

*Answered* for Isobel Birrel ; It is absurd to pretend that the disposition to the husband in fee, whereby he might have disposed the land to any other at pleasure, did only make him an heir of provision, who needed no service ; nor doth it follow, that because the husband had a liferent, the supervenient fee was not conquest. The decisions cited are not to the purpose, where acquisitions of fee for securing and completing former rights of fee, were not interpreted to be conquest ; but how can a fee be accessory to a liferent which it absorbs, or property be accessory to servitude ? And it is not strange in our law, to see a right made over one way, come back to the granter in whole or in part another way.

THE LORDS found, That by the clause of conquest in the contract of marriage, the lands disposed by the wife to the husband during the marriage, are conquest to him, and that the fee of the one half thereof falls to the heirs of the wife.

*Forbes, p. 208.*

---



---

SECT. IV.

Rights conquest, but taken in favour of younger children.—Lands conquest, and again sold.—Liferent of conquest over and above the liferent of a certain sum.—Sums conquest, but applied for purging incumbrances.—Who heir of conquest ?

1625. July 16.

KNOX *against* BROWN.

KNOX, relict of James Brown chirurgion, having charged her son, as heir to her husband, conform to her contract of marriage, to fulfil the same to her, upon that clause thereof, whereby the husband obliged him and his heirs, to provide her to her liferent of all sums which he should conquer, and employ the same upon lands or annualrent, to himself and his heirs, during the time of their marriage ; this clause the LORDS found obligatory against the heir of the defunct, to bind him to employ and give the relict her liferent of all sums of money, which the husband had conquered during his lifetime, after the date of that contract, and which he had given out in heritable manner, and remained in that case, and of that nature, the time of his decease ; and found, That the relict, by virtue of that clause, had right to seek her liferent of the heritable sums conquered by her husband, which were provided by him to his second son ; albeit the clause of the contract was conceived in these terms, viz. ‘ Oblig-  
‘ ing him and his heirs, to provide her to the liferent of the sums which he should  
‘ conquer to himself or to his heirs ;’ which clause they found extended also

VOL. VII.

17 S

No 17.

No 18.

A provision to a wife in a contract of marriage, of her liferent of all sums ‘ to be acquired by the husband, and taken to himself, and to his heirs,’ was found to comprehend the liferent of sums, the fee of which was provided to the second son.

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.*

1629. February 10. OLIPHANT *against* FINNIE.

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.

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