

No 15. band, as of a lawful right of the lands, which could not be quarrelled by him or his heirs, for the causes foresaid, which was repelled by the LORDS.

Act. *Stuart et Aiton.*

Alt. *Advocatus, Nicolson, et Burnet.*

Clerk, *Hay.*

*Fol. Dic. v. 1. p. 198. Durie, p. 453.*

No 16.

New rights acquired during the marriage, to lands, which the purchaser had some right to before the marriage, are not to be reputed conquest.

1683. February 6. WAUCHOPE against L. of NIDDRIE.

IN an action of declarator pursued by James Wauchope, son and apparent heir of the second marriage, betwixt the Laird of Niddrie and Ker his second spouse, founded upon a clause in the said Niddrie's second contract of marriage, wherein he was obliged to provide the children of that marriage, to 10,000 merks, together with the hail conquest lands during the marriage, and subsumed, That the lands of Lochtouer were conquest during the marriage, and that this Niddrie, as heir to his father, ought to denude himself thereof in favours of the said James;—it being *alleged* for Niddrie, That he could not be liable to denude himself of the saids lands, because the same could not fall under the clause of conquest, in regard his father had both a right of wadset thereupon, and two comprisings, and an irredeemable disposition from the apparent heir of the said lands;—and it being *replied*, That after the marriage, he had acquired preferable rights to these lands, and so *in tantum* the value of these rights were conquest:—THE LORDS sustained the defence for the Laird of Niddrie, that his father had either right by expired apprisings, or by an irredeemable disposition; and found, That any right acquired during the marriage, although preferable, did accresce to the former rights, and was but a completing of the conquest formerly begun before the marriage.

*Fol. Dic. v. 1. p. 198. P. Falconer, No 47. p. 26.*

1707. November 12.

FERGUS against BIRREL and ALEXANDER SWINTON.

No 17.

By a clause in a contract of marriage, conquest was to be divided, in case of no children, between the husband's and wife's heirs. The wife in the contract disposed her lands to her husband in

By contract of marriage in 1674, betwixt William Fergus and Agnes Birrel, one of the heirs portioners of Freuchie, she disposes her lands to him in liferent, and the heirs of the marriage in fee; which failing, to the said Agnes, her heirs and assignees whatsoever. In 1682, she grants a disposition of her lands to her husband, on this narrative, that he had paid several debts which affected her land, and that now all their children of the marriage were dead, and for the nuptial love she bore to him, &c. The husband being the first decesser, she is told that her disposition being *stante matrimonio*, it was *donatio inter virum et uxorem*, and so revocable in law, she is advised to revoke it, and so dies; whereupon Isobel Birrel, her sister, and nearest heir, raises a reduction of that disposition against Mary Fergus, sister and heir to the husband, and insisted on