advances out of capital. But as the income of this estate is unappropriated, of course as each year's income accrues it is the duty of the trustees to add it to the capital to increase the amount of the residue. It is the right and duty of trustees to accumulate undisposed of income with capital, and therefore I think this application is quite within the scope of the Act of Parliament which deals with the unappropriated capital of trust-estates.

Now, not to repeat the words of the clause, the conditions of a valid application to the Court are that the class of children—the family of children—must have an interest in the trust fund, and that no other persons can show an interest under the deed. If these conditions exist, the Court may grant the trustees power to make advances from the capital of the estate, even though the interest of any individual child may be contingent, because it is so put in the statute. The object of this remedial provision is to avoid the difficulty which arises, where, owing to the existence of a clause of survivorship as between children, it would not be held that a right to an absolute share vested in each child at the testator's death. But the statute recognises that provided the children as a family have the sole interest in the fund, and that there are no other funds applicable to their maintenance, power to apply this common fund may be granted. Now, I think we have before us exactly the case which the Act contemplates. There is no destination-over in this deed, and if the children were all in minority the only persons who could claim this fund would be the next-of-kin. These are the children themselves, and although in the case I am putting they are all dead, their collateral relatives do not take as next-of-kin in their own right, but as representing the children. This was established in the case of *Lord* v. *Colvin*, 23 D. 111, and the principle was recognised in the very carefully considered judgment of the House of Lords in *Gregory's Trustees* v. *Alison*, 16 R. (H. of L.) 10, and it appears to me to be quite unnecessary to call the next-of-kin of the children for whose behoof this application is made. The same considerations render it unnecessary to appoint a curator *ad litem*, because according to the report which is before us there is no other source of maintenance open to these children. The application is for their benefit, and my opinion, which I understand your Lordships agree with, is that it would be unnecessary to appoint a curator *ad litem* except for the protection of some interest in the children themselves. I am therefore of opinion that we may now grant the power craved.

LORD KINNEAR—I entirely agree in all that Lord M'Laren has said.

The LORD PRESIDENT concurred.

LORD ADAM was absent.

The Court granted the prayer of the petition.

Counsel for the Petitioner — Burnett. Agents—Fraser, Stodart, & Ballingall, W.S.

Saturday, July 7.

FIRST DIVISION.

BAXTER, PETITIONER.

Nobile Officium—Appointment of Auditor to the Court of Session ad interim.

Edmund Baxter, W.S., Auditor of the Court of Session, presented a petition to the Court of Session stating that he was at present seriously unwell, and that in the present state of the Session it was of serious importance that the work of the office should be carried on, and praying the Court to make such an interim appointment as they might think fit.

Counsel referred to 1 and 2 Geo. IV. cap. 38, sec. 38, and to Mackay's Manual of Practice (1893), p. 83, which contained a list of other offices to which the Court had made *ad interim* appointments.

The Court *appointed* Mr Ellison Ross, S.S.C., to discharge the duties of Auditor until the third sederunt-day of next Session.

Counsel for the Petitioner — Mackay. Agent—Charles Baxter, W.S.

Tuesday, July 17.

FIRST DIVISION.

[Sheriff-Substitute of Lanarkshire.

CURRIE *v.* ALLAN AND CAMPBELL.

Ship—Perilous Position of Ship at Quay—Obstruction by Vessel Lying Outside and Refusing to Move—Right to Cut Other Vessel's Ropes.

A steamship lying in a perilous position at a quay was unable to sail because another vessel lying outside had the ropes mooring her to the quay stretched across said ship. During the whole of one night it was impossible for the outside and smaller vessel to sail with safety, and in the morning when she might possibly have made the attempt some of the crew still refused to go to sea. The master of the inside vessel after repeatedly requesting the master of the outside one to move, and having given warning of what he would do, cut the ropes and sailed away. The crew on board the other ship with difficulty got on shore, while the vessel was driven on to the opposite coast and there stranded, sustaining considerable damage.

Held that it lay with the master who had cut the ropes to justify what he had done, that he had failed to do so, and that the owners of his vessel were liable in damages for the loss sustained by the one cut adrift.

Observed that a man is not entitled to

save his own property at the expense of that of another without indemnifying him, and that the proper remedy of the owners of the ship prevented from sailing would have been an action of damages for any loss caused through the fault of the outside vessel.

About half-past three on the afternoon of Friday 17th November 1893 the s.s. "Easdale" arrived at Port Askaig, Islay, which has no proper harbour and no projecting pier but a quay to which about two vessels can lie moored. When the "Easdale" arrived the "Macbeth" was moored at the end of the quay furthest from the shore, and behind her the "Islesman," alongside and outside of the "Islesman" the "Dunlossit" was lying, and the "Easdale" took up her position outside of the "Dunlossit," across which her ropes were thrown and attached to the quay. The "Easdale" merely called for orders and intended to sail very shortly, the "Dunlossit" meant to sail that afternoon and indeed remonstrated with the "Easdale" for taking up a position which prevented her getting to sea. The "Easdale" had not received her orders at six o'clock, and thereafter the wind freshened to a heavy gale making it impossible for her to leave with safety. During the night these two vessels knocked against each other and the belting was torn off the "Dunlossit." In the course of the night and morning the master of this vessel repeatedly requested the "Easdale" to move, and in the morning the master endeavoured to get his crew to proceed to sea as the gale was moderating; two of them however refused to go until the weather moderated still further, and the mate went away altogether. The "Dunlossit" was a vessel of 49 tons with engines of 40 horse-power, while the "Easdale" only measured 85 feet over all, and had engines of 20 horse-power. About 8 o'clock on the morning of the 18th November the master of the "Dunlossit," after repeatedly threatening he would do so, cut the ropes of the "Easdale" and sailed away. The "Easdale's" crew then on board with difficulty got ashore, the vessel itself was driven over to Jura and there stranded, sustaining considerable damage. Shortly thereafter the end of the quay gave way, and the "Macbeth" drifted down into the place previously occupied by the "Dunlossit" and "Easdale." The whole facts of the case as found by the Court are set out in the opinion of the Lord President and in the interlocutor pronounced by the First Division.

John Currie, hotel-keeper, Ballachulish, owner of the "Easdale," brought an action in the Sheriff Court at Glasgow against Francis Allan, commission agent, Glasgow, and Neil Campbell, shipmaster, Port Askaig, joint-owners of the "Dunlossit," for £450, being the amount of the damage alleged to have been sustained by the former vessel.

The pursuer pleaded—"The s.s. "Easdale" having sustained the loss and damage before condescended on, and such loss and damage having been caused wrongfully and unnecessarily by those on board the s.s. "Dunlossit," for whom the defenders are responsible, the pursuer is entitled to decree as craved, with expenses."

The defenders pleaded—"(2) The pursuer's master and crew having abandoned their vessel, which became a source of danger, and having regard to the state of the weather, the position of the various vessels, and the whole circumstances, the defenders' master was justified in cutting the "Easdale" adrift."

Upon 6th April 1894 the Sheriff-Substitute (BALFOUR) after a proof assoilzied the defenders.

"*Note.*— . . . Under all the circumstances I am of opinion that the master of the 'Dunlossit' was justified in cutting the ropes of the 'Easdale,' because (1st) the 'Easdale' took up a dangerous berth at the quay, which she at first intended to occupy for only fifteen minutes; (2nd) the 'Dunlossit' had already suffered considerable damage at the quay from lying between the other two steamers; (3rd) at break of day the storm had not abated, and the 'Dunlossit' lay in a position of great danger; (4th) she could only get away by cutting the ropes of the 'Easdale'; (5th) the 'Easdale' herself could not move for want of a proper crew; and (6th) if the 'Dunlossit' had not moved away at the time she did, she and the other vessels would have been wrecked by the 'Macbeth' coming down on the top of them. . . .

"The following authorities were referred to for the pursuer, viz.—*Rylands* v. *Fletcher*, 3 L.R. (H. of L.) 330; *Radley* v. *London and North-Western Railway Company*, 1 App. Cas. 754; and *Davies* v. *Mann*, 10 M. and W. 546.

"The following authorities were referred to for the defenders, viz.—*The* '*Pladda*' and *The* '*Kepler*,' 2 L.R. (Prob. Div.) 34 and 40; *The* '*Uhla*,' Maritime Law Cases, iii. 148; *The* '*Vivid*,' Aspinall's Maritime Cases, i. 601; *The* '*Excelsior*,' L.R. (Ad. & Eccle. Cas.) ii. 268; *The* '*Clara Kellam*,' L.R. (Ad. & Eccle. Cas.) iii. 161; *The* '*Volcano*,' Robinson's Admiralty Reports, ii. 337; Marsden on Collisions, 507."

The pursuer appealed to the First Division of the Court of Session, and argued—(1) The "Easdale" was entitled to take up the position she did; at such a quay as this it was her only course. There was no case of a foul berth. (2) She was prevented by the exceptionally bad state of the weather from going to sea, and that was a reason freeing her of all liability for keeping back the "Dunlossit." (3) There was no case of desertion except on the part of the mate; the crew were willing to go to sea when the weather moderated. The fate of another vessel (the "Barracoutta)" showed them it would not be safe to try to go to sea. (4) The master of the "Dunlossit" had failed to show any grounds for taking this extraordinary step. There was no question of danger to life. If he had had patience, both would have got away in safety, for the gale was moderating. The giving way of the quay was

unforeseen. If his vessel was being injured or delayed by the fault of the "Easdale," his remedy was by action of damages against the owners. (5) If he took the matter into his own hand and saved his own property at the expense of that of another, he must pay the damage sustained by that other—*cf. Rylands* v. *Fletcher*, 1868, L.R., 3 (H. of L.) 330.

Argued for respondent—(1) The initial fault was that of the "Easdale," which had practically taken up a foul berth, and for all that resulted therefrom her master had himself to blame—*Bailiffs of Romney Marsh* v. *Trinity House*, 1870, L.R., 5 Exch. 204; Marsden on Collisions (3rd ed.) 502-503, and cases there cited, especially "*The Innisfail*," 1877, 35 L.T. (N.S.) 819. (2) The "Easdale's" crew had deserted her, and the master of the "Dunlossit" had no other course open to him. If he had not acted as he had done, both his vessel and the "Easdale" would have been seriously injured by the "Macbeth" coming down upon them when the quay gave way. Even if he had not foreseen this precise danger, it showed the perilous position he was in, and that his action was reasonable in the exceptional circumstances of the case. A master was entitled in special circumstances to cut another ship adrift—Balfour's Practicks, p. 625.

At advising—

LORD PRESIDENT—The leading facts in this case are singular and striking. During the night of the 17th or morning of the 18th November last two steamers lay moored to the quay at Port Askaig in Islay. The weather was most tempestuous all night and morning. The one steamer all through the night was anxious to go out to sea, but could not do so unless the other, which was moored outside her, consented to go out also. This the outside vessel could not, or at least did not do. At eight o'clock on the morning of the 18th the master of the steamer desiring to go out, the "Dunlossit," solved the problem by cutting the moorings of the other steamer, the "Easdale," and sending her adrift. He thus freed his own vessel, and got away. The owners of the "Easdale" now sue for damages, the "Easdale" having, when cut adrift, gone ashore and suffered injury.

I think it sufficiently clear that *prima facie* the act of the master of the "Dunlossit," in cutting the moorings of the "Easdale" and sending her adrift was an illegal act, and that it is therefore for the defenders to justify that act on some ground known to law. I shall state briefly what I take to be the facts.

Port Askaig has no harbour, and vessels lying there are moored to the pier or wharf, there being no pier projecting into the sea. On the afternoon of the 17th the "Dunlossit" was lying moored when the "Easdale" arrived, and the "Easdale" accordingly lay outside the "Dunlossit," and was moored to the quay by ropes which passed over the "Dunlossit." The "Dunlossit" explained to the "Easdale" at the outset that she intended soon to leave, and the "Easdale" had no intention herself of making any stay. By six o'clock, however, the storm had come on, and the "Easdale's" business at Port Askaig was only then finished. From that time onwards the storm raged with great violence, and two of the "Easdale's" hands declined to go to sea on account of the severity of the weather. Whether, if she had been fully manned, she could safely have gone out to sea may be doubtful, but it is certain that with two of her crew away it would have been impossible to face the storm. The "Easdale" accordingly stayed where she was. Meanwhile the "Dunlossit" was impatient to get away. She was lying between two steamers, the "Easdale," as already explained, being outside her; as the night went on she was suffering damage from the other steamers tossing against her, and tearing the belting off her side, and I think that towards morning her position became one of considerable peril, having regard not merely to the contact with the steamers on either side, but also to the proximity of a fourth steamer moored in front of her. Suffering damage from hour to hour, and apprehensive of dangers which might involve the destruction of his steamer, the master by eight in the morning had resolved that his position was no longer tolerable. He had repeatedly appealed to the "Easdale" to let him out, but it was manifest that the "Easdale" could not move without having to go to sea, and could not go to sea without her crew. Accordingly the master of the "Easdale" refused to move. The master of the "Dunlossit" threatened several times to cut the moorings of the "Easdale" before he actually did so. About eight he proceeded to do so, and the men on the "Easdale" had just time to clear out before the steamer was sent adrift.

Now, I am prepared to hold that the "Dunlossit" was suffering substantial damage and was in serious peril; that she could only avoid damage and peril by going out; and that as the "Easdale" declined to move, the cutting of that steamer's moorings was the only way of enabling the "Dunlossit" to escape damage and peril. On the other hand, it is equally certain that to cut the "Easdale" adrift was to expose her to at least equal damage and peril; and it is not disputed that when the master of the "Dunlossit" sent the "Easdale" out into the storm he did it with his eyes open to what it meant to that vessel.

In using the word "peril" it is necessary to remember that there is on neither side any question of peril to life. It was, so far as the "Dunlossit" was concerned, merely present and probable injury to the ship to a greater or less (and an entirely uncertain) extent; that is put forward as the justification of the act in question. On the other hand, as already pointed out, the men on the Easdale had time to clear out before she was sent adrift.

Now, I own to having a strong repug-

nance to the idea that one man is entitled at his own hand to send a ship, it may be to perdition, in order to save his own ship, and then to refuse to bear the loss. I have stated, I hope fairly, what I consider to have been the serious risks to which the "Dunlossit" was exposed. But, after all, the ultimate consequences were calculable in money; and if anyone was liable for such damages as the "Dunlossit" might sustain, that damage could be made good to her owners. I am not satisfied of the soundness of the reasoning by which the defenders maintain that the owners of the "Easdale" were guilty of a breach of duty to the "Dunlossit" in that the "Easdale" did not go out to sea and thus release the "Dunlossit." But even assuming the "Easdale" to have been in the wrong, it does not follow that the "Dunlossit" had the right to wreck her, and the defenders have failed to place their right to do so at the cost of the pursuer upon any satisfactory legal ground. Even assuming fault on the part of the outside vessel and serious damage to the inside vessel, it is difficult to ascertain whether it is under all conditions, and if not, then under what conditions, that the right to destroy the outside vessel arises to the inside vessel for her own safety. I have heard no theory which would give this right to a vessel of similar value to the vessel to be wrecked, and at the same time withhold from a vessel worth £1000 the right to sacrifice to her own safety a vessel worth £100,000. Such heroic measures as that adopted by the master of the "Dunlossit" do not readily fit in with the methods of protecting property, and redressing injury to property, which pass current in peaceful communities. It is perhaps on the whole better that the master of a vessel in danger from another should protest against such conduct as he considers injurious, and hold the offender liable in the consequences, which the sequel will frequently show to be less overwhelming than had been apprehended.

Let it be remembered, however, that the question we have got to settle is not whether the master of the "Dunlossit" can be justified *in foro poli* for laying violent hands on his neighbour's goods. The question is, who is to bear the loss? Now, I cannot help thinking that the frankness of the defenders' claim is apt to make one forget its exceeding arrogance. They assert right for their own benefit to seize and destroy another man's ship, and to make him pay for the consequences. This new form of compulsory taking would have for its characteristics that it is unauthorised by anything but the needs of the taker, that it serves none but his private benefit, and that it is unrestrained by any obligation to compensate. I own my inability to fall in with such views.

A subordinate argument was submitted that there was no damage, inasmuch as the "Easdale" would have been destroyed had she been left where she was at the pier. This theory is highly conjectural, and in my opinion the evidence does not establish it.

I am for recalling the interlocutor of the Sheriff-Substitute.

LORD ADAM concurred.

LORD M'LAREN—The facts of this case are not in serious dispute. I accept your Lordship's findings in fact, and I draw the same conclusions from them.

There is no doubt from the evidence, and indeed it is matter of general knowledge, that when the master of the "Easdale" moored his vessel alongside and outside of another vessel he was only exercising one of the ordinary rights of vessels touching at ports of the description of Port Askaig. It is equally clear that he was under obligation to withdraw when required and when practicable in order to enable the inside vessel, the "Dunlossit," to proceed on her voyage. But this obligation on the part of a vessel lying in the way of another must be qualified by this condition, that it must only move as and when it can do so consistently with its own safety. In a crowded harbour, for instance, it may be impossible to move at any moment so as to let the boat nearer the land get clear, and at a wharf open to the sea like the one here, if the vessel required to move cannot do so without risk of loss of the ship or the crew, that is equivalent to physical impossibility.

Certainly in the ordinary case the obligation to move is not an obligation to leave the ship, and then to cut her moorings and allow her to drift on to a lee shore; it is an obligation, if possible, to give the other vessel a passage, having regard to the relative positions of the ships and the dangers of navigation, returning afterwards to the quay if the master wishes to do so.

On the night in question it was the intention of both vessels to proceed on their respective voyages, but it is also certain that when they were ready to sail it was not safe for either of them to go to sea. As at that time the master of the "Easdale" was undoubtedly justified in refusing to move, indeed his view is acquiesced in by the master of the "Dunlossit." But during the night a fresh element of difficulty was introduced, because the master of the "Easdale" in his anxiety to get to a safe harbour had tried to persuade his crew to go to sea; they had refused, and the mate had absconded. On the following morning, therefore, when the "Dunlossit" wished to proceed, while I think there is considerable doubt as to the possibility of the "Easdale"—a small and unloaded vessel—proceeding to sea with safety, even assuming her crew were all on board, it was clearly impossible in the then state of the weather to sail with an insufficient crew.

I am far from saying that a master who refused to move because his crew had declined to go to sea could remain in the position he had taken up, although obstructing the progress of another vessel, without incurring the risk of having to pay damages of the nature of demurrage to that other vessel for any loss she might sustain

by the delay. If, on the other hand, the weather made it absolutely unsafe for the vessel to leave her moorings, the master would be entitled to stay where he was, and would be excused absolutely. That would be an ordinary incident of navigation, but if from his crew deserting or other similar circumstances it is impossible for him to go away, I should not say the other vessel was not entitled to damages, for it is the duty of every master to have a crew on board, at least sufficient to manœuvre the vessel, and take it out of the way of another vessel about to sail.

Admitting, however, that the master of the "Easdale" was in the wrong in not having a sufficient crew on board, we have a very different question before us here, viz., whether in that state of circumstances the master of the "Dunlossit" was entitled to cut the "Easdale" adrift and send her to perdition. I could not assent to that proposition even if there had been no crew on board, although in such circumstances the master of the vessel wishing to move might be justified in removing at his own hand the vessel obstructing his course and taking her out, if he took her back afterwards. I have no doubt he might do so, but the right which is here asserted is that while the "Easdale" could not with safety go out, the master of the "Dunlossit" was entitled to cut her adrift and make her a derelict.

In the course of the argument I asked whether the authority of any jurist or any moralist could be cited for such a proceeding. No authority was given, and I know of no principle in law allowing one, who apprehends the loss of his own vessel, the right to take the matter into his own hands and wreck his neighbour's to prevent such loss. I can see that very alarming consequences might result from the recognition of such a principle, and I am satisfied that there is no such right. Nor could I imagine a more unfavourable case for its exercise, even if such right existed, because I think that if the "Dunlossit" had waited a few hours longer until the gale had subsided both vessels could have got away in safety.

I agree with your Lordship in thinking that the owners of the "Dunlossit" are responsible for the damage caused to the "Easdale" by the cutting her adrift.

LORD KINNEAR was absent.

Counsel explained that the amount of damage had not been adjusted, and concurred in asking that the case should be remitted to the Sheriff.

The Court pronounced the following interlocutor:—

"Find as matter of fact that on the afternoon of 17th November 1893, while the s.s. 'Dunlossit' lay moored to the quay at Port Askaig in the Isle of Islay, the s.s. 'Easdale' came to Port Askaig, and was moored to the quay alongside but outside of the 'Dunlossit' by ropes passed across the 'Dunlossit;' that before six p.m., and while the two steamers thus lay, a gale of exceptional violence came on, which lasted all night and until after the unmooring after mentioned; that throughout the night the 'Dunlossit' suffered considerable damage through the tossing against her of the 'Easdale' and of another vessel lying on her inner side; that the master of the 'Dunlossit,' from and after six p.m. on the 17th November, desired to leave, but that it was impossible for him to do so unless the 'Easdale' cleared out; that the master of the 'Dunlossit' repeatedly asked the master of the 'Easdale' to clear out; that it was impossible for the master of the 'Easdale' to move his steamer so as to enable the 'Dunlossit' to leave without the 'Easdale' herself going to sea; that it was impossible for the 'Easdale' to go to sea with safety to life and property on board owing to two of the crew having refused to go out on account of the gale, and the remaining crew not being sufficient to man the ship in the existing state of the sea and weather; that the master of the 'Easdale' declined to go out; that during the night and morning the master of the 'Dunlossit' repeatedly threatened to the master of the 'Easdale' to cut the moorings of that vessel; that shortly after eight a.m. on 18th November the master of the 'Dunlossit' cut the moorings of the 'Easdale,' the men on board hastily left, and the 'Easdale' drifted to sea with no one on board, and was driven on shore and suffered damage; that at the time when the moorings were cut the 'Dunlossit' was suffering damage from the contact of the 'Easdale,' and was in serious peril of further damage owing to contact with the 'Easdale' and the steamer on her inner side, and also to the possibility of another vessel moored in front of her coming into collision with her; that the master of the 'Dunlossit' in cutting the moorings of the 'Easdale' acted without any consent or authority from anyone representing the 'Easdale,' and in the knowledge that by cutting her moorings he exposed her to the certainty of her being driven out to sea, and to the probability of serious damage; that the master of the 'Dunlossit' so acted solely for the protection of the 'Dunlossit' against present and possible damage: Find in law that in so cutting the moorings of the 'Easdale' the master of the 'Dunlossit' made the defenders liable for the damage resulting to the 'Easdale:' Find the defenders liable in expenses in both Courts, and remit to the Auditor to tax the same, and to report to the Sheriff of Lanarkshire: On the motion of both parties, remit to the Sheriff of Lanarkshire to ascertain the amount of damage, and to proceed in the cause as shall be just, and authorise him to decern for the taxed amount of the expenses for which the defenders are hereby found liable."

Counsel for Pursuer and Appellant—Ure—A. S. D. Thomson. Agents—Morton, Smart, & Macdonald, W.S.

Counsel for Defenders and Respondents—Dickson — Salvesen. Agents — Ronald & Ritchie, S.S.C.

Tuesday, July 17.

FIRST DIVISION.

[Lord Wellwood, Ordinary.

LORD ADVOCATE *v.* WILSONS.

Succession — Voluntary Settlement — Reserved Interest — Customs and Inland Revenue Act 1881 (44 *Vict. cap.* 12), *secs.* 38 *and* 39.

The Customs and Inland Revenue Act 1881 by secs. 38 and 39 enacts that with respect to "any property passing under any past or future voluntary settlement made by any person dying on or after 1st June 1881 by deed or any other instrument not taking effect as a will, whereby an interest in such property for life or any other period determinable by reference to death is reserved either expressly or by implication to the settlor," a full and true account shall be delivered to the Commissioners of Inland Revenue upon the death of such person by the person who as beneficiary, trustee, or otherwise acquires possession of such property.

W. transferred his business to his sons by agreement, under which they were to enter into a contract of copartnery to be approved by him, were to relieve him of a certain debt, and were to grant a bond of annuity in favour of himself and his wife, the annuity to be equal to 5 per cent. on the value of the stock-in-trade ascertained by mutual valuation, he collecting for his own use the outstanding book debts due to the firm. No security for payment of the annuity was taken other than the personal security of the sons.

Held (following the case of *Crossman* v. *The Queen*, L.R., 18 Q.B.D. 256) that this was a voluntary settlement with a reserved interest in the sense of the Act.

By the Customs and Inland Revenue Act 1881 (44 Vict. cap. 12) it is enacted (section 38) that—"(1) Stamp duties at the like rates as are by this Act charged on affidavits and inventories shall be charged and paid on accounts delivered of the personal or moveable property to be included therein according to the value thereof. (2) The personal or moveable property to be included in an account shall be property of the following descriptions, viz. — (*c*) . . . Any property passing under any past or future voluntary settlement made by any person dying on or after such day" (that is, on or after 1st June 1881) "by deed or any other instrument not taking effect as a will, whereby an interest in such property for life, or any other period determinable by reference to death is reserved either expressly or by implication to the settlor, or whereby the settlor may have reserved to himself the right by the exercise of any power to restore to himself, or to re-claim the absolute interest in such property." Section 39 provides that "Every person who as beneficiary, trustee, or otherwise acquires possession or assumes the management of any personal or moveable property of a description to be included in an account according to the preceding section, shall, upon retaining the same for his own use, or distributing or disposing thereof, and in any case within six calendar months after the death of the deceased, deliver to the Commissioners of Inland Revenue a full and true account, verified by oath, of such property, duly stamped, as required by this Act."

By sub-section 1 of section 11 of the Customs and Inland Revenue Act 1889, sub-section 2 of section 38 of the Customs and Inland Revenue Act 1881 is hereby amended as follows:—"The description of property marked (*c*) shall be construed as if the expression 'voluntary settlement' included any trust, whether expressed in writing or otherwise, in favour of a volunteer, and if contained in a deed or other instrument effecting the settlement, whether such deed or other instrument was made for valuable consideration or not as between the settlor and any other person, and as if the expression 'such property,' wherever the same occurs, included the proceeds of sale thereof.'

The following agreement was entered into on 4th May 1887 between George Washington Wilson, photographer, Aberdeen, and his sons John Hay Wilson, Louis Graham Oliver Wilson, and Charles Albert Wilson. "(Second) On said contract being executed, and a bond and bills granted as hereinafter provided, the whole stock-in-trade of the said firm of George Washington Wilson & Company, together with the goodwill of the business and the right to use the said company name of George Washington Wilson & Company (but not the book-debts of the firm) shall belong to the second parties' firm as their absolute property, and the first party hereby agrees to grant all deeds necessary for this purpose; (third) in consideration of the second parties' firm receiving the said stock-in-trade and goodwill of the business, the second parties, as individuals and as a firm, hereby agree to relieve the first party of the sum payable by him to the said George Brown Smith, under the aforesaid minute of agreement between the first party and the said George Brown Smith to the extent of seven hundred and fifty pounds; . . . and further, the second parties, as individuals and as a firm, agree to grant a bond of annuity in favour of the first party and his wife Mrs Maria Ann Cassie or Wilson, securing to the first party during his life, and after his death to his said wife during her life, if