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Case No. 2,319.

CALLAN v. KENNEDY.

[3 Cranch, C. C. 630.]²

Circuit Court, District of Columbia.

May Term, 1829.

PROMISE OF HUSBAND TO PAY WIFE'S DEBT—VALIDITY AFTER WIFE'S DEATH'.

An action cannot be maintained against the husband for the debt of the wife, after her death, upon an express promise made by the-husband, in the lifetime of the wife, upon no other consideration than his liability as husband for the debt of the wife, and the property which he acquired in right of the marriage.

A verdict was taken for the plaintiff for \$300, subject to the opinion of the court upon a case which stated, that Margaret Delany, being indebted to the plaintiff as administrator of Thomas Delany in the sum of \$300, intermarried with the defendants who, in right of the marriage, received more than sufficient property to pay the debt, which property remained in his possession; after the death of his wife. During the coverture he expressly promised to pay the debt; but made no new promise after her death. This suit was brought after her death.

CRANCH, Chief Judge. The question arising upon this state of the case seems to be, whether an action can be maintained against the husband for the debt of the wife, after her death, upon an express promise made by the husband in the lifetime of his wife, upon no other consideration than his liability,

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as husband, for the debt of his wife, and the property acquired by him in right of the marriage.

It was decided in *Mitchinson v. Hewson*, 7 Term R. 348, and in the case of *Rann v. Hughes*, there cited, that the promise can only be coextensive with the consideration. During the coverture, the husband was bound to pay, whether he received property with his wife, or not; and his promise made during the coverture, did not increase his obligation, or create a new contract, unless it were made upon a new consideration, other than his previous obligation as husband, and his acquisition of the property of his wife, in right of the marriage. See *Heard v. Stamford*, 3 P. Wms. 411.

The court is, therefore, of opinion that the plaintiff cannot recover in this action, and that judgment of nonsuit must be entered.

² [Reported by Hon. William Cranch, Chief Judge.]

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