

Case No. 17,282.

WATSON v. DUNLAP.

{2 Cranch, C. C. 14.}¹

Circuit Court, District of Columbia.

Nov. Term, 1810.

PROMISE OF FEME COVERT—CONSIDERATION—PLEADING AND PROOF.

1. The promise of a feme covert is void, and her subsequent promise when sole, without a new consideration, is also void.
2. A promise in writing without consideration is void; but the burden of want of consideration is on the defendant.
3. The plaintiff cannot give evidence of a consideration different from that alleged in the declaration.
Assumpsit, to pay for money advanced by the plaintiff to the defendant's son by her first husband.

J. D. Simms, for defendant {Eliza Dunlap}, prayed the court to instruct the jury that the first assumpsit being made while under coverture was void (1 Strange, 94), and that the subsequent assumpsit while sole, was void for want of consideration.

Mr. Youngs, for plaintiff, contended that the promise being in writing, it was not necessary that there should be a consideration. 3 Call, 114. The court cannot alter the words of a statute, if they are positive; if not ambiguous, there is no room for construction. The statute of frauds only requires the promise to be in writing, not the whole agreement. *Violett v. Patton*, 5 Cranch [9 U. S.] 142.

THE COURT was of opinion, 1st, that there must be a consideration, although the promise be in writing. *Rann v. Hughes*, 7 Term R. 350; *Wain v. Warlters*, 5 East, 11. But the burden of proof is on the defendant to show the nature of the consideration, or that there was none. 2d, that the advance of money to her son while she was covert, did not create such a moral obligation upon the defendant as is a sufficient consideration to support her actual assumpsit in writing.

THE COURT also refused to permit evidence of a consideration different from that assigned in the declaration. Non pros.

¹ [Reported by Hon. William Cranch, Chief Judge.]