be well to suggest that the cross appeal should be dismissed without costs, but with a statement that it be without prejudice to the effect of the Scots marriage settlement.

Their Lordships dismissed the appeal with costs. They also dismissed the cross appeal without costs and "without prejudice to the effect of the Scots marriage settlement."

Counsel for Pursuer (Respondent in Appeal)—Clyde, K.C.—Hon. W. Watson. Agents—Tods, Murray, & Jamieson, W.S., Edinburgh—Rawle, Johnstone & Company, London.

Counsel for the Defender (Appellant)—Dean of Faculty (Campbell, K.C.)—Cripps, K.C. — Macphail. Agents — Melville & Lindesay, W.S., Edinburgh — John Kennedy, W.S., Westminster.

Thursday, July 25.

(Before the Lord Chancellor (Loreburn), Lord Macnaghten, Lord Robertson, and Lord Atkinson.)

MACKENZIE'S TRUSTEES *v.* MACKENZIE AND OTHERS.

(*Ante*, November 29, 1906, 44 S.L.R. 126, 1907 S.C. 139.)

Succession — Testament — Construction — Destination — Heir of Entail — Description or Condition.

A testator bequeathed interests in the residue of his estate "to the heir for the time being entitled to succeed under the said deed of entail" on his attaining the age of twenty-four. He had in a preceding portion of his testament directed an entail of a certain estate upon a series of heirs, and it appeared from the whole provisions of the deed that he contemplated the founding of a family of that estate. The institute in the proposed entail obtained a conveyance in fee simple of the estate, under section 27 of the Entail Act 1848, and died before attaining twenty-four years of age.

Held that the words "the heir for the time being entitled to succeed under the said deed of entail" were merely a description of the person favoured and did not import a condition that he should in fact be heir under an executed deed of entail.

Per Lord Robertson—"The substance of a bequest of residue is the choice of persons."

This case is reported *ante ut supra.*

Baroness Wesselenyi, administratrix of the deceased Claude Longueville Mackenzie, appealed to the House of Lords.

At the conclusion of the argument for the appellant, the respondents not being called upon—

Lord Chancellor—The point in this case is a very short point and it is this—There is a direction in the fourth codicil of this deceased gentleman to the following effect:—"I direct my trustees, after paying all debts, legacies, annuities, and life interests affecting my personal estate, to make payment to the heir for the time being entitled to succeed under the said deed of entail" of certain sums of money. The question is whether those words mean the heir who shall in fact have title by virtue of the deed, or the heir whom the deed designates as the person entitled to succeed. I agree with the decision of the Second Division that under this language you have to ask who is the person whom the deed declares to be the heir. It is a question of what the deed says, not what the deed does; and so, although it is no longer operative, it can still indicate the heir pointed to in the codicil.

In regard to the question of costs I do not perceive at your Lordships' bar any appearance on behalf of Sir Victor Mackenzie. Therefore, I move your Lordships that this appeal be dismissed with costs in the ordinary way.

Lord Macnaghten—I agree.

Lord Robertson—The respondent, Sir Victor Mackenzie, is unquestionably the person entitled to this residue if the entail of Kintail still subsisted.

The proposition maintained by the appellant is really this, that the testator's intention to give this residue to Sir Victor, his lineal descendant, was subordinate to his intention to give it to an heir of entail, and that as the entailed title has gone by the board the testator has expressed no intention applicable to the situation. It seems to me that this is to erect out of words of style a structure of intention wholly non-existent. The testator was dealing with what he was making an entailed estate, and he therefore calls the persons whom he is benefiting heirs of entail. But the substance of a bequest of residue is the choice of persons; and Sir Victor is the designated person in the present case.

On the question of costs I have only to say that I can see no ground at all for granting the appellant costs out of an estate which we hold to be determined by this will as the effective instrument, his whole argument being that the will has no application to the case in hand. As to the position of Sir Victor, I entirely concur with what my noble and learned friend on the Woolsack has said.

Lord Atkinson—I concur.

Their Lordships dismissed the appeal with costs.

Counsel for the Appellant—Clyde, K.C.—Macmillan. Agents—Mackenzie, Innes, & Logan, W.S., Edinburgh—Busk, Mellor, & Norris, London.

Counsel for the Respondents (Mackenzie's Trustees)—Dean of Faculty (Campbell, K.C.)—Hon. W. Watson. Agents—Tods, Murray, & Jamieson, W.S., Edinburgh — Norton, Rose, Barrington, & Co., London.

REPORTS OF CASES IN HOUSE OF LORDS AND PRIVY COUNCIL DEALING WITH QUESTIONS OF INTEREST IN SCOTS LAW.

(Continued from page 632 ante).

HOUSE OF LORDS.

Monday, December 3, 1906.

(Before the Lord Chancellor (Loreburn), Lords Macnaghten, James of Hereford, Robertson, and Atkinson.)

LETHBRIDGE
v. ATTORNEY-GENERAL.

(ON APPEAL FROM THE COURT OF APPEAL IN ENGLAND.)

Revenue — Estate Duty — Policy of Life Insurance--Interest Provided by Deceased --Finance Act 1894 (57 *and* 58 *Vict. cap.* 30), *sec.* 2 (1) (*d*).

A father, equitable tenant for life of an estate, had raised sums amounting to £59,121 on the security of his life estate and of certain policies of insurance on his life. By agreement with his son, equitable tenant in tail in remainder, the estate was disentailed and £71,000 raised on mortgage of the fee, out of which the mortgages for £59,121 were paid off. Under the same agreement the policies, having been reassigned to the tenant for life, were assigned by him to his son, and the estate was re-settled upon trust, *inter alia*, out of the rents and profits to pay the interest on the mortgage debt of £71,000 and the premiums necessary for the policies, but in the event of any of the policies being surrendered by the son, then to pay the amount that would otherwise have been payable as a premium to the son, and to apply the residue of the rents and profits in paying to the son the sum of £1000 a-year, and, subject to the trusts already mentioned, in trust for the tenant for life with remainder on his death to his son in fee. Subsequently, in consideration of the sum of £4100, the tenant for life assigned his life estate to the son, subject, however, to the trust for keeping on foot the policies, and the amount of the price paid to the tenant for life was calculated on the footing that the life estate was subject to that trust. The policies were kept up under the before-mentioned trust, and on the death of the tenant for life the son received the sums due under the policies.

Held (*reversing* the judgment of the Court of Appeal) that, as the son had given full value for the policies, they were not "provided" by the father within the meaning of section 2 (1) (*d*) of the Finance Act 1894, and that consequently no estate duty was payable on the father's death in respect of the moneys received under them.

Appeal from a judgment of the Court of Appeal (COLLINS, M.R., MATHEW and COZENS-HARDY, L.JJ.), who had reversed a judgment of PHILLIMORE, J., upon an information claiming estate duty under the Finance Act 1894, sections 1 and 2 (1) (*c*) and 2 (1) (*d*).

PHILLIMORE, J., gave judgment for the defendant.

The facts of the case sufficiently appear from the rubric and the judgments of their Lordships.

The Finance Act 1894, section 2 (1) (*d*), provides as follows:—"Property passing on the death of the deceased shall be deemed to include . . . (*d*) any annuity or other interest purchased or provided by the deceased, either by himself alone or in concert or by arrangement with any other person, to the extent of the beneficial interest accruing or arising by survivorship or otherwise on the death of the deceased."

LORD CHANCELLOR (LOREBURN) — The question raised by this appeal is whether estate duty should be paid on a sum of money received in discharge of fifteen life policies which fell due on the death of Sir Wroth Lethbridge, deceased. I will call him the father, for the present appellant, his son, is also Sir Wroth Lethbridge. The father originally effected these fifteen policies on his own life, and after maintaining them for some time, assigned them to his son under a family arrangement, or series of arrangements, necessitated by his (the father's) pecuniary difficulties. In substance it came to this, that the son mortgaged his inheritance in the family estates to save his father, and the father in return assigned these policies, together with an annual sum out of his life interest in the same estates sufficient to pay the premiums and also to pay an annuity to the son during their joint lives. In my opinion we have nothing to do with these transactions beyond what suffices to answer this question—Did the son give in money