

1694. *July 12.* MR THOMAS RAE, Minister at Dundurras, *against* JAMES and JOHN MANS.

MR Thomas having married his daughter to James Man, and contracted 1000 merks of tocher with her ; before the year and day that it became due, he lent 700 merks of it to his goodson's brother, on his letter, that, either the money should be paid, or else allowed in the fore-end of the said tocher. The marriage dissolves within year and day, and so there was no tocher due in law. He pursues now for repetition of the 700 merks, against the heir of his son-in-law, who is also now dead. The defences were, *first*, He was minor, and *non tenetur super hæreditate paterna*.

ANSWERED,—This does not touch heritage, but only repetition of a sum. The Lords repelled this first defence.

The *second* was, The letter was not holograph, and so not probative. The Lords sustained the letter, in respect it was adminiculated by the contexture and whole tract of the affair.

*3tio*. It was alleged to be alternative, either to allow it in the fore-end of said tocher, or to retire the bond ; and, *in omnibus obligationibus alternativis, electio est semper debitoris* ; and he choosed to deduce from the tocher *pro tanto*.

ANSWERED,—That member of the alternative proceeded from a supposition that the tocher would fall due, if the marriage subsisted year and day ; or else on his ignorance that he had right to it *quomodocunque* : but *ita est* the marriage so dissolving, the term of payment of the tocher never came, but it returned to the giver ; and so there was no alternative.

The Lords found, this member not existing, it could not be chosen by the debtor ; and, therefore, decerned him to refund the money.

*Vol. I. Page 630.*

1692 and 1694. MILNE of CLACKMANNAN'S CREDITORS *against* ALEXANDER MILNE of CARRIDDEN.

1692. *December 21.*—THE Lords found, that old Carridden did not fully clear, by his oath, how his heritable bond of 83,000 merks Scots was made up, and particularly Kennoway's bond ; therefore, they ordained this Carridden, his son, yet to search amongst his father's papers, and depone if he can find any of the grounds or instructions of that debt ; seeing the other creditors had reason to take all manner of expiscation anent the verity of the co-creditors' debts, that simulated or paid sums may not be kept up on the estate : but thought it hard, on that pretence, to keep up his annualrents, whereof formerly he was in possession ; and, therefore, removed the stop formerly laid on by them.

*Vol. I. Page 535.*

1694. *June 28.*—THE Lords advised the debate in presence between the Creditors of Miln of Clackmannan and Miln of Carridden ; wherein they craved to reduce his bond of 83,000 merks, as granted by Clackmannan, then a bankrupt, at least *in meditatione fugæ*, at least that you knew him to be insolvent when he granted you that security ; in so far as umquhile Alexander Miln of