

## Sect. 4.

How Marriage is dissolved, and the Effects of the Dissolution.  
Marriage is dissolved by the Death of either Party, or by Divorce

I.

Dissolution of Marriage thro' Death of either Party.

If the Husband or Wife die within Year and Day of the Marriage, all ~~things~~ things come in Contemplation thereof on either Side, blow up, become void and return to the same Condition they were in before the Marriage, unless there was a ~~Child~~ Child of the Marriage heard cry; or that it was otherwise agreed. Craig Touch'd in 2. tit. 22. s. 2. Stat. lib. i. tit. 4. s. 12 & 19. Which is conform. to the civil Law. This Return takes Effect in the Case of a second, as well as of first Marriage, and Restitution hereinde is to be made, whether the Husband dying was married before or not, or whether the Wife dying was a Virgin the Time of her Marriage or not 23 July 1634 Maxwell contra Hairstones. It was extended to an Infeudment by a Husband to his Wife; that had no express Relation to the Marriage which was presumed to have been given hoc intuitu: in Respect it mentioned no other Cause, and was the same Deed to which the Husband stood obliged by the Contract of Marriage 16 Novemb. 1683 Grant contra Grant. A Father paid within the Year, was ordained to be restored upon the Wife's dying within that Time; without any Allowance to the Husband for her Entertainment during the Marriage, but only for her Marriage-Baths and other antinuptial Debts, and her funeral-Charges after Dissolution of the Marriage, all which had been paid by the Husband 23 Feb. 1681 Gordon contra Ingles. A Man having married a Taverner who, after she was proclaimed, had bought 12 Hogsheads of Wine and vended some Part of it before the Marriage, and some after during the Space of 4 Months only that she lived with her Husband; and the Husband immediately after his Wife's Death, having caused the Magistrate's inventory the Remainder of the Wines, and without further meddling delivered the Keys of the Cellar to her: the Husband was not found liable to the Seller of the Wines, for any Part thereof vended before the Marriage, or for what remained unsold after his Wife's Death; but only for what was sold during the Marriage, he being hired thereby. Because by Dissolution of the Marriage within Year and Day, the Property of the Wines returned to the Wife's Executors and nearest of Kin, and the Husband had no Interest therein. But in Regard there were Wines in the Cellar bought from other Persons the Husband was burdened to prove what Quantity was sold before the Marriage, and what remained at his Wife's Death, or otherwise to pay the Price of the whole, it being his Part to know that Matter of Fact more than the Merchant who was a Stranger 25 Novemb. 1668 Andrew contra Case.

The Benefit of this mutual Restitution is not confined to the Husband and Wife

Wife and their Heirs; but is communicated to any other Person concerned. So that if the Father was not brought by the Wife herself, it goes back to the Person from whom it came Stat. lib. i. s. 17. Stewart: Answers to Dirlet-Doubts Tit. Father: As to her Father, Mother &c who took her 13 July 1697 King contra Her. For albeit it might be pretended, that the Father's fictive benevolence was given to the Bride out of Affection, to the End she might give it to the Bridegroom; yet all Obligations for a Father are conditional, and causa data. This Marriage dissolving by the Wife's Death within the Year, an Infeudment granted to a Husband an eldest Son by his Father, of his Estate in Contemplation of the Marriage, was found void: seeing the Father did not adhere to that Infeudment, but on the contrary did infect his second Son in his whole Estate 16 July 1678 L. Burghill contra L. Farnie. Be cause the same Fathers infect their Sons in their Estates without Respect to Marriage, yet that is done upon some special Consideration, as when a Father finds himself overburdened with Debt, and would ease himself, or is conscious of his own Unfitness to manage. For otherwise a Father is never presumed willing to render himself a naked Life-tenant; <sup>that is</sup> Yea, frequently even in Contracts of Marriage a Father denudes himself of his Estate, only upon special Motives of Respect to the Bride or the Father which he cannot otherwise obtain. However the Infeudment in the Case just now cited would not have simply ceased, as personal Rights or Life-tenants in Contemplation of Marriage do; had the Father persisted and suffered his eldest Son to possess. Again, Marriage that dissolves without Effect by the Husband's Death, a Father provided to his Wife by her Brother, payable to the Husband who was to have employed it for her, was annulled even as to the Wife's Claim against her Brother, albeit it was expressly payable in Satisfaction of her Portion natural; in Respect no such Portion appeared to have been due to her, or commencing upon 9 Novemb.

1672 Guthrie contra Guthrie. But Infeudment to a Wife in Recompence of her Father payed to the Husband was found to stand good till the Father were repaid; tho' the Marriage dissolved within the Year 20 July 1684 Petrie contra Paul. The Title and bona fides makes bona consumpta <sup>Stat. lib. i. s. 17.</sup> Upon Dissolution of Marriage within Year and Day, Gifts given to the married Persons by the Friends on both Sides, without expressing on whose Account are divided equally between the Man and Wife: except jocalia proper for the Wife so gifted after the Marriage and delivered to her, Carpro. part. 1. prou. forous. part. 3. Const. 22. Def. 1. & 2. 19 January 1679 Wash contra Jamison. Division is made equal betwixt the Man and the Wife: because Gifts to them in a conjugal Society being possessed by them in communione bonorum and presumed given to them as in that Society, both have equal Share by the Dissolution thereof. For Dissolution of the Marriage within Year