

ing the bond in question, which must have been in his view at the time. NO. 3.

The Lord Ordinary reported the cause on Informations. The Court were much divided in opinion.

It was at all hands considered as a question of intention. Several Judges thought, that at granting the bond, it was the Earl's wish that it should be paid from the Annandale estate, without relief; and that upon the principles of the case 1747, Campbell against Campbell, No. 16. p. 5213; a change of view was not to be inferred from the entail afterwards executed.

But a majority of the Court thought the argument of the defender better founded.

The Lords sustained the defences.

Lord Ordinary, *Bannatyna.*

Alt. *Williamson et alii.*

Act. *Solicitor-General Blair et alii.*

Clerk, *Home.*

D. D.

*Fac. Coll. No. 148. p. 331.*

1800. May 16. JANET RENNIE against WILLIAM WALKER.

By marriage-contract between James Brown and Janet Rennie, certain provisions were made on the latter, which were accepted by her in satisfaction of all her claims, "her aliment to the next term after the decease of her husband, and mournings, being excepted."

At the death of Mr Brown, it appeared, that he executed a bond of provision in favour of his wife, for a larger annuity than that contained in the marriage-contract, which was declared to "include all that she can anywise ask or claim in and through my decease, any manner of way, excepting the heirship-moveables, household-furniture and plenishing, in terms of the contract of marriage."

There was also found in his repositories a trust-deed, dated a few days after the bond of provision, by which he disposed all his funds to trustees, who were appointed to pay his widow L. 100, and to deliver to her his chaise and horses, besides fulfilling all her claims under the marriage-contract and bond of provision.

Mrs Brown brought an action against William Walker, her husband's trustee, concluding, *inter alia*, for payment of mournings, and for aliment to the next term after her husband's death.

NO. 4.

The claim of a widow for aliment and mournings, found not to be barred by her acceptance of provisions made on her by her husband, by a deed which declared these provisions to be in full of all claims whatever she might have on her husband's effects.

NO. 4. In defence, Mr Walker contended, That the pursuer, by accepting the provisions contained in the bond, which were declared to be in full of all that she could ask through her husband's decease, was barred from demanding mournings and aliment; and that the L. 100 given her by the trust deed, was meant by her husband to be applied to these purposes.

Answered: The provisions made on the pursuer by deeds posterior to the marriage-contract, were intended to come only in the place of her jointure. Her husband did not intend to exclude her legal claims of mournings and aliment, which are expressly reserved in the marriage-contract.

The Lord Ordinary "sustained the defences against the claim for mournings and aliment."

But on advising a reclaiming petition, it was

Observed on the Bench: The widow's mournings are part of the funeral expence, and her aliment to the next term, a part of the expence of the family. Neither of them fall under the description of provisions made by a husband on his widow; nor will her claim to them be held to be cut off by any general clause in his settlements, such as that which occurs in the present instance.

The Lords altered the judgment of the Lord Ordinary, and decreed in favour of the pursuer.

Lord Ordinary, *Meadowbank.* Act. *Montgomery,* Alt. *Moodie.* Clerk, *Pringle.*

R. D.

*Fac. Coll. No. 176. p. 398.*