

No 23.
 wife in a sufficient jointure to a certain extent, was found not to have fulfilled the obligation, by securing her in *houses*, which require repairs, and are liable to be burnt.

some tenements and houses in Edinburgh, and provided the same to her in life-rent; the LORDS found that was not a sufficient equivalent provision to answer the obligation in the contract, because of the accidents of fire, and the considerable reparations that houses are subject to; and therefore decerned against the husband's heir to fulfil the obligation in the wife's contract of marriage; and ordained her to renounce any right to the tenements. Here there was a clause in the contract, That the fund for the wife's jointure should be employed with her father's consent, which was not done.

Fol. Dic. v. I. p. 146. Harcarse, (CONTRACTS of MARRIAGE.) No 371. p. 95.

No 24.
 A person being bound in his contract of marriage to secure his wife in *well holden lands*, was found to have implemented the obligation, by infesting her in *ward lands*, which are liable to recognition, only on account of particular circumstances attending the case.

1685. *November.*

LADY KIRKLAND and HER SPOUSE *against* Her SON.

A MAN being obliged, in his contract of marriage, to employ 20,000 merks upon well holden land to his wife in life-rent, and to the heirs of the marriage in fee, and execution to pass at her father's instance, who being debtor to the husband in as much as with the tocher made 20,000 merks, gave infestment out of his own ward-lands for the same, in the terms of the contract; the wife, after her husband's decease, pursued his heir for implement of the contract, in respect her father's lands held ward, and were in danger of recognition, and her husband could not collude with him to her prejudice.

Answered: She being infest before the marriage by her own father, who might have stopt the marriage, and at whose instance execution was ordained to pass; it must be supposed, that all parties agreed to the implementing of the contract, by a security out of the father's lands.

THE LORDS, in this circumstantiated case, found the infestment out of the ward-lands sufficient, unless recognition be incurred.

Fol. Dic. v. I. p. 146. Harcarse, (CONTRACTS of MARRIAGE.) No 376. p. 97.

1724. *December 2.*

JAMES GRAY, Writer to the Signet, Assignee of MARGARET MATHISON, *against* WILLIAM HUTTON, Assignee of PATRICK THOMSON.

No 25.
 A father, as *burden-taker* for his son, a minor, became an obligant in his son's contract of marriage. The son was taken bound to lay out a

THOMAS WHITE, eldest son to Thomas White, indweller in Leith, entered into a marriage contract with Margaret Mathison, in which the father was consentor and burden-taker for his son, and became obliged to pay to him 3000 merks; which, with 2000 merks brought as tocher with Margaret Mathison, Thomas the son obliged himself to ware, bestow and employ upon land, or good security for interest, for himself and his wife, for her life-rent use allenary, and the bairns of the marriage in fee.

Thereafter Thomas White elder, in his daughter Marion's contract of marriage with Patrick Thomson, covenanted to pay with her 4000 merks of tocher. Of this contract James Gray, as assignee of Margaret Mathison, relict of Thomas White younger, raised reduction upon this ground, That Thomas White elder, having become bankrupt, could not enter into such an obligation in prejudice of Margaret Mathison's liferent provision, for which he was priorly bound, as burden-taker for his son, by which he, as *correus*, had subjected himself to the fulfilling of any obligation his son had come under in his contract of marriage with her.

It was *answered*, That the father became only obliged to pay 3000 merks to his son, but was not bound to employ the same with the wife's tocher; that the son alone was taken bound to perform that part of the contract; and though the father, as administrator in law, authorised his son, because then a minor, which gave occasion to the usual clause in the beginning of the contract, 'With the special advice and consent of his said father, and the said Thomas White elder, for himself, and taking burden upon him for his said son, and they both of one consent and assent,' &c. yet that could never imply that the father was cautioner for the son in those obligations in which the son was alone bound.

THE LORDS found, That Thomas White elder was not bound in his son's contract of marriage for the liferent of the 5000 merks thereby provided to his wife Margaret Mathison, and now assigned to James Gray; and therefore found he could not reduce Thomson's contract of marriage on the ground of that credit.

Reporter, Lord Cullen. Act. Ch. Binning. Alt. H. Dalrymple, sen. Clerk, Mackenzie.
Fol. Dic. v. 3. p. 127. Edgar, p. 123.

1730. January 1. KENNEDIES *against* RONALD.

A WOMAN, in her contract of marriage, obliging herself to pay to her husband 2000 merks of tocher, at least to subscribe and deliver assignations to as many sufficient bonds as would extend to that sum; this clause was found to import, that the sum must be paid by bond or assignation as aforesaid, and that the moveable goods and gear which fell otherwise to the husband, *jure mariti*, could not be imputed in payment thereof.

Fol. Dic. v. 1. p. 146.

See This case: v. HUSBAND and WIFE.

1743. February 19.

MARGARET GARDEN, Relict of GILBERT STEWART, Merchant in Edinburgh,
against JOHN STEWART, &c. Representatives of the said Gilbert.

THE said Gilbert Stewart having married Margaret Garden, he, by a post-nuptial contract, provided her in L. 30 of annuity, in case she survived him,

No 25.
sum on good security. This obligation was found to affect the son only, not the father personally.

No 26.

No 27.
It was provided, in a contract of marriage, that the