

No 348.

total deed of settlement was not delivered, but remained latent in the granter's repositories at the time of the children executing the discharge and renunciation, no *jus crediti* could thereon accrue to them till their father's death, and consequently it could not fall under their discharge, which comprehended only provisions actually due to them; they therefore repelled the claim of the youngest child.

Fol. Dic. v. 4. p. 132. Fac. Col.

** This case is No 24. p. 8187. *voce* LEGITIM.

1791. July 5.

CAMPBELL *against* SIMPSON.

No 349.

SIMPSON, debtor in L. 109 : 10s. to Campbell, for the price of cattle, *alleged*, in defence against an action for payment, That Campbell had accepted of a composition, which the debtor had offered to all his creditors, on condition of their giving him a discharge in full. Campbell admitted, that he was present at a meeting of the creditors, when Simpson laid before them a state of his circumstances, and offered them 7s. in the pound, on condition of their giving him a discharge; and he owned, that Simpson having laid down L. 38 : 8s. being the composition of his debt at that rate, he had taken the money, and never returned it. But he *alleged*, That the meeting was irregular; that he never had accepted of the proposal made by the debtor, to which the rest had agreed while he was out of the room; and that he had taken the money only as a partial payment, and had desired two persons present to bear witness that he took it only as such. THE LORDS were of opinion, That the pursuer having taken the money, while he understood the condition on which it was laid down, was sufficient to bind him to the transaction; and therefore found he was debarred from insisting for payment of the balance of his debt. See APPENDIX.

Fol. Dic. v. 4. p. 131.

Tocher stipulated by a third party, when presumed paid. See HUSBAND and WIFE.

Wife accepting a right to a part of her legal provisions, understood to pass from the remainder. See IMPLIED DISCHARGE.

Condition, *si sine liberis*, if presumed when not expressed. See IMPLIED CONDITION.

See IMPLIED ASSIGNATION.—IMPLIED CONDITION.—IMPLIED DISCHARGE.

See APPENDIX.