stances of the case, I have come to the conclusion that the Lord Ordinary has rightly applied the practical inferences to be brought to bear upon the question. Here is a man who, by his own confession, was unfit for military service in 1811, when he was forty-three years old, whose health had been undermined by dissipation and the hardships of military service, and had certainly not been improved by life in the hulks. We have him afterwards undergoing a sentence of transportation, and hear of him finally in 1825. And all we then hear is to the effect that he was in life and no more. He was ill and in destitution, and desired the means of reaching home. From that date to the present, a period of forty-six years, he is not again heard of. I quite agree that we must take into consideration not only the years that elapsed before 1849, but those also which have since passed. Then we have the unanimous opinion of his family—the current belief among them that he had died shortly after writing home to his brother in 1825. Such family opinion is of the utmost possible importance. There are a hundred things which may combine to found a unanimous family opinion which cannot be embodied in evidence produced before the Court. William Bruce himself candidly acknowledges that he held this opinion as to Alexander's death. I am not going to use that fact as conclusive against him, but it forms a strong argument in this case. On the whole, I can have no doubt that the Lord Ordinary's judgment is right.

The Court adhered.

Agents for the Pursuers—Ferguson & Junner, W.S.

Agents for the Defenders—Wotherspoon & Mack, S.S.C.

Friday, November 24.

SPECIAL CASE—MRS RAMSAY AND OTHERS

Husband and Wife—Marriage-Contract—Trust, Revocation of. Where a lady in her marriage-contract conveyed all her property, presently belonging, or which should belong to her during the marriage, to trustees, who were directed to hold the remainder, after satisfying certain provisions, for behoof of "her, her heirs, executors, and assignees, altogether exclusive of the *jus mariti* of her husband," but giving the husband, if surviving, a liferent of one-half of the said remainder; and where the parents of the lady, who was of full age, were parties consenting to the marriage-contract, and at the same time making therein an irrevocable apportionment in the lady's favour of certain large sums, over which they had a power of apportionment and disposal,—*Held* (*diss.* Lord Deas) that the lady's object not being to revoke the contract, but to act strictly within its provisions, on the husband renouncing the contingent liferent provided to him over the one-half of the remainder of her money, the lady was then absolute proprietor of the said remainder so conveyed to trustees, and entitled to require them to pay it over to her, or make such conveyance as she chose to direct.

The parties to this Special Case were—Mrs Sarah Frances Robertson or Ramsay, and her husband Admiral George Ramsay, of the first part; and Admiral Milne and General William Maule Ramsay, their surviving marriage-contract trustees, of the second part.

The question laid before the Court arose under the marriage-contract of Admiral and Mrs Ramsay, of which the following are the essential clauses:—"It is matrimonially contracted and agreed betwixt George Ramsay, of the Royal Navy, on the one part, and Miss Sarah Frances Robertson, daughter of William Robertson, Esquire of Loganhouse, one of the Keepers of Her Majesty's Records for Scotland, with the special advice and consent of her said father, and also of Mrs Rachael Frances Spottiswoode or Robertson, her mother, wife of the said William Robertson, on the other part, in manner following:—That is to say . . . in contemplation of which marriage the said George Ramsay does hereby bind and oblige himself, his heirs, executors, and successors, to content and pay to the said Sarah Frances Robertson, in case she shall survive him, during all the days of her life, from and after his death, a free liferent annuity of £50 . . . And further, to pay to her, in case she shall survive him, at the first term of Whitsunday or Martinmas after his death, the sum of £200 for mournings, and in lieu of furniture . . and which sums so provided to the said Sarah Frances Robertson shall be exclusive of any pension or annuity to which she might be entitled as the widow of an officer in the Navy, and of a reasonable sum in name of aliment from the day of his death up to the term when the first half-year's annuity would become due: And farther, the said George Ramsay binds and obliges himself and his foresaids to make payment to the child or children of the marriage of the sums following, viz., in case there shall be one child, the sum of £500; in case there shall be two children, the sum of £1000; and in case there shall be three or more children, the sum of £1500 . . . And farther, in the event that the said George Ramsay shall hereafter have it in his power to add to the foregoing provisions, he does hereby bind and oblige himself and his foresaids to made the following additions thereto, or to the extent of such part thereof as may be in his power, viz., To add to the said liferent annuity an additional annuity of £150, to be payable in the same manner as the annuity of £50 before specified; to add the sum of £300 to the foresaid allowance for mournings and furniture; and to add to the provisions in favour of the child or children of the marriage, as follows:—In case there shall be one child, of £1500; in case there shall be two children, £2000; and in case there shall be three or more children, £3500 . . . And it is hereby declared that the foregoing provisions settled upon the said Sarah Frances Robertson shall be in full to her of all claims of terce, *jus relictæ*, or other legal claim whatsoever to her and her representatives, against the said George Ramsay, and his representatives, and that the provisions settled upon the child or children of the marriage shall be in full of all claims of legitim or other legal claim whatsoever which they could have against the said George Ramsay or his representatives: For which causes, and on the other part, the said Sarah Frances Robertson does hereby dispone, assign, convey, and make over, to and in favour of her three brothers, John Spottiswoode Robertson, Alexander Henry Robertson, and George Sidney Robertson, and Captain Alexander Milne, of the Royal Navy, and William Maule Ramsay, Major of the 62d Regiment of Bengal Native Infantry,

and the survivor or survivor of them, and of any other person or persons who may be assumed by them or by the survivor in virtue of the powers hereinafter specified, the majority of them, while more than two survive, being always a quorum, as trustees or trustee, with the powers and for the uses and purposes after specified, the whole heritable and moveable property presently belonging to her, or to which she may acquire right during the subsistence of the marriage, and particularly, without prejudice to the foresaid generality, her share of the provision settled upon the children of the marriage in the contract of marriage between her father and mother, which provision was, upon the death of the said William Robertson and Rachael Frances Robertson, to be divisible equally among the children of the marriage between the said William Robertson and Rachael Frances Robertson, or in such shares as they or the survivor might appoint by any writing under their hands, or under the hand of the survivor: And as it is their intention that the said Sarah Frances Robertson should at least have an equal share along with her brothers of the foresaid provision, therefore they do hereby unalterably appropriate to the said Sarah Frances Robertson and her heirs and assignees one fourth share of the foresaid provision, and, under reservation to her of any further share to which she may be entitled in the event of the death of any of her brothers, and also of any further share which the said William Robertson and Rachael Frances Spottiswoode or Robertson, or the survivor, may think fit to appropriate to her, and also the share which the said Rachael Frances Spottiswoode or Robertson may appropriate to the said Sarah Frances Robertson of the sum of £20,000, being a legacy to the said Rachael Frances Spottiswoode or Robertson by her uncle Andrew Strachan, Esq., and which is now vested in trust for her behoof during her life, and afterwards to be disposed of as she may think proper: And she does accordingly now unalterably and irrevocably appropriate to the said Sarah Frances Robertson and her heirs and assignees one-fourth share of the capital sum of the foresaid legacy, whatever it may amount to, and under reservation to her of any further share of the capital sum of the said legacy which the said Rachael Frances Spottiswoode or Robertson may appropriate to her in the event of the death of any of her brothers or otherwise, together with the writs and title-deeds and vouchers and instructions of the said property; and the said Sarah Frances Robertson does hereby bind and oblige herself, and her heirs and executors, to grant all supplementary deeds to her said trustees, which may be requisite and necessary for effectually completing the foresaid general conveyance . . . And the said trustees shall hold and apply the trust-property, after payment of the necessary expenses of the trust, for the uses and purposes after specified, viz.—*First*, the capital sum of £5000 of the funds appropriated to the said Sarah Frances Robertson by the said William Robertson and Rachael Frances Spottiswoode or Robertson as before mentioned, to be held in trust for behoof of the said Sarah Frances Robertson and George Ramsay, and the survivor of them in liferent, to the effect that they or the survivor shall draw the annual interest or produce thereof, and for behoof of the child or children of the marriage in fee, the capital sum to be divided among the children, if more than one, and the issue of any of the children who may have predeceased, in such shares as their father and mother, or the survivor, may appoint, and failing such appointment, to be divided among them and the issue of any of them who may have predeceased, equally, the issue being entitled to the share which would have belonged to the deceased parent; and in the event of there being no child of the marriage, or issue of such child who shall survive the said George Ramsay and Sarah Frances Robertson, the said sum of £5000 shall be at the disposal of the said Sarah Frances Robertson, subject always to the liferent thereof as aforesaid, and failing such disposal thereof by her, the same shall go in equal shares to the representatives of the said George Ramsay and Sarah Frances Robertson; and with regard to the remaining property conveyed by the said Sarah Frances Robertson as aforesaid, the same shall be held by the said trustees for behoof of the said Sarah Frances Robertson, her heirs, executors, and assignees whomsoever, altogether exclusive of the *jus mariti* of her husband as regarding both the capital and the interest or annual produce arising from the said property, excepting only that in the event of the said George Ramsay surviving the said Sarah Frances Robertson he shall be entitled to the liferent of one half thereof . . . and the said William Robertson does hereby bind and oblige himself, and his heirs and executors, to pay to the said George Ramsay and Sarah Frances Robertson, during his own life and the subsistence of the marriage, a free yearly annuity of £250, payable half-yearly per advance, commencing the first term's payment thereof at Christmas next for the half-year succeeding that term, and the next term's payment at Midsummer thereafter, and so forth, half-yearly, during the lifetime of the said William Robertson and the subsistence of the marriage . . . and further, in the event of the dissolution of the marriage by the death of either of the said George Ramsay and Sarah Frances Robertson, and if there shall be a child or children of the marriage surviving, to continue the said annuity to the survivor of the said George Ramsay or Sarah Frances Robertson during the life of the said William Robertson, and the survivance of such child or children,"

Admiral and Mrs Ramsay were married in 1845, and three children were born of the marriage, who were still surviving at the date of the present Special Case. The sums dealt with in Mrs Ramsay's marriage-contract were—£2000 belonging to herself at the date of her marriage, her share of £8000 settled in her father and mother's marriage-contract, and the share appropriated to her of the £20,000 settled in her uncle Mr Strachan's will; it was also contemplated that she would succeed to a share of her father's own property. In point of fact, Mrs Ramsay did, upon her mother's death in 1870, succeed to a much larger sum than was contemplated at the date of her marriage, and the whole funds in the hands of the trustees then came to exceed £35,000.

The Special Case concluded thus:—"(7) The parties hereto are agreed that the special sum of £5000, which was directed to be held for behoof of Admiral and Mrs Ramsay in liferent and their children in fee, shall be held and retained by the trustees for the purposes directed in relation thereto; but they have differed as to the disposal of the remaining property conveyed by Mrs Ramsay as above mentioned. With reference to the said remaining property, Mrs Ramsay claims, with consent and concurrence of her husband, that the

same shall be handed over to her, to be held by her exclusive of the *jus mariti* of her husband, but to be disposed of by her at pleasure; and Admiral Ramsay agrees, in order to facilitate that arrangement, to renounce the contingent liferent in said property provided to him by the said contract of marriage; while the parties hereto of the second part, being the surviving trustees under the said contract of marriage, claim to retain and hold the said property in trust, in the manner and for the purpose specified in the said contract."

The following were the questions on which the parties desired the opinion and judgment of the Court:—

"(1) Whether, having regard to the agreement of the said Admiral George Ramsay to renounce his contingent liferent over the trust-property after mentioned, the said Mrs Sarah Frances Robertson or Ramsay is entitled to demand and obtain from the trustees payment, or a conveyance in her favour, exclusive of the *jus mariti* of her husband, of the whole trust-property vested in them under the conveyance in their favour by the said Mrs Sarah Frances Robertson or Ramsay, contained in the said contract of marriage, other than the sum of £5000 directed to be held by them for behoof of the spouses, or the survivor in liferent, and the children of the marriage in fee?

Or,

"(2) Whether the second parties, as trustees under the said contract, are entitled and bound to retain and hold the said property in trust, in the manner and for the purposes specified in the said contract?"

Solicitor-General (A. R. CLARK) and LANCASTER for the parties of the first part.

WATSON and BALFOUR for the parties of the second part.

Authorities—*Anderson* v. *Buchanan*, June 2, 1837, 15 S. 1073; *Pringle* v. *Anderson*, July 3, 1868, 5 Scot. Law Rep. 737; *Hope* v. *Hope's Trustees*, March 15, 1870, 7 Scot. Law Rep. 399; and other cases referred to in Lord Ardmillan's opinion.

At advising—

LORD PRESIDENT—The parties to this Special Case are Mrs Sarah Robertson or Ramsay and her husband Admiral George Ramsay, of the one part, and the trustees under their antenuptial contract of marriage, of the other part. And the question put to us is, Whether, having regard to the agreement of the said Admiral Ramsay to renounce his contingent liferent over the one-half of the residue of the trust-property, Mrs Ramsay is entitled to demand and obtain from the trustees payment, and conveyance to her, exclusive of the *jus mariti* of her husband, of the said whole residue of the trust-property, after providing for the sum of £5000 specially provided to the spouses in liferent, and the children of the marriage in fee? Or, Whether on the other hand, the trustees are entitled and bound to retain the whole of the said trust-property, in the manner and for the purposes specified in the said contract.

It appears to me that these questions must be solved entirely by a consideration of the meaning of the trust-conveyance contained in the marriage-contract itself. There is no proposal on the part of the spouses to revoke the contract, or to set aside the trust altogether, or to do anything contrary to the rights of parties, as settled by the marriage-contract. What they contend for is simply this, that the purposes of the trust would be carried out by a compliance with the demand which they make upon the trustees. In consequence, the case does not bear any real resemblance to the decided cases of *Anderson* v. *Buchanan* and *Pringle* v. *Anderson*, for in both these cases the object of the spouses was to revoke and put an end to the contract, at least in part. The question here is merely whether Mrs Ramsay is entitled to make the demand which she does.

Now, at the time the parties were married the Admiral was only a Captain in the Navy, apparently without fortune. He settles but a small sum upon his wife and children. But Miss Robertson, his promised spouse, was a young lady of some expectations, though these were not then so great as they afterwards turned out to be. She had a sum of £2000 left her by some relation. But, besides that sum in hand, she was also entitled to a share of a sum of £8000, settled in her father's and mother's contract of marriage upon the children of that marriage. Her share of that sum at the date of her marriage would have been a fourth, failing any special appropriation by her father and mother; and they specially, as parties to her marriage-contract, appropriated to her one-fourth share. Similarly, her mother appropriated to her a fourth share of a sum of £20,000, left by her uncle Mr Strachan, and of which her mother had a power of disposal. In each case there was reserved to her a claim to additional sums on the predecease of any of her brothers. Her expectations thus amounted to £7000 at the date of her marriage, in addition to the £2000 in hand. Now, these were the elements for consideration in framing the marriage contract; and while Captain Ramsay made what provisions he could, it was thought that Miss Robertson could not be expected to do more than settle a reasonable sum in return, leaving herself the absolute owner of the rest.

She accordingly conveyed to certain trustees the whole heritable and moveable property presently belonging to her, or to which she might acquire right during the subsistence of the marriage, and particularly the provisions settled upon her under her father and mother's marriage-contract, and her uncle Mr Strachan's will, as above narrated. And the estate which she thus conveys is to be held in trust and made subject to the provision in favour of her children of £5000, to be liferented by the spouses and the longest liver of them. Now, as I read this marriage-contract, that is the only proper provision made by Mrs Ramsay, except a contingent liferent to her husband to be after mentioned. In fact, this leading provision is Mrs Ramsay's contribution to the marriage. But then there follows this provision, that, with regard to the remaining property conveyed by Mrs Ramsay as aforesaid, the same should be held by the trustees for behoof of herself, her heirs, executors, and assignees whomsoever, altogether exclusive of the *jus mariti* of her husband, as regarding both the capital and the interest, except only that, in the event of Captain Ramsay surviving her, he was to be entitled to the liferent of one-half thereof. Now, as Admiral Ramsay has renounced this right of liferent, we are quite entitled to read this part of the deed as if it had never existed. It was quite competent for him, being a person of full age, to renounce it, as he has done, and the question then comes to be, Supposing that there is no liferent provided, what is the meaning of the trustees being ordered to hold the fund for Mrs Ramsay, her heirs, executors, and assignees whatsoever? I confess I can see no answer but one,

and that is, that after the property had made provision for the £5000 destined to the children of the marriage, the balance belonged to her absolutely, to do what she chose with, according to her own will at the time. And, therefore, on the words of that part of the deed I think the case is clear enough.

But then it was suggested that the contract might have been intended to protect Miss Robertson from her husband, and that the trust was created to exclude still more effectually his *jus mariti*. But surely the *jus mariti* may be excluded, and yet the wife be left the absolute fiar of her own estate. No doubt, if that be the case, it will be competent for the lady to make a gift of any part of her funds to her husband, but it leaves such gift revocable.

But then it is said with some force that when a trust is created, it is intended for some object which could not be secured properly without it, and that if there is no other object in constituting the trust except to exclude the *jus mariti*, the trust is a needless formality. But then it must be observed that the lady's first purpose was to provide £5000 to herself and husband in liferent and the children of the marriage in fee, besides creating a contingent liferent in favour of the husband. These are surely sufficient reasons for the constitution of the trust.

It is also argued that the constitution of this trust may be held matter of contract, and contract not merely between the spouses, but between them and the parents of the wife also. Now, it is quite true that the parents of Mrs Ramsay were made parties to the deed, but it is necessary to consider for what purpose. Miss Robertson at the time of her marriage was of full age. Her father's interference therefore was not as her curator. But that of both father and mother is very easily explained by looking to that part of the deed in which their names occur, and seeing what they do. After Miss Robertson has conveyed specially her share of the provision under her father and mother's marriage-contract, the deed proceeds thus—"and as it is the intention of the said father and mother that the said Sarah Frances Robertson should at least have an equal share along with her brothers of the foresaid provision, therefore they do hereby unalterably appropriate," &c. Now, it appears to me that this is done—this appropriation of part of the provision is made—merely for the purpose of giving more substance and reality to the conveyance by Miss Robertson than it otherwise could have had, by fixing what it would actually amount to, as then foreseen. Then the deed goes on to appropriate in a similar way a share of the provision under Mr Strachan's will. Now, the effect of these two proceedings was simply this, that instead of the conveyance by Miss Robertson being indefinite as to amount, it was thereby fixed that the trustees would have in their hands not only her own £2000, but also £2000 of the £8000, and £5000 of the £20,000. I do not see the least evidence that either Mr or Mrs Robertson became contracting parties in any other sense in this deed, or that they stipulated, in return for what they themselves did, that something else should be done on the other side. I think they interfered simply to strengthen the hands of their daughter.

The conclusion I come to therefore is, that Mrs Ramsay is entitled to require the trustees to pay or convey to her the balance of the trust-funds, after securing the £5000 held for behoof of the children. But in coming to this conclusion, I desire to add that I do not think this case can be a precedent for a lady having provisions settled on her by marriage-contract, to give up or renounce those provisions; for I do not look upon this part of the trust-settlement as portion of the marriage-contract.

Lord Deas—I agree with your Lordships in what I understand to be the leading doctrine on which you proceed—I mean that a destination in an antenuptial marriage-contract may be evacuated with reference to any parties not being the issue of the marriage; and that when there is no issue of the marriage claiming under that destination the fee of the estate, and when the only destination is to the wife herself, her heirs, assignees, &c., the property must be held in her and at her absolute disposal; the fee must be held to be in her, and subject to her disposal, unless there is something in the deed clearly to the contrary. The mere existence of a trust will not prevent that result. The trustees in that case would hold the estate as trustees for the wife and her heirs, and she would exercise over the estate the same powers as if there were no trust at all. If this, then, had been an antenuptial contract between the gentleman and lady alone, I would have come to the same conclusion as your Lordships, though even in that view there might have been a difficulty, owing to the careful exclusion of the *jus mariti*. But my difficulty arises from this, that the father and mother of the lady are also parties to the contract. It is certainly true that they are stated at the outset to be merely consenting parties, but as the deed proceeds we find that they are far more. Still I hold it settled, under any circumstances, that consenting parties are just parties to the deed. And farther, I am humbly of opinion that when the lady's parents become parties to the marriage-contract, they become contracting parties with respect to everything which relates to the interest of their daughter. I think they are parties especially to every provision that relates to the exclusion of the husband's legal rights; and that that part of the deed which deals with these matters cannot be altered except with consent of the father and mother. Now this deed affords peculiarly strong grounds for the support of these views. Not only are the lady's parents parties consenting to the deed, but they themselves deal with most substantial interests. They contract to give her irrevocably a certain portion of the funds, under their own marriage-contract, an apportionment of which was at that time entirely in their power, and also a fixed share of another sum over which the mother had absolute power, not of apportionment only, but of disposal. They bind themselves down to the appropriation to her of at least one-fourth of these funds. And, moreover, the whole fortune which came to her afterwards consisted of this money, over which her father and mother had, at the time of her marriage, full power so far as apportionment went. When they undertook that irrevocable apportionment they did so in consideration of the marriage-contract. I doubt very much whether they would have apportioned or left the fund to descend to her in the same way if they had not relied upon the conditions of the marriage-contract, which were that they should convey to trustees all her property, both present and future, to be held by

them for behoof of her, her heirs and executors, exclusive of her husband's *jus mariti*. Now, if that conveyance was to take effect in its terms, the husband is excluded both from principal and interest; and the giving him a contingent liferent of one-half the residue of the lady's property is only of importance as showing that it was in contemplation that the deed should be in existence at the death of the lady. I think this is in favour of the natural view that the parents became parties to that contract, and undertook their share of the obligations contained in it, on the understanding that the trust was to subsist during the marriage for the protection of the lady. The object, of course, was to establish a restraint upon herself in favour of herself, so that she could not afterwards, even if she wished, give way to her natural affection towards her husband, to her own possible detriment. However the case may be, when the lady is the only party to the deed, I cannot think that when the father and mother become parties also, and in it make large provisions towards the marriage, the lady can afterwards interfere with the purposes of the trust. It seems to be assumed that the lady could assign her right subject to the husband's liferent. I think she could do no such thing, for I think it would be breaking in upon the object of the contract altogether, which was to preserve the fund intact to the wife till her husband's death. And most undoubtedly a trust is required to exclude the *jus mariti* so far as third parties are concerned. No doubt, and this is the narrow part of the case, if you can read it as fairly meaning that the whole of that money was to belong to herself and be at her own disposal, your Lordship's view is right. But my difficulty is so to read it, and to suppose that the father and mother, or the lady herself, had any such intention; and I therefore feel myself compelled to differ from your Lordship's judgment.

Lord Ardmillan—In considering whether Mrs Ramsay, with consent of her husband, can demand and obtain from the marriage-contract trustees a conveyance of the trust-property to the extent explained in the Special Case, the question which first arises is, Whether, in regard to the property of which she thus demands conveyance, there is any interest other than her own remaining to be protected, or any trust-purpose remaining to be fulfilled.

This trust was created by Mrs Ramsay herself, and for her own benefit. The trustees hold the fund in question for behoof of Mrs Ramsay and her heirs, executors, and assignees, exclusive of the *jus mariti* of her husband Admiral Ramsay, but with an emerging life-rent of the half to Admiral Ramsay in the event of his surviving his wife. I think that Mrs Ramsay could now assign her right and interest. She could not indeed evacuate the emerging liferent of her husband. But she could convey her own interest, subject to and under burden of this liferent, and exclusive of his *jus mariti*. Except in so far as regards the emerging liferent of the husband, there is no interest in anyone to compete with that of Mrs Ramsay, and no interest to be protected by the trustees, and, except in so far as regards the protection of that liferent by the trustees, there is no trust-purpose to be fulfilled. Now, in this position of matters, the lady being alone now interested, and acting with her husband's concurrence, designs to obtain a conveyance of her own estate, and to that effect to recall the trust which she herself had created. If the Admiral had predeceased her, there would have been no emerging interest. If he renounces or discharges his emerging liferent, that interest is at an end. But he does so; and he concurs in this application. As matter of construction of this deed, I am of opinion that by Admiral Ramsay's renunciation and his concurrence, all interest counter to that of Mrs Ramsay is taken away, and all difficulty is removed. The only interest, except Mrs Ramsay's own, being thus taken away, why should the trust continue? The only trust-purpose which could be said to remain, or could even be expected to arise, is withdrawn, and an assignation by her would be effectual. If she could have assigned, under burden of the emerging liferent, which I think she could, then, on the liferent being effectually discharged, she can assign absolutely.

Where there are no competing interests—where there is no duty of trust-protection—no trust-purposes present or emergent—coming into conflict with Mrs Ramsay's rights, the trust becomes purely administrative for the benefit of Mrs Ramsay, the person who created it; and such a trust, under such circumstances, can, I think, be recalled by the truster. If I have bestowed a gift, I have created an interest in the donee. If I have committed the care of that gift to trustees, I have created a trust for protection of the gift and of the donee. But if there is no donee, and no interest conferred, and no protection required, for what end shall the trust continue? What is there to prevent revocation by the granter? To this question I have heard no answer.

In the absence of authority, I should, on principle, be of opinion that Mrs Ramsay, her husband concurring and renouncing his emerging liferent, can effectually revoke this trust and demand conveyance of the estate. But we are referred to the decision in the case of *Torry Anderson*, and that decision is pressed on us as a conclusive authority. I am not satisfied that the decision is in all respects applicable, and I am not disposed to extend the application of a decision which does not commend itself to my mind. The trust-deed in the case of *Torry Anderson* was declared to express words to be "not revocable" by the granter Mrs Torry Anderson "on any ground or in any form whatever." This express declaration was a speciality, and was considered important by some of the Judges in the majority. I may particularly mention the opinions of Lord Mackenzie and Lord Medwyn. In so far as that decision turned on the declaration in the trust-deed of the irrevocable character of the trust, it is not an authority here, for here there is no such declaration.

But being called on to hold this decision as conclusive, and even conclusive in a case where the special declaration does not occur, I must say that, after careful consideration of the decision and the opinions of the majority of the Judges in the case of *Torry Anderson*, I have the greatest difficulty in concurring in them. I am disposed rather to adopt views in accordance with the opinion of the minority of the Court. At the same time, if the trust-deed in the present case had been in all respects similar, and especially if it had contained a clause expressly declaring the deed to be irrevocable on any ground or in any form, as was declared in the case of *Torry Anderson*, I should not have felt at liberty to sustain, in this case, the power to revoke. To that extent I would have accepted the authority of the decision, and given effect to the clause.

In the case of *Pringle* v. *Anderson*, July 3, 1868, the Second Division of the Court refused to sustain a revocation during the life of both spouses of a trust in a marriage-contract where the trust was only terminable at death of the husband, and where again there was a clause declaring that it should "not be revocable or subject to alteration by the parties or either of them." But as I read that decision, it was pronounced mainly in respect of the special terms of the deed, and in particular the presence of the clause excluding revocation was viewed as the leading ground of judgment. It is also to be observed that the possibility of important interests emerging by the birth of children was held not to be altogether excluded. This is noticed by Lord Neaves.

The point is said to have been again raised in the case of *Hope* v. *Hope's Trustees*, March 15, 1870, which came before the Court in the form of a Special Case. But I do not think that the same point was there raised. The nature of the deed, and the circumstances and position of the parties in the case of *Hope* v. *Hope's Trustees*, were different from what they are here. Other rights and interests than those of the parties seeking to revoke were there existing, and might even be said to be involved.

I am not aware of any decision other than those which I have mentioned which can be urged as authority against Mrs Ramsay's demand. The cases of *Annandale*, June 9, 1847, 9 D. 1201; *Robertson* v. *Davidson*, Nov. 24, 1849, 9 D. 152; *L'Amy* v. *Nicolson's Trustees*, Dec. 5, 1850, 13 D. 240; and *Pretty* v. *Newbigging*, March 2, 1854, 16 D. 667, may be referred to as explaining the effect on the trust administration of the husband's renunciation of his liferent. On that point there is little difficulty here, as his liferent is not an existing right, but only a contingent right emerging on his surviving his wife.

The result of my consideration of the case on principle, and with reference to our Scottish authorities, is that Mrs Ramsay, with the concurrence of her husband, is entitled to demand and obtain conveyance of the trust property in so far as now claimed. I have only to add that I concur with your Lordship in your concluding remarks, guarding the judgment in this case from application to proper marriage-contract provisions to which other persons are parties, or in which other persons are interested. I do not think that there are any parties here so interested as to entitle them to interfere and resist Mrs Ramsay's demand.

Lord Kinloch—By the marriage-contract of Admiral and Mrs Ramsay a sum of £5000, part of Mrs Ramsay's fortune, was vested in trustees, to be held by them for the spouses in liferent and the children of the marriage in fee. "And with regard to the remaining property conveyed by the said Sarah Frances Robertson as aforesaid, the same shall be held by the said trustees for behoof of the said Sarah Frances Robertson, her heirs, executors, and assignees whomsoever, altogether exclusive of the *jus mariti* of her husband as regarding both the capital and the interest or annual produce arising from the said property, excepting only that in the event of the said George Ramsay surviving the said Sarah Frances Robertson he shall be entitled to the liferent of one-half thereof."

There is no proposal made to interfere with the trust in so far as it concerns the £5000 provided to children. But in regard to the residue Admiral Ramsay now proposes to renounce his contingent liferent, and the question which arises is, Whether Mrs Ramsay is entitled with his consent to put an end to the trust of the residue, and demand a conveyance from the trustees.

In principle I think this demand well founded. I must look at the case as it would have existed if no liferent to Admiral Ramsay had been mentioned at all, for his renunciation places matters exactly in the same predicament. I then find no interest for which the trustees are to hold except that of Mrs Ramsay as proprietrix in absolute fee. The trust is only a trust for administration, or it may be a more delicate mode of giving practical expression to the exclusion of the *jus mariti*, but in nowise necessary to the vitality or force of the exclusion. There is no restraint on Mrs Ramsay's absolute proprietorship, and no suspension of its exercise till the dissolution of the marriage. Mrs Ramsay is not debarred from exercising her proprietary right till any specified period. She may at any one moment draw on the trustees to the full extent of the residue, doing with the amount drawn entirely what she may please. She can assign the whole fund to whom she pleases, thereby giving her assignee power to demand an immediate conveyance from the trustees. All this I consider to follow from the unqualified constitution of a trust on behalf of "Sarah Frances Robertson, her heirs, executors, and assignees whomsoever." In point of principle I can see no ground whatever on which Mrs Ramsay, the absolute and unlimited proprietrix in fee of this residue, can be denied a conveyance by the trustees.

It has been suggested that the accession of Mrs Ramsay's father and mother to the marriage-contract may imply that the trust is to be maintained as one of the conditions in the contract stipulated for by them. Undoubtedly they were in one sense contracting parties, and any contract made with them must be observed. But the question always returns, To what effect can they be said to contract? When the answer is to the effect of Mrs Ramsay being constituted absolute and unlimited fiar—then to allow Mrs Ramsay to exercise the power of such a fiar by obtaining a conveyance is not to frustrate, but to follow out the stipulations for which they contracted.

But it is said that a difficulty is created by some prior decisions of the Court, and particularly by the case of *Torry Anderson* v. *Buchanan*, June 2, 1837. I consider the decision in that case, particularly as approved of in the after case of *Pringle* v. *Pringle's Trustees*, as of binding authority to the extent to which it goes, but not as a decision the principle of which is to be strained beyond its own precise scope. And it differs from the present case in more than one particular. The trust-conveyance in that case was of the liferent interest of the wife in an entailed estate, the rents and produce of which during her life were to be drawn by the trustees, and paid over to her exclusive of the *jus mariti*. The trust to this effect was declared to be irrevocable "on any ground or in any form whatever," and this clause of irrevocability weighed greatly with the majority of the Court by which the judgment was pronounced. This irrevocable trust for a lifelong administration (so long at least as the marriage subsisted) is evidently a very different thing from the trust in the present case, which applies to a property at once alienable by the wife, has attached to it no clause declaring it

should not be revoked, and is the mere form in which a presently disposable fee is vested absolutely in the wife. This difference between the two cases warrants me, as I conceive, in not holding myself compelled to follow in the present case the course followed in *Anderson* v. *Buchanan*, but in applying to the case the sound legal principle by which I consider it to be ruled.

The same observation is applicable to the after case of *Pringle* v. *Pringle's Trustees*, July 3, 1868, which is in substance a similar case to that of *Torry Anderson*, and with the same clause of irrevocability attached to the trust in the marriage-contract.

The case of *Hope* v. *Hope's Trustees*, 15th March 1870, is a case entirely different from the present. In that case the marriage-contract provided a certain annuity to the lady in the event of her husband's decease, for which security was given by a joint obligation granted by the bridegroom's father, afterwards commuted for a disposition by the husband, who obtained right to the father's estate, of a house in Edinburgh in favour of trustees to hold for the lady's benefit. The Court held that the husband could not revoke this trust, and deprive his wife of this security, even with the wife's consent. They held, in other words, that he could not use his wife's consent, procured presumably by his influence over her as her husband, to validate an act performed by him for his own benefit to his wife's clear prejudice, and thereby not to carry out, but to frustrate, the right given her by the marriage-contract. The trust was in that case reasonably held constituted for the very purpose of protecting the wife against marital influence to this very effect, and to admit of her consent as sufficient to revoke the trust would be to hold the very act against which the trust was to guard to be an act capable of destroying it. It is clear that no sound deduction can be drawn from that case to the present.

I am therefore of opinion that the question put to us should be answered in the affirmative.

Agents for Admiral and Mrs Ramsay—Mackenzie & Kermack, W.S.

Agents for the Marriage-Contract Trustees—W. H. & W. J. Sands, W.S.

Friday, November 24.

SECOND DIVISION.

JANE KIPPEN *v.* RICHARD KIPPEN AND OTHERS.

Trust—Annuity—Revocation. Where an annuity is to be purchased for a woman, and settled on her exclusive of the *jus mariti* of any husband she may marry, but is not expressly alimentary, she is entitled to the sum that would be expended in the purchase of the annuity; and if she has conveyed her right to trustees, with directions to pay her the life interest exclusive of the *jus mariti* of any husband she may marry, but is unmarried, she may revoke the trust-deed.

By trust-disposition and settlement executed in 1849 the late William Kippen conveyed his whole estate to trustees, of whom his son James Hill Kippen is now the sole survivor. By codicil in 1853 he directed his trustees immediately after his death to purchase or provide from his means and estate an annuity of £120 sterling in favour of each of his said daughters, payable at the usual terms, the same to be exclusive of the *jus mariti* of their respective husbands in the event of their marriage, and of their debts and deeds, and of the diligence of their creditors, which annuities thereby directed to be provided to his said daughters should be in lieu of any former bequest in their favour, and in full of all other claims legally competent to them upon his means and estate. The residuary legatees were the pursuer's brothers Richard Kippen and James Hill Kippen. Mr Kippen died in 1853. The trustees proposed to purchase an annuity for £120 sterling in favour of the pursuer, in implement of the provisions contained in her father's settlement and codicils, but the pursuer was desirous that this should not then be done, and ultimately it was arranged that the pursuer should grant, and accordingly on April 14, 1856, she did grant a trust-deed, whereby she appointed her brother Richard Kippen, Andrew Buchanan Yuille, and James Keyden, and certain others now deceased, trustees for her behoof, with full power to them to uplift, receive, and discharge from her father's trustees such sum of money as should be deemed by them to be an adequate price or value for the annuity of £120 sterling, according to the tables provided by the Act 10 Geo. IV. c. 24. The second purpose of the trust gave powers of investment to the trustees, and declared that the trustees should have full power and authority at any time thereafter to invest the trust funds, in whole or in part, in the purchase of an annuity for the pursuer's behoof, seclusive of the *jus mariti* of any husband whom she might marry, and in no way affectable by her own facts and deeds, or by the facts and deeds of such husband, or by the diligence of creditors. In the third place, it was declared that the trustees should make payment to the pursuer during all the days and years of her life, and that also seclusive of the *jus mariti* or right of administration of any husband she might marry, of the whole free annual interest, profits, and dividends of the trust funds thereby committed to them, and in the event of her trustees at any time thereafter purchasing an annuity of £120 for her, and of there being a surplus of the fund remaining after making such purchase, it was declared that it should be lawful for them to make payment to the pursuer or otherwise to apply for her behoof the surplus of the principal sums of money thereby intrusted to them, it being thereby declared to be the pursuer's intention that the trustees should have as full powers in every respect over the surplus of money as what any person otherwise unfettered enjoyed or possessed in the management of his own affairs, and that neither the pursuer herself nor any husband whom she might marry should have any right or title to interfere with the management of the funds thereby entrusted to them, or to control the trustees in the application of the same, or the annual profits and proceeds thereof otherwise than as above provided for; and that all receipts for annual profits by the pursuer alone should be full and ample discharges and acquittances therefor without the concurrence of any such husband, any law or custom to the contrary notwithstanding. Lastly, the trust-deed provided that after the death of the pursuer her trustees or trustee should denude themselves of the trust thereby created, and should pay over the sums of money then remaining in their hands to the pursuer's heirs, executors, or assignees whomsoever.