

On the 1st August 1776, "The Lords repelled the reasons of reduction."

Act. H. Dundas. *Alt.* R. M'Queen. *Reporter*, Justice-Clerk.

Diss. Covington, Gardenston, Auchinleck, President.

Non liquet, Monboddo, who, on account of connexion with the family, voted not.

1776. *February 22*, and *August 2*. SOPHIA, LADY CRANSTON, *against* GEORGE LEWIS SCOTT and OTHERS.

HUSBAND AND WIFE.

Donatio inter virum et uxorem.

[*Faculty Collection*, VII. 289; *Dict.*, *App. I*, *Husband and Wife*, No. I.]

COVINGTON. The benefit of this donation does not go to Lord Cranston or his creditors, but to Lady Cranston's own children; and therefore it is not a revocable donation which she made.

KAIMES. By this transaction, the creditors of Lord Cranston are not much benefited; but his children are great gainers, and his wife loses nothing. Such a transaction cannot be called a *donatio inter virum et uxorem*.

GARDENSTON. This deed, holding it to be completed, cannot be revoked, for it is a contract with creditors.

On the 22d February 1776, "The Lords found the contract binding;" adhering to Lord Auchinleck's interlocutor.

Act. J. M'Laurin. *Alt.* R. M'Queen.

Reported by Mr David Ross of Ankerville, Lord Probationer.

August 6.—KAIMES. In mutual contracts, the consent of both parties is required, and till both consent, neither is bound: but it is not promise alone which binds parties; there may be an offer, as in this case, sufficient to constitute an obligation. "I will do *this*, if you will do *that*." I am bound, but not for ever." The offer must be accepted of *debito tempore*: as there were many creditors, matters could not be instantly adjusted. Lady Cranston put her deed on record, and the creditors have accepted so early that the lady can suffer no loss.

COVINGTON. I am sorry that my opinion does not coincide with what I consider to be a beneficial transaction for the family. My doubt lies here: I cannot hold this to be a conditional obligation. There was never any complete agreement. It was incumbent on the creditors to have qualified their claims in the ranking according to the proposed restriction. Instead of this, some of the creditors wavered, and were uncertain whether to consent or not. Lady

Cranston proceeded on a wrong supposition that the creditors had consented. This was a mistake, for the creditors lay by till Lord Cranston's death. Before that time the bargain was uncertain, but not afterwards.

MONBODDO. There was no donation here by Lady Cranston to her husband : it was an absolute bargain proceeding on an offer, only resolvable upon the creditors not agreeing. If this was a donation, it was a donation to third parties, and it cannot be recalled, although the husband should get a consequential benefit.

KENNET. The deed was put on record, and the creditors did not intimate their purpose to recede.

JUSTICE-CLERK and ALVA doubted, in consequence of Lord Covington's argument.

PRESIDENT. Here is a fair contract for the benefit of Lady Cranston's *first* husband, which she calls in question after having gotten a *second*. Nothing was done by Lady Cranston to undo the proposal : it was put on record. The creditors must have been allowed time to give a special consent. There was no harm done to Lady Cranston, and there is no reason that she should be suffered to resale.

On the 2d August 1776, "The Lords found that the deed of renunciation by Lady Cranston is binding upon her and her husband for his interest, and that she is bound to implement it ;" adhering to their interlocutor of 22d February 1776.

*Act. R. M'Queen. Alt. J. M'Laurin, D. Rae.
Reporter, Ankerville.*

1776. February 21 and August 7. JOHN PARISH and J. H. SCHREIBER *against* JACOB and JOHN KHONS, &c.

FOREIGN.

Creditors of a bankrupt acceded to a trust in favour of the whole creditors. The trustee found preferable to such acceding creditor using diligence even as to effects situate in a foreign country.

[*Faculty Collection, VII. 271 ; App. I., Foreign, No. 2.*]

KAIMES. The pursuers appeared, took their votes, and named trustees : does not *that* bind them down by their own consent ? Still they may assert that the translation is not right, or they may deny that they concurred ; but they do neither.

COVINGTON. The old question still remains, Whether the agreement in Germany can go further than the subjects in Germany ?

PRESIDENT. I do not say that it does ; but I bind the pursuers by their own consent, and I bar them *personali exceptione*.