

the tocher, it is presumed he gave a bond for the repayment, and which *de facto* was repaid. No 371.

*Answered* for the pursuer; That provisions between husband and wife, or third parties, in contemplation of marriage, do indeed resolve upon the dissolution thereof within the year; but this bond was granted after the marriage.

THE LORDS generally inclined to sustain the first defence; but some being unclear as to that, the LORDS determined upon the second, that the husband being debtor, by intromitting with L 1000 of the tocher, the granting of the second bond was intended in satisfaction of that debt, seeing *debitor non præsumitur donare*; and here the bond bore 'love and favour,' and onerous causes.

*Harcarse*, (STANTE MATRIMONIO.) No 872. p. 247.

1743. February 19. MARGARET GORDON *against* STEWART and Others.

No 372.

FOUND, that even where marriage dissolves within year and day, the relict is entitled to mournings.

The point was new; the mournings were considered to be due in this case, not so properly as a legal consequence of marriage, as that the wife, being a part of the husband's family, ought to have mournings, as what the respect due to the husband's family required, as it did, that servants get mourning.

*Fol. Dic. v. 3. p. 289. Kilkerran*, (HUSBAND and WIFE.) No 6. p. 258.

1751. February 22. ELIZABETH SOMERVILLE *against* GEORGE BELL.

No 373.

JOHN FORRESTER of the island of Jamaica, had it long in view to make his addresses to Elizabeth Somerville, so soon as his circumstances should permit him to marry. One of his letters to her dated in March 1739, has the following paragraph: "I'll settle upon you, in case of death, L. 100 per annum, to be paid upon the Exchange of London. As to your own fortune, I want none, nor did I ever court you with that view; if you have a mind to give it to any of your relations, I'll with all my heart consent, for I thank God I do not want it. I'll take care to support you as well as your dear heart can wish. As to your jointure, it shall be preferable to any sister you have, &c." In the year 1743, Mr Forrester came home, and the marriage was celebrated 27th December that year, but without the formality of a marriage-contract. Being upon death-bed, April 1744, and without the least prospect of recovery, he executed a deed, which became a subject of dispute in the Court of Session. It proceeds upon the narrative, 'That there was no contract of marriage, but only some verbal conditions; therefore, in execution of his just intentions, he becomes bound to pay the sum of L. 666 : 13 : 4 Sterling, to his spouse in life.

Where marriage dissolves within year and day, post-nuptial contracts fall.