

1685. *January.*LAURIE *against* LAWSON.

No 62.

A HUSBAND having received a part of the tocher from the wife's father, at whose instance execution was to pass, and in the receipt obliging himself not to crave the balance till he should implement the contract on his part; in a process at the instance of one to whom the husband had assigned the said balance, the LORDS found that he could not insist for the remainder of the tocher, though he was a singular successor, until the contract of marriage was fulfilled on the husband's part.

Fol. Dic. v. 1. p. 598. Harcarse. Sir P. Home.

* * * This case is No 44. p. 9188.

1686. *February.*SHEARER *against* CARGILL.

No 63.

PETER SHEARER, as assignee by James Bell, to a part of his wife's tocher due by Thomas Cargill of Auchtedonald, having pursued an adjudication against Auchtedonald; *alleged* for the defender, That adjudication could not proceed for the sum, nor was he liable to pay the same before James Bell the cedent did secure his wife in a liferent provision, conform to the contract of marriage; for the obligations on the contract of marriage being mutual, as the cedent could not seek payment nor adjudge for the sum before first he performed his part of the contract, neither can Peter Shearer the assignee. *Answered*, That the assignation being granted to the pursuer for an onerous cause, he may seek payment, and adjudge for the sum, albeit the cedent has not performed his part of the contract, as has been several times decided; and the wife's friends may go on in diligence against James Bell the cedent, for fulfilling his part of the contract, as accords. THE LORDS allowed the adjudication to proceed, but with the burden of the obligation of the contract of marriage, in favour of the wife.

Fol. Dic. v. 1. p. 598. Sir P Home, MS. v. 2. No 782.