

* * * Forbes reports the same case :

No 54.

POSSILS having, before his marriage with Barbara Fullerton Lady Freugh, written and subscribed a renunciation of her jointure, containing an obligation to renew the same in favour of her assignees, when and how oft he should be required ; and she having, many years after the marriage, assigned her jointure to Patrick M'Dowall of Freugh, and William his brother, her children of the first marriage, Possils pursued an action of mails and duties against the assignees and other intromitters with the rents of the jointure lands, who founded on the renunciation to exclude him *ab agendo*.

Alleged for the pursuer ; No respect can be had to the renunciation ; because, 1st, It is null, for that it bears not the place where it was written. 2^{dly}, The Lady had tacitly part from the benefit thereof, not having disposed of her jointure before the marriage ; and she could not do it afterwards, in respect the marriage was a legal assignation to the pursuer of all that belonged to his wife, or stood in her person at the time they entered into the state of matrimony ; and the right renounced recurred to him *jure mariti*.

Answered for the defender ; As it cannot be controverted, but had the renunciation been transmitted by the wife to a third party before the marriage, the conveyance would have been effectual, January 15. 1669, Hamilton *contra* Bain, Div. 10. Sect. 2. *b. t.* ; so, in the present case, the husband having obliged himself to renew the renunciation in favours of his wife's assignees, there seems to be a *jus quæsitum* to them whenever she assigned.

Replied for the pursuer ; The clause in the renunciation, obliging the husband to renew the same in favours of the wife's assignees, must be understood *positis terminis habilibus*, in the terms of law, she exercising the faculty of assigning *debito tempore* before her marriage, which was a legal assignation in favours of the husband, of all she had not otherwise disposed of ; so that the defenders in this process are to be considered only as second or posterior assignees, competing with the husband's first legal assignation intimated by the marriage.

THE LORDS did not regard the objection against the renunciation, that it mentioned not the place where it was granted, seeing it was written and subscribed by the husband himself ; but found, that the renunciation of the liferent recurred to the husband *jure mariti* after the marriage. See WRIT.

Forbes, p. 346.

1730. June 23. WALKER against The CREDITORS of her Husband.

No 55.

FOUND, that a husband, in his contract of marriage, may renounce his *jus mariti*, and that the reservation, though not exercised by the wife in favour of any third party, does not fall *sub communione*. See APPENDIX.

Fol. Dic. v. I. p. 389.