to those commissions, perquisites, and allowances which go to make up the full emoluments of the servant. There remains, however, a class of cases in which the injury accompanying the dismissal arises from causes less tangible, but still very real—circumstances involving harshness, oppression, and an accompaniment of obloquy. In these cases, unhappily, the limitations of the legal instrument do appear; these cases would not afford separate grounds of action because they are not cognisable by law. The very instance before your Lordships' House may afford an illustration. Here a successor to the plaintiff in a responsible post in India was appointed in this country without previous notice given by the defendants; the successor enters the place of business to take, by their authority, out of the hands of the plaintiff, those duties with which the defendants have by contract charged him; and he does so almost simultaneously with the notice of the defendants bringing the contract to a sudden determination; while even before this notice reached his hands the defendants' Indian bankers had been informed of the termination of the plaintiff's connection with and rights as representing their firm. Undeniably all this was a sharp and oppressive proceeding, importing in the commercial community of Calcutta possible obloquy and permanent loss. Yet, apart from the wrongful dismissal, and on the hypothesis that the defendants are to be held liable in the full amount of all the emoluments and allowances which would have been earned by the plaintiff but for the breach of contract, there seems nothing in these circumstances, singly or together, which would be recognised by the law as a separate ground of action. If there should be, it will, on the principle I have referred to, remain; but if there be not, I cannot see why acts otherwise non-actionable, should become actionable or relevant as an aggravation of a breach of contract which, *ex hypothesi*, is already fully compensated. A certain regret which accompanies the conclusion which I have reached on the facts of this particular case is abated by the consciousness that the settlement by your Lordships' House of the important question of principle and practice may go some length in preventing the intrusion of not a few matters of prejudice hitherto introduced for the inflation of damages in cases of wrongful dismissal, and now definitely declared to be irrelevant and inadmissible on that issue. I concur in the judgment proposed by the Lord Chancellor.

Judgment appealed from reversed.

Counsel for Appellant—Duke, K.C.—Groser. Agents—Wansey, Stammers, & Co., Solicitors.

Counsel for Respondents—Lush, K.C.—Schiller. Agents—Broad & Co., Solicitors.

HOUSE OF LORDS.

Monday, July 26, 1909.

(Before the Lord Chancellor (Loreburn), Lords Macnaghten, Atkinson, Collins, and Shaw.)

ATTORNEY-GENERAL *v.* DUKE OF RICHMOND.

(On Appeal from the Court of Appeal in England.)

Revenue—Estate Duty—Deductions—Incumbrances Created bona fide "Wholly for the Deceased's Own Use and Benefit"—Valued Interests of Heirs of Entail Charged on Estate—Finance Act 1894 (57 *and* 58 *Vict. c.* 30), *sec.* 7, *sub-sec.* 1 (*a*).

An heir of entail in possession of Scottish heritage carried out disentailing procedure. The heritage was disentailed, the valued interests of the succeeding heirs being charged thereon. This was admittedly done with the object of reducing the total value of the estate for estate duty purposes by the amounts so charged upon the lands. *Held* (Lords Collins and Shaw of Dunfermline *diss.*) that the interests charged upon the land were incumbrances created *bona fide* and wholly for the deceased's own use and benefit, and that accordingly those amounts fell to be deducted from the deceased's estate under section 7, sub-section 1 (*a*), of the Finance Act 1894.

Per Lord Macnaghten—"The incumbrances intended to secure those debts were created *bona fide* in the only sense in which *bona fides* can be used in such a connection, that is to say, the debts and incumbrances were not fictitious or colourable, but real and genuine to all intents and purposes. Were these debts and incumbrances incurred and created 'wholly for the deceased's own use and benefit?' . . . . It seems to me that the words of the enactment are satisfied if the direct and immediate purpose of the person incurring the debt, or creating the incumbrance, is to make himself master of a sum of money over which he and he alone has power of disposition; and that it was not intended that there should be any inquiry into the ulterior and more remote purposes of the transaction or any investigation into motives."

The Attorney-General made a claim for estate duty against the respondent, under the circumstances stated in the rubric and in the opinions of Lords Macnaghten and Shaw of Dunfermline. The judgment of Bray, J., in the respondent's favour was affirmed by the Court of Appeal (Cozens-Hardy, M.R., Farwell and Kennedy, L.JJ.).

Their Lordships gave considered judgment as follows:—

Lord Chancellor (Loreburn)—I have had the advantage of reading in print the

opinions of Lord Macnaghten and Lord Atkinson, and I agree with the conclusion at which they have arrived. It is not necessary to decide finally whether the words "wholly for the deceased's own use and benefit" are to be read with the word "created" in sub-section 7 (1) of the Act of 1894, or relate only to the "consideration." If the latter, then no doubt the consideration for the incumbrance was received wholly for the late Duke. If the former, I think that the incumbrance was created wholly for the late Duke's use and benefit, in the sense that this was the direct and immediate purpose, as pointed out by Lord Macnaghten, and this suffices where the other conditions of the section are satisfied. I see no other arguable point in the case. It is not my province either to censure or to commend the transaction itself. It was within the law and without dishonesty. If this case has disclosed a way by which settled property may largely escape the estate duty, that is an affair for the Legislature to consider, in which courts of law have no concern.

LORD MACNAGHTEN — The question involved in this appeal has at last been brought within a very narrow compass. In the case as originally presented on behalf of the Crown there were charges and insinuations of bad faith which ought never to have been made. Those charges and insinuations were disproved at the hearing, and they have been abandoned or dropped, somewhat grudgingly I think, and with some appearance of reluctance. However, they are out of the way now, and the only question remaining is a question of construction—a question perhaps of some difficulty, arising as it does on one of the least intelligible sections in an Act of Parliament not remarkable for perspicuity. In 1897, three years after the passing of the Finance Act 1894, the late Duke of Richmond was minded to acquire in fee-simple certain estates in Scotland known as the Gordon-Richmond estates, of which he was then institute of entail in possession. There is no doubt about the motive which influenced him. He was advised by the solicitor of the family, a gentleman of the highest standing (and advised, I suppose, rightly), that if the entail were subsisting at the time of his death the principal value of the entailed estates would be aggregated with the rest of the property passing on his death so as to form one estate, but that it was competent for him under the law of Scotland, with the consent of the next two heirs of entail, his eldest son, then Earl of March, who is the present Duke, and his grandson, Lord Settrington, or, failing their consent, on paying or securing to the satisfaction of the Court the ascertained value of their respective interests, to acquire the estates in fee-simple. He was further advised (but the soundness of this advice is questioned in these proceedings) that if he acquired the fee-simple, then, although the principal value of the Gordon-Richmond estates would still have to be aggregated with the rest of his property, the value of the estate subject to duty would be diminished by the sums paid or secured as purchase money or compensation for the interests of his son and grandson. The Duke acted on the advice of his solicitor, conceiving, rightly or wrongly, that he was not under any obligation, legal or moral, to keep his property in a form peculiarly and unnecessarily obnoxious to an impost which I am afraid that many people still think unequal and unfair. Everything was done in an open and straightforward manner without subterfuge or concealment of any kind or any attempt to make the transaction appear other than what it was in reality. The sanction of the Court was applied for on the footing that Lord March and Lord Settrington failed to consent. The procedure was regular and proper throughout. The interests of the next two heirs of entail were valued under the direction of the Court, and the amount of the valuation in each case was secured on the fee-simple of the Gordon-Richmond estates to the satisfaction of the Court. On the death of the late Duke, which occurred in 1903, his executor, the present Duke, who succeeded to the Gordon-Richmond estates under the late Duke's will or trust-disposition, claimed an allowance in respect of the sums secured in his favour and in favour of his son on the fee-simple of the Gordon-Richmond estates. The Commissioners of Inland Revenue rejected the claim. An information was brought by the Attorney-General to enforce their view. Bray, J., dismissed the information with costs, and the Court of Appeal sustained his decision. I think that the judgment of the Court of Appeal is right. The question depends on the meaning and effect of the language used in section 7, sub-section 1 (*a*), of the Finance Act 1894. I cannot help approaching the question with some diffidence, because, as your Lordships may remember on a former occasion when this sub-section was much discussed, a noble and learned lord, who was a much greater authority on questions of this sort than I can pretend to be, observed in this House that the sub-section was "not an easy one to construe," and that he was not satisfied that he had "quite mastered the meaning of it." In that case it was not necessary to solve the difficulty. Your Lordships are confronted with it now, and it must be solved. Some meaning must be given to the enactment, however obscure the language may be. After all, there is but little room for argument. The main puzzle lies in an expression contained in only eight words. No allowance, says the enactment, is to be made "for debts incurred by the deceased or incumbrances created by a disposition made by the deceased" unless four conditions have been complied with. It must appear that (1) "such debts or incumbrances were incurred or created *bona fide*"; (2) "for full consideration in money or money's worth"; (3) "wholly for the deceased's own use and benefit"; and (4) that they "take effect out of his interest." It cannot, I think, be

disputed that conditions 1, 2, and 4 have been satisfied. The debts to Lord March and his eldest son were incurred *bona fide*, and the incumbrances intended to secure those debts were created *bona fide* in the only sense in which the term *bona fides* can be used in such a connection—that is to say, the debts and incumbrances were not fictitious or colourable, but real and genuine to all intents and purposes. The consideration given was the full consideration, for the amount was judicially ascertained and settled by the Court. Again, these debts and incumbrances undoubtedly took effect out of the interest of the late Duke. So far there cannot, I conceive, be any difficulty. Then comes the pinch of the case. Were these debts and incumbrances incurred and created "wholly for the deceased's own use and benefit"? The learned counsel for the Crown say, No. They were mainly, if not wholly, for the benefit of the deceased's successors"; and that is perfectly true in the result. If you give the expression its strict meaning, adhering slavishly to the letter, no allowance can be made for any debt incurred by the deceased, or any incumbrance created by him which in the slightest degree operates for the benefit of any other human being. The argument must go this length. The word "wholly" forbids anything short of it. The condition that a debt or incumbrance or the consideration for such debt or incumbrance (if that be the true reading) must be wholly for the benefit of a particular individual excludes every case where anybody else participates in the benefit. If the construction for which the appellant contends be right, a man who burdens his property to portion his daughter, to educate or advance his son, to save a friend from ruin, to effect some lasting improvements on his estate which cannot give an immediate return, or to promote some benevolent object or some object of real or supposed public utility, to endow a hospital for instance, or save a famous picture for his country, cannot hope for an allowance from the Commissioners of Inland Revenue. That concession is reserved for the man who spends on himself alone—for the prodigal, the gambler, and such like. I cannot bring myself to think that the Legislature deliberately intended to put a premium on extravagance purely selfish, and to penalise expenditure on objects generally considered more worthy. What then is the meaning of the expression of which so much was made in the argument? It seems to me that the words of the enactment are satisfied if the direct and immediate purpose of the person incurring the debt or creating the incumbrance is to make himself master of a sum of money over which he, and he alone, has power of disposition; and that it was not intended that there should be any inquiry into the ulterior and more remote purposes of the transaction or any investigation into motives. The motive in this case is transparent, and it was openly avowed, but motives for the most part are complex and often extremely obscure, and if the appellant's contention were to prevail the door would be open to harassing inquisition and constant litigation. The result is that, in my opinion, all the conditions required to entitle the respondent to the allowance which he claims have been satisfied, and the appeal should be dismissed with costs. So much for the question of construction. It is really the only question. But perhaps, having regard to some things said in the course of the argument, I may be forgiven for adding a word or two on a broader aspect of the case. Your Lordships were warned by the learned counsel for the appellant of the appalling consequences of the decision under appeal. "Here," they say, "is a tremendous hole in the Finance Act discovered by the ingenuity of a Scotch solicitor. The great fishes which the commissioners look upon as their own will swim through the gap one by one. The duller witted Southron will follow the lead, and what will become of the revenue of the country?" I do not think the prospect so gloomy, nor can I see that any extraordinary astuteness was required to recommend the course which the late Duke adopted. I should think that the eminent solicitor who was the Duke's adviser would be the first to disclaim the left-handed compliments lavished on his skill. The law of Scotland authorises heirs of entail in possession to break the fetters of the entail on compensating interests in expectancy. That is all that the Duke did. There is no similar procedure in England. As Mr Clyde explains in his evidence, "the principles of Scotch entail law are fundamentally different from the corresponding laws in force in England." But what is practically the same thing is done here every day and nobody complains. If a settlement is spent, the persons interested in the settled funds—the tenant for life and remaindermen not being under disability—may divide the funds between them, and so the estate of the tenant for life may escape death duties which if the settlement remained in existence it would have to pay. Suppose £10,000 were settled on A's marriage upon A for life, with remainder to the wife for life, with remainder to the children who attain twenty-one. Suppose the wife is dead and the children are all of age and under no disability, why should not the settled funds be divided between the father and the children according to their interests? Practically that was what was done in this case. Only the law of Scotland offers special facilities for enabling the heir of entail to put an end to the entail and disentangle or sever his interest from the interests in expectancy. There is nothing here in the nature of a gift. The Duke did not part with any property that was really his own. There was nothing but a purchase on statutory conditions carried out under the direction of the Court. If the Duke had paid money down, what could have been said against the arrangement? If he had borrowed the money from his bankers the transaction would not have been open to objection.

There can be no difference in principle between paying ready money for what you buy and giving full security for the price; and so far as I can see there is nothing in the Finance Act to forbid or penalise the transaction whether it be effected by present payment or by giving adequate security.

LORD ATKINSON—In this case, the facts of which have been already stated with sufficient fulness, fraud is not relied upon by the Crown. It is, on the contrary, admitted that the transactions which took place between the late Duke of Richmond and his son and grandson, the next heirs in tail to his Scotch estates, up to and inclusive of those of the 20th October 1897, were real and genuine, as opposed to colourable transactions. If so, the incumbrances on these estates created by the late Duke were, in my opinion, created *bona fide* within the meaning of section 7, subsection 1 (*a*) of the Finance Act 1894. It is certain that the motive which prompted the late Duke to enter into these transactions was to relieve those estates which upon his death would pass to another, or to others, from the payment of estate duty. That motive, however, does not vitiate the transactions any more than it vitiates a voluntary alienation of property made with the same purpose and object twelve months before a donor's death. Just as there is nothing illegal or immoral in making such a gift, or in living for twelve months afterwards, so as to make the gift an effectual means of escape from death duties, so there is, in my opinion, nothing illegal or immoral in making the dispositions of property which were made in this case. I further think that the case must be determined solely with regard to the legal right and interest which the respective parties had acquired on the 20th October 1897, the date of the execution of the impeached securities. What they did afterwards, how they chose to dispose of those legal interests or to exercise those legal rights, is, in my view, irrelevant. It might have been legitimate to inquire into these matters subsequent, if the transactions which were concluded on that day had been impeached as unreal, colourable, or sham transactions; but they have been admitted to be real and genuine in their character, and if so, all subsequent dealings with the estate and the interests created in it are outside the field of inquiry, even though by their operation they practically restore the *status quo ante*. The question for decision, therefore, simply resolves into this—Were the incumbrances which were in fact created on the 20th October 1897, to use the words of section 7, sub-section 1 (*a*) of the statute, "created *bona fide* for full consideration in money or money's worth wholly for the deceased's Duke's own use and benefit, to take effect out of his interest"? It is clear that they fulfilled this last requirement, as they took effect out of the fee of the lands which he had acquired by the disentailing proceedings. Were they created *bona fide?* They cannot, I think, for the reasons already given, be held to have been created *mala fide* simply because they constituted one step in proceedings designed to provide a means of escape from the payment of estate duties. The next question is, Did they by their operation confer upon the heirs in tail the legal rights which they purported to confer? If the Earl of March or Lord Settrington had sought to put them in suit, it cannot be said that he could have been restrained by any proceeding in any court of law or equity. But if these instruments thus did what they purported to do—conferred in law and in fact the rights and interests which they purported to confer—I fail to see how they can be held to have been created otherwise than *bona fide*. Then were they created for full consideration in money or money's worth. If the Earl of March and Lord Settrington had in the year 1897 been tenants in fee in remainder of these estates, instead of being next heirs in tail of them, and the late Duke had purchased these respective interests in remainder at a price fixed by public authority as their full value, and on payment of this price had taken a conveyance of these interests to himself, thereby, through the merger of his life interest converting himself into the owner in fee in possession, it could not be suggested that he had not received full consideration in money or money's worth for the money which he had paid. And if, instead of paying the purchase money, he had executed a mortgage of the fee-simple which he had acquired in favour of his son for the full amount of the purchase money, with interest till paid at a certain rate, it would be equally impossible to suggest that the mortgage security, the incumbrance of the fee, had not been created for full consideration in money or money's worth—namely, the interests in remainder, which, *ex hypothesi*, were full value for the sum secured. But what the late Duke did in fact in this case, though differing from these transactions in legal character and operation, were in their ultimate effect and result the same. He purchased from his next heirs in tail the consent which enabled him under the statute to destroy their interests in the estate, and to convert himself into the owner in fee, at a price equal to the full money value of the interest destroyed. Had he paid this price in money it could not be contended with success in this case any more than in the other that he did not receive full consideration for the money which he paid. That consideration was in reality the fee of the estate, which necessarily exceeded in value the interests of the next heirs by the value of the Duke's own life estate. It cannot make any difference in the legal result of the transaction if he mortgaged the fee for the amount of the purchase money instead of paying it in cash. In this case, as in the former, the incumbrances must be held to have been created for full consideration in money or money's worth. It was urged, however, that these incumbrances were not created wholly for the benefit of the deceased duke

and that no doubt is perfectly true. They were, however, created as completely and entirely for his benefit as is any mortgage given by a mortgagor to secure a debt due by him created for the benefit of that mortgagor, and were created as much for the benefit of the next heirs as is any mortgage given to secure a debt due to a creditor created for the benefit of that creditor. The incumbrances in this case were, in my view, in truth created, as all securities of that kind, mortgages or other, must be created, for the benefit both of the person who creates them and of the person in whose favour they are created. In my opinion every contract for value freely entered into must, in the absence of fraud, be held in contemplation of law to have been entered into for the benefit of both of the parties to it. The consideration which each receives, especially if it be money or money's worth, may be received wholly for the benefit of the recipient, but the contract entered into binds him to give as well as entitles him to receive. Consideration must move from him as well as to him. The contract cannot, therefore, I think, be held to benefit him alone. And I do not think that the provisions of section 7 or of any other section of the Finance Act 1894 require that the financial transactions of deceased owners of property should, for the purposes of that statute, be dealt with by courts of law on any different assumption. It never could have been intended, for instance, to say that it was competent for a court of law in the case of a loan secured by mortgage to hold that the incumbrance was created wholly for the benefit of the mortgagor, and wholly to the detriment of the mortgagee if the security was in fact worthless. Nor, on the other hand, that it was created wholly to the detriment of the mortgagor and wholly for the benefit of the mortgagee if the rate of interest was excessive, or the other provisions of the mortgage harsh, and it was proved that the mortgagor could have borrowed elsewhere on much easier terms. I do not think that section 7, sub-section 1 (*a*), of the statute imposes a condition so impossible to satisfy as that contended for; and therefore I concur with the Court of Appeal in thinking that the words "wholly for the deceased's own use and benefit" apply to the consideration given for the incumbrance, not at all to the incumbrance itself, and simply mean that the deceased, the person who creates the incumbrance, must have received the full consideration in money or money's worth as his own, to be disposed of by him in any way that he pleases, free from the control or interference of others. If this sub-section, or rather that portion of it which deals with the creation of incumbrances by deceased owners, be considered in connection with section 3, I think it will appear that this is its true construction. Section 3 deals with the alienation of property by the owner, or with the carving by him of interests out of it in favour of others. This portion of section 7, sub-section 1 (*a*), deals with the creation by an owner of property of incumbrances upon it. They are kindred operations. In section 3 it is provided that in order that the property alienated, or the interest created by an owner, may escape taxation when it passes on his death, full consideration in money or money's worth must have been paid to him "for his own use or benefit"—that is to say, I take it that it must have been paid to him as his own, to be disposed of as he wills. Section 7, sub-section 1, provides that in order that the amount of an incumbrance created by a deceased owner may be deducted from the amount on which duty is to be paid full consideration in money or money's worth must have been given to the deceased "wholly for his own use and benefit." Nothing turns on the use of the word "and" in the latter case instead of "or." The aim and object of both provisions is apparently the same, first, to prevent evasion by fictitious sales or the creation of fictitious interests or incumbrances or the acknowledgments of fictitious debts, and second, to prevent the tax being practically levied twice over on the same property. When the owner of property alienates it he diminishes by the value of that property the amount of property which remains with him and which will, presumably, pass upon his death, and consequently be taxable; but if he receives the full money value of that which he has parted with, the taxable fund is brought back to its old level. It would be unjust to tax, first the property alienated, and secondly the money paid for it. That would be taxing the same property twice. And consequently the property alienated is in such cases treated as if it did not pass on the death of the vendor, and the tax is presumably levied on the purchase money which represents it. In furtherance of this object it is provided that where partial, not full, consideration is received, the alienated property is taxed, but to avoid injustice a deduction is made in respect of the partial consideration so received. Similarly, in the case of debts and incumbrances, these are to be allowed for under sec. 7, sub-sec. 1, if not incurred or created by the deceased, because the amount of the net assets left by him on which duty is rightly payable is only what remains after they have been deducted; but, as in the other case, to prevent evasion, and at the same time to avoid taxing the same thing twice over, it is provided that debts and incumbrances incurred or created by the deceased may be deducted and the taxable fund thereby diminished to the amount of the debt or incumbrance only where he has received in respect of them full consideration in money or money's worth, that is, has received an equivalent addition to the taxable fund, bringing it up to its original level. It is obvious, however, that the consideration received could not pass into the taxable fund if persons other than the deceased had any interest in or control over it; and consequently it must be received by him "wholly for his own use and benefit," just as the purchase money of lands sold must be paid to the vendor "for his own use or

benefit." If in such a case no allowance were made, the taxable fund would presumably be artificially swelled by the amount of the consideration received, and the duties in effect levied twice over. In my opinion, therefore, the decision of the Court of Appeal was right, and this appeal should be dismissed, with costs.

LORD COLLINS—I need not say that it is with profound diffidence that I venture to differ from the unanimous judgment of the Master of the Rolls and his colleagues in the Court of Appeal. I cannot, however, persuade myself that the incumbrances in respect of which deduction is claimed in this case were "created wholly for the late Duke's own use and benefit" within the meaning of sec. 7, sub. 1 (*a*), of the Finance Act 1894. I accept unreservedly the conclusions of fact found by Bray, J., and adopted by the Court of Appeal, and I do not at all question the right of an owner of property so to dispose of it, if he can, as to keep it outside the meshes of a taxing statute. But the real question here is whether he has succeeded in doing so. In my opinion he has not. It is common ground, and expressly found by the learned Judge, that "it was the intention of the late Duke to bar the entail and make himself owner in fee simple of the Gordon-Richmond estates, subject to the incumbrances including the bonds, but that the motive which mainly actuated him in taking the steps which he did for that purpose was that he would thereby diminish his estate and lessen the estate duty payable on his death." Can an incumbrance created mainly from such a motive be fairly said to be "incurred or created wholly for the deceased's own use and benefit," and not in whole or in part for that of his successor? I think not. No doubt the learned Judge was perfectly logical in holding, notwithstanding this finding, that the deductions were legitimate, because his view was that "the freeing the estate from estate duty at the owner's death is really a benefit to the owner." "He has so much more at his disposal." But from this particular view of the learned Judge each member of the Court of Appeal expressly differed, and no argument in support of it was urged before us. The learned Judge further fortified his opinion that no objection could be sustained, on the ground that the incumbrances were not created wholly for the deceased's own use and benefit, by construing the section as enacting, not that the creation of the incumbrance, but that the money or money's worth—*i.e.*, the consideration—must be wholly for the deceased's own benefit. The Court of Appeal seem to have read the section in the same way. In my opinion that interpretation is not consistent with the plain grammatical construction of the section. Debts and incumbrances are the nominatives which govern the verbs throughout the sentence, and they must fulfil four conditions—they must be made (*a*) *bona fide*, (*b*) for full consideration, (*c*) wholly for deceased's own use and benefit, (*d*) must take effect out of his interest. The reason which the learned Judge gives for rejecting what seems to me the natural construction of the sentence is that incumbrances must always be partly for the benefit of the person in whose favour they are created, and therefore could not ever be created wholly for the use and benefit of their creator. I do not think that this incident of an incumbrance at all qualifies the true interpretation of the section. Just as money may be expended, so may an incumbrance be created, wholly for the use and benefit of the person paying the money or creating the incumbrance, though money passes to a third person in the one case and the right to enforce the security in the other. There being, therefore, no barrier to interpreting the section according to its natural grammatical meaning, and the only suggestion whereby the avoidance of death duty may be regarded as enuring wholly for the benefit of the deceased, rather than of his successor, being ruled out, it would seem to follow that the creation of the incumbrances in this case cannot be brought within the conditions permitting deduction. The Legislature would seem to have fenced round permissible deductions with the precautions above mentioned in order to provide that the estate thus made liable to depletion should receive an equivalent addition in return for the incumbrance. But even if the grammatical construction put on the section by the courts below be adopted, I am far from satisfied that "full consideration in money or money's worth" was received by the deceased in return for the incumbrances. In fact, if it had been, it might have defeated the main purpose of the transaction, which involved a diminution in value of the estate to be left in the hands of the settlor at the close of the transaction. In fact, the machinery put in operation by the elaborate processes adopted would have failed in its main object if it had left the estate which it was contemplated would pass on the death of the settlor at the same value at the close of the proceedings as it would have been had no settlement been made. It was through the means of allowable deductions only that the intended diminution of the taxable value of the estate could be brought about, and to the extent of such deductions the consideration was less than full. Looking, as we are entitled to do, at the transaction as a whole, there is no doubt that the interests of Lord March and his son in the estate which the late duke was to buy up were carefully assessed at the sum for which the incumbrances were created, but the proper equivalent in return for the incumbrances to such an amount would have been an estate equivalent to the sum total of those interests and unincumbered by a charge for the purchase money. But it was part of the arrangement that the purchase money was to be secured on the estate not paid, and therefore the consideration intended to be given, and actually given, was less than full by the value of the incumbrances, and thus furnished no ground for

claiming the deduction which has been allowed. There is no evidence that the dominion acquired over the fee was really desired with a view to altering the succession, or had any special value for that reason. In point of fact, the property was at once resettled as nearly as possible on the old lines. I cannot think that a claim thus manufactured can be held good. For these reasons I think that the appeal should be allowed.

LORD SHAW—On the 6th October 1897 the late Duke of Richmond granted a bond and disposition in security over his estates after mentioned for £415,000 in favour of his son, the present Duke. On the same day he granted a bond over the same estates for £287,000 in favour of his grandson, the present Earl of March. The question in the present case is Whether, in determining the value of these estates for the purposes of estate duty, allowances should be made for these incumbrances. The provisions of section 7, sub-section 1, of the Finance Act 1894 applicable to the present case are as follows:—"In determining the value of an estate for the purpose of estate duty, allowance shall be made . . . for debts and incumbrances, but an allowance shall not be made (*a*) for debts incurred by the deceased or incumbrances created by a disposition made by the deceased unless such debts or incumbrances were created or incurred *bona fide* for full consideration in money or money's worth wholly for the deceased's own use and benefit, and take effect out of his interest." I am of opinion that in order to arrive at a just determination upon the elements for consideration presented by this clause it is necessary to consider not merely the transaction of creating incumbrances by itself, but the entire transaction of which they form a part. I think that this must be done if mistake is to be avoided. It is for that reason that I give the brief narrative which follows:—Among the Scotch Entail Acts cited in these proceedings, the Rutherfurd Act (11 and 12 Vict. c. 36) and the Act of 1875 (38 and 39 Vict. c. 61) are those outstanding. By the former of these Acts an heir of entail in possession received for the first time in the law of Scotland power to disentail on obtaining the necessary consents of succeeding heirs. By the latter statute such consents if not given might, in the case of new entails of which this is one—namely, entails executed after the 1st August 1848—be dispensed with by the Court on payment of the value of the expectancy or interest of the heir or heirs of entail. The beginning of the series of transactions after mentioned was made on the 12th April 1897, when a petition was presented to the Court of Session by the late Duke of Richmond, the prayer of which was for the disentail of what may be comprehensively termed the Gordon-Richmond estates lying in six counties in Scotland. The petition necessarily craved for service upon the succeeding heirs of entail, and in the event of any of those whose consent was necessary refusing or failing to give such consent, then for the ascertainment of the value in money of such heirs' expectancy or interest, and the payment of the amount or the giving of proper security therefor over the entailed estates. Upon such payment or security the Court was asked to dispense with consent and to approve of the instrument of disentail tendered in the course of the proceedings. The parties were at one as to the object to be achieved. The consents of the heirs of entail were not given, mortgages were accordingly granted for their interests, and after various steps of procedure the petition was granted. So far as the proceedings were concerned they appear to have been in proper form. This observation applies not only to the valuation of the interests of those heirs whose consent was necessary, but also to the bonds and dispositions in security granted over the estates and to the instrument of disentail. The procedure is accurately summed up and ratified in the interlocutor of the 20th October 1897. As already stated, the finance of the transaction was arranged by security being given over the estates to the next heirs for the ascertained value of their interests, that value being in the case of the Earl of March, now Duke of Richmond, £415,000, and of Baron Settrington, now Earl of March, £287,000, together a sum of £702,000. As the late Duke was at the date of his petition seventy-nine years of age, it is plain that actuarially the value of the succeeding heirs' interest, for which bonds and dispositions in security had to be granted, went a long way towards evacuating the entire value of the entailed estates. As it turned out, this evacuation was completed prior to the Duke's death on the 27th September 1903. In the interval between the disentailing proceedings and his death instalments of interest became due on the bonds and dispositions in security. These were not, however, paid; from the beginning to the end of the series of transactions no money passed. At certain dates balances of overdue interest were struck, and further bonds and dispositions in security over the estates were granted to the amount of £88,000. The result was that so far as the financial interest of the late Duke in the Scotch entailed estates was concerned, that interest had at the date of his death been reduced to nothing. Indeed, in the estate-duty account presented by the solicitors to the Inland Revenue it is expressly stated that there is an excess of debts and incumbrances over the value of the heritable property of £47,092. So far for finance. But as the statute under construction deals not only with *bona fide* and full consideration, but provides that the incumbrances are to be created *bona fide* for full consideration "in money or money's worth wholly for the deceased's own use or benefit, and take effect out of his interest," it becomes necessary to inquire what became of the Gordon-Richmond estates, thus left unentailed but depleted in value in the hands of the late Duke; and, secondly, what became of the

sum of over £700,000, for which, as stated, his Grace granted incumbrances in favour of his son and grandson. With regard to the estates themselves, the late Duke of Richmond on the 20th April 1898 executed a *mortis causa* deed of entail in favour of the same line of succession as that favoured by the entail of 1872. With regard to the £700,000, that was settled by an assignation and deed of trust dated the 11th and 15th Nov. 1897, and recorded on the 18th Nov. 1897. Substantially the result arrived at by these deeds was to put the money represented upon trust for the same line of succession, viz., the old heirs of entail. It will be seen, accordingly, that at the end of these transactions the parties affected thereby were, for practical purposes, restored pretty nearly to the identical position which they occupied at the beginning. This, I think, was exactly what was sought to be achieved. Whatever may have happened to others, it is at all events fairly clear that the one man who had not benefited was precisely the petitioner for disentail, the grantor of repeated mortgages, and re-entailer of the reversion—the late Duke himself. For myself I can see no benefit produced to the late Duke of Richmond by this series of transactions, and I am unable to affirm that the incumbrances which formed essential items of the series were, in the language of the statute, "for deceased's own use and benefit." What the motive for the transaction was is not denied. Answering the learned Judge who tried the case, his Grace speaks with perfect frankness to a conversation with his father—"You had a conversation with your father before he began this transaction?—Yes. He told you what his motive was?—Yes, his motive, as I think I said yesterday, was to lessen the amount of the death duties if he could." The interests of all the three parties to the transaction were ably attended to by the same firm of solicitors. They accepted the task of endeavouring to give effect to the motive of the late Duke. In doing so they incurred no risk of prejudicing the interest of his son or grandson. On the contrary, the result, if it could be legally accomplished, would benefit them, as, under the judgments appealed against, it has benefited them by a saving in estate duty to the amount of £55,000. That saving of estate duty (I purposely do not use the term evasion or even avoidance of estate duty), that saving formed the object and purpose of the transaction. It was for this that the incumbrances were created, and not "for full consideration in money or money's worth wholly for the deceased's own use or benefit," or to "take effect out of his interest." The saving was not to take effect till he was dead, and then could be for the benefit only of those who would have to pay the estate duty. I therefore agree with the conclusion arrived at by Lord Collins. In doing so I admit to the full the difficulties arising out of the clause and referred to in the judgment of Lord Macnaghten. On the construction of the sub-section I agree that the insertion of the words "*bona fides*" would, of course, hit a fraudulent creation of an incumbrance, but I think, further, that the words "*bona fides*" must be read in collocation with the other words, "for full consideration in money or money's worth, wholly for the deceased's own use or benefit." By this I mean that the transaction of creating the incumbrances must not be technically and apparently for the benefit of the grantor, but really and intentionally so. I cannot think that this was the case in the present instance. With reference to the judgments in the Courts below, I will only say that they do not appear to me to give effect to the strong and carefully worded language of the statute. When, for instance, Bray, J., reasons that "It is a mistake to assume that to free one's heir from estate duty is necessarily an act done for his benefit," and that "it does not necessarily follow that the present Duke will reap the whole benefit if he escapes the payment of estate duty," the point of the provision appears to have been missed, viz., that escape is not permissible unless the incumbrance was created, *inter alia*, "wholly for the use and benefit," not of the present Duke but of the late Duke, the grantor of the deed. And with reference to the decision of the learned Judges in the Court of Appeal, I think (1) that it was too closely confined to the one item of the transaction as a purchase of a reversion without taking into account the fact, appearing from other parts of the transaction, that the reversion was purposely reduced to a shadow, and (2) that too much stress was laid upon argument, possible but not put forward, as to fraud. The deeds make no attempt at concealment, but disclose quite openly the inter-relation of the facts, deeds, and transactions which go to make up the scheme. To view these so inter-related as if they were in isolation would be for me—and I speak, of course, only for myself—to shut out the light, to lose their true meaning, and to produce a risk of failure to get down to the reality and substance of the case. I think that the creation of these incumbrances was not for the use and benefit of the late Duke of Richmond, but was simply part of a plan for saving death duties to his heirs. I do not think that the scheme was in this case accomplished without a contravention of the letter as well as a very plain violation of the spirit of the statute.

Appeal dismissed.

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