

right, in yearly profit, than was contained in the tack, viz. for the tack-duty allenary, if the infestment did free the receiver of that tack-duty; for, albeit the heir ought to give her infestment thereof, as of a purchase, yet it was found it ought not to be so simply given, but with exception and reservation of the tack foresaid, and the benefit thereof to the heir; and, as concerning the destituting of the party of the mind of the contract, which intends to give the wife her liferent of all which the husband should acquire; this contract was not of that tenor, but did only bear, to infest her in all lands and heritage the husband should conquer; and, if parties agree to provide the wife to liferent of tacks or bonds, or other securities and benefits purchased by their husbands, the same ought to be so expressed; but not being expressed by the parties in writ, could not be extended otherways than they agree in the words of their contract.

No 2.

Act. Aiton &amp; Stuart.

Alt. Hops, Nicolson &amp; Burnet.

Clerk, Hay.

Fol. Dic. v. I. p. 196. Durie, p. 359.

1629. February 20.

DOUGLASS against WHITE.

A HUSBAND being obliged to his wife in his contract of marriage, to infest her in liferent in all lands and annualrents, which he should conquer and acquire the time of their marriage; and he having lent out some monies to certain debtors by obligations, whereby they were obliged yearly to pay to the creditor 10 for 100, ay and while the principal sum were paid; the saids bonds neither bearing a clause of infestment therefor, nor of paying annualrent as well not infest as infest, but being of the foresaid tenor, to pay annualrent ay and while the principal sum were re-paid; it was found, That the heir of the husband, albeit he could not give her infestment and sasine of the said annualrent, he neither being infest therein, nor the creditor bound to give him infestment, yet that the heir should give her her liferent right *habili modo*, of the said sums, albeit the tenor of the contract proports as said is.

No 3.  
A husband was bound to infest his wife in the conquest of all lands, annualrents, &c. He lent out money upon annualrent, bearing no clause of infestment, yet it was found that the clause comprehended this subject.

Clerk, Hay.

Fol. Dic. v. I. p. 197. Durie, p. 428.

\* \* Spottiswood reports the same case: .

By contract of marriage passed between James Douglas and Elizabeth White, he was obliged to infest her in all lands and annualrents conquest by him during the marriage. After his decease, she and Mr Thomas Reidpath, her second husband, pursued the heir of the first marriage, Robert Douglas, to infest her in liferent, in the annualrents of certain heritable bonds acquired by umquhile James in his time. *Alleged*, That clause in the contract was only to be under-

No 3. stood of such annualrents wherein James was infeft, or at least might have been infeft into; but so it is, that there was a number of bonds wheresf she craved her liferent, whereupon no infeftment could follow, bearing only an annualrent of ten for the hundred. THE LORDS found that she should have her liferent, albeit they had not the clause (as well not infeft as infeft) and although the heir could not infeft her in such annualrents, yet they found that she should be provided to them by some other legal course.

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

1673. July 15.

ROBSON *against* ROBSON.

No 4.  
A clause of conquest providing to the wife the liferent of all lands, annualrents, goods, and gear conquest during the marriage, was found not to extend to bonds, unless the wife could prove that they came in place of, and were purchased by the goods and gear acquired during the marriage.

ISOBEL ROBSON pursues James Robson her son, as heir to his father, for implement of her contract of marriage, by which she is provided 'to all lands, annualrents, goods and gear, conquered during the marriage;' and subsumes, that her son sold and disposed of several goods belonging to his father, and took the bonds in his own name, which therefore he ought to re-employ for her liferent use. The defender *alleged* absolvitor, because the goods libelled were his own proper goods in his own possession, and sold by himself, whose possession infers property in moveables; and it is not relevant that once they were the father's goods, because he might have gifted or dispoened them to his son, without either witness or writ, unless the pursuer referred to the defender's oath, that the goods belonged to his father, and were neither gifted nor dispoened to him. It was *answered* for the pursuer, That albeit possession of moveables presumes property, and that a prior right of property is not relevant, yet it is but a presumptive probation of property, which may be taken off by a stronger contrary probation, and thus the pursuer offers to prove, that the son when he sold the goods was in his father's family, and that the goods were his father's proper goods.

THE LORS found the answer relevant to be proven by witnesses, but as for the goods that the son sold after he was married and forisfiliate, the LORDS sustained not the answer as to these, but ordained the son to be examined, how he got them from his father, and before whom, unless he had meddled with them violently or clandestinely.

The pursuer *insisted* further for the liferent of all bonds, bearing date during the marriage. The defender *alleged*, That this clause of conquest could not be extended to bonds, unless they had been expressed; for lands, annualrents, goods and gear, never comprehend *nomina debitorum*. It was *answered*, That the meaning of the parties was certainly to give the wife the liferent of bonds, seeing she was provided to lands and annualrents, which was more, and here, she had no more provision but this clause of conquest; and seeing the bonds behoved to have been made up, either of money or other moveables, which are comprehended in the clause; it is to be presumed, that the same was acquired