practice to the contrary in every shire in Scotland; because their jurisdiction is limited by the statute which gives them being, no earlier than the days of Charles II., and no jurisdiction can be acquired by prescription: there is nothing can give it but immemorial use, to such judges of whom we do not know the origin, as sheriffs, barons, commissaries; because such use, with respect to them, presumes that the jurisdiction was originally annexed to the office.

1763. *June* 16. M'KINNON *against* M'DONALD.

[*Fac. Coll. III.* 105, No. 705.]

IN a Highland contract of marriage the wife was provided to an annuity of L.100 Scots, and to a third of moveables; and, in case the husband survived the wife, and that there were more than one son of the marriage, they were to be provided to an half of the husband's moveables; and, in case there was more than one daughter, they were to be provided to a third of the husband's moveables. The case happened that the wife predeceased the husband, and a claim was brought by her nearest of kin for her legal provision of her half of the moveables, (she having died without children,) which she had not discharged nor accepted her conventional provisions in place of.

Lord Alemore was of opinion, that they should find directly, that where conventional provisions are settled upon a wife, the *jus relictæ* is thereby virtually discharged, as well as the terce of lands; contrary to the opinion of all our lawyers, the constant tract of our decisions, and the implied meaning of the 10th Act of 1681; because, he said, this practice was most ruinous in the country, among farmers whose whole stocks consist of moveables, and where contracts of marriage were commonly drawn by persons of no skill; and, therefore, he was for reviving the old law, by which a wife never could have a right to both legal and conventional provisions, and not even to the whole conventional if it exceeded the legal;—R. M. *L.* 2, *C.* 16; Sir T. Craig, *L.* 2, *Dieg.* 22. Par. 25; Balfour, title *Wife's Dowry and Terce.* The rest of the Lords did not carry the matter so far; but they were of opinion that the wife, by getting a share of the moveables for her provision, did tacitly renounce her legal share of them, and, by the children being provided to a share of the moveables, without any exception or deduction of the wife's share, it appeared to be understood by the parties that she had no share of the moveables; and the like decision had been pronounced in other cases, as in the case of *Boys*, 12th July 1701, observed by Fountainhall; *Crawford*, 3d January 1747, observed by Falconer.

June 29.—Refused a reclaiming petition against this interlocutor, by which they seem to establish a rule, that, where the moveables are burthened in a contract of marriage with a provision either to wife or children, the wife will not have her legal share of the remainder; contrary to what was decided in the case of the *legitim*, observed by Lord Kaimes, 1726, case of *Dirleton's Executors*.