

No 82.

Upon consideration of all which circumstances, the LORDS declared, that no part of the 40,000 merks provided to the rest of the children was applicable to any subsequent children.

*Fol. Dic. v. 2. p. 285. Stair, v. 2. p. 663.*

\* \* \* Fountainhall reports this case :

SIR JOHN GIBSON had a faculty to burden his eldest son with 40,000 merks, he leaves 10,000 merks to his children of the third marriage. Mr Alexander Gibson raises a reduction of it, that *tales facultates sunt strictissimi juris*, and not being exercised *debito modo*, they became void and extinct; that he reserves it for providing his remanent children, which in sense, reason, and law, could only be Mr Alexander's brother-german, there being then no other children *in rerum natura, et verba obscura contra preferentem interpretantur*. THE LORDS, upon presumptions, reduced it, seeing their children were opulently provided beside; but as to the lands of Keirhill, they assoilzied them from Mr Alexander's reason of reduction upon the clause of conquest in his mother's contract of marriage, and that they were acquired during the first marriage, and so he had no power to dispone them, he being creditor. This the LORDS repelled by one or two votes only, though some LORDS inclined rather to sustain this second reason, and repel the first about the 10,000 merks.

*Fountainhall, MS.*

1680. December 1. & 21. ANDERSON against BRUCE.

No 83.

A MAN, in his contract of marriage, being obliged "to provide his conquest to himself and wife in conjunct-fee and liferent, and to the heirs of the marriage; which failing, the one half to his heirs, and the other half to her heirs;" and there being a considerable conquest, but no bairns of the marriage; the LORDS found a provision of the said conquest in favour of the children of a second marriage, was a rational and effectual deed, and therefore sustained the same against the wife's heirs.

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

\* \* \* This case is No 46. p. 12890.

No 84.

Where provisions to children were exorbitant and unusual, found, that

1683. February 6. LAIRD of NIDDRY against JAMES WAUCHOPE, his Brother.

THE Laird of Niddry, by his contract of second marriage, *anno* 1653, being obliged to provide the lands, annualrents, and tenements to be acquired during the marriage, to the heirs thereof; and they having claimed the barony of