part of the Crown, that there was some other person in the right of the superiority: *aliis jus habentibus* is a very singular clause, and is of that import.

COALSTON. I always supposed that the charter 1664 was erroneous, and that the family of Buccleugh might have been restored, if a demand to that effect had been timeously made. I should have thought that the Crown would have acquired right had there been no specialty here. The only difficulty is from the clause *to those having right.* While such a clause is in the charter, how can the Crown be said to have acquired a right?

On the 5th August 1768, the Lords sustained the defence of prescription as to the holding, and remitted to the Ordinary to hear parties as to the feu-duties.

On the 16th November 1768, "refused a reclaiming petition, and adhered."

Act. A. Lockhart. *Alt.* A. Dundas.

Reporter, Auchinleck.

Diss. Alemore, Elliock.

Non liquet, Kaimes.

1768. *November* 15. JAMES, ANDREW, &c. WEMYSSES *against* DAVID WEMYSS.

MUTUAL CONTRACT.

Marriage-contract, though not signed by the wife, may bind her and her issue.

[*Faculty Collection, IV. p.* 324. *Dictionary,* 9174.]

HAILES. The one party pleads that the marriage-contract is effectual in part, and void in part; the other, that it is void altogether. I agree with neither: I think that it is effectual altogether. The wife did not sign it, but the other parties did: the father-in-law performed what was incumbent on him. The husband always supposed himself bound: the wife performed the only obligation prestable upon her,—she solemnized the marriage. After a homologation of more than thirty years, she comes too late to object against this contract as not binding. It is as much required in law that a woman sign her marriage-contract before witnesses, and that she heard it read over: neither solemnity is well observed; and if ladies are permitted, after the celebration of the marriage, and even upon its dissolution, to object to the conventional provisions, on account of these solemnities having been omitted, nineteen of twenty of the ladies in Scotland will be found entitled to their legal instead of their conventional provisions.

MONBODDO. If the wife is bound by the marriage-contract, both my interlocutors will, of course, be altered; but I see no principle of law upon which she can be bound. There is a decision in the *Dictionary,* title *Privileged Writs, Duke of Montrose* 1728, whereby the contrary was decided.

KAIMES. There might be some difficulty were there any reason to suppose that the wife knew nothing of the marriage-contract; but this is not pretended. On the contrary, she actually solemnized the marriage.

PITFOUR. The decision 1728, *Duke of Montrose*, was firmly given, and not disapproved of. The younger children are bound, and the father-in-law, as burden-taker for his daughter, is also bound. When there is a burden taken, a contract will not be reduced, although the principal on one side does not sign. If there is no obligation on the one side, neither is there on the other; but, if I choose a burden-taker to be my party, I am bound by his subscription. How can a wife be deprived of her *jus relictæ* without signing a contract, since it is only by an express renunciation that the *jus relictæ* can be set aside?

AUCHINLECK. In marriage-contracts the greatest honesty and fairness are required. It is sometimes necessary for the bride to adhibit her subscription, when she has a portion to convey. But, generally, the portion proceeds from the father, and he alone carries on the treaty. Very often the bride signs only one page, or simply adhibits her initials. There occurred a question between *M'Kenzie of Luddie* and *M'Kenzie of Bennangfield*, where a person did not sign a submission, but met with the arbiter; he, on that account of his not having signed, objected to the decreet-arbitral, acknowledging at the same time, that, if the decreet had been favourable, he would not have objected. This was found to be fraud, and the Court held him as bound. The same thing occurs here: Can this woman lie by for thirty or forty years, and then object to the formality of the contract, whereof she does not pretend that she was ignorant?

PRESIDENT. The tocher, provisions to the younger children, jointure, are all *partes ejusdem negotii*; How can you separate them?

MONBODDO. The wife is a principal party, the father-in-law is only cautioner: How can we say that the principal, who does not subscribe, is bound, or that the cautioner is bound when the principal party is not? That the marriage followed, is nothing to the purpose; for the marriage might have followed although there had been no contract at all.

On the 15th November 1768, the Lords found the marriage-contract obligatory on all parties, in respect that the marriage followed; and altered the interlocutor of the Lord Monboddo, Ordinary; and remitted to him to proceed accordingly.

On the 1768, refused petition, and adhered.

Act. A. Lockhart. *Alt.* Ilay Campbell.