

No 266. regard she was *vestita viro*, and immediately after dissolution of the marriage, she revoked and intented a reduction, before diligence done at the instance of her husband's creditors.

Act. *Sir Walter Pringle.*

Alt. *Graham.*

Clerk, *Gibson.*

*Bruce, v. 1. No 5. p. 7. No 18. p. 24. and No 70. p. 85.*

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S E C T. VI.

Husband bound to do diligence to recover his wife's tocher,  
unless when due by herself.

1625. *June 24.* ERLIE and BURD *against* GORDON.

No 267.

IN a contract of marriage where the husband was obliged to eik so much money to the tocher, and to employ all, &c., the LORDS found, that the husband should be obliged to employ, although the money was no paid, and found his heir debtor therefor, and for the annualrents thereof, from his father's death.

*Fol. Dic. v. 1. p. 407. Kerse, MS. p. 65.*

1637. *January 18.* WOLF *against* SCOT.

No 268.

A husband was bound to lay out heritably a tocher payable by a third party. Though the tocher was never received by him, his heirs were found liable, but execution was superseded for a certain time, that in the interim diligence might be used for recovering it.

ONE Wolf relict of umquhile Scot Chamberlain of Innerweik having pursued one Scot, brother to her said umquhile husband, as lawfully charged to enter heir to him, to employ to her in liferent the sum of 500 merks, contained in her contract of marriage, and which her said umquhile husband was obliged to do in the said contract; for therein her father was obliged to pay to her said umquhile husband 1000 pounds in name of tocher, whereto her husband obliged him and his heirs to add 2000 merks, making in the whole 3500 merks, and to employ the same to himself and her, and the longest liver of them two in liferent; and the defender *alleged*, that he could not employ that 1000 pounds conditioned in tocher, except that the same were exhibited and paid to him, that therewith he might employ also both the said sum, and the 2000 merks, whereto he was obliged beside it; and the other answering, that the relict was not obliged to pay that sum, and if the sum be not paid, she ought not to be postponed thereby, for the defender or the

defunct's self might have sought it, and if they have not done it, it were no reason therefore that she should want the benefit of the said contract; and it being further *alleged*, that this contract, which is the ground of the pursuit, is but an imperfect minute, and wants the date, and designs not the writer, therefore until it be extended, it ought not to produce action;—THE LORDS repelled both the allegances, in respect the party had the person obliged to pay the sum by the contract extant to pursue therefor, and if he did not the same, the pursuer, who was not obliged to pay the sum, ought not to be prejudged thereby; but they superseded the execution upon this sentence till Whitsunday, that the defender might use his diligence, to recover the sum from the party obliged in payment thereof; and if he should never recover it, they found that the defender was not the less obliged to employ the like sum to this relict, he being obliged thereto by his contract, and the party being responsible, who was obliged to pay at the term of payment appointed thereto; and the second allegiance was repelled, because it was a minute of a contract of marriage to have been perfected, whereupon marriage had followed thereafter, and that the pursuer condescended the said minute was the hand writ of her deceased husband. See WRIT.

No 268.

Act. Nicolson &amp; Craig.

Att. Advocatus, Hepburn &amp; Gilmour.

Clerk, Gibson.

*Fol. Dic. v. I. p. 407. Durie, p. 823.*

1665. February 22.

CAMPBELL against CAMPBELL.

No 269.

A wife pursuing her father-in-law, for employment of her tocher, conform to her contract; he *alleged* absolutor, because the clause bore expressly, that so soon as the tocher was paid compleatly, he should employ it, and so much more for the wife's liferent use; so that, unless it were shown, that the tocher was compleatly paid, he was not obliged. The pursuer *answered*, that she was not obliged to pay the tocher, but her father, and if any neglect or defect was therein, it was not her fault, but the defender ought to have done diligence, *debito tempore*, and therefore, albeit the tocher were not paid, at least he must employ his own part proportionable to what of the tocher he hath received.

Which the LORDS found relevant, and if the pursuer had not restricted herself to that proportion they would have sustained it simply, for all the defenders own part.

*Fol. Dic. v. I. p. 407. Stair, v. I. p. 274.*