[16*th August* 1836.]

The MARQUIS of BREADALBANE, and the TRUSTEES of the late MARQUIS of BREADALBANE, Appellants.

The MARQUIS and MARCHIONESS of CHANDOS, Respondents.—

Collation — Discharge — Parent and Child — Legitim.— Held (affirming the judgment of the Court of Session), 1, That an heir of entail who succeeds his father in entailed estates under a destination to heirs male cannot claim legitim without collating his life interest in the entailed estates. 2. Circumstances held not sufficient to amount to a discharge or renunciation of legitim.

2D DIVISION.

Lord Jeffrey.

THE late Marquis of Breadalbane succeeded in 1782 to certain landed estates by virtue of a deed of strict entail executed by John third Earl of Breadalbane. The destination was to the heirs male of the body of the entailer, whom failing to the Marquis (then John Campbell of Carwhin), described as the next heir male of the family. The entailer died without leaving heirs male of his body, and thereupon the Marquis made up titles, and was infeft under the entail. He was not the heir of line of the entailer, and was only distantly related to him. In 1793 he married without any contract of marriage, and none was subsequently executed. Of this marriage there were a son and two daughters.

In 1819 his daughter Lady Mary Campbell was married to the Marquis of Chandos, on which occasion

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marriage settlements were prepared and executed in the English form, to which the Duke of Buckingham, father of Lord Chandos, and the late Marquis of Breadalbane were parties. By these an annuity, which was to vary from 2,500*l.* to 3,500*l.*, was secured by the following clause to Lady Mary out of the Buckingham estates:—

"It is hereby declared and agreed that the said several "annuities, yearly rent charges, or sums herein-before "limited to the said Lady Mary Campbell and her "assigns as aforesaid, or such of them as shall become "due and payable, shall be in full for her jointure, and "in lieu, bar, and satisfaction of and for her whole "dower, thirds, and free bench at common law or by "custom or otherwise, which she can or may or other-"wise could or might have or claim of, in, to, or out "of all and every or any of the said freehold and "copyhold or customary manors, lands, tenements, and "hereditaments whatsoever, whereof or whereunto the "said Richard Plantagenet Earl Temple" (now Marquis of Chandos) "her intended husband now is, "or at any time or times during the said intended cover-"ture between them shall or may be seised or entitled for "any estate to which dower or free bench is incident."

There was no corresponding discharge of Lady Chandos's legal rights with reference to the law of Scotland. The deed also contained the following clauses:—

"And whereas upon the treaty for the said intended "marriage the said John Earl of Breadalbane agreed "that he would pay or secure the sum of 30,000*l.* as the "portion or fortune of the said Lady Mary Campbell, "in the manner herein-after mentioned; (that is to say,) "the sum of 10,000*l.*, part thereof, to be paid on or "before the solemnization of the said intended marriage;

" the farther sum of 10,000*l.* to be paid at the expira-
" tion of eighteen calendar months from the day of the
" solemnization of the said intended marriage, and to
" carry interest in the mean time at the rate of 5*l.* per
" cent. per annum; and the remaining sum of 10,000*l.* to
" be paid within six calendar months next after the
" decease of him the said John Earl of Breadalbane,
" with interest from the day of his decease; and it was
" agreed that the said Richard Marquis of Buckingham
" should receive from the said John Earl of Breadalbane,
" the said two sums of 10,000*l.* and 10,000*l.* first and
" secondly herein-before mentioned, together with the
" interest of the said sum of 10,000*l.* secondly herein-
" before mentioned, from the day of the solemnization of
" the said intended marriage; and in consideration
" thereof should enter into such covenant as is herein-
" after contained for the payment of the said sum of
" 20,000*l.* within two years after the solemnization of
" the said intended marriage, and to pay interest for the
" same in the mean time; and that the said sum of
" 20,000*l.* and the interest thereof should be further
" secured in the manner herein-after expressed; and it
" was agreed that the said sum of 20,000*l.* so to be
" covenanted to be paid by the said Richard Marquis of
" Buckingham, and the said sum of 10,000*l.*, the residue
" of the said portion of 30,000*l.* to be secured by the
" bond of the said John Earl of Breadalbane, and to be
" payable after his decease, and the several securities
" for the same, should be vested in the said George
" Neville and John Viscount Glenorchy, their executors,
" administrators, and assigns, upon and for such trusts,
" intents, and purposes, and with and under and sub-
" ject to such powers, provisions, limitations, declarations,

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" and agreements, as are herein-after declared, expressed, " and contained, of and concerning the same; and in " further consideration of the said intended marriage, and " also of the said portion or fortune of the said Lady " Mary Campbell, the said Richard Marquis of Buck- " ingham and Richard Plantagenet Earl Temple pro- " posed and agreed to settle and assure the said several " manors or lordships," &c.

" And whereas in part performance of the said agree- " ment, on the part of the said John Earl of Breadal- " bane, the said Earl hath paid to the said Richard " Marquis of Buckingham, upon the day of the date " of these presents, the sum of 10,000*l.* of lawful money " of Great Britain, and by his bond or obligation in " writing under his hand and seal, in the penal sum " of 20,000*l.*, bearing even date with these presents, " the same Earl hath secured to the said Richard Mar- " quis of Buckingham, his executors, administrators, " and assigns, the payment of the sum of 10,000*l.* of " like lawful money of Great Britain at the expiration " of eighteen calendar months from the day of the date " of the same bond, with interest in the mean time at " the rate of 5*l.* per cent. per annum, payable half- " yearly, as therein mentioned; and the said John " Earl of Breadalbane hath also given and executed " another bond or obligation in writing, under his hand " and seal, bearing even date with these presents, " whereby he has become bound to the said George " Neville and John Viscount Glenorchy, their execu- " tors, administrators, and assigns, in the penal sum of " 20,000*l.*, subject to a condition thereunder written " for making void the same on payment of the sum of " 10,000*l.* of like lawful money to them the said George

" Neville and Lord Viscount Glenorchy, their execu-
" tors, administrators, and assigns, within six calendar
" months after the decease of the said John Earl of
" Breadalbane, together with interest on the same sum
" of 10,000*l.* at the rate aforesaid from the day of the
" decease of the said John Earl of Breadalbane."

The trust created as above in the persons of the said George Neville and Viscount Glenorchy is thus set forth: — " And this indenture further witnesseth, That
" for the considerations herein-before mentioned it is
" hereby declared and agreed by and between the said
" parties to these presents, that the said George Neville
" and Viscount Glenorchy, and the survivor of them, and
" the executors, administrators, and assigns of such sur-
" vivor, shall stand possessed of and interested in the said
" sum of 10,000*l.* secured by the bond of the said John
" Earl of Breadalbane, to be paid within six calendar
" months after his decease as herein-before recited, upon
" trust that they the said George Neville and Viscount
" Glenorchy, and the survivor of them, and the execu-
" tors, administrators, and assigns of such survivor, do
" and shall, with all convenient speed after the said
" sum of 10,000*l.* shall have been received (with the
" consent, in writing, of the said Richard Plantagenet
" Earl Temple and Lady Mary Campbell, or such
" one of them as shall be living, or if neither of them
" shall be living, then at the discretion and of the pro-
" per authority of the trustees or trustee for the time
" being), lay out and invest the same in their or
" his names or name either in the public stocks or
" funds or in or upon government or real securities
" at interest, and do and shall from time to time, (with

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" the like consent, or of such discretion as aforesaid,) " call in the principal money so placed out, or make " sale of the securities or funds whereupon or wherein " the same shall be invested from time to time, and " place out the monies thereby arising in or upon such " new or other stocks, funds, or securities of the same " or like nature as they, he, or she shall think proper; " and do and shall stand possessed of and interested in " the said sum of 10,000*l.*, and the stocks, funds, or " securities in or upon which the same shall be invest- " ed, and the dividends, interest, and annual produce " thereof, upon and for the trusts, intents, and pur- " poses, and with, under, and subject to the powers, " provisoes, declarations, and agreements hereafter ex- " pressed, declared, and contained of and concerning " the same."

In 1828 the Marquis executed in favour of certain trustees a disposition and settlement (with reserved power to alter) of his unentailed heritable estate and of his whole moveable property, with the exception of the furniture, jewels, &c. within the castle of Taymouth, which were bequeathed to his son. The trust purposes were for payment, inter alia, to his widow and two daughters, of all " provisions and obligations in their " favour contained in any deed or deeds granted or to " be granted by me to them, or to which they may " have right by law, in so far as the same may affect " my said general estate or effects."

The trustees were directed to employ the whole free proceeds of the trust estate and the accumulations therefrom in the purchase of lands, which at the end of twenty years were to be entailed and made over to the

heir of entail of the Breadalbane estates in possession at the time.

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In August 1829 he executed the following codicil to the trust settlement:—"In virtue of the power herein-" before reserved to alter and innovate these presents, " I hereby direct that my said trustees, instead of in-" vesting the free rents of my unentailed lands and " estates in manner before mentioned, shall annually " pay over the whole free proceeds of the same to my " two daughters, Lady Elizabeth Campbell and Mary " Marchioness of Chandos, equally between them while " both shall be in life, and to the survivor, and shall " continue to do the same as long as both or either of " them shall be alive; but that always without prejudice to " the obligations and provisions granted by me in favour " of Mary Countess of Breadalbane, or to the obligations " contained in the contract of marriage between John " Viscount Glenorchy and Eliza Baillie his spouse."

Besides the personal property in the house of Taymouth, certain leasehold property in London was provided to the present Lord Breadalbane.

The other daughter, Lady Elizabeth Campbell, was married in 1831 to Sir John Pringle, and certain provisions were declared in the marriage contract to be in full of all her legal claims, and in particular of the legitim, which was discharged.

In 1834 the Marquis died, leaving the Marchioness and the three children above mentioned surviving him. He left unentailed estates yielding about 5,000*l.* a year, and personal or moveable funds to the amount of 400,000*l.*

His son succeeded to the entailed estate and to the special legacies, and was infeft as heir male and of tailzie

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to his father. Thereafter various questions having arisen as to the disposal of the moveable succession and the rents of the unentailed lands, the trustees raised a process of multiplepoinding to settle the rights of parties.

Lady Chandos claimed a third of the free moveable succession as the only child entitled to legitim, and without prejudice to this claim craved to be preferred to the rents of the unentailed lands. Lady Elizabeth Pringle claimed the sums provided by her marriage contract and also the annual proceeds of the unentailed lands.

Lord Breadalbane claimed a third part of the whole moveable succession as legitim; or if it should be found that Lady Chandos had right to legitim, then he offered to collate with her whatever he had taken or should be entitled to take as heir of line of his father, or whatever he succeeded to as his father's heir, other than the entailed estate: he also claimed what was specially bequeathed to him by the late Marquis.

The Marchioness Dowager claimed one third of the personal estate jure relictæ, and also in right of her terce to be put in possession of one third of the unentailed lands in which her husband died infeft.

The trustees claimed to be preferred to the trust estate, or at least to so much of it as should not be required to satisfy the claims of any of the competitors who, claiming adversely to the trust deed, should be ultimately preferred.

On the cause coming before the Lord Ordinary he ordered Cases, which were reported to the Court; on advising which their Lordships of the Second Division, on the 20th January 1836, pronounced the following interlocutor:—"Find that Mary Marchioness of Chandos

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" has not, by her contract of marriage or otherwise, " renounced her legitim, and is therefore entitled to " make her claim for the same accordingly; and in re- " spect the said Marchioness of Chandos is the only " younger child of the late Marquis of Breadalbane who " has not renounced the right of legitim, find that her " claim extends over one third part of the free moveable " estate of her said father, and that it is not to be re- " duced in amount by imputing thereto any part of the " sums provided to her by her said father in her contract " of marriage, and which sums, in so far as not yet " satisfied, must form a deduction from the trust funds " in medio; reserving to the trustees any claim of " relief for the same that may be found competent to " them against the heirs of entail of the late Marquis " of Breadalbane, and to all other parties their rights " as accords, and decern accordingly: Find that the " claimant, the present Marquis of Breadalbane, is not " entitled in name of legitim to any share of the funds " in medio without collating his interest in the entailed " estates to which on the death of his father he has suc- " ceeded; and in hoc statu repel his claim of legitim " accordingly, and decern: Find that the claimant, the " Marchioness Dowager of Breadalbane, is entitled to a " terce of the unentailed estates in which her husband " the late Marquis of Breadalbane died infeft, and to " make her right to the same effectual in due course of " law; and further, find that the said Marchioness " Dowager of Breadalbane is entitled to her jus relictæ, " extending over one third part of the free moveable " estate of her said deceased husband, and decern: Find " that the claimants, the trustees under the contract of " marriage between Sir John Pringle and Lady Eliza-

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" beth Maitland Campbell, daughter of the late Marquis " of Breadalbane, are entitled to the sums therein " provided by the said deceased Marquis in terms " of her claim for the same in this process: Further, " find that the said Lady Elizabeth Pringle is now entitled " to one half of the free yearly proceeds of the unen- " tailed estates of her said father, conveyed by him to " his trustees, raisers of the present process, in terms of " his settlements referred to, and decern; and that with- " out prejudice to any farther claims on her part, either " on the predecease of her sister the Marchioness of " Chandos, or in the event of its being found that the " claim of the said Marchioness her sister to the other " half of the said rents in terms of the said settlements " cannot be sustained; on the validity and effect of which " claim on the part of the said Marchioness of Chandos " appoint counsel to be farther heard in their own pre- " sence: Find that the claimant, the present Marquis " of Breadalbane, is entitled to the special legacies " claimed by him as contained in the settlements of his " father, the late Marquess of Breadalbane, but under " the proviso that neither these nor any other legacies " contained in the settlements of the said deceased " Marquis of Breadalbane shall affect or diminish the " claims of legitim or of jus relictæ as found compe- " tent and sustained by this interlocutor; and reserve " for further consideration all other points and questions " arising in the present process which are not disposed " of by the preceding findings."

Against this interlocutor an appeal was brought by the Marquis of Breadalbane and by the trustees of the late Marquis, as to the finding that the Marchioness of Chandos had not discharged her legitim, and by the

former also as to the finding that he was bound to collate the entailed estates as a condition of participating in the moveable succession.[1]

Appellant.—The fund destined for legitim is one third of the free moveable succession of the father, which, where there is one child only entitled to legitim, belongs exclusively to that child, and where two or more are entitled to legitim, is equally divisible among them, subject always to claims of collation inter se, which may in certain circumstances arise in respect of provisions that may have been granted to them by their father during his lifetime. Such provisions, however, can in no case be taken in computo in ascertaining the amount of the fund for legitim; because, if such provisions have been given and received in satisfaction of legitim, the claim of the child so provided is extinguished; if otherwise, and the child's claim for legitim remains, neither the executors nor relict can found upon it or plead it in diminution of the legitim; and so accordingly it has been held in the present case, and is clear upon all the authorities.

Lady Chandos having discharged her claim for legitim, the appellant, as the only child whose legitim is not discharged, is entitled to the whole legitim, without the necessity of collating either what he took as heir—no matter in what character as heir—from his father, or what he took as a provision granted during his

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[1] In so far as related to the question of collation the arguments and authorities were the same as those in the case of Anstruther, along with which this case was heard, and therefore are not repeated.

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father's life, for the reason already assigned, namely, that there can be no question of collation in such a case except as between the parties entitled to legitim; none certainly as between the claimant for legitim on the one hand, and the executors or relict on the other.

That Lady Chandos has renounced or discharged her right of legitim—that the provision given and received by her on occasion of her marriage and constituted by her marriage contract was given and received in satisfaction of her claim against the father's moveable succession as a child in the family, is a question rather of English than of Scotch law. It necessarily raises and involves a question of construction as to the true import and effect of her marriage settlement, an instrument executed in England, and according to the forms of the English law, and under which the various stipulations of the contract were to be performed, England being the domicile of the husband, and consequently of the marriage—and if the true construction be that it imports a discharge and renunciation of all claims against the father of the nature of jus crediti, that is to say, all claims which may be different from or higher than the mere spes successionis in that part of his executry which he had power to dispose of, it seems impossible, on such a supposition, to maintain that Lady Chandos is still entitled to legitim. The point now adverted to appears to have been in a great measure overlooked by the Court below, who have treated the case, notwithstanding the peculiar circumstances attending the contract, as if it had turned exclusively upon the law of Scotland, and as if the law of Scotland, unaided by the English

law, could furnish the rule for the construction of an English contract. That they so dealt with it is unquestionable, since they did not adopt the only legitimate means of ascertaining the law of England in the matter; and without reference to the law of England the point cannot be decided.

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There can be no doubt that in so far as the present is a question of Scotch succession, it is that law, as administered in its own Courts, which must declare generally in what circumstances a child shall retain and in what he shall lose and be excluded from his claim of legitim. It is for the law of Scotland, therefore, to say that marriage alone of a child is not forisfamiliation; that the right to legitim shall not by general presumption or implication be held to be discharged; and that the acceptance by a child of a provision on occasion of marriage will not of itself amount to discharge or renunciation of legitim. But it is equally clear in the law of Scotland that there are no particular words—no voces signatæ—required to discharge the legitim. This is not such a case as that of landed property, where the law will accept nothing in lieu of certain technical phraseology, such as give, grant, and dispone; nor is it in any respect dependent on the same principles which have been thought to require in land rights a strict adherence to technical terms, without which an instrument can be of no avail. This is just a question of discharge and renunciation or not; which discharge and renunciation it is true is not lightly to be presumed nor easily implied, but nevertheless requires no particular mode of expression. Provided the meaning of the parties be clear, that the provision has been given and accepted

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in satisfaction of legitim, the law will be satisfied, whatever be the shape or form of the contract. The mere acceptance of the provision undoubtedly will not be sufficient; it must appear that the child has accepted of it in place and in payment of legitim, and in renunciation of any claim against the father of the nature of debt,—and of any claim against his moveable estate, except that arising from his good will.

The question is, whether the English deed, construed by the English law, does or does not truly and necessarily import the discharge of any such claim as legitim, when her father gave to Lady Chandos, and she and her husband received from him the sum of 30,000*l.* "as "the portion or fortune of the said Lady Mary Camp-"bell," payable two thirds of it during the father's life, and one third of it after his decease? Supposing such a contingent eventual claim as that of legitim to have existed against the father by the law of England, in consequence of some antecedent family settlement,—a claim, not to a certain amount of moveable property, but merely that the children should have a certain share in whatever moveable property the father might choose to leave,—the question is, would such a claim be discharged by the law of England where a daughter in a marriage contract specially accepted a particular provision as her portion or fortune; more especially where the fortune given to that daughter was of the same amount with that which had been given to another daughter expressly in satisfaction of this claim, although so expressed, because the deed happened to be executed in Scotland? If such should be

the construction of the deed according to the law of England, the parties are bound to accept that construction, because they cannot be held to have acted upon any other construction. They cannot construe an English deed by the Scotch law, or say what shall be understood by its terms and covenants, otherwise than as the law of England shall dictate. And if the law of England interprets the deed to be a discharge of all claims of the nature of a jus crediti, it must be dealt with by the law of Scotland as a deed of that nature and effect.

Respondent.—There is not the slightest ground for maintaining that the deed of 11th May 1819 in any way operated a discharge of Lady Chandos's claim for legitim. It is not contended that there was any express discharge of the claim, and the discharge must therefore rest on implication. The only circumstance on which it can be rested is, that Lord Breadalbane, in agreeing to pay the sum of 30,000*l.* with his daughter, designates it as "the portion or fortune of the said Lady Mary "Campbell." This is not a matter in which the law admits of implication; no presumption, however strong, has ever been allowed the least effect in cutting down the legal provision of legitim.

Stair [1] states the law in direct reference to the payment and acceptance of "a tocher or portion;" and in so doing makes use of almost the very terms of Lady Chandos's contract. He says, after noticing the adverse argument,—"Yet the contrary opinion is more

[1] Stair, 3, 8, 45.

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" favourable, viz. that nothing can take away the bairn's " legitim unless it be discharged; and that a pre- " sumption of accepting a tocher or portion in satis- " faction will not be sufficient, unless it bear 'in " 'satisfaction of the portion natural and bairn's part,' " 1st, Because the legitim is so strongly founded in the " law of nature and positive law that presumption or " conjecture cannot take it off;" &c.

Erskine [1] is to the same effect:—" As this right of " legitim is strongly founded in nature the renunciation " of it is not to be inferred by implication. It is not " presumed either from the child's marriage or his " carrying on a trade by himself, or even his accept- " ance of a special provision from the father at his " marriage (Harc. 475, Russell, Dec. 8, 1687, Dict. " 8177,) if he have not expressly accepted of the " provision in full satisfaction of the legitim."

So also Bankton [2]:—" A child is said to be foris- " familiated when he receives payment or satisfaction of " his portion natural, discharges the same, or accepts a " bond of provision in satisfaction thereof; but if it " bear not to be in satisfaction, he may still claim his " proportion of legitim upon collating his bond or " portion to the other children."

To the same effect also there are numerous decisions of the Court.[3] So late as 27th January last the whole doctrine and authorities of the law on this

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[1] Erskine 3, 9, 23. [2] Bankton, 3, 8, 16.

[3] Wright, Jan. 27, 1835; and see Ross, Feb. 24, 1627; Murray, July 16, 1678; Duke of Buccleuch, Feb. 14, 1677; Nesbits, Jan. 18, 1726; Lady Balmain, Dec. 1726; Lawsons, Feb. 6, 1777; Stirling, June 1792, and Burden, June 29, 1738, there cited.

point having in most elaborate pleadings been brought under the review of the Court (Second Division), their lordships unanimously adopted and gave effect to an opinion expressed by the Lord Ordinary (Moncreiff); viz. " that according to the terms and legal import of " the deed in favour of Mrs. Clark at her marriage, " the acceptance of the provisions thereby made in her " favour cannot be held to import a discharge of the " legitim. The rule is fixed that legitim is not dis- " charged by implication; and there are no words in " this deed which have ever been held to import " a discharge of legitim; and although there is " much argument used by both parties on this " point the Lord Ordinary is not able to find au- " thority for holding that without any words of dis- " charge a discharge may be inferred from collateral " circumstances."

So far as the marriage settlements in the present case are concerned, not only is there nothing contained therein which can in the very remotest degree affect the claim of legitim, but, on the contrary, (and more especially keeping in mind that Lord Breadalbane, a Scotch nobleman, and therefore cognizant of the law of his own country, and it is presumed not acting without advice in so important a matter, was a party to these settlements,) in place of there being any presumption or ground for implication that it was on either side intended that the legitim should be discharged, the fair and reasonable presumption is, that since direct and positive words, such as by the law of Scotland are indispensably and all but technically necessary for effecting such a discharge, were not here used, the understanding and

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intent of parties must have been that the legal rights were to remain entire.

Upon an examination of the marriage settlements it will be seen that they contain not one word which can be construed into any act either of disposal or discharge by Lady Chandos in favour of her father. She does not even declare her acceptance of the 30,000*l.* as a payment made on her own account. It is paid to her husband, or to those acting for her husband's behoof; and ex figura verborum, at least, there is nothing further to connect her with it. In this respect the transaction comes much to the same thing as if the parties had met without any formal contract, and Lord Breadalbane had paid the 30,000*l.* to Lord Chandos over the table. Could it have been maintained in such a case that Lady Chandos's merely standing by and acquiescing in this act of her father's would have operated a discharge of her legitim? It does not appear that a single word was ever said in regard to the legitim. Looking to the contract as an English contract, it is not to be presumed that Lord Chandos and the other English parties had at all in view the peculiarities of the Scotch law on this subject; and of course they cannot be held to have discharged or to have intended to discharge a right which they may not have known even to exist; and in respect of which, whether regard be had to the valuable counter provisions which they were themselves making in favour of the bride and her family, or to the comparative inadequacy of the sum paid by Lord Breadalbane relatively to the claim of legitim itself, they were in truth receiving no consideration. When it was meant to exclude Lady

Chandos's legal rights of jointure, dower, thirds, and free bench, which would otherwise have been competent to her by the law of England, there was inserted in the deed an express discharge on her part to this effect. But Lord Breadalbane exacts no similar discharge from her of her legal right to legitim by the law of Scotland. He does not insist on a declaration of her acceptance of the portion or tocher which he pays with her as having the least reference to, much less as being in satisfaction of, such a claim. The existence of an express discharge in the one case and the absence of it in the other would of itself have been decisive in the claimant's favour, even supposing that a question like the present could have turned upon presumption and implication.

LORD CHANCELLOR.—My Lords, the next case to which I have to call your attention is that of Lord Breadalbane against Lord Chandos. This case arose in a suit of multiplepoinding instituted by the trustees of the late Marquis of Bredalbane; and the question is between the present Lord Breadalbane and his sister Lady Chandos. The late Lord left three children: the present Lord, Lady Chandos, and Lady Elizabeth Pringle. The present Lord succeeded as heir of entail to large estates. The late Lord left a large personal estate, having by a trust disposition vested his property in trustees. The question is, to whom the third part of that estate, being the legitim, belongs? Lady Elizabeth Pringle has expressly renounced her claim to legitim. As to her, therefore, no question exists. Lady Chandos, upon her marriage, which took place in England, had a

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fortune of 30,000*l.* paid or secured for the purpose of her settlement, which settlement did not in terms renounce her claim to legitim or take any notice of it. But on the part of Lord Breadalbane it is said that she is barred by that settlement from claiming any share of legitim; and if so, both sisters being barred, and Lord Breadalbane being the only other child, he would be entitled to the whole of the legitim, and as to him no question of collating would arise. But if Lady Chandos be not barred, then Lord Breadalbane contends that before she can claim any share of the legitim she must bring into the account the fortune she received upon her marriage, or rather elect between the two claims. On the other hand, Lord and Lady Chandos contend that Lady Chandos is not barred by her settlement from claiming her share of the legitim, but that Lord Breadalbane cannot claim any share without collating the settled estates, and as he declines to do so that she is solely entitled to the whole of the legitim, and that no case of collating or election arises as to her. The interlocutor of the Court of Session found "that the claimant Mary "Marchioness of Chandos has not by her contract of "marriage or otherwise renounced her legitim, and is "therefore entitled to make her claim for the same "accordingly; and in respect the said Marchioness of "Chandos is the only younger child of the late Marquis "of Breadalbane who has not renounced the right of "legitim find that her claim extends over one third "part of the free moveable estate of her said father, "and that it is not to be reduced in amount by imputing "thereto any part of the sums provided to her by her "said father in her contract of marriage, and which

" sums, in so far as not yet satisfied, must form a deduction from the trust funds in medio, reserving to the trustees any claim of relief for the same that may be found competent to them against the heirs of entail of the late Marquis of Breadalbane, and to all other parties their rights as accords, and decern accordingly. Find that the claimant the present Marquis of Breadalbane is not entitled, in name of legitim, to any share of the funds in medio, without collating his interest in the entailed estates to which on the death of his father he was succeeded, and in hoc statu reple his claim of legitim accordingly." My Lords, against this interlocutor two appeals have been presented, the one by the trustees of the late Marquis of Breadalbane and the other by the present Marquis of Breadalbane. The appeal presented by the trustees of the late Marquis of Breadalbane complains of so much of the interlocutor as finds that "the Marchioness of Chandos has not by her contract of marriage or otherwise renounced her legitim, and is therefore entitled to make her claim for the same accordingly; and in respect the said Marchioness of Chandos is the only younger child of the late Marquis of Breadalbane who has not renounced the right of legitim find that her claim extends over one third part of the free moveable estate of her said father, and that it is not to be reduced in amount by imputing thereto any part of the sums provided to her by her said father in her contract of marriage." Lord Breadalbane's appeal complains of the interlocutor so far as Lady Chandos is concerned, in the same way as the appeal of the trustees; and it also complains of it inasmuch as it finds that

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he "is not entitled in name of legitim to any share of "the funds in medio, without collating his interest in "the entailed estates." Now as to the question whether Lord Breadalbane is bound to collate his settled estates, your Lordships having decided the case of Anstruther v. Anstruther it is unnecessary to discuss that point. The only difference between the two cases upon this point is, that in this case the appellant Lord Breadalbane is not heir of line to the settler as the heir was in the other case; but it is obvious that this cannot make any difference, the obligation to collate arising from the party as to whose personalty the collation is required, and not depending in any respect upon heirship to the entailer, as to whose entail no question of collation arises. I therefore assume that Lord Breadalbane is bound to collate his settled estates; but then the question arises whether Lady Chandos is barred by her settlement from claiming the legitim to which, if not barred, and if Lord Breadalbane decline to collate his settled estates, she would be exclusively entitled. Upon this question some points are admitted. It is admitted that by the law of Scotland the claim to legitim cannot be barred by inference, but only by direct renunciation, and that the settlement in question, if it had been executed in Scotland, would not have barred Lady Chandos's claim to legitim. But it is contended that being an English deed it must be construed according to the law of the country where it is executed, and that it would bar Lady Chandos's claim to participate in her father's personalty in this country, and that it must therefore have the same effect as to his Scotch property. But it may be asked, of what would that deed be a renunciation

in England? Would it be a renunciation of any thing which the law would cast upon the child? Would it be a renunciation of the child's right under the Statute of Distributions? I speak now of renunciation only, and not of bringing any portion into hotchpot. Cases of double portions were referred to, but they have no application. In those cases the question is, whether a father, having made a will giving his child a portion, is to be supposed to have intended, by afterwards settling a fortune upon such child, to revoke the provision by the will. It is obvious that those cases turn not upon contract between the parties, but upon the presumed intention of the testator. But certain cases upon the custom of London and York were supposed to apply, but upon examination they will be found to bear in favour of Lady Chandos's claim. According to those customs advancement is not renunciation, but the child is entitled to have his advancement made up, so as to place him upon an equality with the other children. He must, in short, collate or bring into hotchpot the value of his advancement. The child may indeed by contract renounce his share of the orphanage part, as in the case of Blimden v. Barker, 1 Peere Williams, 636; Cox v. Belitha, 2 Peere Williams, 273; Lochyer v. Savage, 2 Equity Cases abridged, 272; Metcalf v. Ives, Lord Hardwicke's Cases by West, 82; but those were all cases of contract. No case is cited to show that such a deed as this would have excluded a child from the share of the orphanage part, although it would be bound to bring the portion advanced into hotchpot. But that is part of the custom, and has no reference to contract, which is the present

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question. The only part of the settlement relied upon is the expression that Lord Breadalbane would "pay "the 30,000*l.* as the portion or fortune of his daugh- "ter." Before the question can arise as to the effect of an English contract upon a claim of legitim in Scotland it must be shown that such expressions would bar a child of its claim to the intestate estate, or the orphanage part, by the custom. But if that had been done it would have gone but a little way to prove that the claim to legitim was thereby barred, when it is admitted that by the law of Scotland that right cannot be barred but by such a deed as this. The settlement in question, though it professes to bar other rights, does not in any degree refer to the claim to legitim. The cases of Foubert v. Turst, 1 Brown's Parliamentary Cases, 129; Talleyrand v. Boulanger, 3 Vesey junior, 447; De la Vega v. Vianna, 1 Barnewall and Adolphus, 284; Anstruther v. Adair, 2 Mylne and Keene, 513, were cited for that purpose; but in those cases there was no ambiguity as to the intention of the parties. In none of these was it decided that a contract executed in one country, because operative in that country as to property therein situated was to be held available in another country as to property there situated, when by the law of that other country such property would not be affected by such an instrument. It therefore appears to me that there is no ground for contending that the settlement upon Lady Chandos's marriage amounts to a renunciation of her claim to the legitim. But then it is said that she must elect. Between what interests is she to elect? Between her claim to legitim and the portion? But this assumes that the portion was to be in lieu of

legitim, and therefore assumes the whole question in debate. As to her collating or bringing the portion into hotchpot, that question can only arise where there are more children than one to share the legitim. And as Lady Elizabeth Pringle has expressly renounced, and as Lord Breadalbane cannot claim any share without collating his entailed estate, which he does not offer to do, no question can arise as to Lady Chandos collating or bringing her portion into hotchpot with the legitim. I therefore submit to your Lordships, that the interlocutor of the Court of Session has accurately adjudicated upon the rights of the parties, and ought therefore to be affirmed.

LORD LYNDHURST.—In this case the first point that arises does not substantially differ from the question in the case of Anstruther v. Anstruther. As to the second point to which my noble and learned friend has referred I confess that after I heard the argument at the bar, to which I gave great attention, I never entertained any solid doubt respecting it. I beg therefore to state that I entirely concur in the judgment which has been pronounced by the noble and learned Lord; and I may repeat what I said in the former case, with respect to the concurrence of another noble and learned Lord who was present at the argument.

The House of Lords ordered and adjudged, That the said petition and appeal be, and is hereby dismissed this house, and that the interlocutor, so far as therein complained of, be, and the same is hereby affirmed.

SPOTTISWOODE and ROBERTSON—GEORGE WEBSTER, —Solicitors.

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Lord Breadalbane having filed a bill in the Court of Chancery, and obtained from His Honor the Vice Chancellor an injunction restraining Lord and Lady Chandos from taking advantage of the judgment pronounced in their favour by the Court of Session, a motion was made before the Lord Chancellor to discharge that order, and his Lordship, after hearing the case fully argued, delivered the following judgment on the 22d of July 1837.

LORD CHANCELLOR.—This was a motion to discharge an order of the Vice-Chancellor for an injunction to restrain Lord and Lady Chandos from taking advantage of a judgment of the Court of Session in Scotland; it was argued before me some considerable time back. The magnitude of the sum in question between the parties, and the order which had been pronounced by the Vice-Chancellor, made me desirous to postpone my judgment till I should have time and opportunity of going through the whole of the papers, and considering the various points which had been urged at the bar.

The bill raises three propositions. It first prays the Court to declare that by the construction of the settlement of 1819 the claim to legitim is barred. It next alleges that if that should not be found to be so, it was a matter of contract and agreement between the parties, at the time of the marriage settlement of Lord and

Lady Chandos in the year 1819, that the legitim should be barred. It then alleges that there was a paper which was lately discovered, being the proposals which preceded the settlement, and that those proposals furnished evidence of the intention of the parties, or at least contain words amounting to a contract, that the settlement should contain a provision barring Lady Chandos's title to legitim, and on these three grounds—the construction of the settlement of 1819, the alleged contract between the parties, and the effect of words found in the proposals, though not introduced into the settlement,—it prays that the Court will grant an injunction to restrain Lord and Lady Chandos from taking advantage of the judgment of the Court of Session by which Lady Chandos has been decreed entitled to her legitim. The sum in question is of great magnitude, for it is one third part of the whole personal estate of the late Lord Breadalbane, which personal estate is said to amount to 400,000*l.*

Now as to the first of the propositions raised by the bill, that is finally disposed of by the judgment of the House of Lords. The construction of the settlement of 1819 has been the subject of the judgment of the Court of Session, and that judgment of the Court of Session has been affirmed by the House of Lords, by which it has been decreed that that settlement does not bar the title to legitim. The next proposition in the bill, namely, that it was a matter of contract between the parties, and that the settlement therefore did not carry into effect that which was agreed upon, is positively denied by the answer, and this being a motion, on the answer for the present purpose it must be assumed, and

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indeed I have not the slightest doubt, looking at all the transactions between the parties, that there was no such contract between them. The only point therefore remaining is that which has been put forward as the principal equity in support of the claim of the plaintiff to this injunction, namely, that the proposals which were not in evidence before the Court of Session, and which it is alleged have been since discovered, contain within themselves that which amounted to a contract, whether the parties had it in contemplation or not that the legitim should be barred.

Now the proposals were prepared by a solicitor in London. It is stated that they were approved by the Duke of Buckingham acting for his son Lord Chandos, and by Lord Breadalbane acting for his daughter Lady Chandos. The proposals were that Lord Breadalbane would pay 20,000*l.*,—10,000*l.* down, and 10,000*l.* within eighteen months after the marriage,—and that he should enter into a security for the payment of 10,000*l.* more after his own death. In consideration of these three sums, making 30,000*l.*, the Duke of Buckingham agreed to settle very large estates on the issue of the marriage, and out of those estates to provide a jointure for Lady Chandos, and provisions for younger children; and then, after enumerating the trusts of the money to be secured for the benefit of such younger children, it provided for the different purposes which the parties had in view with regard to the real estate and the settlement of 30,000*l.* for the benefit of the children. Then the proposal contains these words: "The settlement to contain the usual clause of indemnity "to trustees and all other usual and necessary clauses."

It is contended that inasmuch as it is usual in Scotland that when a father provides a portion for a child, he should require the child to enter into a renunciation of her claim to legitim, that these words in these proposals, whether the parties had it in contemplation or not, amount to a contract between the parties, that the settlement should contain that which is alleged to be a usual provision in Scotch settlements. Now the settlement itself was entirely of English manufacture; it was prepared by a solicitor in England, and it in fact contains no such clause, but it recites that Lord Breadalbane was to pay and secure 30,000*l.* as the portion or fortune of Lady Chandos. That has been adjudicated not to amount to a renunciation of legitim, it being clearly proved that in the Scotch law legitim cannot be renounced by inference, but that it requires express contract and distinct renunciation for the purpose of depriving the child of legitim. Lord Breadalbane afterwards executed two bonds, one to secure the 10,000*l.* to be paid eighteen months after the marriage, and the other to secure the 10,000*l.* to be paid after his own death.

It appears that in 1831 the other daughter of Lord Breadalbane, now Lady Elizabeth Pringle, married, and in her marriage settlement there is an express renunciation of her title to legitim. It appears also that in 1824, Lord Chandos's marriage having taken place in 1819, Lord Breadalbane was desirous, under a power which an act of Parliament gave him, of charging the 10,000*l.* which he had contracted to pay upon his estates, and in that bond he expresses it that the 10,000*l.* so charged was to be in bar of Lady Chandos's title to legitim.

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Now that can be material only as it may evidence the impression upon Lord Breadalbane's mind; it cannot affect the rights of the parties which are to be determined, not by any thing which Lord Breadalbane did after the marriage, but by that which took place between the parties at the time of the marriage.

It also appears that anterior to the marriage, that is to say, in the years 1794, 1798, and 1812, Lord Breadalbane executed certain instruments making provision for younger children, and in all those instruments it is provided that the provision so received was to be in bar of the children's title to legitim. These of course are immaterial to the present purpose; they are important only as they may show Lord Breadalbane's knowledge of what was necessary to bar a child's claim to legitim. The intention there expressed is not consistent with the marriage settlement, in which it appears that no such intention was expressed, and no such means taken to bar Lady Chandos's title to legitim. The Court of Session in Scotland is unquestionably a court of equity as well as a court of law, and I apprehend there can be no doubt that it was within the jurisdiction of the Court of Session to entertain the question which the plaintiff has thought proper to raise upon this record. The suit in Scotland was a suit of multiplepoinding; all parties having any claim were called before the Court for the purpose of asserting their title to the personal property of Lord Breadalbane; the question was raised in that suit as to whether the title to legitim was barred by the settlement, but any supposed title arising from the terms of the proposals was not brought forward. It certainly is contrary to the prac-

tice of this Court to assume jurisdiction on equities arising from parties not having taken the opportunity of asserting their title in that Court, in which the matter has been the subject of adjudication, and in which they have either missed their opportunity or not thought proper to bring their title forward; but, in the view I have of this case, it is not necessary to pursue that question further. I have adverted to it only that I may not be misunderstood, that it may not be assumed that this Court would have jurisdiction to enforce an equity after adjudication by the Court of Session, where the matter of equity was cognizable by that Court on the ground of the party not having thought proper, or by accident or any other reason, having taken no steps to bring forward that claim before the Court.

Such being the case made by the bill, the defendant's answer positively denies all contract or understanding on the subject. They say the whole negociation was left to the Duke of Buckingham on the one side, and to Lord Breadalbane on the other. They admit that it is usual in Scotland to insert clauses barring legitim, but they state that which was established by the decision of the House of Lords in this very case, that though it is usual to insert a clause barring legitim, yet that legitim cannot be barred except by distinct contract. They also admit that on Lady Elizabeth Pringle's marriage legitim was barred, but they allege it was barred by express contract introduced into and specified in the settlement.

Now, from what is stated in the answer, and from that which was decided in the Court of Session and confirmed in the House of Lords, three points were clearly established: first, that the mere giving a portion

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is no bar to legitim; that in order to bar legitim it is necessary there should be express renunciation; and that the settlement in this case did not operate as a bar to Lady Chandos's right to legitim. The sole question therefore is, whether the provision in the proposals for the insertion of the usual and necessary clauses gives a title to correct the settlement by the insertion of such a clause.

The first question is, was that the intention of the parties? First of all, was it the intention of Lord or Lady Chandos, the party from whom this very valuable right was supposed to be taken by what took place in 1819? They, by their answer, positively deny not only that there was any such intention, or that there was any such contract, but that the subject matter was present to their minds at all. In short, they state that they know nothing about legitim, and that there is not any reason to suppose that the case is at all misrepresented by the answer. The next question is, was it the intention of the Duke of Buckingham to surrender the claim to legitim? It is equally clear that he thought nothing about it; it is probable that he knew nothing about it, and there is an absence of all evidence that he had present to his mind the question of legitim to which his son in right of his wife would become entitled, or that he intended to consent to the barring of any such right.

Then it is said, though that may be true, yet Lord Breadalbane living in Scotland and being acquainted more or less with Scotch law, and having the assistance of a very experienced Scotch lawyer, Lord Lauderdale, whom he appears to have consulted on all the arrangements with regard to the settlement, must have known

the law of Scotland with reference to the child's title to legitim, and that it was usual to insert clauses barring legitim in the settlement which a father makes on his children; and that he therefore must have understood the words "usual and necessary clauses," as intending to provide that the settlement should contain a clause barring Lady Chandos's title to legitim.

Now the first observation that arises upon that proposition is, that he was afterwards a party to the settlement itself which contains no such provision; it also appears that he subsequently, namely, in the year 1824, when he executed a deed of that date, made an attempt which was obviously not likely to have a very beneficial effect to himself, he charges the provision upon his estate, and he says it shall be in bar of legitim. Now if he had supposed that legitim had been before barred by the settlement, it would have been a perfectly unnecessary provision in that deed which was to carry into effect the provisions of the settlement, to specify that it should be in bar of legitim.

But supposing that he had any such intention,—supposing that he, residing in Scotland, and being more or less cognizant with Scotch law, the right of his child to legitim, and the means by which that right would be barred, had been present in his mind, it is quite clear that he never communicated that to the other parties. The termination of legitim by his child was that which accrued to his own benefit; he was authorized to treat on behalf of his child with respect to those rights, which he had conferred upon her by the provision of 30,000*l.*; he was authorized on the part of his daughter to treat with the father of the intended husband; but he had no

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authority, nor was it ever supposed that Lord Breadalbane was invested with any authority to treat, not as with the father of the husband, but as between himself and his daughter on the subject of her claim to legitim, the daughter and her intended husband being entirely ignorant of any such question being raised, or any such effect being given to the transactions then in progress.

Now if he put that construction upon those words, of which however there is not only no evidence, but I am perfectly satisfied that the subject-matter, strange as it may appear, was as absent from his mind, and from the mind of Lord Lauderdale who was acting for him, as it was from the minds of Lord and Lady Chandos or the Solicitor who was acting for them, or the Duke of Buckingham who was acting for Lord Chandos; but if that was present in his own mind, and not communicated to the other parties, or present in the minds of the other parties, it would be very difficult to contend that the right of Lady Chandos to legitim out of the personal estate was to be barred.

Now, if Lord Breadalbane had so understood the words, it must have been because he was acquainted with the Scotch law, and knew that such covenants were usual to be inserted in Scotch settlements; but it is most extraordinary that with that knowledge, and with the supposed construction put upon the words in the proposals, he afterwards executed a settlement which contained no such provision, although the proposition is this, that he, knowing the Scotch law, knew that an express renunciation of legitim was necessary in order to carry the intention into effect. Upon the whole it is positively denied that the parties sought to be affected by

this injunction knew any thing about it. The result of the whole leaves no doubt upon my mind that it was not present to the minds of any of the parties; but still, though the parties had not the subject-matter present to their minds, they may have used words which may operate upon rights of which they were not cognizant. If a party thinks proper to bar all rights that he has, it is not necessary to prove that he knows all his rights, or that he had ascertained what his rights were.

That brings the case to the question, the only arguable question, what is the effect of these words in the proposals? Now it is always to be kept in mind that by the law of Scotland nothing but an express renunciation will have the effect of barring the title to legitim, and it would be a strange conclusion if the Court were to decide that the effect of the words being introduced into the proposals would be to deprive one of the parties contracting of the title to property of the enormous amount of that in the present case, none of the parties to that arrangement having any intention that they should so operate or that that should take place; still it is possible that the words may have that effect. Now the proposals relate entirely to English subject-matter. They are between parties resident in England, the only party not resident in England being Lord Breadalbane. It was the marriage settlement of the son of an English nobleman marrying the daughter of a Scotch nobleman; it was prepared in England, the subject matter is English, and all the parties English; and after providing for all the purposes usual in a settlement of that description, the provision for younger children, for the wife, and for the settlement of the estate, the words of the proposals are

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"to contain the usual clauses of indemnity to trustees, "and all other usual and necessary clauses." Now I apprehend that taking those proposals according to their ordinary meaning, after parties have stated what they profess to do and the provisions that they intend to make, when they provide that "all usual and neces- "sary claims" shall be inserted, they must be taken to mean all usual and necessary clauses for the purpose of carrying into effect the provisions before expressed, of which the right of legitim forms no part. In the case of Anstruther v. Adair, in the second volume of Mylne and Keene, p. 513,—the question arose out of a settlement which was executed in Scotland between parties domiciled in Scotland, and the question was with respect to the equity of the wife according to the English Law,—it was decided, and most properly decided, by Lord Brougham, that the settlement being executed in Scotland between Scotch parties it must be disposed of according to the Law of Scotland; and that you cannot apply the equity of the English law between parties living in Scotland, and who never had in contemplation the equity of the English law. This is a settlement executed in England, relating to English subject-matter, and providing for its objects by the usual clauses with reference not to any thing de hors the settlement, not to any right which might arise by the laws of a foreign country, Scotland being for this purpose a foreign country, and different laws being administered there from those administered here,—the obvious meaning of these words is, that there shall be such clauses as are usual and necessary for the purpose of carrying into effect the contract between the parties.

There were cited, not I believe in the argument here but in the argument in the House of Lords, a variety of cases with respect to that part of the law which comes the nearest to the law of legitim of Scotland, namely the rights of parties to a share of estate under the custom of London and York, and several cases were cited where the title of the child was barred by the provisions given by the father to the child; but in no case was there any instance of the orphanage part being barred merely by the giving of the portion. There were cases where the father had advanced a portion to his child, and had stipulated that that should bar the orphanage part. No case was produced where the title of the child was held to be barred by that which has taken place here, namely, simply advancing the portion of the child under terms such as those which are contained in this settlement, on which the argument has been founded that that settlement barred the claim to legitim.

The ground upon which this motion is rested is, that there is evidence which would justify the Court in correcting the settlement; the proposals being afterwards matured into a settlement, it is the settlement which binds the rights of the parties, unless there is something bringing the case within the authority of other cases, in which the Court has felt itself authorized to correct a settlement upon the grounds of mistake or misapprehension, and to introduce into the settlement something which appears to have been the intention of the parties as evidenced by other means than the settlement itself. Now, in order to justify the Court in doing that, it is obvious that there must be a clear intention proved, it

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must be shown that the statement did not carry the intention of the parties into effect. If there be merely evidence of doubtful or ambiguous words having been used, the settlement itself is the construction which the parties have put upon those doubtful or ambiguous words; they have themselves therefore removed any doubt which might have existed upon that which forms the foundation of the settlement. But in this case, although it is unnecessary I should pursue that subject further, there is an absence of proof that the settlement did carry out those proposals; it differs from the proposals in some most important parts. No doubt those were the proposals originally suggested, but what passed between the time of the proposals and the execution of the settlement, what gave rise to any change of intention, or why the settlement was not in conformity with the proposals in other matters, does not appear; but there is evidence of a manifest departure in important points in the settlement from the arrangements contained in the proposals. In order to justify the Court in correcting the settlement, it must be proved, not only that the contract was different from that which the settlement carried into effect, but that there was no change of intention, to explain how it happened that the settlement did not follow the terms of the original contract.

Now if Lord Breadalbane had this knowledge, which is the foundation of the whole argument; if, seeing these words in the proposals, he imagined the settlement would contain terms barring Lady Chandos's title to legitim out of his estate, he of course would have expected that the settlement should be framed as to effect that purpose, and he who would take the benefit

of that renunciation would naturally look to see that that object of his had been carried into effect. He is a party to that settlement, not for the purpose of taking the benefit of Lady Chandos's renunciation, but inasmuch as he was a party contracting to make further provision for Lady Chandos, by paying 20,000*l.* at a future period, he was a party to that settlement. Is there then any thing in that settlement which could induce him to suppose that the intention which he had in his mind of protecting the personal estate from Lady Chandos's claim to legitim had been carried into effect.

In the course of the argument here many books were referred to for the purpose of showing that in Scotch settlements it is usual to insert clauses having legitim; but that only proves that it is usual so to contract, for it is clear, without special contract for that purpose, legitim cannot be barred; and the question is not whether it is usual in Scotch but whether it is usual in English settlements, in which no reference is made to legitim, or any rights dependent upon the Scotch law. It is sworn by the answer, by which I am on this motion bound, that Lord and Lady Chandos never intended to give up their claim to legitim, and I am satisfied from all the facts of the case that the question never occurred to the minds of any of the parties; if it had, that claim might have been barred; but, looking to the settlement, I am equally clear that it provided all the usual and necessary clauses which the parties intended, and I must construe the proposals to mean all clauses usual and necessary for the purpose of carrying into effect the arrangement before detailed, of which the renunciation of legitim

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forms no part. And I am also of opinion, that if this were doubtful, the settlement afterwards executed removes the doubt and proves what the parties meant; that there is not any evidence to show such a mistake in the settlement as to justify a court of equity in interfering to remedy that settlement. Upon these grounds I am bound to dissolve the injunction which the Vice Chancellor has granted.

Injunction dissolved.