estimate the balance of the profits. Now, what is the balance of the profits? "Profits," I read on authority, to be the whole of the incomings of a concern after deducting the whole of the expenses of earning them—that is, what is gained by the trade. The whole expenses of earning them must mean, according to the schedule, the whole expenses incurred for the purposes of the business and nothing else, but I came upon the statement of facts to the conclusion that if these premises were either actually used as the counting-house and other parts of the bank were used, or of the residence of the bank managers or clerk upon the premises was necessary for protection purposes and for the purposes of carrying on the business of the bank, the whole premises, not the dwelling-house alone, but the whole premises of the bank were used for those purposes, and the annual value of them forms a proper deduction in estimating the balance of profits, which is the first thing to be done. That balance of profits is to be ascertained after deducting the whole of the necessary expenses, save those which by negative provisions are excepted in the statute.

My Lords, without going further it appears to me to be perfectly immaterial whether this accommodation is to be regarded as a part of the emolument of the manager of the bank for the performance of the duties imposed upon him, or as a part of the premises used solely and wholly for bank purposes. Upon the ground which I have stated it seems to me clear that this deduction is a deduction which the bank are entitled to make, and that therefore they have already paid the whole amount of income tax for which they are liable.

Lord Macnaghten—My Lords, I quite agree. I think that the deduction was properly and necessarily made in estimating the profits and gains of the bank which were chargeable with duty, and that there is nothing in the first rule applicable to the first and second cases under Schedule D prohibiting the deduction. I do not think that a house in which a bank or limited company carries on business is a dwelling-house within the meaning of that rule. It is not and could not be used by the bank for any purpose distinct from their business. I think the expression "dwelling-house" in that rule means a house in which the person liable to pay income-tax dwells in the ordinary sense of the word.

Judgment appealed from affirmed and appeal dismissed with costs.

Counsel for the Appellants—Att.-Gen. Webster — Sol.-Gen. Robertson. Agent — W. H. Melvill, for D. Crole, Solicitor of Inland Revenue.

Counsel for the Respondents—Sir H. Davey, Q.C.—Graham Murray. Agents — Grahames, Currey, & Spens, for J. & F. Anderson, W.S.

Tuesday, November 15, 1887.

(Before the Lord Chancellor (Halsbury), Lord Watson, and Lord Macnaghten.)

DOWAGER DUCHESS OF MONTROSE AND OTHERS *v.* STIRLING STUART.

(*Ante*, vol. xxiv., p. 105.)

Warrandice—Heir and Executor—Catholic Security.

By a trust-disposition and settlement, executed in 1853, the granter conveyed his whole estate, heritable and moveable, to trustees, for the purpose, *inter alia*, failing heirs of his body, of conveying his estate of M, and his other lands in the county of L, to his brother, and the heirs of his body, under the fetters of an entail. By the same deed he directed his trustees, failing his own issue, to make over the whole residue of his estate to the person who should succeed to M.

By a codicil, dated in 1876, he disponed to his wife, in the event of her surviving him, the lands of B and A (which were among the lands originally directed to be entailed), and bequeathed to her the whole residue of his estate. By a previous deed he had appointed his wife his sole executrix. The disposition of B and A contained a clause of warrandice in ordinary form under the Titles to Land Consolidation Act 1868 (31 and 32 Vict. cap. 101), which imports absolute warrandice. In 1882 the truster granted a bond and disposition in security for £250,000 over the estates of M, B, and A.

On the truster's death his widow maintained that no part of the debt of £250,000 was payable out of B and A, or out of residue, but that the whole debt was entirely chargeable against M.

Held (*affirming* the judgment of the Second Division) that the truster had in imposing the obligation of warrandice used words limited in their significance to personal obligation, and that his widow, as personal representative and executrix, must herself discharge the obligation of warrandice.

This case is reported *ante*, November 26, 1886, 24 S.L.R. 105, and 14 R. 131.

The Dowager Duchess of Montrose and Mr Stirling Crawfurd's trustees appealed.

At delivering judgment—

The Lord Chancellor (Halsbury)—My Lords, in this case the question for your Lordships' decision appears to me to be clear beyond all doubt. Mr Stirling Crawfurd appears to have left three estates, which were charged with a sum of £250,000. With respect to two of them he left them to his widow, the present appellant, with a clause of warrandice that they should be free from all obligations, of course including the proportionate part of this £250,000 to which by law they would be liable.

It is not denied that if nothing more appeared each of these three estates, the one (Milton) which went to the testator's brother and heir-at-law, and which was left to him by a sufficient disposition and not as heir-at-law, and the two which went to his widow, would be rateably chargeable with the

payment of this £250,000. It is further apparently admitted that if the residuary estate had gone to a different person than the widow no such question as has been submitted at your Lordships' bar could have arisen; the fulfilment of that clause of warrandice would have been a personal charge, and would have been a primary charge upon the executor to be met out of personal estate; and the only question which appears to be suggested is this, that inasmuch as the same person who occupies the position of disponee of these two smaller estates is also executrix and residuary legatee, one must construe the testamentary disposition as a whole, and look at all that was intended to operate, and assume that although there is no express disposition to that effect we must read into these testamentary dispositions such operative words as to free these smaller estates from the obligations which would otherwise rest upon them. That contention appears to be grounded upon a misuse, I think, of the words "residuary estate." I could imagine a case being presented to your Lordships in which, if the facts could be established to raise such an argument, it might be plausibly contended that it would be impossible to suppose that the testator meant to render null and of no effect a disposition which he had made, and if it could be established that to the knowledge of the testator these two estates would be entirely swallowed up by the obligations which were charged upon them, and that the effect of the disposition when looked at as a whole would be to give his widow absolutely nothing, it would be a plausible argument to contend that we must suppose he had some object in making the disposition to his widow, and that he could not have intended merely to make a disposition on paper, the result of which, taken as a whole, would be to give her absolutely nothing.

My Lords, no such case arises here before your Lordships. The legal operation and effect of the language used, and its technical import, are not denied. And when one speaks of the residuary estate it is a fallacy to speak of the residuary estate as if it were an ascertained something. The residuary estate, although it is a compendious and convenient form of expression, means that which remains after the obligations which primarily rest upon the personalty have been discharged, and it seems to me that there is no inconsistency in reading the two propositions together:—"I leave one of these two estates to my widow, and after she has discharged all the legal obligations, including this and all other legal obligations to which the personalty is liable, I also make her the person who shall benefit by my bounty in receiving all that remains after the discharge of this obligation." My Lords, that seems to me to be the rational mode of dealing with these dispositions, reading these testamentary instruments together. Under those circumstances it appears to me that the supposed inconsistency—the supposed conflict of intention which is suggested as arising—is entirely disposed of.

My Lords, I therefore agree entirely with the judgment pronounced by the Court of Session, which I think, following the language of the question put to them by the parties, is sufficiently accurate to show what they intended to convey, and under these circumstances I move that the appeal before your Lordships be dismissed and the interlocutor affirmed with costs.

Lord Watson—My Lords, I agree with the Lord Chancellor in thinking that this is a very simple case. I have heard nothing in the course of the ingenious arguments of the learned counsel to suggest any doubt as to the propriety of the judgment of the Court of Session.

The various writings which have been brought under the notice of your Lordships must, I think, be read as one deed constituting the settlement of Mr Stirling Crawfurd. In noticing the terms of his settlement it is sufficient to refer to those provisions which directly bear upon the question argued before us with regard to the warrandice of the conveyance to the lands of Balornock and others. He constitutes the appellant his executrix and universal trustee of his estate, which imposes upon her the character of his personal representative, liable to the payment of his moveable debts. Then he gives her a legacy payable by herself in that character of £50,000. Then he conveys to her two estates with warrandice, and imposes upon her as his personal representative, in language technical and of well-known application in the law of Scotland, an obligation to make good that warrandice; and after all these provisions are made he bequeaths to her the whole residue of his estate. What is the residue of his estate? It is simply so much of his personal means as may remain after the whole antecedent purposes of the deed have been effected, after debts and legacies have been paid, and the obligation of warrandice discharged.

But it is urged that as the result of these provisions we must in point of fact infer that the testator did not mean to charge his personal representative with the burden of the warrandice, and that he meant to impose the obligation upon the fee of the entailed estate. If that was his meaning, it is a singular thing that he should have used words which are ineffectual to create a real burden, and are constantly used by Scotch conveyancers to import an obligation affecting personal representatives.

Lord Macnaghten concurred.

Interlocutor appealed from affirmed, and appeal dismissed with costs.

Counsel for the Dowager Duchess of Montrose (Appellant) — Balfour, Q.C. — Rigby, Q.C. Counsel for Mr Stirling Crawfurd's Trustees (Appellants)—Sir H. Davey, Q.C. Agents—Grahames, Currey, & Spens, for John Clerk Brodie & Sons, W.S.

Counsel for the Respondent—Sol.-Gen. Robertson—E. W. Byrne—C. K. Mackenzie. Agents—Baileys, Shaw, & Gillett, for Graham, Johnston, & Fleming, W.S.