rities to follow up and secure the articles, I must hold that the pursuers cannot sue for the price of the engine admittedly sold to the defenders, because the defenders are entitled to rescind the contract of sale on the ground of essential error induced, not by statements made by the pursuers, but by their concealment of material facts directly affecting the question of the defenders' purchase which they were bound to disclose, and which they failed to disclose to the defenders.

The Court adhered.

Counsel for the Pursuers (Reclaimers)—Constable, K.C.—W. T. Watson. Agents—Whigham & M'Leod, S.S.C.

Counsel for the Defenders (Respondents)—Christie, K.C.—D. M. Wilson. Agents—Fraser & Davidson, W.S.

Thursday, October 23.

SECOND DIVISION.

NEW ZEALAND AND AUSTRALIAN LAND COMPANY, LIMITED *v.* SCOTTISH UNION AND NATIONAL INSURANCE COMPANY.

Revenue—Income Tax—Company—Colonial Tax — Repayment — Preference Shareholders — Proper Deduction from Dividends—Right to Benefit by Repayment—Income Tax Act 1842 (5 *and* 6 *Vict. cap.* 35), *sec.* 54—*Finance Act* 1916 (6 *and* 7 *Geo. V, cap.* 24), *sec.* 43.

A company under whose articles of association the preference shareholders were entitled to a fixed dividend of 4 per cent. and no more, paid Colonial income tax at the rate of at least 1s. 6d. in the £1 on its profits earned in the Colonies. It subsequently obtained repayment under the Finance Act 1916, section 43, in consequence of having so paid Colonial income tax, of a certain proportion in the pound of the British income tax paid by it. *Held* that in paying the dividend on the preference shares the company was entitled to deduct the full amount of the British income tax, and was not bound to take into account the repayment it had received in respect of the Colonial income tax which it had paid.

Rover v. *South African Breweries*, [1918] 2 Ch. 233, decision of Astbury, J., *disapproved.*

The Income Tax Act 1842 (5 and 6 Vict. cap. 35), section 54, enacts—"That every such officer . . . of any . . . company . . . shall . . . prepare and deliver . . . a true and correct statement of the profits and gains to be charged on such . . . company . . ., computed according to the directions of this Act . . .; and such estimate shall be made on the amount of the annual profits and gains of such . . . company . . . before any dividend shall have been made thereof to any other persons . . . or companies having any share, right, or title in or to such profits or gains; and all such other persons . . . or companies shall allow out of such dividends a proportionate deduction in respect of the duty so charged. . . ."

The Finance Act 1916 (6 and 7 Geo. V, cap. 24), section 43, enacts—"If any person who has paid, by deduction or otherwise, United Kingdom income tax for the current income-tax year on any part of his income at a rate exceeding three shillings and sixpence proves to the satisfaction of the Special Commissioners that he has also paid any Colonial income tax in respect of the same part of his income, he shall be entitled to repayment of a part of the United Kingdom income tax paid by him equal to the difference between the amount so paid and the amount he would have paid if the tax had been charged at the rate of three shillings and sixpence, or if that difference exceeds the amount of tax on that part of his income at the rate of the Colonial income tax equal to that amount. In this section the expression 'United Kingdom income tax' means income tax charged under the Income Tax Acts; and the expression 'Colonial income tax' means income tax charged under any law in force in any British possession or any tax so charged which appears to the Special Commissioners to correspond to United Kingdom income tax."

The New Zealand and Australian Land Company, Limited, *first party*, and the Scottish Union and National Insurance Company, *second party*, brought a Special Case to determine the amount of income tax deductible by the first party from the dividend payable on preference shares held by the second party in the first party's undertaking.

The Case stated—"1. The first party is a company incorporated under the Companies Acts, and has its registered office in Scotland. It carries on business in the United Kingdom, and also carries on a large business as pasturalists and agriculturists in New Zealand and Australia, and owns a large amount of property in both Colonies. The share capital of the first party originally consisted of £2,500,000, divided into 2,500,000 shares of £1 each, consisting of 1,000,000 'A' preference shares and 1,500,000 ordinary shares. Its capital at the year ending 31st March 1917 was £2,500,000, divided into £1,000,000 'A' preference stock and £1,500,000 ordinary stock. In addition the first party had £677,400 of debenture stock and £1600 of debentures. No preference stock except the said 'A' preference stock has been issued. . . . 2. The second party holds £10,000 of the said 'A' preference stock in the capital of the first party. 3. The rights of the stockholders in the capital of the first party are fixed by its articles of association, which provide as follows, *videlicet*—'(10) Every holder of A preference shares or stock in the capital of the company shall be entitled to receive in each year a dividend upon such shares or stock, after the rate of four pounds per cent. per annum (and no more), out of the profits of each year before the

holders of any of the other shares or stock in the capital of the company shall be entitled to receive any dividend for the same year in respect of any of such other shares or stock. But if in any year ending on the thirty-first day of March there are not profits available for the payment of the full amount of the said preferential dividend for that year, the deficiency shall be made good as soon as may be out of the profits of the subsequent year or years. . . .' In terms of the articles of association the preference stockholders participate only in the profits of the first party to the extent of the dividend of 4 per cent. payable to them, and they are not entitled to receive and do not receive out of the profits of the first party any payment beyond the said dividend . . . 4. The first party is assessed for and pays income tax in the Dominion of New Zealand and in the Commonwealth of Australia (hereinafter called 'Colonial income tax'). It is also assessed for and pays income tax in the United Kingdom (hereinafter called 'United Kingdom income tax'). 5. The Colonial income tax paid by the first party consists of (1) income tax paid in the Dominion of New Zealand; (2) State income tax paid in each of the States of New South Wales, Queensland, and Western Australia; and (3) Federal income tax paid in the Commonwealth of Australia. Colonial income tax is paid by the first party in the said respective Colonies on the profits earned by it there. Said profits are arrived at after meeting the working expenses of the first party in the said Colonies. The balance of the said profits after deducting the Colonial income tax paid is remitted to the United Kingdom and carried to the credit of the general revenue account of the first party. The balance of revenue after meeting revenue charges and expenses of the first party in the United Kingdom is carried to profit and loss in the usual way, and constitutes or forms part of the profits of the first party upon which United Kingdom income tax is chargeable, and which, subject to payment thereof, are available for distribution to the stockholders of the first party by way of dividend or otherwise, and fall to be dealt with in terms of the articles of association of the first party. . . . 12. The first party through its proper officer prepared and delivered all the statements of the profits and gains to be charged on it for the financial year commencing 6th April 1916 and ending 5th April 1917 as required . . . before any dividend had been made thereof to anyone having any share, right, or title in or to such profits or gains. The said profits or gains were assessed in accordance with the Income Tax Statutes at £418,161, and United Kingdom income tax at the rate of 5s. per £1 thereon, amounting to £104,540, 5s., was charged thereon and was paid by the first party. 13. At its annual general meeting held on 20th November 1917 the first party by resolution sanctioned payment of the dividend of 4 per cent. for the first party's financial year ending 31st March 1917, under deduction of income tax, to be made to the holders of the said 'A' preference stock. [An appendix to the Case gave the terms of the above resolution as follows, viz.—'The chairman then formally moved the adoption of the report and balance-sheet, and that the meeting sanction the payment of the following dividends:—(1) On the 'A' preference stock, 4 per cent., under deduction of income tax, of which 2 per cent. was paid as an interim dividend on 9th June last, leaving 2 per cent. to be paid on 10th December next. (2) On the ordinary stock, 10 per cent., and a bonus of 5 per cent., free of income tax, of which 5 per cent. was paid as an interim dividend on 9th June last, leaving a further 5 per cent. dividend, along with the 5 per cent. bonus, to be paid on 10th December next.'] 14. On making payment of the dividend of 4 per cent. so declared to its preference stockholders, including the second party, the first party deducted therefrom a proportion of the said United Kingdom income tax at the said rate of 5s. per £1 assessed and charged on and paid by the first party. . . . 16. The first party having paid United Kingdom income tax for the year in question at the rate of 5s. per £1 on its profits satisfied the Special Commissioners that Colonial income tax at the rate of at least 1s. 6d. per £1 had been paid in respect of part of the income earned in the said Colonies. Accordingly in terms of said section 43 of the Finance Act 1916 the first party claimed repayment in respect of the said profits earned by it in the said Colonies of part of the United Kingdom income tax equal to the difference between the amount so paid, *videlicet*, 5s. per £1, and the amount it would have paid if the United Kingdom income tax had been charged at the rate of 3s. 6d. per £1, *videlicet*, a difference of 1s. 6d. per £1. The Commissioners of Inland Revenue admitted the claim and repaid to the first party the sum of £28,435, 17s. 6d. 17. The amount of the sum so repaid to the first party was determined by reference to the amount of the profits earned by it in respect of which Colonial income tax had been paid in the said Colonies. 18. The profits earned by the first party for the year in question were more than sufficient to pay the dividend of 4 per cent. to the preference stockholders (including the second party) in the capital of the first party without taking into account the said repayment. For the same year the first party paid to its ordinary stockholders a dividend at the rate of 10 per cent. per annum and a bonus of 5 per cent. free of income tax."

The *question of law* was—"In paying the dividend of 4 per cent. per annum for the year to 31st March 1917 to the second party on its holding of preference stock in the first party, was the first party entitled to deduct from the said dividend United Kingdom income tax (*a*) at the rate of 5s. per £1, or (*b*) at the nett rate to be ascertained by taking into account the amount of the said tax repaid to the first party under section 43 of the Finance Act 1916?"

Argued for the first party—The proper rate of deduction was 5s. in the £. Income tax was levied on income and not on persons. The taxable income of the company was something quite different from

the taxable income of the shareholders. The Legislature, however, tried to avoid the same income being taxed twice, and it was for this very reason that deduction at the source was provided, and if some of that income was handed on to other people they had a right to recover the tax appropriate to their income. The right of recovery, however, given under section 43 of the Finance Act 1916 (6 and 7 Geo. V, cap. 24) was given only to persons who had paid both British and Colonial income tax. Section 43 spoke of persons, but the company as a corporation was included in that word in respect that it had an income of its own and the right of recovery conferred by that section was given not to the shareholders but to the company as an individual. That section was purely personal to the person paying, *i.e.*, the company which paid both the United Kingdom tax and the Colonial tax. If the Colonial tax had been payable in addition to the British tax the company could not have deducted it from the dividend payable to the preference shareholders—*Spiller* v. *Turner*, [1897] 1 Ch. 911. The right of the preference shareholders, which depended entirely on the articles of association, was to receive a dividend of 4 per cent., and that dividend was inclusive of the amount payable for British income tax—*Ashton Gas Company* v. *Attorney-General*, [1904] 2 Ch. 621, [1906] A.C. 10, 43 S.L.R. 567. Colonial income tax was a mere debt paid by the company, which must be paid before the profits were sent to this country. The company in the present case paid 5s. tax, and there was no statutory warrant for any deduction except 5s. The proposition of the second party really was that they were entitled as shareholders to have income tax paid on their shares at the rate of only 3s. 6d. But the company did not pay the Colonial income tax as agents of the preference shareholders, and unless the doctrine of agency was carried to lengths which none of the cases justified, these shareholders could have no such right as was claimed. The Court was not bound to follow the case of *Rover* v. *South African Breweries*, [1918] 2 Ch. 233. The result of the second party's contentions would be to give the preference shareholders a larger dividend than the 4 per cent. to which they were entitled.

Argued for the second party—The company paid income tax as agent of the shareholders. It paid income tax with their money. The fallacy of the first party's argument was that what had been repaid was not the Colonial income tax, but part of the United Kingdom income tax. The result was exactly the same as if the Imperial tax had been imposed at the lower rate. If, however, the company paid income tax on behalf of the shareholders, equally it collected the recoupment on behalf of the shareholders. The deduction was certainly made at the source, not of the company's income, but of the shareholders' income. The company was not the person chargeable with income tax, but merely the vehicle through which it was collected. The position was analogous to an annuity paid subject to income tax at the full rate. If the trustees recovered in respect of such payment, the amount would not go into the general trust estate, but would be paid to the annuitant. Inasmuch as the company was agent of the preference shareholders when it paid United Kingdom income tax, so it was agent when it recovered United Kingdom income tax in respect that it had paid too much as agent. The words "by deduction" used in the Act implied agency. It was admitted that so much of the United Kingdom income tax had been repaid to the company. To give effect to the first party's argument would be to give the ordinary shareholders part of the dividend to which the preference shareholders were entitled. The case of the *Ashton Gas Company* v. *Attorney-General* (*cit.*) was authority for the proposition that when the company paid income tax it was merely the hand of the shareholders—*ibid*, *per* Earl of Halsbury, L.C., at p. 11. The decision of Astbury, J., was given on the very question before this Court, and as it was not appealed it stood the law of England at present. The real question was whether the company were entitled to deduct from the dividend payable to the preferable shareholders in name of income tax more than they were obliged to pay to the Inland Revenue in the long run.

At advising—

LORD JUSTICE-CLERK—[*After quoting the question in the case*]—The resolution authorising the payment of the dividend is in the following terms:—"The chairman then formally moved the adoption of the report and balance-sheet, and that the meeting sanction the payment of the following dividends:—(1) On the 'A' preference stock 4 per cent. under deduction of income tax, of which 2 per cent. was paid as an interim dividend on 9th June last, leaving 2 per cent. to be paid on 10th December next. (2) On the ordinary stock 10 per cent. and a bonus of 5 per cent. free of income tax, of which 5 per cent. was paid as an interim dividend on 9th June last, leaving a further 5 per cent. dividend along with the 5 per cent. bonus to be paid on 10th December next."

By the Income Tax Act in force at the date of the resolution, income tax for the year in question was to be charged at the rate of 5s. per £.

The second party holds £10,000 A preference stock in the company of the first part, and by the articles of association holders of such stock are to be paid a dividend of 4 per cent. per annum "and no more," such dividend, however, being cumulative. In my opinion this means that these holders are to receive a dividend each year not exceeding 4 per cent. unless there are arrears to be made up. The company paid its preference stockholders for the year in question a dividend of 4 per cent. less 5s. of income tax. There were no arrears.

The company paid British income tax at the rate of 5s. per £ on its profits. Thereafter they satisfied the Special Commissioners that they had paid Colonial income tax at the rate of at least 1s. 6d. per £ on that part of their income which had been

earned in the Colonies referred to, and they claimed repayment in terms of section 43 of the Finance Act 1916, of the amount allowed by that section, viz., 1s. 6d. per £. The Commissioners of Inland Revenue admitted the claim and accordingly repaid to the company the sum of £28,435 17s. 6d. In my opinion the dividend warrants and certificates of deduction of income tax printed in the appendix to this case, and in particular the deduction of 5s. per £, were correctly stated in terms of the statute.

In order to bring section 43 into operation the person who claims repayment must have actually paid British income tax at a rate exceeding 3s. 6d. per £. In the present case the company had actually paid income tax at the rate of 5s. Such person must also have paid Colonial income tax, and that the company had also done, and they had further satisfied the Special Commissioners that the Colonial income tax so paid on the income earned in the Colonies amounted to at least 1s. 6d. per £ on such income. In my opinion all this was quite regular and conform to law, and the company were accordingly entitled to receive the repayment which was made to them.

The second party have received full payment of their stipulated dividend of 4 per cent. True, it was not all paid in cash, but partly in cash and partly by a certificate for deduction of British income tax. That certificate is, however, in my opinion, to be regarded as being under the statutes equivalent to a payment in cash as between the company and its stockholders. The statutory rate of income tax for the year in question was 5s. per £. Section 54 of the 1842 Act provides that a share or stockholder must allow a proportionate deduction out of his dividend in respect of the duties so charged.

The fact that the Colonial Government had exacted at least 1s. 6d. per £ of income tax from the company's profits earned in the Colonies did not in any way affect the second party's right to a dividend of 4 per cent.—*Spiller* v. *Turner*, [1897] 1 Ch. 911. The second party were entitled to be paid their full 4 per cent., subject always to the British income tax, altogether irrespective of what had been paid in the Colonies as Colonial income tax. They have been so paid. I cannot see therefore how the second party can be said to have paid in any way anything by way of, or in respect of, Colonial income tax. But the company were not entitled to pay the second party a dividend of 4 per cent. plus the whole or any part of the 5s. income tax chargeable and charged in Great Britain—*Ashton Gas Company*, [1904] 2 Ch. 621, and [1906] A.C. 10. If the company were to pay the second party 4 per cent., less income tax at the rate of 3s. 6d. per £, they would in my opinion be paying, and the second party would be receiving, a larger dividend than 4 per cent. and so contravening the company's articles of association. Moreover, unless the second party paid both the British income tax and the Colonial income tax, they do not in my opinion come within the terms of section 43, and as I have already stated I do not see how the second party can be said in any way to have paid any Colonial income tax. The second party were in my opinion not within the class the hardship on whom section 43 was intended to alleviate in respect they did not pay double income tax.

It seems to me that the contention of the second party would result in this, that at any rate as between them and the company of which they are stockholders they are to be dealt with, so far as payment of dividend is concerned, as only liable to pay income tax at the rate of 3s. 6d. per £ (that being the figure used on both sides in the argument before us). In my opinion there is no sufficient warrant in the statute to support this view.

Some of these points do not require to be determined in order to answer the question submitted to us, but as they were argued before us I have indicated my opinion upon them. It may be that other considerations would have to be dealt with if the second party had not received their 4 per cent. for the year in question. But on the facts of this case that point does not arise.

In my opinion the first alternative of the question should be answered in the affirmative.

LORD DUNDAS—I concur in result with the opinion just delivered. The question for determination is, What rate of deduction are the first parties entitled to make from the dividend payable to the second parties on their holding of preference stock in respect of United Kingdom income tax for the year to 31st March 1917? The only deduction authorised is prescribed by section 54 of the Act of 1842, viz.—"a proportionate deduction in respect of the duty so charged." It is quite clear that "the duty so charged" is the British income tax and nothing else, and the question which seems to me to lie at the root of the matter thus comes to be what is the rate of that tax with which the first parties have in fact been "charged"?

Section 24 of the Act of 1916 provides that income tax for the year in question shall be charged at the rate of 5s. But the difficulty arises on the terms of section 43 of that Act. It is argued for the second parties that upon certain conditions in fact, which are assumed to be here present, the rate at which the first parties have been actually charged has in effect been reduced from 5s. to (say) 3s. 6d. I use this figure (as learned counsel did at the debate) not as an actual one, but merely as a convenient basis for argument. If this contention be sound, the second parties are clearly in the right, for it is plain that the first parties cannot make any deduction except "in respect of the duty so charged." viz., *ex hypothesi*, 3s. 6d. I am of opinion, however, that the argument is fallacious. I think that the first parties, like other persons, still stand charged with British income tax at the rate of 5s. under section 24, notwithstanding that by section 43 they are entitled to be relieved by repayment from the British Treasury to the extent of 1s. 6d. in respect of Colonial tax which they have already paid. That this

is so appears, in my judgment, from the very words of section 43. The first parties are in the position of a person "entitled to repayment of a part of the United Kingdom income tax paid by him equal to the difference between the amount so paid" (viz., 5s.) "and the amount he would have paid if the tax had been charged" (which in fact it was not—the rate charged (section 24) is 5s.) "at the rate of 3s. 6d." The result which, in my opinion, arises in this case, upon a construction of the words of section 43, seems to me to be in accordance with the clear object and intention of the section, viz, to afford relief to those who would otherwise have had to bear the double burden of Home and Colonial taxation on the same income, and not to diminish the charge upon a person or class of persons who had not borne the double burden. If the second parties' contention were given effect to, the preference stockholders would, I apprehend, stand in the anomalous position of being relieved of a part of their British tax on the questionable ground that an extra burden of Colonial tax had been borne not by them but by others, viz., the ordinary stockholders. It seems plain enough that the second parties have borne no part of the burden of the Colonial income tax.

I come, therefore, to the conclusion that the first parties are right, and that we must affirm the first alternative, and negative the second alternative, of the question put to us. In so holding, I am of course aware that we are differing from, and in effect overruling, the decision of Astbury, J., in the case of *Rover*, [1918] 2 Ch. 233. The point at which I am constrained to dissent from the carefully reasoned opinion of that learned Judge seems to arise at the conclusion of the first paragraph thereof, where his Lordship says that "although the words of the section" (54 of the Act of 1842) "refer to the allowance of duty 'charged,' it clearly, in my judgment, means charged in the sense of 'paid or payable.'" The point lies at the very root of the judgment in *Rover's* case and in this case. I have endeavoured to demonstrate from the statutory words used that the duty "charged" upon the first parties is 5s. and no lesser rate.

LORD GUTHRIE — The first parties, the New Zealand and Australian Land Company, paid United Kingdom income tax, for 1916-17 at the rate (assumed in argument) of 3s. 6d. per £ on their whole profits earned in the Dominion of New Zealand and the Commonwealth of Australia. But for the fact that their New Zealand and Australian profits also paid Colonial income tax, the United Kingdom income tax paid for the first parties would have been at the ordinary rate of 5s., charged by the Crown except in cases, such as the present, of double taxation.

The second parties, preference shareholders in the first parties' company, claim that as in a question between them and the company (different considerations might or might not arise between the second parties and the Crown if the second parties were assessed directly) they are entitled to the benefit of the deduction. I think the first parties were right in refusing the second parties' claim, with the practical result that the benefit of the deduction will be confined to the ordinary shareholders.

First, because no question of double taxation can arise in connection with the second parties, who are not subject to the hardship, which it was the purpose of section 43 of the Finance Act of 1916 to diminish. Having received payment of their preferential dividend in full, and there being no past arrears of preferential dividend to extinguish, they have no interest, beneficial or adverse, in the existence and exaction of the Colonial income tax. They would not be entitled to anything beyond four per cent. even if for any reason the Overseas Dominions ceased to exact Colonial income tax, or were willing in the first parties' special circumstances to give an abatement to the first parties; and they are not liable to any reduction in the four per cent. dividend paid to them because of the existence of the Colonial income tax. No doubt the Colonial income tax, like the United Kingdom income tax, is paid by a company representing them as well as the ordinary shareholders, on profits made for them as well as for the ordinary shareholders. It is not said that even if the company had confined itself to United Kingdom business it would not have been able to pay the full preferential dividend to the second parties. But if the company as their agents pay them their full preferential dividend (there being, as already mentioned, no question in this case of money being needed to make up for an unpaid or inadequate preferential dividend in a former year, for which purpose, no doubt, the £28,000 in question with all the other funds of the company would be available) the company in paying the Colonial income tax cannot represent them, because they have no interest in whether it is paid or not, or at what rate it is paid. It may be that a different question would arise if in any year the profits of the company were insufficient or only sufficient to yield to the preference shareholders their full preferential dividend with or without an amount necessary to pay previous unpaid preference dividends. It might be argued that in such circumstances the whole business of the company at home and abroad was substantially done for their preference shareholders.

Second, because under section 43 of the Finance Act of 1916 the benefit of the reduction from 5s., the rate "charged" (an ambiguous word, without, as it seems to me, any context to entitle the Court to hold "charged" equivalent to "paid or payable," as Mr Justice Astbury does in *Rover* v. *South African Breweries*, [1918] 2 Ch. 233, although without reason assigned) can only be claimed by a person who has paid both United Kingdom income tax and Colonial income tax. It seems to me clear that the company in paying the United Kingdom income tax represented the preference shareholders equally with the ordi-

nary shareholders. But if the preference dividend can be paid in full, then the company in paying the Colonial income tax only represents the ordinary shareholders, from whose share of the profits the whole Colonial income tax is in that case paid, their profits being proportionately diminished, and to whom the whole income of the company, whether derived from ordinary trading or from a windfall like this allowance, belongs so far as it is not necessary for payment of current or previous unpaid preference dividend. The second parties plausibly argued—taking what they called a large view of the statute—I should prefer to call it a jury view—which, of course, is inadmissible in construing a Revenue statute—that because the company pays the 5s. United Kingdom income-tax as and for all its shareholders, it equally collects recoupments as and for the whole body. But if I am correct in my interpretation of the statement of the facts, the recoupments are only allowed to those shareholders, or to the company as representing those shareholders, who have paid the Colonial income tax, and the second parties, the company's preference shareholders, have not done so directly or indirectly.

For these reasons, whether regard be had to the purpose of the Statute of 1916, its spirit, or its terms, I think the first parties acted rightly in deducting 5s. per £ when they paid the preference shareholders their four per cent. dividend.

LORD SALVESEN was not present.

The Court answered the first alternative of the question in the affirmative and the second in the negative.

Counsel for the First Party—Lord Advocate (Clyde, K.C.)—Sandeman, K.C.—C. H. Brown, K.C.—Douglas Jameson. Agents—J. & J. Ross, W.S.

Counsel for the Second Party—D.-F. Murray, K.C.—Macmillan, K.C.—A. C. Black. Agents—Cowan & Dalmahoy, W.S.

Friday, October 24.

SECOND DIVISION.

CRAW'S TRUSTEES *v.* BAIRD AND OTHERS.

Succession — Testament — Construction of Testamentary Writings — "Property"—"Residue"—Inclusion of Heritage—Titles to Land Consolidation (Scotland) Act 1868 (31 *and* 32 *Vict. cap.* 101), *sec.* 20.

By her holograph will a testatrix left pecuniary and specific legacies and also a bequest in the following terms:—"My dear friend Miss Annie Comrie of Stenhouse for the kindness she has to me I leave the residue of my property." The testatrix owned a house which she did not live in, but she was aware that she owned it, and she was also aware of the amount of her moveable estate. The total amount of the pecuniary legacies was greater than the amount of the moveable estate. *Held* that the words "the residue of my property" were habile to convey the heritage, and in the circumstances did include the house in question.

Peter Jolly Purves and others, trustees and executors of Mrs Jane Blacklock or Craw, *first parties*, Miss Mary Baird and others, legatees, *second parties*, Miss Annie Comrie, residuary legatee, *third party*, and Donald Blacklock, heir-at-law, *fourth party*, brought a Special Case to determine whether the holograph will of Mrs Craw applied to a house left by her.

Mrs Craw died on 1st December 1917 leaving a holograph will and codicil in the following terms:—"I hereby revoke my former will. I have already given instructions about my interment. I wish £400 (pounds) to be given to my good friend Miss Mary Baird, or failing her sister Grace Baird, both of 17 Hatton Place, free of legacy duty, also my eight-day clock. £100 (pounds) to be given to Mrs Blacklock (my sister-in-law) of 66 Brunswick St., also free of legacy duty. £10 (pounds) to Miss Bella Gray in recognition of her devotion to her mother, my dear friend, also free of legacy duty. Mrs Brodie, 30 Sciennes Rd., to get all the things on the top of the bureau, also tea-caddy on top of bookcase. My rings on my left to Mrs Brodie, also bracelet on my arm. Miss Grace Baird to get rings on right hand, also my gold chain and appendages. My small work table (at my bedside) to Mrs Purves, 24 Howard Place, small table with china with contents above and below. Also bookcase and contents to her husband, my good friend, with boxes on top, also large china plate, also china cabinet with contents, also the things on top. All my pictures to Mr Purves, with 2 miniatures and brooch and china ornament, also silver candlesticks. Three old chairs to Mrs Purves. Three vases on mantelpiece with my three brooches to Miss Grace Baird, along with my bureau. The rent and taxes to be paid in the house I die in, and Miss Henderson to get the option of staying on. Also she gets all my other belongings in the house which she has got already in lieu of the small salary she has got from me. My dear friend Miss Annie Comrie of Stenhouse for the kindness she has to me I leave the residue of my property. Omitted on previous page: flower stand with contents to Mrs Brodie, and lace flounce (my own work) sewed on curtain to Mrs Purves, 24 Howard Place. Written 31st March 1917. 7 Roseneath Ter. JANE CRAW (Mrs).

"3rd April 1917.

"*Codicil to my Will.*

"Omitted. Old-fashioned chest of drawers in bedroom to the aforesaid Mrs Purves, also my silver tea set and 6 dessert and 1 table spoon, silver, to Mrs Purves, also large flower-pot on floor in room. 6 dessert spoons to Miss Grace Baird. Residue of furniture to Miss Henderson. Mr Purves, 44 Queen St., trustee and executor. Miss Grace Baird, co-trustee. JANE CRAW."