out the rights of parties in the ordinary course of conveyancing; and for the reasons already given I am of opinion that a disponee before 1874 must have completed his title by infeftment of and under the superior. I am therefore of opinion that the first question must be answered in the affirmative.

The question between the first and the third parties depends upon the same principles. I do not think it necessary to examine the title of the third parties in detail, because the point of distinction between it and that which we have just considered may be stated in a sentence. The prohibition against subfeuing is substantially the same, and the contingency of entry-money becoming payable during the life of the last-entered vassal is expressly provided for, but although the original feuar is bound to enter within three months of the date of the feu right, there is no corresponding condition expressed with reference to his disponees; but, on the other hand, the prohibition is fortified by a clause of irritancy by force of which the disponee may be compelled to enter or to forfeit his right. The clause of irritancy brings this case directly within the authority of *Dick Lauder* v. *Thornton*, and that is enough for the decision. I am therefore of opinion that the second question also must be answered in the affirmative.

The LORD PRESIDENT, LORD ADAM, and LORD M'LAREN concurred.

The Court answered both questions in the affirmative.

Counsel for the First Parties—Wilson, K.C.—Chree. Agents—Menzies, Black, & Menzies, W.S.

Counsel for the Second and Third Parties—Campbell, K.C.—D. Anderson. Agents—Bruce, Kerr, & Burns, W.S.

Tuesday, January 10, 1905.

FIRST DIVISION.

[Lord Stormonth Darling, Ordinary.

H. M. ADVOCATE *v.* ALEXANDER'S TRUSTEES.

Revenue—Estate-Duty—Property Passing on Death—Deductions Allowable as Debts—Marriage Contract Provisions—Debt Incurred "for Full Consideration in Money or Money's Worth Wholly for the Deceased's Own Use and Benefit"—Counter-Obligations in Marriage Contract—Aliment of Widow from Date of Death of Husband till First Term thereafter—Finance Act 1894 (57 *and* 58 *Vict. cap.* 30), *sec.* 7.

By antenuptial contract of marriage A bound himself, his heirs and successors, to pay to the marriage contract trustees during the lifetime of his intended wife in the event of her surviving him—(1) a free yearly annuity of £1500, and (2) a sum of £2000 for her behoof in lieu of household furniture, payable at the first term after his death. He also bound himself to aliment her from the day of his death till the first term of Whitsunday or Martinmas thereafter, suitably to his station in life. On her part A's intended wife conveyed to the trustees a sum of £11,000, which she had in her own right, and also her contingent interest in a further sum of £6000, and that for the following purposes, viz.—Payment of the income to the spouses and the survivor, division of the capital amongst the children, and failing children disposal as she might direct. She also accepted the provisions made by her husband in her favour as in full satisfaction of her legal rights in the event of her survivance.

In his son's marriage contract A bound himself, his heirs and executors, to pay to the trustees therein mentioned a sum of £30,000 as a provision for the intended spouses and the children of their marriage, declaring, however, that the trustees should not be entitled during his lifetime to demand payment of that sum so long as he regularly paid £1000 per annum in full. On the other part corresponding provisions were made by the son's intended wife and her father in favour of the spouses and the children of the marriage.

Held on the death of A (1) that neither the provisions made by him in his own marriage contract nor those undertaken by him in his son's marriage contract were debts incurred "for full consideration in money or money's worth wholly for the deceased's own use and benefit" within the meaning of section 7 (1) of the Finance Act 1894, and consequently that, in determining the value of his estate for the purpose of estate-duty, no deduction fell to be made in respect of these provisions; and (2) that no deduction was to be allowed in respect of the obligation undertaken by him in his marriage contract to provide *interim* aliment for his widow.

The Finance Act 1894 (57 and 58 Vict. c. 30), sec. 7, enacts—"Value of Property.—(1) In determining the value of an estate for the purpose of estate-duty allowance shall be made for reasonable funeral expenses and for debts and encumbrances, but an allowance shall not be made (*a*) for debts incurred by the deceased or encumbrances created by a disposition made by the deceased, unless such debts or encumbrances were incurred or created *bona fide* for full consideration in money or money's worth wholly for the deceased's own use and benefit, . . . and any debt or encumbrance for which an allowance is made shall be deducted from the value of the land or other subjects of property liable thereto."

This was an action by the Lord Advocate for and on behalf of the Commissioners of Inland Revenue against the testamentary trustees and executors of the deceased

Major-General Sir Claud Alexander of Ballochmyle, in the county of Ayr, Baronet.

By antenuptial contract of marriage dated 11th February 1863, Sir Claud Alexander, in contemplation of his marriage, and in consideration of a conveyance by his intended wife, then Miss Speirs, afterwards Lady Alexander, bound himself, his heirs and successors, to pay to the trustees under the contract, (1) during the lifetime of his wife, in the event of her surviving him, an annuity of £1500 free of all deductions, and (2) a sum of £2000 in lieu of household furniture, payable the first term after his death should she survive him. He also bound himself to aliment her from the date of his death till the first term of Whitsunday or Martinmas thereafter, suitably to his station in life, and to provide her with mournings.

In security of these obligations he conveyed to the trustees certain portions of the lands of Ballochmyle, it being provided that the sums above mentioned should be held by the trustees and paid by them to Lady Alexander.

On her part Miss Speirs conveyed to the trustees a sum of £11,000 belonging to her, and also her own and her mother's interest in a sum of £6000 under her mother's antenuptial contract, for the following purposes, namely—(1) Payment of the free yearly proceeds to the spouses and the survivor, (2) for division of the capital amongst the children, and (3) in the event of there being no issue for disposal of the capital as she might direct. She further accepted the provisions made in her favour as in full satisfaction of all her legal rights in the event of her survivance.

In the antenuptial contract of marriage entered into between his son Claud Alexander, younger of Ballochmyle, and Lady Diana Montgomerie, daughter of the then Earl of Eglinton, Sir Claud Alexander bound himself to pay to the trustees therein mentioned a capital sum of £30,000 as a provision for the spouses and the child or children of the marriage. The trust purposes were payment of the income to Claud Alexander and of an annuity of £750 out of the income to Lady Diana should she survive her husband. Subject to these provisions the capital and income were to be held for the child or children of the marriage, and failing children for the survivor of Sir Claud and his son. It was further stipulated that the trustees should not be entitled during Sir Claud's lifetime to demand payment of the £30,000 so long as he regularly paid £1000 a-year, the annual income being restricted to that amount.

On the other part Lady Diana conveyed to the trustees the whole estate then belonging to her or that she might acquire *stante matrimonio* (including £5000 belonging to her, and £12,000 contingently restrictable to £9000, being her share of a provision of £36,000 for younger children under her father's marriage-contract). She also bound herself, in the event of her succeeding to the entailed estate of Montgomerie, to disentail and convey it to the trustees. In addition thereto Lord Eglinton agreed to pay Lady Diana £400 a-year during the joint lives of Sir Claud Alexander and himself. In implement of the obligations undertaken by him in his son's marriage-contract Sir Claud, by bond and disposition in security dated 6th December 1889, and recorded 13th February 1890, bound himself and his heirs, executors, and representatives whomsoever to pay to the trustees acting under his son's marriage contract the sum of £30,000, and in security thereof conveyed to them the lands and estate of Ballochmyle.

Sir Claud Alexander died on 23rd May 1899 survived by Lady Alexander and his son the said Claud Alexander, who was an only child.

By his trust-disposition and settlement, dated 29th February 1888, and, with three codicils thereto, recorded in the Books of Council and Session 5th June 1899, he conveyed to certain trustees, who were also his executors, his whole estate, and directed them to convey to his son Claud Alexander the estate of Ballochmyle and other heritable property in Ayrshire, and also the residue of his whole means and estate after implementing the prior purposes of the trust.

By the last of the three codicils, on the narrative that his son had entered into a second marriage, he recalled the bequest of the lands of Ballochmyle and others, and of the residue, and directed his trustees to hold them in trust for his son in liferent, and for his grandson Wilfred Archibald Alexander and the heirs of his body in fee, whom failing, other substitute heirs; declaring that his son should have power to call upon the trustees (1) to hand over to him for his own disposal a sum not exceeding £20,000, and (2) to settle a suitable jointure on his widow.

Upon the deceased's death his trustees and executors gave up an inventory of his personal and moveable estate, which was duly recorded, and in appropriate accounts annexed to it they specified other property, in respect of which estate duty was payable on his death. The gross value of his personal and moveable estate in the United Kingdom was stated in the inventory at £91,104,16s. 11d.; and the value of such estate abroad, £9116, 0s. 6d., amounting together to £100,220 17s. 5d. From this a deduction was made on account of (1) debts as per schedule £8014, 3s. 4d., and (2) funeral expenses £190, 7s, 9d.—£8204, 11s. 1d.—leaving a net personal and moveable estate of £92,016, 6s. 4d. The value of the heritable estate to be summed up with the value of the personal estate was stated in the accounts at £81,258, 6s. 4d., less deductions amounting to £41,000, or altogether a sum of £40,258, 6s. 4d., thus bringing out in the aggregate a net dutiable value of £132,274, 12s. 8d.

In the schedule of debts which were deducted from the personal and moveable estate in the inventory were included the following entries:—"115. Cost of aliment of the deceased's widow from date of death to November 1899, when her provisions became payable, and mournings, £1000. 116. Amount of provisions covenanted to be paid by deceased to his widow by their antenuptial contract of marriage, dated 11th February 1863, for the considerations therein specified,

and at the first term of Whitsunday or Martinmas happening after his death, £2000." In preparing an estimate of the gross principal value of the heritable estate a deduction from its gross annual value was made of the following item:—"Annuity of £1500 in favour of Eliza Lady Alexander, deceased's widow, secured by deceased over Ballochmyle estate or a portion thereof, by his antenuptial contract of marriage, dated 11th February 1863, for the considerations therein specified, £1500;" and in bringing out the net principal value of the heritable estate for assessment to duty a deduction was made on account of the sum of £30,000 as a debt constituted by the deceased's bond and disposition in security, dated 6th December 1889, in favour of the trustees in the antenuptial contract of marriage between Claud Alexander younger and Lady Diana Montgomerie.

Objections having been taken by the Commissioners of Inland Revenue to these deductions, the present action was raised at the instance of the Lord Advocate on behalf of the Commissioners to have the defenders ordained to deliver a full account of the estate of the deceased, and concluding, *inter alia*, that the deductions objected to should be disallowed. A claim was also made for settlement estate duty in respect of the lands of Ballochmyle settled in terms of the codicil above mentioned and of the residue, deducting therefrom the sum of £20,000, payment of which could be demanded in terms of the codicil.

The pursuer pleaded—"(1) The deductions which the defenders claim a right to make in assessing the value of the deceased's property for the purpose of duty are not such as can be allowed on a sound construction of the Finance Act 1894. (2) The lands of Ballochmyle and others, and the residue of the deceased's whole estates, being property settled under the deceased's testamentary writings, settlement estate duty is due at the rate specified by statute."

The defenders pleaded—"(2) On a sound construction of the Finance Act 1894, the defenders are entitled to make the deductions claimed in assessing the value of the deceased's property for the purpose of estate duty. (3) On a sound construction of section 5 of the Finance Act of 1894, settlement estate duty is not due on the lands of Ballochmyle and others, and on the residue of the deceased's property, in respect that the said lands and the said residue are not 'settled property' within the meaning of section 22 of said Act."

On 22nd November 1904 the Lord Ordinary (Lord Stormonth Darling) pronounced an interlocutor ordaining the defenders to deliver to the pursuer the account called for in the summons both as regarded estate duty and settlement estate duty, and found the pursuer entitled to expenses.

Opinion.—"The first question in this case is whether, in determining the value of the late Sir Claud Alexander's estate for the purpose of estate duty, his trustees are entitled to make certain deductions in respect of provisions contained in his own marriage contract and in that of his son, to which he was a party. The question turns on section 7 of the Finance Act 1894, which provides that allowance shall be made for 'debts and incumbrances,' but not 'for debts incurred by the deceased, or incumbrances created by a disposition made by the deceased, unless such debts or incumbrances were incurred or created *bona fide* for full consideration in money or money's worth, wholly for the deceased's own use and benefit." The obligations undertaken by Sir Claud in his own and his son's marriage contract were undoubtedly debts, and, in so far as secured over his estate, they were also 'incumbrances.' But the trustees must show that the debts or incumbrances are of a kind which satisfy the other requirements of section 7. They endeavour to do this, as regards Sir Claud's own contract, by pointing to the fact that his intended wife brought into settlement a considerable fortune, which she had partly in her own right and partly in expectancy, and that she accepted Sir Claud's provisions in her favour as in full satisfaction of her legal rights in the event of her surviving him. As regards his son's contract, they find the 'full consideration in money or money's worth' required by section 7 for the provision of £30,000 made by Sir Claud in the counter-stipulations undertaken by the lady and her father Lord Eglinton in favour of the spouses and the children of the marriage.

"Now, even if this question had to be solved on the words of section 7 of the Finance Act alone, without the aid of decision, I should find it very difficult to resist the argument for the Crown. I should say that to make a debt incurred or incumbrance created by the deceased himself deductible in determining the value of his estate for the purpose of estate duty, the debt or incumbrance must be shown to have originated in something of the nature of a proper purchase, in which the deceased received for his own use and benefit full consideration in money or money's worth. I should say that it could not, therefore, cover any stipulation in a marriage contract, although reciprocal in character and issuing in a debt incumbrance, where the true consideration is a thing incapable of being expressed in money or money's worth—to wit, the marriage itself.

"But I find that the question is, for me at least, foreclosed by the decision in *Lord Advocate* v. *Sidgwick*, 4 R. 815. That judgment is none the less apposite for having been pronounced before the date of the Finance Act, inasmuch as it proceeded on the words of section 17 of the Succession Duty Act of 1853, which are similar to, but less forcible than, the words of section 7 (1) (*a*). I call them less forcible, for instead of 'valuable consideration in money or money's worth,' the latter Act speaks of 'full consideration in money or money's worth.' It is true that Lord Deas dissented, but the view of the majority (Lord President Inglis, Lord Mure, and Lord Shand) found support in the reasoning of Lord Westbury in *Floyer* v. *Bankes*, 3 De G. J. & S. 306. *Sidgwick's* case presented both of the important elements that are here founded on, viz., that

the intending wife and her father brought her own fortune into settlement, and that she accepted the intending husband's provisions in her favour as in full satisfaction of her legal rights. Some stress is laid in the opinions of the judges on the intending husband having had no estate of his own at the date of the contract on which terce or *jus relictæ* could arise, whereas here it is said (at least in the case of Sir Claud's own contract) the intending husband had a valuable estate. But I do not read the opinions as turning essentially on that circumstance; and indeed it is manifest that, whatever may be the state of the husband's property at the date of the contract, the legal rights emerging in the event of his predecease are always more or less problematical in value. In another respect this case is stronger than *Sidgwick's*, for the words of the Finance Act requiring that the deductible debts or incumbrances must have been incurred or created 'wholly for the deceased's own use and benefit' are not to be found in the Succession Duty Act, and it would be difficult to say that Sir Claud took any personal benefit either from the renunciation of Lady Alexander's legal rights in his own marriage contract, or from the provisions made by Lord Eglinton and his daughter in the marriage contract of the son. Accordingly my judgment on the first question is for the Crown.

"The second question relates to the liability of the trustees for settlement estate duty; but the trustees concede that this question is determined against them by the case of *Stewart's Trustees*, 1 F. 416.

"There is a subsidiary question as to the obligation undertaken by Sir Claud, in the event of his predecease, to aliment his widow from the day of his death until the first term of Whitsunday or Martinmas thereafter, and to provide mournings for her. I understood the Crown to concede that a sum for mournings was deductible as falling under 'reasonable funeral expenses,' which are expressly mentioned in section 7; and that is the legal category to which a widow's mournings may be referred, according to Lord Fraser's book on 'Husband and Wife,' at p. 967. But it is clear that the claim for *interim* aliment cannot be brought under that head; and however much it may be a proper debt against an executor, I do not see that where it forms part of the provisions in a marriage contract it is in any different position from the other provisions of the deed for the purposes of estate duty.

"I shall therefore order an account, both as regards estate duty and settlement estate duty."

The defenders reclaimed, and argued—*As to provisions in deceased's own marriage contract*—The debts in question fell to be deducted, seeing that full consideration in money or money's worth had been given, looking to the fortune which Lady Alexander brought into settlement and what she renounced. The provisions on the one side were made in consideration of those on the other. The rights renounced were valuable rights. Each of the parties had property, and each could contract. That distinguished the case from that of the *Lord Advocate* v. *Sidgwick*, June 6, 1877, 4 R. 815, 14 S.L.R. 522. In that case the contract made was really one between the parents of the spouses. *As to Aliment.*—The obligation to aliment was a debt at common law. It was none the less so in respect that it was made matter of contract. It was therefore deductible. The sum of £50 had been allowed for mournings but nothing was allowed for aliment. That was unreasonable. It was debt incurred by him and exigible from his estate—Fraser, H. and W., 965–7; Hanson's Death Duties, 5th ed. 168. *As to the Provisions in Son's Marriage-Contract.*—The provisions were made by Sir Claud and Lord Eglinton, and each parent was considering what the other was to give. They were given for full consideration and were therefore deductible. *As to Settlement-Estate-Duty.*—The reclaimers admitted that in view of the decision in *Inland Revenue* v. *Stewart's Trustees*, January 20, 1899, 1 F. 416, 36 S.L.R. 297, the question was determined against them.

Argued for the respondents—*As to the marriage contracts*—No full consideration in money or money's worth had been given, nor were the debts in question created solely for Sir Claud's own use and benefit. The leading consideration was the marriage. The provisions were family provisions and were also for the benefit of the children. Failing children Lady Alexander was entitled to deal with her own estate as she pleased. The provisions in the son's marriage contract were also family provisions. Moreover, the obligation to pay £30,000 did not require implement at once—so long as Sir Claud paid £1000 annually. That brought the case within the rule of *H. M. Advocate* v. *Gunning's Trustees*, January 28, 1902, 39 S.L.R. 534; *Attorney-General* v. *Holden*, April 1, 1903, [1903] 1 K.B. 832. The distinctions between the present case and that of *Sidgwick* were merely verbal and not vital. *Sidgwick's* case really governed the present. The case of *Sidgwick* was supported by the reasoning in *Floyer* v. *Bankes*, 1863, 3 De G. J. & S. 306. *As to Aliment.*—The Lord Ordinary was right. The obligation to pay interim aliment was not a debt of Sir Claud's in the sense of the Act. It was simply part of the provisions of the marriage contract and fell under the same principle—the consideration being the marriage. *As to Settlement-Estate-Duty.*—It was settled by the case of *Stewart's Trustees* (*supra*) that the duty was exigible.

LORD KINNEAR—I think the Lord Ordinary has disposed of this case rightly, and I am for adhering to his judgment, substantially for the reasons he has given. I think, with his Lordship, that the case of the *Lord Advocate* v. *Sidgwick* (4 R. 815) is a very valuable authority, but I agree that the present case is, in one important respect, distinguished from that, because the question which had to be considered in the case of *Sidgwick* was whether moneys settled in contemplation of marriage by the father of the bride were to be treated as a consideration in money for a settlement made by

the father of the bridegroom. It might very well be that these two settlements could not be considered as counterparts of one another, and yet that when each of the contracting parties themselves agrees to settle a sum of money their contributions might be taken as reciprocal considerations. But although that distinction has been taken, and is certainly justified by the facts, I think that in substance the two cases are not distinguishable. But if they were I think we must keep in view that we are not construing the same words as those which were construed in the case of *Lord Advocate* v. *Sidgwick*, but a different provision of a different statute, and that we must consider whether in the present case the condition of the Finance Act of 1894 is or is not satisfied. The provision is this, that in determining the value of an estate for the purpose of estate duty allowance shall be made for debts and incumbrances, but such an allowance is not to be made for debts incurred by the deceased, or incumbrances created by disposition made by the deceased, unless such debts or incumbrances were incurred or created *bona fide* for full consideration in money or money's worth wholly for the deceased's own use and benefit. Therefore the question we have to consider is whether any of the items which are said to constitute debts deductible from the estate of the deceased Sir Claud Alexander were debts incurred or incumbrances created for full consideration in money or money's worth, and wholly for the deceased's own use and benefit. Now, the consideration in respect of which it is said the marriage-contract provisions for his widow and children are to be deducted are said to be the settlement by Miss Speirs, afterwards Lady Alexander, in contemplation of the marriage, of two sums of £11,000 and £6000, which were settled in trust for payment of the free yearly proceeds to the spouses and the survivor of them for paying the whole proceeds for behoof of the children of the marriage, and for division of the capital amongst them after the death of the surviving spouse, and in the event of there being no issue of the marriage for disposal as Lady Alexander might appoint.

I think the main consideration upon which the case of the Lord Advocate against Sidgwick was decided is directly in point. The question is whether this settlement of money belonging to Miss Speirs was the full consideration in money or money's worth of the settlement made by her intended husband. The doctrine laid down by the Judges in the *Lord Advocate* v. *Sidgwick* is this, that where obligations or mutual obligations of that kind are undertaken in a marriage contract they are not money considerations for one another, but that the true consideration is not the money but the marriage. The ground upon which that doctrine is rested is very fully and clearly explained in the judgment of the Lord President. The distinction to which I have already adverted does not seem to me to displace that consideration at all. The marriage is still the counterpart of the money obligation upon both sides, because the true moving cause and consideration for the settlement of money is the marriage.

But if it could be suggested that the mutual money obligations were still, in a reasonable sense, counterparts of one another, so that they might be treated as considerations of one another, still I think the words of the statute we are now construing would not be satisfied because we must determine in order to give effect to the defenders' contention that the money contributed by the wife was not only a part consideration for any benefit she took under the marriage contract from her husband's funds but the full consideration in money or money's worth for all that she got by the contract. Now, it seems to be clear enough that the true consideration was not the money settled by her but the marriage, and at all events that it is impossible to say that her settlement in money was the sole consideration for the settlement made by the husband. But even if it were, that would not be enough to satisfy the condition of the statute, because it goes on to say that allowance is not to be made for debts unless they were incurred "wholly for the deceased's own use and benefit," and that clause appears to me to be conclusive of the whole matter. I think it is quite impossible to say that the money settled upon Lady Alexander herself and the children of the marriage was settled solely for the use and benefit of the husband and as a consideration for his own benefit—given to him in return for the money which he had himself settled. That last clause is, as I have said, I think quite conclusive.

For these reasons I agree with the Lord Ordinary as to the effect of the contract of marriage between Sir Claud Alexander and Lady Alexander. But then I think it was conceded—at all events I think it is quite clear—that the same reasoning applies even more obviously and directly to the question arising under the second contract, the contract of marriage between the son of the first marriage and his first wife, and I think it furnishes also the true answer to the last point that was raised, whether a deduction ought not to be made in respect of the obligation under Sir Claud Alexander's marriage contract to aliment his widow from the date of his death until the first term thereafter. The question whether a deduction is to be made on that account must be determined by exactly the same consideration, whether it does or does not fall within the words of the statutory provision allowing deductions—that is to say, a statutory provision allowing debts to be excluded from the account. Is the obligation upon Sir Claud Alexander's executry to aliment his widow until the first term of Whitsunday or Martinmas a debt incurred for full consideration in money or money's worth and wholly for the deceased's own use and benefit? I think it is quite clear it is not; and therefore, upon the same grounds as I think we ought to decide the question upon the two marriage contracts, I am for adher-

ing to the Lord Ordinary's judgment upon that third question also.

We are told that there is a question as to the liability of the trustees for settlement estate duty, but the reclaimers concede that the question is ruled by the decision in the case of *Stewart's Trustees* (1 F. 416), which they also concede is binding on this Court. We have heard no argument upon that matter and express no opinion upon it, but upon the questions which have been argued I agree with the Lord Ordinary, and am for adhering to his judgment.

LORD M'LAREN—I agree with the opinion of the Lord Ordinary, and concur in the opinion of Lord Kinnear.

LORD ADAM—I concur.

The Court adhered.

Counsel for the Pursuer and Respondent —Solicitor-General (Dundas, K.C.)—A. J. Young. Agent—Philip J. Hamilton Grierson, Solicitor of Inland Revenue.

Counsel for the Defenders and Reclaimers —Lorimer, K.C.—Grainger Stewart. Agents —A. & A. Campbell, W.S.

Wednesday, January 11.

SECOND DIVISION.

[Lord Kincairney, Ordinary.

SUTHERLAND *v.* THE PROVOST AND MAGISTRATES OF WICK.

Burgh—Town-Clerk — Salary — Extension of Burgh — Increase of Town-Clerk's Duties—Claim for Increase of Salary—Application to Fix Reasonable Salary—Magistrates' Discretion in Fixing Salary.

A royal burgh was by Act of Parliament extended by the inclusion within it of a neighbouring burgh. The town-clerk of the royal burgh became under the Act the town-clerk of the extended burgh, no provision being made as to his remuneration. The magistrates, after the amalgamation, fixed his salary at an amount which somewhat exceeded the salary he had formerly received, but which he contended was really less in view of the increase of his duties and outlays. In an action brought by him against the provost, magistrates, and councillors of the burgh for declarator that they were bound to pay to him as town-clerk a reasonable and suitable salary fixed by the Court, he averred, *inter alia*, that the resolution of the defenders fixing his present salary was not a *bona fide* exercise of their powers.

Held that the amount of the remuneration of the town-clerk was a matter in the discretion of the magistrates, in which the Court could not interfere in the absence of relevant and sufficient averments that the magistrates had acted dishonestly and corruptly or with a malignant desire to injure, and defenders *assoilzied*.

This was an action at the instance of Hector Sutherland, solicitor, Wick, against the Provost, Magistrates, and Councillors of the burgh of Wick, concluding for declarator that the defenders were bound (1) "to provide for and pay to the pursuer, as town-clerk of the burgh of Wick, a reasonable and suitable remuneration for his services as town-clerk foresaid"; and (2) "to make payment to the pursuer, as town-clerk foresaid, of the sum of £280 sterling per annum, or such other sum as our said Lords may find to be reasonable and suitable remuneration to the pursuer as town-clerk foresaid as from 18th November 1902."

The following narrative of facts is taken from the opinion of the Lord Ordinary (KINCAIRNEY):—"This action has arisen out of the recent amalgamation of the adjacent burghs of Wick and Pulteneytown, and relates to the salary of the town-clerk of the burgh as extended by the Act by which the amalgamation was effected. That Act confirmed a Provisional Order, and was passed on 18th November 1902. It is entitled the Wick Burgh Extension Order Confirmation Act 1902. It takes the form of an extension of the burgh of Wick rather than of an amalgamation of Wick and Pulteneytown, and its effect seems to be to extinguish the burgh of Pulteneytown and to enlarge the burgh of Wick so as to include within its boundaries the old burgh and royalty of Wick, the burgh of Pulteneytown, the harbour of Pulteneytown, and other adjacent lands.

"By section 3 of the Act (the interpretation clause) it is provided that the 'existing burgh of Wick' means the burgh of Wick including the royalty as existing immediately previous to the commencement of the Order; that the 'burgh' and 'royal burgh' mean the existing burgh of Wick as extended by the Order; and that 'town-clerk' means the town-clerk of the 'existing burgh of Wick and of the burgh.'

"The pursuer of this action is the town-clerk of the extended burgh. He does not take that title in the instance, but he sues in that capacity, and can have no possible case unless he is so. He is not an applicant for the office, nor a person to whom the office has been offered, or who claims to be entitled to be appointed; he is, or at least must claim to be, the actual holder of that office.

"His position is as follows:—He has been town-clerk of the burgh of Wick since 1886. It is not very distinctly set forth what his salary or emoluments were then. In 1897 the Magistrates instituted an inquiry in regard to the salaries of the various servants and officials of the burgh, the result of which, as regards the town-clerkship, was that the town-clerk's salary was fixed at £100, besides business chambers rent free. To what extent he was allowed legal charges for work done for the burgh is not stated quite distinctly. The salary was fixed after inquiry as to the salaries of the town-clerks of various Scotch burghs. An allocation was made of the £100 among the various offices or duties which were covered under the general term