pro tanto 27 January 1669 Bell of Belfoord contra Lady Rutherfoore. A
it would have excluded his Heirs. A Wife cannot in her Husband's Life time
renounce sell alienate or transact for her Terce of Lands of which her Hus-
-band dies infeft: Because then she hath no Right to a Terce Craig Jtd. §. 12
vers. hanc autem tertiam. Sed de hoc quære, because pactum de hæreditate
viventis, tho disallowed in the civil Law is allowed with us vid. infra pa.
Whatever be as to this a Wife may stante matrimonio take Land in Satisfac
of her Terce.

2.
Of Courtesy.

The Courtesy of Scotland (Curialitas Scotiæ called in England the Court
of England) is a legal Right, which the Husband of an Heiress (Courtesy of the Land) has to liferent
Lands and Heritages she dies infeft in; if there was a Child of the Marri
hearc cry or weep Reg. majest. Lib. 2. cap. 58. §. 1. Leg. Burg. Cap. 44. This
legal Right is peculiar to Britain (Skene de verb. sig. verb. curialitas) and
takes Place no where else that I know, except it be observed as Craig asserts
(Feud Lib. 2. Tit. 22. §. 13) in Normandy. It was introduced here by our common
Law or ancient Custom, as an honest Mean of Subsistence to the Husband
tho Reason: Because Fathers by the civil Law had the Usufruct of any a
-ventitious Estate falling to their Children as Heirs to their Mothers §. 1. Inst.
per quas person. cuiq. acquir. l. ult. C. de bon. qui liber. Craig Jtd. Law requ
that the Child be heard cry, as the surest Token of it's being ripe and come to
Maturity: For a stillborn Child is not considered to have had any Existence in
the World l. 129. ff. de verb. signif. That the Child was born alive or heard cry may be prove
even by Women Witnesses Skene Jtd. Craig Jtd. vers. competit autem Ram
Lib. 2. Tit. 6. §. 19. vers. The Original of this Liferent. Because Men are sel
dom present at the Birth of Children. The Courtesy is effectual to the Husb
tho the Child should die immediately after it was heard cry, and before the Mo
-ther Skene Jtd. Craig Jtd. Stair Jtd. For the Child ipso facto by his Birth
Heir apparent to his Mother, tho he was born before the Time and could not
live. But there will be no Courtesy tho the Marriage should last many Years,
unless there be a ripe Child born Stair Jtd. Whereas the Wife has a Terce, if
either the Marriage continue Year and Day undissolved, or if there be a Child
heard cry, tho gotten and born before the Marriage; seeing it is legitimate the
-by however short Time the Marriage endure (8)

A Second Husband has as good Right as the first to a Courtesy Skene Jtd.
Stair Jtd. Which Craig (Jtd. vers. Nec interest vidua) will have to take Place
tho there be Children of the former Marriage living. But it was found that a
Second Husband cannot have the Courtesy, where his Wife hath an Heir of
the first Marriage surviving December 1702 Darlieth contra Campbel
Because the Courtesy falls to the Father thro his Child's being apparent
Heir of the Fee. And if it were otherwise, a fourth or fifth Husband might
claim the Liferent by Courtesy of his Wife's whole Estate, and none of her Chil-
dren

(8) But it has been thought enough while the Courtesy, that a Child, tho born dead, shewing
Signs of Life, be produced to the Courtesy that the Child born dead, such as by possibility may make
it to have been alive, as Cries, Shrugs or Shaking of Limbs, as has been common in Scotland. The Wife
She takes Husband and Child issue a Daughter and Cries, Shrugs or Shaking of Limbs, a Woman and the Husband may enjoy the Courtesy. G. Jacob Law Dictionary Book Courtesy of England

-dren of the former Marriages get any thing. A Husband hath Right to
his Courtesy ipso jure maritti summarily, without Service or Infeftment. So
as he may possess and remove Tenants, Skene Jtd. Craig Jtd. Compend. autom. Rei Curiae.
Whereas a Terce is consti
-tute by Service and Kenning. And if such a Man was held and reputed law-
-ful Husband to such an Heiress, without any Question about his Marria
her in her Lifetime he will have Right to the Courtesy till their Marriage be
declared null Arg. Act 77. Par. 6. J. A. M'Kenzie Observ. on d. Act 77.

Craig (Jtd. vers. Nec interest) and the Lord Stair (Jtd. §. 19. vers.) are of O
-pinion that the Husband's Courtesy extends to all his Wifes Heritage whether
Ward Feu or Burgage. And so it seems to have formerly obtained 19 January
1636 M'Aulay contra Watson. But the Lords more lately prune no Courtesy in
in Burgage Lands 16 June 1715 Gordon contra Clerk
[illegible]
Line [illegible] or Provision [illegible] at
which are acquired by singular [illegible] 22 June [illegible] contra [illegible]
Skene Jtd. Craig Jtd. Vide Nec interest. Vide 15 July 1671 [illegible]
snat. Ist Infeftment to a Woman per paraphernam he suitable, as when a Man
infeffs his Daughter and apparent Heir reserving his own Liferent with Power
to Dispose, will afford a Courtesy Stair Jtd. Vide Skene in his gloss. Because he
she is not thereby Heir active, and such an Estate is not reckoned Heritage but
Conquest. Yet she is Heir passive; and there is more Reason that the Husband
should enjoy his Liferent of that Estate than if a Wife had been therein Heir of
Provision or Saizie, whereby failing her and her Issue, claims not nearest of Blood to
her might probably succeed. Not nor Heirs of Saizie weigh with more Reason
situation her Husband's Liferent by the Courtesy, than his own Children or Heirs
of Line to their Mother, could controvert his Liferent of the Seat, where she
was infeft by her Father or other Predecessor to whom she was apparent Heir.

Liferenters by the Courtesy may elect and be elected Commissioners for
Shires or Stewartries to the Parliament or a Convention of Estates Act 21. Par.
3. Ch. 2.

A Husband possessing his Wifes Lands by the Courtesy is liable to pay the
current Annuelrents of her personal as well as real Debts, to the Value of the
Rents he enjoyed by the Courtesy 3 January 1716 Anna Montefie contra her
nearest of Kin and Creditors. Because a Husband doth not only enjoy a Life
-rent of his Wifes Inheritance, but also any Honour and Dignity of the Family
belonging to her and hath Seat in Parliament and all other Privileges that
would have belonged to her had she been a Male. So that he who represents the
Wife's Family, should in Reason and Equity bear it as he got it. And if it were not
so the Estate might be sunk by Diligences for personal Debts. Hence Sir John
Skene (Annot. in cap. 5. Lib. 2. Reg. Majest.) calls the Courtesy, forma cujusdam
quasi Successionis, a kind of Succession, and not a proper Succession, because it sub-
-jects the Husband to the Payment of all current yearly Burdens, only where
there is no other Fund or Debtor out of which or by whom the same may be paid.

But