Thursday, July 9.

FIRST DIVISION.

STEUART'S TRUSTEES AND ANOTHER.

Antenuptial Contract of Marriage—Settlement of a Fixed Sum upon the Wife—Implied Exclusion of Jus relictæ.

By an antenuptial contract of marriage executed at the Cape, a domiciled Scotsman settled a sum of £3000 upon his wife in the event of his death. The contract provided that each of the spouses was to retain and possess all all his or her estate and effects as fully and effectually as if the marriage had not taken place, and was to have full liberty to test upon the same. No express mention was made of *jus relictæ*.

Held that it was the intention of the contracting parties that the wife should have no claim upon her husband's estate for anything beyond the special provision of £3000, that the words used were sufficiently wide to give effect to that intention, and that accordingly the wife was barred from claiming *jus relictæ* in addition to the special provision.

The late Charles Horace Durrant Steuart, of Dalguise, Perthshire, married in 1889 at Cape Town as his second wife Miss Alice Katherine Reus, of Rondelosch, in the Cape Division. An antenuptial contract of marriage was drawn up at Cape Town and was duly executed there upon 27th March 1889. It was in the following terms —"Know all men whom it may concern, that on this the 27th day of March in the year of our Lord 1889, before me, Murdoch Morison Tait of Cape Town, Cape of Good Hope, notary public, by lawful authority duly sworn and admitted, and in the presence of the subscribed witnesses, personally came and appeared Charles Horace Durrant Steuart of Dalguise, Perthshire, Scotland, but presently of Wynberg, in the Cape Division, a widower, and Alice Katherine Reus of Rondelosch, in the Cape Division, a spinster, both the appearers being of the full age of majority and upwards, and the appearers declared that whereas a marriage has been agreed upon and is intended to be shortly had and solemnised between them, the said Charles Horace Durrant Steuart and Alice Katherine Reus, they do by these presents contract and agree each with the other as follows:—

"*First.* That there shall be no community of property or of profit or loss between the said intended consorts, but that he or she shall respectively retain and possess all his or her estate and effects, moveable and immoveable, in possession, reversion, expectancy, or contingency, as fully and effectually as if the said intended marriage did not take place.

"*Second.* That the one of them shall not be answerable for the debts and engagements of the other of them, whether contracted before or after the said intended marriage.

"*Third.* That all inheritances, legacies, gifts, or bequests which may devolve upon, or be left, given, or bequeathed to either of the said intended consorts shall be the sole and exclusive property of him or her upon or to whom the same shall devolve or be left, given, or bequeathed.

"*Fourth.* That each of the said intended consorts shall be at full liberty to dispose of his or her property and effects by will, codicil, or other testamentary disposition as he or she may think fit, without the hindrance or interference in any manner of the other of them, and that the marital power which the husband by law possesses is expressly excluded; and he is hereby deprived of it over the estate of his said intended spouse.

"*Fifth.* That for and in consideration of the said intended marriage the said Charles Horace Durrant Steuart agrees to, and hereby does, give and grant unto and settle upon his said intended consort, Alice Katherine Reus, absolutely, and as her sole, free, and uncontrolled property, the sum of £3000 sterling, to be paid her in cash after the death of him the said Charles Horace Durrant Steuart, out of such funds as may be realised out of the estate left by him at the time of his decease: And for the better securing to the said Alice Katherine Reus the said sum of £3000, he the said Charles Horace Durrant Steuart doth hereby further give and grant unto and settle upon her, the said Alice Katherine Reus, all the furniture, pictures, plate, and other moveables (with the exception, however, of the family portraits and such moveables as are or may be made heirlooms) contained in all the houses, the property of him the said Charles Horace Durrant Steuart, situate on the estate of Dalguise, Perthshire, Scotland, upon condition, however, that should there be sufficient funds realised out of the estate of him the said Charles Horace Durrant Steuart or from any other source whatsoever, to meet and liquidate the claim of the said Alice Katherine Reus in full, then that this settlement of the furniture, pictures, plate, and other moveables shall forthwith be annulled and of no effect, but that should there be insufficient funds realised to meet the said claim in full, or only sufficient to meet the said claim in part, then that the said furniture, pictures, plate, and other moveables, or such portion thereof as may be necessary, shall be realised for the benefit and on account of the said Alice Katherine Reus in order to meet and liquidate her said claim, or such deficiency thereof as may be due to her: The condition and intent of the whole of this settlement being that the said Alice Katherine Reus shall receive the full sum of £3000 hereby settled upon her, but neither more nor less.

"*Sixth.* And the said Charles Horace Durrant Steuart declared the conditions upon which the aforegoing settlements are made to be, that if the said Alice

Katherine Reus shall predecease him leaving no issue born of their marriage, then that the settlements hereby made and created shall forthwith cease and determine, and all and everything hereby settled shall revert to him the said Charles Horace Durrant Steuart: But that if the said Alice Katherine Reus shall predecease him, leaving issue born of their marriage, then and in such case the sum of £3000 and the other property hereby settled upon her shall devolve upon and become the absolute property of such issue, but upon the same terms and conditions as are hereinbefore set forth.

"*Seventh.* And the said Alice Katherine Reus declared to have accepted the said donation and settlement upon the terms and conditions hereinbefore set forth.

"Upon all which conditions and stipulations the said appearers declared it to be their intention to solemnise their said intended marriage, hereby mutually promising to act up to the tenour of these presents under obligation of their persons and property according to law.

"Thus done, contracted, and agreed at Cape Town, on the day of the month and year first before written, in the presence of the witnesses Mathew Blake and George Marquard Findlay, who, together with the appearers and me the notary, have subscribed to the original hereof now filed and remaining in my protocol."

Mr Durrant Steuart died domiciled in Scotland, at Dalguise, on 29th December 1890, leaving a trust-disposition and settlement dated 1883, by which he left the whole residue of his personal estate to trustees for behoof of his wife and children by his first marriage other than the child who should succeed to him in the estate of Dalguise. He was survived by his wife and by only one child, a son of his first marriage, the present proprietor of Dalguise. He left in addition to Dalguise, with a clear rental of £581, personal estate in Scotland amounting to £5884, after deducting the foresaid provision of £3000, and his other personal debts, and real and personal estate at the Cape valued at £2300.

Upon the widow's claiming *jus relictæ* over and above the special provision of £3000 settled upon her by the antenuptial contract, the trustees maintained that she was barred from making such a claim by the terms of the contract.

A special case setting forth the above facts was accordingly presented to the Court by the trustees of the first part and the widow of the second part to have the following question answered—"Is the second party barred by the terms of the antenuptial contract from claiming *jus relictæ* in addition to the special provision of £3000?"

Argued for the first parties—Although the phraseology of the antenuptial contract was somewhat peculiar, it clearly barred any further claim at the instance of the wife. It was practically a universal settlement of the whole of Mr Steuart's estate. If so, the widow could not claim under it and also claim under legal rights. The first article excluded the *jus mariti*, the fourth the *jus relictæ* and the *jus relicti*. The *jus relictæ* was also excluded by the words "neither more nor less" at the end of the fifth article. *Jus relictæ* will be excluded, although not named, if the words used (as here) are sufficiently clear and broad—Fraser on Husband and Wife, 1061, and cases of *Miller* v. *Brown*, 1776, M. 6456; *Breadalbane Trustees* v. *Marchioness of Chandos*, January 20, 1836, 14 S. 309—*aff.* 2 S. & M'L. 377; *Keith's Trustees* v. *Keith*, July 17, 1857, 19 D. 1040, there referred to.

Argued for the second party—The claim was not barred. The *jus relictæ* was not expressly discharged, and a discharge was not to be readily implied—Fraser on Husband and Wife, 1060; Bankton, i. 5, 123, and *Tod* v. *Wemyss*, 1770, M. 6451, there cited. In *Keith's Trustees* the discharge of *jus relictæ* was not implied from a deed drawn in England, because the *jus relictæ* was not held clearly to have been in the minds of the contracting parties. Here the deed was drawn at the Cape, and the wife was not to be presumed to have had her rights under the law of Scotland in contemplation. This deed did not from its terms necessitate the discharge of *jus relictæ*. The argument on the other side would lead to holding that *jus relicti* (although the husband got nothing by the deed) and possibly also legitim were discharged. Nothing was to be implied from the amount the wife got, which was very moderate. Article 4 did not define the extent of the husband's or wife's estate, but reserved to them curatorial and testamentary powers over whatever they might possess. The words "this settlement" at the end of article 5 referred to the settlement of the £3000 in that article, and did not imply a universal settlement of the husband's whole estate. The words "neither more nor less" were to be read in connection with the settlement of the furniture to secure the provision of £3000, not as limiting the amount his wife was to receive from the truster from all possible sources to that amount.

At advising—

LORD PRESIDENT—My first impression was that our judgment must, on pretty clear grounds, be in favour of the first parties. I am still of that opinion, although not so confidently. There are several peculiarities about the case. The deed before us is in the form of an antenuptial contract of marriage, but is not expressed in the usual technical language to which we are accustomed. We must take it, however, as an instrument intended to fix certain points clearly for the lives of the contracting parties. And first, each is to maintain his or her own estate independently of the other spouse. A great deal has been made of the fifth head of the contract, but we must keep in view the whole contract to appreciate that fifth head. Under the first head there is to be "no community of property or of profit and loss between the intended consorts."

I read that as meaning that the parties knew something of the *communio bonorum*, and that that was to be excluded. But further, the contract goes on clearly to say that the husband and the wife are to "retain and possess all his or her estate and effects, moveable and immoveable, . . . as fully and effectually as if the said intended marriage did not take place"—that is, as if the marriage had not been solemnised, and that is one of the conditions upon which this contract is entered into. The fourth head is also of great importance, for each consort is to be "at full liberty to dispose of his or her property and effects by will, . . . and the marital power of the husband is expressly excluded." Mr Cullen argued that the marital power there intended to be excluded was the husband's power of administration. There is a good deal to countenance that in the fourth head, but if read along with the first head, under which the husband has no right to his wife's estate, it must mean not merely exclusion of his right of administration, but of every kind of right which in the circumstances a husband might be supposed to have.

Keeping these two heads in view, we come to the consideration of the fifth, which is very peculiar in some respects. Generally, it is a provision by the husband for the payment of £3000 in cash to his wife after her death, and by the sixth head it is settled on the issue of the marriage, if any, failing the wife. In security of the £3000 certain furniture and other moveables are set apart, and this head of settlement ends with these words—"The condition and intent of the whole of this settlement being that the said Alice Katherine Reus shall receive the full sum of £3000 hereby settled upon her, but neither more nor less." Now, the parties are at issue as to this fifth purpose in this respect, that they differ as to what the settlement here spoken of is, whether the settlement is this article 5, and nothing else, or the whole contract. I cannot read these words without reference to the whole deed, for I think the meaning of the contract depends upon the construction put upon the three articles I have referred to taken together. It was argued with apparent force that the meaning was that the wife was to receive £3000, neither more nor less, as the result of this fifth head, but that no other legal rights of the wife were to be affected. If the estates of the two spouses were not subject to the provisions in the first and fourth heads there might be a good deal of force in that argument, but taking these along with the fifth, I do not see how £3000 can be held to be given in addition to any legal rights the wife may enjoy by the law of the husband's domicile, because that would be contrary to articles one and three taken together. I therefore think that we are not dealing here with *jus relictæ* at all, but that, as each spouse has by the contract retained what was his or her own to be enjoyed by them respectively, there is no fund out of which the one can claim *jus relictæ* or the other *jus relicti*, and I am of opinion that the question must be answered in favour of the first parties.

LORD ADAM—The question arises here out of the antenuptial marriage-contract of Mr and Mrs Steuart, and is, whether it was the intention of the contracting parties that Mrs Steuart should have right to her *jus relictæ* notwithstanding the provision in the settlement? I do not know any reason why effect should not be given to what we may arrive at as having been the intention of the parties, and if we come to the conclusion that it was the intention of the parties that the *jus relictæ* was to be excluded, we must give effect to that intention. I think that that was the intention of the parties notwithstanding Mr Cullen's clear and able argument. I think the solution of the question depends more upon the first four articles than upon the fifth. By the first article the husband retains his own estate, and if the settlement with regard to the spouses' own property stopped there, I think the widow's claim would be excluded, because I cannot see how the husband's reservation is consistent with the widow's right to *jus relictæ* over the same funds.

The settlement does not stop there, but provides by article 4 that "each of the intended consorts shall be at full liberty to dispose of his or her property and effects by will as he or she may think fit." Now, Mr Cullen asks us to interpret that as not referring to the amount of the property to be disposed of, but only as to the power of dealing with what each may legally dispose of. He would read in the addition "so far as they legally may." That cannot be the true construction, because in that view when we come to "the hindrance and interference" of the other spouse, we cannot give any meaning to these words. But they must have a meaning, which I take to be, that if a will is made it is to receive effect. The true meaning therefore is, that the husband and wife reserve full powers to dispose of their whole property and effects without regard to any legal rights which might be claimed by the other. I concur with your Lordship in thinking that that meaning is also to be put on the fifth article by which the husband confers £3000 on his wife. By the preceding clauses he reserves his right not to settle anything; by the fifth he settles £3000, and the furniture in security if necessary. Then he goes on to say that "the intent of the whole of this settlement" is that the wife shall receive "the full sum of £3000 hereby settled upon her, but neither more nor less." I think the meaning of these words is that all the wife is to take from his means and estate in any way is £3000, and that she is not to get, in any form or shape, more than £3000.

LORD M'LAREN—I think that in cases of this kind it is necessary to keep in view the general object of the marriage-contract. The general notion of such a contract is that it is a deed whereby conventional provisions are substituted in place of those

accruing by operation of law. In those cases where the wife has been held entitled to her legal provisions over and above the conventional ones in her favour, it has been because it was thought not unreasonable to infer, from the omission to express in the deed what was in the minds of the parties on the subject, that the parties intended the provisions should be supplementary. It is an unlikely thing that the legal rights of parties should remain and also those created by convention.

I may make a few observations, because this deed, although operative in Scotland, was prepared in a colony, and it is only by considering it in its general relations that its true meaning can be ascertained. The scheme of it is that the conveyancer with regard to the solemnities employs the forms common in the colony, for he brings the parties before a notary-public, and probably also in the arrangement of the clauses. He took care to associate—probably having in view the intention of the parties—with all qualifying words applicable to rights he knew of, words that would qualify larger rights also. Thus in the first article, besides providing for a case of profit and loss not appropriate to the law of Scotland, he goes on to provide that the rights of the parties to their respective properties shall remain as if the marriage had not taken place. Again in article 5, while the general purpose of the clause is to settle a specific sum, it also concludes with the words of wide meaning, "but neither more nor less." Therefore unless we are to hold that the *jus relictæ* must be mentioned by name in order to prevent its taking effect, it is difficult to see how any deed could exclude that right more clearly than this one does. In *Keith's Trustees* Lord Deas contemplated the *jus relictæ* being excluded by general words if there had been any there applicable, which there was not. I think that view well founded, and I know of no contradiction. General words will be sufficient if sufficiently wide, taken in their ordinary sense. In this case I do not know whether the conveyancer was conversant with the law of Scotland. He was probably wise to assist the parties by using comprehensive terms. I agree in thinking that this deed excludes all rights arising to either spouse except the wife's claim to £3000.

LORD KINNEAR—I am of the same opinion. I agree with what has been said that all we have to do is to ascertain the intention of the contracting parties by interpreting the language used according to its ordinary sense. There is no rule of law that particular words must be used as to *jus relictæ*, or that, having ascertained the intention of the parties in this respect, we may not give effect to it. What the parties evidently intended was that the wife should have a certain sum of money, and no other claim against her husband's estate in consequence of the marriage. I think the first and fourth material clauses, because the first provides that the rights of parties shall remain as if there had been no marriage. The second and third clauses are ancillary, and carry out the intention of the first. Each spouse is to be the uncontrolled proprietor of his or her own estate. Then the fourth clause provides that each is to have full power of disposing of their own property. There is no room for doubt that the parties meant that nothing in the marriage was to prevent them by will disposing of their respective properties as if their had been no marriage. The suggestion pressed upon us to the contrary effect is, I think, untenable if we consider the effect of that argument--viz., that clause five was not intended by the spouses to define the property over which the power of each was to extend, but to secure their testamentary capacity over what they could by law dispose of. The fatal objection to putting that meaning on the clause is, that there is no testamentary incapacity affecting a husband or a wife requiring to be removed. I entirely agree that the fifth clause hangs so well together with the others as to show that the scheme was that the wife should get £3000, neither more nor less, and nothing in addition which the law would have given her had there been no contract. The contract is just what a reasonable arrangement would suggest. It does not deprive the wife of any reasonable expectation, looking to the amount of the estate and to the fact of there being a child of a former marriage. It is just such a reasonable arrangement as we need not regret giving effect to.

The Court answered the question in the affirmative.

Counsel for the First Parties—Wallace. Agents—Thomson, Dickson, & Shaw, W.S,

Counsel for the Second Party—Cullen. Agents—J. & A. F. Adam, W.S.

VALUATION APPEAL COURT.

Tuesday, February 17.

(Before Lord Wellwood and Lord Kyllachy.)

EARL OF HOME *v.* ASSESSOR FOR DUNDEE.

Valuation Cases—Barracks Unlet.

Barracks which had reverted to the proprietor after the expiration of the lease under which they had been held by the Crown, and which were unlet and could not be let without considerable outlay being made to alter their condition, were entered in the roll at the rent at which they had been held by the Crown. *Held* that the entry was *wrong*, and the valuation *reduced* to a nominal sum consented to by the proprietor.

Remarks (*per* Lord Wellwood) on the effect upon the question of valuation of