

1781. *February 1.* Sir JOHN PATERSON *against* JOHN ORD, Esq.

COURTESY—MEMBER OF PARLIAMENT.

The courtesy does not take place in lands acquired by the wife by singular titles.

[*Dictionary*, 3121.]

MONBODDO. It is established that courtesy does not take place when the wife is not an heiress. The Act 1681 has no relation to courtesy: it respects the right of voting during the lifetime of the wife.

BRAXFIELD. As to the question of courtesy, I cannot find a good reason for the distinction between lands taken by succession or by singular titles; yet, since this is established in practice, it must not be altered. No law says that a husband shall vote in right of his wife. When she ceases, by death, to have any infertment, the husband cannot vote on the infertment of his son.

On the 1st February 1781, "The Lords found that Mr Ord is not entitled to be enrolled.

Incident. Inner-house.

*Act.* J. Swinton. *Alt.* H. Erskine.

1781. *February 13.* FERGUSON of AUCHINSOUL *against* HUGH MITCHELL.

PERSONAL AND REAL.

[*Fac. Coll.* VIII. 60; *Dict.* 10,296.]

MONBODDO. Here the price was honestly paid; possession was held for seven years; and the purchaser was in the course of completing his titles: a personal creditor steps in, adjudges, is infert, and now seeks to carry off the subject. This is unjust. The original seller could not have conveyed to that creditor, without a crime. Can the law do that for a man which he could not do himself? If both rights had remained personal, the minute of sale would have been preferable, as being prior in date; and therefore the only ground of preference claimable is on account of the infertment. What can be the effect of that infertment? The disponee contracted on the faith of the records, but the adjudger did not. When men lend money on the faith of the records, it is not on personal security that they lend: when they lend money on the faith of the records, they take heritable security. The infertment here is no more than a completing of the diligence, which, before infertment, was only inchoated. I do not say that the infertment has no effects. No: it makes the person infert the first effectual adjudger, and it prefers him to any posterior real right. If transferred to a third party, it would be preferable to the minute