LORD SKERRINGTON—I concur, but only upon the ground stated by Lord Mackenzie.

The Court adhered.

Counsel for the Pursuer (Reclaimer)—Maclaren. Agent—Malcolm Graham Yooll, S.S.C.

Counsel for the Defenders (Respondents)—Chree, K.C.—Gentles. Agents—R. Addison Smith & Company, W.S.

Wednesday, December 12.

FIRST DIVISION.

[Exchequer Cause.

INLAND REVENUE *v.* LORD LYELL.

Revenue—Estate Duty—Finance Act 1894 (57 *and* 58 *Vict. cap.* 30), *secs.* 2 (1) (*b*) *and* 3 (1)—*Finance Act* 1896 (59 *and* 60 *Vict. cap.* 28), *sec.* 15 (1).

The Finance Act 1894 enacts—Section 2—"(1) Property passing on the death of the deceased shall be deemed to include . . . (*b*) Property in which the deceased or any other person had an interest ceasing on the death of the deceased, to the extent to which a benefit accrues or arises by the cesser of such interest. . . ." Section 3—"(1) Estate duty shall not be payable in respect of property passing on the death of the deceased by reason only of a *bona fide* purchase from the person under whose disposition the property passes, nor in respect of the falling into possession of the reversion of any lease for lives, nor in respect of the determination of any annuity for lives where such purchase was made, or such lease or annuity granted, for full consideration in money or money's worth paid to the vendor or grantor for his own use or benefit, or in the case of a lease for the use or benefit of any person for whom the grantor was a trustee."

The Finance Act 1896 enacts—Section 15—"(1) Where by a disposition of any property an interest is conferred on any person other than the disponer for the life of such person or determinable on his death, and such person enters into possession of the interest and thenceforward retains possession thereof to the entire exclusion of the disponer or of any benefit to him by contract or otherwise, and the only benefit which the disponer retains in the said property is subject to such life or determinable interest, and no other interest is created by the said disposition, then on the death of such person after the commencement of this part of this Act the property shall not be deemed, for the purpose of the principal Act, to pass by reason only of its reverter to the disponer in his lifetime."

A testator bequeathed his heritable estates to certain heirs, and his moveable estate to trustees for certain purposes, which included the payment of an annuity of £1000 to Mrs L. (who in the circumstances which occurred was the mother of the heir to the heritable estates). The residue of the moveable estate, after the trust purposes had been fulfilled, was to go to the person who succeeded to the heritable estates. Shortly after the death of the testator, Mrs L., as the result of an arrangement with her son, granted a discharge to the trustees of their obligation to pay her the annuity of £1000, and *unico contextu* with the deed of discharge her son granted a bond of annuity and disposition in security, whereby he bound himself personally to pay the annuity left by the testator, and disposed in security of that obligation certain of the heritable properties to which he had succeeded. On the death of the annuitant the Crown claimed estate duty on the value of the benefit accruing by the cesser of the annuity. *Held* that the exemptions in section 3 (1) of the Finance Act 1894 and section 15 (1) of the Act of 1896 did not apply—*per* the Lord President, Lord Johnston, and Lord Mackenzie in respect that no fresh annuity had been granted by the defender, but the security for the annuity had merely been altered; *per* Lord Skerrington, in respect that a new annuity had been granted and full consideration given for it, but the full consideration was not in money or money's worth.

The Finance Act 1894 (57 and 58 Vict. cap. 30), sections 2 (1) and 3 (1), and the Finance Act 1896 (59 and 60 Vict. cap. 28), section 15 (1), are quoted *supra in rubric*.

The Lord Advocate, on behalf of the Commissioners of Inland Revenue, *pursuer*, brought an action against Lord Lyell of Kinnordy, Kirriemuir, in the county of Forfar, *defender* concluding for decree, ordaining the defender "to deliver to the Commissioners of Inland Revenue an account of the property which passed, or is deemed to have passed, on the death on 18th February 1915 of Mrs Katharine Murray Horner or Lyell, the defender's mother, for the purpose of ascertaining the estate duty chargeable in respect of the value of the benefit accruing or arising from the cesser of an annuity of £1000 payable to the said Mrs Katharine Murray Horner or Lyell, and secured over the defender's lands and estates of North Tarry and Dickmontlaw by bond of annuity and disposition in security, dated 1st February, and recorded in the Division of the General Register of Sasines applicable to the county of Forfar 6th February, both in the year 1887, granted by the defender in favour of the said Mrs Katharine Murray Horner or Lyell," and whether such account was delivered or not for £1500 as estate duty.

The pursuer *pleaded*—"1. The defender being bound to deliver to the Commissioners of Inland Revenue and verify an account of the property passing on the death of the said Mrs Katherine Murray Horner or Lyell, as condescended on, decree should be pronounced in terms of the conclusions of the

summons. 2. Estate duty being payable in terms of the Finance Act 1894, sections 1 and 2, in respect of the cesser of the interest of the said Mrs Katharine Murray Horner or Lyell, with interest thereon, as condescended on, and the defender being liable in payment of the said duty, the pursuer is entitled to decree in terms of the conclusions of the summons."

The defender *pleaded, inter alia*—"4. The said annuity being in the circumstances set forth granted for full consideration in money or money's worth paid to the grantor for his own use or benefit within the meaning of section 3 (1) of the Finance Act 1894, no estate duty is payable in respect of the determination of the same, and the defender should therefore be assoilzied. 5. The creation of said annuity being a transaction within the scope and meaning of section 15 (1) of the Finance Act 1896, the properties burdened by the annuity are not deemed, for the purposes of the Finance Act 1894, to pass on the death of the annuitant by reason only of its reverting to the defender in his lifetime, and the defender should therefore be assoilzied from the whole conclusion of the summons."

On 24th July 1917 the Lord Ordinary (CULLEN) decerned and ordained the defender to deliver the account sued for, to which interlocutor was appended the following opinion from which the *facts* of the case appear.

Opinion.—"John Mudie, advocate, of Pitmuies, in the county of Forfar, died in 1876, leaving a settlement under which he bequeathed, in the event which happened, to the defender (1) all his heritable properties, and (2) the residue of his moveable estate. By the terms of his settlement his moveable estate was charged with various legacies and charges, and in particular with an annuity of £1000 per annum to the defender's mother Mrs Lyell during her lifetime, which he directed his trustees to pay her out of his moveable estate conveyed in trust to them.

"The moveable estate of the testator conveyed to his trustees was, after meeting all other charges thereon prior to the defender's residuary interest, ample to secure due payment by the trustees to Mrs Lyell of her said annuity.

"In 1877, the year following the testator's death, a transaction was entered into between the defender and his mother. It was thereby agreed that, *unico contextu*, (1) Mrs Lyell should discharge her annuity right as against the moveable succession of Mr Mudie, and (2) the defender in exchange for such discharge should grant in her favour a bond of annuity containing (*a*) a personal obligation by him for payment to her of an annuity of £1000 per annum, and (*b*) a disposition of lands called North Tarry and Dickmontlaw, forming part of the heritable succession of the deceased John Mudie, in security of the defender's said personal obligation.

"This transaction was carried through. Mrs Lyell duly granted a discharge freeing the moveable estate in the hands of the testator's trustees of the burden of her annuity, and the defender in exchange therefor duly granted a bond of annuity in her favour for £1000, with a disposition in security of the lands of North Tarry and Dickmontlaw. The defender thereupon obtained payment to him of the amount of the residuary moveable estate of the testator in the hands of his trustees, the amount so paid to him being larger than the testator's scheme of settlement had contemplated in proportion to the effect of the discharge of her annuity granted by Mrs Lyell as above narrated.

"Mrs Lyell enjoyed the annuity of £1000 per annum under the defender's bond and disposition in security of 1877 until her death, which occurred on 18th February 1915.

"In respect of the cesser on Mrs Lyell's death of her temporary interest in the lands of North Tarry and Dickmontlaw under her annuity infeftment in security above mentioned, the Crown now claims from the defender estate duty on the value of the benefit accruing or arising from such cesser, under the provisions of section 2 (1) (*b*) of the Finance Act 1894. [*His Lordship quoted the section.*]

"The defender, in answer to the claim of the Crown, invokes, in the first place, the exempting provision contained in section 3 (1) of the Finance Act 1894, and in particular that part of it which is applicable to the case of an annuity granted for full consideration in money or money's worth paid to the grantor for his own use and behoof. The terms of said provision are as follows. [*His Lordship quoted the section.*]

"I am unable to sustain the defender's proposed application of said section 3 (1) to the transaction of 1877 before narrated. The defender inherited Mr Mudie's heritable estates. He also inherited his moveable estate subject to payment of legacies and charges, including Mrs Lyell's annuity, which was well secured on it through the trust. What was done by the transaction of 1877 was by agreement to transfer the burden of the annuity from the moveable to the heritable estate so as to enable the defender to obtain immediate payment from the trustees of the moveable estate freed of the annuity. The defender desired this result as one beneficial to him. But whatever the value of the benefit to him arising from the transaction may have been, I am unable to see that it represented payment to him of 'full consideration in money or money's worth' for the bond of annuity he granted to Mrs Lyell. Mrs Lyell did not pay such full consideration. She only agreed that the defender should have the benefit he desired of having the residue of the moveable estate immediately paid over to him freed of her annuity right. This view appears to me to be supported by the case of *Attorney-General* v. *Smith Marriott*, L.R., [1899] 2 Q.B. 595.

"The defender next invokes the exempting provision in section 15 (1) of the Finance Act 1896, which is in the following terms. [*His Lordship quoted the section.*]

"The kind of interest thus exempted is one conferred by the disponer which reverts

to him in his lifetime on the death of the grantee. The word 'conferred' is not referable to any statutory definition and appears to be used here as in other duty-imposing Acts—*e.g.* the Succession Duty Act 1853—as equivalent to 'granted' without reference to the cause of granting, subject to the observation that cases where the cause of granting is full consideration in money or money's worth are already exempted under section 3 (1) of the Finance Act 1894. The word 'conferred' in the enactment under consideration thus seems in itself wide enough to include all cases other than those of full consideration in money or money's worth being paid, without distinction as to the cause of conferring or granting the interest which may be in question. The interest exempted must, however, satisfy certain conditions necessary to its immunity—to wit (1) the grantee must enter into possession of the interest and thenceforward retain possession thereof to the entire exclusion of (*a*) the disponer or (*b*) of any benefit to him by contract or otherwise; (2) the only benefit the disponer retains in the property must be subject to said interest; and (3) the disposition creating the said interest must be one which creates no other interest.

"The only one of these conditions which gives rise to question in the present case is that which requires an entire exclusion of any benefit to the disponer by contract or otherwise. The words to 'the entire exclusion of the disponer or of any benefit to him by contract or otherwise' are identical with words used in section 11 (1) of the Customs and Inland Revenue Act 1889 (amending section 38 (2) of the Customs and Inland Revenue Act 1881) as to *inter vivos* gifts by a deceased not excluded from being brought into account for account duty (probate or inventory). They are also identical with words used (by incorporation) in section 2 (1) (*c*) of the Finance Act 1894.

"In the case of *Attorney-General* v. *Worrall*, [1895] 1 Q.B. 99, which related to a claim for account duty turning on the terms of section 11 (1) of the Customs and Inland Revenue Act 1889, a mortgagee made a gift to his son (who had acquired the mortgagor's equity of redemption) of the mortgage, and the son bound himself by a personal covenant to pay to his father £735 per annum during his life. It was held, *inter alia*, by the Court of Appeal that the father's right to receive the £735 per annum was a benefit by contract within the meaning of the said section 11 (1) although not reserved out of or charged on the subject of the gift. The decision was recognised by the Court of Appeal in the case of *Attorney-General* v. *Johnson*, [1903] 1 K.B. 617, which related to a claim for estate duty under section 2 (1) (*c*) of the Finance Act 1894. In the case of *Attorney-General* v. *Seccombe*, [1911] 2 K.B. 688, which was a claim for estate duty under section 2 (1) (*c*) of the Finance Act 1894, and in which the case of *Lord Advocate* v. *Stewart*, 1906, 8 F. 579, 43 S.L.R. 465, was followed, Hamilton (J.) said (p. 700) with reference to the words 'to the entire exclusion of,' &c.—'It is clear that the clause is not limited to a reservation out of the property passing under the gift. That point seems to me to be concluded against the defendant by the decision in *Attorney-General* v. *Worrall*, which was recognised in *Attorney-General* v. *Johnson*;' and further on (p. 701) the learned Judge said—'The only remaining question is as to the meaning of the latter words of the section "or of any benefit to him by contract or otherwise."' The word 'benefit' is not in my opinion confined to 'a benefit conferred by the deed of gift or to a benefit issuing out of the property thereby conveyed. A benefit issuing out of some other property or a benefit given by some separate and independent contract will come within the section.'

"Accepting as I do the view taken in these English cases of the meaning of the words 'or of any benefit to him by contract or otherwise' as occurring in section 11 (1) of the Act of 1889 and section 2 (1) (*c*) of the Act of 1894, I see no reason for attaching a different meaning to the same words as they occur in section 15 (1) of the Act of 1896. From this point of view the question for consideration in the present case is whether a 'benefit' arose to the defender from the contract of 1877 between him and Mrs Lyell, in pursuance of which the defender granted to Mrs Lyell the bond of annuity and disposition in security in exchange for her discharge of the moveable estate.

"It is to be noticed that the statute does not define the word 'benefit.' The words used are 'any benefit,' without limit or qualification as to either the nature or the value of the benefit. No more ample words could have been used.

"Now under the contract of 1877 something was obtained by the defender. As stated in article 3 of his statement of facts, he was desirous of having the trust brought to a close and the free residue of the moveable estate paid over to him. In order to achieve this object he was willing to give Mrs Lyell the substituted security for her annuity of part of his lands. He preferred having the money out of the trust to keeping his lands unencumbered. He succeeded in getting the arrangement made and carried through, and so got by contract a 'benefit' such as he desired. The value of the benefit arising to him thereby is not in question. I think it was a benefit arising to him by contract within the meaning of section 15 (1) of the 1896 Act.

"It does not appear to me that this view conflicts with that I have already expressed, to the effect that the annuity was not granted for 'full consideration in money or money's worth paid to the grantor.' Athough the defender did not get such full consideration in money or money's worth for his bond of annuity he did get a certain contractual *quid pro quo* in the discharge granted by his mother; and I think this contractual *quid pro quo* was a 'benefit' within the meaning of the statute, as it appears to have been according to his own contemplation.

"I am accordingly of opinion that the claim of the Crown to an account is well founded."

The defender reclaimed, and argued—The Lord Ordinary was wrong. The case fell under the Finance Act 1894 (57 and 58 Vict. cap. 30), sec. 3 (1), as the question arose upon the determination of an annuity granted for full consideration in money or money's worth. Here there was full consideration. As the result of granting the annuity the defender on the one hand became personally bound and his heritable property was burdened. On the other hand he got the moveable trust estate in immediate payment free of the burden of the annuity. The mere fact that in computing his assets after granting the annuity he was no richer was irrelevant, for that was always the case where full consideration was given. Questions of profit and loss on the transaction were irrelevant — *Lethbridge* v. *Attorney-General*, [1907] A.C. 19, *per* Lord Loreburn, L.C., at p. 23. *Attorney-General* v. *Smith-Marriott*, [1899] 2 Q.B. 595, was distinguished, for in it a burden was merely removed from one piece of property to another, while both pieces were in the defender's possession. But if the reclaimer failed on that ground he was entitled to succeed under the Finance Act 1896 (59 and 60 Vict. cap. 28), sec. 15 (1), for if no consideration was given by the defender he received no benefit. The transaction certainly conferred on Mrs Lyell an interest which she did not formerly possess, for she became a personal creditor of the defender and a creditor in a real security over his heritable property, neither of which rights were possessed by her till after the transaction. Section 15 (1) drew a distinction between the property in which an interest was created and the interest created. The disponer must be entirely excluded from the interest created, and from any benefit by contract or otherwise in the interest created, but he might still retain rights in the property out of which the interest was created—*Attorney-General* v. *Glossop*, [1907] 1 K.B. 163, *per* Farwell, L.J., at p. 177 *et seq.* *In re Finance Act* 1894 *and Cochrane*, [1906] 2 I.R. 200, was distinguished, as it was a decision with reference to account duty which was imposed in different terms from those under construction. The decisions upon analogous enactments, but upon different phraseology, could not be used as authorities in the present case as the Lord Ordinary had used them — *Glossop's* case (*cit.*), *per* Farwell, L.J., at p. 178. But if such decisions could be so used they did not support the Lord Ordinary, *e.g.*, *The Lord Advocate* v. *Stewart*, 1906, 8 F. 579, *per* Lord President Dunedin at p. 595, 43 S.L.R. 465. In *Attorney-General* v. *Worrall*, [1895] 1 Q.B. 99, the opinion of A. L. Smith, L.J., at p. 108, founded on by the Lord Ordinary, was *obiter*, and was inconsistent with the Lord President's opinion — *Stewart's* case (*cit.*). In the *Attorney-General* v. *Johnson*, [1903] 1 K.B. 617, the disponer did retain a benefit. So also in *Earl Grey* v. *Attorney-General*, [1898] 2 Q.B. 534, [1900] A.C. 124. *Attorney-General* v. *Seccombe*, [1911] 2 K.B. 688, was referred to.

Argued for the respondent (pursuer)—In such cases as the present the substance and the form of the transaction must be considered—*Lethbridge's* case (*cit.*), *per* Lord Atkinson at p. 26. If so, the defender could not succeed either under the Act of 1894 or the Act of 1896. The transaction was not a transaction in annuities but in the parties' rights in the succession. The defender had the heritable property and was vested in the moveable property which was burdened with the trust which secured the payment of the annuity to Mrs Lyell. Mrs Lyell discharged her annuity and got another annuity secured by the defender's personal obligation and the heritable estate to which he had succeeded. The discharge of Mrs Lyell showed that the transaction was in the rights of parties in the succession; thus the new annuity to Mrs Lyell came into being because "it was necessary that provision should be made for" the annuity left to her by John Mudie. Mrs Lyell never discharged her annuity; she merely discharged the trustees from the obligation to pay her. In fact it was clear from the discharge that the parties were simply rearranging their rights in the succession of John Mudie. Further, the bond of annuity and disposition in security which created the fresh annuity in Mrs Lyell's favour expressly bore that that annuity which the defender bound himself to pay was the annuity given to Mrs Lyell by John Mudie. In form the annuities were different, in substance they were the same. If so the defender was liable under section 2 (1) (*b*) of the Act of 1894. As regards section 3 (1) of the Act of 1894, the only grantor of the annuity to Mrs Lyell was John Mudie or his trustees. But if so the consideration must be paid to them, which was not the case here. If, however, the defender was regarded as the grantor, he did not receive full consideration; all he got was the release of the moveable estate from trust administration, and that could not be expressed in money or money's worth. Full consideration could always be expressed in money or money's worth. With regard to section 15 (1) of the Act of 1916, if no new right was created but the incidence of an existing annuity was merely shifted, that section did not apply, for it was essential under that section that an interest should be conferred which did not before exist. Further, the interest created must be one in possession, and consequently must be the annuity itself, for the disposition in security produced no interest in possession till the annuity was not paid. The disposition in security was not a disposition in the sense of section 15 (1). "Disposition" in that section was not used in the narrow technical sense — *Lord Advocate* v. *Roberts' Trustees*, 1857, 20 D. 449, *per* Lord Handyside (Ordinary) at p. 452; *Attorney-General* v. *Montefiore*, 1888, 21 Q.B.D. 461; *Duke of Northumberland* v. *Attorney-General*, 1905, A.C. 406, *per* Lord Macnaghten at p. 410 *et seq.* It covered in the widest way every sort of conveyance, and in the present case covered the whole of the deeds by which the alteration of the rights of parties were effected. If so there was a case of non-exclusion of benefit to the defender, for he got rid of the trust administration of

the moveable estate, and that was a benefit to him by contract though it was not expressible in money or money's worth. *Glossop's* case (*cit.*) was distinguished, for it was a decision on the words "and no other interest is created by the disposition." *Worall's* case (*cit.*) applied in terms. *Stewart's* case (*cit.*) was distinguished.

At advising—

LORD PRESIDENT—In this case the defender must, I think, deliver the account ordered by the Lord Ordinary. Under the settlement of the late Mr John Mudie the defender succeeded to the testator's heritable estate and to the free residue of his moveable estate. The latter was burdened with an annuity of £1000 payable to the defender's mother. The annuitant died on 18th February 1915, and at that date there would have been a cesser of an interest deemed to be a passing of property to the defender within the meaning of the first and second sections of the Finance Act 1894, and estate duty would have been payable if the provisions of the settlement had been carried out strictly according to the testator's directions. They were not. Immediately after the testator's death the defender was minded to have the moveable estate in his own hands free from the burden of the annuity, and accordingly it was proposed to the annuitant that she should take, in substitution for a security over the testator's moveable estate the personal bond of the defender and a bond and disposition in security over the part of the heritable property to which he had succeeded under the settlement. To that proposal the annuitant assented, and the transaction between her, the defender, and the testamentary trustees was embodied in the formal deeds which we have before us. They simply effected a change of security for the annuity granted by the testator. There was a substitution for the charge upon the moveable estate of the personal bond of the defender, and a charge upon part of the heritable estate to which the defender succeeded under Mr Mudie's settlement. How that can affect the Crown's claim for duty I am unable to see. Indeed it was not contended, if I have stated the correct view of the transaction of 1877, that duty was not payable. However this annuity was secured, there was upon the annuitant's death a cesser of her interest, property was within the meaning of the statute deemed to pass to the defender, and estate duty became payable on her death in terms of the first and second sections of the Finance Act. If I am correct in my reading of this transaction entered into between the defender, his mother, and the testamentary trustees in 1877, then it is quite obvious that section 3 (1) of the Statute of 1894 and section 15 (1) of the Act of 1896 have no application of any kind to this case. I am therefore for adhering to the Lord Ordinary's judgment, although probably not on precisely the same grounds which his Lordship has taken.

LORD JOHNSTON—As was said by Phillimore, J., in *Attorney-General* v. *Smith Marriott*, [1899] 2 Q.B. 595, at p. 602, "The whole matter turns upon one short question—Is this a new annuity or an old one with a varied security?" I am unable to answer the question in any other way than the Court of Queen's Bench did in that case, and for the same reasons.

I would at the same time add this other consideration—the annuity to fall under the exemption of section 3 (1) of the Act of 1894 must be granted "for full consideration in money or money's worth, paid to the . . . grantee for his own use or benefit." The term "paid" implies that payment be made in money or money's worth in the ordinary sense of the word payment, either by the annuitant or by someone on his or her behalf. I do not think that there was any such payment made here. The portion of the residue of Mr Mudie's estate retained to secure Mrs Lyell's annuity had already vested in the grantee indefeasibly. It was his money, subject to its retention to secure the annuity. The consideration (and this apart from the question whether it was full consideration) was not a payment in money or money's worth, but was merely the release of one security subject already belonging to the grantee from a burden, on another subject also belonging to him being substituted as the security for the same burden. Such transaction cannot be deemed payment in the sense of the statute.

LORD MACKENZIE—The question here is whether the claim of the Crown to an account is well founded or not. I agree with the Lord Ordinary that it is.

The first point argued for the reclaimer was that he is exempt from the provisions of section 2 (1) (*b*) of the Finance Act 1894 because of section 3 (1). It is the substance of the transaction, not the form, which has to be regarded, and it appears to me that once the true nature of the transaction is understood the defender's argument is seen to be untenable. The transaction was as regards the rights of succession enjoyed by the defender and his mother to the estate of the deceasd John Mudie. It was he who created the annuity in favour of Mrs Lyell which was secured on the trust money which belonged to the defender. Mrs Lyell was willing that her son should get the benefit of being released from the trust administration. She accordingly relieved the moveable estate of the burden of her annuity, and the defender provided for the annuity by giving her security over the heritable property he succeeded to from John Mudie. It may be that the same argument would have been equally good if the defender had given security over the heritage belonging to him, but it is not necessary to go into that. It was the same annuity throughout. It may have changed its form but not its substance. The exemption in section 3 (1) is in these circumstances inapplicable. The annuity was not granted in virtue of the transaction, for there was no "grantor." The annuity depended upon the antecedent right. Nor can it be said that the defender got "full consideration." No doubt he got some benefit in the increased rate of interest which the trust funds would yield in his

hands as compared with the rate earned by the trustees. The release, however, from trust administration is not "money or money's worth," which is the provision in the sub-section.

The second point maintained for the defender is founded on section 15 (1) of the Finance Act of 1896. If what has already been said is correct no separate question arises upon this provision, for if by the transaction no annuity was granted or conferred (which is the view I take) then the section does not apply. But further, if the transaction be regarded as a whole, which is the true view, then it is not only the bond of annuity and disposition in security by the defender which must be taken into account. The arrangement by which Mrs Lyell disburdened the moveables was part of the transaction, and this, though not full consideration, did give a benefit to the defender. This is sufficient to prevent him from making a successful appeal to section 15 (1).

LORD SKERRINGTON — The transaction upon which the defender founds as saving him from liability for estate-duty amounted to an exchange of one annuity for another. It seems to me hardly accurate to say that it was a mere change in the security for an annuity. An annuity which was constituted by the will of a testator imposing a duty of payment upon his testamentary trustees and which was secured by moveable trust estate, of which the defender was beneficial owner, was extinguished in consideration for the granting of a new annuity constituted by the defender's personal obligation and secured over his heritable property. Accordingly it seems to me that there were here two annuities and not one annuity. Further, the consideration for the granting of the new annuity was full and complete, being the discharge of an annuity of the same amount and equally well secured. I do not understand on what view it was argued that there was not here full consideration. That, however, is not enough. In order to avoid liability for estate duty there must be "full consideration in money or money's worth paid to the vendor or grantor for his own use or benefit." If the original annuity had been granted for a full money consideration I should have thought that its discharge constituted "full consideration in money or money's worth." The original annuity, however, was not granted in return for any consideration of a pecuniary nature. Accordingly I do not think that its discharge constituted a consideration in money or money's worth for the granting of the new annuity. That seems to me the true ground upon which the defender's case under section 3 (1) of the Act of 1894 fails. The expression "full consideration in money or money's worth" is familiar in earlier legislation, and constantly recurs in the Finance Act of 1894. Thus by section 7 (1) (*a*) no allowance is made for debts incurred by the deceased, however onerous, unless he received "full consideration in money or money's worth." If the argument of the reclaimer were well founded a person might in his lifetime convert by a mere process of conveyancing an obligation incurred in consideration of marriage, and prestable at his death, into an obligation incurred for money or money's worth.

The reclaimer founded also upon section 15 (1) of the Finance Act of 1896. My reading of that exemption clause is that it applies only where the creator of the annuity reserves or creates no benefit for himself from the transaction. I have already expressed the opinion that Mr Lyell obtained full consideration for the new annuity which he granted. It follows that this clause of exemption does not help him.

The result is that estate duty must be paid in respect of the provisions of section 2 of the Finance Act of 1894.

The Court adhered and remitted to the Lord Ordinary to proceed.

Counsel for the Pursuer (Respondent)—The Lord Advocate (Clyde, K.C)—R. C. Henderson. Agent—Sir J. Hamilton Grierson, Solicitor of Inland Revenue.

Counsel for the Defender (Reclaimer)—Sandeman, K.C. — Christie, K.C. — W. T. Watson. Agents—Guild & Guild, W.S.

HIGH COURT OF JUSTICIARY.

Thursday, December 20.

(Before the Lord Justice-General, Lord Mackenzie, and Lord Skerrington.)

M'DERMOTT *v.* STEWART'S TRUSTEES.

Justiciary Cases — Statutory Offence — Poaching Acts—Procedure—Night Poaching Act 1828 (9 *Geo. IV, cap.* 69), *sec.* 1—*Evidence of Previous Conviction Led in causa Prior to Conviction of Accused of Offence Charged—Summary Jurisdiction (Scotland) Act* 1908 (8 *Edw. VII, cap.* 65), *sec.* 34 (2), (4) *and* (8).

A summary complaint charging a contravention of the Night Poaching Act 1828 libelled the offence as a second offence, and bore that the accused was liable to the penalties set forth in section 1 of that Act as for a second offence. Evidence was led *in causa* in proof of the previous conviction. *Held*, in a suspension, (*dis.* Lord Skerrington) that the previous conviction was libelled as an aggravation of the offence charged, not as a substantive part thereof, and could not competently be proved *in causa*, but ought to have been proved after conviction of the offence charged.

Justiciary Cases—Evidence—Previous Conviction—Application by Officer not Present when Accused Convicted, and not Official of the Prison where Accused was Confined —Summary Jurisdiction (Scotland) Act 1908 (8 *Edw. VII, cap.* 65), *sec.* 34 (4) *and* (5).

In a summary trial on a charge of night poaching an extract of a previous conviction was applied to the accused