

But it is urged in this case, that though George Williams, the husband, could not himself be examined as a witness, because his wife is pecuniarily interested, yet his books and papers may be inspected, and their contents if they contain evidence adverse to her, may be used against her. The argument is, that George Williams, under the circumstances of this case, must be regarded as the agent of his wife, and that any declarations or statements made by him, oral or in writing, in relation to the transaction referred to, must be considered as made by her, and may be used in evidence against her, as her own declarations or statements might be.

I have been furnished with no authority, nor have I been able to find any case, in which the husband has been treated as the agent of his wife, though cases may readily be found, in which the wife has acted as the agent of the husband, and her representations as such have been received in evidence against him. 1 *Philips' Ev.*, 71. 2 *Starkie Ev.*, 403. 2 *Kent Com.*, 179.

And there are a class of cases in which, without proving any express authority on the part of the wife to act for the husband, her declarations have been admitted as evidence against him. Such, for example, as the case reported in 1 *Strange*, 527, where in an action brought for nursing the defendant's child, the Chief Justice admitted evidence on the part of the plaintiff, that the defendant's wife had represented the agreement to be for so much per week, because, as he remarked, such matters are usually entrusted to the woman.

My impression is, that no case can be found, in which the husband has been so far regarded as the agent of the wife, as that his declarations can be received in evidence against her.

But assuming the contrary to be true, I should still think, the entries in the books and papers called for, would not be admissible to affect the interests of the wife.

The rule which admits as evidence the declarations or representations of an agent, is, like most other rules, subject to limitations and restrictions. Such declarations or representations must be made in the course of and accompanying the transaction which is the subject of inquiry. When thus made by an agent, acting within the scope of his authority, they are