

1776. January 19. HELEN MILLER *against* HENRIETTA BROWN.

IMPLIED DISCHARGE AND RENUNCIATION.

*Jus relictae* cut off by a Renunciation executed by the wife, upon a voluntary separation of the husband and wife.

[*Fac. Coll. VII. 164 ; Dict. 6456.*]

KAIMES. In the form of the words, nothing was renounced but what the woman had right to as a wife : but that is not the meaning of the deed.

PRESIDENT. Here was a total separation *bona gratia*. The woman could not, in consistency with good faith, renounce this and betake herself to her legal provisions.

On the 19th January 1776, "The Lords assoilyied the defender ;" adhering to Lord Kennet's interlocutor.

*Act.* G. Clerk. *Alt.* Hugo Arnot.

*Non liquet*, Gardenston, Hailes, [who was moved by former decisions.] This case was very favourable in its circumstances, for the woman did not revoke till her husband was actually *in extremis*.

1776. January 20. JAMES CARSTAIRS, Merchant in St Andrew's ; CATHERINE GRAHAM his Spouse ; JANET and THOMAS CARSTAIRS, and OTHERS, their Children ; HENRY RHYMER, Borrowstounness, and HENRY and OTHERS, his Children ; DAVID NEVAY, late Merchant in Edinburgh ; the Reverend WILLIAM FALCONER, and the Reverend DAVID LINDSAY.

JURISDICTION—TRUST.

Certain trustees, after having accepted of a trust, applied to the Court to be relieved of it, and prayed for the appointment of a *factor toto tutoris*. The Lords refused to interfere.

THE petitioners applied to the Court, stating that Mrs Elizabeth Carstairs having, by a disposition dated 15th June 1768, conveyed to the petitioners, Mr Nevay, Mr Falconer, and Mr Lindsay, as trustees, certain sums of money for behoof of the other petitioners, the said trustees accepted of the trust, and had ever since continued to act. That the chief burden of the management had fallen upon Mr Nevay, the other two trustees being clergymen, and unacquainted with business. That Mr Nevay having retired from trade, in consequence of age and infirmity, the trust was in danger of being evacuated ; and therefore praying the Court to appoint certain persons suggested in the petition, to take up and execute the trust, in room of the said trustees, or otherwise to appoint one or more of them factors *loco tutoris*. In support of the application, the petitioners referred to the case of *Lord Monzie* and others,