

MONBODDO. An indorsation by initials is good, if the party be wont to sign by initials: the bill is in the possession of the defender; that circumstance presumes property. I would allow a proof that the woman was wont to sign by initials, and of her having said that she had given the bill to the defender.

GARDENSTON. This is not a transaction of the nature of an indorsation; it is a gift.

PRESIDENT. Initials are no proper subscription; they are not probative in law: when the practice of signing by initials is clearly proved, then there may be proof of actual signing before witnesses. Here there is a transmission of property, a donation not *in re mercatoria*.

BRAXFIELD. Proof of subscribing by initials is not sufficient to support deeds. In deeds of importance, a party must sign, or notaries must sign for him. There is an exception as to what happens *in re mercatoria*. Still the deed, even in such a case, must be supported by extraneous proof.

On the 23d June 1785, "The Lords, in respect the defenders acknowledge that they cannot prove that the deceased Elizabeth M'Harg did actually admit her subscription by initials to the bill in question, sustained the objections stated by the pursuer against the validity of the said indorsation; and found that the defenders are accountable for the contents of the said bill;" adhering to the interlocutor of Lord Braxfield.

*Act.* Ch. Hay. *Alt.* A. M'Connochie.

*Diss.* Monboddo.

1785. June 28. HENRY RIDDEL and JOHN CAMPBELL, Trustees of DR ELLIOT, against WILLIAM MORRISON and COMPANY.

#### INSURANCE.

The proprietors of three ships procured an insurance on all of them. Before the result of the voyage was known, but, after one of the ships arrived at its destined port, the underwriter became bankrupt. On the safe arrival of the whole ships, his creditors raised an action against the insured for payment of the premium. The Court sustained the defence, that, by the underwriter's bankruptcy, he becoming unable to fulfil his engagement, the insured were entitled, for their own security, immediately to re-insure.

[*Fac. Coll. IX. 342; Dict. 7118.*]

BRAXFIELD. If the insured cannot, in case of loss, operate payment from the insurer, he may secure himself by re-insurance; the creditors of the insurer may, however, offer to find security for making good the loss; and, in that

case, the insured will be bound for the premium ; but then the offer must be instantly made.

PRESIDENT. At the time of the bankruptcy no premium was paid. It is for the benefit of all concerned to hold the bargain at an end. Had the premium been actually paid, there would have been more difficulty for them : the contract would so far have been implemented.

On the 28th June 1785, "The Lords assoilyied the defenders ;" adhering to the interlocutor of Lord Eskgrove.

*Act.* A. Campbell. *Alt.* R. Blair.

1785. July 1. MRS AGNES FERGUSON *against* JAMES CHEAP of Strathtyrum, and OTHERS.

#### SERVITUDE

Of pasturage preserved to one part of a barony, notwithstanding the lapse of the years of prescription, by the possession of the other parts.

[*Faculty Collection, IX. 376 ; Dictionary, 14,520.*]

BRAXFIELD. The judgment of the Court, in the case *Moncrieff* against *Balfour*, December 1752, runs counter to the judgment of the Ordinary in this case.

ESK GROVE. In that case there was a question of property as part and pertinent ; a right of servitude once constituted is not lost by a neglect of possessing the whole.

GARDENSTON. I thought it established law, that when there is once a constitution of a right in a barony, the possession of a part saves the whole right.

ROCKVILLE. There would arise this inconveniency from the contrary doctrine, that the proprietor would be prevented from improving his ground, by laying sheep aside. [The only inconveniency would be to deprive the party of a right which he did not think worth preserving.]

On the 1st July 1785, "The Lords found that Agnes Ferguson had a right of pasturage, feal and divot, on the commonty of Leggiemuir."

*Act.* Ilay Campbell. *Alt.* A. Rolland.

*Diss.* Henderland, Braxfield, Hailes, President.