opinion. It seems to me that an application to review under article 16, Schedule 1, of the Act of Parliament is admissible not only where the circumstances have changed but where the party who applies for review is prepared to adduce evidence to show that the unaltered state of circumstances is now better understood than it was at the time that the first Order was made. The question therefore which we have to resolve in this case I think comes to this—it is not easy to my mind—whether there has been such a finding of fact as that I am in a position to say that although the physical condition of the man remains the same, the arbiter was at the second arbitration in a better position to judge of the diminution of capacity which had been induced by the injury which the man had sustained. Now upon that, difficult as it is, I concur with the Lord Justice-Clerk in that I am not prepared to say that there was no evidence upon which the arbiter could find that the greater difficulty in the appellant finding work (which was greater than he contemplated when he fixed the 10s. 3d.) was due to the nature of his personal injury, and if there was such evidence and it was for the arbiter to determine what the result of it was, this appeal must succeed. I therefore think the appeal should be allowed.

Counsel for the appellant then raised the question of pauper costs, and contended that the Scottish Act of 1424, which still was in force, governed any Order of the House of Lords on the question.

Without calling on the respondents their Lordships gave judgment as follows :—

VISCOUNT FINLAY — In my opinion we cannot accede to this application. The practice in appeals to this House was settled in 1892, and ever since that time it has been adhered to, and adhered to in all Scotch cases. We are now asked to say that by virtue of a Statute of 1424, a Scottish statute of James 1st of Scotland, that practice is wrong. That statute in its terms does not apply to the House of Lords ; it is a statute applying to Scotland and to the Courts of Scotland, and the practice in Scotland is in conformity with the directions given for what the judge should do in cases where resort was had to the statute.

The matter is not altogether devoid of direct authority, because in the case of *Wyman* v. *Paterson* in the year 1900, reported in the Appeal Cases for that year, beginning at page 271 (2 F. 37, at p. 48, 37 S.L.R. 635), application was made where a fund had been recovered for an order that the fund which had been recovered and preserved by the action of the appellant should bear the costs of her solicitor, and the Lord Chancellor (Lord Halsbury) said, "This is a pauper case. We do not give costs in a pauper case."

Under these circumstances it appears to me that we must adhere to the practice which has been established for so many years and which has received the sanction of Lord Halsbury's opinion, not as a mere dictum, but as the reason for the conclusion at which he arrived on that application.

For these reasons it appears to me that we cannot do anything in the direction desired by Mr Macquisten on behalf of the appellant in the present case.

VISCOUNT CAVE—I agree. I only desire to add that this House has power under section 11 of the Appellate Jurisdiction Act 1876 to regulate its own procedure. Under that power a rule has been laid down, and I submit that it should be adhered to.

LORD DUNEDIN—I think the procedure of every Court is part of the *lex fori* of that Court. It is inconceivable that James 1st of Scotland should have legislated for the *forum* of the House of Lords as it is now constituted. It is quite within the power of the House of Lords to make a regulation which would arrive at the result which Mr Macquisten wants, but there is a good deal to be said upon both sides about the question whether a pauper should be allowed to get his expenses from the other side when he never can have to bear any expenses himself. It is a general question ; the House of Lords has settled it in one way ; and it is quite impossible, I think, for us to alter that practice.

LORD SHAW — I agree with the noble Viscount on my left (Viscount Cave).

LORD WRENBURY—I agree.

Their Lordships sustained the appeal with expenses, the expenses in the House of Lords to be taxed in the manner usual where the appellant sued *in formâ pauperis*.

Counsel for the Appellant — Scanlan —Macquisten. Agents — Thomas Scanlan & Company, Glasgow—R. D. C. M'Kechnie, Edinburgh—Herbert L. Deane, London.

Counsel for the Respondents—Sandeman, K.C.—W. Beveridge. Agents—W. T. Craig, Glasgow—W. B. Rankin & Nimmo, W.S., Edinburgh—Beveridge & Company, Westminster.

Monday, July 21.

(Before Viscount Finlay, Viscount Haldane, Viscount Cave, Lord Dunedin, and Lord Shaw.)

INLAND REVENUE *v.* HAMILTON.

(In the Court of Session, December 12, 1917, 55 S.L.R. 163, and 1918 S.C. 135.)

Revenue—Succession Duty—Entail—Predecessor—Disposition—Devolution by Law —Succession Duty Act 1853 (16 *and* 17 *Vict. cap.* 51), *secs.* 2 *and* 10.

The Succession Duty Act 1853, section 2, enacts — "Every past or future disposition of property by reason whereof any person has or shall become beneficially entitled to any property or the income thereof upon the death of any person dying after the time appointed for the commencement of this Act, either immediately or after an interval, either certainly or contingently, and either originally or by way of substitu-

tive limitation, and every devolution by law of any beneficial interest in property or the income thereof, upon the death of any person dying after the time appointed for the commencement of this Act, to any other person in possession or expectancy, shall be deemed to have conferred or to confer on the person entitled by reason of any such disposition or devolution a succession; and the term 'successor' shall denote the person so entitled; and the term 'predecessor' shall denote the settlor, disponer, testator, obligor, ancestor, or other person from whom the interest of the successor is or shall be derived."

A proprietor by entail settled his estate upon himself and the heirs of his body, whom failing upon his brother and the heirs-male of his body, "whom failing the heirs-female of the body of the said" brother.

The succession having opened to an heir-female of the body of the brother after he and his heirs-male had successively held the estate, *held* that the heir-female took, for the purposes of the Succession Duty Act 1853, by disposition not by devolution by law, and that her predecessor was the settlor and not her father, the last heir-male of the brother.

Lord Advocate v. *M'Culloch*, 1895, 22 R. 356, 32 S.L.R. 266, *approved*.

Revenue—Succession Duty—Finance (1909-10) *Act* 1910 (10 *Edw. VII, cap.* 5), *sec.* 58—*First Succession under the Disposition.*

The Finance (1909-10) Act 1910, section 58, increases succession duty in certain cases, "in the case of a succession arising under a disposition only if the first succession under the disposition arises on or after" 30th April 1909. *Held* that "the first succession" meant the first taking which involved liability for payment of duty under the Succession Duty Act.

This case is reported *ante ut supra*.

At delivering judgment—

VISCOUNT FINLAY—The first question in this case is whether the appellant who succeeded to land in Ayrshire on the death of her father Hugh Hamilton took by devolution of law as his heiress, or whether she took under disposition made by the deed of 11th October 1823. In the former case her father would be predecessor and the rate of duty would be 1 per cent.; in the latter case the predecessor would be Hugh Hamilton (*primus*), a brother of her great-grandfather, and the duty would be either 5 per cent. or 10 per cent. according to the construction to be put upon the Finance Act 1910 (10 Edw. VII, ch. viii), section 58.

The deed of 11th October 1823 was made by Hugh Hamilton (*primus*), who died in 1829. By it certain lands were disponed to the settlor and the heirs of his body, whom failing to Alexander West Hamilton "and the heirs-male of his body, whom failing to the heirs-female of the body of the said Alexander West Hamilton and the heirs whatsoever of their bodies" with further limitations. Provision was further made by the deed in the following terms—"the eldest heir-female and the descendants of her body, always excluding heirs-portioners, and succeeding without division throughout the whole course of the female succession, and the daughter of the heir who was last in possession succeeding always in preference to the daughter of any former heir or other heir-female so often as the succession shall devolve upon daughters or heirs-female through the whole course thereof, which I hereby declare to be my true meaning and intention notwithstanding the aforesaid general destination to heirs whatsoever."

On the death of the settlor, Alexander West Hamilton succeeded to the lands, and on his death in 1838 he was succeeded by his son Hugh Hamilton (*secundus*), who died in 1910 without heirs-male of his body, but leaving two daughters, of whom the appellant is the elder. The Crown claims duty on the footing that her predecessor for the purposes of succession duty was the settlor, and that she took by his disposition. The appellant claims that while Alexander West Hamilton, her paternal grandfather, took by disposition under the settlement, she took by devolution of law.

From the authorities referred to in argument I desire to cite only one passage which occurs in the judgment of Lord Selborne in *The Earl of Zetland* v. *Lord Advocate* (1878, L.R., 3 A.C. 505, at pp. 519-520, 5 R. (H.L.) 51, 15 S.L.R. 373)—"The second section of the Act distinguishes between two classes of titles, viz., those in which the interest of the successor comes to him by 'disposition' (or, in the terms of English law, by purchase), and those in which it comes to him by 'devolution by law' (or, in English technical phrase as to the real property, by descent). The predecessor in cases of 'disposition' (or purchase) is the settlor, disponer, testator, or obligor, 'from whom the interest of the successor is derived.' In cases of 'devolution by law' (or descent) he is the 'ancestor from whom the interest of the successor is derived.' I omit the words 'or other person,' which seem to have been put into the Act only *ex abundanti cautela*. Devolution by law takes place whenever the title is such that an heir takes under it by descent from an 'ancestor,' according to the rules of law applicable to the descent of heritable estates; and in all cases of descent the estate of the successor is immediately 'derived' from the 'ancestor' from whom the estate descends. The word 'ancestor' does not mean, either etymologically or technically, a lineal ancestor only—in illustration of which proposition I may refer to a passage in Comyn's Digest as to the English writ of 'Mort d'Ancestor,' which (it is said) 'does not lie upon the death of any ancestor except a father, mother, brother, sister, uncle, aunt, nephew, or niece; for upon the death of another ancestor, an aiel, besaiel, or cosinage lies.'"

Under the deed of tailzie, on the failure of heirs-male of the body of Alexander West Hamilton the property passed to the heirs-female of his body, and the heirs of their bodies, subject to the provisions in favour

of the eldest heir-female, and the daughter of the heir who was last in possession, which I have already quoted. This establishes a new channel in which descent takes place in terms of the deed. The appellant, therefore, as the eldest daughter, took by disposition, and the settlor was her predecessor for the purposes of the Act. It follows that under the Act of 1853 the duty would be 5 per cent.

It remains to consider whether that duty is raised to 10 per cent by virtue of section 58 of the Finance Act 1910. That section provides (sub-section 1) that any succession duty which under the Succession Duty Act 1853 is payable at the rate of 5 per cent. shall be payable at the rate of 10 per cent. on the value of the succession, and further (sub-sec. 4) that the section shall take effect in the case of succession arising under a disposition only if the first succession under the disposition arises on or after the 30th of April 1909.

The appellant contends that the first succession under the disposition occurred on the death of Alexander West Hamilton in 1838, and that the succession duty as now claimed is therefore dutiable only at 5 per cent. It was contended on the other hand for the Crown that the first succession referred to in sub-section 4 of section 58 of the Act of 1910 must be a succession dutiable under the Act of 1853.

My first impression was in favour of the contention of the appellant upon this point, but that impression has been modified by further consideration, and I am of opinion that the contention on the part of the Crown is right. The Act of 1910 increased to 10 per cent. the duty payable at 5 per cent. under the Succession Duty Act 1853, and the term "succession" is defined in the Act of 1853 as denoting any property chargeable with duty under the Act. I think that the term "succession" under sub-section 4 of section 58 of the Act of 1910 must be read in the same sense as referring to a succession dutiable under the Act of 1853. As the death of Alexander West Hamilton took place in 1838 before the Act of 1853 became operative it was not the first succession within the meaning of sub-section 4.

Upon the whole I think that the appeal must be dismissed on both points with costs.

VISCOUNT HALDANE--[*Read by Lord Atkinson*]—I have come to the conclusion that the Crown is entitled to hold the judgment which it obtained from the Courts below.

By a disposition and deed of tailzie dated 11th October 1823, Hugh Hamilton disponed, *inter alia*, the estate of Pinmore in strict entail to himself and the heirs whatsoever of his body, whom failing to Alexander West Hamilton (his cousin) and the heirs-male of his body, whom failing to the heirs-female of the body of the said Alexander West Hamilton and the heirs whatsoever of their bodies, with other destinations-over on failure, the eldest heir-female and the descendants of her body, always excluding heirs-portioners, to succeed without division throughout the whole course of the female succession, and the daughter of the heir who was last in possession succeeding always in preference to the daughter of any former heir or other heir-female, so often as the succession should devolve on daughters or heirs-female throughout the whole course thereof, which he declared to be his true meaning and intention notwithstanding the foresaid general destination to heirs whatsoever.

The entailer Hugh Hamilton died in 1829 leaving no heirs of his body, and thereupon Alexander West Hamilton succeeded and died in 1838. His eldest son Hugh Hamilton (*secundus*) succeeded him as heir-male of his body, and Hugh Hamilton (*secundus*) died in August 1910 leaving no heir-male of his body. He was succeeded in the entailed lands by his eldest daughter, who is the present appellant.

The first question in this case relates to the rate of succession duty payable by the appellant under the Succession Duty Act of 1853. She maintains that she took the succession through devolution by law from her father or grandfather, and that she was therefore by reason of the provisions of section 10 of the Act liable to succession duty to the rate of only 1 per cent. The Crown, an the other hand, claims that she succeeded by virtue of the terms of the disposition by the original entailer to whom she was related as a collateral, and was therefore liable at the rate of 5 per cent. under that section, or possibly, in view of the change made by a later Act to be afterwards referred to, at the rate of 10 per cent.

Section 2 of the Act of 1853 provides, so far as is material, that "every past or future disposition of property . . . and every devolution by law of any beneficial interest in property . . . shall be deemed to . . . confer on that person entitled by reason of such disposition or devolution a succession . . . and the term 'predecessor' shall denote the settlor, testator, obligor, ancestor, or other person from whom the interest of the successor is derived."

Now it is well settled that when the disposition has vested an estate in a person taking under it, and the succession of the next taker arises by the operation of a principle of law which alone ascertains the character in which he takes, his succession is deemed to be by way of devolution from the taker to whom he succeeds, and that taker is the predecessor within the meaning of section 2. What the determining principle of law is, and what is the construction of the disposition, are matters belonging to the law applicable, which may be that of Scotland or England or of some other country. All that the Courts have laid down about a common rule of interpretation is really confined to the construction of the statute itself, on which they have intimated that a construction ought to be placed which will enable it to apply to an estate arising under whatever general system of law is being considered.

In Scotland the law relating to estates in land is radically different from that of England. Here the fee-simple can be split up into a series of minor estates in possession or remainder. If, for example, land is given

to A and the heirs of his body, with remainder to B and the heirs of his body, and A and the heirs of his body become extinct, B takes a new estate tail and the heirs of his body take by devolution from B as their predecessor. But in Scotland where the fee cannot be split up in this fashion, B and the heirs of B's body take, under an entail of an analogous description, as heirs of provision to whom the fee passes in order prescribed by the destination in the entail as the law interprets it. The law assumes as the principle of devolution the order prescribed by the entail, and treats that order as establishing a devolution by law in virtue of the provisions contained in it. When a person is named in the entail he need not, as in England, be an heir by law or else a remainder man who can be the ancestor for a class of such heirs. He may be by the law of Scotland merely heir by provision under the entail. Now in *Lord Saltoun's* case (3 Macq. 659), as explained in Lord Blackburn's judgment in *Earl of Zetland* v. *The Lord Advocate* (3 A.C. 505), this was not questioned, but a construction was placed on the language of the Succession Duty Act which obviated divergence between cases in Scotland and England in the incidence of the duty. Under that construction where the entailer had disponed to her eldest son *nominatim* and the heirs of his body, whom failing to his nephew *nominatim* and the heirs of his body, the nephew was held liable as taking from the entailer as predecessor. It was obvious that if the entail had been of land in England he must have been so held liable, and a construction was put on the definition of "predecessor" in the Act of 1853 which excluded such a case as that of the Scottish destination before the Court from falling within "devolution" from an "ancestor" within the meaning of the words of the Act.

I think that the result is that it is now established that when a person takes under a Scottish entail as the head of a new class of heirs, he takes, within the meaning of the Succession Duty Act of 1853, by disposition and not by devolution, while if he takes as an heir to be ascertained by law within a class which has been called or constituted by the act of the entailer he takes by devolution, and it makes no difference in the latter instance that he may have to serve himself as heir in order to establish his title.

Now, if this be so, how does the question stand on the destination before us? On the failure of the heirs-male of the body of Alexander West Hamilton, which took place in the person of Hugh Hamilton (*secundus*), there is a destination to the heirs-female of Alexander's body under which the appellant has come in. I think that section 2, on the construction to which I have referred as now settled, compels us to say that this destination to heirs-female of Alexander's body is one to a new class which is to be ascertained by reference to the disposition as the agency which created it. No doubt when the class is ascertained the law does the rest by recognising a devolution. But the ascertainment of the class is due to the disposition and to that alone. I therefore find myself in agreement on this question with the learned Judges who decided this case in the Court of Session, and also with those who decided *Lord Advocate* v. *M'Culloch*, 1895, 22 R. 356, 32 S.L.R. 266.

This, however, is not the only question which your Lordships have to dispose of. Section 58 of the Finance Act 1910 provides that "any legacy or succession duty which under the Stamp Act 1815, or the Succession Duty Act 1853, or any other Act, is payable at the rate of three per cent., shall be payable at the rate of five per cent., and any legacy or succession duty which under the said Acts is payable at the rate of five per cent. or six per cent. shall be payable at the rate of ten per cent. on the amount or value of the legacy or succession." Sub-section 4 of the same section provides that the "section shall take effect in the case of legacy duty only where the testator by whose will the legacy is given or the intestate on whose death the legacy duty is payable dies on or after the thirtieth day of April 1909, and in the case of a succession arising through devolution by law, only where the succession arises on or after that date, and in the case of a succession arising under a disposition, only if the first succession under the disposition arises on or after that date."

For the appellant it is contended that the succession of the appellant was not the first succession specified in accordance with the words as they stand of the taxing statute, inasmuch as Alexander West Hamilton was the first to succeed to the entailer. But "succession" is defined by section 1 of the Act of 1853 to denote any property chargeable with duty under that Act, and I think that the true inference from the language of subsection 4 of section 58 is that the legislation refers to the same kind of succession as is referred to in the Act of 1853, that is, to such a taking under a disposition as makes the property subject to duty. I agree with the reasons given by Lord Cullen for adopting this interpretation.

I am of opinion that the appeal fails and ought to be dismissed with costs.

VISCOUNT CAVE—I have arrived at the same conclusions on both the points raised on this appeal.

On the first point I am clearly of opinion that the appellant took by virtue of a disposition and not by devolution of law. The death of Hugh Hamilton (*secundus*) broke the chain of succession among the heirs-male of the body of Alexander West Hamilton, and opened the succession to a new class designated by the entailer, namely, the heirs-female of the body of Alexander West Hamilton, taking in the order specially indicated in the disposition and deed of tailzie of the 11th October 1823. The appellant is the first member of this new class and takes by the disposition of the entailer.

On the second point I agree with the interpretation put by the Lord Ordinary upon section 58 (4) of the Finance (1909-10) Act 1910, and with the reasoning upon which his conclusion is founded.

I think that the appeal should fail.

LORD DUNEDIN—[*Read by Lord Shaw*]—

The first point argued is admittedly ruled by the decision in *M'Culloch*, and the present case is really an appeal against that judgment. I cannot say I have felt any doubt as to that decision being sound. The truth is that the whole matter was settled long ago by this House in the case of *Lord Saltoun*. What was wished was a working rule which should settle what should be done in the case of Scotch destinations — should settle who was "the predecessor in the sense of the Succession Duty Act." The Court of Session had taken the very simple view that the predecessor was the person who last held the estate. There was much to be said for that view, but it did not commend itself to our predecessors, under the guidance of Lord Chancellor Campbell, who thought that to so hold would make too much difference of the incidence of the tax in Scotland and in England.

The metaphysical conception of the estate taken by successive holders is radically different in English and Scottish law, and the words of the statute cannot be directly applied in both countries to the same effect.

Rejecting the view of the Court of Session it was necessary to find some other rule. That rule was formulated as follows:—As long as the succession opened to one class of heirs called in a destination, succession was by devolution of law; as soon as that class was exhausted and the original entail or settlement had to be involved to designate what was the next class called, the succession was by disposition. In the first case the predecessor was the immediate preceding holder; in the other it was the entailer or settlor. Applying that rule, the heirs-male of the body of Alexander West Hamilton being exhausted, it was necessary to go to the entail to find who were next called, to wit, the heirs-female of his body, and in virtue of her belonging to the class the appellant succeeded. Accordingly the entailer was her predecessor.

As to the question of the rate of duty exigible, that is a question of pure chance. In the present case the appellant has to pay at the higher rate. In *M'Culloch's* case the successor had to pay at the lower. The appellant's counsel in this case seemed to think that there was an argument in the statement that if his client had been a male the duty would have been at the lower rate. The answer is a simple one, that in that case his client would have been in the first class called. But it is equally true that if Mrs Jamieson M'Culloch had been a male the duty would have been at the higher rate instead of the lower. In the same way it is useless to say that if the destination had been simply to the heirs of the body of Alexander West Hamilton instead of to the heirs-male of the body, whom failing to the heirs-female of the body, then the appellant would have succeeded by devolution of law. The answer is that in that case the destination would have been a different one, and in certain eventualities would have called different persons from the destination as it stands, for under the first supposed destination a female might have succeeded before a male. I am bound to say that although I have dealt with this question in my own words I do not think I am adding anything to what was said by Lord President Robertson, afterwards Lord Robertson, in *M'Culloch's* case.

As regards the second point I agree with the learned Judges of the First Division. The statute begins by altering the 5 per cent. to one of 10 per cent. Then comes the proviso, which says that the section shall take effect in the case of a succession arising under a disposition (which, the first point being decided as above, is the present case) only if the first succession under the disposition arises on or after the date of 30th April 1909.

Now it is evident that the duty of 10 per cent. cannot be exigible except from successions on which 5 per cent. was due—that is to say, from successions accruing after the date of the Succession Act 1853. It seems to follow, unless the Act is to be made nonsensical, that when the proviso speaks of the first succession it is a succession of the same class, *i.e.*, a succession arising after the Act of 1853. If that is so, the present succession is the first succession arising since the Act of 1853, and was after the date of 1909.

Agreeing as I do with the First Division on both points, I am of opinion that the appeal should be dismissed.

LORD SHAW—I am of the same opinion.

It is not necessary to re-state the facts, which are well known, governing the decision; and I do not think that there is any doubt as to the law of this case. In the Pinmore entail the entailer was succeeded by his cousin Alexander West Hamilton, to whom in 1838 his son Hugh Hamilton (*secundus*) succeeded as heir of entail. All that is relevant in the deed of entail are these words—"Whom failing to Alexander West Hamilton . . . and the heirs-male of his body, whom failing the heirs-female of the body of the said Alexander West Hamilton."

When Hugh Hamilton died in 1910 it turned out that he was the last of the heirs-male of the body of Alexander West Hamilton, and accordingly that that line, prescribed by the entail, had come to an end. A further line had to be sought for, and it could only be sought for by referring to the deed of entail itself, and it was found in the words "whom failing to the heirs-female of" Alexander West Hamilton. This is the connection between the last taker, who was the last of the old line of heirs-male, and the new and present taker, viz., the first taker of the new line of heirs-female. I entertain no doubt that in the construction of the Succession Act of 1853 and the Taxation Statutes which follow the relation between these two persons was not a relation of devolution by law, but that the appellant takes under what is known under the statute as disposition.

The appellant, however, maintains, for some reason which I have not been able to fathom, that no respect be paid to the well-known decisions affecting this branch of the law, and that the relation was that the succession is open to the present proprietor by devolution by law. Devolution by law does not mean devolution necessarily according

to the order of intestate succession. As Lord President Inglis said in *Lord Zetland's* case, 4 R. 199, at p. 204 (14 S.L.R. 137 at pp. 140-141), in words expressly adopted by Lord Hatherley in this House—"In short, the will of the entailer when he calls a succession of heirs-male of the body is, that the law shall determine within that class which is the person to take on every occasion on which a death occurs amongst the class causing a devolution of the estate; and from this it seems to follow that on every such occasion the transmission of the estate from the dead to the living is a devolution by law."

But it equally follows that while devolution by law takes place within the class selected under the entail, it does not take place between one class and another class. This appears to me to be in entire accord with Lord Hatherley's language in the *Zetland* case, where he interpreted the leading decision of Lord Saltoun.

It is here that I beg to express my distinct view that the judgment of the Court of Session in the case of the *Lord Advocate* v. *M'Culloch* was a correct decision. That, too, was a case of the exhaustion of the heirs-male of the body and the taking of one of another class, *i.e.*, from the line of heirs-female. Lord President Robertson's words are very clear, and in my humble judgment very sound. "Mrs M'Culloch," said he, "takes, not because she is heir-male, but, on the contrary, because there are no more heirs-male; neither does she claim because it is a legal consequence of the destination to heirs-male that she should now take. On the contrary, she points to the deed of Edward the entailer, which, now that the law has executed his commission to devolve the estate down the line of heirs-male, steps in and starts a fresh line of succession. To my thinking the case is just the same as if the heirs-female now called had been the heirs-female of some stranger, who and whose heirs-male had never yet taken at all."

If that case be sound the answer to the main question presented by the appellant admits of no doubt. I do not think that for taxing purposes the relation between successor and predecessor—that is to say, between the respondent as the first taker of the class of heirs-female with the last of the line of heirs-male—arose by devolution of law. It arose by disposition.

On the rate of duty I have nothing to add to what your Lordships have already declared.

Their Lordships affirmed the interlocutor appealed from and dismissed the appeal with expenses.

Counsel for the Appellant—Macmillan, K.C.—Pitman. Agents—Shaw & Young, Ayr—J. & F. Anderson, W.S., Edinburgh—John Kennedy, W.S., Westminster.

Counsel for the Respondent—Lord Advocate and Dean of Faculty (Clyde, K.C.)—R. C. Henderson. Agents—Sir Philip J. Hamilton Grierson, Edinburgh—H. Bertram Cox, C.B., London.

Friday, July 25.

(Before Viscount Finlay, Viscount Cave, Lord Dunedin, Lord Shaw, and Lord Wrenbury.)

CALDWELL *v.* HAMILTON.

(In the Court of Session, June 1, 1918, 55 S.L.R. 678, and 1918 S.C. 677).

Bankruptcy—Sequestration—Acquirenda—Salary Earned under Contract of Service—Beneficium Competentiæ—Process—Bankruptcy (Scotland) Act 1913 (3 *and* 4 *Geo. V, cap.* 20), *secs.* 2, 28, 97 (1), 98 (1), 1 (2).

A bankrupt whose estates had been sequestrated continued to earn by service a salary. *Held* that it was competent to pronounce an order ordaining him to pay to his trustee out of the income so earned, as and when received, what was held to be in excess of a suitable aliment for him, reserving right to the trustee, the bankrupt, and any other persons interested to apply further to the Court in the event of any change of circumstances.

Opinion of Lord Fraser in *Mitchell* v. *Barron*, 8 R. 933, 18 S.L.R. 668, *overruled.*

This case is reported *ante ut supra.*

Hamilton, the respondent in the petition, appealed to the House of Lords.

At delivering judgement—

VISCOUNT FINLAY—In this case a petition was presented on behalf of the trustee in the bankruptcy of the appellant asking that it should be found that the bankrupt was entitled to a salary at the rate of £500 per annum as an employee of William Beardmore & Company Limited, that the amount was in excess of a suitable aliment to him, and that the amount of such excess should be fixed, and that he should be ordered to pay over to the trustee the amount of such excess when received by him.

The petition came before Lord Sands in the first instance. It was opposed on two grounds, namely—(1) that the personal earnings of the appellant after the date of the sequestration do not pass under the sequestration to the trustee; and (2) that it was not competent to make an order against the bankrupt with reference to any instalments of the salary before they accrued due. Lord Sands refused the prayer of the petition. His decision was reversed by the Second Division of the Inner House, who pronounced the interlocutor now under appeal. By that interlocutor the matter was remitted to the Lord Ordinary to grant the prayer of the petition to the effect of finding that the bankrupt is in receipt of a salary of £500 per annum as an employee of William Beardmore & Company, Limited, and of certain other incomes, and to find that the amount is in excess of a suitable aliment to the bankrupt under his existing circumstances by £150 per annum, and to order and decree the bankrupt to pay over £150 per annum out of the said salary, as and when received by him, to the trustee