christian Elizabeth Watherston shall be construed as if they formed a valid *mortis causa* deed or will, by which she bequeathed to the third parties hereto the following legacies, *videlicet*:—(Here followed the names of the legatees and the sums which they agreed to take, which were in each case about half of those given by the testamentary writings of the deceased) all of said legacies being free of government duties of whatever kind, and to be paid as soon as possible, but without any interest thereon. (*Second*) The said Christian Elizabeth Watherston shall be held to have died testate to the effect expressed in the foregoing article, and to have validly exercised the powers of bequest conferred on her by the 1886 trust-deed and the 1895 trust-deed to the extent of the sums which may be required from the 1886 trust and the 1895 trust, in addition to her own separate estate, to meet the whole of the bequests specified in the preceding article, and whole Government duties and expenses; and the conveyance of estate contained in the writing of eighteenth January eighteen hundred and ninety-seven, in favour of George Thomas Balfour-Kinnear and James Balfour Kinnear, both Writers to the Signet, Edinburgh, the trustees and executors of the said Christian Elizabeth Watherston nominated under said last mentioned writing, shall be held to be an effectual conveyance not only of her own separate estate but also of so much of the 1886 trust-funds and the 1895 trust-funds as may be required for the purpose of paying the whole of said bequests and duties and expenses connected therewith, and also the whole expenses connected with the succession to the said Christian Elizabeth Watherston incurred since her decease. The trustees and executors of the said Christian Elizabeth Watherston shall ascertain as nearly as may be the sum required in addition to her separate estate, and shall receive the amount so required from the 1886 trust and the 1895 trust proportionately; and the 1886 trustees and the 1895 trustees are hereby authorised to pay over such sums as they may be called on to pay to the trustees and executors of the said Christian Elizabeth Watherston, whose receipt and discharge shall be sufficient exoneration to said 1886 trustees and 1895 trustees respectively. (*Third*) The said Christian Elizabeth Watherston shall be held *quoad ultra* to have died intestate and without having exercised the powers of bequest conferred upon her by the 1886 trust-deed and the 1895 trust-deed. (*Sixth*) The whole parties hereto agree to accept the foregoing division and the sums thereby falling to each as in full of all claims competent to them and each or any of them by virtue of the 1886 trust-deed, the 1895 trust-deed, or any of said writings of the said Christian Elizabeth Watherston, or by or through the decease of the said Christian Elizabeth Watherston and William Watherston, or either of them: And the whole parties hereto bind themselves and their respective heirs and successors to abide by the compromise effected by these presents, and to grant all necessary discharges or other writings necessary to carry the same into effect: And they all discharge each other, and the trustees under the 1886 trust-deed, the 1895 trust-deed, and the trustees and executors of the said Christian Elizabeth Watherston, of all claims thereunder, excepting as adjusted and agreed to by this deed."

Miss Watherston's own estate proved insufficient to pay the legacies fixed by the agreement, which amounted to £40,900; the duty payable being £3032, 10s.; and the balance necessary to pay the legacies, duties, and expenses was, on the request of her trustees, paid to them by the trustees under the trust-deeds of 1886 and 1895. Thereafter the various legatees received the sums payable to them as agreed on, free of legacy duty; and in respect of the duty payable on their legacies the said sum of £3032, 10s. was paid by the trustees to the Crown on 9th February 1899. The amount so paid was calculated on the sums actually paid to the legatees, in terms of the deed of compromise, without taking into account the sums applied in payment of the duties on the legacies.

The Crown maintained that legacy duty was exigible not only on the sums paid to the legatees in terms of the compromise, but also on the money applied in payment of the duty on the legacies. The trustees disputed the claim made by the Crown, and on 26th June 1900 the present action was raised.

The Crown founded on section 23 of the Legacy Duty Act 1796, quoted *infra*.

The defenders averred that the full legacy duty payable on the legacies in question had been paid by them to the Crown.

They averred further—"(Ans. 8) . . . On 23rd February 1900, before this action was raised, the defenders offered to the Inland Revenue payment of legacy duty upon the duty in the case of all those legatees whose legacies were not expressly duty free in terms of Miss Watherston's testamentary writings, in full of the claim now made. This offer, which was made in order to avoid litigation, is now repeated without prejudice to the defenders' contentions and pleas."

The pursuer pleaded—"(1) Legacy duty is chargeable on the money applied in the payment of duty on the said legacies,"

The defenders pleaded—"(2) No legacy duty being payable on the duty in the case of the legacies in question, the defenders should be assoilzied from the conclusions of the summons. (4) In any event, in respect of the tender made before the present action was raised, and repeated on record, the defenders are entitled to expenses."

The Legacy-Duty Act 1796, sec. 21, enacts —"That if any direction shall be given by any will or testamentary instrument for payment of the duty chargeable upon any legacy or bequest out of some other fund, so that such legacy or bequest may pass to the person or persons to whom or for whose benefit the same shall be given free of duty, no duty shall be chargeable upon the money to be applied for the payment of such duty, notwithstanding the same may be deemed a legacy to or for the benefit of the person or persons who would otherwise pay such duty."

Section 23 enacts—"Where any legacy or part of any legacy or residue or part of residue whereon any duty shall be chargeable by this Act shall be satisfied otherwise than by payment of money or application of specific effects for that purpose, or shall be released for consideration or compounded for less than the amount or value thereof, then and in such case the duty shall be charged and paid in respect of such legacy or part of legacy or residue or part of residue according to the amount or value of the property taken in satisfaction thereof or as the consideration for release thereof or composition for the same."

The Lord Ordinary (STORMONTH DARLING) by interlocutor dated 21st December 1900 decerned against the defenders for the sum sued for with interest.

Opinion—"The defenders in argument did not plead up to the full measure of their defences, but took their stand upon the tender in answer 8. This reduces the sum in dispute from the £250, 7s. 6d. sued for to a sum, I think, a little over £20. But although the amount at stake is small the principle involved is not without interest and not without difficulty.

"The late Miss Watherston, who died unmarried on 11th January 1898, left three testamentary writings, purporting to deal not only with the estate strictly speaking her own, but with two large funds left in trust by her father, over which he had given her power to test. Questions arose after her death as to the validity, meaning, and effect of her testamentary writings, and these disputes were all settled by the deed of agreement and compromise set out in the appendix to this record. The first article provided that the said three writings should be construed as if they formed a valid *mortis causa* deed or will, by which Miss Watherston bequeathed legacies of the amounts specified in the article (the amount in each case being, I was informed, about one-half of what the writings bore), and the article closed with the words—'All of said legacies being free of Government duties of whatever kind, and to be paid as soon as possible, but without any interest thereon.' The second article provided that 'the said Christian Elizabeth Watherston shall be held to have died testate to the effect expressed in the foregoing article, and to have validly exercised the powers of bequest conferred on her by the 1886 trust-deed and the 1895 trust-deed to the extent of the sums that may be required from the 1886 trust and the 1895 trust in addition to her own separate estate to meet the whole of the bequests specified in the preceding article and whole Government duties and expenses.' The third article provided that Miss Watherston 'shall be held *quoad ultra* to have died intestate and without having exercised the powers of bequest conferred upon her by the 1886 trust-deed and the 1895 trust-deed.' And the sixth article bore that 'the whole parties hereto agree to accept the foregoing division, and the sums thereby falling to each as in full of all claims competent to them and each or any of them' by virtue of the two trust-deeds or of any of the testamentary writings, or through the decease of Miss Watherston or her father.

"The various legatees received the sums agreed upon free of legacy duty, and a sum of £3032, 10s. of duty was paid by the defenders to the Crown. This amount was calculated on the sums actually payable to the legatees without taking into account that the true amount of the benefit taken by each legatee was the sum which he actually received plus the amount applied in payment of duty to the Crown, for which, apart from the agreement, he would have been personally liable. The present claim is for duty on the money so applied.

"Now, at first sight the notion of paying duty upon duty may be a little startling, all the more that in the ordinary case no such payment is due to the Crown. But that is by virtue of section 21 of the Legacy-Duty Act (36 Geo. III. c. 52), which provides that 'If any direction shall be given by any will or testamentary instrument for payment of the duty chargeable upon any legacy or bequest out of some other fund, so that such legacy or bequest may pass to the person or persons to whom or for whose benefit the same shall be given free of duty, no duty shall be chargeable upon the money to be applied for the payment of such duty, notwithstanding the same may be deemed a legacy to or for the benefit of the person or persons who would otherwise pay such duty.' Lord President Inglis, commenting upon this section in *Lord Advocate* v. *Miller's Trustees*, 11 R. at p. 1055, said—'There can be very little doubt that but for this enactment in every case where a legacy is given free of legacy duty by the will of the testator, and the executry estate can afford to relieve, and does relieve, the legatee of the amount of the duty by paying the duty out of the executry estate, that portion of the executry estate so applied would itself be subject to legacy-duty.' That is the principle on which the defenders admit that, as regards all the legacies whose freedom from legacy-duty arises solely from the deed of compromise, the claim of the Crown is well founded. They concede that in the case of

these legacies section 23 of the Legacy-Duty Act applies. It provides (taking it shortly) that where any legacy chargeable with duty 'shall be released for consideration, or compounded for less than the amount or value thereof, then and in such case the duty shall be charged and paid in respect of such legacy . . . according to the amount or value of the property taken in satisfaction thereof, or as the consideration for release thereof or composition of the same,' Applying these words to the case in hand, the defenders concede that as regards legacies of this kind 'the composition for the same' accepted by the legatees was not merely the sum which each legatee received into his hand, but included also the amount paid on his behalf to the Government.

"But then the defenders say this principle does not apply to the case of the legacies accepted by the legatees in lieu of larger legacies which the testatrix herself declared to be free of legacy-duty. As regards these, they say the deed of compromise made no change on the provisions of the will except by reducing the amounts, and they point to the provision of the deed that the testatrix should be held to have died testate to the effect expressed in an article which merely reduced the amounts. This is a plausible argument, but I think it is unsound. The question really comes to be, whether the legatees in the latter class truly derive their right to have legacy-duty paid for them from the will or from the compromise, because if they derive it from the compromise, they are in exactly the same position as the other legatees, and section 21 of the statute, which refers solely to directions given by will, can have no application.

"The proper way to test this question is, I think, to consider whether, if the compromise had been silent as to legacy-duty, the legatees in this latter class could have insisted, as against the defenders, that legacy-duty should have been paid for them. Now, I think they could not. The answer by the defenders to such a demand would have been—'Your right to receive anything at all is due entirely to the compromise; the deed declares that certain specified sums are what you are to receive; that *quoad ultra* the testatrix is to be held as having died intestate, and that the parties agree to accept these sums as in full of all claims.' With such provisions in the deed, I think the demand must have failed, and if so, the legatees of the one class, just as much as the legatees of the other, owe the benefits which they take entirely to the compromise.

"Assuming the amount of duty to be correctly calculated, I shall therefore give decree as concluded for."

The defenders reclaimed, and argued—The only question submitted was that decided by the Lord Ordinary as to those legacies which were declared duty free under Miss Watherston's will. If the duty free legacies were payable under the will the case was within section 21, and the legacy duty paid on them was exempt from duty. It was clear that these legacies were payable in virtue of the will, and not of the compromise. But for the will the legatees could have taken nothing, nor would any duty have been payable; the only alteration made by the compromise, which declared that Miss Watherston should be held to have died testate, was to reduce their legacies by a half, but the basis of their right was none the less the will. Even if section 23 were applicable to the case of these legacies, as was maintained by the Crown, it did not aid their case. That section merely provided that a legatee who was obliged to take less than the full amount of his legacy was only liable in duty on the amount actually received; but it did not declare that the duty thereon was itself liable to pay duty.

Argued for the pursuer and respondent—The judgment of the Lord Ordinary was right. The legatees took under the compromise, and not under the will. The compromise altered the terms of the will in several respects, *e.g.*, it provided that all the legacies, whether declared by the testatrix to be duty-free or not, were to be duty-free; and further, that no interest was to be paid. That result could not be reached by construction but only by agreement. If that view were sound, then section 21, which referred only to legacies given by will, had no application, and the legacy duty was not exempt from duty—*Lord Advocate* v. *Miller's Trustees*, July 4, 1884, 11 R. 1046; *Lord Advocate* v. *Freckleton's Judicial Factor*, March 20, 1894, 21 R. 743. But whether the legatees took under the will or under the compromise, section 23 was directly applicable. It embraced every case where the legatee took less than was given him by the will. It provided that duty should be chargeable according to the amount taken as composition. The benefit taken by the legatees was the amount which they agreed to take plus the legacy duty paid thereon; and upon that sum duty was payable.

LORD JUSTICE-CLERK—This is a peculiar case. This lady having left certain testamentary documents, it turned out there would be difficulties in carrying out her testament, or there might be a dispute, and the parties who were interested came to an agreement that she was to be held to have by her testament given legacies of less amount than the actual amount which was stated in figures in her will—that is to say, that the will was to be so read. Now, the original will and the agreement both provide in regard to the legacies in question, whether it was the full amount or the amount that was agreed upon, that they were to be free of legacy duty. Accordingly, under section 21 of the Act which has been quoted to us—the amount of the duty being payable out of other estate than that which was handed over to the legatee—the duty which was so paid was made free of paying legacy duty on itself—if I may so express it—that is to say, the party got the legacy in full, the trustees paying the legacy duty on that legacy, and under

section 21 they did not require to pay duty upon that duty. Now, that clause is about as clear a clause as can be. But then the Crown says that the legacies in this case are taken out of that clause altogether, and are to be dealt with solely under clause 23, because under the arrangement that was made there was actually less paid to the legatees than the amount contained in the original writings of Miss Watherston. Section 23 appears to me—and I think your Lordships agree—to be intended to prevent what would be a gross injustice in those cases in which a legatee, from any cause, is obliged to take less than what was actually left by the testator. It provides that where any legacy chargeable with duty shall be released for any consideration or compounded for less than the amount or value thereof, the duty shall be paid according to the amount or value of the property taken in satisfaction or as a consideration for release thereof, or composition for the same. It was to prevent the injustice, where the legatee could not recover the amount which had been left, of charging duty upon the whole of what had been left. I do not think it was for any other purpose, and I do not think it impinges upon the right of a party who is taking a certain sum directly under the will, or by an agreement by which the will is to be read as bringing this sum to the legatee. In these circumstances, under section 21, if legacy duty is not to be paid on the legacy, but the legatee is to receive the money in full, the amount of the duty which is paid out of the rest of the estate is not itself to be charged. I therefore think that the Lord Ordinary's judgment is wrong, and should be reversed.

LORD YOUNG—I am substantially of the same opinion. The question before us is a question regarding legacy duty. Now, the existence of a legacy or legacies is absolutely essential to the existence of such a question. There must be legacies here, therefore, in the estimation of the Crown, in order to raise a question about the duty payable to the Crown in respect of them. But in order to the existence of a legacy there must exist a testator, and also a testament. Now, who is the testator here? Miss Watherston. There is no other. And therefore the Crown must regard her as a testator; and, as I said, there must also be a testament in order to the existence of a legacy, and the legacies must be legacies under that testament. She has been dead for some years. She left three documents, and the agreement is amongst the parties who disputed about the validity of these instruments and the import and effect of them, for the narrative proceeds, "And whereas certain questions arose between the parties hereto as to the validity, meaning, and effect of the said writings; And whereas all the parties hereto have agreed to compromise the whole questions between them as to the validity, meaning, and effect of said writings left by the said Christian Elizabeth Watherston in manner aftermentioned, therefore the parties have agreed and agree as follows: The said three writings shall be construed as if they formed a valid *mortis causa* deed or will, by which she bequeathed," and then the bequests are mentioned. The agreement is that the import and effect of these three deeds is to be so construed; and then it provides that all those legacies to which it is to be construed to apply are to be free of legacy duty, and that the said Christian Elizabeth Watherston shall be held to have died testate to the effect expressed in the foregoing article, and to have validly exercised the powers of bequest conferred on her by her father's settlement. Now, this shows an agreement by all parties interested as to the import, meaning, and effect of the testament left by Miss Watherston. Does the Crown challenge that? It has been observed more than once that the Crown is at liberty, and the officers of the Crown are bound in the discharge of their duty, to challenge any settlement of this kind, or of any kind, which is detrimental to the interests of the Crown, that is, to the interests of the public of which the Crown has charge, or any settlement which is made regarding the testament or will of a deceased person which is for the purpose of defeating any legitimate rights of the Crown or reducing the amount of its rights. But we were assured that there was no suggestion that this was other than a *bona fide* arrangement, not detrimental to the interests of the Crown in any respect; and indeed, if this arrangement had not been made that Miss Watherston was to be dealt with as having by these three instruments—the meaning and legal effect of which was in some doubt—made a valid testament, it might well be that the whole estate would have gone—or at least some of it—not to people who were paying ten per cent. as strangers, but to such next-of-kin as would have merely a nominal sum to pay. But the Crown have not challenged this, and therefore we must take the case on the footing that Miss Watherston died testate, and that this agreement was her testament. Now, the legacies—and the only legacies which we have to deal with—which are presented or referred to in the case before us, are the legacies which by this agreement she is held to have left by her testamentary instrument, and these legacies are left free of legacy duty. That is to say, the amount of the legacy duty which, without a declaration of "free of legacy duty," would have been payable by the legatees, is an additional gift to them. If there was no such declaration the legatee would have to pay on £500, or £1000, or £10,000, according to his kindred or relationship to the deceased, but it is provided by section 21 that if the testament by which the legacy in question is given declares it to be free of legacy duty, there shall be no duty payable upon the duty.

Now, is that not the case with reference to every one of the legacies in this deed? The case was opened by Mr Chree on the footing that there was a distinction between those legacies and the legacies in which

there was no provision that they should be free of legacy duty, I do not see any ground for the distinction, and I am somewhat amazed at that having been given up, for the legacies are all given by this deed —there is no other. We are not going into those three documents the meaning and validity and effect of which was in dispute and was settled. We are to take only what the parties legitimately interested are agreed is to be taken as the import and effect of them. Therefore, I take the import and effect that the parties are agreed upon—and we are not concerned with anything else—with respect to all the legacies mentioned, that they are legacies conferred by a testament in these terms—declaring that they shall be free of legacy duty. And therefore, in my opinion, although it is unnecessary to decide that—the point having been abandoned—the Crown are entitled to no duty whatever upon what is to be paid in order to free those legacies of legacy duty. I think that is really the whole case. It appears to me that section 23 has no bearing upon the case at all, for I agree with what has been said by your Lordship and observed both by Lord Trayner and Lord Moncreiff, that that applies only to the case of there not being funds to meet the whole legacy, or to cases where for some other reason the whole legacy is not paid, there being no clause about freedom from legacy duty at all. If there are not funds, and a compromise is made, then legacy duty is to be paid only upon what is taken and not upon the larger sum which the will specified. The will has specified a larger sum. On account of deficiency of funds or other grounds a less sum is given. Then legacy duty is to be paid only upon what is given. That is the advantage which the legatee takes. I therefore do not think the clause has any application to this case at all, and in my opinion the whole case is, and ought to be, disposed of upon this simply, that the legacies here in question are legacies free of legacy duty by the testament under which alone they can be considered as legacies at all, and clause 21 of the Act applies.

LORD TRAYNER — I am of the same opinion. The Lord Ordinary has held that the Crown is entitled to the claim it is now making on the ground that the legatees who were declared to be entitled to take their legacies free of legacy duty are taking nothing under the will of Miss Watherston, but are taking what they are getting purely under the rights conferred upon them by the deed of compromise or agreement referred to in the course of the debate. I dissent from that view. The agreement in my opinion gives the legatees nothing. It is an agreement between the legatees that the will of Miss Watherston should be construed in a certain manner, but the foundation of any legatee's right is the testamentary bequest made by Miss Watherston. The legacies are to be paid free of duty, and the duty payable is that which effeirs to the actual amount paid to the legatee. That duty must be paid by the trustees out of the other funds belonging to the estate. But on the amount so paid as duty the Crown cannot claim duty. This I think clear on the provisions of the Act of Geo. III. referred to in the debate.

LORD MONCREIFF—I am also of opinion that the Lord Ordinary's interlocutor should be recalled. With regard to the only legatees with whom we have to deal, I am of opinion that they take under the will of Miss Watherston. They have agreed to treat that as a valid will, but to the effect of only getting one-half what the will gave them. They have agreed to accept half the legacies which they are left by the will, and that is the only alteration which is made by this agreement or compromise upon the will itself. Now, the Crown contends that section 23 applies to the case, and only section 23. In my opinion, both sections 21 and 23 apply. Section 23, as I read it, does not add to the Crown's powers or rights in any way, it restricts them. It is a provision in favour of the legatee, and in a case where the legatee does not receive the full sum bequeathed to him, or where he agrees to accept a smaller sum, the Crown is precluded by the terms of the 23rd section from claiming duty upon the full sum named in the will, and that I take to be the sole meaning and effect of the 23rd section. Accordingly, in the present case, on the one hand the Crown is barred by the 23rd section from claiming duty upon any larger sum than those legacies which are received under this will, and on the other hand they are precluded by the 21st section from claiming duty upon the legacy duty which is to be paid in pursuance of the directions in the will upon those reduced sums.

The Court recalled the interlocutor of the Lord Ordinary reclaimed against, and in respect of the tender by the defenders in their defences, dismissed the action, and found the defenders entitled to expenses.

Counsel for the Pursuer and Respondent —Sol.-Gen. Dickson, K.C.—Dundas, K.C. — Young. Agent — Solicitor of Inland Revenue.

Counsel for the Defenders and Reclaimers —Ure, K.C.—Chree. Agents—Hamilton, Kinnear, & Beatson, W.S.