

Husband's Estate, or what he acquires with his own Money or Means; and what he acquires otherwise viz. with borrowed Money, is not such a free Acquisition, seeing the Debt for which he stands bound as the Price, is a Burden upon the Estate, so that the Obligation to provide such Conquests may be satisfied by doing it with the said Burden. Again a Clause of Conquest of Lands during a Marriage, would not carry Lands acquired by others of equal Value were sold 27 June 1676 E. Dumfermling contra E. Callender. A Husband having obliged himself to invest his Wife in all Lands and Hereditages conquest during the Marriage: her Right was found not to extend to Lands and Tithes, whereof the Husband purchased an absolute and heritable Right two Years after he had acquired Facts of the same nature matrimonial; except in so far as the yearly Profit by the heritable Right exceeded that of the Fact. In respect the Wife was not provided to a Life rent of Tithes 12 March 1628 Lady Dumfermling contra the E. her Son. A Husband having provided his Wife to the Life rent of a certain Sum, and also of the Conquest during the Marriage: she was not found to have Right the whole Conquest and that particular Sum too, but only to that Sum and the Conquest in so far as it exceeded the same; the overplus only being understood conquest 9 January 1672 Beattie contra Roxburgh. How the Notion of Conquest with regard to an Heir of Conquest is more extensive than that of Conquest in a Contract of Marriage is explained afterwards.

A Life rent Provision by one to his Wife of all Conquests during their Marriage, was extended to a Disposition of Lands whereupon the Husband was not invest in his Lifetime: in regard he died in Possession by Virtue of that Right, and his Heir continued the Possession 24 January 1629 Lady Renton contra L. Aulton. A Wife by her Contract of Marriage disposed her Land to her Husband and her in Life rent and to the Heirs of the Marriage, which failing to her own Heirs and Assignys; and it was agreed, that the Conquest of the Marriage should go to the longest Living and to the Heirs between them, and failing these to be equally divided between both their Heirs and Assignys. The Wife having thereafter disposed her Land for one's Cause to the Husband his Heirs and Assignys, failing Heirs of the Marriage, and reserving her own Life rent whereupon he was invest; it was found, that the Disposition was a Right of conquest to the Husband, and that the Fee of the Lands disposed fell to the Wife's Heirs by the Provision of Conquest 12 December 1707 Forquard contra Berriel. But a Clause in a Contract of Marriage providing the Wife to a Life rent of all Lands goods and Goods conquest during the Marriage, was found not to extend to Bonds bearing Date after the Marriage, unless she prove they were made up of Sums or Moveables acquired during the Marriage. Nor were such Clauses found to hinder the

the Husband to give competent Portions to his Children, events his eldest Son at his Marriage which is curious and for a Focher, if there were sufficient Means remaining for a Provision to the Mother 15 July 1673 Robson contra Robson. As to the Manner of proving what was conquest during a Marriage, a Bond of borrowed Money bearing Date during the Creditor's Marriage, is a sufficient Proof of that Money's being conquest in the Time of such Marriage, unless it be proved to have belonged to him before the Marriage *ead. in inter eodem.* In a Suit at the Instance of a Widow for Payment of a Sum as falling under the Conquest, provided to her in her Contract of Marriage; the Lords inclined to sustain this Allegiance for the Defouder, that Bond for the Money was granted to the Husband before, and renewed after the Marriage, relevant to be proved by the Deft. and Witnesses in the Bond: tho' they did not determine this point, but before Answer ordained the Defouder to bring such Proof as he thought fit 18 Decemb. 1666 Menzies contra Burnet observed by J. J. And it was found relevant to hinder a Bond bearing for Money borrowed during the Creditor's Marriage, to fall under a Provision of the Conquest of such Marriage made by him; that the Bond was granted to him by Transaction, as the Price or Composition for his Right of Succession to a deceased Friend's Estate; and the Allegation found probable by the Oaths of Witnesses and Commoners in the Agreement 29 January 1670 Stewarts contra Stewart.

A conventional Provision in Favour of a Wife was effectual *ead. id.* A conventional Provision in Favour of a Wife and mutual Cause there not fail as *causa data non secuta*, tho' the Focher and mutual Cause there not fail as *causa data non secuta*, tho' the Focher being paid should be employed to the Wife's Use; she not being obliged for it herself, but another 5 July 1665 Mackie contra Stewart, even tho' that other was insolvent at the Time of the Contract, and the Focher could never have been recovered from him by Diligence 11 June 1670 Hunter contra Creditors of Peter. Nay even where the Contract bore that the Wife should have no Benefit thereby until the Focher which a third Party was Debtor for were fully paid, if it was recoverable by the Husband's Diligence 21 November 1671 Menzies contra Corbat. Again, where the Half of the Wife's ^{Focher} was by the Contract of Marriage provided ^{to her} and be forthcoming to her failing Children of the Marriage ^{that} bond (and no express Obligation upon him to pay the same, or do Diligence for recovering the Husband was found liable to pay the Half of the Focher, tho' not recovered; unless he had done such Diligence for recovering thereof, as prudent Men use to do; which was implied in his Duty and Trust