

No 49.

was settled *sub destinatione* to the heirs of the marriage, could not fail to have that import and construction; and they therefore ‘found, That the petitioner ‘claiming on her *jus relictæ* was excluded from any share of her husband’s con- ‘quest or other moveable estate standing specially provided by the contract of ‘marriage, but not from her share of any other moveable estate belonging to ‘her husband which did not fall under said provisions.’

Lord Ordinary, *Monboddo*.
Clerk, *Tait*.

For Tod, *Lockhart*.
For Wemyss, *Macqueen*.

R. H.

*Fac. Col. No 59. p. 174.*1776. *January 19.*HELEN MILLER *against* HENRIETTA BROWN.

No 50.

Jus relictæ cut off by a renunciation executed by the wife upon a voluntary separation of the husband and wife.

IN the year 1762, some family differences having arisen between the pursuer and her deceased husband, William Scot Taylor in Canongate, they agreed to a voluntary separation, and upon this occasion mutual deeds were executed. The pursuer renounced all right to any of the goods, gear, or other effects belonging to her husband, or to any aliment, or other provision of the law, competent to her as his wife, in the same manner as if they had never been married, and renounced any right thereto, so as that he may freely dispose on his effects, whether heritable or moveable, without her consent. He, at the same time, renounced his right to his wife’s effects *jure mariti*, and gave her full power over them.

In May 1774, Helen Miller being informed that her husband was at the point of death, and that he had either executed, or was going to execute, a testament in favour of Henrietta Brown, she caused execute a revocation, by which she revoked the discharge granted to her husband, above recited; and having afterward sued Brown for her share of the moveables belonging to her husband, at the time of his death, the latter founded her defence upon the testament executed by the defunct in her favour, and on the foresaid discharge executed by the pursuer at the time of the separation.

Observed on the Bench; Although the word *jus relictæ* is not mentioned, yet the words of the deed are sufficiently broad to comprehend it equally as if it had been expressed; and the husband renounced his *jus mariti*, which was a *quid pro quo*. It was plainly dissolving the communion; and it is from the communion the *jus relictæ* and the legitime arise.

“THE LORDS find, That the pursuer, by the agreement in process, did renounce her *jus relictæ*.”

Aet. Geo. Clerk.

Alt. Arnot.

Clerk, Gibson.

Fol. Dic. v. 3. p. 303. Fac. Col. No 215. p. 164.