

S E C T. III.

Contracts of Marriage.

1637. *January 28.* GALBRAITH *against* LENNOX.

No 42.

If the husband's creditors will find caution for the liferent, the tocher must be forthcoming to them.

Fol. Dic. v. 1. p. 596. Durie.

* * * This case is No 37. p. 700. *voce* ARRESTMENT.

* * * Similar decisions were pronounced, 10th January 1682, Telfer's Creditors against Campbell, No 53. p. 5836. *voce* HUSBAND and WIFE; and 11th June 1712, Robertson against Robertson, No 44. p. 708. *voce* ARRESTMENT.

1682. *December.* HARRY BOUSSY *against* JEAN OGILVY.

No 43.

A HUSBAND being obliged by his contract of marriage to provide his wife to a jointure in England, and the tocher being to be paid to him by the wife's mother the next term after the mother's decease, a creditor of the husband arrested the tocher. In the process of furthcoming *declaratorie*, it was *alleged*, That the obligation for the jointure, and payment of the tocher, were correlative obligations, though by distinct clauses; and that the provision for the wife's jointure not being fulfilled, and the husband bankrupt, the tocher could not be liable to his creditors but with the burden of her jointure, in case of her survival; which allegiance the LORDS found relevant, and refused [to cause] the mother to find caution upon the event, although she was an old woman, not like to have heir or executor; and the term of payment not being till after her death, diligence by arrestment, or otherwise, could not be used; nor would the LORDS decern her to employ it actually for securing of the jointure, her term of payment not being come.

Fol. Dic. v. 2. p. 596. Harcarse, (CONTRACTS OF MARRIAGE.) No 346. p. 84.

1685. *March* — LAURIE *against* LAWSONS.

No 44.

FOUND that a wife's tocher, which her father stood obliged for in her contract of marriage, was not affectable by the husband's creditors, but with the bur-

den of what her husband provided to her in the said contract, there being a Synallagma in the contract.

Fol. Dic. v. 1. p. 596. Harcarse, (CONTRACTS OF MARRIAGE,) No 372. p. 96.

No 44.

* * * Sir P. Home reports this case :

By contract of marriage betwixt Mr John Forbes and Helen Lawson, John Lawson the said Helen's father being obliged to pay to Mr John Forbes a L. 1000 of tocher, who is obliged to add a L. 1000 of his own means, and employ the same upon sufficient security to himself, and the said Elizabeth in liferent, and to the bairns in fee ; and John Lawson having advanced 700 merks of the tocher to Mr John his son-in-law, he takes a discharge from him thereof, bearing that he had advanced that sum, albeit Mr John Forbes had not fulfilled his part of the contract ; therefore he obliges himself, that he, nor any having right from him, should use execution against John Lawson upon the contract, until such time as he had fulfilled his part thereof, the annualrent of the 800 merks remaining being unpaid towards the maintenance of his wife and family, secluding all others his assignees from any right thereto any manner of way ; and Mr John Forbes having assigned the 800 merks remaining of the portion to Charles Lawrie, and Walter Robertson, who having charged John Lawson ; he suspended upon the foresaid clause in the discharge, that he was not obliged to pay the 800 merks that remained of the tocher, before Mr John should fulfil his part of the contract, which being prior to the assignation made to the chargers, the same ought to be effectual against them. *Answered,* That the obligation in the discharge, that the remainder of the tocher should not be paid before Mr John Forbes should fulfil his part of the contract, by employing the 3000 merks to himself, and his wife in liferent, and to the bairns of the marriage in fee, will not hinder Mr John to assign the same, because in so far as concerns the wife's liferent, she was consentor to the assignation, and had judicially renounced her right of the liferent of the sum, which not being in favours of her husband, but in favours of a third party, was not revocable ; and as to the fee provided in favours of the bairns of the marriage, the father notwithstanding of that clause was still fiar of the sum, and so might dispose of the same. *Replied,* that the foresaid provision in the discharge, being in the nature of a back-bond, it is effectual against singular successors, as to personal rights. THE LORDS found the chargers as assignees to the husband, could not charge for payment of the remainder of the tocher, until the contract of marriage were fulfilled on the husband's part, to be employed at the suspender's sight, at whose instance execution was appointed to pass for implement of the contract,

Sir P. Home, MS. v. 2. No 652.