

derstood of a bairn surviving, who had possibility to succeed, albeit he had never succeeded; for the father might have sold the lands, albeit the son were living, and so he could not succeed.

No 3.

Act. *Mowat & Stuart.*Alt. *Nicolson & Craig.*Clerk, *Gibson.**Fol. Dic. v. 1. p. 187. Durie, p. 486.*

* * * Auchinleck reports the same case :

IN a contract of marriage betwixt Kaircrows and his daughter on the one part, and Turnbull on the other part, it is provided, that the tocher shall be re-paid at the next term after the decease of the woman, in case there shall be no bairns procreated of their marriage to succeed to the Laird of Turnbull. There is a son procreated of that marriage, who outlives his father and mother by the space of seven years, but was never served heir. After his son's decease, Kaircrows charges for restitution of the tocher, conform to the contract of marriage. Turnbull suspends, that the tocher cannot be restored by virtue of the clause of the contract, because there was a son procreated who outlived the mother, and might have been served heir; and, the meaning of the contract was, that the tocher should only have been re-paid in case there should have been no bairns procreated of the marriage, which may be gathered by the words of the contract, wherein the tocher is ordained to be re-paid at the next term after the decease of the woman; and, seeing her son survived her, it argues plainly the meaning of the contract was the re-payment to have been made in case she deceased without bairns, which the LORDS found relevant, and suspended the letters *simpliciter*, 27th January 1630, and this same disputed 26th July 1630, and decided *ut supra*.

Auchinleck, MS. p. 6.

1630. June 26.

CROMBULL *against* CAIRNORE.

IN contracts of marriage, found that the clause of re-payment of the tocher in case of the decease of the woman without heirs of the marriage, cannot infer payment of the money where there was a bairn procreate, who lived till after the mother's decease, albeit not entered heir nor retoured.

Fol. Dic. v. 1. p. 187. Kerse, MS. fol. 65.

No 4.

Found as above; and seems to be the same case under different names.

1663. January 31.

FORSYTH *against* MORISON.

By contract of marriage betwixt James Morison and Agnes Forsyth, he is obliged to employ 8000 merks to them and the bairns of the marriage; provi-

No 5.
A wife, in her contract of marriage, ha-