

No 2.

that she had paid to Langshaw, and for instructing thereof, had produced his retired bond, with his declaration, that she had paid him, upon which likewise he had given his oath; yet the Lords found the article ought not to be allowed, albeit they were clear, that the debt was true, and really paid by the executrix; yet seeing she paid, not being an executrix nor tutrix, and cancelled the bond without taking an assignation thereto, they thought she could not distress her children for it, but that it was a donation in their favours, and was not to be imputed in part of their portion; and the decision of Paip and Young does not meet this case, because the tocher being due by contract of marriage, was granted for a most onerous cause, seeing the wife, in contentation thereof, was provided to a considerable liferent, and the children of the marriage to a sum in fee; as also it appears by that decision, that the Lords inclined to sustain both the provisions; but in respect of the meanness of the father's estate, they thought it was presumable, that the father did not design that both these provisions should subsist, but only, that the first provision should be so far sustained, as the pursuer could instruct the onerous cause of the granting thereof; but the reason does not hold in this case, for not only there was a just and onerous cause for granting of the tocher, being by contract of marriage, but also the father was a man of a good estate. THE LORDS sustained the defence, and found, that the tocher ought to be imputed in satisfaction of the legacy; and found, that the legacy was satisfied by the tocher.

*Sir P. Home, MS. v. 2. No 723.*

1758. July II.

BARCLAY against DOUGLAS.

No 3.

A father liable to pay an account of furnishings to his son, tho' living separately from him, he minor, and not entered to any employment.

ROBERT BARCLAY, tailor in Edinburgh, sued Archibald Douglas of Dornock, for an account of tailor-furnishings made all at one time to his eldest son, amounting to L. 36.

The debt was contracted by Dornock's son, when eighteen years of age, without aliment or profession, and not living with his father, on account of some differences betwixt them; the debt was high, considering the circumstances of father and son; but for this the pursuer assigned, as the reason, that at the time of contracting it, the son's friends were soliciting a commission in the army for him.

"THE LORDS found the defender liable."

*Act. J. Craigie.*

*Alt. Hew Dalrymple.*

*J.D.*

*Fol. Dic. v. 4. p. 39. Fac. Col. No 119. p. 219.*