

his conversation with the defender, the Court, in respect of said letters and the statements made at the bar, held that there was enough to show that the defender had induced the original cautioner to withdraw, and that was an illegitimate proceeding, which must have the effect of depriving the defender of his equitable right to demand caution from the bankrupt.

Counsel for Pursuer—G. H. Pattison. Agent—James Somerville, S.S.C.

Counsel for Defender—Orr Paterson. Agents—J. & A. Peddie, W.S.

Tuesday, November 2.

FIRST DIVISION.

SPECIAL CASE—LACY *v.* MORRISON.

Alimentary—Consent—Divorce—Donatio propter nuptias—Liferent—Marriage-Contract—Provision—Revisal. In her antenuptial contract of marriage a lady conveyed to her intended husband the estate real and moveable belonging to her, or that might be acquired by her during the subsistence of the marriage. She was of age, but the contract bore to be with her father's special advice and consent, and was revised by him in draft. Held, that on the dissolution of the marriage by her adultery, the husband was not entitled to a provision made by her father for her aliment and liferent use in his trust settlement previous to the date of the contract, such not being a *donatio propter nuptias*.

By antenuptial contract of marriage between Henry Beatson Lacy, Writer in Glasgow, and Annie Campbell Morrison, daughter of Alexander Morrison of Ballinakill, Writer in Glasgow, dated 10th October 1857, mutual conveyances and provisions were made and obligations entered into. In return for the provisions made by Mr Lacy, Miss Morrison, who was of age, with the special advice and consent of her father, conveyed to herself in liferent,—“seclusive of the *jus mariti* or right of administration of her said intended husband, and not affectable by her own acts or deeds, or the right and diligence of her creditors, or the creditors of her said intended husband,” and on her decease to Mr Lacy in liferent, and under the like conditions, and to the children of the marriage or any subsequent marriage she might make, in the proportions and under the conditions she might specify, the fee of—“all and sundry, the whole lands, means and estate, heritable and moveable, real and personal, now belonging to her, and which she may acquire and succeed to during the subsistence of the said intended marriage, with the rents, interest and profits” other than the provisions made by Mr Lacy in her favour; and reserving to herself power to apportion and restrict to a liferent the interest of her children in these provisions. The draft of this contract was revised by Mr Morrison.

The marriage took place on the 13th of the same month, and was, on 26th January 1869, dissolved by decree of divorce, at the husband's instance, on account of his wife's adultery. Three children were born of the marriage, all of whom survive and reside with Mr Lacy. Hence the question arose, whether Mr Lacy was entitled to a liferent of the interest bequeathed by Mr Mor-

risson to his daughter by a trust-deed and settlement executed in 1849.

By its sixth purpose, the trustees were directed to pay equally amongst his children during their lifetimes, and for their liferent use allanarly, the rent, interest, profit and income of his estate, heritable and moveable, “excluding the *jus mariti* and right of administration of the husbands of such of my daughters as are or shall be married, and declaring that the sums to be payable to my sons and daughters under this provision shall be purely alimentary, and shall not be assignable by them or by the husbands of my daughters, nor attachable for the debts of them, or any of them, and that receipts to be granted by my daughters for the sums payable to them respectively shall be sufficient without the consent of their husbands.” By its seventh purpose, the trustees were directed, on the death of any of the children leaving lawful issue, to pay that child's portion equally amongst the issue at majority or marriage; and until such event to apply the interest, or as much as was necessary, in their maintenance and education.

These provisions Mr Morrison declared were to be in full satisfaction of legitim or any other claims, legal or conventional, to which his children might be entitled. He died on 18th April 1860.

FRASER and WATSON, for Mr Lacy, argued—The daughter being *sui juris*, her father's consent was not necessary to validate her obligations. His revisal of the draft of the contract was equivalent to a draft by himself. As he was a consenting party to the contract, it is evident that the parties had his trust-settlement in view. The provisions of the contract therefore control the provisions of the settlement. By the contract Mr Lacy takes liferent of his wife's provisions if he survive her. Divorce is equivalent to dissolution of the marriage by death of the guilty party. Authorities—*Buchan*, M. 6528; *Beattie v. Johnstone's Trustees*, 7th Feb. 1868.

SOLICITOR-GENERAL and M'LEAN, for Mrs Morrison, and MACDONALD, for the trustees, were not called on.

The Court unanimously held that Mr Lacy had no right to what came to Mrs Morrison under her father's trust-settlement. The provision in it was purely alimentary and personal, and for her liferent use allanarly; and it was not in her power, therefore, to substitute another person for herself. It was not a *donatio propter nuptias*, but made by a testamentary disposition that could be revoked at any time; and, not being a provision in consideration of marriage, it did not come under the rule that such is forfeited by the divorced party. At her death the fee was to go to her children, and there was no liferent of it to her husband.

Agents for Mr Lacy—Murray, Beith, & Murray, W.S.

Agents for Mrs Morrison—J. & R. D. Ross, W.S.
Agents for Trustees—Campbell & Smith, S.S.C.

Friday, November 5.

GLASGOW JUTE CO. *v.* CARRICK.

Appeal—Dean of Guild Court—Feu Contract—Reservation—Stipulation—Superior. In the feu-contract of each of several feuars, it was stipulated that a street should be formed in a certain direction and position. Held (1) each feuair was entitled to enforce the stipulations