do not, as at present advised, at all doubt that they might do so, and that the defenders, the Insurance Company, would be in safety to accept a surrender, or even to make advances as against the policies in terms of their rules. Such transactions would—as explained in the case of *Schumann*—not necessarily be inconsistent with the trust, and indeed might be quite necessary for its protection. Nor, apart from notice of any intended breach of trust, would the Insurance Company be bound to assume that anything of that kind was intended. I am disposed to assent to the argument that all this may be made to follow from the case of *Schumann*.

"But the object of the present action is to put an end to the trust altogether, the declarator sought being that the husband and grantor is entitled to revoke it, or at least to do so with the assent of the trustees, and his wife and children, who are the existing beneficiaries. This, it is obvious, is quite a different matter, and one which cannot be considered apart from the cases of *Low* v. *Low's Trustees*, November 20, 1877, 5 R. 185, and *Peddie* v. *Peddie's Trustees*, February 6, 1891, 18 R. 491. In both of those cases opinions were expressed and received effect adverse to the competency of revocation in such circumstances as exist here—opinions going in effect to this, that the doctrine of the cases of *Torry Anderson* and *Menzies* and *Murray* applies equally to postnuptial and antenuptial provisions. If, therefore, the trust-deed here is to be held as delivered—and I understand the pursuer does not now dispute that that is so—I am unable to hold that the pursuer's wife was entitled *stante matrimonio* to discharge the provisions in her favour. The pursuer does not propose to amend his summons, nor does he make any motion for proof. I have therefore no alternative but to sustain the first plea-in-law for the defenders and dismiss the action."

The pursuer appealed, and argued—The deed of provision did not constitute a liferent in favour of the wife and a fee in favour of the children; it was a deed the immediate effect of which was to place the fee wholly in the power of the wife. In short, under the deed the wife was entitled to the fee of the estate—*Allan's Trustees* v. *Allan*, December 12, 1872, 11 Macph. 216; *Gibson's Trustees* v. *Ross*, July 12, 1877, 4 R. 1038. In these circumstances the pursuers, with the consents mentioned in the summons, were entitled to revoke the deed. The cases of *Low* and *Peddie* founded on by the Lord Ordinary were cases in which a liferent provision in favour of the wife was constituted or might emerge.

Argued for defenders—The cases of *Low* and *Peddie* conclusively settled that where a husband makes a reasonable provision for his wife during her life by conveyance to trustees, he is not thereafter entitled to revoke it although he has her consent or any other consents. There was no distinction between a provision by liferent and a provision by fee; if it were reasonable it was not revocable, even if it consisted of a fee—*Galloway* v. *Craigs*, July 17, 1861, 4 Macq. 267.

LORD JUSTICE-CLERK—My opinion in this case is that the judgment of the Lord Ordinary is right, and I have nothing to add to what he says in his note.

LORD TRAYNER and LORD MONCREIFF concurred.

LORD YOUNG was absent.

The Court adhered.

Counsel for Pursuer—Guthrie, Q.C.—W. Watson. Agent—Thomas Hart, L.A.

Counsel for Defenders—Fleming—Cullen. Agents—Tods, Murray, & Jamieson, W.S.

Thursday, June 28.

SECOND DIVISION.

ROBERTSON'S TRUSTEES *v.* MACGREGOR.

Succession—Mutual Settlement—Husband and Wife—Provisions for Children in Mutual Settlement — Contractual or merely Testamentary — Mutual Benefits Conferred by Spouses—Revocation—Revocability of Provisions to Children.

By mutual trust-disposition and settlement dated in 1883, a husband and wife, who had not executed any marriage-contract, in order to settle the succession to their means and estate, disponed and assigned to trustees the whole means and estate that should belong to them at the date of their respective deaths. The purposes of the trust were, on the death of the first deceaser of the spouses, to give the survivor the liferent of the predeceaser's estate, and on the death of the survivor to divide the whole estates of the two spouses equally among their children. The deed contained the following clause:—"And we reserve power also jointly, but not otherwise, to alter, innovate, or revoke these presents in whole or in part, it being hereby declared that should these presents stand unrevoked at the death of the first deceaser of us, then it shall not be competent to the survivor of us to alter or recal them in any way."

The wife died in 1884. She was survived by the husband and six children. She left property worth over £10,000. After receiving the liferent of his wife's estate for fifteen years the husband died in 1899, leaving a trust-disposition and settlement dated 10th October 1898, by which he revoked the mutual settlement so far as it dealt with his own estate, and left his whole means and estate to trustees to be divided among the children in certain proportions. The husband left property worth over £20,000.

Held that the mutual settlement was remunerative and onerous, and was contractual in its nature, and that the revocation, alteration, and innovation thereof contained in the husband's trust-disposition and settlement were invalid and ineffectual.

By mutual trust-disposition and settlement dated 14th September 1883 John Robertson, Collector of Inland Revenue, sometime in Greenock, then in Manchester, and latterly in Edinburgh, and Mrs Isabella Farquharson Begg or Robertson, his wife, who had not executed any marriage-contract, in order to settle the succession to their means and estate, disponed and assigned to and in favour of the survivor of them, and to James Collie, advocate in Aberdeen, and the survivor of them, as trustees for the purposes therein mentioned, and to their assignees, the whole heritable and moveable means and estate then belonging or that should belong to them at the date of their respective deaths, and appointed their said trustees to be their executors. The trust purposes were, *inter alia*, as follows:—"(Third) that on the death of the first deceaser of us the said trustees shall give to the survivor the liferent use and interest of the residue of the predeceaser's means and estate, both heritable and moveable hereby conveyed," and "(fourth) that on the death of the survivor of us the residue of our whole respective means and estates, both heritable and moveable, shall then be divided among our children equally, share and share alike, and the survivors of them, it being hereby declared that the lawful issue of any of them predeceasing the foresaid period of division shall come in their parent's place, and shall take equally among them the share which would have fallen to their parent if in life." The mutual trust-disposition and settlement further contained the following clause:—"And we reserve our respective liferents of the means and estate hereby conveyed; and we reserve power also jointly, but not otherwise, to alter, innovate, or revoke these presents in whole or in part, it being hereby declared that should these presents stand unrevoked at the death of the first deceaser of us, then it shall not be competent to the survivor of us to alter or recal them in any way."

Mrs Robertson died on 6th December 1884, and was survived by her husband and four daughters and two sons. She left moveable estate of the nett value of £10,293, 9s. 1d. She died possessed of no heritable estate. The estate left by Mrs Robertson was derived from her father, John Begg, Lochnagar (who died on 8th February 1882), and formed a separate estate, from which her husband's *jus mariti* was excluded in terms of the provisions of the Married Women's Property Act 1881, and in particular of section 3, sub-section 2, thereof. James Collie declined to accept office as trustee and executor, and John Robertson was confirmed as sole trustee and executor of his wife, and entered upon the liferent possession of her means and estate in terms of the mutual trust-disposition and settlement.

By deed of assumption and conveyance and trust-disposition and settlement dated 10th October 1898, John Robertson, as sole surviving and accepting trustee and executor under the mutual trust-disposition and settlement, nominated and appointed four new trustees and executors under the mutual trust-disposition and settlement so far as relating to his deceased wife's estate; and he conveyed to himself and them, and the survivors and survivor of them who should accept office, for the purposes expressed in the mutual trust-disposition and settlement, the whole trust-estate, means, and effects left by his said wife as aforesaid, and then vested in him or under his control as sole surviving and accepting trustee and executor foresaid, together with the whole titles, vouchers, and instructions thereof. And further, on the narrative that he was advised that notwithstanding the terms of the mutual trust-disposition and settlement he might nevertheless still vary the purposes and provisions thereof in so far as they related to his own means and estate, and that he had resolved upon altering the same in manner thereinafter set forth, he thereby revoked the said mutual trust-disposition and settlement to the extent and effect to which it related to his own means and estate. He also nominated and appointed the same persons to be trustees and executors to carry out the purposes of his own will, and assigned and disponed to them and the survivors or survivor of them who should accept office, the whole means and estate, heritable and moveable, then belonging to him, or which should belong to him at the time of his death, or of which he should have the power of disposal, or with which he might be entitled to deal beneficially in any manner of way, in trust always for the ends, uses, and purposes thereinafter set forth. He directed his said trustees and executors, after payment of his debts and of the Government duties and trust expenses, to divide the residue of his means and estate into nine equal parts or shares, and to hold, pay, and apply them as follows:—(First) two-ninth parts or shares to be paid over and conveyed absolutely to each of his daughters, Mrs Kate Isobel Robertson or MacGregor, and Mrs Alice Begg Robertson or Alder; (second) two-ninth parts or shares to be held by his trustees for behoof of his daughter Mrs Lottie Elizabeth Robertson in liferent, and her children in fee; (third) two-ninth parts or shares to be held by his trustees for behoof of his daughter Mrs Jeannie Begg Robertson or Bond in liferent, and her children in fee; and (fourth) the remaining one-ninth equal part or share to be held by his trustees for behoof of his grandson Eric Ian Robertson, a pupil, until he attained the age of twenty-five years, and thereafter to be paid over to him.

Mr Robertson died on 1st August 1899. He was survived by the said four daughters, and by the said grandson Eric Ian Robertson, who was the only child of the late John Begg Robertson, M.B., C.M., second son of the said Mr and Mrs Robertson. Alex-

ander Robertson, the elder son of the said Mr and Mrs Robertson, died unmarried and intestate on 23rd August 1885. Mr Robertson left means and estate (inclusive of his wife's estate liferented by him as aforesaid) of the value of about £34,000.

In these circumstances, a question having arisen as to Mr Robertson's power to alter the settlement of his estate contained in the mutual trust-disposition and settlement, the present Special Case was presented for the opinion and judgment of the Court.

The parties to the special case were (1) the trustees and executors under the deed executed by Mr Robertson on 10th October 1898; (2) Mrs Kate Isobel Robertson or Macgregor; (3) Mrs Alice Begg Robertson or Alder's marriage-contract trustees, Mrs Alder, and her husband; (4) Mrs Jane Begg Robertson or Bond's marriage-contract trustees; (5) Mrs Lottie Elizabeth Robertson's marriage-contract trustees, Mrs Robertson, and her husband; and (6) Mrs Jessie Mildred Hanson or Robertson as tutor of Eric Ian Robertson.

The questions of law were—"Was Mr Robertson entitled after the death of his wife to alter, innovate, or revoke the settlement of his estate contained in the mutual trust-disposition and settlement executed by him and his wife on 14th September 1883, and were the revocation, alteration, and innovation thereof contained in the deed of assumption and conveyance and trust-disposition and settlement executed by him on 10th October 1898 effectual? or, Does the distribution of his estate still fall to be regulated by the provisions of said mutual trust-disposition and settlement?"

Argued for the first, second, and third parties—The mutual trust-disposition and settlement was revocable after the wife's death by the husband in so far as it regulated the disposal of his means and estate after his death. The deed was not a contract throughout, it was a contract only so far as it applied to husband and wife. As regards the children, the deed was testamentary—it was simply two wills incorporated in one deed. Mr Robertson was therefore entitled after the death of his wife to alter the testamentary part of the deed so far as it dealt with his own property—*Mitchell* v. *Mitchell's Trustees*, June 5, 1877, 4 R. 800; *Melville* v. *Melville's Trustees*, July 15, 1879, 6 R. 1286.

Argued for the fourth, fifth, and sixth parties—The provisions of the mutual trust-disposition and settlement as to the division of Mr Robertson's estate on his death were contractual and irrevocable except by joint consent of the spouses. The husband's revocation and alteration were ineffectual and null and void, and the succession to his estate fell to be regulated by the provisions of the mutual settlement. The provisions of that deed were reasonable; the wife had contributed above £10,000, and the husband above £20,000. It was a remunerative contract, as the husband had taken the enjoyment of the liferent of the wife's estates for fourteen years. He could not thereafter revoke the benefits to the children which had been practically purchased by the wife. The whole trend of authority was in favour of their contention—*Anderson* v. *Garraway*, January 27, 1837, 15 S. 435; *Hogg* v. *Campbell*, February 24, 1863, 1 Macph. 647; *Kidd* v. *Kidd*, December 10, 1863, 2 Macph. 227; *Davidson* v. *Mossman*, May 27, 1870, 8 Macph. 807; *Craik's Trustees* v. *Mackie*, June 24, 1870, 8 Macph. 898; *Welsh's Trustees* v. *Welsh*, October 24, 1871, 10 Macph. 16; *Muir* v. *Lamb*, March 10, 1880, 7 R. 688. The cases of *Mitchell's Trustees* and *Melville* were quite distinct from the present. In these cases the husband gave everything and the wife nothing. The agreement was therefore one-sided and unreasonable, and was not remunerative as far as the husband was concerned. In *Mitchell's Trustees* also there were no children of the marriage.

LORD TRAYNER—Mr and Mrs Robertson executed a mutual trust-disposition and settlement in September 1883, and at that time Mr Robertson was possessed of considerable estate and Mrs Robertson was possessed of over £10,000 in her own right. That being their position, they made this trust-settlement, by which, to state it generally, they united their estates and gave to the survivor the liferent of the whole estate, and directed the fee of it to be divided among their children equally, share and share alike. That mutual settlement contained a clause that they reserved power jointly, but not otherwise, to alter or revoke "these presents." That, which was not an unusual clause, was followed by what is somewhat unusual—a declaration "that should these presents stand unrevoked at the death of the first deceaser of us, then it shall not be competent to the survivor of us to alter or recal them in any way."

The question here is, whether, notwithstanding such a clause as that, Mr Robertson, who was the survivor, was entitled to alter by will the mode in which his estate was directed to be distributed by the mutual trust-disposition and settlement.

The principles laid down in a large number of cases, many of which were cited to us, are not either doubtful or difficult to apply. In a mutual settlement which is purely testamentary a clause binding the parties not to alter would not be effectual, because a testament is always revocable up to the date of the death of the granter. On the other hand, it is just as well recognised that in a mutual settlement there may be a condition rendering it irrevocable against which neither party can operate successfully without the consent of the other, and the question here is whether this deed is so contractual in its character as to exclude the possibility of revocation even in so far as it dealt with the estate of Mr Robertson, or whether he was entitled to revoke it in so far as regarded that estate, and to give directions anew for its distribution. I am of opinion that the mutual settlement was of the nature of a contract. There is a distinct

contract made which Mr Robertson had no power to revoke. It was distinctly remuneratory, because Mr Robertson got in return for his surrender of his right to dispose of his estate as he pleased the liferent of his wife's estate, which was considerable—I have mentioned it was over £10,000—and Mr Robertson enjoyed that from his wife's death in 1884—a period of 16 or 17 years. It cannot be said that the contract he entered into was one for which he did not receive valuable consideration, and so far as remuneration or consideration enters into the question of whether it is a contract or a testament, everything in this case points to the fact that it was contract and not pure testament.

If that view of the mutual trust-disposition and settlement is right, there is an end of the question, because wherever we find that the parties have contracted that they shall join their estates and destine them in a certain way, and do that for special benefits conferred each upon the other, and declare that this destination is not to be revocable by the one without the consent of the other, then it is irrevocable and must have effect.

LORD MONCREIFF—I am quite of the same opinion, and I have very little to add. I think this deed is contractual. It undoubtedly is contractual to certain effects, and I think it is contractual to all effects. There are all the elements which point to a contract. In the first place, it is distinctly remunerative; the wife contributed £10,000. That is an important element in such cases, because it prevents the idea of provisions made for the wife being of the nature of a donation. The wife contributed £10,000, and in point of fact the husband enjoyed the liferent of this £10,000 for fourteen years; and it is after the expiry of that time that he desires to revoke the deed, and to refuse to give the equivalent for which, I assume, the wife stipulated.

Then when we come to consider for whose benefit the spouses contributed, we find that they are the children of the marriage, and that is a matter of some importance in cases of this kind. Then there is the clause of revocation to which Lord Trayner has drawn attention, in which it is in the most pointed terms provided that while power to revoke jointly is reserved, there shall be no power after the death of the one of the parties to alter "these presents in whole or in part, it being hereby declared that should these presents stand unrevoked at the death of the first deceaser of us, then it shall not be competent to the survivor of us to alter or recal them in any way." Now, no doubt such a clause does not receive effect where plainly the deed is not of a contractual character, but I think that the existence of a clause of this kind is of considerable importance in judging whether the parties intended and understood the deed to be of the nature of a contract. On the whole matter I am of opinion that we should hold that Mr Robertson had no power to revoke this deed.

LORD JUSTICE-CLERK—I am of the same opinion. I think there are in this case all the elements which go to make up what must be held to be a contractual arrangement. Both parties contribute in a full measure to provide the fund out of which each of them was to benefit in the event of the predecease of the other, when they both agree that certain provisions shall be made for other people. It is essentially a family arrangement, and the wife made a large contribution, which, as Lord Trayner has pointed out, was long enjoyed by the husband, an incident which was in contemplation by the parties. I think the whole document constitutes a contract between the parties, and that each of them intended that after his or her decease it should not be altered. And then when we come to look at the clause which states their intention, it is not only consistent with that idea, but it is expressed in the most emphatic and complete terms for the purpose of indicating that it is not to be interfered with after the death of either of them. On the whole matter I have come to the conclusion that the questions should be answered as your Lordships have suggested.

LORD YOUNG was absent.

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

Counsel for the First, Second, and Third Parties—H. Johnston, Q.C.—Lyon Mackenzie. Agents—Fletcher & Morton, W.S.

Counsel for the Fourth, Fifth, and Sixth Parties—Guthrie, Q.C.—Chree. Agent—William Fletcher, W.S.

Friday, June 29.

SECOND DIVISION.

[Sheriff of Chancery.

LADY HOWARD DE WALDEN, PETITIONER.

Title to Heritage—Completion of Title—Free Liferent Annuity Granted by Deceased Heir of Entail not Infeft—Conveyancing (Scotland) Act 1874 (37 *and* 38 *Vict. cap.* 94) *secs.* 3 *and* 10—"*Lands*"—"*Estate in Lands*"—*Entail—Provision to Widow—Entail Act* 1824 (5 *Geo. IV. c.* 87) (*Aberdeen Act*) *sec.* 1—*Right in Security—Heritable Security.*

An heir of entail, neither infeft nor served, and having only a personal right to the entailed lands, died after he had disponed to his wife a free liferent annuity during all the days of her life after his decease furth of the entailed lands, under the powers conferred on him by section 1 of the Aberdeen Act.

Held that it was not competent for the widow to complete her title to the liferent annuity in the manner provided by section 10 of the Conveyancing (Scotland) Act 1874, on the ground (1)