

CASES

DECIDED IN THE HOUSE OF LORDS,

ON APPEAL FROM THE

COURTS OF SCOTLAND.

1841.

[Heard, *July 29*, 1840 — Judgment, *June 22*, 1841.]

WILLIAM DIXON of Govan Colliery, Appellant.

(No. 14.)

[*Lord Advocate (Rutherford) — Sir W. Follett.*]

MRS MARGARET FISHER and Husband, Respondents.

[*Attorney General (Sir J. Campbell).*]

Husband and Wife — Jus Relictæ — Dealings by a widow, in regard to the estate of her husband, held to amount to acceptance by her of provisions made to her by the husband, and to bar her from claiming jus relictæ.

Jus relictæ — Legitim — A widow having, by dealings with her husband's executor, renounced her claim to jus relictæ, cannot, as against one of his children, recall the renunciation, so as to affect the child's legitim.

ON the 14th December, 1809, William Dixon, and his wife Janet Smith, executed a mutual deed, whereby, on the narrative that they had been married many years, and that no marriage-contract had been executed between them, nor any provision made by him in her

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favour, in the event of her surviving him, Dixon bound his heirs and successors to make payment to her, during her lifetime, of a free liferent annuity of L.150 sterling; beginning the first term's payment at the first term of Whitsunday or Martinmas after his decease; and for security of payment of the annuity, he bound himself to infest her in a liferent annuity of L.150 sterling, to be uplifted and taken, free of all burdens, furth of lands specially mentioned.

By the same deed he also bound himself to infest her, during her lifetime, in the event of her surviving him, “in the liferent of the mansion-house, garden, and offices of Neuck Palace Craig, with the park of ground in which the same are situate, consisting of twenty-two acres, or thereby.”

He also assigned and conveyed to her, in absolute property, in the event of her surviving him, “the whole household furniture, and plenishing, bed and table linen, and plate, that shall be pertaining and belonging to me at the time of my death, likewise three of the best milch cows, which shall belong to me.”

These provisions Mrs Dixon accepted in the following terms: — “I, the said Janet Smith, do hereby accept of the provisions before mentioned, in the full of all I could ask or claim, by or through the decease of the said William Dixon, hereby renouncing the legal provisions I might be entitled to in the event of my surviving him.”

This deed contained all the usual and necessary clauses for making effectual the obligations upon Mr Dixon, by infestment or otherwise.

What was the situation of Mr and Mrs Dixon at the time of their marriage, in regard to pecuniary matters, does not appear; nor is it ascertained what was the

exact state of the husband's pecuniary means at the date at which this deed was executed. But it seemed to be admitted, that his fortune and situation in life were both considerably improved at the latter period, from what they had been at the date of his marriage.

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On the 11th April, 1817, Dixon executed a disposition and deed of settlement, whereby, on the narrative that he was resolved to make a settlement of his affairs, to take place in the event of his death, in order that all disputes and differences with regard to his property might be avoided; and, considering that he had already in part provided for his wife by a separate liferent-deed, executed by him in her favour, "which provision, " so made, is hereby ratified and approved of, and " which, with the additional provision after mentioned, " is hereby declared to be in full to her of all that she can " ask or claim in and through my decease," and that it was now necessary he should provide for his children, therefore he conveyed to John Dixon and William Dixon, his two sons, and the survivor of them, his whole heritable and moveable estate whatsoever, under burden of payment, in the first place, of all his debts; second, of L.2000 to each of his daughters; "and in the third " place, for payment of the sum of one thousand pounds " sterling to my wife, (in case she survive me,) six " months after my death, over and above the other " provisions conceived by me in her favour by separate " deed, as before mentioned, the said sum to bear inte- " rest from the foresaid term of payment, until actually " paid."

By this deed he appointed his two sons, John and William, and the survivor of them, his executors, universal legators, and intromittors with his whole estate, and reserved to himself the full power and enjoyment of

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his said whole means and effects, with power to revoke the deed in whole or in part; declaring, that in so far as the same should not be revoked, in so far the same should remain effectual, although found lying by him, or in the custody of any other person, undelivered, at the time of his death.

On the 15th March, 1820, Dixon executed a codicil to his settlement, which stated, that his worldly affairs had continued to prosper, and gave his children additional provisions, without making any change in those of his wife.

On the 23d November, 1821, he executed a disposition and assignation, whereby, for love, favour, and affection to his wife, and other considerations, he assigned and conveyed to her, in case she should survive him, “all and whole the two front northmost shops and “back shops, situated on the west side of that street “called Great Glassford Street,” in the city of Glasgow, the deed containing the usual and necessary clauses for infestment; and “all and whole these my forty shares of “the undertaking of the Monkland Canal navigation, “as the said shares stand divided by an Act of Parlia- “ment of the fifty-third year of his late majesty, “together with the dividends that may become due on “the said forty shares, from and after my decease, and “in all time coming.”

On 16th October, 1822, Dixon, the testator, died. He was survived by his wife, his two sons, John and William, and four daughters, Mrs Mann, Mrs Fisher, Mrs Whitehead, and Lillas Dixon.

Mrs Fisher was not satisfied with the provision made for her by the deeds which have been enumerated, and with the view of determining whether it would be most for her advantage to betake herself to her legitim, she

brought an action of multiplepointing against the widow, and the other daughters, and their husbands, in the name of the two sons, as their father's executors, setting forth, that "in order to ascertain the nature and extent of the property left by the said deceased William Dixon, and the proportion which, by law or otherwise, the pursuers, and their said mother and sisters, or the husbands of such of their said sisters as are married, are entitled to, either in virtue of special deeds, or as *jus relictæ*, legitim, bairns' part of gear, or otherwise, the pursuers, as having intromitted with and taken possession of the said means and estate," were willing to exhibit and give access to the whole writs, &c.; and subsuming, that the said writs, &c. being so exhibited, "the respective rights and interests of the pursuers and the said several defenders, in the means and estate of the said deceased William Dixon, ought and should be fixed and ascertained; and for this purpose, the pursuers are willing, conjunctly and severally, to hold just count and reckoning with the said several defenders for their respective shares and interests in the said means and estate, so far as intromitted with by them, and to give up, relinquish, and make cession or delivery and payment to them, and each of them, of whatever shall be found to be the just and legal share and interest of the said several defenders respectively, in the means and estate of the pursuers' said deceased father," &c.

The widow was very much displeased with Mrs Fisher because of this proceeding to disturb the will of her husband, and the consequence was a breach between her, and this daughter, and the rest of the family. The process of multiplepointing was nevertheless proceeded in.

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On 28th February, 1826, the widow and the two sons executed a deed, which contained the following expressions: — “ In the first place, and on the one part, the
 “ said John Dixon and William Dixon bind and oblige
 “ themselves, jointly and severally, and their heirs,
 “ executors, and successors, to make payment to the
 “ said Janet Smith or Dixon, their mother, her heirs,
 “ executors, or assignees, of the sum of L.5400 ster-
 “ ling, and that at and upon the term of Whitsunday,
 “ 1836, with the interest thereof, from the day of
 “ October, 1822, the period of the death of the said
 “ William Dixon, until paid, and, when required, to
 “ grant bond with heritable security for the payment of
 “ the said sum and interest: Farther, to pay to the
 “ said Janet Smith or Dixon, her heirs or assignees,
 “ during her life, a free yearly annuity of L.200 ster-
 “ ling, payable half-yearly, at Whitsunday and Mar-
 “ tinmas in each year, and to grant bond with heritable
 “ security for the regular payment of the said annuity,
 “ when required: To assign and make over to the said
 “ Janet Smith or Dixon, the liferent of the house and
 “ garden at Govan-hill, as now occupied by her, during
 “ all the days and years of her life, and to allow and
 “ provide, graze, and feed three cows in the park
 “ adjoining the said house and byre at Govan Col-
 “ liery, all free of rent; and also at their own ex-
 “ penses to furnish, keep, and maintain for her, in
 “ good order and condition, a four-wheeled chaise
 “ and pair of horses during her life: Farther, to
 “ deliver over to her the whole household furniture,
 “ plate, and bed and table linen, which belonged to her
 “ said deceased husband at the time of his death, to be
 “ used and disposed of as her own property at pleasure:
 “ Farther, the said John Dixon and William Dixon

“ hereby consent and agree that the said Janet Smith
 “ or Dixon shall have right to the two shops in Glass-
 “ ford Street, as presently possessed by the said John 22d June, 1841.
 “ and William Dixon and John Walker. In the Statement.
 “ second place, and on the other part, the said Janet
 “ Smith or Dixon hereby not only declares herself
 “ satisfied with the provisions before mentioned, in lieu
 “ of, and in full of all claims of whatever nature, whe-
 “ ther legal or conventional, she is entitled to from the
 “ estate of the said deceased William Dixon, her hus-
 “ band; but she hereby gives up, disposes, conveys,
 “ and renounces, to and in favour of the said John
 “ Dixon and William Dixon, and their heirs and suc-
 “ cessors, all such claims and rights, in whatever way
 “ conceived, and whether legal or conventional, and
 “ hereby binds and obliges herself, her heirs, executors,
 “ and successors, to execute all revocations, conveyances,
 “ or other deeds that may be necessary for investing them
 “ and their foresaids in the full right thereof, with full
 “ power to them and their foresaids to follow furth and
 “ make the same effectual, by all competent and legal ways
 “ and means: Farther, the said Janet Smith or Dixon
 “ hereby acknowledges that she has, since the death of
 “ her said husband, received from the said John Dixon
 “ and William Dixon the sum of L.1569, 16s. sterling,
 “ to account of the sums provided to her, as aforesaid:
 “ And lastly, each of the parties bind and oblige them-
 “ selves, and their heirs, executors, and successors, to
 “ execute in favour of each other, and their foresaids,
 “ all deeds that may be required, the one from the
 “ other, for carrying this agreement into full effect.”

At the same time that this agreement was executed,
 the widow executed a transfer of the forty shares of the
 Monkland Company's stock, “ which belonged to the

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“ said deceased William Dixon, and were conveyed by
 “ him in my favour, conform to disposition and assign-
 “ nation, bearing date the 23d day of November, 1821,
 “ with the dividends due on the said forty shares, at and
 “ prior to the date hereof, and in all time coming, de-
 “ claring always, that these presents shall be without
 “ hurt or prejudice, in any manner of way, to my legal
 “ rights and claims against the property, real and per-
 “ sonal, of my said late husband, and full power to
 “ vindicate the same.

On the 8th September, 1826, the two sons, John and William executed a deed, which recited their father's disposition and settlement of April, 1817, and continued thus: — “ And being desirous to liquidate and pay off
 “ our debts, as well as the provisions left by our said
 “ father, and to arrange the affairs of the different con-
 “ cerns belonging to us, and to make a division of the
 “ different properties and subjects left us by our said
 “ father, after all claims against them and us shall have
 “ been first paid, or otherways arranged, to the mutual
 “ satisfaction of ourselves and the creditors, we have
 “ determined, for attaining these objects, to grant the
 “ trust-deed underwritten.”

On this recital, they conveyed to Cuthbertson and others, as trustees, “ all and sundry lands, heritages,
 “ leases, minerals, adjudications, teinds, and heritages of
 “ every description or denomination, pertaining or be-
 “ longing to us in partnership, or individually, and all
 “ debts and sums of money, whether heritable or move-
 “ able, and all claims whatsoever, due or competent to
 “ us, or either of us, with every other species of pro-
 “ perty, real or personal, connected with any farms or
 “ undertaking with which we, or either of us, are con-
 “ nected or concerned.”

On the 29th May, 1827, a deed of agreement was entered into between the sons, John and William, which recited, that their father, by his general disposition and settlement, dated the 11th day of April, 1817, conveyed to them all his property of every description, subject to the legacies and provisions left by him to his widow, and other children, as specified therein, and in other relative deeds: That they had entered on the possession of the property, real and personal, conveyed to them by the said disposition and settlement, and proceeded to make up titles to parts thereof: That since their father's death, they had carried on the business of coal and iron masters, under the firm of "John and William Dixon," whereby considerable debts had been contracted, and were still resting: That in order to secure their creditors, and facilitate a division between themselves of the residue of their joint property, they had executed the trust-disposition of 8th September, 1826, whereby they conveyed their whole property to Donald Cuthbertson and others, as trustees for purposes therein mentioned: That in order to accelerate the winding up of the affairs, they agreed, "Primo, That the said William Dixon, " from and after the 15th day of May current, is, sub- " ject to the conditions after mentioned, to have right " to the whole joint property, real and personal, which " belonged to the saids John and William Dixon jointly, " or as a company, whether derived from their said " father, acquired subsequently for their behoof, or " otherwise connected with or belonging to the said " joint concern. Secundo, That the said William " Dixon and his foresaids shall be liable for, and relieve " his said brother and his successors, of the payment of " the whole joint debts and obligations of the said John " and William Dixon, and of the legacies and annui-

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“ ties left and bequeathed by their said father yet
 “ remaining unpaid, interest that may be due thereon,
 “ and also all debts and engagements of their said
 “ deceased father remaining unsettled, and all claims
 “ and lawsuits connected therewith, or in any way
 “ relating thereto, and lawsuits instituted by the said
 “ company;” and, in general, for every obligation, of
 whatever kind, incumbent on the said John Dixon,
 relative to their joint concern, or due by them jointly,
 as representing their deceased father. The considera-
 tion given to John for this agreement was L.35,000.

William did not settle with his mother and sisters in
 terms of this agreement, and in consequence, John
 raised two actions against him to enforce the agreement.

In September, 1830, the widow addressed a letter
 to John, in the following terms:— “ I hereby agree
 “ to relieve you of all liability whatever, either as an
 “ executor of the deceased William Dixon, Esq., or
 “ as a partner of the late firm of John and William
 “ Dixon, and oblige myself to grant an ample dis-
 “ charge thereof upon demand. In your stead I have
 “ taken Mr William Dixon alone for implement of
 “ all the provisions in the deceased’s settlement, and
 “ of every obligation of the late firm, so far as I am
 “ interested in any manner of way.” The sisters, Mrs
 Mann, Miss Dixon, and Mrs Whitehead, also signed
 letters agreeing to take William as their sole debtor, —
 the wording of which was the same, as that of the letter
 signed by the widow.

In December, 1830, the widow, Mrs Whitehead,
 her husband, and Miss Dixon, executed a discharge in
 favour of William, which narrated, that by the bond
 of annuity of 14th December, 1809, the deceased Mr
 Dixon bound himself “ to make payment to me, the

“ said Janet Smith or Dixon, during all the days and
 “ years of my lifetime, in the event of my surviving
 “ him, of a free liferent annuity of L.150 sterling,
 “ payable at two terms in the year, all as particularly
 “ set forth in the said heritable bond of annuity: That
 “ by disposition and settlement, dated 11th April,
 “ 1817, made and granted by the said deceased William
 “ Dixon, he, upon the narrative, inter alia, that he had
 “ already in part provided for his wife by a separate
 “ liferent-deed executed by him in her favour, gave,
 “ granted, &c., under the burden of payment of the
 “ sum of L.1000 sterling to me, the said Mrs Janet Smith
 “ or Dixon, his wife, in case I survive him, six months
 “ after his death, over and above the other provisions
 “ conceived by him in my favour by a separate deed :”
 That “ we, the said Mrs Isabella Dixon or Mann, and
 “ Miss Lilius Dixon, ratified the said settlement, con-
 “ taining the provisions above mentioned, made by him
 “ in our favour, of which provisions we accordingly
 “ accepted, and declared ourselves satisfied therewith :”
 And that the agreement of February, 1826, and the
 trust-disposition of that year, described as being, “ inter
 “ alia, for the purpose of liquidating, paying, and
 “ securing, the provisions left by the deceased William
 “ Dixon,” and the contract of agreement between
 John and William Dixon, had all been executed. On
 this narrative the deed proceeded thus :— “ And now,
 “ seeing that we, the said parties hereto subscribing,
 “ are satisfied with the individual responsibility of the
 “ said William Dixon, (the son of the said deceased
 “ William Dixon,) and with the security created by
 “ the said trust-disposition for implement and pay-
 “ ment of the provisions due to us under the settle-
 “ ments executed by the said deceased William Dixon

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“ or otherwise, and have, at the request of the said
 “ William Dixon, agreed to discharge his brother,
 “ the said John Dixon, of all liability whatever
 “ therefor, as after mentioned: Therefore we, the said
 “ Mrs Janet Smith or Dixon, Mrs Janet Dixon or
 “ Whitehead, Joseph Whitehead, Mrs Isabella Dixon
 “ or Mann, and Miss Liliias Dixon, with joint consent
 “ and assent, and for our several rights and interests
 “ in the premises, have released and discharged, &c.
 “ reserving to us, and every one of us, our claims
 “ against the said William Dixon, (the son,) and our
 “ rights under the foresaid trust-disposition executed
 “ by the said John Dixon and William Dixon, and our
 “ claims against all other persons for the said provisions
 “ in our favour, which shall in no way be hurt or
 “ impaired by the granting of these presents, or by any
 “ thing herein contained.”

This deed was subscribed by William, and also by John.

On 14th December, 1831, an action of reduction was brought in the name of the widow and of the son, William, the latter being described as “ the assignee of
 “ his said mother, under and in virtue of the writs after
 “ specified.” This action was directed against all the other members of the family, and was brought for the purpose of reducing the bond of annuity, which Mr Dixon had granted on 14th December, 1809, and
 “ any writ or writs which are alleged by the defenders
 “ to be, or to import, an acceptance by the pursuer,
 “ Mrs Janet Smith or Dixon, of the said provisions, in
 “ satisfaction of the legal provisions arising to her, as
 “ widow of the said deceased William Dixon, in so far
 “ as the said bond of annuity or other writs bear, or
 “ may be held to import that the said Janet Smith

“ either accepted of the said provisions granted in her
 “ favour by the said bond, or otherwise in satisfaction
 “ of what she could ask or claim by or through the
 “ said William Dixon’s decease, or renounced her legal
 “ provisions in the event of her surviving him, and in
 “ so far as the same do in any other respect affect or
 “ impinge upon the legal rights and interests of the
 “ pursuer, the said Janet Smith, as wife and relict of
 “ the said deceased William Dixon.” The reasons of
 reduction were, that when the marriage between Mr
 and Mrs Dixon was dissolved by his predecease, his
 estate consisted not only of extensive heritable proper-
 ties, but likewise of personal funds of great amount, out
 of which Mrs Dixon was entitled to claim her terce and
 jus relictæ, and of which provisions he had no power to
 deprive her : That Mrs Dixon never accepted of the
 provisions made to her in lieu of her legal provisions,
 and, consequently, any conditions annexed to the pro-
 visions granted in her favour were void : That even if
 she had accepted the provisions granted in her favour,
 in satisfaction of her legal provisions, a power of revoca-
 tion was implied in such acceptance, as being a donatio
 inter virum et uxorem, inasmuch as the provisions settled
 upon her were very much inferior to the value of her
 legal provisions, as at the time of her husband’s death,
 and also, inasmuch as the conventional provisions were
 greatly diminished in value, by being made to depend
 entirely upon the uncertain event of her surviving her
 husband, and were rendered uncertain, by the bond of
 annuity having remained in the hands of her husband,
 or within his power, until his death, and never having
 been followed by infestment. The summons then pro-
 ceeded : — “ And the said alleged renunciation or dis-
 “ charge of the pursuer’s claims of terce and jus relictæ,

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“ said to be granted by the foresaid bond of annuity
 “ or otherwise, being revocable at the pleasure of the
 “ said pursuer, and she, by this action, exercising that
 “ power accordingly, the said alleged acceptance and
 “ renunciation are null and void.” The conclusions
 were, that the bond and other writings should be
 reduced, “ And whereas, in virtue, first, of an assig-
 “ nation imbodyed in an agreement between the said
 “ Janet Smith or Dixon and John Dixon and William
 “ Dixon, dated the 28th day of February, 1826; and,
 “ secondly, of a deed of agreement between the said
 “ John Dixon and William Dixon pursuer, transferring
 “ all interest in the premises from the former to the
 “ latter, dated the 29th day of May, 1827, the said
 “ William Dixon, pursuer, has now right, inter alia,
 “ to the funds belonging to the pursuer jure relictæ as
 “ aforesaid: And it ought and should be found and
 “ declared, by decree foresaid, that the value of the
 “ goods in communion remaining free and divisible at
 “ the dissolution of the marriage, amounted to the sum
 “ of L.30,000 sterling, more or less, as shall be ascer-
 “ tained by our said Lords; and that the share thereof
 “ falling to the pursuers, the said Janet Smith or
 “ Dixon, or to the said William Dixon, as her assignee,
 “ amounts to the sum of L.10,000 sterling, or such
 “ other sum, more or less, as shall be found to be her
 “ just and legal proportion thereof; with the lawful
 “ interest or other produce of the same, which may
 “ have accrued since the death of the said William
 “ Dixon: And farther, it ought and should be found
 “ and declared, by decree foresaid, that the pursuers
 “ have right to, and are entitled to claim, the whole
 “ provisions and bequests made to the said Janet Smith
 “ or Dixon, without any qualification or condition as to

“ her acceptance thereof, (other than and excepting
 “ what are contained in the said bond of annuity,)
 “ notwithstanding her claiming her said legal provi-
 “ sions, and not renouncing the same, or revoking the
 “ said renunciation or acceptance : Reserving fully and
 “ expressly to the pursuers, their right to the foresaid
 “ conventional provisions secured by the said bond of
 “ annuity, and all other provisions in favour of the said
 “ Janet Smith or Dixon, in case it shall be found, in
 “ the course of the process to follow hereon, that she
 “ has irrevocably renounced or discharged, or is other-
 “ wise not entitled to, the said legal provisions.”

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Preliminary defences were put in by Mr and Mrs Fisher to this action, and here it was allowed, by the appellant, to remain for some years.

On 20th December, 1834, Mrs Dixon, the widow of the testator, died, leaving a testamentary deed, whereby she appointed her daughter, Lillas, to be her sole executrix and universal legatee.

Some time after this, the Fishers wakened the process of reduction, which had been allowed to fall asleep. John Dixon now put in defences, in which he denied the statement in the summons, that the deed of 28th February, 1826, was intended to operate as an assignation to himself and the pursuer, William Dixon, of the widow's legal claims on her husband's estate, and explained that it was a deed entered into by the widow purely for relieving the difficulties of himself and William at that time, by enabling them to get possession of, and sell the Monkland Canal stock, which they accordingly did very soon afterwards.

On 27th February, 1836, the Lord Ordinary reserved consideration of the preliminary defences put in by the Fishers, and granted diligence at their instance for

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recovery of writings specified by them. This specification included all documents tending to shew that Mrs Dixon had discharged her legal or conventional provisions, or accepted the conventional provisions, and a similar diligence was granted in the multiplepinding. Under these diligences, Mr Romanes, W.S. who had been the law agent both of Mrs Dixon and of William Dixon, was examined, and required to produce any deed or deeds of revocation “executed by the deceased
“ Mrs Dixon, of the renunciation contained in the
“ heritable bond of annuity mentioned in the summons:
“ Depones, that he has not, and never had, any such
“ deed or deeds, and never saw any such to his know-
“ ledge, and does not know or suspect where any such
“ may be.”

After these commissions and diligences had been reported, there was lodged in the process of multiplepinding two documents, viz. 1st, A mandate to Messrs Tod and Romanes, W.S. in these terms:—
“ Glasgow, 3d June, 1823.—Gentlemen,—We hereby
“ authorize you to appear for us in the process of mul-
“ tiplepinding raised by Mr Fisher, in regard to the
“ succession of the late Mr Dixon, against us and
“ others, and to claim our legal shares of said succes-
“ sion.—We are, &c. (Signed) Janet Dixon, Janet
“ Whitehead, Joseph Whitehead, Lillas Dixon, Isa-
“ bella Mann, William Dixon. To Messrs Tod and
“ Romanes, W.S. Edinburgh.” 2d, A deed, dated
12th March, 1824, in these terms:—“ I, Mrs Janet
“ Smith or Dixon, widow of the deceased William
“ Dixon of the Calder Coal and Iron Works, con-
“ sidering that my said late husband, by heritable
“ bond of annuity, dated the 14th day of December,
“ 1809, and recorded in the Sheriff-court books of

“ Lanarkshire the 23d day of October, 1822, upon
 “ the narrative that no antenuptial marriage-contract
 “ had been executed between us, nor any provisions
 “ made by him in my favour in the event of my
 “ surviving him, did, therefore, in the event foresaid,
 “ make certain provisions in my favour, as the same
 “ are more particularly specified and contained in said
 “ heritable bond of annuity, which is said to be sub-
 “ scribed by me, and to bear that I, the said Janet
 “ Smith or Dixon, did thereby accept of the provisions
 “ therein contained, in full of all I could ask or claim
 “ by or through the decease of the said William Dixon,
 “ thereby renouncing the legal provisions I might be
 “ entitled to in the event of my surviving him; and
 “ that, thereafter, by disposition and settlement, exe-
 “ cuted by the said William Dixon upon the 17th day
 “ of April, 1817, and codicil thereto, dated the 15th
 “ day of March, 1820; and by disposition and assigna-
 “ tion, bearing date the 23d day of November, 1821,
 “ all recorded in the Sheriff-court books of Renfrew-
 “ shire the 23d day of October, 1822, he made certain
 “ other provisions in my favour, as the said deeds more
 “ fully bear. And farther, considering that the provi-
 “ sions, so conceived in my favour, are not in any
 “ degree or proportion commensurate to my legal pro-
 “ visions, and, therefore, my alleged acceptance of the
 “ former, and renunciation of the latter, for such inade-
 “ quate cause, is extremely prejudicial to me, and I am
 “ resolved to revoke the same, under the sanction of
 “ the law, which permits married persons to revoke all
 “ donations they may have been induced to make
 “ during the subsistence of their marriage: Therefore,
 “ that I may be restored against the said alleged accep-
 “ tance of the foresaid provisions and renunciation of

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“ my legal provisions granted by me in manner fore-
 “ said, I hereby revoke and recall the same, to the end
 “ that I may be reponed ad integrum against the same,
 “ and restored to my whole legal rights, as if the said
 “ pretended acceptance and renunciation had never
 “ been granted: And I hereby declare, that the same
 “ was granted by me without good and sufficient
 “ onerous cause, and at the instance of my said hus-
 “ band; and I consent, &c. In witness whereof, I have
 “ subscribed these presents, (written upon stamped
 “ paper by Adam Paterson, clerk to John Tod, writer
 “ to the Signet,) at Edinburgh, the 12th day of March,
 “ 1824 years, before these witnesses, John Romanes,
 “ writer in Edinburgh, and Adam Anderson, shoe-
 “ maker in Edinburgh.

“ (Signed) JANET DIXON.

“ John Romanes, *witness.*

“ Ad. Anderson, *witness.*”

There was also produced at the same time in the action of reduction a mandate by Mrs Dixon to Messrs Tod and Romanes, in these terms: — “ Govan-hill, March 11, 1830. — Gentlemen, — I hereby authorize you, as my agents, to institute an action of reduction, or such other measure as may be deemed necessary for setting aside the settlements of my deceased husband, to the special effect of enabling me or my assignees to make effectual the legal claims competent to me jure relictæ or otherwise. — I am, &c.”

The Fishers now put in defences on the merits of the action of reduction; and on seeing these, William Dixon, the appellant, asked leave to amend the summons. The Lord Ordinary refused to allow this, but gave him leave to repeat a supplementary summons. The appellant availed himself of this leave, and on

20th April, 1837, he raised a new action of reduction.

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The summons in this new action was by the appellant, as assignee, as after mentioned, of the now deceased Mrs Janet Smith or Dixon, relict of the said deceased William Dixon, and also as a general disponee and assignee of the said William Dixon, of all his estate and effects belonging to him at the time of his death, in virtue of a general disposition and settlement, dated the 11th day of April, 1817, and assignee also of the said John Dixon, as after mentioned, and was directed against his brother and sisters, and their husbands. It recited the summons in the original actions, and the leave given to repeat a supplementary summons, and then proceeded: — “ And, accordingly, the pursuer now
 “ institutes this supplementary action, but without pre-
 “ judice in any respect to the foresaid original action of
 “ reduction, declarator, count, reckoning, and payment,
 “ or any of the reasons or conclusions thereof: That is
 “ to say, the said defenders to bring with them, exhibit,
 “ and produce, before our said Lords, the foresaid bond
 “ of annuity and other writs which are particularly and
 “ generally mentioned and called for, as above set forth
 “ in the said original summons of reduction, declarator,
 “ count, reckoning and payment, and which are here
 “ held as repeated brevitatis causa, — all to be seen and
 “ considered by our said Lords, and to hear and see
 “ the same, with all that has followed or may follow
 “ thereon, in so far as the said bond of annuity or other
 “ writs bear, or may be held to import, that the said
 “ Janet Smith either accepted of the said provisions
 “ granted in her favour by the said bond or otherwise,
 “ in satisfaction of what she could ask or claim by or
 “ through the said William Dixon’s decease, or re-

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“ nounced her legal provisions in the event of her sur-
“ viving him, and in so far as the same did in any other
“ respect affect or impinge upon the legal rights or
“ interests of the said Janet Smith, as wife and relict of
“ the said deceased William Dixon, reduced,” &c.

The four first reasons of reduction were the same as those assigned in the original summons; and after stating them, the summons continued,—“ And the said alleged
“ renunciation or discharge by the said Janet Smith or
“ Dixon, of her claims of terce and jus relictæ, said to
“ have been granted by the foresaid bond of annuity or
“ otherwise, and her alleged acceptance of the foresaid
“ conventional provisions proposed to be given to her
“ in lieu and satisfaction thereof, being revocable at
“ her pleasure, she exercised her power of revoking the
“ same accordingly, by a variety of acts and deeds, and
“ particularly by the following :” —

The acts here founded on were the mandate in 1833, to appear in the action of multiplepounding — the deed of revocation of 12th March, 1824 — the deed of 28th February, 1826 — the transfer of the Monkland Canal shares — the mandate to raise the original action of reduction — and, finally, that action itself. And the conclusions of the summons were precisely the same as those of the original summons.

The Fishers pleaded in defence to those two actions, — 1st, That the bond of 1809 was reasonable at its date, and irrevocable. 2d, That the widow had not only accepted the provisions contained in that deed during her husband's life; but after his death, had assumed possession of them, and of the additional provisions in the other deeds by her husband, and had thereby barred herself from claiming her legal provisions. 3d, That the deeds of agreement of 28th Feb-

ruary, 1826, and 29th May, 1827, did not afford any legal foundation for the action. 4th, That there was no evidence of the deed of revocation of 12th March, 1824, having ever been delivered, without which it was ineffectual, and that documents, not testamentary, kept latent till after the death of the granter, could not be founded upon against third parties, in derogation of the subsequent public and open acts of the granter.

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The facts of the case tending to shew how far Mrs Dixon had accepted or dealt with the conventional provisions given her by her husband, so far as admitted between the parties, or proved in evidence, in addition to what is contained in the deeds already detailed, were these : —

I. Prior to February, 1826. — 1st, The testator died in a house at Govanhill, which had not any ground surrounding it. Mrs Dixon remained in this house, and did not in any way exercise the right of life-rent over the house of Palace Craig, and the twenty-two acres of ground, given her by her husband's deed of 1809. 2d, Mrs Dixon received various payments of money, amounting, as stated in the deed of February, 1826, to L.1569, 16s. The appellant did not produce receipts for these payments, and the respondents did not succeed under the commission and diligence in recovering any. On what account these payments were made, did not appear, except that in the books of the sons, the payments were entered in general and indefinite terms. 3d, The rents of the Glassford Street houses appeared, by the books of the sons, to have been received by them, and to have been entered to the credit of an account for that property, — repairs and insurance being placed to its debit. The balances upon this account from time to time did not

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appear to have been transferred to any other account. 4th, There was no evidence to shew by whom the dividends on the Monkland Canal shares had been received, with the exception of a sum of L.110, entered in the books of the sons, as having been received in February, 1823; and there were produced drafts and copies of letters in 1825, between the sons and the Canal Company, shewing that the sons wished to have the shares transferred to them, under the conveyance in their father's deed of April, 1817; but that the company declined doing so, until confirmation of the father's will should be expedite. Lastly, Mrs Dixon never appeared in the multiplepointing to claim her provisions, legal or conventional; but it was said, that the term for doing so had not arrived in her lifetime, as the pleadings in that case during her life had related solely to the amount of the fund in medio.

II. After February, 1826. — 1st, Mrs Dixon continued to reside at Govanhill as formerly. 2d, L.5400 and also L.4000, as the capital of the annuity of L.200, were placed to the credit of Mrs Dixon's account in the books of her sons; and from these books it appeared, that she, from time to time, received payment of the interest of these sums. 3d, The rents of the Glassford Street houses appeared, from the books of the sons, to have been received by them, and carried to Mrs Dixon's credit in account. 4th, In the books of the sons there were journal entries in each year of a sum of L.2400, as the value of the Monkland Canal shares; and in September, 1826, there were journal and ledger entries, shewing that the shares had been sold for L.3100.

After a record had been made up on the original and supplementary summons, and defences, and condescendence, and answers, parties were heard by their counsel.

The Lord Ordinary then pronounced an interlocutor, expressing, that his opinion was made up; but giving the parties the option of going into the question of fact as to the adequacy of the conventional provisions, before receiving his judgment. The appellant wished to go into this inquiry; but the respondents preferred, that the adequacy of the provisions should be assumed in the meanwhile.

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The Lord Ordinary, on 22d June, 1838, pronounced this interlocutor, accompanied by the note which follows¹: —

“ The Lord Ordinary having considered the closed
“ record in this process of reduction, and having heard

¹ “ *Note.* — It would require a much longer statement than it would be
“ proper for the Lord Ordinary to annex to the above interlocutor, to explain
“ in detail the grounds on which he has come to the conclusion expressed in
“ it. He will endeavour to state the leading points as shortly as he can.

“ But it may first be proper to explain, that before giving out this judg-
“ ment he put it in the view of the parties, that as it would necessarily
“ supersede the other question involved in the reduction, viz. Whether, if
“ Mrs Dixon had in any competent form repudiated her husband’s settle-
“ ments, and brought a reduction of the discharge of the marriage-contract,
“ she had sufficient ground in law for doing so, — it was for the consideration
“ of the defenders, whether the matter of fact necessarily requiring to be
“ ascertained for solving that question should or should not be first inquired
“ into. That question comprehends two points — 1st, Whether the provi-
“ sions made for Mrs Dixon by the marriage-contract were, at the date of
“ that contract, so inadequate with reference to the state of Mr Dixon’s
“ fortune at that time, as to render the discharge given a donation by the
“ wife, liable to revocation and reduction; and, 2d, Whether, in point of
“ law, the date of the contract, or the time of the testator’s death, must
“ be taken as the rule for determining the question, Whether there was
“ such inadequacy or not; and what effect the additional provisions made
“ for her by other deeds may have on any such question. If the Lord Ordi-
“ nary had thought it necessary to enter on this part of the case, he should
“ have been of opinion that the matter of fact, with relation to the state of
“ Mr Dixon’s fortune at the date of the contract, should be first ascertained.
“ But the defenders having expressed their desire to have judgment on the
“ question, Whether, in the circumstances, the reduction was at all competent,
“ he has felt it to be his duty to give out the interlocutor, which, after con-
“ sidering a most elaborate debate, and examining all the documents referred
“ to, he had previously prepared.

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“ parties’ procurators thereon, and made avizandum,
“ Finds, that the question raised by the original sum-
“ mons in the name of the deceased Mrs Dixon and
“ William Dixon, as her assignee, and the supplemen-

“ The Lord Ordinary is, in the first place, of opinion, that the present
“ reduction cannot be supported on the ground of certain documents exe-
“ cuted by Mrs Dixon in 1823 and 1824. The first is a mandate, dated
“ June 3, 1823, granted to Messrs Tod and Romanes to appear in the
“ process of multiplepointing which had been raised. It is signed by Mrs
“ Dixon, by Mrs Whitehead, who had expressly discharged the legitim by
“ marriage-contract, by Miss Dixon, and Mrs Mann, and by William Dixon
“ himself. It appears to the Lord Ordinary that the authority thereby given
“ to claim ‘our legal shares of said succession,’ simply meant that they should
“ claim what was due to them respectively by the deeds of settlement. Mrs
“ Whitehead could claim nothing else; and as little could Mrs Dixon without
“ taking some other proceeding. But the mandate was surely any thing but
“ a universal rejection of the provisions of the settlement, and an assertion of
“ rights at common law as opposed to it.

“ The deed of revocation of 12th March, 1824, may seem to deserve more
“ attention. That deed was certainly produced under very extraordinary
“ circumstances. But it may be sufficient for the Lord Ordinary to say, that
“ on full consideration, he thinks that it must be regarded as entirely a latent
“ instrument which was never acted on, but, on the contrary, was entirely
“ superseded by the transaction which followed between Mrs Dixon and the
“ general disponees and executors of her husband.

“ It is indeed evident, that if the attempt now made to claim *jus relictæ* in
“ the name of Mrs Dixon depended on any simple act of revocation by her,
“ the title to maintain such a claim would not be vested in William Dixon,
“ but in Miss Lilius Dixon, who is the executrix of her mother: and that
“ such a claim could not be maintained against William Dixon is very
“ clear. At any rate, if in point of fact, Mrs Dixon did subsequently accept
“ of the provisions made for her by the settlements of her husband, and dis-
“ charged them, the question, What shall be the effect of such acceptance
“ and discharge, cannot be affected by such a latent instrument, inconsistent
“ with what she actually did.

“ The material question, therefore, is, What was the true nature of the
“ transactions between Mrs Dixon and her two sons in 1826, and following
“ years, with reference to the possession which she had previously obtained
“ of property conveyed to her by her husband’s deeds? For it is clear, that
“ the present action is not an action for the benefit of Mrs Dixon or of her
“ executrix, but simply a proceeding adopted by William Dixon, in order to
“ lessen the amount of the fund of legitim claimed by Mrs Fisher against
“ him, as the disponee and executor of their father. If he obtained a title
“ to make such a claim for his own benefit, whether in his own name, or in
“ that of Mrs Dixon, by the deeds of 1826, that title could not be altered by
“ the mere bringing of the reduction in Mrs Dixon’s name, or by the terms
“ in which the summons may be expressed. And if he did not obtain such

“ tary summons in the name of the said William Dixon,
 “ the pursuer now insisting, depends mainly on two
 “ points : — 1st, Whether the contract of marriage
 “ entered into by Mrs Dixon and her husband, the late

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“ a title by the transactions in 1826, beyond all doubt, any right to set aside
 “ the marriage-contract, to repudiate the settlement, and to claim jus relictæ,
 “ which Mrs Dixon might previously have had, was completely and effec-
 “ tually discharged by the deeds which then passed between the parties.

“ The most material deeds are the deeds of agreement, 28th February,
 “ 1826, and the deed of transfer of the Monkland Canal shares of the same
 “ date. It is evident that Mrs Dixon was previously in possession of the
 “ forty canal shares, valued at L.4000, or L.4400. She had right by
 “ the settlements to an annuity, to the liferent of a house with twenty-two
 “ acres of ground and other advantages, to the whole household furniture,
 “ &c., and to two shops in Glassford Street, conveyed to her by her hus-
 “ band. Now, without going much into details, the Lord Ordinary can
 “ find nothing in the deed of agreement that has the least resemblance to a
 “ repudiation of the provisions of the settlement. The deed proceeds on no
 “ such narrative ; and, on the contrary, her right in the canal shares is ex-
 “ pressly acknowledged, and a transfer of them is executed by herself, as of
 “ property conveyed to her by her husband, and held by her ‘ immediately
 “ ‘ before the execution hereof.’ The two shops in Glassford Street are
 “ recognized as belonging to her ; and in these she obtained infestment. Her
 “ right to the furniture is also acknowledged ; and the whole effect of the
 “ agreement is, that for the transfer of the canal shares, for her annuity of
 “ L.150, for the liferent of the house and ground, and for the discharge
 “ of all her claims, John and William Dixon bind themselves to pay to her
 “ L.5400, at the postponed term of Whitsunday, 1836, with interest from
 “ the death of her husband, to pay her an annuity of L.200, and to
 “ convey to her in liferent a different house and garden. In consideration of
 “ which, she declares herself satisfied with the provisions before mentioned,
 “ in lieu of, and in full of all claims, of whatever nature, whether legal or con-
 “ ventional, she is entitled to from the estate of her husband. Then she
 “ conveys all her rights to John and William Dixon, and binds herself to
 “ execute revocations, and all other deeds necessary for making the same
 “ effectual. And she acknowledges to have received since her husband’s
 “ death, ‘ the sum of L.1569, 16s. to amount of the sums provided to her as
 “ ‘ aforesaid ;’ which must mean sums provided to her by the settlements,
 “ because till this deed was executed nothing else had been provided to her.

“ The Lord Ordinary is of opinion, that this deed imports an acceptance,
 “ and not a repudiation, of the provisions of the settlement. No doubt it is
 “ an arrangement by which those provisions are discharged on certain consi-
 “ derations. The defenders state, that it arose out of the difficulties in which
 “ John and William Dixon were at that time, which led to the trust-deed
 “ executed by them in the same year ; and the Lord Ordinary thinks that
 “ it probably was of that nature. But, independently of this, it was
 “ manifestly a transaction which proceeded on the basis, that Mrs Dixon

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“ William Dixon, in 1809, and in particular the clause
“ thereof, whereby Mrs Dixon, in consideration of the
“ provisions settled upon her by the said contract, in the
“ event of her surviving her husband, accepted of the

“ did assert her claim to all the provisions of the settlement; that she was
“ actually in possession of a part of the property, and exercised the rights of
“ a proprietor in it; that no repudiation had taken place; and that the parties
“ had never entered on any consideration of what her claims might have been
“ if she had rejected the provisions of the settlements, and claimed *terce* and
“ *jus relictæ*.

“ After this, John and William Dixon conveyed their estates to Mr Cuth-
“ bertson as trustee, and it is apparent, that in that transaction it was
“ assumed that the settlement was binding on Mrs Dixon, and no supposi-
“ tion was suggested that any other claim could be made in her right.

“ Mrs Dixon was infest in the Glassford Street shops on the 23d March,
“ 1827, expressly on the conveyance by her husband, than which it is not
“ easy to conceive a stronger act of acceptance of the provisions made by his
“ deeds. These houses had from the first been recognized as the property
“ ‘of Mrs Dixon’ in the books of John and William Dixon. See entry,
“ October 31, 1825. Then, with regard to the other provisions, there is
“ the following entry:—‘September 30, 1828.—Stock Dr. to sundries
“ ‘for the following legacies, in terms of the disposition and settlement of
“ ‘the late Mr Dixon, viz. To Mrs Dixon, Govanhill, her legacy, L.5400.
“ ‘Do. An equivalent for her annuity of L.200, L.4000,’ and throughout the
“ accounts this debt is substantially stated in the same manner.

“ In May, 1827, an agreement was entered into between John and Wil-
“ liam Dixon, by which John, for considerations, conveyed to William all his
“ rights and interest as joint disponee and executor of their father. In that
“ transaction, it is most clear to the Lord Ordinary, that Mr John Dixon, at
“ least, had not the slightest conception that the transaction between them
“ and Mrs Dixon had the effect of conveying to them any right or title to
“ repudiate the settlement in her name, or to claim *jus relictæ* as her
“ assignees, and he has accordingly stated the contrary, in the most positive
“ terms, in his defences to this action. But the deeds speak for themselves.
“ When it became necessary that Mrs Dixon should directly discharge Mr
“ John Dixon of all her claims, both the letters which first passed, and the
“ formal deed of discharge, are perfectly distinct and explicit, as discharging
“ the provisions made by the deeds of settlement.

“ Without going into farther particulars, or enlarging on the application of
“ these facts, the Lord Ordinary thinks it completely established, that Mrs
“ Dixon had finally and irrevocably recognized and accepted the provisions
“ made for her by the settlements, and that, if there had ever been any
“ serious thoughts of revoking and reducing the discharge of the marriage-
“ contract, it had been entirely abandoned, and the chequer closed against it
“ by the acts and deeds of Mrs Dixon herself.

“ The idea seems to be entertained, that Mrs Dixon could, at one and the
“ same time, accept of the provisions, take what was equivalent to payment of

“ said provisions, as in full of all she could ask or claim
 “ by or through the decease of the said William Dixon,
 “ and renounced the legal provisions she might be en-
 “ titled to in that event, was, upon the death of the said
 “ William Dixon, liable to revocation by Mrs Dixon, on
 “ the ground that the provisions thereby made in her
 “ behalf were so greatly inadequate as to render such
 “ her acceptance and renunciation in law donatio inter
 “ virum et uxorem; and, 2d, Whether the said Mrs
 “ Janet Smith or Dixon did competently and effectually
 “ repudiate the provisions made for her by the said con-
 “ tract, and other deeds of settlement subsequently exe-
 “ cuted by the said William Dixon, revoke the accep-
 “ tance and renunciation expressed in the said contract,
 “ and prefer her claim to her legal provisions as the
 “ widow of the deceased, against the general representa-
 “ tives of her husband: Finds, That the first of these
 “ points depends, or may depend, on matter of fact, on
 “ which the statements of the parties respectively are

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“ them, and grant a discharge in full, of these, and all her claims, to the exe-
 “ cutor, and yet reserve, or rather convey, to him a right to reverse the whole
 “ proceedings, to repudiate the settlement, and revoke and reduce the mar-
 “ riage-contract in her name; in other words, to make the discharge which
 “ she had granted to her husband, and confirmed to his executor, in full satis-
 “ faction, operate in favour of the husband’s representative, against the child
 “ or children claiming legitim. The Lord Ordinary is of opinion that this is
 “ incompetent. It brings the case exactly to the point which occurred in
 “ the case of Andrews v. Thomson or Sawyer, March 2, 1836; and therefore,
 “ instead of going into any detailed explanation of the principle, the Lord
 “ Ordinary will simply refer to the report of that case, and the full note of
 “ Lord Corehouse upon it. The facts of the two cases are not exactly the
 “ same; and, in particular, Mrs Dixon has not in direct terms done what was
 “ attempted by Mrs Sawyer in that case. But they are the same in principle;
 “ and the Lord Ordinary is of opinion, that the judgment must be the same
 “ in both. For if Mrs Dixon had effectually accepted the provisions, and
 “ discharged them by the deed 1826, the Lord Ordinary thinks it very clear,
 “ that nothing which she may have been induced to do afterwards could alter
 “ the state of the case.

“ J. W. M.”

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“ essentially opposed : Finds, That the second question
 “ must be determined by a due consideration of the
 “ documents in process: Finds it established that the
 “ said Mrs Dixon did obtain possession of valuable
 “ property, provided to her by her husband, in virtue
 “ of the conveyances expressed in his deeds: Finds,
 “ That, by deed of agreement on the 28th February
 “ 1826, between the said Mrs Dixon and her sons, John
 “ Dixon and William Dixon, the general disponees and
 “ executors of her deceased husband, the said John and
 “ William Dixon bound themselves to pay to Mrs
 “ Dixon the sum of L.5400 at the terms specified, which
 “ sum of L.5400 is, in the accounts of these parties, and
 “ in various other documents, uniformly described as a
 “ legacy or provision to which she had right under the
 “ settlements of her husband, — to secure her in an
 “ annuity of L.200, and in the liferent of a house
 “ specified, with certain other benefits, — to deliver to
 “ her the whole household furniture, plate, &c. of her
 “ husband, which furniture, &c. was also provided to her
 “ by the deeds of her husband; and by which agreement
 “ they farther stipulated that she should have right to
 “ two shops in Glassford Street, which shops were ex-
 “ pressly conveyed to her by her husband’s settlement,
 “ and in which she obtained infestment in virtue thereof:
 “ In consideration of which obligations, the said Mrs
 “ Dixon declares herself satisfied therewith, ‘ in lieu of
 “ ‘ and in full of all claims of whatever nature, whether
 “ ‘ legal or conventional, she is entitled to,’ from the
 “ estate of her husband, and gives up, disposes, con-
 “ veys, and renounces, to and in favour of the said John
 “ and William Dixon, &c., all such claims and rights
 “ in whatever way conceived, whether legal or conven-
 “ tional, and binds herself to execute all revocations,

“ conveyances, or other deeds necessary for investing
 “ them in the full right thereof, with power to follow
 “ forth and make the same effectual; and she farther
 “ acknowledged, that since her husband’s death she had
 “ received L.1569, 16s. ‘ to account of the sums provided
 “ ‘ to her as aforesaid:’ Finds, That by a deed of trans-
 “ fer of the same date, the said Mrs Dixon assigned
 “ and transferred to the said John and William Dixon
 “ forty shares of the Monkland Canal which belonged
 “ to the deceased, ‘ and were conveyed by him in my
 “ ‘ favour by the disposition and asignation’ specified,
 “ with the dividends due thereon, to be held subject to
 “ the same rules and on the same conditions ‘ that the
 “ ‘ deceased William Dixon or myself held the same
 “ ‘ immediately before the execution hereof;’ — which
 “ deed of transfer contains a clause, declaring it to be
 “ without prejudice to her legal rights, in respect of the
 “ property of the deceased: Finds, That the said deed
 “ of agreement neither proceeds on the narrative that
 “ Mrs Dixon had, at any time preceding the date of it,
 “ repudiated the settlements of her husband, and revoked
 “ her obligation under the marriage-contract, nor does
 “ itself either express or import such a repudiation and
 “ revocation: Finds, on the contrary, that it proceeds
 “ on the express assumption of specific rights vested in
 “ her, in virtue of the said settlements, and that the said
 “ deed of transfer is expressly founded on her title and
 “ possession, vested in her by the said deeds: Finds,
 “ That by the force of the said deed of agreement, the
 “ said John and William Dixon, as the disponees and
 “ executors of the deceased, stood completely discharged
 “ of all claims competent to Mrs Dixon, whether under
 “ the settlements of her husband, or at common law,
 “ and that she had finally accepted of the provisions

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“ specified in the said agreement, as in full of all that
 “ she could claim: Finds, That it was not thereafter com-
 “ petent to the said Mrs Dixon herself to make any
 “ claim to her legal provisions, or to repudiate the pro-
 “ visions made for her by the settlements of the deceased,
 “ or to revoke the obligations of the marriage-contract:
 “ And finds, That it was not competent to the said
 “ John and William Dixon, after having finally tran-
 “ sacted and settled with the widow on such terms, either
 “ in their own names, under any general title as assig-
 “ nees, or in her name, to repudiate for her the settle-
 “ ments of the deceased, or to revoke or reduce the
 “ marriage-contract, to the effect of thereby altering or
 “ affecting the rights of other parties interested in the
 “ succession: Finds it farther established, that there-
 “ after a transaction took place between John and
 “ William Dixon, whereby the former, upon certain
 “ considerations, renounced his rights as one of the
 “ disponees and executors of his father, and agreed that
 “ the said William Dixon should have right to the
 “ whole property, subject to the conditions therein ex-
 “ pressed: And finds, That the said agreement, and the
 “ express discharge which was thereafter executed by
 “ Mrs Dixon, and the other persons therein interested,
 “ in favour of the said John Dixon, proceeded on the
 “ assumption that Mrs Dixon had not repudiated the
 “ provisions made for her by the deeds of her husband:
 “ Finds, That in the circumstances, Mrs Dixon having,
 “ in the first instance, accepted and taken possession of
 “ various special subjects of great value, to which she
 “ had right by the deeds of her husband, and having
 “ thereafter transacted with his disponees and execu-
 “ tors, and finally discharged all her claims against
 “ the estate, it was not thereafter competent, either to

“ her or to any one in her right, to repudiate or reduce
 “ the settlements of her husband, or the obligations
 “ undertaken by her in the marriage-contract, on the 22d June, 1841.
 “ ground of inadequacy, or on any other ground set
 “ forth in this record: Therefore, sustains the defences
 “ to this effect; but before pronouncing decree of
 “ absolvitor, appoints the cause to be enrolled, and in
 “ the meantime reserves all questions of expenses.

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“ J. W. M.”

The cause was subsequently enrolled, and the Lord Ordinary, on 26th June, 1838, pronounced the following interlocutor:—“ The Lord Ordinary having called
 “ the cause, and heard parties’ procurators, sustains the
 “ defences, repels the reasons of reduction, and assoil-
 “ zies the defenders from the conclusions of the actions,
 “ original and supplementary, and decerns: Finds the
 “ defenders entitled to expenses; appoints an account
 “ thereof to be lodged, and remits to the auditor to tax
 “ the same and report.”

The appellant reclaimed to the Second Division of the Court, who, on 8th February, 1839, pronounced the following interlocutor:—“ The Lords having con-
 “ sidered this note, with the whole proceedings, and
 “ heard counsel thereon, adhere to the interlocutors of
 “ the Lord Ordinary complained of, and refuse the
 “ desire of the note; of new, find expenses due to the
 “ defenders, allow the account to be given in, and,
 “ when lodged, remit to the auditor to tax and report.”

Judgment of
 Court,
 8th Feb. 1839.

Against the interlocutors of the 22d and 26th June, 1838, and 8th February, 1839, an appeal was taken.

The Appellant.—The provisions made by the testator

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in favour of his widow were greatly inferior in value to those she would have been entitled to by law ; this is to be assumed. The widow, on her husband's death, had a right to renounce the conventional provisions, and betake herself to her legal claims. The acceptance of these rights in the life of her husband was no bar to such renunciation, for this acceptance, the provisions being smaller than the legal claims, was itself revocable by the widow, as importing *donatio inter virum et uxorem*.

But it is admitted that the widow had every desire to support the deeds executed by her husband, and was exceedingly offended by the conduct of the respondents in attempting to disturb them. It was no part of her intention, therefore, to recall her acceptance of these provisions with a view to any personal benefit to herself, and still less with a view to benefit the respondents. Her sole object was to defeat the measures of the respondents. Had she abided by her acceptance of her husband's provisions, the effect would have been to create a bi-partite division of his estate into legitim and dead's part, instead of a tri-partite division, and thereby to increase the amount which the respondents would have been entitled to receive. She therefore resolved to claim her legal provisions, and to make them over to her sons, so as thereby to effectuate, as far as in her power, the general conveyance in their favour, contained in the deed of April, 1817. This she carried into effect, — 1st, By the mandate to appear for her, and make her legal claims in the multiplepoinding, though nothing was done under it by reason of the state of proceedings in that case ; 2d, By the deed of 12th March, 1824, she expressly revoked her acceptance of the conventional provisions ; that that deed was not delivered mattered not, as Mrs Dixon had herself the material

interest in it, (Ersk. III. 2. 43;) 3d, By the deed of 28th February, 1826, she conveyed to the sons her whole legal or conventional claims, and bound herself to execute all revocations or other deeds necessary for making the conveyance effectual; 4th, On 28th February, 1826, she likewise executed an assignation of the Monkland Canal shares, under a declaration that it was done without prejudice to her legal rights against her husband's estate; 5th, On the 21st March, 1830, she gave a mandate for raising the present action of reduction; and, 6th, In the summons of reduction she expressly revoked her acceptance of her husband's provisions.

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II. The general conveyance in the deed of April, 1817, on the supposition that the widow would renounce her *jus relictæ*, vested that part of the executry applicable to it in the disponees of that deed. *Henderson v. Henderson*, Mor. 8,199; *Collier v. Collier*, 11 S. and D. 912; *Robertson v.* 16th January, 1813, not reported. On the death of the testator, the widow's *jus relictæ* vested in her *ipso jure*. Even assuming that the deed of 28th February, 1826, was an acceptance of her conventional provisions, this could only amount to a ratification, in favour of the disponees, of the conveyance in the deed of April, 1817, and could not confer any benefit upon a third party.

But, III. The deed of February, 1826, could not be held to be an acceptance of the conventional provisions. The deed itself did not either express or imply this by its terms, and what the widow obtained under it was different both in nature and value from the provisions made by her husband.

IV. The widow was not precluded by any thing that had been done by her previous to the deed of February,

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1826, from revoking her acceptance of her husband's provisions. 1. Even assuming that the monies acknowledged by her in that deed to have been received by her, arose from the rents of the Glassford Street houses, and the Monkland Canal shares, the conveyance of these properties by her husband was made without any condition as to its acceptance, such acceptance, therefore, could not have any effect upon her *jus relictæ*, Ersk. III. 9. 16. Besides, the amount of her legal claim was still matter of uncertainty, by reason of the litigation in the process of multiplepointing; any intermeddling, therefore, with the income of these properties could not operate in prejudice of her right to make the claim, *Johnston v. Paterson*, 4 S. and D. 234. But, 2. There is no evidence to shew that the payments to the widow arose from any particular source, or were made on any particular account; while the evidence does shew, that the rents of the shops, and the dividends upon the shares, were received by the appellant himself and his brother John.

V. If the conveyance of April, 1817, aided by the deed of 28th February, 1826, vested in the disponees of the former deed the dead's part and *jus relictæ*, any thing done subsequently to the latter deed cannot have any effect upon the right so vested, to operate against it in favour of the claim of the respondents. The infestment taken by the widow in the Glassford Street property, the documents founded on in regard to the release of John's liability, the entries in the appellant's books, and the defence to this action by John Dixon, are wholly irrelevant to the question at issue.

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LORD CHANCELLOR. — My Lords, Before I examine the grounds upon which the Court of Session have held,

that the pursuer cannot maintain this suit, I cannot but observe the situation of the parties litigant. The question being, Whether Mrs Janet Dixon, the widow, had by her acts precluded herself from claiming those rights and interests out of her late husband's property, to which she would otherwise have been entitled.—She institutes the suit jointly with her son William, which William is one of the general disponees of the husband of Janet, and his father, and claiming through John, the other general disponee, was entitled to the whole of the father's property, subject only to the claims of the younger children, and of the mother. And the object of the suit is to have it declared, that the mother is entitled to her legal claims against the estate, and to repudiate and set aside all acts and deeds by which she may have accepted the conventional provisions made for her by her husband, in lieu of such legal claims. But all those acts and deeds, so sought to be set aside, were between the widow and her sons, whose right is now vested in the pursuer, William; and both join in this suit. It is true, that the younger children are interested in the effect of those acts and deeds, as they may affect the amount of the legitim, and what such effect may be is in question in another proceeding. The question in the present suit is, Whether the widow can, after what has taken place, renounce her conventional provision; and the object is, if necessary, to set aside what has so taken place, in order to enable her to claim such legal right. To this suit the younger children are parties, and, so far as the question is, Whether, after what has taken place, the widow can renounce her conventional provisions, and claim her legal right, the form of the suit may be very proper, but so far as the object is to set aside these transactions, there appears to be a

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peculiar impropriety in the form of the suit. All the parties to a transaction join in praying that it may be set aside, because the result of it may benefit a third party; but such third party was a total stranger to the transactions sought to be set aside, and all the grounds upon which that relief is prayed, exist only as between the widow and the sons, the general disponees — but as between them no relief is asked, all the interests of both sons, and of the widow, being vested in the pursuer, William. How such transactions affect the rights of the younger children may be a fair question; but that such rights are to be investigated without reference to these transactions, or how, as against them, these transactions are to be set aside, appears to me very difficult to comprehend. Certainly, in this country no such proceeding could be allowed. But I proceed to consider what the facts are upon which this relief is prayed.

By the deed of 1809, the husband secured to his then wife L.150 per annum, and the house of New Palace Craig, and twenty-two acres for life, and the furniture, and three of his best cows, she consenting to renounce the legal provisions to which she might be entitled. By a deed of 11th April, 1817, he gave her L.1000, in addition to the former provisions, in full of all she could ask or claim in and through his decease. By a deed of 22d November, 1821, he secured to her two shops in Glasgow, and forty canal shares, but the gift was not expressed to be in lieu of her legal rights. The husband died in October, 1822. These provisions for the widow, being all under post-nuptial settlements, it may be assumed that upon her husband's death it was competent for her to repudiate them, and to claim her terce and jus relictæ. But some of these provisions were given upon express condition of her renouncing all such

rights, and it is clear that she could not approbate and reprobate such gifts, or, in the terms of the English law, she was bound to elect between them and the legal rights they were intended to supersede. What ought to be evidence of such approbation or election is a question of fact, and may be proved either by the general conduct of the party in her dealings with the property, or by express declaration.

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In considering the evidence upon these points, it is expedient to keep in mind, that very soon after the death of the husband, the daughter, Mrs Fisher, had intimated an intention of repudiating the provision intended for her by her father, and of claiming her legitim, which led to the suit of multiplepointing in 1823. The extent of this claim, which was earnestly resisted by the mother, might much depend upon whether the mother accepted or repudiated her *jus relictæ*; and to this may be attributed much of that which has been relied upon as evidence of her not having so repudiated it. But still the fact remains to be examined, Did she, or did she not, accept the provisions intended for her by her husband. If she had not intended to accept those provisions, her title to *terce* and *jus relictæ* accrued upon her husband's death in 1822. But there is no trace of any steps being taken to act upon, or enforce any such rights; but there is proof that, to a certain extent at least, she dealt with the subject of her husband's provisions, and such proof as there is of the dealings of the mother and her sons with the property, is referable only to her title under her husband's provision, and not to her title to *terce* and *jus relictæ*.

The deed of the 28th of February, 1826, admits that she had received from them L.1569, 16s. "to

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“ account of the sums provided for her as aforesaid.”
That deed, — though, for the purpose of defeating the
claims of the daughter, Mrs Fisher, ambiguous terms
were introduced into it,—was clearly a settlement between
the mother and the sons, upon the footing of the hus-
band’s provisions. It could not, indeed, be otherwise, it
being a fact admitted on both sides, that she was
offended at her daughter’s attempt to disturb the provi-
sions made by her husband.

That such was the principle upon which this settle-
ment proceeded, is apparent when it is considered, that
what she would claim under her provisions was, — 1st,
An annuity of L.150 ; 2d, The liferent of the house and
grounds of Palace Craig ; 3d, The furniture ; 4th,
L.1000 ; 5th, Two shops in Glasgow ; 6th, Forty canal
shares ; 7th, Three cows. And what she took under the
agreement of 1826, was,—1st, An annuity of L.200 ;
2d, The liferent of the house and garden at Govan
Hill ; 3d, The furniture, &c. ; 4th, L.5400, she giving
up to her sons the forty canal shares ; 5th, The two
shops in Glasgow ; 6th, The keep of three cows ; 7th,
The use of a carriage and horses.

It is impossible to refer this arrangement to her title
to terce and jus relictæ. It is an acceptance of, and
dealing with, the conventional provisions of her husband,
as between herself and her husband, and if so, there is
no ground for relieving her from her own act upon any
ground of ignorance or surprise. If she accepted these
provisions in lieu of her legal claims, as between herself
and her sons, it was not competent for her, as against
her daughter, to keep alive those claims ; but to the
attempt so to do must be attributed the mandate of the
3d of June, 1823, and the deed of revocation of the
12th of March, 1824, of which there is no proof of its

having ever been delivered or used ; and the whole conduct of the parties proves, that it was not intended that it should have any operation as between the mother and her sons.

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It appears to me for these reasons clear, that it is now too late for the widow to repudiate the settlement of her husband, and that the pursuer has no right to impeach the transaction which he seeks to set aside, and that the judgment of the Court below was right as pronounced in the three interlocutors of the 22d and 26th June, 1838, and 8th of February, 1839. I move your Lordships, therefore, that the interlocutors be affirmed with costs.

The House of Lords ordered and adjudged, That the petition and appeal be dismissed this House, and that the interlocutors therein complained of be affirmed, with costs.

Judgment.