landed gentlemen not to strive against the stream, by entailing their estates, which their heirs take as much pains to break, and thus waste their estates among lawyers), and he did not doubt but posterity would find out means of breaking these restraints. He then moved the interlocutors complained of be affirmed.

LORD CHANCELLOR said :—

" That the mere point of law was against the appellant ; but he wished to pronounce such a decree as would enable him hereafter to bring the matter before the Court of Session in Scotland, so as that he might not be debarred from prosecuting his right on the ground of informality only."

LORD MARCHMONT seemed of the same opinion, and added, " that the point of positive law was so involved with informal proceedings of the appellant, that it required some consideration to form a decree, in which the positive law, as well as the equitable right of parties might be preserved. Case adjourned, 17th April 1777."

This case being resumed, the Lords agreed to affirm as below :—

It was ordered and adjudged that the interlocutor of the 21st and 31st July 1772 be affirmed. And it is further ordered and adjudged that the interlocutors of the 21st of January, 28th of February, and 26th of July 1771, and the interlocutor of the 26th of June 1776 be also affirmed, without prejudice to any satisfaction in money that the appellant may be entitled to in respect of any claim he may have in virtue of the agreement 1733.

For Appellants, *Al. Wedderburn, Alex. Murray, Dav. Rae, Alex. Wight, Ilay Campbell, S. Douglas.*

For Respondents, *E. Thurlow, Henry Dundas, Al. Forrester.*

LADY CRANSTOUN and MICHAEL LADE, Esq., *Appellants ;*
GEORGE LEWIS SCOTT and Others, - *Respondents.*

House of Lords, 21*st April* 1777.

RENUNCIATION—DONATION INTER VIRUM ET UXOREM—REVOCATION.—A husband procured a renunciation from his wife of her provision secured preferably over his estates, in order to allow these to be sold, and price paid to his creditors. Held, the wife not bound by the renunciation, although third parties were interested, and had agreed to abate claims on her granting it.

The late Lord Cranstoun, in contemplation of his marriage with the appellant, daughter of Jeremiah Brown of Apscourt, entered into two several marriage settlements

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the one in the Scotch form, to affect his Scotch estates, and the other in the English form, to affect his English estate; both deeds having reference to each other. By the settlement applicable to his Scotch estates of Crailing and Wauchope, he secured to his intended spouse an annuity out of these of £700 per ann., payable on his death. In virtue of this settlement, the wife was infeft in the estates in Scotland, and the sasine duly recorded.

The English deed bore, "for the better and more effectually securing the payment of the said annual sum or yearly rent of £700 so secured in the said settlement or articles of marriage, of equal date herewith, executed according to the law of Scotland, as aforesaid; and for that purpose, that in case the said annual rent or yearly sum of £700, or any part thereof, shall be behind, or unpaid, for six calendar months next, the time when payment falls due, then and in that case, recourse shall be had for payment out of the rents of the English estate." The Scotch estate was thus primarily liable, and the primary security for the annuity.

Lord Cranstoun, at the time of his marriage, owed considerable debts, and these having thereafter increased, his creditors took measures to enforce a judicial sale of the Scotch estates of Crailing and Wauchope. In the course of the proceedings a claim was entered for Lady Cranstoun's annuity of £700 secured by her marriage settlement, which was preferable to the respondent George Lewis Scott, Esq., and many other creditors. It was therefore made a condition of the sale, that £14,000 of the price should be set aside to answer her annuity. But a proposal was thereafter made by the creditors, that she should renounce and discharge her security for her annuity of £700 per ann. on the Scotch estates, and betake herself to Lord Cranstoun's English estates, upon which these creditors supposed she was primarily secured, in consideration of which, they, on their part, agreeing not to exact penalties or accumulation of interests on their bonds. This proposal proceeded on mistake, because she was only entitled to resort to the English estate on failure of payment out of the Scotch estates. This arrangement was not gone into at the time.

In the meantime, Lord Cranstoun's embarrassments had increased; and his necessities being pressing, he had procured, through the influence he had over his wife, many deeds for the purpose of raising money. One of these deeds was, a renunciation of her annuity secured by her marriage settlements

on the Scotch estates, the object of which being, that Lord Cranstoun might carry off a large portion of the price of these estates when sold. This deed proceeded upon the former proposal of the creditors, made five years before, and narrated and proceeded upon the footing of "my renouncing "my annuity out of the estate of Crailing, and taking myself therefor to the *English* estate, whereby the creditors "would get immediate payment of their debts, and they "would give down all accumulations; therefore I renounce "and discharge the foresaid annuity in so far as the same "affects the Scotch estates." This deed, unknown to her Ladyship, was recorded, but nothing followed upon it, the creditors doing nothing on their part to implement it, and she on her part concluded that it was departed from. She afterwards sought for the renunciation, with the view of cancelling it, but found it could not be got, as it had been put on record. The estates, when sold, were sufficient to answer all purposes; and £14,000 was set apart from the price to answer her annuity. Lord Cranstoun died in 1773, and his widow was afterwards married to Mr. Lade.

All questions among the creditors *inter se* being settled, and the purchaser anxious to pay the price, the present multiplepoinding was brought, to which Lady Cranstoun and her husband Mr. Lade were made parties. She claimed in the multiplepoinding to be preferred to the £14,000. The respondents, creditors of his Lordship, objected, on the ground that, by the renunciation executed, she had discharged all claim for her annuity on the Scotch estates.

The Lord Ordinary, after various interlocutors, of this date, found: "In respect of the special circumstances of Nov. 14, 1775. "the case, finds my Lady Cranstoun is bound by her trans-"action, and that she cannot revoke it." At sametime, it was found she was bound to assign her security over the English estates. On reclaiming petition the appellants contended that the renunciation was *donatio inter virum et uxorem*, which was revokable at pleasure, at any time during the granter's life. Judicial ratifications were not necessary to deeds of pure donation between husband and wife; which this undoubtedly was. And even supposing it a deed not to the husband, but to the creditors, or third parties, then it was still null, as wanting her judicial ratification, which was necessary to belie the presumption *ex vi aut metu*. Upon these principles of the law of Scotland, it was that the Lord Ordinary had, by two consecutive interlocutors, adjudged this renunciation to be void as a *donatio inter virum et uxo-*

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rem. The Court found "that the deed of renunciation by "Lady Cranstoun is binding upon her, and her husband, for "his interest, and that she is bound to implement it, and "remit to the Lord Ordinary to proceed accordingly." On further petition the Court adhered, (10th August 1776.)

Against these interlocutors the present appeal was brought to the House of Lords.

At this stage of the proceedings in the House of Lords, the appellant, Mr. Lade, having discovered, from the proceedings in 1772, regarding the division of the price, that this question regarding the renunciation had been decided in Lord Cranstoun's lifetime, obtained leave to bring these before the House, from which it appeared that on 29th July 1772, the Lord Ordinary had found there was "no evi-"dence that the transaction they intended was concluded, "and therefore finds the creditors are not bound to give "that abatement of their debts." On representation and answers, this interlocutor was adhered to. It also appeared from the minutes of the creditors, that Lord Cranstoun had proposed a new scheme, and the creditors were disposed to agree to this, provided a new deed of renunciation was granted by the appellant, Lady Cranstoun, duly ratified by her before a magistrate; but no such deed was ever executed by her.

Pleaded for the Appellant.—The renunciation, as being a *donatio inter virum et uxorem stante matrimonio*, was void by the law of Scotland, and was revokable at pleasure, at any time during the granter's life. Lady Cranstoun did every thing in her power to obtain possession of this deed, in order to cancel it, and, consequently, must be held to have virtually revoked it. The renunciation was further void, as proceeding on false grounds, supposing that the appellant's annuity was secured on both English and Scotch estates alike, whereas the English estate was only to be a security if the Scotch estates failed to afford payment. Consequently the result of this renunciation would be, if sustained, to deprive her of her annuity entirely, because, as the Scotch estates have not failed, she has no recourse against the English. The renunciation, besides, was never accepted by the respondents, nor did they, at any time during Lord Cranstoun's life, bind themselves to perform the obligations they came under. The transaction was never completed, and could not be so, until they executed another deed, binding themselves as the counter part. The whole deed, in its meaning and intent, points at things to be

done in the future, and is not in itself definitive or conclusive. She had, therefore, power to resile. Further, the appellants are not bound, under a sound construction of the two marriage settlements, to assign to the creditors any security she may have over the estate in England, because the avowed object of that security was only to come in aid of the Scotch estates when they failed, or were deficient.

Pleaded for the Respondents.—The deed of renunciation and discharge is not a *donatio inter virum et uxorem;* but an agreement entered into for a valuable consideration, not between husband and wife, but between third parties,—namely, Lord Cranstoun's creditors, and therefore a deed in its nature not revokable at pleasure. Even supposing it were entirely gratuitous, and had no consideration, such a deed would not have been revokable. In regard to the interests of husband and wife, and in so far as it was a gift from the one to the other, it might be revoked, but not so as to affect the interests of third parties secured by it. The deed here in question was perfectly complete in itself. It was a mutual contract, in which Lady Cranstoun instantly renounced her jointure, and the creditors immediately restricted their debts. No counter obligation, no future deed, no act of acceptance, were necessary, as the deed was complete, definitive, and conclusive of itself; and the fact of causing it to be registered, was evidence of its being considered a completed deed. Even supposing it were to be held as one side of a mutual contract which required a counterpart, it is still competent to the creditors to make one. This is the established law of contracts. The creditors have not failed to perform their part; on the contrary, they are willing to perform; and the appellants are not, in the meantime, entitled to resile, as from an incompleted contract.

After hearing counsel, it was

Ordered and adjudged that the interlocutors complained of be *reversed;* and it is declared that the deed of renunciation executed by Lady Cranstoun is not binding upon her; and that she is not bound to implement the same; and it is further ordered that the Court of Session in Scotland do give all proper directions for carrying this judgment into execution.

For the Appellants, *E. Thurlow, Al. Wedderburn, Dav. Rae, J. Dunning.*

For the Respondents, *Henry Dundas, Ar. Macdonald.*

Not reported in Court of Session.