

## COURTESY.

1610. *June 7.*C. SPENS *against* LD of DURIE.

No 1.

**H**E that married a woman who had heritage or annualrent heritable, and procreate a living bairn upon her, will get the curiality as well of her annualrent as her lands, albeit he be her second or third husband.

*Fol. Dic. v. 1. p. 205: Haddington, MS. No 1881.*

1631. *July 15.*FORBES *against* E. MARSHALL.

No 2.

THERE was an action, Forbes *contra* E. Marshall, disputed before the Lords. The case thereof was this; Forbes had married the only daughter, and only bairn of the Laird of Troup, whose lands were tailzied to the Earl of Marshall, failzieing of heirs-male of his own body. After the father's decease, the Earl Marshall contracts with the said daughter, and obliges him to provide her to 10,000 merks, by heritable security, in contentation of all right she might claim; after which contract, she being married on this Forbes, and there being a bairn gotten betwixt them living, thereafter both the mother and bairn dies; after whose decease, Forbes the husband claiming the liferent of this 10,000 merks by the right of curiality; and the Earl Marshall defending, that the curiality could not have place in this case, where the wife was not successor to her predecessor, viz. her father, and where she was not infest in lands wherein he died infest; but this was a conquest, or such a purchase, wherein curiality had no place; being an acquisition made by the woman's self. And the husband *replying*, That this provision came to her in place of the lands, wherein her father was infest; so that it was of the same nature as if she had succeeded to her father. This was not decided, because twelve hours hindered the decision thereof. But many of the LORDS thought that curiality had no place in this case.

The only daughter of the proprietor of an entailed estate, which went to heirs-male, obtained from the heirs-male and provision heritably secured. Agitated but not decided, whether the courtesy took place.

Act. *Stuart & Baird.*Alt. *Advocatus & Nicolson.*Clerk, *Hay.**Durie, p. 597.*