do represent were not deceived and not wronged, for they were themselves parties to whatever fraud was perpetrated on the public. My great difficulty is that these claimants, who are in the position of pursuers, have not explained, though asked repeatedly to explain, who were deceived or who were wronged. They talk about the fraud on the part of those who got up the concern, and of those who entered into this transaction, but whom did these parties deceive that is now here? No one. The only parties deceived were the unfortunate parties who bought at a high premium afterwards,—not the parties now before us. The Company and those who represent the company were not deceived. I think the public were undoubtedly deceived, and that the getting up and promotion of the Company as instructed by the evidence was a fraudulent device; but it was a fraud on the public. These claimants, however, do not represent the public, nor do they represent any one entitled to restitution.

On the other points in the case I have nothing to add to what your Lordships have stated, and I concur entirely in the result of your Lordships' judgment on the merits of the case.

The Court pronounced the following interlocutor:—

"The Lords, on the report of Lord Young, Ordinary, having heard counsel on the record and proof, and proceedings, remit to the Lord Ordinary in the Bill Chamber to refuse the appeal and confirm the deliverance of the trustee, and to find the appellants liable in expenses in the Bill Chamber in so far as not already found due; find the appellants liable in expenses since the date of the Lord Ordinary's interlocutor reporting the case; allow an account thereof to be given in, and remit the same, when lodged, to the Auditor to tax and to report to the Lord Ordinary in the Bill Chamber; with power to his Lordship to decern for the taxed amount of said expenses."

Counsel for Appellants—Watson and Pearson. Agents—Davidson & Syme, W.S.

Counsel for Respondents — Dean of Faculty (Clark), Q.C., Balfour, and Mackintosh. Agents—Stuart & Cheyne, W.S.

HOUSE OF LORDS.

Tuesday, June 23.

(Before Lord Chancellor Cairns, Lords Chelmsford, Hatherley, and Selborne.)

KIRKPATRICK *v.* KIRKPATRICK'S TRUSTEES.

(*Supra*, vol. x. p. 363.)

Property—Disposition.

Held (aff. judgment of the Court of Session) that a *mortis causa* conveyance of heritage executed by a person who died prior to the Titles to Land Consolidation Act 1868 (31 and 32 Vict. cap. 101) was invalid in respect that the word "dispone" was not used.

Succession—Revocation.

Held (rev. judgment of the Court of Session) that a revocable deed conveying the granter's whole estate, heritable and moveable, was not revoked by a subsequent deed by necessary implication, the new deed containing no express revocation, and owing to the omission of the word "dispone" being found ineffectual as a conveyance of heritage, while the former deed was effectual in all respects.

The late Mr and Mrs Kirkpatrick, having eight daughters and one son, executed on the 18th June 1866 a deed whereby they conveyed and "disponed" to themselves, as husband and wife, and their survivor, all their property, heritable and moveable. The deed contained provisions for the daughters, but was silent as to the son.

Nine months afterwards, on March 4, 1867, Mr and Mrs Kirkpatrick executed a second deed, "giving, granting, and assigning," but not *disponing*, to trustees the property in question. This second deed made no reference to the first, but inasmuch as its provisions departed from those of the first deed, showing an intention to displace the first and substitute the second. The Court of Session decided that the first deed was in effect revoked and inoperative, thereby neutralizing both deeds as regarded heritage (the second being inoperative as a conveyance of heritage) and opening the succession to the son as heir-at-law.

The trustees appealed.

In delivering judgment—

The Lord Chancellor said—The first question raised is whether the heritable property which the deed of 1867 proposed to convey has been validly conveyed, for if so, then the former deed of 1866 would be superseded, and the deed of 1867 would be the only one which regulates the succession of the maker of the deed. It appears that the deed of 1867 omitted to contain the word "dispone," which was a word of art and efficacy in the disposition of Scotch heritable property, and all the Judges held that the want of that word was fatal to the validity of the deed of 1867 as a conveyance of heritable property. The appellants have challenged that decision. It would indeed appear to be a very technical view to hold that the want of a single word should be fatal to the validity of a deed, however clear the intention might be; but it should be recollected that in the law of England, also, the absence or presence or a single word is often fatal or efficacious in like manner. I am therefore of opinion that the appellants have failed to show that the deed of 1867 was valid as a conveyance of heritable property. Then the second question arises, whether the deed of 1867, though invalid as a conveyance, is nevertheless valid as a revocation of the deed of 1866; and on this point five Judges in the Court below held that it is. If it were not for the respect one must always feel for a majority of the learned Judges in Scotland, I should have thought this to be a case admitting of little argument. The deed of 1867 professed to dispose of both the real and personal property. It had no recital as to whether the deed of 1866 was to be thereby revoked or not. The only thing clear was that if the deed of 1867 had been effectual, then that of 1866 must be revoked. There may be cases where a deed may be valid to revoke though ineffectual to convey. Some of the Judges below seemed to be satisfied that the use of the words "in order to regulate the succession to my means and estate," implied an intention to revoke the prior deed without anything more, but those words were in fact only

part of an entire sentence, serving to introduce the dispositive clause. The Judges held that the effect of the deed of 1867 was to restore to Mrs Kirkpatrick the original right of property she had before the deed of 1866, but I agree with Lord Benholme that the correct view of the joint effect of the power of revocation in the deed of 1866 and of the deed of 1867 was that the latter was merely the exercise of a power to re-make and alter, and that where the power was not validly exercised and fell to the ground, the original deed of 1866 remained unchanged. Even if the deed of 1867 had been not an exercise of the power, but an attempt to convey property already conveyed, there would have been no implied revocation. No case has been cited to support the view of the Court below, and none would ever be produced either in Scotland or England to the effect that when a mere alternative inconsistent deed is made it necessarily revokes a prior deed dealing with the same property. Such being the view I take, the judgment of the Court below must be reversed.

LORD CHELMSFORD—I concur. Much of the fallacy of the respondent's argument lay in the word revocation. A late deed does not revoke a prior deed unless there are inconsistent provisions, and applying that test here, it is quite plain that there was nothing inconsistent in the deed of 1867 with the deed of 1866, except in some small details.

LORD HATHERLEY—I concur. I am satisfied that the deed of 1867 was nothing else than an ineffectual exercise of the faculty reserved by the deed of 1866. The exercise of the faculty may be bad, but the deed which gave it would remain in full force.

LORD SELBORNE—I concur. As regards the argument that the word "dispone" is in effect contained in the deed of 1867 in other clauses, it is enough to remark that by the law of Scotland that word and nothing less must be found in the dispositive clause, and it cannot be imported into that clause from the other parts of the deed. As to the second point, so far am I from finding in the deed of 1867 any intention to revoke the deed of 1866 that I find entirely the reverse.

Reversed.

Counsel for Appellants—Pearson, Q.C., and Balfour. Agents—Loch & Maclaurin.

Counsel for Respondents—Attorney General (Sir R. Baggallay) and M'Laren. Agents—Martin & Leslie.

END OF VOLUME XI.