words do not, even in vulgar speech, comprehend subjects strictly heritable. No man ever reckons his house among his effects of any kind. *Means,*—from the French, *moyen,*—is no more than that whereby one is enabled to acquire a house or lands; but never implies the acquisition itself.

Monboddo. Here are words of style, well known, and commonly used. They do not apply to lands or to houses.

Coalston. The deed will not carry lands: Had that been the purpose of it, it would have begun with lands. I should have doubted of the deeds carrying the adjudication, were it not for the case *Marshall Wade's Succession,* which seems in point.

Pitfour. There is no doubt as to heritable bonds and adjudications being carried; for the deed mentions heritable and moveable,—and, without prejudice of the generality, a bond of L.2800. I doubt as to land property being disponed. It is a maxim, "that, in virtue of general clauses, heritage is not understood unless expressed."

Kaimes. One thing to intend, another to operate, especially where the deed executed is a donation to the prejudice of the heir. "Heritable means and effect" is not a clause of style. It might, however, comprehend the house, had there been any previous words from which the clause could have been explained.

Gardenston. The purpose was to convey his whole estate, and I think there are words sufficient to convey the whole,—the house as well as the adjudication.

On the 26th January, 1770, the Lords found, that Dr Brown's settlement included the heritable bonds and the adjudication,—but not the house.

Act. R. M'Queen. *Alt.* D. Rae.

Reporter, Justice-Clerk.

Diss. As to house, Auchinleck, Gardenston.

1770. *January* 31. Duke of Buccleugh *against* The Officers of State.

PRESCRIPTION.

The right of Superiority of Lands, held by an erroneous tenure, being found to be established by Prescription in the Crown; the right to the Feu-duties found to be vested in like manner in the Crown, and the vassal accountable for a retrospective period of forty years.

(*Faculty Collection, V. p.* 36; *Dictionary,* 10,751.)

Monboddo. Here no prescription as to feu-duties: the feu-duty is not simply payable to the King, but to those having a right for the time being. This cannot be a title of prescription to the Crown.

Auchinleck. Here is a confession, on the part of the Crown, that the right was not certainly in the Crown. This clause was carried down in the titles of the family till an ignorant doer omitted it. Had the *reddendo,* with the words omitted, continued in the titles for forty years, there would have been prescription in favour of the Crown; but it has been challenged in proper time. The examples produced, of a like clause, confirm the argument; for they relate to church lands, where, notwithstanding the superiority is in the Crown, the feu-duties have been levied by the Lords of Erection. It is the same thing as if the clause had been paying to the King or to Sir John Ker.

Gardenston. A proper title, without prescription, will not avail; nor prescription without a proper title. I think the Crown has neither, though both are necessary.

Justice-Clerk. My difficulty still is, that the charter, however erroneous, did nevertheless change the holding from ward to feu. This was, in those days, a great advantage to the family; and the feu-duty stipulated was scarcely adequate. The whole difficulty is from the clause *aliisve jus habentibus pro tempore.* Casualties must be prestable by the vassal to the superior; the superior may nevertheless separate the feu-duties from the superiority, as is the case in church lands, by public law. But what I here desiderate, is evidence that the Crown so meant. There is a clause of the same nature as to the lands of Branxholme, where the Crown had no doubt of its right. The clause, *pro tempore,* seems to refer to something other than absolute perpetual right. If a feu-duty, for its subsistence, required a daily possession, the argument, on the other side, would be unanswerable; but that is not the case.

Coalston. In 1663, the family of Buccleugh had right to the feu-duties, and the Crown had not, although a charter was taken with a feu-duty, not payable to Sir John Ker, but to the Crown, *aliisve jus habentibus pro tempore.* The question is, What will be the consequence? The charters have been uniformly taken, holding of the Crown, for payment of a feu-duty, in the above terms. It has been found that the right of superiority is in the Crown: if the charter had been taken simply with payment of feu-duties, the right would have been plainly with the Crown, as to feu-duty also,—without possession. I incline to think that the Crown cannot plead prescription in this circumstantiate case. Payment made to the assignees of Sir John Ker would have been good. The present case is the same; for the family of Buccleugh comes in place of Sir John Ker by means of the perpetual discharge.

President. The charter might have been regularly executed by taking up the procuratory of resignation. Be this as it will, the charter is a good charter by prescription. It is probable that the discharge by Sir John Ker was known at the time, and that the feu-duty was made equal to the old 160 merks payable to Sir John Ker. I do not say that the Crown has prescribed a right; but its right is upon the words of the charter. The only difficulty arises from the words *aliisve jus habentibus pro tempore.* If the Crown had meant that the feu-duty should be payable to the family of Buccleugh, the expression is very strange. The words *pro tempore* are probably owing to this, that the Crown meant to make a grant of the feu-duty to the family. But that grant has never been made. I see no equity on the part of the Duke of Buccleugh; for the Crown was certainly entitled to a consideration on account of the great favour

done in changing ward into feu. I cannot put so strong an interpretation on the words as to leave a feu-holding without a feu-duty.

KAIMES. The natural interpretation of *aliis,* is to others in the Crown's right: the contrary interpretation is straitened beyond bounds.

On the 31st January 1770, "The Lords altered, and found the feu-duty payable to the Crown."

Act. J. Dalrymple. *Alt.* H. Dundas.

Reporter, Auchinleck.

Diss. Strichen, Coalston, Pitfour, Gardenston, Auchinleck, Monboddo.

Absent. Alemore, Stonefield.

By the President's casting vote.

July , Adhered. Alemore for alter. Stonefield for adhere.

It would seem that the parties contest who should be the appellant.

Vide supra, 1st August and *17th November* 1769.

1770. *February* 6. COMMISSIONERS of ANNEXED ESTATES *against* ALEXANDER M'NAB.

REMOVING.

1st, A Tenant's entry having taken place at Beltane,—Found that his removal must take place at the same term, and that he must be warned accordingly.

2d, The warning given in this case, forty days before Whitsunday 1769, being found inept, it was held that the decreet, founded on this informal warning, might be turned into a Libel, to the effect of compelling the Tenant to remove at Beltane 1770.

THE defender had entered to the houses and grass of a farm possessed by him, under the pursuer, at the term of Beltane 1745, and to the lands at the separation of the crop of that year. He was pursued, forty days before *Whitsunday* 1769, to remove at Whitsunday that year, from the houses and grass, and from the lands at the separation of the crop. Decree of removing was pronounced by the Sheriff. The defender, in a suspension, objected, That, as his entry had been at Beltane, so must his removal; and, consequently, the warning he had received was not effectual to remove him at Whitsunday 1769. The Court being of this opinion, the pursuers next insisted, that, at all events, the warning which had been given was sufficient to entitle them to remove the defender at Beltane 1770; and that, to this effect, the decree charged on should be turned into a libel.

"The Lords, (21st December 1769,) on report of the Lord Monboddo, turned the decree charged on into a libel, and decern Alexander M'Nab, defender, to remove from the lands of at Beltane next, 1770."

In a petition against this interlocutor, the defender PLEADED,—It has hither-