

vide his wife to an yearly annuity in liferent, in full of what she could claim by her husband's decease, except the half of the conquest; but it is declared, that what arable field, land, tenements in burgh, and sums of money, the husband had then belonging to him, that these should noways be reputed any part of the conquest, by which the wife by the foresaid provision was to claim right; as also, a sum due by wadset, and another by an apprising, extending to L. 11,000; which two rights, with what other estate the husband had then, are reserved out of the provision of conquest in the contract of marriage. And Christian Fraser being married to a second husband, and having pursued her first husband's heir for the half of the sums of money, conquest during her first marriage; *alleged* for the defender, That the reserved estate being first deducted, and then the debts due by the defunct, the superplus can only be understood to be conquest. *Answered*, That no debts can be deducted to exhaust the conquest, but only such debts contracted during the marriage, and not anterior debts. THE LORDS having considered the contract of marriage, and the condescendence of the husband's estate, therein contained, extending to L. 11,000, they found, that the import of the clause of the contract is, that, in the first place, there ought to be deducted out of the husband's estate, extant the time of his decease, the debts then due by him, and that the L. 11,000 is to be deducted, and what remains is only to be reputed conquest.

No 50.

*Sir P. Home, MS. v. 3.*

1688. *June.* KENNEDY and FERGUSON *against* MARTIN.

No 51.

A WIFE being provided to the liferent of lands, with a provision, that, in case there shall be an heir-male of the marriage surviving his father, she should be so much restricted in favour of the heir-male during his life; and such an heir-male having survived his father, the father's Creditors sought to affect the superplus of the relict's liferent, over and above the restricted quantity, during the heir-male's lifetime, as being a provision of aliment to him.

*Alleged* for the Heir male; That it could not be claimed by his father's Creditors, seeing it proceeded from his mother.

*Answered*; If such a preparative were allowed, parents might easily disappoint their Creditors, by providing their wives largely, with an obligation upon them to restrict in favour of children.

THE LORDS inclined to think, that if the wife's jointure was anywise exorbitant, the excess provided for the children would be liable to the father's Creditors; but the point was not voted.

*Harcarse, (CONTRACTS OF MARRIAGE.) No 394. p. 103.*