

This same case being brought in upon 17th January 1627, before the Lords, to be disputed betwixt the same parties, and they heard upon this same reason *de novo*; the LORDS over again found, as it is here set down.

No 46.

Act. *Lawrie.*

Alt. ———.

Clerk, *Gibson.**Fol. Dic. v. 1. p. 310. Durie, p. 82.*

1637. June 28.

GALBRAITH *against* LENOX.

No 47.

IN a case similar to the above, where the tocher was arrested by the husband's creditors, the LORDS decerned in the furthcoming, upon the creditor's finding caution to make the liferent effectual to the wife, and the fee to the children of marriage; but avoided determining if the fee of the subject could be evicted by the husband's creditors, in prejudice of the heirs of the marriage; for the arrester's debt being small, it might possibly be paid by the annualrents of the sum arrested before the husband's decease; in which event there would be no occasion for the question.

Fol. Dic. v. 1. p. 310. Durie.

* * * See This case, No 37. p. 700.

1692. November 22.

SIR JOHN HALL of Dunglass, *against* ELIZABETH LORIMER, Relict of JOHN SANDILANDS.

SHE contended the sum craved to be made furthcoming by Sir John, as a creditor to her husband, behoved *primo loco* to stand affected for her liferent-use, as a part of her jointure of 1200 merks yearly, to which she was provided; because, by her contract of marriage, her husband was obliged to lay 10,000 merks of his own money to the 10,000 merks he received with her in tocher, making up 20,000 merks, and to secure it to her in liferent; and by the destination she had right to it.—*Answered*, That the husband's obligation to employ the tocher for her liferent use was but personal, and, notwithstanding thereof, he might have assigned it to whom he pleased; and that her assignation of the tocher to him was simple and absolute, and nowise clogged with the burden of her liferent, which only would have made it a correlative obligation; whereas here the assigning the tocher was not in contemplation of the jointure, but of the marriage.—*Replied*, That the obligations were all *in eodem corpore et contextu* of the writ; and though it might hinder commerce, to make it hypothecated during the husband's life, who might freely uplift and trade with it, yet the marriage being now dissolved by his death, so that it can answer no end of trading, and being yet extant unuplifted, she ought to be preferred.—

No 48.

The obligation on a husband to employ the tocher for the wife's liferent use, was not mentioned in that part of the contract of marriage, by which the tocher was assigned to him, but was only personal. His creditors, who had attached the subject, were found preferable.