

1777. July 30. Dame MARY WIGHTMAN, and Others, *against* WILSON.

No 52.

WILSON, in his contract of marriage, settled on his wife a jointure of L. 100, and the disposal of L. 500, to be distributed by her among her children, and failing them among her relations, as she should think fit. On the other hand, she conveyed to her husband, in the contract, her whole effects, which are computed to be worth at least L. 700 Sterling. The marriage dissolved, by the death of the wife, without issue; but she had exercised the faculty in the contract, and disposed of L. 500 to her uncle and his heirs, who sued the husband for the same. *Urged* in defence, That the pursuers were barred *exceptio- ne doli*; for the faculty had been granted on the faith of the wife's property amounting at least to L. 700, and it was denied that it had amounted to L. 200. *Answered*, The obligations were not co-relative, and that the faculty was valid though the husband had not received a farthing.—THE LORDS found, *imo*, That 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; and, *2do*, That the wife's whole estate being conveyed to her husband, and computed to amount to L. 700, the presumption in law is, that it did amount to that sum; and, as the husband acquiesced in that valuation during eight years that the marriage subsisted, that presumption cannot now be taken away, at the distance of eighteen years, by any proof or contrary presumption; and therefore they found the defender liable. See APPENDIX.

*Fol. Dic. v. 4. p. 17.*

1787. March 6.

ELIZABETH BUCHANAN, and JAMES HAMILTON her Trustee, *against* ARCHIBALD SPEIRS, and PETER BOGLE.

By a settlement executed by the father of Elizabeth Buchanan, a considerable sum of money was conveyed to a trustee, to be liferented by his widow, and to be divided, at her death, among such of the children as were then alive.

Elizabeth Buchanan, in her marriage-articles, assigned to her husband, by way of tocher, 'all her title and interest under her father's settlement;' while he, on the other hand, became bound 'to lay out the tocher, and so much more as would amount to L. 4000, in favour of the children of the marriage, and likewise for securing to Elizabeth Buchanan, in case of her surviving him, an annuity of L. 160.'

Afterwards a part of the liferented funds was lent out to the husband of Elizabeth Buchanan, Archibald Speirs, and Robert Bogle, on their granting a bond payable to the trustee. This money was wholly applied to the husband's

No 53.

A husband having become bound in his marriage-contract to employ a certain eventual provision, assigned to him by his wife, in security of her jointure, she was found entitled, while the sums so assigned were yet *in medio*,