

3767. For the Plaintiffs it was answered, that in 2 *Peere Williams* 75, and many other cases, it was settled, that all Acts of Parliament made before the Settlement of the Colony extend, unless local in their Nature; that under this rule the Statute of Wills, Statute of Uses, and many other Statutes, were always held to extend; and that the reason of this Act extended as well as any other. That as to this Case not being within the Act, the presumption spoken of was not justified by the Act itself, which extended to every Case—
2d. Though the Witnesses swear only to forty-four Years possession, yet after such a length of time it should be presumed the possession had been from the Date of the Deed to *Chambers*, which was in 1685.—
3d. The Rights of *Femes Covert* are not saved in this Act (except such *Femes Covert* as were in being at the time of making the Act) and Possession was out of *Tucker's* Wife from the time of her Husband's Deed to *Chambers*.—As to the last Point it was said, that it was picked up at the Bar, and not objected to at the Time of tendering the Deed; that it did not strictly go to the title, but was only a claim of two old Women for their Lives, which the Jury might take notice of, if they pleased, by lessening the Damages.

THE COURT were unanimous and clear in their Opinion, that the Act of 32 H. 8 did extend to this Province, and gave it in charge to the Jury accordingly. *

The Verdict of the Jury was conformable to this opinion, by their finding for the Plaintiffs, having made an allowance for the Lives of the two Women in the Damages.

April Term, 1768.

WILLIAM ALLEN, Chief Justice.
JOHN LAWRENCE,
THOMAS WILLING, } Justices

RICHE and RICHARDS *versus* BROADFIELD.

AN Account of Sales of an Adventure shipt to *New-York*, said to be signed by the Factor, offered in evidence to prove a loss on the Goods. Objected, that the Factor himself ought to have been brought to give evidence, *viva voce*, or at least the account should have been proved by him, and certified under the City Seal of *New-York*, agreeably, to the directions of the act of parliament with regard to the proving Colony debts in *England*.—Answered, That this being a Mercantile Transaction, such Evidence as Merchants usually admit as proofs of a foreign Transaction, should be received here.

* See S. F. *Morris's versus Vandercor's* Esq.

BY THE COURT.—The strict Rules of Law with regard to Evidence ought not to be extended to Mercantile Transactions. In this Case, on proving the hand Writing of the Factor, let the Account of Sales be given in Evidence; which was accordingly done.

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JOHN SWIFT *versus* HAWKINS and others.

DEBT for Obligation.—On the plea of payment Defendants offered to give no Consideration in Evidence. Objected, that the Consideration of a Bond is not enquirable into, the passing the Bond being a gift in Law of the money.—To this it was answered, and so ruled BY THE COURT, that there being no Court of Chancery in this Province; there is a necessity, in order to prevent a failure of Justice, to let the Defendants in under the plea of payment to prove mistake or want of consideration: And this the Chief Justice said he had known to be the constant practice of the Courts of Justice in this Province for thirty nine Years past.

For the Plaintiff, the following cases were cited: *Plowd.* 308. b. *Gill, Rep.* 154. *Hard.* 200. 3 *P. Will.* 222.

The Lessee of LLOYD *versus* TAYLOR.

EJECTMENT for Ground in the City of Philadelphia. *Mercy Masters* being seized in fee married *Peter Lloyd*. *Peter Lloyd* and *Mercy* his Wife convey to *Ralph Asheton* in 1727. *Ralph Asheton* reconveys to *Peter Lloyd* the Land in question. Afterwards, in 1738, on a Judgment against *Peter Lloyd*, the Land in question was taken in Execution and sold by the Sheriff to the Defendant for £ 1300.—Plaintiff claims as Heir at Law to *Mercy Lloyd*, insisting that his Mother being a *Feme Covert* could not legally convey her estate without an examination by Writ. And though in the case of *Davey versus Turner* tried in this Court September 1764, * it was ruled that an acknowledgement of the Deed on a private examination before a Justice of peace, was sufficient under a long Usage to sanctify her Deed, though not strictly agreeable to Law; yet here there was not even that acknowledgment, or private examination.

But it appearing in Evidence, that it had been the constant Usage of the Province formerly for *Femes Covert* to convey their Estates in this manner, without an acknowledgment or separate examination; And that there were a great number of valuable Estates held under such Titles; which it would be dangerous to impeach at this time of day, THE COURT gave a Charge to the Jury in favour of the Defendants, founded on the Maxim *Communis Error facit Jus*. And the Jury accordingly found for the Defendant.

* See Ant. p. 11.