

No 18. to such sums as he had employed to his second son, and which was found pre-
 able for her liferent by the heir, of these sums conquered to the second son.

Act. *Stuart.*Alt. *Hope et Cunninghame.*Clerk. *Hay.**Fol. Dic. v. 1. p. 199. Durie, p. 178.*

No 19.

An obligation to provide the wife in liferent of all sums conquest, was not extended to certain sums, which the husband had taken the debtors obliged to pay to some of his younger children, but only to those which he had acquired to himself and his heirs.

1629. February 10. OLIPHANT *against* FINNIE.

THE husband being obliged to provide his wife to a liferent of all sums to be conquest by him during their marriage; whereupon she having pursued the heir, to provide her to her liferent of some particular sums, contained in certain bonds, which the husband had taken the debtor obliged to pay to some others of his bairns, to whom the payment by the bond was appointed to be made, and which sums he had provided to the said bairns;—it was found, That that clause, and the like clauses contained in such contracts, could not oblige the heir to provide the relict to the liferent of sums, which, in the bonds and securities made thereupon, were provided to the defunct's other bairns: For such a general clause, in contracts made by the husband in favours of his wife, ought to be understood only of such sums as the husband acquires to himself and his heirs, and whereunto his heirs may succeed to him after his own decease; and whereof the fee remained in his person while he lived: For, if it should receive any larger interpretation, it would tend to take away all power from the husband, to provide any thing to his other bairns; but to acquire all which he had or might purchase to his eldest son only; yet to this it is *answered*, That the bairns provision is not affected with the wife's liferent.

Act. *Oliphant.*Alt. *Nicolson.*Clerk, *Hay.**Fol. Dic. v. 1. p. 199. Durie, p. 423.*

No 20.

Lands conquest, and sold again, do not fall under the clause of conquest in the contract of marriage. A feu being acquired, and disposed again to the feuar for a greater feu-duty; the feu-duty only is reputed conquest.

1629. November 26. LADY DUMFERMLINE *against* Her SON.

IN this action, whereof mention is made 12th March 1628, No 2. p. 3048. the clause of contract, whereby the husband is bound to infest the wife in all lands to be conquest, during the marriage, will not astrict the heir to fulfil the same to the relict, for such lands as were conquest by the husband, and after the conquest were sold by him, before his decease; for that clause ought only to be effectual to her, for such lands and conquest as remained and continued in that estate, the time of the husband's decease, and the right whereof remained with him. And it was also found, that the lands being acquired by the husband, from the feuar of the lands, and thereafter disposed again in feu to the same feuar, for a greater feu-duty to be paid, than was contained in the feuar's prior

rights, that augmentation of the feu-duty by the husband, could not be reputed a conquest, whereof the relict might claim a liferent, as coming under the fore-said clause in the contract. See No 24. p. 3072.

No 20.

Fol. Dic. v. 1. p. 199. Durie, p. 470.

1672. January 4.

BEATTIE against ROXBURGH.

By contract of marriage betwixt Roxburgh and Sandilands his spouse, Roxburgh is obliged to employ 3000 merks for her liferent use; and, by a posterior clause, provides her to the liferent of all lands conquest during the marriage. Shortly after the marriage, he conquest a land in Edinburgh; likeas he had another tenement before the marriage, out of which he infest his wife in an annualrent, in full satisfaction of the contract of marriage; which infestment, she kept both in his lifetime, and after his death; but being on death-bed, he infest her of new in the tenement acquired after the marriage, bearing expressly, *for implement of the clause of conquest.* And she pursues now James Roxburgh, as lucrative successor to his father, by a disposition after the contract of marriage, to fulfil that obligation, to employ the 3000 merks.—The defender *alleged* absolvitor, *imo*, Because the pursuer had accepted an infestment of an annualrent out of the tenement acquired before the marriage, in full satisfaction; *2do*, The two clauses in the contract of marriage, cannot import that the wife should have the whole lands conquest by the clause of conquest, and should return for the implement of the special clause, for employing the 3000 merks, upon the husband's heirs, or the tenement he had before the marriage; because the clause of conquest can only be understood of what was conquest, more than was answerable to the annualrent of 3000 merks; so that the last infestment granted to her by her husband, must necessarily satisfy both clauses, there being no other conquest. And albeit the infestment bear, to be expressly *in satisfaction of the clause of conquest*; that was but a voluntary gratuitous deed, that the husband was not obliged to by the contract, and was done *in lecto ægritudinis*; whereupon the defender has a reduction *ex capite lecti*, which he repeats by way of exception.—The pursuer *answered* to the first defence, That she never accepted or bruiked by the first infestment, that bears *in satisfaction*; and her intending of this cause is a renouncing of it; and to the second defence it was *answered*, That the clause of conquest extended to the whole conquest, and the husband might well, in implement, infest his wife in this tenement; neither has the defender interest to reduce this disposition, as done on death-bed, in prejudice of the heir, because he is not heir, but lucrative successor, which is only a passive title, but no active title.—The defender *answered*, That albeit primarily and immediately, it be the heir's privilege, not to be prejudged

No 21.

By contract of marriage, the husband bound himself to employ 3000 merks for his wife's liferent use, and by a posterior clause, provided her to the liferent of all lands conquest during the marriage. It was found, that this clause of conquest could only be understood of what was conquest, more than answerable to the annualrent of the 3000 merks.