was no such reciprocal obligation between the appellant and her deceased mother. The Sheriff has therefore rightly decided that the appellant has no title to sue.

LORD MONCREIFF — In the Workmen's Compensation Act 1897 the word "dependents" is defined by section 7, sub-section 2 (*b*), as meaning in Scotland "Such of the persons entitled according to the law of Scotland to sue the employer for damages or *solatium* in respect of the death of the workman as were wholly or in part dependent upon the earnings of the workman at the time of his death."

The question, therefore, which we have to decide is, whether at common law an illegitimate child has a title to sue in its own right for damages and *solatium* in respect of the death of his or her mother. In view of the decision in this Court in the case of *Weir* v. *Coltness Iron Co.*, 16 R. 1614, and the grounds of judgment in the House of Lords in *Clarke* v. *Carfin Coal Co.*, 18 R. (H.L.), p. 63, the point can scarcely be said to be still open.

In *Weir* v. *Coltness Iron Co.* it was decided in terms that the mother of a bastard child has no title to sue an action of reparation in respect of his death.

The question in *Clarke* v. *Carfin Coal Co.* was the same, viz., whether the mother of an illegitimate child was entitled to sue such an action. The House of Lords approved of the decision in the case of *Weir*, Lord Watson expressing an opinion that the right to sue a derivative claim of this kind is limited to a small class of persons, viz., husband and wife and their legitimate children.

The House of Lords thought it necessary to incidentally overrule the earlier decision in the case of *Samson* v. *Davie*, 14 R. 113, in which it was decided that a bastard son was liable to support his mother upon the ground that between the mother (as distinguished from the father) of an illegitimate child and the child there exists a mutual obligation of support in the event of necessity, which taken in connection with the natural though not lawful relationship existing between the two, is sufficient to satisfy the definition given by Lord President Inglis in *Eisten* v. *North British Railway Co.* in 8 Macph. 984. But the House of Lords in *Clarke* v. *Carfin Coal Co.* held that the decision in *Samson* v. *Davie* was not warranted by the authorities or by custom; and accordingly it must now be taken that the mother of an illegitimate child has no better claim for support from the child than has his putative father.

It is urged, however, that while it must now be held that a mother has no claim of support against an illegitimate child and no right to sue for damages in the event of his death, it does not follow that an illegitimate child has no such rights, because he has a claim for aliment against his mother. This does not seem to me to affect the question, because the claim for aliment against the mother is precisely of the same character as that which the child has against his putative father, viz., a claim of debt, and a creditor has no title to sue for reparation merely in respect of the death of his debtor.

I am therefore of opinion that the pursuer not being within the limited class who are entitled to sue such actions has no title to sue.

This being so, it is not necessary to consider whether the deceased having survived for some time the accident which resulted in her death, and the right of reparation having vested in her, that right did not pass to her next-of-kin as her representatives (among whom the pursuer does not stand) to the exclusion of the present claim. The question may hereafter arise whether this is not involved in the decision of the case of *Darling*, 19 R. (H.L.) 31.

The Court dismissed the appeal and affirmed the interlocutor appealed against.

Counsel for the Appellant—Dove Wilson. Agent—Charles T. Cox, W.S.

Counsel for the Respondents — Sym. Agents—Anderson & Chisholm, Solicitors.

Tuesday, June 13.

FIRST DIVISION.

[Lord Stormonth Darling, Ordinary.

INLAND REVENUE *v.* MACLACHLAN.

Revenue—Estate-Duty—Cesser of Annuity—Finance Act 1894 (57 *and* 58 *Vict. cap.* 30), *secs.* 1, 2 (1) *b*, 7 (7) *b.*

Section 1 of the Finance Act of 1894 provides for the levying of estate-duty on the principal value of all property which passes on the death of any person dying after the commencement of the Act.

Section 2 (1) provides that "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 7 (7) of the Act provides that "The value of the benefit accruing or arising from the cesser of an interest ceasing on the death of the deceased shall—(*b*) if the interest extended to less than the whole income of the property, be the principal value of an addition to the property equal to the income to which the interest extended."

The proprietor of an estate burdened it with an annuity of £800 to his widow. A subsequent proprietor burdened it to the extent of a further sum of £800 restrictable during the life of the previous annuitant to the extent of £400, an additional £400 a-year being charged in favour of the second annuitant on certain legacies during the same period.

Held that estate-duty was payable by

the owner of the estate on the death of the first annuitant on the principal value of the whole income of £800, although the benefit actually accruing to him only represented an income of £400 in consequence of the increased charge for the second annuitant, on the ground that the proper test was the value of the interest enjoyed by the deceased and not the benefit taken by the successor.

By antenuptial contract of marriage dated 3rd and 5th June 1823, between Mr Robert Maclachlan of Maclachlan, Argyllshire, and Miss Helen Carruthers, Mr Maclachlan bound himself to pay to his wife, in case she survived him, a free liferent annuity of £800 payable out of the lands of Kilbride and others forming part of the barony of Strathlachlan. He conveyed the said lands to himself and his heirs burdened with the above annuity.

Mr Robert Maclachlan died without issue survived by his wife and succeeded by his brother Mr George Maclachlan.

By bond of annuity dated 21st November 1874 Mr George Maclachlan provided a free yearly annuity of £800 to his widow Mrs Mary Maclachlan, secured by him to her over the said lands, but "providing and declaring always that in case I shall predecease Mrs Helen Carruthers or Maclachlan, widow of my brother the late Robert Maclachlan, Esquire, of Maclachlan, the foresaid annuity of Eight hundred pounds hereby provided to my said spouse shall be restricted to the sum of Four hundred pounds sterling yearly during the lifetime of my sister-in-law the said Mrs Helen Carruthers or Maclachlan." Of even date with this bond Mr George Maclachlan executed a trust-disposition and settlement, dealing chiefly with his moveable estate, by which he directed his trustees to make payment to his widow during Mrs Helen Maclachlan's life of a free yearly annuity of £400, declaring that this annuity was in addition to the one provided by the bond of annuity.

The additional annuity was charged on legacies of £5000 which were left to his younger children.

By a codicil executed on 29th March 1897 Mr George Maclachlan conveyed his estate of Maclachlan, including the said lands of of Kilbride and others, to trustees, who were to pay an annual sum out of the income of the estate to the testator's eldest son William Maclachlan, and on his death without children to the testator's second son John Maclachlan.

Mr George Maclachlan died on 7th August 1877. Sufficient funds were retained from the legatees under the trust-disposition to secure the additional annuity to his widow of £400, and inventory and legacy-duty was paid on those funds.

Mr William Maclachlan having died without issue, Mr John Maclachlan succeeded to the estates of Maclachlan on 1st December 1881.

Mrs Helen Carruthers or Maclachlan died on 18th November 1895. The Commissioners of Inland Revenue made a claim against Mr John Maclachlan for succession-duty in respect of the cesser of the annuity of £800 enjoyed by Mrs Helen Maclachlan, less amount of increased annuity of £400 enuring to Mrs Mary Maclachlan. Payment was made on the cesser of £400 a-year, and was accepted subject to the condition that it should not prejudice the claim of the Revenue for estate-duty.

An action was raised against Mr John Maclachlan by the Commissioners of Inland Revenue craving that the defender should be ordained to deliver to the pursuers "an account of the property which passed on the death of Mrs Helen Maclachlan, for the purpose of ascertaining the estate-duty due and payable in respect of the said property," and for payment of the sum of £750 as estate-duty in respect of the property.

The pursuers maintained that through the cesser of Mrs Helen Maclachlan's interest, on her death her annuity ceased to be a burden upon the property charged therewith, and that the value of the free yearly annuity of £800, capitalised in terms of section 7 (7) *b* of the Finance Act of 1894, was chargeable to estate-duty, and that the amount of duty payable was not less than £750.

The pursuers pleaded—"(1) Estate-duty is payable on account of the cesser of Mrs Helen Maclachlan's annuity, and the passing of property on her death. (2) The defender is liable for the duty, in that the property has passed to him for a beneficial interest in possession."

The defender averred that at Mrs Helen Maclachlan's death, owing to the contemporaneous removal of the restriction upon Mrs Mary Maclachlan's annuity, the property had only passed to the defender "for a beneficial interest in possession" to the extent of an annuity of £400, and that the only benefit accruing in respect of the other £400 of the annuity was to the legatees, whose legacies were burdened with payment of £400 to Mrs Mary Maclachlan.

He pleaded—"(2) In the circumstances condescended on, and upon a sound construction of the said Act of 1894, estate-duty is only due by defender upon the capitalised value of an annuity of £400."

By section 1 of the Finance Act 1894 (57 and 58 Vict. cap. 30) it is provided—In the case of every person dying after 1st August 1894, there shall "be levied and paid upon the principal value ascertained as hereinafter provided of all property, real or personal, settled or not settled, which passes on the death of such person, a duty, called estate-duty," at the graduated rates mentioned in the said Act. By section 2 (1) *b* it is provided that "property passing on the death of the deceased shall be deemed to include the property following, that is to say:—(*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."

It is provided by section 7 (7)—That the value of the benefit accruing or arising from the cesser of an interest ceasing on the death of the deceased, shall (*a*) "if the interest extended to the whole income of the property, be the principal value of that

property"; and (*b*) "if the interest extended to less than the whole income of the property, be the principal value of an addition to the property equal to the income to which the interest extended."

Section 8 (4) provides—"Where property passes on the death of the deceased, and his executor is not accountable for estate-duty in respect of such property, every person to whom any property so passes for any beneficial interest in possession . . . shall be accountable for the estate-duty on the property," and shall deliver to the Commissioners and verify an account.

The Lord Ordinary (STORMONTH DARLING) on 8th March 1899 sustained the defender's second plea-in-law, continued the cause, and granted leave to reclaim.

Opinion.—"Mrs Helen Maclachlan, widow of a former proprietor of the estate of Maclachlan, was secured by her marriage-contract in a free liferent annuity of £800 payable out of lands which now belong to the defender. She died on 18th November 1895. The next proprietor, Mr George Maclachlan, who died in 1877, provided a free yearly annuity of the same amount, and out of the same lands to his widow, who survives. But this annuity as regards the lands was restricted to £400 a-year during the lifetime of Mrs Helen Maclachlan, the balance being charged during that period on legacies which which he left to his younger children by his trust-disposition and settlement. While both ladies lived the lands were thus burdened with annuities to the extent of £1200 a-year. On the death of either of them the burden was to be reduced to £800 a-year.

"The Crown now claims from the defender estate-duty as arising through Mrs Helen Maclachlan's death. It is admitted that a claim arises, and the defenders offer to pay duty on the capitalised value of an annuity of £400 a-year. But the Crown is not content with that, and demands that the duty should be calculated on an annuity of £800 a-year. I am of opinion that this claim is not warranted by anything in the Finance Act of 1894.

"Section 1 of the Act levies estate-duty in the case of every person dying after 1st August 1894 on the principal value of all property which passes on the death of such person. But as an annuity could not be said to 'pass' on the death of the annuitant, inasmuch as it then ceases altogether, that section by itself would not meet the present case. Accordingly, we find that section 2 enlarges the scope of section 1 by providing that 'property passing on the death of the deceased shall be deemed to include the property following,' and then (*b*) brings in 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.'

"Now, what was the extent of the interest which ceased on the death of Mrs Helen Maclachlan? Undoubtedly it was an interest extending to £800 a-year, for that was the sum which was liberated by her death. But then under sec. 2 you must not only have an interest ceasing, you must have a benefit accruing; and you cannot determine what the benefit is without ascertaining to whom the benefit accrues. Pursuing the investigation, therefore, you find that the benefit accrues in two directions. It would all accrue to the proprietor of the estate of Maclachlan were it not that, contemporaneously with, and in consequence of the burden of £800 being taken off the lands, another burden of £400 is laid on by the operation of a deed which is not the deed of the proprietor himself. Where, then, has the remainder of the benefit gone? Plainly to the legatees under Mr George Maclachlan's will, who by and through Mrs Helen Maclachlan's death are relieved of a burden of £400 a-year.

"It appears from the Crown's own statement (condescendence 5) that under section 21 of the Finance Act these legatees are exempt from estate-duty in respect of the benefit thus accruing to them only by reason of their legacies having already borne inventory-duty at Mr George Maclachlan's death. In other words, they have paid the equivalent of estate-duty, and if they had not, the Crown would have claimed estate-duty from them now. But if such a claim could have been made it would have presented in naked simplicity the extraordinary result of the Crown benefiting by the cesser of an annuity of £800 a-year to exactly the same extent as if it had been an annuity of £1200 a-year. Any construction of a Taxing Act, which leads to a consequence so absurd as that is, in my opinion, self-condemned.

"Section 7 (7) of the Act provides merely for the mode of valuing the benefit accruing or arising from the cesser of an interest, and does not seem to me to advance the Crown's argument, because nobody doubts that the mode of valuing an annuity for Revenue purposes is to capitalise it. Neither does the Crown derive help from section (8) (4), which provides that where (as here) the executor of the deceased is not accountable for estate-duty, every person to whom the property passes 'for any beneficial interest in possession' shall be accountable. That would rather seem to suggest that the Crown must seek out the various persons benefited, and charge them for their respective interests, but the argument is that, where one person is found in beneficial possession, he may be charged with the whole duty, and be left as best he may to recover from the others their proper proportions. That would be a very bootless proceeding for the defender in the present case, seeing that the others have by the Crown's own admission a conclusive answer to any such claim.

"I was referred by Mr Young to the case of *Earl Cowley* (1898), 1 Q.B.D. 355, and especially to Lord Justice Rigby's review of the Act, from p. 374 to p. 377. I do not know that some passages in that interesting exposition quite square with the opinion of the Lord Chancellor in *Attorney-General* v. *Beech* (1899), App. Cas., at p. 56, *e.g.*, where the Lord Justice says—'The duty is in no sense a duty on succession,' and the Lord Chancellor says—'What the statute intended to make liable to pay duty is the

succession by one person from another upon death.' But it is not necessary for the defender to demur to one word that was said in *Earl Cowley's* case. The Court there held, *inter alia*, that in computing estate-duty on the value of the life estate which passed on the death of the second Earl, no deduction was to be made in respect of the capitalised value of an annuity created by the joint Act of father and son, and enjoyed by the son during his father's life, on the principle that nothing done by the third Earl himself to increase or diminish his enjoyment of the property could affect the value of the property which passed at the second Earl's death. There is nothing of that kind here. It was not the defender but his predecessor who imposed the burden which reduces the value of the benefit accruing to him by the death of Mrs Helen Maclachlan to £400 a-year. I shall therefore sustain his second plea-in-law."

The pursuers reclaimed, and argued—The scheme of the Act was that section 1 dealt with property which actually passed, while section 2 dealt with property which did not in fact pass. Admittedly here the annuity did not pass, but it was of such a kind as to give Mrs Helen Maclachlan an interest in the estate, and but for the qualifying words in section 2 (1) *b*, "to the extent to which a benefit accrues or arises by the cessor of such interest," the whole estate would have been liable to duty. In order to rightly understand that section, it must be read along with section 7 (7) *b*. The former section was not referring to the person who would be taxed but merely to the subject of taxation, and when it was requisite to see what was the amount of liability, then under 7 (7) *b* which referred back to the words used in section 2 (1) *b*, it clearly was to be the value of the interest ceasing at Mrs Helen Maclachlan's death. It was not relevant to consider whether anything took place by which that cesser had not full effect. The fact that a new debt had been created, different *quoad* debtor and creditor, not over the interest enjoyed by Mrs Helen, but over the whole estate, could not be a relevant consideration. It was not competent to put the two deeds together and say that John Maclachlan's apparent benefit from the cesser of the £800 per year in the first deed could be diminished by the £400 in the other deed. Accordingly it was not necessary either that property should pass to the amount of £800 per year, or that it should pass to John Maclachlan — *Earl Cowley*, L.R. [1898], 1 Q.B.D. 355, at pp. 374-77, L.R. [1899], App. Cas. 198; *Attorney-General* v. *Beech*, L.R. [1899], App. Cas. 53. Nor could the £400 per annum accruing to Mrs Mary be deducted as a burden. It did not exist as an incumbrance at all when Mrs Helen died, and it was not a burden upon Mrs Helen's interest but upon the whole estate.

Argued for respondent — In order for the pursuer to succeed under section 2 of the Act he must show 1st that property liable to duty had passed to the extent of £800 a-year, and 2nd that it had passed to the defender. (1) The deeds under which the property passed must be taken together as a whole. If that were done, it was perfectly clear that the defender was only benefited to the extent of £400 a-year. The scheme of the Finance Act as a whole must be considered. The pursuers were looking at the accruing benefit from the point of view of the person deceasing, not of the one who received the benefit. But it was the latter alone which ought to be looked at. It was evident from section 2 that cesser of interest and benefit were not necessarily co-extensive. The provisions of section 7 were executorial, dealing with the valuation of estate passing under sections 1 and 2, whatever that estate might be—*Earl Cowley* [1899], App. Cas., at p. 205. Accordingly the provisions of sections 1 and 2, which were clearly in favour of the defender's view, could not be defeated by this purely executorial clause. The pursuers admitted that there was only an accruing benefit of £400, but argued that under section 7 (7) this fell to be valued as if it were £800; the answer to this inconsistency must be that section 7 (7) could only be literally applied where the interest ceasing was coextensive with the interest taken by the successor, and that section 2 is the ruling clause. Further, the estate which passed upon Mrs Helen Maclachlan's death did so subject to a burden of £400 payable to Mrs Mary Maclachlan, which under section 7 (1) fell to be deducted, with the result that duty is only payable upon £400. (2) In any event the defender was only liable for duty upon the property which had passed to him "for any beneficial interest in possession" [section 8 (4)], that was to say, upon the capital value of an annuity of £400. He was not in the position of an executor who might pay the duty on the whole estate, heritable as well as moveable, and recover from those to which the property had passed. If it were the case that £400 of the £800 had passed to Mrs Mary Maclachlan, the pursuers must recover from her or from the residuary legatees. Admittedly £400 had passed to the residuary legatees, and to argue that £800 had passed to the defender, resulted in the passing of estate worth £1200 upon the death of an annuitant possessed of £800.

At advising—

Lord President—Mrs Helen Maclachlan enjoyed an annuity of £800 out of the lands of Maclachlan, which belonged to the defender. She had thus an interest in those lands which ceased on her death in 1895. Accordingly, on her death, by virtue of sections 1 and 2 (1) (*b*) of the Finance Act 1894, estate-duty became payable upon the estate of Maclachlan "to the extent to which a benefit accrued or arose by the cesser of" Mrs Maclachlan's "interest." On these words the present question primarily arises, although, as I shall immediately show, our attention must be transferred to a later part of the Act in order to discover their meaning. If those words had stood

alone, or are in the meantime considered alone, it must be allowed that they seem to point away from the estate of the deceased and to the succession accruing to the defender. But section 7 (7), which directly and unquestionably refers to those words, promptly corrects this impression, for it provides that "the value of the benefit accruing or arising from the cesser of an interest ceasing on the death of the deceased shall" . . . "(*b*), if the interest extended to less than the whole income of the property, be the principal value of an addition to the property equal to the income to which the interest extended."

Applying this series of sections to the case before us, it results that, to the extent of Mrs Helen Maclachlan's annuity, the lands of Maclachlan become subject to duty, but that this extent is simply the principal value of the annuity. We are required to go through the fiction of regarding the defenders' lands of Maclachlan as "passing" on the death of Mrs Helen merely in order to make the owner of them liable; but when we come to fix the amount of liability we are required to divert our attention from the effect of the death on the defender to the principal value of the annuity enjoyed by her. And section 8 (4) designates the defender as accountable for the duty.

The circumstances of the present case, which give rise to the defenders' contention are very singular; but I am unable to find in them a valid defence. The death of Mrs Helen Maclachlan, while it relieved the lands of an annuity of £800, is at the same time the event which saddles it with an annuity in favour of another proprietors' widow, Mrs Mary Maclachlan, to the extent of £400; and then again, the moment this younger lady's £400 becomes a burden on the lands, it frees the personal estate of her husband which up to that moment was burdened with it. The defender is therefore quite right, in fact, in the two stages of his argument. *First*, so far as the defender is concerned, the death of Mrs Helen confers on him a net benefit of £400 a-year only, and not of £800 a-year; and *second*, the other £400 a-year ultimately reaches, by way of benefit, not him but his father's personal representatives.

All this is very clearly explained by the Lord Ordinary, and I may say at once that in my judgment the flaw in the Lord Ordinary's reasoning consists in his not giving due weight to section 7 (7) (*b*). I think his Lordship is misled by the words in section 2 (1) (*b*) into the view that this is a tax on succession, or in other words, on the benefit taken by the person who is made liable. All that his Lordship says about section 7 (7) is that it "provides merely for the mode of valuing the benefit accruing or arising from the cesser of an interest, and does not seem to me to advance the Crown's argument, because nobody doubts that the mode of valuing an annuity for Revenue purposes is to capitalise it. As I have already indicated, I think section 2 (1) (*b*) is not rightly understood until you read section 7 (7) (*b*): and when the two are read together the result is, in my judgment, what has been stated above.

The defender maintained—or at least suggested—an argument, which is not indicated on record, to the effect that Mrs Mary Maclachlan's annuity to the amount of £400 must be treated as an incumbrance, and therefore deducted from the value of Mrs Helen's annuity. On neither side of the bar was this subject developed with the attention which it doubtless would have commanded had it been raised on record. But I am unable to see how the provisions of 7 (1) can be applied to cases falling under 7 (7) (*b*). In the case at least of an interest extending only to a part of the income, the process gone through is, so to speak, entirely external to the burdened estates, for it consists solely of adding to that estate. In carrying it out we have nothing to do with other burdens on the estate, whether previously existing or now for the first time accruing.

The very clear statement by the Lord Ordinary of the practical consequences of the pursuer's demand presented a challenge to the learned counsel for the Crown which I should gladly have seen more fully answered. It would have been satisfactory to have heard it clearly explained whether on the theory of the Crown this duty does not fall ultimately but only primarily on the defender. The Act is necessarily difficult to construe, and the present case unusually complicated in its circumstances, and the Lord Ordinary's criticism as to the reasonableness of the demand was therefore to be met, if at all, by something more than suggestions. I should have been glad to see whether, *prima facie* at least (for in Mrs Mary Maclachlan's absence nothing final could be determined), the Act is supposed to give the defender relief under the 14th section for the £400 which that lady draws. It would have been equally satisfactory (although less likely) if it had been shown that the personal representatives, to whom the benefit of this liberated £400 really comes, would ultimately bear this part of the duty. But while all this might have been more satisfactory, the question before us is, whether the defender is liable to the Crown. The sections on which my opinion is rested seem to me irresistibly to lead to the conclusion that he is, and nothing in the other sections rebuts that conclusion. I am therefore for recalling the Lord Ordinary's interlocutor, and giving the pursuer the order concluding for an account.

Lord Adam — I have found this case attended with much difficulty, but however just and equitable the Lord Ordinary's interlocutor may appear to be, I have been unable to come to the conclusion that it ought to be sustained.

Section 1 of the Finance Act enacts that there shall be levied upon the principal value of all property which passes on the death of a person dying after the commencement of the Act a duty called "Estate Duty," at the rates therein set forth.

It is clear that the present case does not fall within this section, because no property passed upon the death of Mrs Helen Maclachlan, her annuity then coming to an end.

But the case certainly falls within section 2 of the Act, which enacts that property passing on the death of the deceased shall be deemed to include (sub-section *b*) property in which the deceased 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.

It is not doubtful that Mrs Helen Maclachlan had an interest in the estate of Maclachlan over which her annuity of £800 was secured, and that that interest ceased on her death. The estate of Maclachlan, therefore must be deemed to have passed on her death, but that only to the extent to which a benefit has accrued or arisen by the cesser of such interest.

The difficulty in the case arises on the construction of these concluding words of the sub-section. The Lord Ordinary thinks that in order to ascertain the extent to which a benefit accrues or arises you must find the person to whom the benefit accrues or arises, and ascertain to what extent he is benefited. Undoubtedly the defender, the proprietor of Maclachlan, is the person benefited, but he is benefited to the extent only of the cesser of an annuity of £400, and not of £800, because, simultaneously with and in consequence of the death of Mrs Helen Maclachlan an annuity of £400 becomes a burden on the estate. I doubt, however, whether that mode of procedure is in conformity with the scheme of the Act, which I think looks to the property charged with the duty, and not to the person who has to pay it; and that consequently it is the benefit accruing or arising to the property which is the test of the amount of duty payable. But however that may be, there would be no difference in this case, because the estate of Maclachlan is only benefited by the cesser of the annuity in question to the extent of £400 per annum. I think, however, that this matter is regulated by section 7, sub-section (7) (*b*), of the Act. I do not agree with the Lord Ordinary that that sub-section merely provides for the mode of valuing the interest accruing or arising from the cesser of an interest.

Sec. 7 and sub-sec. 7 enact that the value of the benefit, accruing or arising from the cesser of an interest, ceasing on the death the deceased, shall, if the interest extends to less than the whole income of the property, be the principal value of an addition to the property equal to the income to which the interest extended. In this case the interest extended to less than the whole income of the property. It extended to an income from the property of £800 a-year. In that case the Act provides that the value of the benefit accruing or arising from the cesser of such interest shall be the principal value of an addition to the property equal to the income to which the interest extended—that is, £800 a-year. It appears to me that the language of the Act is clear and unambiguous, and however unjust and anomalous the result may appear to be, I can come to no other conclusion.

A further question was raised as to whether in calculating the benefit accruing or arising in respect of the cesser of Mrs Helen Maclachlan's interest in the estate, an allowance should not be made for the principal value of the annuity for £400 in favour of Mrs Mary Maclachlan, which as I have said in consequence of Mrs Helen's death became a burden on the estate.

Had Mrs Helen's interest extended to the whole income of the estate, then the question would have arisen, because in that case under sub-sec. 7 (*a*) the value of the whole property would have had to be ascertained and allowance made for encumbrances. But in the case with which we have to deal, we have nothing to do with the value of the estate, but only to ascertain the value of an addition to the estate which obviously can be in no way affected by the value of the estate itself.

On the whole matter I am of opinion that the interlocutor of the Lord Ordinary should be reversed.

Lord M'Laren—I agree, unreservedly, with the opinion of your Lordship in the chair, but there is one point on the construction of the statute as to which I should desire to reserve my opinion, and that is as to the mode of calculating the principal value of an annuity under sec. 7, sub-sec. 7, of the statute. The words of the Act are very vague and perhaps ambiguous. The definition is—"The principal value of an addition to the property equal to the income to which the interest extended." But then the statute does not give any equation between principal value and income. We know that in estimating a principal sum equal to an annuity two elements have to be furnished—the rate of interest which the annuity is supposed to represent, and the number of years' purchase. Now, if this were the case of an annuity, beginning to run, of course the principal value of that would depend upon the age of the annuitant, but I do not see how that method can be applied to an annuity which is already terminated by death. I incline to think the principle of the statute is to treat all annuities alike, and that the principal sum referred to is a principal sum which would produce an annuity in perpetuity; but that is a point which may come up for decision in some future case. But then again, there is nothing said as to whether this annuity is to be treated as equal to three, four, or five per cent. of the hypothetical principal sum, and that again involves a question of calculation. The summons in this case gives the whole question the go-bye by merely setting forth that the amount of estate-duty payable by the defender on the death of Mrs Helen Maclachlan is not less than £750. No question of amount has been raised in argument and I presume it follows from our judgment that the sum of £750 is payable, but how that sum has been arrived at we are not informed.

Lord Kinnear concurred.

The Court pronounced this interlocutor:—

"Recal the said interlocutor [of 8th March 1899]: Repel the pleas-in-law

stated for the defender: Decern and ordain the defender to deliver to the Commissioners of Inland Revenue, within fourteen days, an account of the property which passed on the death of the deceased Mrs Helen Carruthers or Maclachlan for the purpose of ascertaining the estate-duty due and payable in respect of said property, and decern: Find the pursuer entitled to expenses, and remit," &c.

Counsel for Pursuers—Sol.-Gen. Dickson, Q.C.—A. J. Young. Agent—P. Hamilton Grierson, Solicitor of Inland Revenue.

Counsel for Defender—Ure, Q.C.—Pitman. Agents—J. & F. Anderson, W.S.

Thursday, June 15.

FIRST DIVISION.

[Sheriff Court of Lanarkshire.

KING *v.* BRITISH LINEN COMPANY.

Bank — Account-Current — Obligation of Bank to Honour Cheque—Damages for Failure to Honour.

A banker who has an account-current with a customer is bound to honour his cheques to the extent to which there are funds at the credit of the customer in the account, and in the event of his failure to do so he is liable in damages for injury to credit.

A customer having a balance to his credit in an account-current drew a cheque on the 21st October. On 22nd October the bank intimated to him that they intended to retain any money at his credit pending a settlement of a claim by them, and requested him not to pass any further cheques. The customer wrote to the bank that he had drawn the cheque in question prior to receipt of their letter, and that if they dishonoured it his business reputation would probably be injured. The bank dishonoured the cheque. *Held* that they were liable in damages to the customer for injury to credit.

Contract—Breach of Contract—Measure of Damages—Award of Sheriff.

Observed (*per* Lord President) that while the Court will not, in a question of damages, treat the award of a Sheriff with the same caution as that of a jury, it will not lightly set aside the decision of the Sheriff.

An action was raised in the Sheriff Court of Lanarkshire by Mr John Miller King, grain merchant, Glasgow, against the British Linen Company, craving that the defender should be ordained to pay to the pursuer the sum of £161, 4s. 10d., being the amount standing at the credit of the pursuer's current account on 21st October 1896. There were further conclusions for delivery to the pursuer of certain bills, and for payment of £500, this last sum being claimed as damages in respect of the defenders having dishonoured a cheque drawn by the pursuer. The pursuer had kept an account-current with the defenders for a number of years prior to 21st October 1896, at which date there was a balance in his favour of the amount claimed in the first conclusion of the summons.

On 21st October 1896 the pursuer issued a cheque for £38, 18s. drawn by him in favour of Mr James Whiteford, Baillieston.

On the 22nd October the pursuer received from the defenders' agent at their Union Street branch a letter stating that the defenders were raising an action against the pursuer in respect of a bill for £180 alleged to be lying unpaid at their Hutchesontown branch, and also intimating that pending a settlement of this matter he had been instructed to retain any money at the credit of the pursuer's current account, and requesting him to refrain from passing any further cheques. On receipt of this letter the pursuer intimated that prior to it he had issued the cheque in question, and that if it were dishonoured it would injure his credit. He also demanded delivery of certain bills which the defenders held for collection.

On 27th October the defenders raised an action in the Court of Session against the pursuer and his brother concluding for payment of the amount in the bill, but in respect of an extrajudicial settlement the defenders consented to the pursuer being assoilzied.

The cheque which the pursuer had drawn in favour of Mr James Whiteford was endorsed by him to his brother, who paid it into the Union Bank. When presented through the clearing-house to the defenders they refused to honour it and returned it dishonoured to the holders marked "Effects to be retained. Refer to drawer." The pursuer in consequence raised the present action.

The pursuer maintained that the defenders' action in refusing to honour the cheque when they had sufficient funds to meet it had injured his business credit with Mr Whiteford and his other customers, the damage caused thereby amounting to the sum concluded for.

The defenders maintained that they were entitled to retain the balance at the pursuer's credit in respect of his indebtedness to them, and were not bound to honour his cheque pending the settlement.

The Sheriff-Substitute (STRACHAN) on 28th December 1897 repelled certain of the defenders' preliminary pleas and allowed a proof.

The defenders appealed to the Sheriff (BERRY), who on 9th March 1898 adhered to the interlocutor appealed against.

The Sheriff-Substitute on 30th June pronounced an interlocutor, by which he found, *inter alia*, "that the defenders acted wrongfully and unwarrantably in retaining the funds at the credit of the pursuer's current account with them, and the foresaid bills belonging to him, and that their action in dishonouring the said cheque while they had funds at his credit sufficient to pay the same constitutes a breach of the