

1777. July 30. GEORGE WILSON *against* DAME MARY WIGHTMAN and SIR JAMES FOULIS, her Husband.

MUTUAL CONTRACT.—HUSBAND AND WIFE.

The provisions to a wife, in a contract of marriage, are presumed to be made in consideration of the marriage, not of the tocher, unless the words of the contract expressly bear so. Where the wife's funds are computed at a certain sum in her contract of marriage, acquiesced in by the husband during the subsistence of the marriage,—the presumption of law is, that they did actually amount to that sum, and the husband, or his representatives, after her death, will be obliged to account to her executors accordingly.

[*Fac. Coll. VII ; Dict. App. No. I, Mutual Contract, No. 2.*]

COVINGTON. If the obligation had been on the wife to pay a certain sum of money, the case might have been different ; but here there was only a computation of funds, and there was no complaint made during the life of the husband.

BRAXFIELD. I should have had great doubt if Wilson the husband had complained : it is not clear what the wife was really worth.

GARDENSTON. The best use of this process will be, a warning to writers not to throw in unusual clauses. Here was merely a conjectural amount, but no obligation.

PRESIDENT. Although the funds belonging to the wife had been declared to be L.700, and had turned out to be less, I do not think that the Court has any concern to settle placks and baubees between husband and wife, after marriage has been solemnized.

On the 30th July 1777, "The Lords repelled the defence against payment;" adhering to Lord Monboddo's interlocutor.

For Lady Foulis, pursuer, T. M'Laurin. *Alt.* Ilay Campbell.

1777. July 30. WILLIAM RITCHIE *against* JAMES BURNET.

BILL OF EXCHANGE.

Effects of an obligation to account for bills indorsed.

[*Fac. Coll. VIII, 23 ; Dict. 1519.*]

GARDENSTON. When a bill is indorsed to an onerous indorsee, no exception lies except what appears from the bill itself. Here, to the extent of L.1500, the indorsations are onerous, and it is averred that the sums made effectual do not amount to L.1500.