of the account sued for on the instructions of Mr Salmon, architect: Find that Mr Salmon had no authority, express or implied, so to employ the pursuers on behalf of the defenders, but find that the directors of the Company subsequent to incorporation made use of the information which was the result of the pursuers' work as detailed in said five items: Therefore find in law that the defenders are liable to make payment to the pursuers of the sums charged under the first five heads. . . ."

Counsel for the Appellants—Clyde, K.C. —Hamilton. Agents—Cadell & Morton, W.S.

Counsel for the Respondents—Macmillan, K.C.—Aitchison. Agents—W. R. Ramsay & Nightingale, Solicitors.

Thursday, March 20.

FIRST DIVISION.

COLQUHOUN'S TRUSTEES *v.* COLQUHOUN'S TRUSTEE.

Revenue—Estate Duty—Deductions Allowable as Incumbrances—"Incumbrances Created by Disposition Made by Deceased"—"Disposition Taking Effect out of Interest of Deceased"—Provisions to Widow and Children—Finance Act 1894 (57 *and* 58 *Vict. c.* 30), *secs.* 7 (1) (*a*) *and* 22 (2) (*b*).

The Finance Act 1894 (57 and 58 Vict. c. 30) enacts, sec. 7 (1)—"In determining the value of an estate for the purpose of estate duty allowance shall be made for reasonable funeral expenses and for debts and incumbrances, but an allowance shall not be made (*a*) for debts incurred by the deceased, or incumbrances created by a disposition made by the deceased, unless such debts or incumbrances were incurred or created *bona fide* for full consideration in money or money's worth wholly for the deceased's own use and benefit and take effect out of his interest."

Sec. 22 (2) (*b*)—"A disposition taking effect out of the interest of the deceased person shall be deemed to have been made by him, whether the concurrence of any other person was or was not required."

A conveyed his whole estates, other than his entailed estate, to trustees, to pay, *inter alia*, an annuity to his son B, the estates on B's death to be conveyed to the heir succeeding to the entailed estate. The trustees were empowered, in the event of B's requesting them to do so, to grant provisions for behoof of his (B's) widow and younger children, and at his (B's) request did so. On B's death in 1907 estate duty was paid by C, the heir succeeding to the estate, the Inland Revenue (though called upon to do so declining to allow any deduction in respect of the widow's bond of annuity and the children's bond of provision.

C having claimed under sec. 14 (1) of the Act to recover from the beneficiaries under the bonds a rateable part of the duty, *held* that, as neither the provision nor the annuity were incumbrances created by a disposition made by the deceased (*i.e.* B) or by a disposition taking effect out of his (B's) interest, allowance ought to have been made therefor in terms of sec. 7 (1) (*a*) of the Finance Act 1894, and that as C had wrongly paid the duty his trustees had no claim for recovery.

The Finance Act 1894 (57 and 58 Vict. c. 30), secs. 7 (1) and 22 (2) (*b*) is quoted *supra* in rubric. Section 14 enacts—"(1) In the case of property which does not pass to the executor as such, an amount equal to the proper rateable part of the estate duty may be recovered by the person who, being authorised or required to pay the estate duty in respect of any property, has paid such duty, from the person entitled to any sum charged on such property (whether as capital or as an annuity or otherwise) under a disposition not containing any express provision to the contrary. (3) Any person from whom a rateable part of estate duty can be recovered under this section shall be bound by the accounts and valuations as settled between the persons entitled to recover the same and the commissioners." Section 23 (10) enacts—"The expression 'incumbrance' includes any heritable security or other debt or payment secured upon heritage."

On 25th May 1912 Lt.-Colonel Roderick William Colquhoun, Old Faskally, Perthshire, and others, the testamentary trustees of the late Sir Alan John Colquhoun of Colquhoun and Luss, Bart, K.C.B., *first parties*, David J. Abercromby, 2 Albert Court, London, the trustee acting under a bond of provision granted by the trustees of the late Sir James Colquhoun (*primus*) of Colquhoun and Luss, Bart, for behoof of the younger children of the late Sir James Colquhoun (*secundus*) of Colquhoun and Luss, Bart, *second party*, and Mrs Ivie Colquhoun or Harington, widow of Sir James Colquhoun (*secundus*) and wife of Henry Harington, Lichfield, with the consent and concurrence of her husband, *third party*, brought a special case to determine whether a rateable part of the estate duty paid on Sir Alan's succession to the estates was or was not recoverable from the second and third parties respectively.

The case stated—"1. Sir James Colquhoun of Colquhoun and Luss, in the county of Dumbarton (afterwards referred to as Sir James Colquhoun *primus*) died on 18th December 1873. He was predeceased by his wife and survived by one son James, who succeeded his father in the title, and is afterwards referred to as Sir James Colquhoun (*secundus*).

"2. Sir James Colquhoun (*primus*) left a trust-disposition and settlement, dated 1st May 1871, and registered in the books of Council and Session on 18th February

1874. The general purposes of his said trust-disposition and settlement were to provide for the payment of the debts on the estates of Luss occasioned by the large purchases of land made by his father and himself, to pay to his son Sir James (*secundus*) an annuity increasing in amount with the corresponding diminution of the heritable debts from £4000 to £10,000 per annum, and to hold the fee of the unentailed portion of the estates for the behoof of the heir who should succeed to the said Sir James Colquhoun (*secundus*) in the entailed portion thereof, the testator declaring it to be his wish and intention that the whole lands and estates whether entailed or not should descend and be held and possessed by the same person as heir.

"3. By the sixth purpose of the said trust-disposition and settlement Sir James Colquhoun (*primus*) provided as follows:—'In the event of the said James Colquhoun my son being married and being desirous, in contemplation of or after his marriage, to make provision for his wife or intended wife and children born or to be born of the marriage, I hereby direct and appoint my trustees, if asked by the said James Colquhoun to do so, to grant and deliver such deed or deeds as may be necessary for securing over my lands and estates hereby conveyed or any part thereof to and in favour of the wife or intended wife of the said James Colquhoun in the event of her surviving him a free annuity or jointure of such sum as he may desire, but not exceeding the sum of One thousand five hundred pounds sterling per annum, and that during all the days of her lifetime after the death of the said James Colquhoun my son, payable at two terms in the year, Whitsunday and Martinmas, by equal portions, with interest and penalties as usual in such cases, and also to grant such deed or deeds as may be necessary for securing over the lands and estates hereby conveyed to and in favour of any lawful child or children of him the said James Colquhoun, other than the heir who shall succeed to the said lands and estates, or to any person or persons for their behoof that may be named by the said James Colquhoun, suitable provisions after his death, the said provisions to be so secured over my said lands and estates not exceeding the sums after mentioned, *videlicet*:—In the event of there being one child other than the heir succeeding to the said lands and estates the sum of Fifteen thousand pounds sterling; in the event of there being two children other than the heir succeeding to the said lands and estates the sum of Twenty thousand pounds sterling; and in the event of there being three children other than the heir succeeding to the said lands and estates the sum of Thirty thousand pounds sterling; and in the event of there being four or more children other than the heir succeeding to the said lands and estate the sum of Forty thousand pounds sterling. Declaring that the said provisions to the children of the said James Colquhoun shall be payable on the death of the said James Colquhoun, and in such manner and in such proportions as he may appoint by any writing under his hand; and farther declaring that the sum or sums so to be settled on the wife and children of the said James Colquhoun shall be inclusive of and not over and above any sum or sums he may provide to them or any of them over the entailed estates of Luss and others under the powers possessed by him as heir of entail of the said lands and estates.'

"4. In the year 1875, on the marriage of Sir James Colquhoun (*secundus*) to his first wife Charlotte Mary Douglas Munro, the trustees of his father (at the request of Sir James (*secundus*) and in exercise of the powers hereinbefore narrated), granted in favour of his wife a bond of annuity for £1500 per annum payable after the death of her husband. The lady, however, predeceased Sir James on 9th January 1902, and accordingly the annuity secured by the said bond never became exigible.

"5. On the same occasion the trustees of Sir James Colquhoun (*primus*) (at the request of Sir James Colquhoun (*secundus*), and in exercise of the powers hereinbefore narrated), granted a bond of provision in favour of the trustees therein named for behoof of the younger children of the marriage of the said James Colquhoun (*secundus*) with the said Charlotte Mary Douglas Monro, dated 7th and 8th December 1875, and recorded in the General Register of Sasines applicable to the county of Dumbarton on 13th January 1876. . . . This bond of provision provided for payment to the trustees for behoof of the younger children of said marriage, other than the heir succeeding to the lands and estates of Luss, of a sum of £15,000 in the event of there being one child other than the heir; £20,000 in the event of there being two children other than the heir; £30,000 in the event of there being three children other than the heir; and £40,000 in the event of there being four or more children other than the heir. These provisions were heritably secured on certain parts of the unentailed lands of Luss particularly described in the bond. There was no male issue of the marriage, and on the death of Sir James (*secundus*) on 13th March 1907, the estates of Luss, both entailed and unentailed, passed to his cousin the now deceased Sir Alan John Colquhoun, Bart., who died on 14th March 1910. Two daughters, the whole issue of the first marriage of Sir James (*secundus*), survived however, and accordingly a sum of £20,000 became payable under the bond of provision to the trustee acting under the said bond of provision for their behoof; and this sum with interest from 13th March 1907 was paid to him at Whitsunday 1908. . . .

"6. In November 1904 Sir James (*secundus*) entered into a second marriage with Ivie Muriel Ellen Urquhart (now Mrs Harington), and on that occasion the trustees of Sir James (*primus*) (at the request of Sir James (*secundus*) and in exercise of the powers conferred on them as aforesaid) granted a bond of annuity in favour of

Lady Ivie Muriel Ellen Urquhart or Colquhoun for payment to her of a free annuity or jointure of £1500 a year after the death of her husband, and in security thereof disponed certain parts of the unentailed lands of Luss particularly therein described, . . . dated 12th and 17th January, and recorded in the Division of the General Register of Sasines applicable to the county of Dumbarton . . . on 7th February 1905. Since the death of Sir James (*secundus*) his widow has regularly received payment of her annuity in terms of the bond. There were no children of this second marriage, and accordingly the sum secured under a bond of provision which had been executed for behoof of the younger children of that marriage in similar terms to the bond executed on the occasion of the first marriage never became exigible.

"7. On the death of Sir James Colquhoun (*secundus*) on 13th March 1907 the whole entailed and unentailed lands and Barony of Luss passed, as already mentioned, to the now deceased Sir Alan John Colquhoun, and so far as unentailed were conveyed to him by the trustees of Sir James Colquhoun (*primus*), conform to disposition in his favour dated 18th March 1908, under burden of settlement by him of the Government duties exigible in respect of his succession. The aggregate value of the estates, including certain moveable funds in the hands of the trustees of Sir James Colquhoun (*primus*) amounted to £524,223, 4s. 2d., and estate duty was payable on that amount at the rate of 7½ per cent. This duty, so far as chargeable on the unentailed heritable estate, is being settled by eight annual instalments, the first of which fell due upon 13th March 1908, and five of these instalments have now been paid. Altogether there has been paid in respect of estate duty on the unentailed portion of the lands of Luss £16,402, 7s. 10d., exclusive of interest, and a sum of £9,841, 8s. 11d., representing the remaining three instalments, has still to be paid. The first three instalments of said estate duty were paid by the late Sir Alan John Colquhoun during his lifetime, and the remaining five instalments have been and are being paid by the first parties as Sir Alan's testamentary trustees.

"8. When the accounts for estate duty were passed in 1908 on the succession of Sir Alan John Colquhoun, the Inland Revenue authorities, although requested by Sir Alan so to do, declined to allow as deductions from the capital value of the estate passing on the death of Sir James (*secundus*) the amount of the provisions of £20,000 to his younger children and the capital value of Mrs Harington's annuity of £1500 a year."

The first parties maintained (1) that the said provisions and annuity were property which passed on the death of Sir James Colquhoun (*secundus*) in the sense of section 2 of the Finance Act 1894, and that the late Sir Alan John Colquhoun was, and they as his testamentary trustees were now, primarily liable for estate duty thereon; and (2) that, there being no express provision to the contrary in either the bond of provision or the bond of annuity, the first parties, as the testamentary trustees of the late Sir Alan John Colquhoun, had, under section 14 of the said Statute the right to recover from the second party the proper rateable part of the estate duty which then became applicable to the provisions of £20,000 before referred to, and that they also had a similar right of recovery against the third party of the proper rateable part of the estate duty applicable to the capital value of her annuity of £1500 a year.

The second party contended (1) that in determining the value of the estate on which duty was payable on the death of the said deceased Sir James Colquhoun (*secundus*) for the purpose of estate duty an allowance fell to be made in terms of sub-sec. (1) of sec. (7) of the Finance Act 1894 for the said provision of £20,000, in respect that the said provision was not an incumbrance created by the deceased; (2) that the first parties were accordingly not entitled under sub-sec. (1) of sec. 14 of the said Act to recover from the second party an amount equal to the proper rateable part of the estate duty paid by the first parties as aforesaid; and (3) that, in respect that the second party was not a person from whom a rateable part of estate duty could be so recovered, he was not bound under sub-sec. (3) of sec. 14 of the said Act by the accounts and valuations as settled between the first parties or their author and the Commissioners of Inland Revenue.

The third party adopted the contentions of the second party *mutatis mutandis* as applicable to the said annuity of £1500. She further contended, *et separatim*, that in any event, upon a sound construction of the terms of the trust-disposition and settlement of Sir James Colquhoun (*primus*) and of the bond of annuity, the first parties were not entitled to recover from her in respect of the same an amount equal to the rateable part of the estate duty paid by them as aforesaid.

The *questions of law* were—"1. Did an allowance fall to be made in terms of sec. 7, sub.-sec. (1) of the Finance Act 1894 for (*a*) the said provision of £20,000, and (*b*) the said annuity of £1500, or either of them, in determining the value for the purpose of estate duty of the estate passing on the death of Sir James Colquhoun (*secundus*)? 2. Are the first parties now entitled to recover from the second party the proper rateable part of estate duty applicable to the value of the said provision paid to him?—and 3. Are the first parties now entitled to recover from the third party the proper rateable part of the estate duty applicable to the capital value of her said annuity of £1500?"

Argued for the first parties—*Esto* that the deeds creating the provisions in question were granted by the trustees of Sir James (*primus*), they were granted at the request of Sir James (*secundus*), and these provisions were therefore "incumbrances created by a disposition made by him." That being so, these incumbrances were

not deductible—Finance Act 1894, sec. 7 (1) (*a*). As to the meaning of "disposition," reference was made to *Attorney-General* v. *Montefiore* (1888), L.R., 21 Q.B.D. 461. Alternatively, their creation was a joint-transaction, and they were therefore chargeable under section 2 (1) (*d*) of the Act. The fact that the third party's annuity was declared a "free" annuity was not enough to exempt it from estate duty, for that was not an "express provision" in the sense of section 14 (1). "Free" meant free of legal expenses. To exempt an annuity from Government duties it must be declared "free of duty"—*in re Turnbull*, [1905] 1 Ch. 726.

Argued for the second and third parties—*Esto* that the provisions in question were incumbrances in the sense of section 23 (10) of the Finance Act 1894 (57 and 58 Vict. cap. 30), they were not incumbrances created by the deceased, *i.e.*, Sir James (*secundus*), for he was not the fiar of the estate and had no power to make them. That being so, allowance ought to have been made for them—Finance Act 1894, sec. 7 (1) (*a*). As to incumbrances for which no allowance would be made, reference was made to *Inland Revenue* v. *Alexander's Trustees*, January 10, 1905, 7 F. 367, 42 S.L.R. 307; *Lord Advocate* v. *Warrender's Trustees*, January 9, 1906, 8 F. 371, 43 S.L.R. 278; *Alexander's Trustees* v. *Alexander's Trustees*, 1910 S.C. 637, 47 S.L.R. 537. *Esto*, however, that the duty had been rightly paid by the first parties, no part thereof was recoverable from the third party, for she was given a "free" annuity, and that constituted an "express provision" in the sense of section 14 (1) of the Finance Act. "Free" meant free of all deductions whatever—*Bulloch* v. *Beaton*, February 8, 1853, 15 D. 373; *Dundas' Trustees* v. *Dundas' Trustees*, 1912 S.C. 375, 49 S.L.R. 417; *in re Parker-Jervis*, [1898] 2 Ch. 643; *in re Maryon-Wilson*, [1900] 1 Ch. 565; Hanson's Death Duties (6th ed.), p. 514.

At advising—

LORD PRESIDENT—This is a special case between the trustees of Sir Alan Colquhoun, first parties, the trustees under a trust for behoof of the children of Sir James Colquhoun (*secundus*), second parties, and the widow of Sir James Colquhoun (*secundus*), third party, and the question that we are asked to decide is whether the first parties, the trustees of Sir Alan who settled the government duties payable on the death of Sir James (*secundus*), are entitled to be released of those government duties so far as they represent the sums to which the second and third parties are entitled.

The circumstances out of which the case arises are these—Sir James Colquhoun (*primus*) left a trust disposition and settlement by which he made over his whole estate, except his entailed estate, in trust to pay an annuity to his son Sir James (*secundus*), and with the rest of the money to wipe off the debt upon the entailed estates. The annuity was upon what may be called a sliding scale, that is to say, as the debts were paid off the annuity was to be increased. But Sir James (*secundus*) was never to get the fee of the estate. Upon the death of Sir James (*secundus*) the fee of the estate was then to descend to the person who was entitled to the entailed estate, in other words to the person who was entitled to the baronetcy. In order, however, to provide for the case that might arise, namely, that Sir James (*secundus*) might marry and wish to make provision for his wife and children, the trustees were empowered to grant a provision for his wife to become effectual in the case of her becoming a widow, and also to grant a provision of a certain sum to his children, varying according to the number of children that there might be. That event did happen. Sir James (*primus*) died, and his trustees administered the estate and paid off part of the debt and paid the annuity to Sir James (*secundus*). Sir James (*secundus*) did marry, and he called upon the trustees to make provision for his wife and children. They did so, and the children are practically the second parties to the case, not directly but through the trustees who hold the provision for them. The first wife died, and consequently her provision did not become exigible; but Sir James (*secundus*) married a second time, and again asked the trustees to make the same provision, which they did, for his second wife. That lady survived, and is the third party to the case,

Upon Sir James (*secundus*) dying at a date after the passing of the Finance Act 1894 estate duty became exigible upon the whole of the estate that passed at his death. In other words, in terms of the Finance Act it was property which passed on the death of the deceased, not property in which the deceased himself had an interest. Sir James (*secundus*) never had any interest in the fee of the estates, he was a mere annuitant paid by the trustees. The estate was therefore not property in which he had an interest, but property which passed on his death; and accordingly Sir Alan had to settle with the revenue authorities for the estate duties. In determining the value of the estate he claimed to make a deduction for the sums that were charged upon the estate in respect of the children and widow of Sir James (*secundus*). That deduction was not allowed. But the other parties to this case are not in any way bound by the arrangements that were made between the Crown and Sir Alan.

The matter is settled by the seventh section of the Finance Act of 1894, which says this—"In determining the value of an estate for the purpose of estate duty allowance shall be made for reasonable funeral expenses and for debts and incumbrances." Now these sums were maintenance, and if the section had stopped there, there could be no doubt. But then it goes on "but an allowance shall not be made for debts incurred by the deceased"—now this was not a debt incurred by the deceased, because Sir James Colquhoun (*secundus*) never incurred a debt—"or incumbrances created by a disposition

made by the deceased, unless such debts or incumbrances were incurred or created *bona fide* for full consideration in money or money's worth wholly for the deceased's own use and benefit and take effect out of his interest." It is quite clear that this was not for his own use and benefit. It has already been decided, if decision was necessary, in the case of *Lord Advocate* v. *Warrender's Trustees* (8 F. 371), that if a father charges an estate with a view to making a provision in his son's marriage-contract for his son's wife or his son's children, that is not for his own use and benefit. So the whole point comes to turn upon whether this incumbrance was created by a disposition made by the deceased. I am of opinion that it was not created by a disposition made by the deceased. He never had anything to do with a disposition. The person who created the power was Sir James Colquhoun (*primus*), and all that Sir James Colquhoun (*secundus*) had to do was to ask the trustees to do something which Sir James (*primus*) had said they might do. I am helped in that opinion by the terms of subsection (2) (*b*) of section 22, which says—"A disposition taking effect out of the interest of the deceased person shall be deemed to have been made by him whether the concurrence of any other person was or was not required." This never took effect out of the interest which Sir James (*secundus*) had, because Sir James (*secundus*) never had an interest in the estate. He was an annuitant from the trustees, but he never had an interest in the estate, and it made no difference to him, one way or the other, whether this provision was charged in favour of his wife and children or not.

The result is that Sir Alan was wrong in allowing the Crown to insist that no deduction was to be made; and if that is so it is quite clear that the trustees cannot now claim a proportional abatement from the other parties, because he never ought to have paid upon their interests. That does not decide the question whether these parties may not, in a question directly with the Crown, have to pay duty at the same rate; and although I have an opinion upon that, it is probably inexpedient that I should express it, because I should be doing so behind the back of the Crown, which is not here. But so far as this case is concerned it seems to me clear that we must answer the first question in the affirmative; and, that being so, it follows as a corollary that the second question and the third are answered in the negative.

LORD JOHNSTON—[*After a narrative of the facts of the case*]—The Inland Revenue were not parties to the case, but we were given to understand at the Bar that they were prepared to give effect to our decision on the case between the parties.

The Finance Act 1894 provides (section 1) that on the death of every person dying after the date of the Act there should be levied and paid on the value of all property which passes on the death of such person a duty called "estate duty" at the graduated "rates hereinafter mentioned."

Sir James Colquhoun's (*secundus*) children's provisions, and his widow's annuity, were certainly property passing at his death and liable either separately or as part of other property to estate duty, and the real interest that these beneficiaries have is in the rate—to avoid their provisions being massed with other property so as to render them liable in a higher rate.

The Act section 2 (1) provides that property passing on the death of the deceased shall be deemed to include the property following, that is to say—(*a*) property of which the deceased was at the time of his death competent to dispose; (*b*) property in which he or any other person had an interest ceasing on his death, to the extent to which a benefit accrues or arises by the cessor of such interest.

First, then, Sir James Colquhoun (*secundus*) had presumbly property of his own or under his control which passed at his decease. But his daughter's and his widow's provisions were not included in such estate by reason merely of his right to require the trustees of his father to give effect to the power which they had to create such provisions, notwithstanding that Sir James (*secundus*) had conferred upon him within limits the right to define the amount, to appoint the manner of payment, and apportion the amount. It is only by section 22 (2) (*a*), where a general power is vested in the deceased, that he is treated as competent to dispose of the subject of the power.

Second, to the extent of the value of his annuity Sir James (*secundus*) had an interest ceasing with his death in the settlement property. *Quoad ultra*, the trustees of Sir James (*primus*) had an interest in trust in the settlement property ceasing with the death of Sir James (*secundus*). Discrimination between these two interests is however of no practical importance in relation to this case, inasmuch as although the deceased had a limited interest in the estate which passed at his death, that interest passed under a disposition not made by the deceased, and under one in favour of some one other than the wife and children of the deceased (Act, section 4).

The provisions of section 4 for the aggregation of property fall next to be considered. The section provides that, for determining the rate of duty on property passing on the death, all property so passing shall be aggregated so as to form one estate, but provided that any property so passing in which the deceased never had an interest, or which under a disposition not made by him passes on his death to some person who is neither his wife or husband, nor his lineal ancestor or lineal descendant, shall form an estate by itself, but that any benefit under a disposition not made by the deceased reserved or given to the wife or husband or to a lineal ascendant or descendant of the deceased shall be aggregated with other estate, except as above excepted, passing on his death.

Accordingly, as in the main settlement property generally Sir James (*secundus*) was succeeded by his cousin, that estate does not fall to be massed with other estate passing on his death, but forms an estate by itself. It is, however, a question upon which, though it is not directly raised in the case, I find myself obliged to form some, though I should not be justified in saying a concluded, opinion, viz., whether the provision to the children and widow of Sir James Colquhoun (*secundus*) though not derived from Sir James (*secundus*) but from Sir James (*primus*), and carved out of the settlement estate, is nevertheless to be massed with the property of Sir James (*secundus*) for determining the rate of duty. That question as at present advised I should answer in the affirmative.

The mode of collection and recovery of estate duty is this—The executors of the deceased (section 6 (2) and (4)) shall pay the duty on all personalty passing of which the deceased was competent to dispose, may pay the duty on any other property passing which by virtue of any testamentary disposition of the deceased is under the executors' control, and may, at the request of the person accountable, pay the duty on any property passing which is not under his, the executor's control. So far as not paid by the executor, the duty is to be collected upon an account delivered by the person accountable for the duty. And it is also expressly provided (section 8 (4)) that where property passes on the death and the executor is not accountable for the duty "every person to whom any property so passes for any beneficial interest in possession" shall be accountable for the estate duty on the property, and shall deliver and verify an account.

A rateable part of the duty, in proportion to the value of property not passing to the executor as such, may be recovered by the executor under section 9. And similarly, a rateable part of the duty paid by any person authorised or required to pay duty in respect of any property may be recovered from the person entitled to any sum charged on such property under a disposition not containing any express provision to the contrary under section 14.

Sir Alan Colquhoun was required to pay the duty on the settlement estate derived from Sir James (*primus*) as if it was not incumbered by the provisions for the children and widow of his predecessor Sir James, leaving him to recover a rateable proportion from them. The Inland Revenue by so insisting do two things which affect the rate of duty — they increase the main settlement estate by the inclusion of the capital value of these provisions, whereby they may affect the rate payable by Sir Alan, and they certainly fix those taking these provisions with a higher rate than they would probably otherwise pay, for they debar them from the opportunity of delivering an account for themselves and maintaining their right to be charged either (*a*) at the rate applicable to their provisions taken as separate estates, or (*b*) at the rate at which they would be charged if these provisions were massed with the estate of Sir James Colquhoun (*secundus*), their father and husband, under section 4.

Now it is provided (section 7 (1)) that in determining the value of an estate for the purposes of estate duty allowance shall be made for debt and incumbrances, and that any debt or incumbrance for which an allowance is made shall be deducted from the value of the land or other property liable to the duty.

I think that the combined effects of section 4 and section 7 (1) is that Sir James (*secundus*) children's provision of £20,000, and his wife's provision of £1500 a year, are incumbrances to be deducted from the value of the main settlement estate, and are estates by themselves, though it may be to be aggregated with other estate passing on the death of Sir James (*secundus*) their father in order to ascertain the rate of duty.

I admit there is some difficulty in reconciling the provisions of sections 4 and 7 with that of 14 (1). I think this is done by regarding the fact that the provisions in question were already an incumbrance secured by infeftment on the settlement property, when that property passed on the death of Sir James (*secundus*), and therefore that each is a separate heritable subject standing on its own title, though they only came into beneficial possession at his death. But even if that is not sufficient explanation of the apparent conflict, I do not think that the incidental provision in section 14 (1) can be held to override the direct provisions of sections 4 and 7 (1).

I think therefore that the first query falls to be answered in the affirmative, and the second and third in the negative.

LORD MACKENZIE—I am of opinion that the first question should be answered in the affirmative. Section 23 (10) of the Finance Act 1894 defines incumbrance to be any heritable security or other debt or payment secured upon heritage. Section 7 (1) provides that in determining the value of an estate allowance shall be made for incumbrances. It further provides (*a*) that an allowance shall not be made for incumbrances created by a disposition made by the deceased. (Then follows a sub-exception with which we have no concern in the present case.) The only question we have to consider is whether the provisions of £20,000 and £1500 a-year were incumbrances created by a disposition made by the deceased. It is clear that the word "disposition" is not used in the technical sense of Scots Conveyancing. In section 22 (2) (*b*) the same expression is used, the enactment being—"A disposition taking effect out of the interests of the deceased person shall be deemed to have been made by him, whether the concurrence of any other person was or was not required."

What was the interest which Sir James Colquhoun (*secundus*) had in the estates upon which the provision of £20,000 and

the annuity of £1500 was charged? He had no right of fee, his sole right being derived from the settlement of his father Sir James (*primus*). Under it he was entitled to payment from the trustees of an annuity, increasing in amount with the corresponding diminution of heritable debts, from £4000 to £10,000 per annum. These were debts occasioned by the large purchases of land by the truster and his father. The condition attached to Sir James (*secundus*) being entitled to this annuity was that he should allow the trustees to collect the rents of the entailed estates of Luss to which he succeeded on his father's death. The annuity of £4000 it was declared by the settlement was not to be in addition to or over and above the rents of the entailed estates, but in lieu and place thereof. The direction to the trustees was to hold the fee of the unentailed portions of the estates for behoof of the heir who should succeed to Sir James (*secundus*) in the entailed portion thereof.

The question with which we are concerned in the present case arises upon the terms of the sixth purpose of the trust-disposition and settlement of Sir James (*primus*). It directs the trustees, if asked by the testator's son, "to grant and deliver such deed or deeds as may be necessary for securing over my lands and estates hereby conveyed or any part thereof," *i.e.*, the unentailed lands, an annuity not exceeding £1500 in favour of his son's widow, and a provision not exceeding, in the event of there being two children other than the heir succeeding to the said lands and estate, a sum of £20,000. Sir James (*primus*) died in 1873. His son succeeded him—Sir James (*secundus*). He requested his father's trustees to grant the deeds necessary to secure the provisions to his children, and an annuity to his wife. They did so.

Upon this narrative I think the conclusion follows that these incumbrances were not created by a disposition made by the deceased, nor were they created out of the interest of the deceased in the estate. His interest in the estate was that of an annuitant. The fact that he asked his father's trustees to grant the deeds in question is not, in my opinion, sufficient to bring them within the exception in section 7 (1) (*a*).

Queries 2 and 3 should, in my opinion, be answered in the negative, for the reasons stated in the contentions of the second party to the case. The first parties are not entitled under section 14 (1) to recover from the second party an amount equal to the proper rateable part of the estate duty paid by the first parties. The second party is not a person from whom a rateable part of the estate duty can be so recovered, and is therefore not bound under section 14 (3) by the accounts and valuations as settled between Sir Alan or his trustees and the Inland Revenue. The result of my opinion is that Sir Alan, when he fixed with the Inland Revenue under section 1 the principal value of the property which passed on the death of his predecessor Sir James (*secundus*), should have insisted on his right to deduct from the value of the property the amount of the provisions and annuity in terms of section 7 (1). He would, in my opinion, have successfully contested that they did not fall within the exception in section 7 1 (*a*). Taking this view, it is unnecessary to consider the separate point that was made in argument as to the effect of its being a "free" annuity that is provided to the widow.

This is all we have to decide in the present case, and in order to arrive at a conclusion it is not necessary to anticipate any questions that may arise between the Inland Revenue and the second and third parties.

LORD KINNEAR did not hear the case.

The Court answered the first question in the affirmative and the second and third in the negative.

Counsel for the First Parties—Johnston, K.C. — C. H. Brown. Agents — Macrae, Flett, & Rennie, W.S.

Counsel for the Second and Third Parties —Blackburn, K.C.—J. H. Millar. Agents J. S. & J. W. Fraser-Tytler, W.S.

HOUSE OF LORDS.

(VALUATION APPEAL.)

Friday, May 2.

(Before the Lord Chancellor (Haldane), Lord Atkinson, Lord Shaw, and Lord Moulton.)

HERBERT'S TRUSTEES *v.* INLAND REVENUE.

(In the Court of Session, April 18, 1912, 49 S.L.R. 699, and 1912 S.C. 948.)

Revenue — Duties — Land Values — Increment Value Duty — Valuation — Assessable Site Value—Minus Value—Finance (1909–10) *Act* 1910 (10 *Edw. VII, cap.* 8), *sec.* 25.

The Finance (1909–10) Act 1910 provides that in certain events duty shall be payable on the increment value of any land, and that such increment value shall be deemed to be the amount (if any) by which the site value of the land, at the time of the collection of the duty, exceeds the assessable site value of the land as ascertained originally in accordance with the general provisions of the Act as to valuation.

Held (*rev.* judgment of the Valuation Appeal Court) that the assessable site value of land within the meaning of the Act might be a minus quantity.

Expenses — House of Lords — Valuation Appeal—Revenue—Land Values Duties—Increment Value Duty—Finance (1909–10) *Act* 1910 (10 *Edw. VII, cap.* 8).

Circumstances in which, in an appeal at the instance of the Crown from the Valuation Appeal Court to the House of Lords arising out of the construction of the Finance (1909–10) Act 1910, in which the Crown were successful, their Lordships, in respect that the