

S E C T. III.

Contracts of Marriage.

1637. *January 28.* GALBRAITH *against* LENNOX.

No 42.

If the husband's creditors will find caution for the liferent, the tocher must be forthcoming to them.

Fol. Dic. v. 1. p. 596. Durie.

* * * This case is No 37. p. 700. *voce* ARRESTMENT.

* * * Similar decisions were pronounced, 10th January 1682, Telfer's Creditors against Campbell, No 53. p. 5836. *voce* HUSBAND and WIFE; and 11th June 1712, Robertson against Robertson, No 44. p. 708. *voce* ARRESTMENT.

1682. *December.* HARRY BOUSSY *against* JEAN OGILVY.

No 43.

A HUSBAND being obliged by his contract of marriage to provide his wife to a jointure in England, and the tocher being to be paid to him by the wife's mother the next term after the mother's decease, a creditor of the husband arrested the tocher. In the process of furthcoming *declaratorie*, it was *alleged*, That the obligation for the jointure, and payment of the tocher, were correlative obligations, though by distinct clauses; and that the provision for the wife's jointure not being fulfilled, and the husband bankrupt, the tocher could not be liable to his creditors but with the burden of her jointure, in case of her survival; which allegiance the LORDS found relevant, and refused [to cause] the mother to find caution upon the event, although she was an old woman, not like to have heir or executor; and the term of payment not being till after her death, diligence by arrestment, or otherwise, could not be used; nor would the LORDS decern her to employ it actually for securing of the jointure, her term of payment not being come.

Fol. Dic. v. 2. p. 596. Harcarse, (CONTRACTS OF MARRIAGE.) No 346. p. 84.

1685. *March* — LAURIE *against* LAWSONS.

No 44.

FOUND that a wife's tocher, which her father stood obliged for in her contract of marriage, was not affectable by the husband's creditors, but with the bur-