

Year and Day, doth only restore either Party to what was their's before the Marriage. Tho' a Contract of Marriage be come void as to the jointure and Socker given to the Husband and Wife by Dissolution of the Marriage within Year and Day: yet it stands good as to what is therein done in Favour of third Parties, whose jus quæsitum cannot be taken from them. Thus a Wife who in her Contract of Marriage renounced and discharged an hereditary Sum owing to her in Favour of the Debtor, upon his granting a new hereditary Security for it of the same Date to her Husband, having died within Year and Day: the Discharge granted to the Debtor was not voided by Dissolution of the Marriage, notwithstanding whereof the old Security was found to continue innovated by the new Security granted to the Husband, and he only obliged to restore the Sum in that new Security to his Wife's Executors, and not to her Heir: the Money being rendered no less moveable quoad her by the Discharge and new Security, than it would have been by a Requisition or Charge during the Marriage. 11 Decemb. 1668 Scot contra Stoums. A Widow was not made to restore to her Husband's Representative a Silver Medal that had been gifted to her by her Husband intra matrimonij: the Marriage having been completed; albeit it dissolved within Year and Day 19 Novemb. 1710 Douar contra Wright. But here was lis de paupere regno.

But a Marriage Settlement, tho' the Marriage dissolve within the Year, is effectual by the Birth of a living Child, of the Marriage, even tho' both it and the Parents die within the Year 20 July 1632 Jovin contra Robertson. But the Child must be heard vry, to ascertain its Life and Ripeness; which ought not to be left to the loose Conjecture of Witnesses. Marriage having continued a full Year, and a Part of the Day after the Year, the Niches was found not to return to the Father, but to belong to the Husband, tho' there were no Children of the Marriage 25 Feb. 1680 & 7 June 1681 Waddel contra Selmond.

In England, a Husband wins the Socker the first Night.

If Marriage, after acquiring of the Year dissolve by Death of either Party, the Survivor hath Right to the contracted and legal Provisions, unless the latter be dis-charged, or inconsistent with the former.

Men so ordinarily in their Contracts of Marriage provide their Wives to a Liferent, and the Children of the Marriage to the Fee of not only particular Lands or Sums then belonging to them; but also of the whole or some Share of the Conquest during the Marriage, that is what they shall acquire or gain in that Time. Which Clauses of Conquest sometimes bear only Lands conquest, sometimes Lands or Annuelrents, sometimes also Goods and Fees: and are inter-preted strictly according to the Tenor thereof. Thus a Clause of Conquest in a Contract of Marriage, doth comprehend only Rights and Acquisitions by Industry, which the Partys may have at the Time of the Marriage a

probable

probable View of, from their former Way of living and Business: and doth not extend to fortuitous and casual Acquisitions of Means and Estate, as Rights falling to them by Gift, Legacy or Succession as Heir or Executor to some Friend or Relation; unless such be specially expressed l. 7. l. 2. l. 9. ff. pro socio Christian Decis. vol. 2. lib. 1. tit. 17. dec. 58. Fontonella de pact. antenupt. Clous. 11. glos. in. n. 7. Stat. inst. lib. 3. tit. 5. §. 52. As when the Clause doth not rest in the common Provision of Conquest in general; but farther adds what the Party shall succeed to any manner of Way during the Marriage. Thus, an Obligation upon a Husband, to take what Lands or Annuelrents he shall acquire during the Marriage to himself and the Heirs of the Marriage; was found not to extend to Lands fallen to him by Succession, even as Heir of Conquest, or to a Sum given to him by Transaction for his Right to such Lands 29 January 1678 Stewarts contra Stewart. And a Sum to which a Husband succeeded as Executor Nominatè and universal Legatory, was found not to fall under a Clause in his Contract of Marriage obliging him to provide to himself and his Wife in Liferent, and to the Heirs and Heirs of the Marriage in Fee which failing to his Heirs and Heirs and whatsoever, all Lands Hereditage Tenements Annuelrents Tackes Goods and whatsover, all Lands Movable heritable or moveable, he shall conquest or acquire during the Marriage 17 July 1730 Mercer deputy Clerk of the Commissionary Court of Edinburgh contra Mercer his Daughter and Altes her Husband. A general Clause in a Contract of Marriage obliging the Husband to provide his Wife to a Liferent of all Sums to be conquest by him during the Marriage, is understood only of such Sums as the Husband acquires to himself and his Heirs and in which his Heirs may succeed to him after his Decease, and whereof the Fee remained in his Person while he lived: for such a general Clause in Contracts of Marriage doth not oblige the Husband's Heir to provide the Re- sult to the Liferent of Sums provided in Bonds and Securitys and made payable by the Debtors to the Husband's Heir to provide the Fee 1629 Allphant contra Finnie. For if such Clauses in Favour of Wives should receive any larger Interpretation, it would put the Husband under a Necessity to take the Rights of all he had or might purchase to his eldest Son only and restrain him from selling any thing upon his Younger Children. Again, such a Clause of Conquest carries only what more the Husband had at his Death, than when the Contract was entered into; with the Burden of all his Debts contracted during the Marriage, upon Account of the Acquisition 20 Decemb. 1665 L. Kilbuck contra Lady Kilbuck 23 December 1668 Smith contra Muir 24 January 1689 Lady Renton contra L. Ranton Christian. ibid Decis. 58. Because Obligations in a Contract of Marriage concerning Conquest, are understood of a free Acquisition to the Husband's