thing emulously to the hurt of the vassal or tenant. In tacks, a reservation of coal implies a power of working without paying damages. There is no prescription here: I would interpret dubious words by possession; but here the damage paid seems to have been for the houses, and so it is limited to the small payment of two horse-loads of coal in the week.

BRAXFIELD. This question has never been tried before; and the reason is, that clauses are thrown into feu-contracts to prevent any such question. When a superior excepts minerals, this implies a power of working; for, without *that*, the reservation would be nothing. Why may not the proprietor work his mine as freely as the tenant may sow and reap his crop? Should a superior wantonly set down pits, he would be checked. The only question is as to possession. Had an uniform sum been paid for damages, I should have presumed a right by some separate bargain.

ESKGROVE. It is plain that the original feu was without any reservation: the reservation has been thrown in, one knows not why, into a precept of *clare constat*. The power of working, without payment of damages, can hardly be inferred from the general tenor of the clause; and this the more especially, because it appears that something has been wont to be paid in the name of damages to the vassal.

HENDERLAND. The superior could not have stipulated for damages to be paid to himself.—[This obscure.] In the case of *Hamilton of Fala*, the tenant had right to the whole surface.

On the 15th November 1786, "The Lords declared in terms of the libel."

Act. W. Craig, Ilay Campbell. *Alt.* J. and H. Erskine.

Reporter, Hailes.

Diss. Eskgrove, Ankerville, Rockville.

1786. *November* 16. RICHARD THOMSON *against* CREDITORS of MR DAVID ARMSTRONG.

PERSONAL AND REAL.

[*Dictionary*, 10,229.]

BRAXFIELD. The cause turns upon this,—Whether the titles were properly made up by Mr Armstrong; and, in determining on this, we ought to consider what clauses are necessary to be inserted in a charter and infeftment, and what clauses are merely personal. Where clauses are meant to be put in, the disponee cannot leave them out to the hurt of the disponer: as, for instance, if there was a clause of redemption, he could not leave it out. But here lands were disponed, heritably and irredeemably, with an obligation to account, and then another deed was executed. The obligation to account was merely personal;—hence I think that Mr Armstrong might have sold for a price, and the purchaser would have been secured by his *bona fides*. The same is the case as

to heritable creditors. The case is different as to adjudgers; they are not on the same footing with Mr Armstrong, selling for a price. So it was decided in the case *Gib* against *Williamson*, on a hearing in presence. I would not vary that judgment: other cases have been determined on the same principle.

MONBODDO. An heritable bond is good, because it is the price of the estate: the adjudger seeks to mend his former security.

On the 16th November 1786, "The Lords found that the allegation of fraud is not relevant against the heritable creditor, but found that it is competent against adjudgers, and remitted to the Ordinary to proceed accordingly;" adhering, in substance, to the interlocutor of Lord Swinton.

Act. R. Dundas. *Alt.* Alex. Abercrombie.

1786. *November* 16. LILIAS BALD and HUSBAND *against* JEAN BUCHANAN.

CONSOLIDATION—SUPERIOR AND VASSAL.

Of property and superiority not effected *ipso jure*, or without resignation *ad remanentiam*: Whether a conveyance of property, along with superiority, granted by the superior who had only the *dominium directum*, and accepted by the vassal, be valid as to all other parties?

[*Faculty Collection*, *IX.* 408; *Dictionary*, 15,084.]

PRESIDENT. A resignation *ad remanentiam* is necessary, in order to consolidate property with superiority. This is agreeable to feudal principles, and the opinion of the elder lawyers. If any errors have been committed in practice, these must be avoided hereafter.

BRAXFIELD proposed that the *ratio decidendi* should be mentioned in the interlocutor.

MONBODDO. The judgment of Craig is express on this point.

ESKGROVE. Craig speaks only of a resignation *in favorem*, and not of resignation *ad remanentiam*.

On the 16th November 1786, "The Lords found that the superiority of Wester Common, vested in the person of William Buchanan, under the infeftment 1707, and that the property vested in his person under the infeftment 1731, remained separate and distinct estates; and therefore, that the property could not be carried by the special service and infeftment, which was afterwards expede in the person of Archibald the second, in respect that no resignation *ad remanentiam*, consolidating the property with the superiority, had been expede in the person of the said William; therefore repelled the plea of consolidation, and also of prescription and confirmation, and other defences, and sustained the reasons of reduction, so far as respects the lands contained in the contract of marriage 1730."

Act. Matt. Ross. *Alt.* Ilay Campbell. *Reporter*, Justice-Clerk.

Diss. Eskgrove. *Non liquet*, Rockville.