HOUSE OF LORDS.

Tuesday, March 6.

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

THE LORD ADVOCATE *v.* BOGIE AND OTHERS (METHVEN'S EXECUTORS).

(*Ante*, vol. xxx. p. 454, and 20 R. 429).

Revenue—Inventory-Duty—Legacy-Duty—Legacy to Executors and Representatives whomsoever of a Predeceasing Legatee.

A testator bequeathed one-third of the residue of her estate to R. M., and failing him to his executors and representatives. R. M. predeceased the testatrix, leaving a will, by which he nominated executors with directions to invest the residue of his estate.

On the death of the testatrix the Crown claimed, in addition to the inventory duty and legacy-duty paid by her executors, a second inventory-duty and legacy-duty from R. M.'s executors on one-third of the testatrix's residue, on the ground that R. M. had disposed of it by will.

Held (*aff.* the decision of the First Division) that the Crown was not entitled to the duties claimed, the property not being the personal estate and effects of R. M. within the meaning of the statutes.

This case is reported, *ante*, vol. xxx. p. 454, and 20 R. 429.

The Lord Advocate appealed.

At delivering judgment—

LORD CHANCELLOR (HERSCHELL) — My Lords, the question raised in the present case is, whether inventory-duty and legacy-duty are to be paid in respect of a certain part of the estate of Miss Scott which passed to the executors of Mr Robert Methven.

Robert Methven left a trust-disposition and settlement and died. By this trust-disposition and settlement the defenders were his trustees and executors, and became entitled to his heritable and moveable estate. Miss Scott, who had made a trust-disposition in the lifetime of Robert Methven, by that disposition provided with regard to the free residue of her whole moveable estate and effects in these terms—"I leave and bequeath the same to the said Robert Methven, Robert Russell, and James Russell, equally between and amongst them share and share alike for their own use and behoof, and failing all or any of them by their predeceasing me, to their several and respective executors and representatives whomsoever, whom I do hereby appoint to be my residuary legatees." Of course there is no question that inventory-duty must be paid upon the third of the residue which is now in question passing under Miss Scott's will; and there is no question that legacy-duty must be paid in respect of the disposition to which I have just called your Lordships' attention. The question is, whether a second duty is payable.

Miss Scott survived Robert Methven, and therefore the gift to him personally never took effect. At the time from which her will must be regarded as speaking Robert Methven was dead. His estate had passed under this trust-disposition to his executors, and was then ascertained. It has been held, and it is not now in dispute, that the effect of Miss Scott's trust-disposition was not to vest in the executors of Robert Methven, the defenders, and the respondents here, a beneficial interest in the property left by Miss Scott, namely, one-third of her residue; that what they took they took as executors, and that they were bound to deal with this third of the residue in precisely the same way as they had to deal with the estate which had passed to them under Robert Methven's will.

Under these circumstances it is contended on behalf of the Crown, who are the appellants at your Lordships' bar, that inventory duty is payable in respect of the moneys which thus came to the executors of Robert Methven as part of Robert Methven's estate, and that legacy-duty is payable by the beneficiaries under Robert Methven's will, who of course will take, by virtue of this disposition of Miss Scott's, the money which so passes to the executors of Methven.

It may be that under circumstances such as I have detailed it would be neither unreasonable nor unjust that this second duty, as it is called, should become payable; but with that your Lordships have not to deal. It can only be payable if it falls within the taxing provisions which have been enacted by the Legislature with reference to inventories and legacies.

The Stamp Duties Act of 1815 defines as the estate liable to inventory-duty or probate-duty "the personal estate and effects of any person deceased." Now, the contention on behalf of the appellants is, that the effect of Miss Scott's disposition coupled with Methven's was to make this third of the residue of Miss Scott's estate part of the personal estate and effects of Robert Methven. Of course it had never belonged to Robert Methven; at the time of his death it could in no sense be said to be his or any part of his estate. The contention is that the effect of Miss Scott's disposition is to add it to his personal estate, and to make it as much a part of his personal estate as if it had belonged to him in his lifetime. The only question which your Lordships have to consider is, whether it has been in that sense so completely made a part of his personal estate as that within the words of the Stamp Duties Act, which I have read, it must be regarded as part of "the personal estate and effects of the deceased."

The will of Miss Scott, as I have said, must be taken as speaking from the time of her death; and the case appears to me to be precisely the same as if she in her lifetime had given the money to the execu-

tors of Methven to be used by them as executors in the same way as the other money which came to them as executors. I cannot think that there is any difference, because she made this disposition by will, and in her will had made Robert Methven himself a beneficiary in case he had survived her. One must look at the state of things at the time from which the will speaks.

Now, I think that the effect of her disposition was so to vest this money in the persons who were to administer Robert Methven's estate that they would have to administer it precisely as if it were part of Robert Methven's estate. I will go so far as to assume that, so far as it was possible for her to do so, she made it a part of his personal estate. But admitting all that, it does not follow that the legal effect of what she did was to make it for the purposes of this statute that which it really was not, a part of "the personal estate of the deceased," which *prima facie* means the personal estate which has been his. For many purposes it would no doubt be regarded in precisely the same way. The learned Lord Advocate said that the question was whether it was impossible for her to make it so. It seems to me, however, that the question rather is, whether what she has done necessarily has the effect of making it a part of the personal estate of the deceased within the meaning of the statute. If it has, of course the duty follows; but I cannot think that this is the result. It appears to me that the effect cannot be said to be more than this; it is to be held by the same persons and administered in the same way and dealt with altogether as if it were part of the personal estate; but I do not think that makes it, or could make it, part of the personal estate within the meaning of this statute. And, my Lords, it seems to me difficult to resist that conclusion when it was admitted (or perhaps I should hardly say admitted) by the Lord Advocate that if different words having precisely the same effect had been used by Miss Scott a duty would not have been payable; he admitted that if she had described in different words what is said to be the legal effect of her disposition as to the persons to administer, the mode of administration, and the persons who were to benefit, it would have been difficult to contend that it would then have become a part of the personal estate. It seems to me that the only difference which can be suggested would have been that in the one case the duty would have been payable, and in the other it would not, although precisely the same legal result had been brought about by the use of different words.

I think this view of the case is strongly confirmed by the statutes to which attention has been called. So far as I am aware, the first statute which made an inventory obligatory is 48 Geo. III. c. 149, sec. 38, which provides in respect of any person dying after the 10th of October 1808, having personal or moveable estate or effects in Scotland, that before they are dealt with there shall be a "full and true inventory" on oath containing a statement "of all the personal or moveable estate and effects of the deceased already recovered or known to be existing." Of course that would have been satisfied in this case by an inventory made out shortly after Robert Methven's death, and before Miss Scott's death, upon obtaining confirmation. The statute proceeds to deal with cases, which of course would frequently occur, in which, although a full statement was made of all the estate and effects of the deceased then known, it should be afterwards discovered that there was some property forming part of that estate which had not been known at the time when the inventory was made.

Then the statute proceeds in these terms, "If at any subsequent period a discovery shall be made of any other effects belonging to the deceased, an additional inventory of the same shall be in like manner exhibited;" and there are very considerable penalties imposed if that is not done. The statute therefore appears to contemplate that all that is required to supplement an honest statement of the property of the deceased in the first instance is a further statement of any property subsequently discovered "belonging to the deceased." Now, my Lords, whatever may be the case with regard to the expression "personal estate and effects of the deceased," which can conceivably be regarded as an entity that may be added to, it seems to me impossible to contend that the words "belonging to the deceased" could have any application to a property which never belonged to him, and which was, as is suggested, added to his personal estate after his death. Those words occurring in the later part of the section appear to me to be very cogent in the interpretation of the earlier words of the section, which indicate the nature of the property that is to be included in the inventory, and strongly support the view that it would not include that which a person other than the deceased took steps to make and intended to make, so far as could be done, a part of the personal estate and effects of the deceased.

In the subsequent Act, the Act of 1881, which provides also for the payment of further probate duty, it is enacted in section 32 that "if at any time it shall be discovered that the personal estate and effects of the deceased were at the time of the grant of probate or letters of administration of greater value than the value mentioned in the certificate," then "the person acting in the administration of such estate and effects shall within six months after the discovery deliver a further affidavit." There, again, the test is made "the personal estate and effects of the deceased at the time of the grant of probate;" and that provision would clearly be inapplicable to the case where, after the grant of probate, owing to the dispositions of the will of another person, money or property was, in the way suggested, added to the personal estate, because of course it would not come within the words "were at the time of the grant of probate of greater value than the value mentioned in the certificate."

For these reasons I think that the taxing clauses do not apply to the portion of Miss Scott's estate which came to the executors of Mr Methven; and all the illustrations which have been put, and all the questions which have been asked, really seem to me to depend upon the answer to that question. If, within the Act, it has become part of the personal estate and effects, then no doubt probate would be required to make title to it. If it has not so become part of the estate, then probate would not be required to make title. When once that question is answered all the other questions seem to be answered fully and without difficulty.

I will not detain your Lordships more than a moment upon the suggestion that if it is not within the words of the statutes I have quoted it is within the words of the Stamp Duties Act of 1860. It seems to me impossible to say that it was any part of "the personal or moveable estate and effects which" a person "shall have disposed of by will under any authority enabling such person to dispose of" as he thought fit.

The only question remaining is whether the beneficial interest can be regarded as subject to the payment of legacy duty by the beneficiaries. That depends upon the construction of the Stamp Duties Act of 1845, which defines as a legacy liable to duty "every gift by any will or testamentary instrument of any person which by virtue of any such will or testamentary instrument is or shall be payable or shall have effect or be satisfied out of the personal or moveable estate or effects of such person or out of any personal or moveable estate or effects which such person hath had or shall have had power to dispose of." It seems to me impossible to say that any moneys which may be received by virtue of the dispositions which have been under consideration, by the persons who are named as beneficiaries in Mr Methven's will, who in consequence of Miss Scott's disposition would take certain further benefits, are received as gifts by Mr Methven's will, which by virtue of that will are payable out of any personal estate of his or any "personal estate" which he had "power to dispose of."

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

LORD WATSON—I also am of opinion that the judgment appealed from ought to be affirmed. I do not wish to suggest that Miss Scott could not have made such a testamentary disposition in favour of the beneficiaries under the will of Robert Methven as would have entitled the Crown to claim payment of duty. She unquestionably could have directed the trustees of Methven, whom she made her executors, to pay these duties to the Crown, and that direction would have been imperative. I do not think it is necessary to speculate how far she could have accomplished the object of making the Crown entitled to these duties by indicating that her bequest was to be in the same position under these statutes as if it had in point of fact belonged to the nephew who predeceased her. I am satisfied that no such thing was either done or attempted here. Miss Scott created, according to my view, a new trust in the persons of Methven's executors, the purpose of the trust being, not that the fund which she committed to them should become part and parcel of the deceased's estate, but that it was to be administered by the trustees as a separate estate, in the same manner and subject to the same conditions as if it had originally been the property of Methven himself.

LORD ASHBOURNE—I entirely concur. The claim of the Crown is practically for the recovery of a double duty, and for the reasons stated by the Lord Chancellor I think their case has entirely failed.

LORD MORRIS concurred.

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

Counsel for the Appellant—Lord Advocate Balfour, Q.C. — Solicitor-General Sir John Rigby, Q.C — Patten Macdougall. Agents—Sir W. H. Melvill, Solicitor for England of the Board of Inland Revenue, for P. J. H. Grierson, Solicitor for Scotland of the Board of Inland Revenue.

Counsel for the Respondent—Sir Henry James, Q.C. — Lorimer — T. Shaw — James S. Henderson. Agent—D. E. Chandler, for William Black, S.S.C.

Thursday, March 8.

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

EDINBURGH UNITED BREWERIES, LIMITED, AND OTHERS *v.* MOLLESON AND ANOTHER.

(*Ante*, vol. xxx. p. 568, and 20 R. 581).

Contract—Sale—Condition—Misrepresentation—Title to Sue.

By agreement entered into on 11th November 1889 M agreed to sell to D a brewery at the price of £20,500, to be paid by the 31st December, when a conveyance was to be granted to D or to any company to which he might assign his interest. On 14th December D agreed to sell the brewery to the Breweries Company at the price of £28,500. On 31st December M, at D's instance, and in fulfilment of their contract of 11th November, granted a conveyance to the Breweries Company, and D's interest in the brewery ceased. The agreement of 11th November provided that "the arrangement proceeds on the basis that the nett profits of the brewery amounted during