this, they maintain that this liferent fell under the *jus mariti*, not only by operation of the law, but by the settlement itself; and, therefore, the appellants, as Scott's creditors, are entitled to come in his place.

Pleaded for the Respondents.—An unlimited proprietor can settle his estate as he pleases, and full effect must be given to every lawful condition annexed to such settlement. The estate here was conveyed by the testator, to his daughter in trust, for behoof of her in liferent, and her children *nominatim*; and the condition adjected to this was, an absolute exclusion of her husband's *jus mariti* in the event of her husband becoming insolvent. This event took place, and thus prevented and barred him or his creditors from touching the moveable estate, or the rents of the land estate, descending by this settlement, including the timber arrested, which belonged to the deceased Archibald Chessels, and was carried by the settlement.

After hearing counsel,

LORD MANSFIELD said:

"That the intention of the testator being clearly and expressly evident, the deed gave a vested interest to the daughter and her children, exclusive of her husband's *jus mariti*, in the event of his insolvency.—This right being exactly similar to that created by a trust estate in England, for the sole and separate use of a wife, or a wife and her issue; and therefore moved to affirm."

It was ordered and adjudged that the interlocutor be affirmed.

For appellants, *J. Montgomery, Al. Wedderburn, Henry Dundas.*

For Respondents, *E. Thurlow, Dav. Rae, Alex. Murray.*

WILLIAM LORD FALCONER, of Halkerton — *Appellant;*

ROBERT TAYLOR, DAVID BEATTIE, CHRISTIAN Low the Widow, and JAMES Low the Son of JOHN Low, and Others, Tenants upon the Appellant's Estate, in Kincardineshire, — *Respondents.*

House of Lords, *7th April* 1775.

LEASE—AMBIGUOUS CLAUSE—PAROLE PROOF.—Construction of clause in lease for 57 years, to renounce at the end of every 19 years, in the option of lessor and lessee. Held, this not to im-

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port an option, to be exercised by the landlord alone, without the consent of the tenant. But reversed in House of Lords, and remitted to the Court of Session, to take proof of what was the understanding of the parties on entering into the lease, the clause itself being ambiguous.

In 1756 Alexander, late Lord Falconer of Halkerton, granted to the several respondents, leases of farms upon his estate, for 57 years; or three times nineteen years, from Whitsunday 1756. These leases contained this clause, "And "to renounce at Lammas, before expiring of each of the "said three nineteen years, in the option of the said Lord "Halkerton, and the said ——— the lessee."

The present question arose in regard to the import of this clause. And action was brought by the appellant, to compel the tenants to renounce at the end of the first nineteen years, insisting that the import of the clause, was to give an option to the lessor and lessee to determine the lease, at the end of the first or second nineteen years, in the option of either, and that, having adopted that option, he was entitled to insist on their renouncing at the end of the first nineteen years. In defence, it was contended, that the true import and meaning of this clause, was to give an option to renounce at the end of the several periods, only with *the joint consent* of lessor and lessees—that the option to be exercised was a joint option to be exercised, by both agreeing to terminate the lease at these periods—that this was the understanding of the tenants, as well as the late Lord Falconer, who granted the lease, and that, on the faith of this they had laid out improvements, planted trees, and built houses.

Dec. 7, 1773. The Lord Ordinary, of this date, pronounced this interlocutor, "Find the clause in the said tacks, founded on by "the pursuer, imports an option reserved to Lord Halker-"ton, and also to the tenant, in case either should use the "same; and that the tenant is bound to renounce the tack, "at the requisition of Lord Halkerton, in terms of the "said clause. Therefore, repel the defences, and decern "against the several defenders, in terms of the conclusions "of the libel." Which interlocutor, upon representations from the respondent, he adhered to, by two subsequent interlocutors.

Jan. 18, 1774. Feb. 26, ——

July 27, 1774. On reclaiming petition to the whole Court, the Lords, of this date, pronounced this interlocutor, "adhere to the in-"terlocutors of the Lord Ordinary, reclaimed against, and "refuse the desire of the said petition."

The respondents again petitioned the Court, whereupon the Lords pronounced this interlocutor, "sustain the de- "fences, assoilzie the defenders, and decerned."

Against this interlocutor the appellant brought the present appeal.

Pleaded for the Appellant.—The clause in the leases binds the respondents as tenants, "To renounce at Lammas, be- "fore expiring of each of the said three nineteen years, in "the option of the said Lord Halkerton, and the said lessee;" and the obvious meaning of this clause is, to give an option or power to each, to determine the lease at the end of the first or second nineteen years, if either should think proper so to do. If the clause is obscure, it can admit of no other consistent interpretation than this. Because, any other would do substantial injustice to the landlord, the meaning of the clause being, that the landlord might have the benefit of the gradual rise in value of land, which was then increasing, as well as the rents of lands; and the reason which the appellant gives, coupled with the facts and circumstances as to a great fall in the rents of lands in Kincardineshire, is purely fictitious, and wholly without proof or foundation. But, in point of fact, the clause in the lease is not obscure or ambiguous, and, therefore, any explanation by facts and circumstances, or parole proof, cannot be admitted to annul a clause, in a solemn written contract, explicit in its terms. It is, therefore, plain and intelligibly expressed; and *superflua non nocent*, could not apply, as there was no superfluity of expression, nor was the maxim *verba fortius accipiuntur contra proferentem*, founded on by the respondents, better applicable, this not being a unilateral deed or grant, but a deed containing a mutual contract.

Pleaded for the Respondents.—The clause in the leases in question, when soundly construed, signifies a power or option given to lessor and lessee, *i. e.* to landlord and tenant, to determine the lease by joint consent at the end of the first or second nineteen years; and there are many circumstances which go to support this very rational interpretation. The tenants were to plant trees and to build houses; it hence became indispensable to their interests, after such serious expenditure, and where their patrimonial interest was so much involved, to have a voice in the option, so that the power, when exercised, might not prejudice their rights. If the construction of the appellant were the correct one, he might derive a most eminent advantage over the tenant, by cutting it short at the end of the first nineteen years,

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without any relief or question for the tenants' expenditure. That superflua non nocent, and verba fortius accipiuntur contra proferentem, were maxims that ought to apply here, the more especially where the respondents were ignorant country people, who did not attend to this clause. That, in point of fact, the reason for giving an option to the tenant joint with that of the landlord, was, that at this time the rent of lands was greatly falling, and unless he would exercise this power, he would be tied down for 57 years, however much the rent of land may have fallen during that period. The respondents therefore took their farms on the distinct understanding that this was the meaning of the clause. Such was the meaning the late Earl attached to it, who bound them to plant trees, and which manifestly pointed out a lease of longer duration than one liable to be put an end to, by the will of the landlord, at the first period of nineteen years. On the faith that the clause gave them a mutual right of consent and question in the power to be exercised, they entered on possession, planted the trees, and erected the buildings of great value upon the lands, and inclosed the grounds even beyond what was stipulated in the leases which gave a claim to continue possession for the whole 57 years, except they chose to give them up, with the consent of the landlord, at the periods therein specified. But if any inaccuracy has arisen in drawing the leases, to render the real meaning of the clause obscure and ambiguous, such inaccuracy, according to the established principle of law, must be construed against the granter, and not against the tenant, who has acted on the faith of a different bargain; and such the whole circumstances connected with the leases go to prove and establish.

After hearing counsel, Lord Mansfield moved the reversal of the judgment below. And it was therefore

Ordered and adjudged that the interlocutors complained of be reversed, and that the cause be remitted back to the Court of Session, with liberty to the respondents to go into the proof of such controverted facts as may by law be competent to their defence; and also to bring a cross action for their relief in case they shall be advised so to do.

For Appellants, *Al. Wedderburn*, *Al. Forrester*, *Gilbert Elliot.*

For Respondents, *E. Thurlow*, *Alex. Murray.*

Note.—Unreported in Court of Session.