

being but one daughter procreated, he did give her in tocher 1000 merks to Thomas Cowan her husband; and thereafter, the said Adam having married a second wife, by that contract did provide the whole conquest to the heirs of that marriage, and having made some conquest of lands, did get a discharge from the daughter of the first marriage, and her husband, of all that they could ask by virtue of the first contract of marriage, and had given them a bond of 400 merks; whereupon they did pursue his relict and daughter of the second marriage for payment. It was *alleged* for the defenders, That the bond was given after the second contract of marriage, whereby the whole conquest was provided to the defenders; likewise for implement, the defunct, in his own time, had disposed the whole conquest, goods and gear, in their favour. So the debate was, If that provision of conquest did hinder the defunct to contract debts, or to grant this bond to the daughter of the first marriage, which was *alleged* to be a pure donation without any onerous cause. THE LORDS did find, That these provisions in favour of the heirs of a second marriage, did not prejudice a lawful creditor, nor the pursuer, albeit the bond had been a pure donation, seeing the conquest was only founded in favour of the heirs of the marriage; and albeit the defenders had gotten a disposition, yet it could never defend them, they being successors *titulo lucrativo*;—notwithstanding, it was *alleged*, That the contract in favour of the heirs ought to be interpreted bairns, as it had been found at several times by former decisions; and that they were creditors by the said provision of conquest before the granting of the said bond. THE LORDS declared they would make this decision a practise for the future, in all such cases, because they found, that such provisions of conquest were only effectual after the husband's decease, and did not hinder him either to contract debt or to affect the same during his lifetime.

No 77.

Gosford, MS. p. 39.

1673. July 15.

ROBSON *against* ROBSON.

It was found, That a provision of conquest to a wife did not bar the husband from making rational provisions to his children of a former marriage, provided a competency was left to the wife.

No 78.

Fol. Dic. v. 2. p. 284. Stair.

* * * This case is No. 4. p. 3050, *voce* CONQUEST.1677. June 16. & 20. MITCHEL *against* CHILDREN of LITTLEJOHN.

A DEED granted by a husband to his second wife, declaring, That though the marriage should dissolve within year and day, the contract, by which she

No 79.

No 79.

was provided to a jointure of 750 merks, should stand good for 600 merks yearly, was found a rational deed, and effectual against the heirs of the first marriage, who, in their mother's contract, were provided to the conquest during the marriage.

Fol. Dic. v. 2. p. 284. Stair. Dirleton.

*** This case is No 11. p. 3190, *voce* DEATH-BED.

No 80.

1677. February 13,

FRASER *against* FRASER.

A PROVISION of conquest in a contract of marriage to the heirs, or to the bairns of the marriage, is not so strictly to be interpreted as if the father were under a specific obligation to make every subject effectual to them that he should happen to acquire during the marriage. It has no other effect than to be a limitation upon the father, that he cannot alter the destination established in their favour by substituting strangers. But as conquest is *nomen universitatis*, to no particular of which can the children lay claim, but to the *universitas* in general, the father, who may forbear to purchase, is at liberty to exercise every act of property after he does purchase; which, though it may alter or lessen the particular subjects that fall under the *universitas*, is not disposing of the *universitas* itself, or altering the destination established in the contract. Any mere gratuitous deed, however, without rational cause or consideration, will be understood to be an indirect method of altering the succession, *et fraus facta contractui*, and therefore ineffectual.

Fol. Dic. v. 2. p. 284. Stair.

*** This case is No 23. p. 12859.

No 81.

1677. June 19.

MURRAYS *against* MURRAYS.

Found in conformity with Robson *against* Robson, No 78. p. 12943. Here the question was with children of the second marriage, as heirs of conquest.

UMQUHILE Thomas Murray, Bailie of Edinburgh, by his first contract of marriage, provided a sum to the bairns of the marriage, with a clause of conquest of lands and tacks acquired during the marriage. And, by his contract of marriage with his second wife, he provides the heirs of that marriage to a sum, and to the conquest during that marriage, of lands, annualrents, and sums of money, and there is expressed goods and gear, but these words are crossed, yet legible. The defunct had a son and two daughters of the first marriage. The two daughters were married, and forisfamiated in his own time. The son of the first marriage hath some heritage in land, which is said to be 700 merks yearly. He has a son and two daughters of the second marriage; and he grants a bond