HOUSE OF LORDS.

Thursday, November 10.

(Before the Lord Chancellor (Lord Herschell), and Lords Watson, Morris, and Field.)

DUKE OF HAMILTON *v.* THE LORD ADVOCATE.

(*Ante*, vol. xxix, 213, December 1, 1891.)

Revenue—Succession—Legacy and Inventory-Duty — Liferent — Trust-Deed — 36 *Geo. III. c.* 52, *sec.* 14.

A testator conveyed to his trustees, *inter alia*, his whole moveable means and estate in Scotland which should belong to him at the time of his death, and after providing for payment of his debts he directed his trustees to make an inventory of the collection of "marbles, bronzes, objects of virtu, buhl, pictures, ornaments, china, and the library" in his house, which articles were to remain vested in and to be held by them as part of his trust-estate, the liferent use thereof being permitted to his eldest son D, whom failing to the substitute heirs of entail entitled to succeed to the estate. After all his debts, &c., had been "completely paid and extinguished," the trustees were directed to divest themselves of the whole of his heritable and moveable estate, and dispone the same by deed of entail as follows—"In the event of the liquidation of the said debts and obligations during the lifetime of D, the said trustees shall assign and make over to him the whole of the moveable estate hereby conveyed, and directed to be liferented as aforesaid." . . .

D, by an arrangement with the creditors of the testator, liquidated his debts partly by payment and partly by taking upon himself the burden of the balance, but the art collection continued to be held by the trustees during his life.

In a claim by the Crown against the executor and general disponee of D for legacy and inventory duty upon this collection, as having been *in bonis* of D —*held* (*aff.* the decision of the First Division of the Court of Session) that by the provisions of the trust-deed the art collection was to become the property of the heir in possession of the estate upon certain debts being extinguished, and these having been paid off during D's life the collection vested in him, and that the defender was bound to lodge accounts of the personal estate and effects of the testator and of D in order that the legacy and inventory duties respectively remaining due thereon might be ascertained.

This case is reported *ante*, vol. xxix, p. 213.

The Duke of Hamilton appealed.

At delivering judgment—

LORD CHANCELLOR—My Lords, on the 12th of October 1850 Alexander Duke of Hamilton made a trust-disposition and settlement of his property. He died in the year 1852, and was succeeded by his son Archibald Duke of Hamilton, who himself died, I think, in the year 1863, and was succeeded by the present Duke. The question raised by the appeal is the right of the Crown to certain duty in respect of certain articles, pictures, objects of vertu, marbles, bronzes, and a library, which were comprised in the trust-disposition of Alexander Duke of Hamilton. The simple question is, whether upon the true construction of that trust-disposition, and in the events which have happened, an absolute interest in these moveables to which I have referred, vested in his son Archibald Duke of Hamilton, or whether during and throughout the life of Archibald Duke of Hamilton these moveables were subject to a trust, the use in liferent only being in Archibald Duke of Hamilton? If they were so subject to a trust, then no doubt no claim could be made in respect of duty so far as regards the estate of Archibald Duke of Hamilton. If, on the other hand, they vested absolutely in him, it is not disputed that the claim of the Crown is well founded.

Now, my Lords, no doubt the Duke of Hamilton by this trust-disposition did indicate in the language used in the early part of it a desire that the paintings, books, and objects of art at Hamilton Palace should remain at the Palace and in the possession of the person for the time being filling the position of the Duke of Hamilton. The question, however, is, what is the effect of the disposition that he has made? I quite agree that in construing that disposition one is entitled to take into account the desire which he has expressed in the early part of it, but however clearly that desire may be expressed, after all, the case must be determined by seeing what were the dispositions actually made, and construing them reasonably, looking at the whole trust-disposition.

By the trust-disposition he conveys first his heritable, and then his whole moveable means and estate in Scotland, "of whatever kind and denomination, heirship moveables included, marbles, bronzes, objects of vertu, buhl, pictures, ornamental china, and my library at Hamilton Palace, and in general the whole moveable means and estate in Scotland that shall belong to me at the time of my decease." Then the trusts are thus declared—First, the trustees shall, from the moveable means and estate, pay the debts "of a private or personal kind due by me." Then, *secundo*, "That the said trustees shall apply such portion of the balance of my said moveable estate as the said Marquess of Douglas" (his son) "may approve in payment and extinction of the Scotch consolidated family debt," but he declares that the "Marquess, after fixing the portion to be paid in extinction of" the Scotch consolidated family debt, "shall be entitled to use and apply the

remainder of the rents of the whole estate hereby conveyed" "for the support of his rank and due maintenance of his family until his own right to demand payment of rents shall open." Then comes the fourth trust, which is the important one—"That my said trustees and executors shall, immediately after my death, hand over to the said Marquess of Douglas the whole of the plate of every description in Hamilton Palace, as well as the whole household furniture therein in common use, for his own sole use and benefit." That of course gave him an absolute right to the plate and household furniture. "But declaring that a special inventory shall be made of the said marbles, bronzes, objects of vertu, buhl, pictures, ornamental china, and library therein, and which shall remain vested in and be held by the said trustees as part of my said trust-estate, the liferent use thereof being permitted to the said Marquess of Douglas." Then failing him to the present Duke, and failing him other dispositions are made, the final one being "to the person succeeding to the dukedom and estates of Hamilton for the time being."

Now, no doubt the moveables in question were thereby vested in the trustees upon a trust which gave to Archibald Duke of Hamilton a liferent use only, but the 7th clause of the trust-deed provides that "after all the said debts, legacies, donations, and provisions shall have been completely paid and extinguished, the said trustees shall be bound and obliged to divest themselves of the whole of the said heritable and moveable estate hereby conveyed, and to dispose, assign, convey, and make over the same by disposition and deed of entail, assignation, or other habile mode, as follows." Now, it was said that those words could not extend to the whole of the heritable and moveable estate because some of that heritable and moveable estate had been already disposed of. My Lords, of course the natural construction of those words would be "such part of the heritable and moveable estate as remained after the execution of the trust in the trustees." It would be unreasonable to suppose that it could apply to any other part of it. The clause then proceeds—"That is to say, in the event of the liquidation of the said debts and obligations during the lifetime of the said Marquess of Douglas, the said trustees shall assign and make over to him the whole of the moveable estate hereby conveyed and directed to be liferented as aforesaid." The moveables in question were a part of the moveable estate thereby conveyed; that it is impossible to dispute. It is equally impossible to dispute that they were directed to be liferented. They are part of the moveable estate specifically directed to be liferented, and the only part of the moveable estate so specifically directed, even supposing any other part of the moveable estate can be properly said to have been directed to be liferented. It is quite immaterial to inquire whether that is so. Those chattels were part of the moveable estate hereby conveyed and directed to be liferented as aforesaid. I confess I have a difficulty in seeing how any argument can be for a moment sustained, the effect of which is to exclude from that provision a part of the moveable estate thereby conveyed and directed to be liferented, when the direction applies to the whole of such estate. And the more so when we bear in mind that the direction in the earlier part of the deed is that the pictures and china and other moveables shall be vested in and held by the trustees "as part of my said trust-estate," showing an intention that the whole of his trust-estate shall be held, as it were, together, upon one and the same trust—so far from making a distinction between that part of the estate and the rest, declaring that they are to be held together as one trust.

Then the deed provides that in the case of the death of the Marquess before the debts are all paid, the directions applicable to him are to apply to his son, the present Duke, and failing him to the heir substituted for him in the entails, and so on—that is to say, supposing the debts had remained unsatisfied, the direction is, that when they become satisfied the estate shall be conveyed, if the Duke Archibald is alive, to him; if the next Duke is alive, to him; if he be not alive, then to the person substituted heir in the entails of the Hamilton estates and in the possession thereof at the termination of the trusts.

Now, my Lords, those are the provisions of the deed, and it seems to me impossible to hold otherwise than as the Courts below have held, that if the debts were satisfied in the lifetime of the Duke Archibald, thereupon as soon as they were so satisfied he had a right to call upon the trustees to make over to him these moveables. He might or might not exercise that right, but as between him and the Crown his exercise or non-exercise of it cannot make the slightest difference to the right of the Crown to the duty. He might have chosen to create a new trust, but his creation of a new trust would have been an act done by him as the owner of these moveables, and, again, it would not have prevented the right of the Crown attaching.

The only remaining question is, were these debts all paid and extinguished in the lifetime of Duke Archibald? The deed does not say by whom they are to be paid and extinguished, the only provision is that all the debts shall have been completely paid and extinguished. It appears that as regards a portion of the debts, they were paid by Duke Archibald out of monies which he derived from the sale of an estate; as regards a portion, he took the debt upon himself by agreement as between him and the creditors, the creditors agreed to look to him to discharge his father's estate, and as far as appears I think your Lordships are entitled to take it to be the fact that the debt which he had so taken upon himself was paid and discharged during his lifetime, so that every debt on the estate had been absolutely paid and extinguished before Duke Archibald died. That being so, as soon as that

event took place the obligation of the trustees provided for in the trust-disposition took effect, and from the moment it took effect the right of the Crown to this duty attached.

I therefore move your Lordships that the judgment appealed from be affirmed, and that this appeal be dismissed with costs.

LORD WATSON—My Lords, this is a very plain case. I think it quite sufficient to say that I agree with all the Judges in the Courts below that the trust constituted by the fourth purpose of the deed of 1850 was only meant to endure until the seventh purpose came into operation, and that the seventh purpose became operative as soon as the truster's debts were paid off by his son Duke Archibald, who thereupon became the beneficial owner of all the objects of vertu and other articles of which he had previously the liferent use only.

LORD MORRIS and LORD FIELD concurred.

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

Counsel for the Appellant—Sir Horace Davey, Q.C. — Macphail. Agents — Grahames, Currey, & Spens, for Tods, Murray, & Jamieson, W.S.

Counsel for the Respondent—Sir Charles Russell, A.-G.—The Lord Advocate—Patten MacDougall. Agent—Sir W. H. Melville, Solicitor for England of the Board of Inland Revenue, for Philip J. Hamilton Grierson, Solicitor for Scotland of the Board of Inland Revenue.

Tuesday, November 29.

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

MANN AND BEATTIE *v.* EDINBURGH NORTHERN TRAMWAYS COMPANY.

(*Ante*, vol. xxviii. 828, and 18 R. 1140.)

Company—Promotion Money—Expenses of Private Act—Fiduciary Relation—Private Advantage—Ratification by Directors—Liability to Account.

M, the agent, and B, the engineer, of a newly incorporated cable tramways company, of which they had been the chief promoters, arranged on behalf of the company the contract for the construction of its works. By this contract the contractors undertook, besides constructing the works, to pay the expenses incurred by the company in obtaining their Act. M and B at the same time entered into an agreement with the contractors on their own behalf, whereby they bound themselves to relieve the contractors of their liability for the expenses of the Act in consideration of the payment of a sum of £17,000, the balance of which they were to retain for their own behoof.

Five years afterwards the company called on M and B to account for the sum they had received under their agreement with the contractors. In answer the defenders maintained that the company were barred from challenging the agreement, in respect that everyone interested in the shares of the company knew of and had assented to the agreement, and the company's shares had never been issued to the public.

Held (*aff.* the decision of the First Division) that the alleged knowledge and assent of those who represented the company had not been proved; but even assuming such knowledge and assent, the agreement was illegal, as it was *ultra vires* of promoters or directors or shareholders to apply the moneys of the company, which were devoted by statute to special purposes, to any purpose which was not sanctioned by the provisions of the Act of incorporation.

This case is reported *ante*, vol. xxviii. p. 828, and 18 R. 1140.

Messrs Mann and Beattie appealed.

At delivering judgment—

LORD CHANCELLOR—My Lords, in the year 1884, on the 7th of August, an Act was obtained called the Edinburgh Northern Tramways Act, which authorised the making of certain tramways in the city of Edinburgh. That Act was promoted by Messrs Mann and Beattie, who were respectively law-agent and engineer, and it was no doubt promoted also by certain other persons named in the Act who had agreed to a limited amount to guarantee the expenses which were necessarily incurred for the purpose of obtaining the Act, and they had also, some of them, taken part in raising the deposit required in order that the Act might be obtained.

The Edinburgh Northern Tramways Company having obtained the Act for the purpose of establishing cable tramways in Edinburgh sought to obtain a contract with another company in order that the tramways might be made and the necessary works constructed. They ultimately entered into an agreement of the 24th of October 1884 with the Cable Corporation, who for a certain sum of money were, as provided in that Act, to construct the tramways, and to pay all the expenses of and incidental to obtaining the Act, which by section 78 of the Act it was provided should be paid by the Tramways Company. That was the agreement, so far as it appeared, between the Tramways Company and the Cable Corporation. The sum of £93,000 was not all of it to be paid in cash, but it was to be paid partly in cash and partly in shares. I need not trouble your Lordships with the particulars of the payments to be made, because nothing turns upon it.

It appears that at the same time as that agreement was entered into, that agree-