

No 84. the 9000, which was the defender's tocher, at the receipt and payment thereof, which was never made to the defender's husband during lifetime. It was *duplied*, That William Cunningham being burden-taker for the said Margaret for payment of the tocher, her husband ought to have done diligence against him, and recovered payment, and his omission thereof cannot prejudice the defender of her liferent.

THE LORDS, as to the *first*, found, That a gift of bastardy was no title to moveables without confirmation; and therefore found, that there should be a confirmed testament before extracting; as to the *second*, Having considered the contract of marriage, whereby the defender, and William Cunningham, her brother, as burden-taker for her, were obliged to pay the tocher at a certain day, conjunctly, but not severally, and that the husband was not obliged to employ the same before payment; they found, That she was not creditor as to her own half, for which her husband could do diligence against her, being his own wife; but sustained the defence for the other half due by William, as conjunct debtor, against whom he might have done diligence.

Gosford, MS. No 537. p. 284.

1674. June 6.

LAW against MUIR.

No 85.

THE LORDS found, That there is a great difference betwixt an obligation by a woman in her contract of marriage, to pay a sum of money in name of tocher, and her being obliged to enter her husband to the possession of goods and gear, extending to a sum named; for, in the first case, they found, that the parties having lived long together, although the wife had gotten no discharge, it was not sufficient to prejudice her of her liferent; but, in the other case, the affirming that she had goods and gear to a certain value, and it being offered to be proved, that they were evicted from her, it was found, that she ought to condescend and prove, that she had goods of her own to the extent of the sum named in the contract.

Fol. Dic. v. 2. p. 140. Gosford. Dirleton.

*** This case is No 336. p. 6119.

1682. December 21.

SCOTLAND against REID.

No 86.

JOHN SCOTLAND, as executor to Henry Bairdner, who was first husband to Jean Reid, pursued her and her second husband, for payment of 2000 merks, which she was obliged in her contract of marriage to pay to her deceased husband, in name of tocher; the LORDS found, in regard the wife was only party contractor for herself, and that none was burden-taker for her, or obliged with her for