No 13. was found to meet the assignee, as it would have met the cedent's self; and seeing the bond made by the buyer to the seller, which was assigned, bore to be granted for the price of the land, it was found, That the buyer could not be compelled to pay the same, before that the assignee should obtain the cedent's ratification of the alienation, done by the cedent after his majority, conform to the back-bond, or else until the time he was past the age of 25 years, and so after the years of his restitution; and which was so found, albeit the back-bond bore no clause, that the buyer should not pay the price till that were done, but only astricted the seller to pay a greater failure to the buyer, if he ratified not, which was not respected, as said is; but in the mean time, during the retention of the money, the buyer was obliged to pay profit to the assignee yearly, while the sum were paid by him.

Act. *Lawtie.* Alt. *Nicolson* et *Neilson.* Clerk, *Hay.*

Fol. Dic. v. 1. *p.* 595. *Durie, p.* 396.

No 14. 1663. *February* 12. Relict of George Morison *against* His Heirs.

This relict pursues for implement of her contract.—It was *alleged* she had accepted a wadset, in full satisfaction thereof, which now being redeemed, she could crave no more, but re-employing the money to her in liferent.

The Lords found, That this acceptance by the wife, being *donatio inter virum et uxorem*, she might now revoke it, and therefore found the heir liable to make up what was in the contract.

Stair, v. 1. *p.* 177.

1663. *February* 13.

No 15. Acceptance of full satisfaction imports an obligation to denude of what is over.

Elizabeth Fleming and Sir John Gibson *against* Fleming and Robert Baird.

By contract of marriage betwixt the said Robert Baird and his spouse, he accepted 12,000 merks in name of tocher, in satisfaction of all his wife could succeed to by her father, mother, sister, and brothers, and discharged his mother as executrix and tutrix thereof; yet she having formerly put more bonds in the name of Robert's wife than this sum, and there being no assignation to the remainder in the contract, pursues the said Robert and his spouse, to grant an assignation thereof, and to pay what he had uplifted of the sums more than his tocher.—The defender *alleged* the summons is not relevant, he neither obliged *ex lege* nor *ex pacto* to assign.—The pursuer *answered*, This being *bonæ fidei contractus*, the meaning and interest of parties is most to be respected; and therefore, though it contains but expressly a discharge, which cannot be effectu-

al to lift the sums from the creditors, but would lose them to both parties, he must assign; especially, seeing his acceptance of full satisfaction imports an obligement to denude himself of the superplus; and which the LORDS found relevant, and sustained the summons. No 15.

Stair, *v.* 1. *p.* 179.

*** Follows the sequel of the above.

1664. *November* 16.

DAME ELIZABETH FLEMING, *against* FLEMING and BAIRD her Husband.

No 16.
One party being required to assign, the other party found obliged to warrant, that what the first was to receive should be free of incumbrance.

IN a count and reckoning betwixt Dame Elizabeth Fleming and her daughter, and Robert Baird her spouse, the LORDS having considered the contract of marriage, in which Robert Baird accepted 12,000 merks, in full satisfaction of all his wife could claim by her father's decease, or otherwise; and there being some other bonds in her name, her mother craved that she might be decerned by the Lords to denude herself, and assign to her mother, seeing she was satisfied; and she on the other part craved, that her mother and Sir John Gibson might be obliged to warrant her, that her 12,000 merks should be free of any debt of her father's.—It was *answered* for the mother, That there was no such provision contained in the contract, and the Lords, in justice, could not cause her to go beyond the terms of the contract; there was no reason for such a warrandice, seeing debts might arise to exhaust the hail inventory.—It was *answered* for the daughter, That there was no obligement in the contract for her to assign her mother; but if the Lords did supply that as a consequent upon the tenor of the contract, they ought also to supply the other.—It was *answered* for the mother, That there was no reason for her to undertake the hazard, unless it would appear that there was so considerable a diminution of her daughter's portion in her favours, as might import her taking of that hazard for that abatement; and albeit such a warrandice were granted, yet it should only be to warrant the daughter from the father's debt, in so far as might be extended to the superplus of the daughter's full portion above the 12,000 merks.

THE LORDS found, That if there was an abatement in favour of the mother, it behoved to import that she undertook the hazard of the father's debt, not only as to the superplus, but simply; but seeing it was known to the Lords, they gave the mother her choice, either to account to the daughter for the portion, if she thought there was no benefit without any such warrandice; or, if she took herself to the contract, and so acknowledged there was a benefit, they found her liable to warrant her daughter *simpliciter*.

Stair, *v.* 1. *p.* 225.