

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.

COVINGTON. The indorsations were onerous, to the extent of L.1500, for the behoof of Ritchie and the others who advanced the money.

PRESIDENT. This done in the fair way of commerce: the indorsee is at liberty to take his payment from the best debtors.

BRAXFIELD. If there had been a separate clear obligation for the L.1500 which could have been put in suit, I think that the indorsation would not have been good.

On the 30th July 1777, "The Lords found that the bills were indorsed for value in commerce, and therefore preferred Ritchie;" altering Lord Anker-ville's interlocutor.

*Act.* A. Elphinston. *Alt.* A. Rolland.

[I still suspect fraud in this case, and that Ritchie knew that the bill belonged to Yeats, not Gray.]

1777. July 31. PARISH of GUTHRIE *against* PARISH of ABERBROTHOCK.

POOR.

A Bastard Child being sent to nurse out of the parish in which the parents resided, to another parish, the former was found liable for its maintenance.

[*Supplement, V. 539.*]

HAILES. The mother has her residence in the parish of Aberbrothock, and so must the child. If every bastard child was to have a residence in the parish where it is nursed, the parishes in the neighbourhood of great cities would be grievously oppressed. It is still more extraordinary to plead that a person who undertakes the maintenance of an infant for three months, is bound to maintain it till it can provide for itself.

PRESIDENT. A three months' residence of an infant can never have any effect in law.

On the 31st July 1777, "The Lords remitted, with this instruction, to find the parish of Aberbrothock liable, reserving recourse against all concerned;" altering Lord Alva's interlocutor.

On the 9th August 1777, "They adhered."

*Act.* T. Ramsay. *Alt.* G. Buchan Hepburn.