rights, that augmentation of the feu-duty by the husband, could not be repute a conquest, whereof the relict might claim a liferent, as coming under the foresaid 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.

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.

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 infeft his wife in an annualrent, in full satisfaction of the contract of marriage; which infeftment, she keeped both in his lifetime, and after his death; but being on death-bed, he infeft 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 obligement, to employ the 3000 merks.—The defender *alleged* absolvitor, 1*mo*, Because the pursuer had accepted an infeftment of an annualrent out of the tenement acquired before the marriage, in full satisfaction; 2*do*, 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 infeftment granted to her by her husband, must necessarily satisfy both clauses, there being no other conquest. And albeit the infeftment 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 infeftment, that bears *in satisfaction*; and her intenting 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, infeft 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 deeds on death-bed; yet secondarily, it is competent to the creditors of the defunct, or heir, who are also prejudged by such deeds; because, if the right stood in the heir's person, they could affect the same; and it was so found in the reduction, at the instance of the creditors of Balmerino and Couper; at whose instance, Couper's disposition on death-bed was reduced, albeit Balmerino was neither heir nor pursuer; and there is no reason, that if an heir should forbear to enter, creditors should be prejudged. *See* TITLE TO PURSUE.

THE LORDS found, That the defender, as creditor in the sums whereupon the disposition proceeded, had interest to reduce the disposition; and found the wife's second infeftment reduceable, as being *in lecto*, in so far as it deborded from the contract of marriage; and found, that thereby that infeftment behoved to be interpreted in the first place, for satisfying the special obligement of employing the 3000 merks; and that the superplus benefit of the tenement, if any was, was comprehended in the clause of conquest only; and found no necessity to decide the first defence, concerning the acceptance of the first infeftment, whether the wife's taking and keeping of it in her custody, did import the same.

Fol. Dic. v. 1. p. 199. Stair, v. 2. p. 34.

1688. *July.* COLLINGTON *against* HEIR of COLLINGTON.

No 22.

A wife, by a contract of marriage, being provided to the liferent of what the husband should conquest, or, of what sums he should receive payment of during the marriage, was found not entitled to the liferent of sums conquest during the marriage, which had been applied by the husband for purging incumbrances upon his estate.

BY contract of marriage betwixt my Lord Collington and his second Lady, my Lord having obliged himself to employ what he should conquish, or any sums of money he should receive payment of as due to him, and to take the rights and securities thereof to himself and his Lady, and longest liver, in conjunct fee; and having renounced his *jus mariti* of thirty-six chalders of victual that stood in the Lady's person, which obligement she accepted in satisfaction of all she could ask or claim of jointure, terce or third, except the house or park of Collington; the Lady after her husband's decease, pursued his son and heir, this Lord Collington, for a liferent of a great sum alleged conquest by the father, the pursuer's husband, arising from fees and pensions from the King, with which he had purged old wadsets and incumbrances upon his lands, upon these grounds, 1. That the money conquest must be repute extant, in so far as the wadsets of the lands now redeemed, are surrogate in place thereof; especially the Lady having quit her terce of the lands which are now freed, and which she would have fallen to, in case he, in contemplation of the said obligement of conquest, had renounced. 2. The case where a wife is competently provided by her contract, obligements of conquest do usually admit of some extension, for provisions to children of a former marriage, which is *debitum naturale*, and for rational deeds where no fraud appears; yet that cannot be pleaded here, where the conquest is the wife's principal provision; and it could not be esteemed a rational act, to take the conquest of the second marriage from the bairns thereof, and give it to the eldest son of the first mar-