

# APPENDIX.

## PART I.

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### HUSBAND AND WIFE.

1776. *August 10.*

GEORGE LEWIS SCOTT, and Others, *against* SOPHIA LADY CRANSTOUN, and  
MICHAEL LADE, Esq. her Husband, for his interest.

SOPHIA BROWN, daughter of Jeremiah Brown of Apscord, in the county of Surry, Esquire, was, in the year 1748, married to James late Lord Cranstoun, to whom she brought a fortune of £12,000, and during her marriage succeeded to a much greater one. In contemplation of this marriage, two settlements with mutual reference to each other were executed betwixt the parties, one to affect Lord Cranstoun's Scots estate, and the other the estate which he had in England. By the Scots settlement, his Lordship disposed to the said Sophia Brown, now Lady Cranstoun, in liferent, a yearly annuity or annual-rent of £700 Sterling, forth of all and whole the said James Lord Cranstoun's lands and estates both in England and Scotland, or whatever such lands and estates, either in England or Scotland, which he should purchase, acquire, or succeed to, during the continuance of the marriage, "and particularly without prejudice to the generality aforesaid out of all and whole the lands and estates of Crailing and Wauchope." In virtue of this settlement, Lady Cranstoun was infeft in the lands, for securing her jointure or annuity of £700, and her sasine taken thereon duly recorded.

The above marriage contract refers to the English contract executed of the same date, 26th and 30th March 1748, in form of an indenture between the parties to the contract and the late Lord Napier and others trustees therein mentioned. By this deed Lord Cranstoun's English estate, described as part of the Lordship and Manor of Riddsdale in the county of Northumberland, and said to be then of yearly rent about £384. Sterling per annum, is

No. 1.  
*Donatio inter  
vivum et  
uxorem.* See  
No. 322.  
P. 6108.

No. 1. declared to be vested in the said trustees, “ upon trust for the better and  
 “ more effectually securing the payment of the said annual sum or yearly rent  
 “ of £700, so secured or intended to be secured to the said Sophia Brown  
 “ in and by the said settlement or articles of marriage, of equal date hereof  
 “ executed according to the laws of Scotland as aforesaid.” And the settle-  
 ment provides, “ that the said premises shall come *in aid* of the said lands,  
 “ hereditaments, and estates of the said James Lord Cranstoun in Scotland,  
 “ in and by the said recited articles or settlement, charged with the said annual  
 “ sum or yearly rent of £700, and be contributory therewith for the better  
 “ and more effectually raising and paying the same annual sum to the said  
 “ Sophia Brown, and her assignees, for her liferent as aforesaid.”

Lord Cranstoun at the time of his marriage was in debt, and his debts con-  
 tinued to increase during his life, notwithstanding the large fortune he got by  
 his Lady. This misconduct alarmed his creditors, who at last brought his  
 Scots estate of Crailing and Wauchope to a judicial sale. In the ranking  
 Lady Cranstoun entered her claim for her liferent provision, secured to her  
 by the foresaid marriage settlements, and she was accordingly ranked upon  
 the said estate preferable to George Lewis Scott, and many others of Lord  
 Cranstoun’s creditors, for payment of her annuity of £700. Sterling. But  
 under condition, that if she should draw that annuity out of the estates of  
 Crailing and Wauchope, she should make over to the postponed creditors  
 “ any separate security provided to her upon Lord Cranstoun’s estate in Eng-  
 “ land.” Her Ladyship, however, was so classed amongst the creditors upon  
 the Scots estates of Crailing and Wauchope, as to render her absolutely cer-  
 tain of drawing, in the event of her Lord’s death, full payment of her annuity  
 of £700 out of the price of these estates or interest thereof; and according-  
 ly, by the articles of roup, the purchasers were entitled to retain £14,000,  
 part of the price, at 5 *per cent.* to answer that annuity.

In June 1770, Lord Cranstoun, who had frequently before applied to her for  
 a variety of deeds in his own favour, or in favour of his creditors, and which  
 she from the *reverentia maritalis* had been induced to grant, obtained from her  
 in particular a deed renouncing her preferable security for her annuity upon  
 his Scots estate, which had been by that time sold. The deed was conceived  
 in the following terms: “ I Sophia, Lady Cranstoun, considering that I am in-  
 “ fect in the estate of Crailing and others, for payment to me of an annuity of  
 “ £700 Sterling during my life, in case I survive Lord Cranstoun my husband;  
 “ that I am also secured in the said annuity upon Lord Cranstoun’s English  
 “ estate; that by the decret of ranking of Lord Cranstoun’s creditors I am rank-  
 “ ed for the said annuity upon the estate of Crailing *secundo loco*, with this  
 “ quality, that if I draw the said annuity out of the estate of Crailing, I must  
 “ make over to Lord Cranstoun’s creditors my security therefore upon his  
 “ Lordship’s English estate for their relief thereof;—that six months before the  
 “ sale of Crailing, the creditors agreed, upon my renouncing my annuity out of

of the estate of Crailing, and taking myself therefore to the English estate, whereby they would get immediate payment of their debts, that they would give down all accumulations, and accept of their principal sums, annualrents, and expenses; and also considering that the estates of Crailing and Wauchope sold for £33,700 Sterling, and that the principal sums and annual-rents due to the creditors did then amount only to about £27,000 Sterling; and being now willing to accept of the offer made by the creditors upon their implementing their part thereof, and the residue of the price after their payment being vested in trustees for behoof of Lord Cranstoun and myself in liferent, and Brown, James, Charles, and George Cranstoun, my younger children, in fee, therefore I hereby, with consent of James Lord Cranston my husband, and with and under the conditions and provisions before mentioned, and no otherwise, renounce and discharge the foresaid annuity of £700 Sterling so far as the same respects or affects the estates of Crailing and Wauchope, and all or any part thereof, and that in favour of the creditors ranked upon the said estate and the purchasers thereof; and consent that the creditors draw their principal sums, annualrents, and expenses, out of the price of the said estate immediately, and in the same manner as if I had never been infeft in the said estate for the said annuity, or ranked therefore on the same, saving and reserving always my security for the said annuity out of Lord Cranstoun's English estate; provided always that these presents are granted by me upon this express condition, that the whole creditors who produced interests and are ranked on the estate, accept of payment out of the price of the estate and rents thereof, of the principal sums and annualrents, and real expenses, and give down all accumulations except the annualrent of the annualrents accumulated on their adjudications, declaring hereby, that if the above condition is not complied with and agreed to by the creditors, or their debts restricted as aforesaid, then this renunciation is to be void and null, and my infeftment for my said annuity, and place in the decret of ranking, are to stand and to have full force and effect; with and under which conditions these presents are granted and no otherwise;—and I with consent aforesaid, bind and oblige myself, my heirs and successors, to warrant this renunciation under the condition foresaid, at all hands, saving always to Lord Cranstoun all objections to the adjudications, of the Countess of Cassilis, Claud Johnston, and William Grahame.

Lord Cranston died in 1771; and the purchasers of the Scots estate of Crailing and Wauchope, having raised an action of multiplepinding, Lady Cranstoun and her present husband, Mr. Lade, appeared in the process, and claimed to be ranked upon the prices of the said estates for payment of her full annuity of £700 Sterling, as unaffected by the aforesaid deed of renunciation, and a decret of preference was pronounced by Lord Auchinleck Ordinary, in favour of Mr. Lade in the right of Lady Cranstoun.

No. 1. A representation having been preferred for the creditors, the Lord Ordinary found, that Lady Cranstoun and her husband must make over to the creditors the security upon Lord Cranstoun's English estate; and the creditors having desired an express judgment, concerning the deed of renunciation, his Lordship 'found, that the deed granted by Lady Cranstoun *stante matrimonio* being 'a donation to her husband, is not effectual.' He at the same time refused a representation on the part of Lady Cranstoun against the interlocutor finding her obliged to assign. Both parties represented against this interlocutor; and his Lordship pronounced the following judgment: 'In respect of the special 'circumstances of the case, finds my Lady Cranstoun is bound by her trans- 'action, and that she cannot revoke it.' To this interlocutor the Ordinary afterward adhered; and against these judgments finding the renunciation effectual, and that Lady Cranstoun was obliged to assign, her Ladyship and her husband reclaimed to the whole Court. They argued, that the renunciation being a *donatio inter virum et uxorem stante matrimonio*, was revocable at any time during the life of the granter. But laying aside this circumstance, it was apparent, from the words and tenor of the deed, that the renunciation was monolateral, and a mere gift or donation, upon the part of Lady Cranstoun, qualified with certain conditions pendent on the will of third parties; and consequently could not be binding upon her unless it was excepted by these parties; and unless they had become bound to perform the conditions. Now these third parties, the creditors, never declared their acceptance of this deed, nor became bound on their parts to perform the conditions under which it was granted. When Lord Cranstoun was alive they never thought of accepting of the deed of renunciation, but as soon as he died, and Lady Cranstoun became entitled to her jointure, they laid hold of it for the purpose of depriving her of her just claim. Her Ladyship besides had virtually revoked the deed, and she offered to prove, that long before any of the creditors thought of availing themselves of it, she had demanded the deed back for the purpose of cancelling it.

On the part of the creditors it was answered, That the deed of renunciation was not in fact, nor could be construed in law, a donation to Lord Cranstoun. It was by no means a gratuitous, but an onerous rational deed on the part of her Ladyship, for the benefit of herself and children, and for value received; while the benefit to Lord Cranstoun was only the chance of his enjoying the interest of £6000 during life, in case he survived Lady Cranstoun. But supposing that even a considerable benefit had redounded to him without any benefit to the Lady herself, still this could afford no objection to the transaction, donations between husband and wife being by law revocable only in so far as concerns their own particular interest. The right of a third party is not to be called in question; and it has been repeatedly adjudged, that deeds between a husband and a wife, where there is *jus quasitum tertio*, cannot be revoked even in the narrowest cases.

No. 1.

To the plea, that the renunciation was only one part of a mutual contract, of which the counterpart was wanting, it was answered; *1st*, That the argument here was founded on a misapprehension of the nature of the transaction. No deed or writing of any kind was necessary to be executed by the creditors; the proposal came from them; and the deed of renunciation accordingly proceeds upon the narrative that they had agreed.

*2dly*, Supposing the transaction to be considered in the light of a mutual contract, Lady Cranstoun cannot now be allowed to resile; for as no formal deed was necessary on the part of the creditors, it was sufficient for them to declare their acceptance when required; and having declared their acceptance *rebus integris*, the transaction was complete and binding on both parties.

Replied for Lady Cranstoun and her husband, That it was mere pretext to insist that the deed of renunciation conferred any benefit upon Lord Cranstoun's creditors or his children; for the immediate benefit was to Lord Cranstoun himself; and were a distant, contingent, or eventual interest to a third party, to be admitted, the most indiscreet donation to the husband might thus be protected. And with regard to the second argument, that no formal deed of acceptance on the part of the creditors was necessary, the deed of renunciation did contain express conditions to be performed by the creditors, which they having failed to perform, the deed of consequence became void.

The Court pronounced the following judgment: "On report of the Lord Probationer, and having advised this petition with the answers, and heard parties procurators thereon, the Lords find 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 they remit to the Lord Ordinary to proceed, and further to do as he shall see just." And to this interlocutor the Court adhered, upon advising a reclaiming petition and answers. But this judgment was reversed upon appeal.

Lord Probationer, *Ankerville*.For the Creditors, *M<sup>c</sup>Queen*.*Alt. Rae, M<sup>c</sup>Laurin*.*J. W.*

1776. November 21.

NEILSON.

No. 2.

A claim for a widow's mournings was found not effectual in competition with the husband's creditors, where the marriage had been dissolved within year and day.—See No. 375. p. 6165. See APPENDIX, PART I. *voce* PRIVILEGED DEBT.