

No 10. The like decision done 11th July 1632, La. Bonitoun *contra* L. Harden, where the relict, upon the like clause of her contract of marriage, got her liferent of lands acquired by her husband to his son, reserving only to the husband his liferent thereof.

Clerk, *Gibson*.

*Fol. Dic. v. 1. p. 197. Durie, p. 302.*

\* \* Spottiswood reports the same case :

By contract of marriage, the Earl of Dumfermline obliged himself to infest himself and his Lady, in conjunct-fee, in all lands acquired by him during the marriage. She pursued her son, and the Earl of Winton his tutor, for implement thereof. *Excepted* by them for some lands near Musselburgh, That she ought not to be infest in them, because they were acquired by her son, and her husband's name was not in them. *Answered*, That the purchase was her husband's, her son being but a child, *et in sacris paternis, et nullum habens peculium adventitium*, and if way were given to such things, it were to open a gate to all frauds for frustrating of contracts of marriages.—THE LORDS repelled the exception, the pursuer proving, that the lands were conquest by my Lord's own money, and not by his son's.

*Spottiswood, (HUSBAND and WIFE) p. 155.*

1629. *January 24.* LA. RENTOUN *against* L. RENTOUN.

No 11.

In a case parallel to the above, the heir having paid the price after his father's death, and retired the bond granted by the father for the same, the Lords found, that the heir ought not to provide the relict in the liferent thereof, but with the burden of paying annualrent for that sum unpaid by the defunct: The reason of which was,

UMQUHILE L. Rentoun being obliged to provide his wife to her liferent of all conquest to be made by him during the time of their marriage; whereupon she having charged her son, his heir, to provide her to some lands conquered by her husband after the bond, which conquest being made by contract, no infestment having followed to him in his lifetime, but only a contract, by virtue whereof he possess the land; the charges were sustained, and albeit the husband was not infest, yet it was found a conquest, he possessing by virtue of that contract, and dying in possession, and the son continuing in that same possession; and because the husband, the time of his decease, stood obliged in a part of the price of the land conquered to the seller, which his heir was compelled to pay to him since, who sold that land to him. It was found, that the heir ought not to provide the relict to her liferent thereof, but with the burden of paying annualrent for that sum unpaid, and which the heir was compelled to pay sensine of all terms after the provision, to be made to her by the heir, of her liferent thereof, seeing the sum which he was compelled to pay was by virtue of a bond made by the husband, expressly bearing payment of the sum owing by him for the price of the same land; whereas, if the bond had not

made specific mention that the sum was owing by the defunct for the same cause, viz. for the price of these lands, the LORDS would not have so decided; for, if the price had been paid by the defunct to the seller of the land, and if he had borrowed the money from another to pay the same, and that he had remained at his decease debtor therein to that creditor, the bond making no mention that that sum was borrowed for the cause of that alienation, *eo casu* the burden of payment of that annualrent, of that sum so borrowed, would not lie upon the relict, but she would have her liferent free of that burden: And the contract bearing, to provide to her her liferent of all possessions purchased by him, it was questioned, if that should extend to tacks acquired by him, but that was not decided.

NO II.  
that the bond granted by the defunct bore expressly to be for payment of the sum owing by him for the price of these lands.

Act. *Oliphant.*

Alt. *Craig.*

Clerk, *Gibson.*

*Fol. Dic. v. 1. p. 197. Durie, p. 417.*

\* \* \* Spottiswood reports the same case :

ALEXANDER HOME of Renton was obliged to infest his wife in all the lands conquest by him after the marriage. She pursued her son, as heir to his father, to infest her in thirteen husband-lands of Renton, alleged conquest by his father the time of their marriage. *Alleged*, He ought not to infest her in two of these husband-lands acquired from Thomas Home, because albeit the bargain was made by his father in his own time, yet he was never infest in them all his time, and so they could not be reputed conquest.—THE LORDS repelled this allegiance, as had been done between the Countess of Dumfermline and her Son, No 10. p. 3053. Next *alleged*, Though acquired by his father, yet the greatest part of the price was paid by himself since his father's decease, and therefore he could not infest her, but with the burden of the annualrent of the sums he had paid out himself for these lands. This allegiance was found relevant.

1629. *Feb. 10. and March 6.*—In that same action she sought to have the teinds of the kirk of Hornden, which her umquhile husband had acquired by tack after the marriage; for, by the contract, he was bound to infest and sease her in all lands, annualrents, rooms, and possessions, acquired by him after the marriage.—THE LORDS would not sustain the charge for this part, in respect that her husband having acquired only a tack of these teinds, he could not infest her therein; and therefore the contract could not be extended to teinds, but only to lands wherein her husband could have been infest.

*Spottiswood, (HUSBAND and WIFE) p. 158.*