the Court what additions and repairs are necessary for that purpose: Reserving in the meantime all questions of expenses."

Counsel for Pursuer (Respondent)—Dean of Faculty, (Fraser)—Burnet Agent—W. S. Stuart, S.S.C.

Counsel for Defender (Reclaimer)—J. P. B. Robertson. Agents—J. & A. Hastie, S.S.C.

Wednesday, June 12.

FIRST DIVISION.

Exchequer Cause.

[Lord Curriehill, Ordinary.

LORD ADVOCATE *v.* PRINGLE.

Revenue — Inventory - Duty — Value of Contingent Interest.

The executor of a deceased party gave up an inventory of the moveable estate, including as one item therein the value of a right of succession which was then contingent and uncertain, and estimated that value at £20. —*Held* that the Crown was not barred, by accepting payment of the stamp-duty upon this inventory, from claiming duty on the amount of a correct valuation of the expectancy as at the date when the inventory was sworn to, but was entitled to payment of duty upon that footing.

Question, Whether they were entitled to a payment of duty on the sum actually realised by the executor.

Revenue—Residue-Duty—Value of Contingent Interest.

The amount of residue-duty payable is determined by the amount actually realised, and in the event of the sale of a contingent interest by the executor, duty is payable not upon the price thereby obtained, but upon the actual value of the contingent interest, whatever that may turn out to be.

Thomas Turnbull of Crailing, Fenwick, and Briery Yards, died unmarried and intestate on 15th October 1874. He had for many years been of unsound mind and under curatory, and his personal estate had been accumulating till it had reached the sum of £205,235, 8s. 1d. An inventory of his estate was given up by his executors, upon which they paid the full amount of legacy and inventory duties demanded by the Commissioners of Inland Revenue, amounting together to £16,330, 1s. 4d.

In 1855 seven persons then alive—viz., Andrew Pringle, Mrs Beatrix Scott *alias* Piper *alias* Oyston, Janet Pringle, Robert Pringle, John Armour junior, Margaret Fulton, and William Barclay David Donald Turnbull—all stood in equally near degrees of relationship to Thomas Turnbull, being all children of cousins-german of his father William Turnbull. In the event therefore of all these persons surviving Thomas Turnbull, each of them would be entitled, as one of his next-of-kin, to one-seventh share of his moveable succession; but in the event of any of them predeceasing him the representatives of such predeceaser would not be entitled to any share of the succession, which would all belong to the surviving next-of-kin. In order to obviate this result as far as possible, and to secure to the representatives of predeceasers an interest in the succession, a joint arrangement and deed of agreement was entered into in 1855 by five of them —Margaret Fulton and William Barclay David Donald Turnbull declining to be parties to the agreement. The substance of this agreement was that the representatives of any predeceasers should have the same interest in the estate of Thomas Turnbull as would have belonged to the party they represented if he or she survived Thomas Turnbull. The two who were not parties to the agreement predeceased Thomas Turnbull, and accordingly their representatives were not entitled either as next-of-kin or under that agreement to any part or share in Thomas Turnbull's succession. Of the parties to the agreement two predeceased Thomas Turnbull, viz., Janet Pringle and Robert Pringle, and but for the agreement their representatives also would have been excluded from all interest in Thomas Turnbull's succession, the whole of which would have belonged absolutely to the three surviving next-of-kin, viz. — Andrew Pringle, Beatrix Scott *alias* Oyston *alias* Piper, and John Armour junior. These persons, however, after being decerned executors-dative to Thomas Turnbull, and expeding confirmation, and paying the inventory and legacy duties on the succession, were bound to divide the clear residue into five equal portions, and to pay one such portion, amounting it appeared to upwards of £37,000, to Andrew Pringle, as executor-dative and legal representative of Janet Pringle, who had died unmarried and intestate, and another portion to himself as an individual.

Janet Pringle had died intestate on 13th November 1858, and her brother Andrew Pringle was decerned her executor-dative *qua* next-of-kin on 5th February 1863, on which date he took oath to an inventory of her personal estate and effects. In that inventory her right and interest under the agreement was included as one of the items of her moveable estate. The agreement was narrated in the inventory, and the nature of the right and interest was clearly described — the entry concluding as follows:— "which right and interest may at present be valued at £20." The other items of the inventory amounted to £29, so that the whole did not exceed £49, upon which a stamp-duty of 10s. was paid, that being the amount payable on inventories in cases of intestate succession where the whole estate is above £20 and under £50. Janet Pringle's estate at her death fell to her two brothers Andrew and Robert, but as Robert died on 11th December 1859, and therefore predeceased Thomas Turnbull, Janet's interest in Thomas Turnbull's estate fell to be divided between her brother Andrew Pringle, her executor, and the children of Robert.

This action was now brought by the Lord Advocate, as representing the Crown, against Andrew Pringle, as his sister Janet's executor, and concluded that he should be ordained to exhibit upon oath and to record a full and true inventory of Janet Pringle's estate, or for decree for £784, 10s. as inventory-duty payable on a full and true inventory of her estate, if such inventory had been duly exhibited and recorded; and (2) for £1132, 11s. 3d. as residue-duty upon the estate as handed over to the heirs *ab intestato.*

It was averred by the Crown that the share of Thomas Turnbull's estate falling to Janet Pringle was £37,035, 17s. 8d., and it was upon this sum that duty was claimed.

It was admitted by the defender that by assignation dated 31st January 1863 he sold for an annuity of £350 and a sum of £3000 his individual *spes successionis*, together with any right he might have as one of Janet's next-of-kin.

The defender pleaded, *inter alia*—"(2) The alleged agreement of 1855 was null and invalid, in respect that Mrs Beatrix Scott *alias* Piper *alias* Oyston could not, according to the law of England (to which she was subject), enter into such a transaction, and in respect that John Oyston, who was then her husband, did not sign it. (4) Any interest which at the time of her death Janet Pringle had in the estate of Thomas Turnbull having been merely a *spes successionis*, the action is groundless. (5) The defender having in the inventory condescended on truly described and fairly valued the interest of Janet Pringle in Thomas Turnbull's succession, and the Crown having assented to the said valuation and accepted duty thereon, the present action is groundless. (7) Assuming that the sale of 31st January 1863 is to be taken as the criterion of the value of Janet Pringle's interest in Thomas Turnbull's estate, any duty payable by the defender falls to be calculated on the value so ascertained. *Separatim*—In no view can the duties claimable from the defender for his half of Janet Pringle's interest be calculated on an amount exceeding the price obtained by him."

The Lord Ordinary found for the pursuer, adding this note:—

"*Note.*—[*After stating the facts*]—And the first question now to be determined is, Whether the right and interest which Janet Pringle had in said succession in virtue of the agreement with her relatives, and which thus came to be exigible by her executor, formed part of her moveable or personal estate. After much consideration, I have come to be of opinion that this question must be answered in the affirmative.

"It is true that Janet Pringle's interest in the succession of Thomas Turnbull was prospective and contingent. It could not be realised until the death of Thomas, and whether it would ever realise any sum at all depended upon various contingencies, viz.:—(1) upon Thomas dying without recovering mental health, and therefore without leaving a valid testament; (2) upon his dying without issue; (3) upon one or more of the parties to the agreement surviving Thomas. And the amount which might be realised was further contingent upon Margaret Fulton and William Barclay David Donald Turnbull, or either of them, surviving or predeceasing Thomas Turnbull. But notwithstanding these contingencies, the right of Janet Pringle was absolute as against the other parties to the agreement. It was a right which she purchased from those parties to call upon such of them as might survive Thomas Turnbull to pay to her, or her heirs, executors, and successors, one-fifth part of their shares in the succession of Thomas—the price paid being her own obligation to surrender to the other parties and their representatives corresponding shares of the succession in the event of her succeeding to the whole or a part thereof by her survivance of Thomas. The contract was a highly onerous one, and I have no doubt that it formed in her a vested fund of credit which she could have disposed of by will, or could have sold during her life, and which might have been attached by her creditors either during her life or after her death. The agreement was truly a *pactum de hereditate viventis*, belonging to a class of transactions which are of by no means rare occurrence, and to which the law does not refuse effect; and although in almost all cases of the kind the right acquired is more or less contingent, *i.e.*, liable to be defeated by occurrences beyond the control of either of the parties to the transaction, the right such as it is has generally an appreciable value, and is regarded as forming part of the estate of the party acquiring the right, even although it may not be capable of realisation during the life of that party. Thus, a *post obit* bond granted to a creditor by an expectant heir-of-entail is contingent upon the debtor surviving the heir-of-entail in possession, and the contingency may not be purified during the lifetime of the creditor. But the bond is part of the creditor's estate, and it is made payable to the creditor or his heirs, executors, and successors, and it cannot be enforced by the creditor's representatives—at all events by those who succeed to him—by will or *ab intestato* without making up a title to the creditor. It appears to me that the position of Janet Pringle under the agreement now in question is in no essential respect different from that of the creditor in such a *post obit* bond. . . . . . .

"The pursuer now claims inventory stamp-duty upon the value of the said right and interest as actually realised by the defender as Janet Pringle's executor; but the defender resists the claim on the ground, first, that the said right and interest was not truly part of Janet Pringle's estate, and was erroneously included in the original inventory thereof; and second, that assuming the said right and interest to be liable to inventory-duty, the claim of the Crown for such duty has been satisfied by the payment already made, and that the pursuer is not entitled to demand payment of duty in addition to what has already been paid.

"If I am right in holding that Janet Pringle's right and interest under the agreement truly formed part of her personal or moveable estate, it follows that the first of these grounds of defence cannot be sustained. I have more difficulty as to the other ground of defence, which cannot be satisfactorily disposed of without a careful examination of the various statutes on which the demand of the Crown is based.

"By the Act 48 Geo. III. cap. 149, sec. 38, it is required that every person who, as executor, nearest-in-kin, creditor, or otherwise, shall intromit with or enter upon the possession or management of any personal or moveable estate or effects in Scotland of any person dying after 10th October 1808 shall, on or before disposing of or distributing any part of such estate or effects, or uplifting any debt due to the deceased, and at all events within six months after having assumed such possession or management in whole or in part, and before he shall be confirmed executor, testamentary or dative, exhibit upon oath or solemn affirmation in the proper Commissary Court of Scotland 'a full and true inventory, duly stamped as required by this Act, of all the per-

sonal or moveable estate and effects of the deceased already recovered or known to be existing.' And if at any subsequent period a discovery shall be made of any other effects belonging to the deceased, an additional inventory of the same shall, within two months after the discovery thereof, be in like manner exhibited upon oath or solemn affirmation, and the person refusing or neglecting to exhibit any such inventory or additional inventory is subjected to certain penalties besides being made liable in double duty. By section 42 of the same statute it is enacted that confirmation shall not be granted of any testament, testamentary or dative, or eik thereto, of or for any estate or effects of the deceased 'unless the same shall be mentioned and included in some such inventory exhibited and recorded as aforesaid,' and that it shall not be competent to any executor to recover any debt or other effects in Scotland of the deceased unless the same shall have been previously included in some such inventory. The rates of duty are now regulated by the Act 55 Geo. III. cap. 184, schedule, part 3. And by the Act 23 and 24 Vict. cap. 80, sec. 5, it is enacted that the inventory and additional inventory of the personal estate of the deceased shall be stamped with duty according to the value of the property contained therein at the time they shall be respectively sworn to, including the proceeds accrued thereon down to that time.

"It cannot be doubted that if in the inventory of Janet Pringle's estate given up by the defender as her executor in 1863 her right and interest under the agreement had not been specified and valued, and charged with duty, the defender could not have resisted the pursuer's present demand for inventory stamp-duty on the value thereof as actually realised by him with the proceeds and interest accruing thereon up to the date of giving up an additional inventory—*Lord* v. *Colvin*, L.R. 3 Equity, 737. But in point of fact the defender did include the said right and interest in the inventory given up by him, and duty was paid by him on the amount of the inventory, including said right and interest. It is true that the sum at which it was valued was only £20, and that the addition of that sum to the value of the other personal estate of Janet Pringle, viz., £29, did not require a higher stamp-duty than would have been chargeable on an estate of only £29. But the fact remains undoubted, that Janet Pringle's 'right and interest' now in question was included in the inventory of her estate in 1863, and if that inventory was a 'full and true' inventory as at its date, the case of *Lord* v. *Colvin* seems to be an authority for holding that subsequent increase in value would not render an additional inventory or payment of additional duty necessary. The decision of the present question therefore appears to me to turn upon one of fact, viz., Whether the inventory given up by the defender was a 'full and true' inventory of Janet Pringle's estate? When the case was originally debated I was inclined to hold that as the right and interest in question was of a highly speculative and contingent character, and as no undue concealment on the part of defender was alleged by the Crown, the inventory as given up was sufficient, and that the subsequent increase in the value of the estate was not a discovery of new funds requiring the exhibition of an additional inventory or the payment of additional stamp-duty. But in consequence of an inquiry which I found to be necessary in order to ascertain the amount actually realised by the defender in order to fix the amount of residue-duty with which he was chargeable, a most important fact was brought to light, and has now been added to the record by way of amendment. It now appears, and it is not disputed by the defender, that before he gave up the inventory in 1863 in which he valued the right and interest in question at only £20, he had actually sold it along with his own individual right and interest under the agreement, to Mr William Barclay David Donald Turnbull for an annuity of £350, payable to himself from the date of sale and during his life, and a sum of £3000 to be paid to him three months after Thomas Turnbull's death. This important fact was not disclosed by him to the Inland Revenue officers at the time, and they passed the inventory on the footing and in the belief that the then present value of the right and interest in question was, as the defender then stated it to be, only £20. Now, it is plain that this was not a true statement, because the actual value at that date was at least one-half of the said annuity and of the said sum of £3000. I am therefore of opinion that the inventory given up by the defender in 1863 was not a full and true inventory of Janet Pringle's estate as at that date, and that he is now bound to give up an additional inventory, and to pay additional stamp-duty upon the actual value of the said right and interest as realised by him, with the interest and proceeds thereof from the date of realisation till the date of oath to the additional inventory. It is now said by the pursuer that the defender has realised still further sums than those above specified in respect of the sale of said right and interest; but that is a matter for future inquiry.

"The second conclusion of the summons is for payment of residue-duty on the amount of the said right and interest as actually realised by the defender. The main defence to this part of the claim is that founded on the Succession-duty Act (16 and 17 Vict. cap. 51) sec. 14, by which it is provided that 'where the interest of any successor in any personal property shall before he shall have become entitled thereto in possession have passed by reason of death to any other successor or successors, then one duty only shall be paid in respect of such interest, and shall be due from the successor who shall first become entitled thereto in possession.' The defender maintains that he here takes as Janet Pringle's successor a succession to which Janet herself never 'became entitled in possession.' I think, however, that the defender misapprehends both the Succession-duty Act and the true nature of his own position. The 14th section of the Succession-duty Act cited applies to a case where the ultimate successor takes the succession as the successor of a party who, if he had survived the opening of the succession, would have himself reduced it into possession, but who predeceased that event. Thus, where A, having a vested reversionary interest in a property under a disposition or will, settles it upon B, and dies before the property falls into possession, B, who takes the property, does not pay one succession-duty in respect of A's succession and another on his own; he pays only one duty. But the present case is not a case of succession-duty at all. Janet Pringle had no right

of succession to Thomas Turnbull, and the defender does not take up her right and interest as her successor in the sense of the Succession-duties Act. He takes that right and interest as her next-of-kin *ab intestato*—her estate consisting not of a succession created by disposition, but of a debt due to her by the parties to the agreement who survived her and acquired the estate of Thomas Turnbull. The defender could not enforce the debt as against those parties except by making up a title to Janet Pringle by confirmation. He thus takes up Janet's right and interest as an estate of residue on which duty is payable under the Acts 36 Geo. III. cap. 52, and 55 Geo. III. cap. 184, schedule, part 3. The remark of Mr Hanson (p. 276), in dealing with the 14th section of the Succession-duties Act, appears to me to state correctly the import and effect of both sets of statutes. He says—'The present section does not, however, in any way interfere with the operation of the Legacy-duty Acts, according to which, as has been pointed out . . . . the duty is payable under the will or intestacy of every person through whom it is necessary to make a title to the property in order to enable the ultimate owner to receive and give a discharge for it when the time of payment comes." The defender is therefore, in my opinion, liable in legacy or residue-duty at the rate of £3 per cent. upon the amount realised by him in respect of Janet Pringle's right and interest under the agreement, with interest upon the duty till paid; but as the amount of the residue is not admitted the case is appointed to be enrolled in order that the amount may be ascertained.

"I should here state that I do not think the defender is liable for either inventory, stamp-duty, or for residue-duty, upon a larger sum than he has actually realised or may realise as executor of Janet Pringle, and for behoof of her executry estate, from the sale of her right and interest in Thomas Turnbull's succession, or otherwise in respect of that right and interest. He may have made a good or a bad bargain for the executry estate by the sale; but the purchase by Mr Turnbull was a speculative one, which might have proved unprofitable, and the defender is not bound to pay inventory or residue duty on the profit realised by the purchaser." . . .

The defender reclaimed.

In the course of the argument it was intimated for the Crown that there was no desire to claim anything more in name of inventory-duty than was due upon a fair valuation of Janet Pringle's expectancy at the time the inventory was sworn to.

At advising—

Lord President—This action is raised by the Lord Advocate on behalf of the Board of Inland Revenue against the defender as executor of the deceased Janet Pringle, and calls upon him in that capacity to exhibit upon oath a true and full inventory of the personal estate and effects of the said Janet Pringle, or otherwise to make payment to the pursuer of £784, 10s. as the amount of the inventory-duty; and there is further a conclusion for payment of residue-duty upon the same succession. Now, the defence, as I understand it, against the first of these conclusions—the conclusion regarding the inventory-duty—is, that the amount of that inventory-duty has been already settled, and therefore that it is too late for the Crown now to call upon the executor to exhibit an inventory with a stamp of this amount upon it. And there is no doubt that the executor did at a previous period make up an inventory and had it impressed with the stamp which represented the full amount of the value which he, the executor, put upon the estate in that inventory. That inventory enabled him to obtain confirmation, and as soon as that was obtained the inventory was transmitted in due course to the Inland Revenue Office; and the defender maintains that as the officers of Inland Revenue did not then object to the amount of stamp which was put upon that inventory, they cannot do so now, —that, in short, it must be held that the amount of the inventory-duty was thereby settled between the Crown and the executor.

I think that defence is not well-founded. I do not think that in the circumstances which have occurred there is anything at all amounting to a settlement of the inventory-duty. The officers of Inland Revenue have no occasion to interfere, and do not in practice interfere, except it may be in special cases if they are asked to do so, when the executor makes up his inventory; and he therefore selects the stamp which is appropriate to the amount of the valuation that he himself has fixed in his inventory on his own responsibility. The stamp is right enough probably as regards the valuation which he has put upon the estimate in his inventory, but that valuation may be altogether inadequate, and certainly that is a matter that must fall to be rectified afterwards on one side or other, whether the valuation be too large or too small. Now, nothing more happened here so far as I can understand, and therefore if the valuation be inadequate, and especially if it be grossly and palpably inadequate, as is maintained on the part of the Inland Revenue, then a fresh inventory must be exhibited, or at all events the requisite amount of duty must be paid.

Now, how does the matter stand as to this valuation? The item to which the whole dispute relates was an expectancy or reversionary interest which the deceased Miss Janet Pringle had under an agreement which had been made between her and other persons who were next of kin along with her of the deceased Thomas Turnbull of Briery-yards. That gentleman had been a lunatic for a very long period, and the rents of his estate had accumulated during that interval, and the accumulation produced a very large sum, which in the event of his death would fall to the parties who made this agreement. But they foresaw that Mr Turnbull might very possibly survive some of them, and consequently that the survivors of Mr Turnbull would take the whole, whereas the predeceasers would get nothing of this large succession. And accordingly they made this arrangement, that the representatives of the predeceasers of those next of kin should take an equal share along with those who survived Mr Turnbull. That is the substance of the agreement. It is said that the whole next of kin were not parties to this deed. I do not think that it is of much consequence, because those

who were parties to the deed were not a bit the less on that account bound by it, it not being in the contemplation of the deed that all the next of kin were to be included. Again, it is said that there is some difficulty about this deed being a valid deed at all, in respect of one of the parties to it being a married woman. I do not think that that is of much consequence either. That must be taken into account in estimating precisely what was the value of the interest of Miss Janet Pringle at the time of her death in the succession of Thomas Turnbull. That is quite possible. But still the agreement has received effect, and therefore it cannot in this question be treated as a void deed in any sense or to any extent.

Now, then, this being the nature of the interest of Miss Janet Pringle, and it being perfectly well known at the time the inventory of her personal estate was sworn to that the personal succession of Thomas Turnbull when he died would be a very large one, what did the executor of Miss Janet Pringle do? He set out this item as the second item in his inventory, and he concludes the description of it by saying—"which right and interest may at present be valued at £20." Now, as the share in the succession which ultimately came to Miss Janet Pringle amounted to £37,000, and as it could be well seen, even at the time the inventory of Miss Pringle's estate was given up, that it would be very large, though not quite so large as that, the question comes to be, whether we are bound to take this nominal valuation of £20 as fairly representing the value of the estate at the time the inventory of it was sworn to. I do not believe that the executor intended that to be a final valuation from the way in which he has expressed himself, because he says it may at present be valued at £20, which means, I think, not that its present value is £20, but that for the sake of obtaining confirmation in the meantime this may be taken as its nominal value. That, I think, is the true interpretation of that part of the inventory, but if it were otherwise it would not make any difference in my judgment, because I think this is plainly a totally inadequate valuation as at that time, and I think there must be substituted for that what will represent the fair value of the right as it stood at the time the inventory of Miss Pringle's estate was sworn to. What was the value of that expectancy to her estate? That is the question. That, I understand, is not disputed by the Crown. There is, no doubt, upon the face of this record, in a conclusion of the summons, an indication of the purpose to charge as inventory-duty the full value of the right as it afterwards came to be established, but that is not now insisted in, and I understand that the Crown are quite willing to accept a fair valuation of this right as it stood according to its true value at the date of the oath to the inventory of Miss Pringle's estate, and to that I think they are entitled.

With regard to the residue-duty, it appears to me there is no difficulty at all, because the duty on the residue of a succession can never be fixed until the amount of the residue as actually realised is ascertained. Now, this residue never could be realised until the death of Thomas Turnbull, when this reversionary right became a reality, and it came to be seen what was the produce of that expectancy, and the residue-duty, I take it therefore, must be fixed according to the percentage authorised upon the residue of the succession as it has now been realised and ascertained.

I am therefore substantially in accordance with the Lord Ordinary, but I am afraid it will hardly do to adhere to his interlocutor, because he has proceeded under a mistake in regard to some of his findings as to what Miss Janet Pringle's executor did; and indeed I do not see the use of all the findings which have been made here, because it appears to me that the judgment of the Court, if your Lordships agree with me, stands upon a much more simple ground—on a ground deduced entirely from the Acts of Parliament under which this claim of the Inland Revenue is necessarily based.

Lord Deas—I am of the same opinion both as to the inventory-duty and the residue-duty. It certainly is not necessary, and it is not usual, to fix absolutely the amount payable for inventory-duty at the outset. Everybody knows that he must pay inventory-duty at the outset upon the whole gross estate without deduction of the debts, although the debts may turn out to be equal to the estate, in which case the whole inventory-duty would be repaid. If they do not turn out to be equal to the whole estate, then there is a deduction allowed upon application in proportion to the amount of the debts. In short, the payment of the inventory duty at the outset is a great convenience to the public, because confirmation is forthwith got, and the realisation and management of the estate go on tentatively. I do not say that it might not be possible that the Inland Revenue officers might have agreed with the parties to make an inquiry at that stage which would be final; that would be a different matter; but that is not usual, and nothing of the kind is suggested here. On the contrary, the words introduced in this valuation go distinctly to indicate that it was tentative merely, with a view to get confirmation and go on with the management of the estate. I do not believe that the executor himself intended it to be a permanent valuation, but if he did, I am certainly of opinion that the Inland Revenue officers were not bound so to understand it, and were quite entitled—from the words used that the succession "may at present be valued at £20"—to take for granted that he did not intend it to be a final valuation, and certainly he is not entitled so to treat it.

I think it is a very reasonable thing for the Inland Revenue officers not to insist on having inventory-duty corresponding to the whole amount ultimately realised, but to take it at a proper estimate of the value of the succession at the time; and whatever might be said of their right to carry their claim further, I am clearly of opinion that they are at least entitled to that.

As to what was said about the agreement, I have no doubt at all that it was a lawful and a binding agreement, and I think it was a most reasonable thing in the circumstances to make an agreement that all the parties to it should share as if they had survived Mr Turnbull. I do not think that makes the slightest difference upon the nature of the question now before us.

As to the residue-duty, I agree with your Lordship that there is no way of fixing the residue-

duty except by the amount ultimately ascertained. It may in many cases be that the parties who have to pay the residue-duty may have more to pay in consequence of their not settling it at once, or insisting on its being ascertained and settled. By letting it lie for a long period of time they may sometimes be better off and sometimes worse. But they cannot complain if the consequence of delay in settling is, that it turns out that there is a larger sum on which the duty has to be paid than there would have been if the inquiry and settlement had been made earlier.

Lord Mure—I come to the same conclusion. The first point does not arise here in quite a pure shape—that is, what is to be the effect of entering in an inventory the value of the contingent interest of a party in some anticipated succession. It was argued to us that if the Inland Revenue made their inquiry at the time they were precluded from raising any question about it afterwards. Now, it might give rise to some difference of opinion if that point arose here in a pure shape. But it does not, because, as is pointed out by the Lord Ordinary in his note, and explained in the 3d article of the condescendence, before the inventory was given in the party had actually sold his own contingent interest and half the contingent interest of Miss Janet Pringle for an annuity of £350 and £3000 of money. Now, it is not said that the officers of Inland Revenue were aware of that assignation of the contingent interest, and that it had been dealt with in that way. They seem to have been kept in ignorance of the true nature of the transaction at that date. In these circumstances, it is quite clear that the Inland Revenue were entitled to have a new valuation giving the fair value of the interest at the time. I therefore agree with what your Lordship proposes.

I also agree in regard to the residue-duty.

Lord Shand—In regard to the inventory-duty, the statute provides that the executor shall exhibit a full and true inventory. If the executor delays giving up the inventory until the estate has been realised, it is clear that he must then pay the inventory-duty upon the actual amount of the estate as realised. If, on the other hand, the inventory is given up before realisation, while there is a contingent right or expectancy such as we have here to deal with, there must be a fair and proper valuation of that contingent right. In the present case the estate had not been realised, and I think the Crown have shown clearly that the sum of £20 which was inserted in the inventory was a long way short of a fair valuation, and they are therefore entitled to have additional inventory-duty paid. The value of the right of succession under the deed of agreement was admittedly a great deal more than the nominal sum of £20 inserted in the inventory, and the Crown being entitled to inventory-duty on the true value of the right, that right must still be valued.

It was pleaded at the bar, and is stated in one of the pleas for the defenders, that the Crown having assented to the valuation, and accepted duty on it, the present action is groundless. I confess I have been unable to see how that argument can possibly be maintained. The counsel for the defender has been unable to explain at what stage this valuation was assented to or the duty accepted. What occurred was that the agent for the executor wrote out the inventory on a stamp purchased by him, and the value of which was determined by him alone, and this inventory formed the basis of the confirmation granted, and which followed as a matter of course. That inventory was no doubt after a time transmitted to the Inland Revenue Office, and lay there for some time, but any thing of the nature of assent upon their part to the correctness of the valuation or acceptance by them of the stamp-duty as sufficient has not been shown to have taken place. In practice the inventory-duty is generally investigated at the same time as the residue-duty, when a production of books and documents is frequently called for. That practice has been followed in this case. When the Crown officials came to look into both residue and inventory-duty, and to make the usual investigations and inquiries, they found that the stamp representing the inventory-duty was too low, and I see nothing whatever that could be construed as amounting to an acceptance of duty or an assent to the executor's valuation.

In the circumstances of this case there was room for an argument on the part of the Crown that there was no serious attempt at valuation here at all, and that therefore the Crown was now entitled to claim duty on the amount not only of a new and correct valuation of the contingent right as at the date of the inventory but on the sum actually realised by the executor as Janet Pringle's share of Mr Turnbull's estate. But it is not necessary to decide that question, for the Crown have stated that they are ready to accept the true value of the contingent right as at the date of the inventory, and to that I agree with your Lordships in thinking they are quite entitled.

As to the residue-duty, there has been no attempt at the valuation of the residue, and I agree with your Lordships that the executor must now pay upon the sum actually realised. The Lord Ordinary has, I think, taken an erroneous view of this matter, as appears rather from a passage in his note than from the terms of his interlocutor. The interlocutor bears that the defender is bound to pay duty on the true amount or value of the clear residue of the personal or moveable estate of the said Janet Pringle, including therein the true value of her said right or interest as the same has been or may actually be realised by the defender as her executor, and to this general finding I take no exception. But in his note his Lordship says—"I should here state that I do not think the defender is liable for either inventory stamp-duty or for residue duty upon a larger sum than he has actually realised or may realise as executor of Janet Pringle, and for behoof of her executry estate, from the sale of her right and interest in Thomas Turnbull's succession, or otherwise in respect of that right and interest. He may have made a good or a bad bargain for the executry estate by the sale, but the purchase by Mr Turnbull was a speculative one, which might have proved unprofitable, and the defender is not bound to pay inventory or residue-duty on the profit realised by the purchaser." Now, I think that is an unsound view of this question. If Miss Janet Pringle during her lifetime had sold her right of succession, so that when she died that

right of succession had been considerably reduced in value—that is, reduced to the price for which she stipulated—then her executor would have taken up merely the purchase price or the balance unpaid as part of the executry estate. But she had not sold her right of succession, and accordingly she died leaving her executor to take up the full share of Thomas Turnbull's estate to which she was entitled under the deed of agreement as part of her succession. The executor thought fit to sell, not the whole right of succession, but his share of that right as one of Janet Pringle's next of kin. I think that sale cannot make any difference upon the right of the Crown to residue-duty. The residue-duty is payable upon the full amount of moveable estate which Janet Pringle left, and the Crown's right cannot be affected by a sale of either the whole or a part of that executry estate so as to limit the claim to duty to the purchase price only. The purchaser or assignee to the executor's right when he demands payment of the estate which he has so purchased uses the executor's title as giving him right to the money, and accordingly it is plain that the executor, as executor, practically draws the whole residue whatever may be the price at which he may have sold it. That being so, it appears to me to be clear that the Crown's right to residue-duty is a right not limited in any way by the sale which the executor has made, but covers the whole of the residue to which Janet Pringle's executor had right whether the executor sold it or not.

The following interlocutor was pronounced:—

"The Lords having heard counsel on the reclaiming note for the defender Andrew Pringle against Lord Curriehill's interlocutor, dated 18th March 1878, Recal the said interlocutor: Find that the stamp on the inventory given up by the defender as executor of the deceased Janet Pringle on 5th February 1863 does not truly express the amount of the inventory-duty payable in respect of the moveable estate of the deceased: Find that the sum of £20 stated in the said inventory as the value of the reversionary interest or expectancy belonging to the said executry estate under the deed of agreement therein mentioned is a merely nominal and temporary valuation made by the executor for the purpose of enabling him to obtain confirmation: Find, of consent of the pursuer, that the said reversionary interest or expectancy must, for the purpose of fixing the amount of stamp or inventory-duty, now be valued as at the date of giving up the inventory on 5th February 1863, according to the price which it would then have realised if exposed for sale: Find that the residue-duty falls to be calculated on the true amount of the residue of the moveable estate of the deceased as it has been now or shall be realised and ascertained: Find that the amount of the said residue cannot be affected by the fact that one-half of the said reversionary interest or expectancy was sold by the executor before the death of the party on whose death it was contingent: With these findings, remit to the Lord Ordinary to proceed further as shall be just, reserving expenses, but with power to the Lord Ordinary to dispose of the expenses in the Inner House as part of the expenses in the cause."

Counsel for Pursuer (Respondent)—Solicitor-General (Macdonald)—Rutherfurd. Agent—Solicitor of Inland Revenue.

Counsel for Defender (Reclaimer)—Balfour—Rhind. Agents—J. L. Hill & Co., W.S.

Saturday, June 15.

FIRST DIVISION.

[Sheriff of Ayrshire.

CROZIER *v.* MACFARLANE & COMPANY.

Cessio Bonorum—*Competency of a Petition—Where there was no Condescendence or Pleas-in-Law—Sheriff Courts Act* 1876, (39 *and* 40 *Vict. cap.* 70), *secs.* 2 *and* 6.

A petition for *cessio bonorum* is incompetent unless a condescendence and note of pleas-in-law be annexed thereto.

A petition for *cessio bonorum* was presented in the Sheriff Court of Ayrshire. There was no condescendence or pleas-in-law appended. The Sheriff (Campbell), holding that the petition was for that reason incompetent, dismissed it. He added the following note to his interlocutor:—

"*Note.*—The objection which has been sustained is founded on the 6th section of the Sheriff Courts Act of 1876, which provides that every action in the ordinary 'Sheriff Court shall be commenced by a petition in one of the forms as nearly as may be contained in Schedule A, annexed to this Act.'

"Now, in the first place, there is no doubt that the petition in question is not framed in the terms prescribed by that Act; and

"In the second place, it is clear that the words of the Act are imperative.

"The only question therefore is, whether the words above quoted, viz., every action in the ordinary Sheriff Court, embraces actions of *cessio;* and if they do, this action has been rightly dismissed.

"The Sheriff is of opinion that the process of *cessio* is an action in the ordinary Sheriff Court within the meaning of the statute.

"1st, The title to the Act proposes to deal with the administration of justice only in civil causes in the ordinary Sheriff Courts of Scotland.'

"2dly, Section 2d enacts that, 'unless where otherwise provided, this Act shall only apply to civil processes in the ordinary Sheriff Court.'

"3dly, In the interpretation clause (sec. 3) the word 'action' is interpreted to mean and 'include every civil proceeding competent in the ordinary Sheriff Court.' And this is held to include all summary actions as well as ordinary ones (*M'Dermott* v. *Ramsay*, 9th December 1876, 4 Rettie 217).

"But it is said that this process of *cessio* is a special kind of action, and not to be dealt with as 'a civil proceeding in the ordinary Sheriff Court.'