No 154. opinion the advance was made as his share of the fine; and, supposing Young to have had no claim against him in case he had paid it all, or even that he could have demanded relief of Young for the whole, if he had been forced to pay it, and testified he did so with an intention to seek his relief, yet having paid it as his share, he could not repeat.

The Lords, 13th December 1744, found there lay no action for repetition of the sum libelled; and, on a bill and answers, they adhered, unless the pursuer would offer to prove by the defender's oath, that the money was advanced by way of loan.

Act. *Lockhart.* Alt. *R. Dundas & Burnet.* Clerk, *Justice.*
Fol. Dic. v. 4. p. 124. D. Falconer, v. 1. p. 58.

SECT. VI.

Tocher granted in a Contract of Marriage how far presumed in Satisfaction of former Provisions.

No 155. A tocher granted to a daughter in her contract of marriage interpreted to be in satisfaction *pro tanto* of all former special provisions, tho' not so expressed.

1569. *December* 15. Cockburn *against* Laird of Cambusnethan.

Anent the action by John Cockburn, brother to the Laird of Stirling, against the Laird of Cambusnethan, who married the said Laird's daughter; it was *alledged* by the said pursuer, That Catharine Charteris, relict of umquhile John Carmichael of M. gave 200 merks to the said defender's daughter to her marriage, and put it in the defender's hands, who gave his obligation to the said Catharine and her son, that he should deliver the said money to his daughter at her perfect age; and, therefore, the said pursuer, who married the said daughter, to whom the said money was given, desired the defender to deliver the said sum to the said daughter, his wife, and to him for his interest, conform to the said obligation. It was *alleged* by the defender, That he gave the said sum to the King's Treasurer, together with 1000 merks of his own proper money, for the marriage of the Laird bf Lamington to his said daughter; for the which marriage she obtained 1700 merks, with which sum she was married, and disponed thereupon at her pleasure; and therefore he should be assoilzied from payment of the said 200 merks, notwithstanding his obligation; which allegeance was found relevant by the Lords, who assoilzied from the said sum.

Fol. Dic. v. 2. p. 146. Maitland, MS. p. 191.

*** Similar decisions were pronounced, 27th November 1685, M'Intosh against Robertson, No 2. p. 9619, *voce* PARENT and CHILD; and 9th February 1699, Earl of Northesk against Lord Phinhaven, No 30. p. 5196, *voce* GROUNDS and WARRANTS. No 155.

*** The like was found with regard to an obligation in a father's contract of marriage to secure a sum named to himself and wife in conjunct fee and liferent, and to the heirs and bairns of the marriage in fee; 15th June 1737, Stenhouse against Young, *see* APPENDIX.

1680. *June* 22.

Dame LILIAS SETON, and Sir JAMES RAMSAY of Logie, her Husband, *against* GEORGE SETON of Barns.

No 156.
Found in conformity to Cockburn against Cambusnethan, *supra*.

DAME LILIAS SETON, and Sir James Ramsay of Logie, her husband, pursue George Seton of Barns, her brother, for L. 900 Sterling, promised to her by her father, Sir John Seton, in a letter to her. *Alleged*, The letter is conditional, as shall appear by a writ under his hand, which is not produced, and *non creditur referenti nisi constet de relato*; 2*do*, It bears, "In case I die before you be married, and your tocher paid;" but *ita est*, she was married in her father's lifetime, and he gave 10,000 merks of tocher with her, and got a discharge of it. This being reported, "the LORDS find, the father having after the date of the letter met with his daughter, and married her, and provided her to a competent tocher, the letter does not oblige; and therefore assoilzied."

1680. *July* 1.—IN the action Dame Lilias Seton against Barns, (22d June 1680.) being beaten from the letter, they recurred to a new claim, viz. the 5000 merks contained in her infeftment, which albeit it carried that same quality of the missive, viz. that it should be void and null when she was married and her tocher paid, yet it behoved to remain as a debt, because, by an agreement betwixt this Barns and his father, he did take his father expressly obliged to purge and obtain her renunciation of that infeftment, which he never would have done, if he had looked upon it as a right satisfied and extinct.—*Answered*, That infeftment is *res hactenus judicata*, and out of doors by a decreet absolvitor *in foro*, obtained by Barns against it in 1663; and this new allegeance on the contract betwixt his father and him was competent then, and being omitted, cannot be proponed now; and cannot be said to be emergent, or *noviter veniens notitiam*; see an express and solemn decision on this, 20th January 1631, Gordon, *voce* PROCESS. 2*do*, *Esto* the allegeance were receivable, (as it is not) *nullo modo relevat*; for there is nothing more ordinary