No 188.
A husband, during the lifetime of his wife, has right to vote in virtue of her infeftment, though she be not an *heiress*, but has acquired by singular titles.

1786. *January* 25. General SKENE *against* GEORGE SANDILANDS.

THE proprietor of the lands of Nuthill, having four daughters, disponed his estate to the eldest; who, after her father's death, took infeftment on the disposition, and obtained a charter of confirmation from the Crown. She afterwards married Mr Sandilands, who, in virtue of the titles above mentioned, was admitted among the freeholders of the county of Fife.

General Skene, a freeholder in that county, complained to the Court of Session of this enrolment; and

Pleaded, The right of voting at elections, in virtue of a wife's infeftment, belongs exclusively to those who have married *heiresses*. Mr Sandlilands has thus assumed a privilege to which he has no right, his wife's estate having accrued to her by singular titles. By the rules of succession, it would have divided between her and her sisters equally.

This distinction between the husbands of those who enjoy a landed estate, by purchase, or by inheritance, as it flows from feudal principles, was naturally adopted into the statutes relative to elections. Though not so distinctly marked by that of 1681, it is explicitly recognized in the after one of Queen Anne, enacting, 'That no husbands shall vote at any ensuing election, in virtue of their wives' infeftments, who are not *heiresses*, or who have not right to the property of the lands, on account whereof such vote shall be claimed.'

It might, indeed, at first sight appear, from the latter part of the clause already recited, that the husbands, even of women who hold the property of lands by purchase, were admitted to the privilege of voting. But the statute, so interpreted, would be inconsistent with itself. The meaning of the Legislature certainly was, not only to confine this right to the husbands of heiresses, but also to impose an additional restriction, among this class, with regard to those whose wives had only a limited right, and not the absolute property of the estates to which they had succeeded; 1st February 1781, Sir John Paterson against Ord, No. 11. p. 3121.

Answered, The obligation to attend the King's Baron Courts was a natural consequence of holding a feudal estate of the Crown; and though, with regard to fiefs possessed by women, this duty, from motives of delicacy, was understood, while they remained single, to be virtually passed from by the Sovereign; yet, during their coverture, it devolved on their husbands, who, as they enjoyed the whole advantages of the lands, were justly called to perform this and the other prestations of vassalage. From the same principle it arose, that, as the husband of an heiress was, by the custom of Scotland, entitled, even after his wife's death, to draw the rents of her estate in virtue of the courtesy, so his obligation to perform the feudal services still continued; and it was only when the wife had not taken her estate by descent, but had acquired it by other me-

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thods, that her husband, as in the case of Ord against Paterson, being, after her demise, excluded from possessing the lands, was, at the same time, released from the duties he formerly owed.

Our ancient law has not, in this respect, suffered any essential alteration. By act 1681, the right of being enrolled as a freeholder is communicated to husbands, for "the *freeholds* of their wives, *or* having right to a liferent by the "courtesy." And by 12th Queen Anne, every husband indiscriminately is allowed to vote, if his wife is either an heiress, or the *proprietress* of a freehold of the requisite valuation, holding of the King or Prince. The latter part of this clause was thrown in to prevent the creation of occasional votes on the eve of an election; as it was foreseen, that, without a limitation of this sort, liferent, or defeasible estates, would be given to wives, in order to qualify their husbands to vote.

It was farther *urged* for Mr Sandilands, That his wife, with respect to an estate descending to her from her father, though in consequence of a deed *inter vivos*, was to be considered as an heiress. This argument, however, was unanimously disregarded by the Court; it being evident, that Mrs Sandilands, in the course of succession, would have been entitled only to a partial interest in the lands.

THE LORDS dismissed the complaint, and found expenses due.

For the Complainer, *Dean of Faculty*. Alt. *Wight*.

C. *Fol. Dic. v.* 3. *p.* 426. *Fac. Coll. No.* 250. *p.* 383.

1786. *July* 26. HENRY ERSKINE KNIGHT *against* GEORGE ROBINSON.

No 189.
The freeholders having struck off the roll the name of a person, enrolled in right of his wife, during her lifetime, as it appeared from the investitures, that she was only a singular successor, and was since dead; the Lords, on a complaint, allowed the complainer to produce evidence in the

MRS ERSKINE, spouse to Henry Erskine Knight, was, in virtue of marriage articles, entitled, as heir of provision, to succeed to her father in the lands of Pittodrie, to the exclusion of a brother by a former marriage.*

Her father, however, having made out a disposition in her favour, she did not complete her titles after his death by a service, but executed the procuratory contained in the disposition, and afterwards obtained a charter of resignation from the Crown.

In virtue of these investitures, and without founding on the marriage-contract, Mr Erskine Knight was enrolled, during his wife's life, as a freeholder in the county of Aberdeen.

At the meeting for electing a Member of Parliament, in 1786, George Robinson, a freeholder, objected to Mr Knight's continuing on the roll. Mrs Knight was then dead; and although she had left children, yet the rights formerly produced being those of a singular successor, her husband, it was con-