

No 88. married, cannot prejudge her of the clause of conquest contained in the mother's contract of marriage, seeing she did not accept the same in satisfaction of the said provision. THE LORDS refused to sustain process for the half of the conquest during the father's lifetime, and found that the father, notwithstanding of the foresaid clause, may dispose upon the conquest for any rational or necessary use, and that it may be affected with the father's debts, contracted or to be contracted at any time during his lifetime, and any other rational or necessary deeds done by him.

*Sir P. Home, MS. v. 2. No 620.*

1685. February 24.

ELSPETH CRUIKSHANKS, and Mr JOHN JOHNSTON, Merchant in Aberdeen, Her Husband, *against* ROBERT CRUIKSHANKS of Banchry, Her Father.

No 89.

THE LORDS, on Carse's report, found, That the obligation in the said Robert's contract of marriage with the pursuer's mother, providing the conquest to the bairns of the marriage, resolves only into a destination; and that, notwithstanding of that clause, the father is fiar; and therefore refused to sustain process during the father's lifetime, either for liquidation or payment, or declaring that the father may do no deed that is gratuitous or voluntary, to the prejudice of the said clause of conquest. See the parallel case decided 27th November 1684, Simpson *against* Anderson, No 88: p. 12960.; only, here the clause of conquest runs, that he provides the conquest to the bairns *in integrum*, which conception was not so strong in Anderson's case.

*Fol. Dic. v. 2. p. 287. Fountainhall, v. 1. p. 343.*

1687. February —.

Mr ROBERT IRVINE *against* ELIZABETH and JEAN IRVINES.

No 90.

A MAN having obliged himself to provide 4000 merks to himself and his wife in conjunct fee and liferent, and to the bairns of the marriage in fee, and to pay the money to the bairns, the next term after their mother's decease, she predeceasing, the children pursued their father for payment.

*Alleged* for the defender, That the provision to pay the 4000 merks to the pursuers, the first term subsequent to their mother's decease, supposed her to be the survivor, and was not intended as a renunciation of the father's conjunct fee.

THE LORDS found the father had the liferent of the sum during his life.

*Fol. Dic. v. 2. p. 285. Harcarse, (CONTRACTS OF MARRIAGE.) No 383. p. 99.*