ground for revocation. The taint may be original, or the inequality may supervene, but both cases depend on the same equitable principle. Now, if we take the later point of time in the present case, the inequality is almost unparallelled—the wife gives little and takes much. And the importance of taking the second date is illustrated by considering what are called the counter stipulations by the wife, for although, had she survived, the liferent provided to her might have been a reasonable provision, yet, in the event that has happened of the husband's survivance, the case is totally different. But then there is the second question, whether as regards the disponees the deed is revocable? The trustees have been infeft, the deed has been delivered, and some forcible argument has been submitted to us on that point. There are a great many cases decided in favour of revocability and irrevocability, but I know of none in which a purely gratuitous deed has been held to be irrevocable. The cases are well summed up in the judgment in *Spalding* v. *Spalding's Trustees*, 2 R. 237. I will only mention that of *Somerville*, May 15, 1819, F.C., in which a deed had been delivered, but because it was gratuitous and testamentary the Court held that the right to revoke remained. Again, in the case of *Kidd* v. *Kidds* there was a contract to settle money on the children of the marriage, and on the wife's death it was held that the husband had no right to revoke, not so much because a stipulation had been made by the wife, but because it had been made for the children of the marriage.

The following interlocutor was pronounced:—

"The Lords having heard counsel on the reclaiming note for Mitchell's Trustees against Lord Young's interlocutor of 20th December 1876, Find that the trust-disposition and settlement referred to in the summons and record is revocable by the pursuer in so far as it disposes of his own estate; but find, in terms of the minute No. 12 of process, that such revocation is on the condition that he shall renounce all benefit under the said disposition and settlement in the estate of his deceased wife, and refund with interest any part of said estate which he may have received under the same; with the above variation, adhere to the interlocutor of the Lord Ordinary: Find both parties entitled to expenses out of the fund in the hands of the trustees, and remit to the Auditor to tax the same and to report: Remit to the Lord Ordinary to proceed with the cause and to decern for the expenses now found due, and decern."

Counsel for Pursuer (Respondent)—Fraser—Millie. Agent—W. G. Roy, S.S.C.

Counsel for Defenders (Reclaimers)—Asher—A. J. Young. Agents—Fyfe, Miller, Fyfe & Ireland, S.S.C.

Wednesday, June 6.

FIRST DIVISION.

[Lord Curriehill, Ordinary.

THE LORD ADVOCATE *v.* SIDGWICK.

Revenue—Succession-Duty Act (16 *and* 17 *Vict. cap.* 51) *sec.* 17—*Exception from Duty in the case of a Marriage-contract Provision to one of the Spouses.*

In a marriage-contract a father-in-law bound himself to pay an annuity of £3000 to the lady in the event of the decease of his son, her husband, the annuity to be made a real burden upon certain lands which it was provided should be entailed upon the son and the heirs of the marriage. The lady renounced her right to tercé and *jus relictæ*, the husband at that date being possessed of neither heritable nor moveable estate. Her father further became bound under the deed to grant a bond for payment of £10,000 to the lady and her children.—*Held* (*rev.* the Lord Ordinary (Curriehill)—*diss.* Lord Deas) that the annuity, on its becoming payable, was chargeable with succession-duty; and objection, that it was exempted under section 17 of the Succession Duty Act, as being granted "for valuable consideration in money or money's worth," repelled.

Opinions that in most marriage-contracts the sole consideration of any provision under them is the marriage, which is not under the 17th section of the Succession-Duty Act "a consideration in money or money's worth."

Observed by Lord Shand that the only subject of exception under the 17th section of the Succession-Duty Act is that of a *bona fide* proper purchase.

This was a Special Case under the Act 19 and 20 Vict. cap. 56, in which the question submitted for the opinion and judgment of the Court was, Whether an annuity provided under a certain marriage-contract was chargeable with succession duty?

The following were, *inter alia*, the facts as stated: — "By indenture, dated 2d February 1821, made between certain parties (being articles for a settlement made in contemplation of the marriage then intended to be and afterwards duly solemnised between the Marquess of Salisbury and Frances Mary Gascoyne), certain hereditaments and real estates, forming part of the fortune of the said Frances Mary Gascoyne, were covenanted to be settled, *inter alia*, upon trust for raising, by the means therein mentioned, out of the estates thereby covenanted to be settled, portions for the younger children of the said intended marriage, in manner following:—That is to say, if there should be one child, the sum of £10,000; if two or more such children, the sum of £15,000; if three or more, the sum of £20,000,—the said sum or sums of money intended for the portions of such children (being more than one) to be shared and divided between or among them in such parts and proportions and in such manner as the said Marquess of Salisbury and Frances Mary Gascoyne should direct or appoint; and in

default of such direction or appointment, then as the survivor of them should direct or appoint." And upon 23d October 1824 that provision was carried out, and an indenture of settlement in the English form was executed settling the subjects named in terms of the direction. The Marchioness of Salisbury died in October 1839 without having exercised the joint power of appointment which she had with her husband in regard to the provisions of the younger children. Five children of the marriage survived its dissolution and attained majority. One of the younger children was Lady Blanche Mary Harriett Gascoyne Cecil, afterwards Lady Blanche Balfour.

"By contract of marriage, dated the 10th, 14th, and 15th August 1843, entered into between James Maitland Balfour, Esquire, eldest son of James Balfour, Esquire of Whittinghame, in the county of Haddington in Scotland, on the first part; the said James Balfour, Esquire of Whittinghame, for himself, on the second part; and the said Lady Blanche Mary Harriett Gascoyne Cecil, the younger daughter of the said Marquess of Salisbury, with consent of the said Marquess, and the said Marquess for himself, on the third part,—the said James Balfour in contemplation of the marriage then about to be and shortly thereafter actually solemnised between his son, the said James Maitland Balfour, and the said Lady Blanche Mary Harriett Gascoyne Cecil, bound and obliged himself and his heirs and successors, with all convenient speed to dispone, convey, and make over to himself, and after his decease to the said James Maitland Balfour and the heirs-male of his body to be procreated of the said then intended marriage, whom failing, to the other heirs therein specified, *inter alia*, certain lands then belonging to him in fee-simple, and now known as the Whittinghame estates, and that in the form of strict entail according to the law of Scotland, 'which entail should debar and exclude the wives and husbands of the said James Maitland Balfour, and the heirs of tailzie substituted to him, from all right of terce or courtesy of or upon the said lands, baronies, and others.'" &c. Power was reserved to the heirs of entail to provide their wives and husbands in liferent provisions out of the entailed lands by way of annuity, under the provisions of the Act 5 Geo. IV. cap. 87.

James Balfour further obliged himself to entail certain other lands called Strathconon, belonging to him, in the same terms as the Whittinghame estates, and he transferred to trustees securities to the amount of £150,000 to be entailed in like manner, declaring that until that sum was so laid out James Maitland Balfour, failing himself, should have right to the proceeds of it. He also bound himself to pay an annuity of £3500 to James Maitland Balfour during their joint lives.

"By the said contract of marriage, and in further contemplation of the said then intended marriage, the said James Balfour and the said James Maitland Balfour thereby bound and obliged themselves, and the said James Balfour bound and obliged the heirs of entail succeeding to him in the said lands, baronies, and others, to make payment to Lady Blanche Balfour of an annuity, in name of pin-money, of £500 sterling per annum, out of the rents of the foresaid lands, baronies, and others, during all the days of her life, ay and until her annuity or jointure of £3000 per annum, thereinafter provided to her, should become payable; but declaring always that during the lifetime of the said James Balfour the interest to become due upon the sum of £10,000 sterling, being the fortune hereinafter mentioned of the said Lady Blanche Balfour, should be paid and applied, and be taken and held as payment *pro tanto* of the foresaid annuity of £500, and that the said James Balfour during his lifetime should only be bound to make payment of such sum or sums of money in addition to said interest as would be sufficient to make up the full annuity of £500, as the same falls due. The contract of marriage also contained the following clause:—"As also the said James Balfour hereby binds and obliges himself, and the heirs of entail succeeding to the foresaid lands, baronies and others, to make payment to the said Lady Blanche Mary Harriett Gascoyne Cecil during all the days of her lifetime from and after the decease of the said James Maitland Balfour, her promised husband, in the event of her surviving him, of an annuity or jointure of three thousand pounds sterling per annum, payable at two terms in the year, Whitsunday and Martinmas, ... which annuity of three thousand pounds, interest to become due thereon, and penalty above mentioned, are hereby expressly conditioned and declared, and shall be so declared, in the deed of entail to be executed by the said James Balfour of the foresaid lands, baronies, and others, to be a real burden upon the said lands, baronies, and others during the continuance of the said annuity."

These provisions were the whole provisions of the contract of marriage conceived in favour of Lady Blanche Balfour by James Balfour or James Maitland Balfour; and the contract contained a clause stating that these "provisions before written, conceived in favour of the said Lady Blanche Mary Harriett Gascoyne Cecil, she hereby, with consent foresaid, accepts of in full satisfaction of all terce of lands, third or half of moveables, and of everything else which she can ask or claim by and through the death of the said James Maitland Balfour before her, or which her executors or nearest-in-kin can ask or demand out of his estate in the event of her decease before him, excepting only mournings and a suitable allowance for her maintenance from the day of her husband's death until the first term's payment of her jointure or annuity of three thousand pounds above mentioned, to all which she shall have right in the event of her surviving her said husband."

There were also the following clauses:—"For which causes, and upon the other part, the said Marquess of Salisbury hereby binds and obliges himself, and his heirs, executors, administrators, and assignees, to grant a bond or other deed or deeds required by the laws of England, and in the English form, for payment of the sum of ten thousand pounds sterling on the fifteenth day of May eighteen hundred and forty-four, to bear interest at the rate of four pounds per centum per annum from and after the celebration of the said marriage, to certain trustees therein named." The third purpose of the (trust, which alone it is necessary to state), was, in the event of Lady

Blanche Balfour surviving her husband, to make payment of the interest of the sum of £10,000 to her during her life in addition to the annuity or jointure of £3000 above provided to her.

Before his death, which occurred on 19th April 1845, James Balfour had executed a disposition and deed of entail of the Whittinghame estates, proceeding on the narrative of the contract of marriage, and in terms of it. The annuity of £3000 to Lady Blanche Balfour was made a real burden upon the entailed estates. James Balfour was survived by James Maitland Balfour, who succeeded to the entailed estates, and by Lady Blanche Balfour.

From the date of the marriage between James Maitland Balfour and Lady Blanche Balfour down to the 20th day of February 1860 the Marquis of Salisbury paid his daughter the interest at four per cent. on the sum of £10,000, being £400 per annum, which interest was, in terms of the contract of marriage, held to be a payment to account of the £500 per annum of pin-money provided to her under her said marriage-contract, the balance being paid by James Balfour down to his death; thereafter James Maitland Balfour paid the whole annuity of £500, and the interest of the £10,000 was payable to him. He died on 23d February 1856, on which date the provision of £500 per annum as pin-money to Lady Blanche Balfour ceased, and the interest of the £10,000 became payable to her. She also then became entitled to the annuity of £3000 provided to her in terms of the marriage-contract and deed of entail, and she enjoyed that until her death in May 1872.

Under Lady Blanche Balfour's will, her daughter (the defender in this action) Mrs Eleanor Mildred Balfour or Sidgwick, wife of Henry Sidgwick, of Trinity College, Cambridge, was sole executrix.

The Lord Advocate maintained that under the Act 16 and 17 Vict. cap. 51, the foresaid annuity of £3000 was a succession derived by Lady Blanche Balfour from James Balfour upon the death of her husband, and as such was liable in succession-duty at the rate of one per cent.: That the marriage of his son with Lady Blanche was the consideration on account of which James Balfour granted the annuity in question; and marriage, although a valuable consideration, was not a valuable consideration for money or money's worth in the sense of the Succession-Duty Act: That neither of the spouses conferred any provision on James Balfour; but he, besides the annuity of £3000 in question to Lady Blanche, granted to James Maitland Balfour an annuity of £3500 during their joint lives, and obliged himself to grant entails of Whittinghame and Strathconon, in which James Maitland Balfour was the substitute immediately after himself, and gave him the same position and right with reference to the £150,000 and the lands to be acquired with that sum: That the reciprocal provisions by the spouses in favour of each other could not be regarded as valuable consideration in money or money's worth to James Balfour, and they were not such with reference to the spouses themselves in the sense of the Succession-Duty Act.

The defender maintained that the annuity was not chargeable with succession-duty in respect (1) That it was settled for valuable consideration in money or money's worth in the sense of section 17 of the Act 16 and 17 Vict. cap. 51, such valuable consideration being, first, the settlement of £10,000 for the purposes of the marriage-contract, and, second, the discharge by Lady Blanche Balfour of terce and *jus relictæ;* and also in respect (2) that the payment of the foresaid annuity was an obligation undertaken by the said James Maitland Balfour in favour of his wife under the foresaid disposition and deed of entail, and as such was not liable in succession-duty.

The Lord Ordinary in Exchequer Causes (CURRIEHILL) found that the annuity was not chargeable with succession-duty. The following was the note to his Lordship's interlocutor:—

"*Note.*—One of the grounds on which the defendant maintains that the annuity of £3000 provided to Lady Blanche Balfour in her marriage-contract is not liable to succession-duty is, that the payment of said annuity was an obligation undertaken by her husband James Maitland Balfour in favour of his wife. But I do not think that the obligation was either in form or in substance an obligation of that character. It is true that James Maitland Balfour, by taking possession of the estate of Whittinghame on the death of his father James Balfour, accepted the disposition and deed of entail thereof executed by his father, and thereby became bound to pay the said annuity as heir of entail. But the obligation was truly the obligation of James Balfour, and became prestable by his son only as heir of entail. Had the latter predeceased his father, the annuity would have been payable to Lady Blanche by James Balfour, not under the deed of entail, but in virtue of the personal obligation undertaken by him in the contract of marriage, and after his death it would have been payable by the next succeeding heir of entail, under an obligation imposed, not by the husband, but by James Balfour in the deed of entail. And if the defendant's case had depended solely upon the contention now under consideration, I should have had great difficulty in sustaining her claim for exemption from succession-duty.

"But I think the defendant is entitled to prevail on the other ground pleaded by her, viz., that the annuity was settled for valuable consideration in money or money's worth in the sense of section 17 of the Act 16 and 17 Vict. c. 51. The part of the section on which this argument is based is expressed as follows, viz.:—'No bond or contract made by any person *bona fide* for valuable consideration in money or money's worth —for the payment of money or money's worth after the death of any other person—shall create the relation of predecessor and successor between the person making such bond or contract and the person to or with whom the same shall be made.' The meaning of that section has been considered in various cases in England. In the case of *Floyer* v. *Bankes*, 9 Jur. (N.S.) 1256, which was cited for the Lord Advocate as his leading authority, the Lord Chancellor (Westbury) said—'The essential requisites of a contract which is not to create a succession are clearly defined by the 17th section. First, it must be a contract by one person to pay money or money's worth to another; secondly, it must be made *bona fide* for valuable consideration existing in money or money's worth, the contract creating personal liability between the contracting parties; and,

thirdly, such a contract is prevented from creating a succession only as between the contracting parties, for all that the 17th section does is to declare that there shall be no relation of predecessor and successor between the person bound to pay and the person entitled to receive.' Adopting this as the sound construction of the statute, I am of opinion that in the present case all these essential requisites are to be found. In the first place, there is a contract by James Balfour to pay money to another (Lady Blanche) on the death of a third person, viz., James Maitland Balfour. In the second place, the contract is made undoubtedly *bona fide* for the valuable consideration of £10,000 settled by the lady and her father, and it creates personal liability between James Balfour and Lady Blanche; and, thirdly, the annuity on which succession-duty is claimed is, according to the Lord Advocate's own contention, a succession between these two contracting parties, viz., the person bound to pay and the person entitled to receive, but as between such parties the statute declares that there shall be no relation of predecessor and successor.

"It is indeed maintained on behalf of the Lord Advocate that in the present case no valuable consideration in money or money's worth was given for the annuity. It is unnecessary in the view which I take of the case to hold that either the marriage itself or the renunciation by Lady Blanche of her terce and *jus relictæ* constituted a valuable consideration in money or money's worth. The husband had apparently at the date of the contract no estate, heritable or moveable, and in that respect the case closely resembles the case of *Floyer* v. *Bankes*, in which Lord Westbury, reversing the judgment of the Master of the Rolls, expressly decided that neither the marriage nor the renunciation by the wife of a possible dower out of estates which her husband might never possess could be held to be considerations in money's worth. But in the present case I think it must be held that a valuable consideration in money was given for the annuity by the settlement in the marriage-contract of £10,000 by the Marquis of Salisbury for behoof of his daughter Lady Blanche and her husband J. M. Balfour and the children of the marriage. It is said that neither the said sum of £10,000 nor any other sum of money was paid or provided to James Balfour; but that is not an accurate statement, because the said sum of £10,000, which included the fortune to which Lady Blanche was absolutely entitled under the marriage-indenture of her own parents, was settled in such a way that during the lifetime of James Balfour the interest of that sum was to be paid and applied as payment *pro tanto* of an annuity of £500 which in the contract he had undertaken to pay to Lady Blanche in name of pin-money. James Balfour thus to that extent did unquestionably receive personally a valuable consideration in money's worth. And further, after James Balfour's death the interest of the £10,000 was to be paid to his own son J. M. Balfour during the subsistence of the marriage, and was to be continued to him during his lifetime in the event of the dissolution of the marriage by the death of Lady Blanche without issue. James Balfour thus obtained for himself and for his son an annual payment of the interest of £10,000, and for the children of the marriage he obtained the capital. It appears to me to be immaterial that the provisions made by James Balfour in favour of Lady Blanche were of greater actual value than those made by Lady Blanche and her father. The statute does not require the money or money's worth to be equivalent in amount or value to the money or money's worth provided in the contract. It is enough if the contract be made *bona fide* for 'valuable consideration in money or money's worth.' And it appears to me that it would be an abuse of terms to hold that a substantial provision of £10,000 settled by or on behalf of one of the spouses in this marriage-contract was an elusory consideration, or anything but a valuable consideration in money or money's worth for the annuity, especially as the annuity, though undoubtedly of considerable amount, was only contingently payable, and would never have been paid at all in the event of Lady Blanche predeceasing her husband.

"I have only to add that in the case of *Floyer* v. *Bankes*, although one of the grounds of judgment was that no valuable consideration in money's worth was given for the provision in favour of the lady on which succession-duty was claimed, the Lord Chancellor proceeded mainly upon the ground that the provision was not in the shape of a personal contract by anyone to pay money to her on her husband's death, but was a mere exercise by the father and brother of the husband of an heir-apparent to a rent-charge over a family estate. In the present case both of the essential requisites are found which were wanting in the case of *Floyer* v. *Bankes*. I am therefore, on the whole matter, of opinion that the annuity in question is not liable for succession-duty."

The Lord Advocate reclaimed, upon leave being granted, and argued—To found the ground of exemption sustained by the Lord Ordinary there must (1) be a direct money consideration given by the person entitled to the annuity, who was termed "successor" in the Act. James Balfour was the "predecessor," and Lady Blanche Balfour the "successor." It was the directly contracting parties only who were exempted. But here Mr James Balfour and the Marquis of Salisbury were the true parties to the contract, and they could not so contract without the duty being exigible. (2) The marriage was the only true consideration; there was none in money or money's worth. The annuity would fall to be paid even though the alleged consideration for it, viz., the payment of the £10,000, should fail.

Argued for the defender—There was here a valuable consideration personally received by James Balfour. The £10,000 was "money or money's worth," and was no illusory provision. It did not detract from its value that it occurred in a marriage-cantract. The marriage was not the only consideration in the contract, and if the annuity was given for money or money's worth, it did not matter that the motive was marriage. The cases cited showed that general views of the meaning and object of the transaction were not to be looked at so much as the precise words of the Act and its strict interpretation.

Authorities—*Floyer* v. *Bankes*, 3 De Jex, Jones, and Smith, 306, 37 L.J., Ch. 1; *in re Ramsay's Settlement*, 30 Beav. 75, 30 L.J., Ch. 849; *Jenkinson*, Jan. 14, 1857, 24 Beav. 64; Inventory Duty Cases, viz., *Hagart* v. *Hagart's Trustees*, Dec. 24,

1870, 9 Macph. 58, H. of L. May 2, 1872, 10 Macph. 62; *Moir's Trustees* v. *Lord Advocate*, Jan. 7, 1874, 1 Rettie 345; *Lord Advocate* v. *Robert's Trustees*, Jan. 26, 1858, 20 D. 449; *Marshall's Executors* v. *Lord Advocate*, March 20, 1874, 1 Rettie 847.

At advising—

LORD PRESIDENT—The question raised in this Special Case, and disposed of by the Lord Ordinary's interlocutor, is, whether a certain annuity of £3000 provided for the late Lady Blanche Balfour in her contract of marriage is chargeable with succession duty? There are, I think, three separate grounds upon which the defender maintains that it is not so chargeable.

In the first place, it is contended that payment of the annuity was an obligation undertaken by the husband in the marriage-contract—an obligation by the husband in favour of the wife in consequence of the deed of entail (as I understand it), which settled the estate upon him and the issue of the marriage. Now, I am clearly of opinion with the Lord Ordinary that that is not a good ground for holding the annuity free of charge; because the obligation undoubtedly was a personal obligation undertaken by the husband's father, and not by the husband himself, in the marriage-contract, and although there was security given for the payment of the annuity over the estate which the father then agreed to settle upon his son and the issue of the marriage, that obligation never became binding upon the husband except in his character of heir of entail. It was not therefore an obligation undertaken by him in the marriage-contract in favour of his wife, and so the annuity cannot possibly be exempted from chargeability as being a succession by the wife to the husband.

Then it is contended upon two separate grounds that the annuity is not chargeable with succession-duty because it is exempted under the provisions of the 17th section of the Statute 16 and 17 Vict. cap. 51. The provision of the section applicable to the case is, that "no bond or contract made by any person *bona fide* for valuable consideration in money or money's worth, for the payment of money or money's worth after the death of any other person, shall create the relation of predecessor and successor between the person making such bond or contract and the person to or with whom the same shall be made." It is contended that a valuable consideration was given for this annuity in money's worth, because Lady Blanche Balfour in the marriage-contract renounces her right of terce and *jus relictæ*. I am not prepared to say that a renunciation of such rights may not under some circumstances be a consideration in money or money's worth for something that is given for such renunciation. If there was a presently existing right of terce and *jus relictæ*—a right of present value renounced in consideration of an annuity—that might be quite intelligibly maintained to be a consideration in money's worth. But Mr Maitland Balfour, the husband of Lady Blanche, at the time of their marriage was not possessed of any heritable estate nor of any moveable estate, and therefore there really was no valuable right in the person of Lady Blanche Balfour which she could renounce at that time. It was something quite prospective and visionary, and therefore can never come under the description of money's worth. In that respect also I concur with the Lord Ordinary.

But his Lordship has held that there was another consideration in this contract given for this annuity, which is a substantial consideration in money or money's worth, and that raises a question undoubtedly of considerable importance and of some novelty. The scheme of the marriage-contract was that the father of the husband, Mr Balfour of Whittinghame, undertook, in contemplation of the marriage then about to be solemnised between his son and Lady Blanche, to settle his estate—a very large landed estate—upon his son and the heirs of the marriage in entail. He also bound and obliged himself to make payment to Lady Blanche during all the days of her lifetime after the death of her husband of an annuity or jointure of £3000 a-year, and this, as I have mentioned already, was made a burden upon the entailed lands. These were the chief obligations undertaken by Mr Balfour, the father of the husband. On the other hand, the Marquis of Salisbury, the father of the bride, bound and obliged himself to grant a bond or other deed or deeds required by the laws of England, and in the English form, for payment of the sum of £10,000 sterling on the 15th day of May 1844, to bear interest at the rate of 4 per cent. per annum from and after the celebration of the said marriage, to certain persons, as trustees for the lady and her children. Now, the question comes to be, whether this obligation to pay £10,000 and the proceeds for behoof of the lady and her children is a consideration in money or money's worth given for the obligation of Mr Balfour to provide and pay an annuity of £3000 to Lady Blanche? The nature of the settlement may be expressed in popular language, thus—The lady's fortune was settled upon herself and her children; it was not a fortune which belonged to her previously, but it was a marriage portion provided to her by her father in pursuance of some previous family settlement to which it is needless specially to advert. And, on the other hand, the obligation of the husband's father was to pay an annuity to the bride in the event of her surviving her husband. It is a very important question undoubtedly, whether, when there is a provision of an annuity on the one side and a provision of a sum of money on the other—that is to say, when each of the proposed fathers-in-law contribute in that way a capital sum of money and an annuity respectively—the one of these is within the meaning of the statute the consideration of the other? It seems to me that when one thing is under a contract the consideration of another, it necessarily follows that if the consideration fail the obligation of which it is the consideration fails also; and if that test be applied to the present case I am afraid the necessary conclusion is that the one is not the consideration of the other. Suppose that from any cause the Marquis of Salisbury had failed to pay this £10,000—suppose he had been unable to do so—a very wild supposition, no doubt, in the case of the Marquis of Salisbury, but it might have occurred with other people—and if he had become bankrupt and the provision were never paid, would the annuity provided by Mr Balfour to his daughter-in-law have failed also? Most assuredly not. He would have been just as fully bound to pro-

vide and pay the annuity to his daughter-in-law as if the Marquis of Salisbury on the other hand had fulfilled his obligation to pay the £10,000. I do not think there can be any doubt about that. Then, is it possible, if that be so, to hold that the one is the consideration of the other?

It was represented that the consideration of the obligation might be partly the counter-obligation and partly the marriage, and that even in that case there was a consideration in money or money's worth, because although the marriage was one consideration, the money provision was the other, and there was thus an exemption from charge under the 17th section of the statute. Now, it does not appear to me that that is the true view of a contract of this kind at all. I think that every one of the marriage provisions which we find here has an appropriate consideration under the contract, but one consideration only, and I think the consideration of each one of them is the marriage, and nothing else. It appears to me that when the Marquis of Salisbury promises to pay £10,000 as the marriage portion of his daughter, he does that, not because of or in consideration of the provisions made on the other side, but because his daughter is going to be married, and for no other reason. And, on the other hand, when Mr Balfour makes his provision of an annuity for his intended daughter-in-law, he does that because she is to become his daughter-in-law, and for no other reason.

It may be that in conducting a marriage treaty a great deal may pass between the parties which in negotiation bears the appearance of giving money on one side and consideration for money on the other. That is very true, and so, too, where parties differ about the amount of money to be given on the one side and on the other there may be a failure of the treaty altogether. But suppose that one of the parties declines to give the money that is proposed—what is the result? Not that the other provision is withheld and that the marriage proceeds, but that the marriage breaks down. And here again we have a very clear indication of what lies at the bottom of the whole proceedings of the parties as the consideration upon which they are acting, and as the cause of everything that takes place. It is not because one man gives £10,000 on the one side that another man gives an annuity upon the other. That is not what is at the bottom of it. The thing that is at the bottom of it, and the sole motive of the whole of the parties, is the marriage which is about to be celebrated. And therefore I am of opinion that under this, as under most marriage-contracts, the sole consideration of each provision is the marriage; and if that be so, I am compelled to differ from the Lord Ordinary, because I hold it to be quite clear that the marriage is not within the meaning of the Act of Parliament a consideration in money or money's worth.

Lord Deas—By the contract of marriage of the Lady Blanche Cecil, afterwards Balfour, and James Maitland Balfour, in August 1843, the Marquis of Salisbury, father of the bride, bound himself, and his heirs, executors, and assignees, to grant a bond for payment on the 15th May 1844 of £10,000, bearing interest from and after the celebration of the marriage, to trustees for purposes which I need not detail at length, but the result of which was, by relieving the intended husband and his father of their obligation to pay to Lady Blanche £500 per annum of pin-money, to give the husband the immediate benefit of the interest of the £10,000, and to provide the fee to the children, and failing children to carry that fee to the husband if he was the survivor and his wife had not appointed otherwise. Lady Blanche, to the extent of any provision she might have claimed under her father and mother's marriage indenture, was a consenting party to the purposes of the trust thus created. Such was the money consideration on the one side. On the other hand, an annuity of £3000 a-year was, contingently, provided by James Balfour, the father of the intended husband, to Lady Blanche in the event of her surviving her husband, which she did. The husband's father died in April 1845, and the husband himself died on the 23d of February 1856, when the lady's annuity of £3000 commenced to be payable, and the present claim for succession-duty, if it be well founded, became prestable. At the distance of twenty-one years payment of that duty is now demanded.

The demand is founded upon section 2 of the Statute 16 and 17 Vic. c. 51, upon the footing that section 17 is not applicable to money considerations, although mutual, if contained, as they are here, in an antenuptial marriage-contract. That was the substance of the argument upon which the Lord Advocate in his reply rested the claim of the Crown, and it just comes to this—That whatever money provisions or provisions of money's worth may be provided upon the one side and the other, and whatever personal liability may be thereby created between the parties, these provisions do not come under section 17 of the statute if they are contained in an antenuptial contract of marriage, the marriage itself being, it is contended, to be held the sole consideration for all such provisions.

No precedent to that effect was cited to us, and I am not aware that there is any such precedent. It is a question raised long after the passing of the statute, and which does not appear to have been hitherto decided either in the one way or the other The only case referred to in which anything really bearing on the point is to be found was the case of *Floyer* v. *Bankes*, decided by Lord Westbury, a very high authority, and in which he reversed the judgment of the Master of the Rolls. It was there decided, and I cannot doubt rightly decided, that the consideration of marriage is not money or money's worth in the sense of section 17 of the statute. But it does not follow that there may not be money or money's worth provided on one side and the other in a marriage-contract in such terms as to come within the operation of the section. In the present case we have substantial sums of money provided on the one side and the other. The £10,000 provided by the Marquis of Salisbury on behalf of his daughter Lady Blanche was immediately payable, and paid, and forthwith bore fruits. The annuity provided to the lady by James Balfour and his son was large —£3000 a-year—but it was not absolutely provided, but only in the event of her surviving her husband. It might only therefore come into operation after a long period of years, or it might never come into operation at all. It has not been

pleaded to us that there was any such inequality between these two provisions as to make an exceptional case, if section 17 of the statute can be applied to money provisions in a contract of marriage. The case has been pleaded as raising the important general question, that, be the pecuniary consideration upon each side what it may, it cannot fall under section 17 of the statute if contained in a marriage-contract.

That is the doctrine contended for and avowedly desired to be established by the Crown in this case, and properly so desired if the Crown can make it out. I have considered that doctrine very attentively, and I have not been able to persuade myself that it is sound. It is said that the marriage is to be held the consideration for everything. But where is the authority for that proposition? It has not been so decided, and I do not even find any dicta to that effect. No doubt marriage is an onerous consideration. It is one of the considerations in this contract. Is it the sole consideration? I am not able to see that it is so. There are many marriages where there is no other consideration. It would be very sad if this were not so. But there are also many marriages where bargains or mutual purchases are made with reference to estates of importance and money of great amount. It is not a matter of course, in adjusting a contract of marriage, that either of the parties shall provide estates or sums of money; but if upon the occasion of the marriage they make a mutual bargain of that kind, it is not the less a mutual bargain that it is contained in a contract of marriage. Laying out of view all money provisions, the consideration of marriage is equally onerous on the part of each of the spouses. The one balances the other, so far as that goes. The wife binds herself irrevocably to the husband, and the husband binds himself irrevocably to the wife. These mutual considerations are equal to and satisfy each other. If to these there be superadded upon one side a provision, say of £5000, in money, prestable on the death of one party, and a provision on the other side of £5000 in money's worth, prestable on the death of another party, shall there be held to be no bargain or purchase within the meaning of section 17 of the statute because the spouses have in the same deed contracted to become husband and wife? I find nothing to that effect in the words of the statute. There is not a syllable in it to exclude the application of the enactment to marriage-contracts. The enactment is, on the contrary, general and absolute in its terms. Again, taxing enactments are not construed in favour of the Crown unless that is obviously their fair meaning. The rule is rather the other way. It is mere iteration to say that the sole consideration of all the mutual provisions is the marriage. That is the proposition to be proved.

It would be a waste of time to go into many of the cases which have been mentioned in the course of the argument, because they really come to nothing upon this question. The case mainly requiring attention is the case of *Floyer* v. *Bankes*, to which I have alluded. The Master of the Rolls had there based his judgment on two grounds—1st, That the marriage itself was, in the sense of section 17 of the statute, a valuable consideration for the lady's annuity, requiring no money to be superadded to give it full force. Lord Westbury held that this ground of judgment was erroneous, and I think it plainly was so. 2d, That the lady's renunciation of dower, free blench, and the widow's right to one-third of the personal estate of the husband on intestacy was money's worth. The answer to this was, that at the date of the contract, the rights renounced could not be regarded as money's worth, because the husband had no estate out of which these rights could arise. The judgment was therefore reversed. But Lord Westbury indicated no opinion favourable to the contention of the Crown in this case—that whatever may be the mutual provisions in money or money's worth, section 17 will be inapplicable if these provisions are contained in a contract of marriage. The inference from all that he said is rather the other way. For, if that had been his opinion, he had only to have said so, and it was unnecessary to have said more. That ground, if a good ground, would have been sufficient for judgment. In place of that, he is at pains to detail the grounds upon which he goes, not one of which implies a recognition of the doctrine in question.

He says—"The essential requisites of a contract which is not to create a succession are clearly defined by the 17th section. First, it must be a contract by one person to pay money or money's worth to another; secondly, it must be made *bona fide* for valuable consideration existing in money or money's worth, the contract creating personal liability between the contracting parties; and, thirdly, such a contract is prevented from creating a succession only as between the contracting parties, for all that the 17th section does is to declare that there shall be no relation of predecessor and successor between the person bound to pay and the person entitled to receive."—9 (English) Jurist, N.S., p. 1256.

He then goes on to say—"This reduces the matter to the inquiry, Is there any contract by Henry Bankes and William John Bankes to pay these annuities to Miss Nugent on her becoming the widow of George? Were they, or was either of them, to be in any way liable for such payment? The answer must be that there is nothing of the kind." This was because Henry Bankes and William Bankes had merely exercised a joint power of appointment which they had by indentures, dated in 1810 and 1821, entitling them to burden certain hereditaments with rent-charges, which they did, in favour of Miss Nugent in case she should survive her husband George Bankes, but without themselves coming under or ever having been under any personal liability whatever for these rent-charges or any part thereof.

The Lord Chancellor further says—"But if this could be held to be a contract to pay, which would be an abuse of language, a valuable consideration in money or money's worth would still be required;" and as neither the marriage nor the renunciation of dower, &c., could be called such, and no other consideration on the lady's side was alleged, his Lordship came to the conclusion that section 17 of the statute did not apply to the case.

There is obviously, to say the least of it, nothing in all this to countenance the general doctrine that it is sufficient to exclude the applicability of section 17 that the provisions in money or money's worth are contained in a con-

tract of marriage. If that doctrine is not to be set up by the judgment in the present case, the case loses all its general importance. But while my opinion is against the soundness of that doctrine, I do not say we can negative the pecuniary claim of the Crown in the present case, unless the essential requisites pointed out by Lord Westbury are found to occur in it, viz., 1st, a contract by one person to pay money or money's worth to another; 2d, a *bona fide* valuable consideration in money or money's worth, the contract creating personal liability between the contracting parties.

I am disposed, however, to think that both of these elements, which were awanting in the case of *Floyer* v. *Bankes*, are to be found in the present case.

1st, By the contract of marriage, James Balfour and his son James Maitland Balfour bound and obliged themselves, and James Balfour bound and obliged the heirs under the entail which he thereby undertook to execute of the Whittinghame estates, to make payment to Lady Blanche, if she survived her husband, of the annuity in question of £3000 a-year.

2d, On the other hand, the £10,000 provided by the Marquis, with the concurrence of Lady Blanche for her interest, for behoof of her husband and herself and the issue of their marriage, in the terms already alluded to, was a *bona fide* valuable consideration in money or money's worth for the obligations undertaken by James Balfour and his son. The obligation of the Marquis is introduced by the words, "For which causes, and on the other part"—the causes being the provisions made by James Balfour and his son along (I quite admit) with the marriage itself. The contract created in the most express and absolute terms personal liability on the part of the Marquis to pay the £10,000 whatever might become of his wife's hereditaments and real estates, which were originally burdened with £20,000 for provisions to their children by indenture made on the occasion of their marriage. The Marquis bound himself, his heirs, executors, administrators, and assignees to grant bond for the £10,000, payable at Whitsunday 1844, with interest from and after the celebration of the marriage. It is not stated in the case whether the bond was actually granted, but the principle applies that what should have been done is to be held as having been done. The stipulated interest was accordingly paid by the Marquis, and in 1860 he paid the capital itself to the trustees under the contract, whereupon Lady Blanche discharged all claim she might have had to a provision under the indenture just mentioned.

In these circumstances, it humbly appears to me that the conditions of section 17 of the statute must be held to have been satisfied, and I am therefore for adhering to the Lord Ordinary's interlocutor.

Lord Mure—I concur in thinking this an important and difficult question, but after giving it the best consideration in my power I have come to the same conclusion as your Lordship in the chair, and substantially upon the same grounds. I shall shortly state my reasons.

It is not disputed that the duty here claimed is due under the 2d section of the Act, unless the succession is exempted in respect of the terms of the 17th section. Under that section no bond or contract made by any person *bona fide* for valuable consideration in money or money's worth shall create the relation of predecessor and successor, so as to make the provisions of the 2d section applicable. Now, it seems to be settled in England, in the case quoted in the pleadings, that marriage itself is not a consideration in the sense of the statute, even where (as here) there is in the marriage-contract a renunciation of the dower or of all contingent legal rights on the part of the wife. That, no doubt, was not a judgment of the House of Lords, but it was a judgment of the Lord Chancellor of the day, altering a judgment of the Master of the Rolls, and therefore it is an interpretation of the statute which is entitled to the greatest weight; and I shall only say that I concur in the view that Lord Westbury there indicates, as to whether marriage and a renunciation of the dower in the ordinary case can be a consideration in the sense of the statute. I do not say that there may not be provisions so broad, and a contract so entered into, as to fall under the provisions of the 17th section of the statute.

But the question we have here to decide is, whether there is anything in this contract of marriage which can be said to be a consideration in money or money's worth in the sense of the Act? Now, I can find nothing in the deed itself which says that the settlement of the annuity by Mr Balfour is to be dependent on the settlement of the £10,000 by Lord Salisbury. Looking at the contract in a general point of view, it just comes to this, that the father of the gentleman undertakes to make a provision by way of annuity for his daughter-in-law on his son's death, and the father of the lady undertakes to settle a sum on her and the children of the marriage. The one is not given as an equivalent of the other, but because the son of the one gentleman and the daughter of the other are about to enter into a contract of marriage. I agree with your Lordship that it is in contemplation of the marriage that both these provisions were made, and I do not see anything in the terms of the marriage-contract to enable me to say that the one is in consideration of the other.

Further, I think the language of the deed is not unimportant. It says that the said James Balfour, in contemplation of the marriage of his son, settles so and so. Now, it is not to be thrown out of view that in the ordinary case of marriage-contracts, where the one provision is intended to be a sort of consideration for the other, in addition to the words "in contemplation of the marriage" there are generally these words "and in consideration of the provisions made in her favour as after-mentioned." These words are omitted here, and it is simply stated that the annuity is granted in contemplation of the marriage, without any reference to what may be done by the lady's father in the subsequent part of the deed. And when we come to the subsequent clauses we find that they provide certain things in contemplation of the marriage, bnt I do not see any words in the deed which lead me to suppose that the consideration which Mr Balfour had in view when he made that provision was the £10,000 which Lord Salisbury settled upon the children.

Lord Shand—The claim of the Crown in this case is resisted on two grounds—in the first place, on the ground that the lady who got the benefit of this annuity gave valuable consideration for it, in respect she renounced her right of terce and *jus relictæ*; and, in the second place, on the ground that in return for the annuity she gave a present payment to trustees of £10,000. In regard to the first of these points, I think the case is substantially in the same position as that of *Floyer* v. *Bankes*, to which reference has already been made, and in which Lord Westbury in delivering judgment said—"The Master of the Rolls seems to have thought that the implied agreement by Mrs Georgina Bankes to release her dower or free blench would be a consideration in money's worth within the meaning of the 17th section. This perhaps might be so if it were shown, which it is not, that George Bankes was at the time of the contract possessed of or entitled to any estate out of which his wife might become dowerable, but a bare possibility of future dower or free blench in non-existing estates would not have been a subject of value at the time of the agreement, and the release of such a possibility would not, in my judgment, answer and satisfy the words 'valuable consideration in money or money's worth.'" It will be observed that there is no opinion here expressed that the renunciation of such a right, even if the lady would by the marriage have acquired a right in existing estates, would be a consideration in money or money's worth sufficient to bring the case under section 17 of the statute. The statement is carefully guarded: that "perhaps" it might be so; and I am not disposed in this case to put it higher. Here, so far as the right of terce is concerned, it appears to have been of no value, because by the very contract with which we are dealing we find that the husband's father stipulated that he should only be bound to entail the estates, subject to the condition that there should be no right of terce attached to them, and as to the *jus relictæ*, it was entirely problematical whether that right should be of any value whatever. So that the case, so far as the *jus relictæ* is concerned, is precisely the same as that of *Floyer*. But I am not prepared to say that the possession of either of these rights, even if there were existing estate, would be sufficient to operate an exemption of succession duty under section 17 of the statute, for I think that in that state of the facts a somewhat similar question to that which we have now to determine in dealing with the second point raised would arise,—viz., the question whether that renunciation is really a giving of money or money's worth for the provision which is secured, or whether it is not given really in consideration of the marriage, the marriage being the true consideration in respect of which the right would be renounced. I am far from saying that I think a renunciation of rights of terce or *jus relictæ*, even where the husband is possessed of estate, would be sufficient. But the case being in the same position as that of *Floyer*, I am of opinion that here the renunciation cannot be regarded as a valuable consideration, in respect there were no existing rights.

The next point that arises is, whether the sum of £10,000 provided under a bond by the lady's father can be regarded as a valuable consideration in money or money's worth, given for the annuity of £3000? and here a question might arise whether this sum was really given by the lady at all. If it was not given by the lady, but was given by the father, the only result under the statute would be this, that as the lady's father in that view purchased the annuity by paying the £10,000, while there would be no relation of predecessor and successor in reference to the annuity as between Mr Maitland Balfour and his daughter-in-law, that relation would still subsist as between Lord Salisbury and his daughter, for Lord Salisbury in that view became the purchaser of this annuity by paying the £10,000; and it is plain from the concluding words of section 17 that while the relation of predecessor and successor would not arise directly between the person granting the annuity and the person in whose favour it was made, yet as the statute provides that "any disposition or devolution of the money payable under such bond or contract if otherwise such as to create a succession within the provisions of this Act, shall be deemed to confer a succession," it follows that there would be a succession as regards the annuity purchased between Lord Salisbury, the purchaser, and his daughter. I am not satisfied by the documents in this case that this money was advanced by the lady. It appears that under her father's marriage-contract there were provisions to the effect that if there was one child there should be a payment of £10,000, if two or more children £15,000, and if three or more £20,000, with a power of division in favour of the parents or the survivor. So that if there were no division of this fund in terms of the power, there having been five children of the marriage, this lady's legal right would have been £4000 only. The case does not state that there was any deed of division of the £20,000 in which the five children were each entitled to share. On the contrary, as I read it, the case is not only consistent with the view, but appears to me to bring out the view, that the father out of his own means very considerably supplemented what the lady was entitled to. In no part of the marriage-contract does this money appear to have been put in her possession as her own, and thereafter put by her into the common fund. The father undertakes a personal obligation to pay £10,000 on the marriage, and as far as I can see, at all events to a very great extent, that was his own fund. Therefore I should have difficulty here in holding in the case, as it is presented, that this is a consideration in money or money's worth provided by the lady. It appears to me to be a consideration given by the father; and if that be so, the only result in a question with the Crown would be, that if it could be regarded as a transaction of purchase of the £3000 annuity, that annuity having been so purchased would still be subject to succession-duty as being provided by Lord Salisbury, who had purchased it.

But I do not think it necessary to decide the case on that ground; for I am of opinion with the majority of your Lordships that this £10,000—even assuming it to have been paid by the lady—is not a consideration that comes within the provision of section 17 of the statute. Upon that matter I should wish again to refer to what Lord Westbury says in the case of *Floyer* as to the general effect of the Succession-Duty Act, with which we are dealing. His Lordship says—"In

framing the Act" the word 'succession' was adopted for the purpose of denoting any property passing upon death from one person to another by virtue of any gift or descent, or of any contract not being a *bona fide* contract of purchase of loan. Money or property, the right to receive or possess which might arise upon death, under a contract made *bona fide* in return for other money or property, was not as between the contracting parties to be treated as a succession. But it was not intended to exempt property arising upon death under contracts for valuable consideration generally. Marriage is by the law of England a valuable consideration for a contract and that of the highest kind, but property arising under a contract in consideration of marriage is not excepted even in favour of persons coming directly within that consideration. A contract to be excepted must be *bona fide* made in consideration of money or money's worth, words which appear to have been selected for the purpose of excluding the consideration of marriage." Now, taking that to be, as I have no doubt it is, a correct view of the purview of the statute, the question is, the marriage not being a valuable consideration within the meaning of the statute, can this £10,000 be so represented?

Now, in the first place, I have to make this observation, that at the best, and even on the argument maintained on behalf of the respondents, this payment of £10,000 is not represented as the sole consideration in respect of which the annuity was given. It is not disputed that the marriage was a very material part of the consideration. If it were disputed, I think the argument would be a very hopeless one, for it is quite plain that the transaction was not a purchase of this annuity of £3000, and of the obligation of Mr Balfour to settle his estates, which were obviously of enormous value. It cannot be represented that the obligation for payment of £10,000 was a consideration equal in value to what Mr Maitland Balfour gave on the other side. The obligation was obviously given, in the view most favourable for the respondents, partly in consideration of money or money's worth and partly in consideration of the marriage; and if that be so, I am not prepared to say that section 17 of the statute applies. On the contrary, my opinion rather is that the section does not apply, for I think the general meaning and effect of the statute is, that money or estate, whether left by settlement *mortis causa* or provided by marriage-contract, if it be money settled upon parties to accrue to them after the death of the settler, or some other person in life at the date of the deed, shall be liable in duty, and that the exception to that is where the right that is the subject of question is a purchased right, such as a policy of insurance, in which a person pays a full value for the obligation undertaken by the insurance company, or a bond of annuity in which a full price is paid for the annuity. In short, it is, in my opinion, a *bona fide* purchase that is made the subject of exception; and I am not prepared to hold that if it could be shown that a certain consideration was given in money's worth, the leading consideration however being the marriage, this section of the statute applies. My opinion, on the contrary, is, that the section only covers the case of a proper purchase of the right; and so I should not be prepared to hold, even on the argument submitted to us on the concession, which cannot be withheld, that the marriage at least was partly the consideration here, that section 17 applies.

But I agree with your Lordship in the chair, and generally on the grounds which have been already stated, in thinking further that it is not a sound view of the effect of this marriage-contract to hold that the annuity of £3000 was given in consideration of the obligation by Lord Salisbury, or of the agreement by his daughter, to pay £10,000. No doubt the parties had met, and the preliminaries of the marriage had been arranged. In arranging these preliminaries the parties interested required to see where the funds on each side were to come from, and in order to bring about the marriage parties on each side of the house agreed to put so much money into the common fund. But when they came to sign the marriage-contract and to grant the obligations contained in it, the money obligations were truly granted, not by the one giving so much money because and in consideration of the other giving so much money, but in contemplation of the marriage and because of the marriage, and to provide a fund for the married persons. The marriage is the true consideration in the minds of the parties; and it is clear on the statute that marriage is not a consideration to be taken into view. It would be remarkable if it were otherwise, for parties might then readily evade the succession-duty. I suppose that almost as much money is dealt with and settled by marriage-contracts as by deeds of settlement, and at least an enormous amount of property is so dealt with. It is clear that it was not intended to exempt marriage-contract provisions from succession-duty. I think your Lordship applied a sound test on this question as to whether the marriage is not truly the consideration in the question that you put:—Would it be any answer to one of the parties to this settlement when called on to fulfil his stipulations to pay so much money, that he should say he was not bound to pay it, because the parent on the other side had been unable to fulfil his obligation or had not done so? If the one is a consideration of the other, he would necessarily be entitled to say that because no money was given on the other side he was not bound to fulfil his obligation. But the answer is—It is not in consideration of this other fund being given that you have granted your obligation or undertaken to make a provision; the true consideration is the marriage itself that has taken place, and you are bound to pay the money.

It has been represented that the argument on behalf of the Crown here is, that because you find this stipulation in a marriage-contract the clause does not apply. I can only say that I do not understand that to be the contention of the Crown, and it is certainly not that contention that I adopt. It is not because the provision is in a marriage-contract that the clause of exemption does not apply, but because, being in a marriage-contract, as we find the clauses there, the obligation to settle so much money on the one side is not the true counterpart of the obligation on the other. The marriage is the counterpart of the obligation on both sides. The marriage is the moving cause and consideration.

One might quite well suppose a case of one obligation occurring in a marriage-contract, where a wife purchased an annuity at so much money from a third person by a regular transaction of purchase and sale, and in the same deed—the marriage-contract—the parties concluded the transaction. Although the obligation were contained in the marriage contract, the clause of exemption would apply if the case were truly a proper transaction of purchase for money or money's worth, which this is not.

I may notice, before concluding, the inconveniences to which the argument on the respondents' side would necessarily lead if it were sustained. It is said that the obligations upon one side are to be regarded as a counterpart of the other, and therefore you have money's worth given for this annuity. Suppose a marriage takes place in which one of the parties has very little means indeed, and the other a large fortune,—it may be that all the husband offers is an insurance on his life as against £30,000 or £40,000 advanced and settled on the other side. If the argument maintained here be sound, then if the husband is able to advance £1000 only, or merely to effect an insurance on his life, it might just as well be said this is a valuable consideration given for the settlement of the larger sum of £30,000 or £40,000; and the settlement of that sum having thus been purchased, the amount shall be free from succession-duty. It would surely be very difficult to maintain that £2000 or £3000 was a valuable consideration for three times the amount. And so the Court might be put in every case to balance the considerations in each contract, and to say, is it or is it not the counterpart of the other—is it a valuable consideration in money or money's worth?

Again, it is said, if you find obligations on one side and another, they are to be regarded as counterparts of each other. The father or the relative of the lady gives certain sums of money, the father or relative of the husband gives other sums of money, and these are to be regarded as purchased not from the contracting spouses themselves, but from relatives intervening. Observe what is the effect of that view if sustained under the statute? It is not to exempt these sums from duty, because if the purchase is made by a relative it is plain the result is to make what he purchases his estate, and that estate, so made his, still becomes the subject of succession duty. You have an illustration of that in the case *in re Jenkinson*, 1856, 24 Beavan's Reps. 64; and it is plain that it is so from the statute. That view of the statute therefore leads to this anomalous, and to my mind extravagant, result, that if you have counterp rovisions of that kind in a marriage-contract, the succession-duty is payable, not with reference to the degree of relationship of the person who settles the money, but with reference to the relationship of the other party, the person who has purchased the settlement and who has thus settled the money. That might make a very serious difference to the parties, depending on the degrees of relationship of the relations who have intervened. I cannot read the statute as introducing anything so roundabout in the way of regulating the rules of succession, and providing what I should regard as a very remarkable element to deal with,—an element of chance in fixing the rate to be paid, because it varies according to the degree of relationship. I think it is much more reasonable to hold the money or estate provided in a marriage-contract as money or estate settled by the person who gives it, not money or estate purchased, and I think there is nothing in the statute to lead to a different result. On these grounds—and I cannot say I entertain any very serious difficulty about it—I am of opinion that this annuity is liable to succession-duty.

The following interlocutor was pronounced:—

"The Lords having heard counsel on the reclaiming note for the Lord Advocate against Lord Curriehill's interlocutor, dated 13th March 1877, Recal the said interlocutor: Find and declare that the annuity of £3000 per annum provided to the late Lady Blanche Balfour, as in the Special Case stated, is chargeable with succession-duty; and remit to the Lord Ordinary to proceed in accordance with the above finding, with power to his Lordship to dispose of the expenses incurred in the Inner House."

Counsel for Pursuer (Reclaimer)—Lord Advocate (Watson)—Rutherfurd. Agent—The Solicitor of Inland Revenue.

Counsel for Defender (Respondent)—Kinnear. Agents—Gibson & Strathearn, W.S.

Wednesday, June 6.

FIRST DIVISION.

[Lord Craighill, Ordinary.

HEITON *v.* THE WAVERLEY HYDROPATHIC COMPANY.

Obligation—Contract of Sale—Negotiations which were held not to constitute a Completed Contract, and where Possession which followed was held not to be rei interventus.

A written offer to buy certain subjects was made, and correspondence and negotiations followed between the parties on either side with reference to certain conditions and stipulations not contained in the offer. The disposition was put in draft by the offerers' agents, and the offerer took possession and proceeded to make alterations upon the subjects in terms of the requirements of the sellers. He was afterwards called on to remove, and thereupon he brought an action to have it found that there was a concluded contract, which the sellers were bound to implement. The defenders were assoilzied, on the ground (1) that there was no concluded contract between the parties, and (2) that the possession could not amount to *rei interventus*, as there was no previous *consensus ad idem*, and it had not been got from those entitled to give it.

Observed, that where parties are in dispute whether there is or is not a concluded bargain between them regarding heritable property, what is to be looked at is not the drafts of the proposed deeds, but the documents themselves which formed the bargain