

## CONQUEST.

## SECT. I.

## Clauses of Conquest, how far extended..

1623. *March 14.*BESSIE SKENE and her SPOUSE *against* The HEIR of THOMAS FORBES.

THOMAS FORBES, burges of Aberdeen, by his contract of marriage with Bessie Skene, obliged himself to infeft her in conjunct fee, in all the lands and annualrents he should conquest, and to provide the same to the heirs to be procreate betwixt them; which failing, the half to his heirs, and the other to her heirs, heritably. He thereafter conquered the lands of Robisland, and certain fishings holden feu of the town of Aberdeen, and lent 6000 merks to Mr William Forbes of Craigivar, to himself in liferent, and to one of his daughters in fee. He being deceased, his relict pursued her son, heir to her husband, to infeft her in liferent, and to provide the fee of all the lands and annualrents conquered by her husband, to the heirs of their marriage; which failing, the half to his heirs, and the other half to her heirs: The heir suspended, *alleging*, That he could not infeft her in Robisland, and the fishings, because, by acts of the Magistrates and Council of Aberdeen, ratified by Queen Mary, it was not leisom to them to feu any of their lands or fishings, but to actual burgesses of the town, and their heirs male, and that all heirs female were expressly excluded; and also, it was thereby provided, that no infeftment of conjunct fee or liferent should be given thereof to any woman; and so the charger, not being capable of any infeftment to these lands, the letters should be *simpliciter* suspended. Notwithstanding whereof, the LORDS found, That the heir should give her *damnum et interesse*, because he was not to be allowed to make any conquest which might prejudice her of the benefit of conjunct fee of all his conquest, according to the provision of her contract of marriage.—Next it was *alleged* in the suspension, That the relict could have no conjunct fee of the 6000 merks owing by Craigivar, because it was not conquest, the defunct not being infeft; but only that the term of payment being bypast, that annualrent should be paid to the said Thomas Forbes during his life, and to his daughter after his decease; notwith-

## No 1.

He who by contract of marriage, was bound to infeft his wife in conjunct fee of all future conquests, acquiring thereafter lands holden burgage, which, by acts of the town, could only be holden by burgesses, their heirs male, &c. his heir was ordained *prestare damnum et interesse* to the relict.

No 1. standing whereof, it was found conquest of an annual rent, and that she should be infeft therein. The husband had conquered the wadset of a tenement in Aberdeen, wherein she was also ordained to be infeft, and in case of redemption that the money should be re-employed to her behoof during her lifetime.

*Fol. Dic. v. 1. p. 196. Haddington, MS. No 2814.*

1628. *March 12.* LA. DUMFERMLING *against* The EARL.

No 2.

A husband was bound by his contract of marriage to infeft his wife in all lands and heritages he should conquest during the marriage, and having, during the subsistence thereof, first acquired tacks of certain lands, and some years thereafter, the heritable right thereof, she was found to have right only to the rents of the lands as payable to by these tacks, but, not to the profit accruing from the tacks, in respect there was no express stipulation in the contract, providing her to the liferent of tacks or other securities purchased during the marriage.

IN an action by the Lady Dumfermling against her son, as heir to his father, for fulfilling of that part of her contract of marriage, whereby her husband was obliged to infeft her with himself, in all lands and heritages, which he should conquest the time of their marriage; it being controverted betwixt the parties, if that clause of the contract, of the tenor foresaid, (for that was the tenor of the same) did extend to lands or teinds, whereof the umquhile Earl, her husband, since their marriage had acquired an heritable right to himself and his heirs; the same lands and teinds before that heritable right, being acquired by her said husband, in tack and assedation also since the marriage, and before the heritable right acquired by him two years at least, in respect whereof he being tacksman, and the tack being set for longer space, that would endure longer than the Lady's lifetime; the defender *alleging*, that the posterior acquiring of an heritable right could not be found, such a conquest, as might compel the heir, to give the relict infeftment thereof, as of lands whereof she could be effectually infeft, as conquest lands, the same being under so long tacks procured before, which ought of reason to stay the effect of the infeftment, so far as might extend to the profit of the lands, which would only pertain to the heir, by reason of the preceding tacks; and the pursuer *replying*, that if this should have place, all contracts bearing such clauses should be eluded, and the wives defrauded of their provision introduced in their favours; for, to prejudge the infeftment, which is provided to the wife, it should be then lawful to the husband who minds to conquest lands, whereby the wife would receive the benefit of infeftment, to defraud her thereof, by taking a preceding long tack of the same, whereof he shortly thereafter takes an heritable right, though the preceding tack is acquired also since the marriage, yet he might elude that clause of infeftment, if shortly after the tack he had also acquired infeftment, which is against the mind of the contract, appointing her to be infeft in all which he should conquest; this exception was sustained, notwithstanding of the reply; for the LORDS found, that the acquiring of an heritable right by the husband, of that whereof he had acquired tacks two years of before, of the endurance foresaid; and albeit the tacks were also acquired by the husband since the marriage, they could not be repute a conquest, which might compel the heir to give the relict infeftment profitably, or of any greater benefit concerning the lands so acquired by her, except so far as was further acquired by the heritable