

1699. *January 20.* CUMING *against* KENNEDY and her HUSBAND.

No 85.

A CLAUSE of conquest, in a contract of marriage, was to the children thereof. One daughter only existed, who had also only one daughter by a first marriage. She married again. The grandfather made that grandchild his universal legatee. In a competition betwixt the grandchild and her mother, the Lords sustained the universal legacy, and found, That the clause of conquest did not restrain the granter, but that he might even by testament legate his goods to his grandchild, seeing the daughter had been competently provided by him in her first contract of marriage, and that the deed was not wholly gratuitous but rational.

*Fol. Dic. v. 2. p. 285. Fountainhall. Dalrymple.*

\*\*\* This case is No 41. p. 6443. *voce* IMPLIED DISCHARGE.

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SECT. XII.

Provisions to Children when Prestable.—Provisions in a certain Event.

1662. *February 8.* FENLAYSON *against* VEITCH.

A DAUGHTER, by her contract of marriage, being provided to be a bairn in the house, at her father and mother's decease, her provision was found payable at the father's decease, although the mother was still alive, and that, because it could not be *in pendent* in the mean time till the mother should die, and that the mother had no right thereto, being prestable out of that part of the goods which belonged to the defunct, after separation of the wife's third.

No 86.

*Fol. Dic. v. 2. p. 285. Durie.*

\*\*\* This case is No 11. p. 12848.