

payment, and that the marriage did subsist for the space of 11 years, that the tocher was presumed to be paid, or that the husband had as much of the wife's means as did amount to the sum pursued for.

No 86.

*Fol. Dic. v. 2. p. 139. P. Falconer, No 35. p. 19.*

\* \* \* Sir P. Home reports this case :

1683. *March.*—By contract of marriage betwixt Henry Bairdner of Coultmill and Jean Reid his wife, she being obliged to pay to her future husband 2000 merks of tocher, at a certain term after the marriage, for which he provided her to a liferent out of his lands; and the said Henry Bairdner being deceased, and Thomas Bairdner, his brother, having acquired right to several debts, and having confirmed the foresaid 2000 merks, as executor-creditor to his brother, and having pursued the said Jean Reid and John Scotland her husband, for payment; the LORDS found, that the marriage having continued for the space of 11 years, that it did presume the tocher was paid, seeing the husband all that time did not reclaim, or that the husband had gotten as much of the wife's means as did satisfy the tocher contracted; and, therefore, assoilzied the defender.

*Sir P. Home, MS. v. i. No 444.*

1685. *March.*COLTERALLERS *against* WEIRS.

No 87.

ONE having pursued the Laird of Colterallers, as executor to his Lady, for a legacy left by the defunct to the pursuer; *alleged* for the defender, That there were 4000 merks of the tocher contracted by the defunct still unpaid, which debt must be satisfied before any legacy can be claimed.

*Answered* for the pursuer; That law presumes that was paid, seeing the marriage stood seven or eight years, and the defunct had an opulent estate in goods and money.

*Replied*; The defender knowing that his wife had the subject of the executy, he was the less careful to get payment of what he wanted; and he is willing to make faith, that so much of the tocher remained unpaid at her death.

THE LORDS sustained the allegiance and reply made for the defender, he giving his oath, &c.

*Fol. Dic. v. 2. p. 139. Harcarse, (CONTRACTS OF MARR.) No 373. p. 96.*