

add to the evidence, but he had ample opportunity of leading evidence before the Lord Ordinary gave his judgment, and never applied for leave until after that judgment. The evidence in the case is quite conclusive in favour of the pursuer. She kept this document, which declared the marriage, in her own possession, and even though she had not herself signed it, it might well be deemed a declaration made by both of the parties. That being so, the declaration was clearly evidence of a marriage *de presenti*, and the judgment of the Court below is right.

LORD CAIRNS concurred.

LORD CHANCELLOR—With regard to the costs, the House will not draw up the order at once, so as to allow of any application by the appellant, but probably the effect of the judgment of the House will be to make the husband liable for the wife's costs in any event.

Judgment affirmed.

Friday, July 12

CHAPMAN v. COUSTON, THOMSON, & CO.

(*Vide ante*, vol. viii, p. 415.)

*Sale—Sample—Timeous Rejection.*

Circumstances in which it was held that timeous rejection as not conform to sample of goods sold had not been made. Judgment of Court of Session affirmed.

The circumstances of this case and the decision of the Court below will be found reported *ante*, vol. viii, p. 415 *et seq.*

Against the judgment holding them liable for want of timeous rejection of the wines, the defenders appealed. The discussion was limited to two particular lots of the wine sold, and to the question of timeous rejection.

Mr MANISTY, Q.C., and Mr J. C. SMITH, for the appellants.

LORD ADVOCATE and SOLICITOR-GENERAL for the respondent, were not called on.

At delivering judgment—

LORD CHANCELLOR—(After minutely reviewing the facts of the case and the correspondence which had taken place between the parties)—There can be no doubt that the Court below have come to a proper decision in this matter. The question related to two lots of wine bought by the defenders at a sale in Edinburgh, which were not conform to sample, there being four or five other lots bought as to which no question of quality has arisen. Both parties acted *bona fide*, but there appears to have been some unfortunate misapprehension between them as to the law applicable to the case. The law of Scotland is this:—It is not competent for a person receiving articles he has purchased, not conform to description of the sample, to retain the goods, and at the same time to raise any question about the payment of the price. There is only one of two courses open to him—either that of retaining them and paying the price, subject to any right or claim he may have as to any difference between the price and the actual value; or of notifying immediately, or within reasonable time, to the person from whom he purchased the articles that he rejects them, and that the contract is at an

end between him and the vendor, and that the articles, if not removed, will be held at the risk of the vendor. Having regard to the nature of the article, I am disposed to think that timeous objection was made to the quality of the lots in question, but, on the other hand, I have failed to discover in the negotiations and correspondence which have taken place that any distinct intimation was given by the purchasers that the goods were rejected, and that they were held at the vendor's risk. The goods objected to were retained, not returned, and the price was refused. No distinct offer was made to return the goods even on the 15th June, the day after the action was commenced, and it was then too late. The defenders had no *locus penitentiae*. The interlocutor complained of must therefore be affirmed, and the appeal dismissed, with costs.

LORDS CHELMSFORD, COLONSAY, and CAIRNS concurred.

Agents for Pursuer—Millar, Allardice, & Robson, W.S.

Agents for Defenders—Leburn, Henderson, & Wilson, S.S.C.

SMITH CUNINGHAME v. ANSTRUTHER'S TRUSTEES.

MERCER v. ANSTRUTHER'S TRUSTEES.

(*Ante*, p. 431.)

The following judgments were pronounced:—

"9th August 1872.—After hearing Counsel, as well on Tuesday the 12th as Thursday the 14th, Friday the 15th, and Monday the 18th days of March last, upon the original petition and appeal of Mrs Maria Anstruther or Smith Cuninghame, spouse of William Cathcart Smith Cuninghame of Caprington, with consent of the said William Cathcart Smith Cuninghame, as administrator-in-law for his said wife, and for his own right and interest, complaining of an interlocutor of the Lords of Session in Scotland, of the First Division, of the 18th (signed 20th) of March 1869, in so far as the same finds that under the contract of marriage, dated 24th and 26th March 1828, the fee of the sum of £4000 was vested in James Anstruther, and that under the said contract of marriage the fee of the means and estate therein mentioned as provided by Mrs Marian Anstruther was vested in her, and in so far as the same does not find that under the said contract of marriage the children of the marriage became respectively absolutely entitled to a share of the provision of £4000 by Mr Anstruther, and to a share of the provision therein contained of the whole means and estate of Mrs Anstruther, subject only to a power of apportionment among them by Mr and Mrs Anstruther, or the survivor of them; and also of an interlocutor of the said Lords of Session there, of the First Division, and three Judges of the Second Division, of the 11th (signed 14th) of July 1870, and praying their Lordships to reverse, vary, or alter the said interlocutors to the extent complained of, or to give the petitioners such relief in the premises as to this House, in their Lordships' great wisdom, should seem meet; as also upon the joint and several answer of Mrs Anabella Agnes Anderson or Anstruther, widow of the deceased James Anstruther, Writer to the Signet, sometime residing at Treesbank, in