

1781. November 28.

RIDDEL against DALTON.

No 51.

DALTON, in a postnuptial contract of marriage, bestowed on Riddel his wife, in the event of her surviving him, a liferent of his whole effects, heritable and moveable. On the other part, 'she, in the event of her predecease,' assigned to him her share of the goods in communion, her paraphernalia, and a liferent of a house belonging to her, stipulating at the same time an annuity, and a small sum of money, to her next of kin.

Dalton died before his wife, and her executors, after her death, laid claim to the half of his moveable effects, in name of widow's part, which was nowhere expressly discharged in the contract of marriage.

THE LORDS found, "That the wife's acceptance of the provisions in the marriage-contract, virtually implied a renunciation of the *jus relictæ*."

Lord Ordinary, Braxfield. Act. Crosbie, Rolland. Alt. Ilay Campbell, H. Erskine.  
Clerk, Home.

*Ed. Dic. v. 3. p. 302. Fac. Col. No 9. p. 18.*

1791. November 29.

ANNE ELISABETH JANKOUSKA, *alias* GRIEVE, against ANDREW ANDERSON and Others.

No 52.

MRS JANKOUSKA, a native of Russia, was married to Tamez Grieve, who was possessed of considerable funds both in Russia and England, and was also proprietor of a small landed estate in Scotland.

Mr Grieve executed a settlement in the English form, giving to his wife, in case of her surviving him, an annuity of L. 800 out of his Russian property; a house at Petersham near London, and a sum of L. 2000, secured by mortgage in England. He also directed his Scots estate to be sold, and the price to be liferented by Mrs Grieve. But owing to the form of the deed, this last part of it became ineffectual.

Mrs Jankouska, therefore, claimed a terce out of her husband's lands in Scotland; but in this she was opposed by Anderson and other heirs of her husband, who

*Pleaded,* To prevent exorbitant settlements in favour of wives, it was provided by the statute of 1681, cap. 10. 'That in all time coming, where there shall be a particular provision granted by a husband in favour of his wife, either in a contract of marriage, or some other writ before or after the marriage, the wife shall be thereby excluded from a terce out of any lands or annualrents belonging to her husband, *unless it be expressly provided* in the contract of marriage, or other writ containing the said provisions, that the wife shall have

A relict who had accepted conventional provisions in an English deed, was allowed also the terce of a Scotch estate. See Synopsis.

No 52. ' right to a terce by and attour the particular provisions conceived in her favour.'

The present claim is in direct opposition to this enactment. If, indeed, the pursuer had rejected the settlements executed by her husband, she might doubtless have claimed her legal provisions. But it would be now too late for her, were it consistent with her interest, to repudiate those settlements. The intention of her husband respecting the disposal of the Scots estate cannot be of any importance. Although, in the event of selling the lands, it was meant that she should enjoy the liferent of the price, it does not appear, that while the lands were unsold, she could claim any part of the rents; and besides, the settlement being, as to them, ineffectual and void, the case is to be viewed in the same light as if it never had been intended; Mackenzie's Observations on act 1681.

*Answered*; The enactment of 1681 imposes no restraints on husbands when executing deeds in favour of their wives. It was wholly meant to prevent wives from demanding their legal as well as their conventional provisions, which they were formerly authorised to do, if not excluded by particular stipulations. And therefore, wherever it appears to have been the intention of the husband that his wife should enjoy both, the statute ought to be laid aside as inapplicable.

This is evident from the preamble of the statute, which sets forth, ' That sometimes, through the ignorance and inadvertence of writers and notars, clauses are insert in contracts of marriage, containing provisions by husband's in favour of their wives, without mentioning the terce that is due to them by law, or expressing the provisions to be granted in satisfaction of the terce, whereby occasion is given to relicts to claim a terce out of their husbands estate by and attour the provision conceived in their favours, *contrary to the meaning of the parties-contractors.*' In the present case, it was intended that the widow, during her life, should enjoy what the produce of the Scots estate, when converted into money, should yield, although considerably exceeding the rents of the land. Nor could the husband's will to admit his wife's claim of terce be more forcibly expressed, than by a deed giving to her a liferent of the whole. His heirs, therefore, must either ratify this settlement, or they must put it entirely out of view; and, in either case, the determination will be favourable to the widow.

THE LORD ORDINARY rejected the widow's claim of terce. And to this judgment the Court, on advising a reclaiming petition, with answers, adhered.

But after advising a second reclaiming petition and answers,

THE LORDS found, That the Lady was entitled to a terce. See TERCE.

Lord Ordinary, *Hales*.      Act. *Honyman*.      Alt. *Abercromby*.      Clerk, *Mennis*.  
C.      *Fol. Dic. v. 3. p. 303.*      *Fac. Col. No 191. p. 397.*