

husband should be distressed for his wife's debt, contracted before the marriage, which should exceed any tocher received by him.—THE LORDS did find, that there is a great difference where a woman, in a contract, is obliged to pay a sum of money, and to enter her husband to the possession of particular goods and gear, extending to a value in money; for, in the *first* case, the parties having lived long together, albeit the wife had gotten no discharge, it was not sufficient to prejudice her of her liferent; but, in this case, she affirming that she had goods and gear to a certain value, and they being condescended on, it being offered to be proved that they were evicted, and did belong to the children of the first marriage; they found, that she ought to condescend and prove that she had real goods in her own possession, and that the allegiance of eviction of the same goods was relevant to take away the title of executrix creditrix, whereby a lawful creditor of her husband was prejudged, and so she could only have a right to a half, or a third, of the free gear *deductis debitis*.

*Gosford, MS. No 960. p. 411.*

No 336.

1733. July 13.

SHEARER *against* SOMERVILLE.

A BARGAIN made betwixt husband and wife during the marriage, whereby their contract of marriage was past from, and the longest liver to bruik all, was found onerous, and not revocable as *donatio inter virum et uxorem*. See APPENDIX.

*Fol. Dic. v. I. p. 410.*

No 337.

1749. January 17.

CAMPBELL *against* CAMPBELL'S TRUSTEES and STEWART of Binny.

MR ARCHIBALD CAMPBELL minister of Weem, by his contract of marriage, 17th December 1716, with Anne Stewart, became bound to settle 6000 merks on himself and her in conjunct fee and liferent; disposing to her, in case of her survivancy, his whole household-plenishing and silver plate, including heirship moveables; and if there should be no heir of the marriage, the fee of 2000 merks; for which causes, she disposed to themselves in conjunct fee and liferent, and to the children of the marriage, whom failing, to her nearest heirs, heritable subjects to the amount of 6200 merks; and her liferent right of a house in the town and 21 acres in the parish of Dalkeith.

Mr Campbell made an assignation, 5th February 1736, of certain special sums, and in general of his whole effects, to Trustees for the behoof of the schoolmaster of Weem, and of five other schools to be erected within the parish; providing that all the remanent money (after satisfying certain special

No 338.

Mutual contract between husband and wife not revocable.