

No 79.

was provided to a jointure of 750 merks, should stand good for 600 merks yearly, was found a rational deed, and effectual against the heirs of the first marriage, who, in their mother's contract, were provided to the conquest during the marriage.

Fol. Dic. v. 2. p. 284. Stair. Dirleton.

*** This case is No 11. p. 3190, *voce* DEATH-BED.

No 80.

1677. February 13,

FRASER *against* FRASER.

A PROVISION of conquest in a contract of marriage to the heirs, or to the bairns of the marriage, is not so strictly to be interpreted as if the father were under a specific obligation to make every subject effectual to them that he should happen to acquire during the marriage. It has no other effect than to be a limitation upon the father, that he cannot alter the destination established in their favour by substituting strangers. But as conquest is *nomen universitatis*, to no particular of which can the children lay claim, but to the *universitas* in general, the father, who may forbear to purchase, is at liberty to exercise every act of property after he does purchase; which, though it may alter or lessen the particular subjects that fall under the *universitas*, is not disposing of the *universitas* itself, or altering the destination established in the contract. Any mere gratuitous deed, however, without rational cause or consideration, will be understood to be an indirect method of altering the succession, *et fraus facta contractui*, and therefore ineffectual.

Fol. Dic. v. 2. p. 284. Stair.

*** This case is No 23. p. 12859.

No 81.

1677. June 19.

MURRAYS *against* MURRAYS.

Found in conformity with Robson *against* Robson, No 78. p. 12943. Here the question was with children of the second marriage, as heirs of conquest.

UMQUHILE Thomas Murray, Bailie of Edinburgh, by his first contract of marriage, provided a sum to the bairns of the marriage, with a clause of conquest of lands and tacks acquired during the marriage. And, by his contract of marriage with his second wife, he provides the heirs of that marriage to a sum, and to the conquest during that marriage, of lands, annualrents, and sums of money, and there is expressed goods and gear, but these words are crossed, yet legible. The defunct had a son and two daughters of the first marriage. The two daughters were married, and forisfamiated in his own time. The son of the first marriage hath some heritage in land, which is said to be 700 merks yearly. He has a son and two daughters of the second marriage; and he grants a bond