lants. The Court would not require impossibilities, nor oblige a man to condescend upon what he could not know—but it required his doer to declare that he could not condescend more specially than he had already done.

BARJARG. There is no reason for concealing the man's name when known, and when the pursuer restricts his libel to the proof of guilt with that particular man.

JUSTICE-CLERK. The excellent statute of James VI., 1606, would be eluded, were parties allowed to go on in prosecutions without mentioning names.

COALSTON. This action comes as near a criminal action as can be. The lady is entitled to the privileges of a criminal. When no person objects, an action of divorce may go on without the mention of names: not so, when a more particular condescendence may be given, and is required.

GARDENSTON. My difficulty lies here:—if the man is pointed out, how can he be made a witness and obliged *jurare in suam turpitudinem.*

PRESIDENT. By the old practice of the Commissary Court, a pursuer was not obliged to condescend. But the contrary was solemnly determined in the case of *Cuninghame.* This case is still stronger: the person described as the gallant is said to be a person of low rank. If the pursuer means to avoid condescending, merely with the view of bringing this nameless low person as evidence, this would be dangerous indeed, and make way for too easy conviction, in so atrocious an accusation as that of adultery. There is no danger from the action of damages, which the pursuer says may be brought by the supposed gallant, if the proof should prove insufficient. For, if a husband shows that he had a probable cause of suspicion, no damages will ever be awarded; and, if he has no probable cause, there is no reason why he should not be exposed to damages.

On the 21st February 1770, "The Lords refused the bill of advocation."

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

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1770. *March* 2. DAVID ROSS *against* ELIZABETH ROSS.

CLAUSE—GENERAL ASSIGNATION.

A general clause for "Goods, gear, debts, &c., and all other effects of what nature or kind soever," in a disposition, held insufficient to convey heritable bonds and adjudications.

[*Fac. Col. V.* 71; *Dictionary*, 5,019.]

GARDENSTON. It is a rule of law, that deeds disinheriting a son, especially an eldest son, are to be strictly interpreted. This is a hard-hearted deed. I do not doubt of intention; but that is not enough. It is probable that the testator did not advert that he had such subjects. The late case of *Bower* was still narrower than this, and yet the Court found for the heir-at-law.

AUCHINLECK. This is an unnatural deed;—a man, thinking of death, and going out of the world with so deep a resentment against his son. My difficulty is here—there is a conveyance of the whole effects of every kind and denomination. There was no occasion to make a particular enumeration of heritable subjects. Whole effects comprehends heritable bonds.

PITFOUR. We are bound to give a fair effect to deeds, however much we may dislike them. Yet I do not think that this deed carries the heritable bonds and securities. It is an important principle, that general words are not to be extended from an idea of intention. A general discharge, or a general submission, is a favourable deed as tending to sopite pleas. Yet a discharge or submission, as general as the clause in question, would not reach to heritable property.

COALSTON. If Alexander Ross had conveyed his whole estate, heritable and moveable, excluding his son, the conveyance would have carried every thing. But it is a general rule, that whenever a man conveys a subject specially, and then adds a general clause, that general clause is not to be extended beyond what is conveyed specially. The particular subjects conveyed are plainly moveable. The express "all other effects" cannot go farther. Perhaps the shocking irrationality of the deed may influence my judgment.

MONBODDO. Whatever the meaning of the words "goods, gear, and effects" may be in a neighbouring country, I am satisfied that, by the law of Scotland, they do not comprehend heritable subjects. What the intention of the testator was, I do not know.

JUSTICE-CLERK. The general strain of the deeds looks like an intention to exheredate the eldest son entirely, and yet there are words in the deed inconsistent with this notion. It is surprising that a man skilled in Scotch conveyances should have omitted to use proper words for disponing heritage. The clause of exheredation relates to the lands only. My opinion is confirmed by the clause conveying the evidents: for there he applies himself to the double settlement which he has been making; and as he made separate conveyances of the lands and moveables, so he makes separate conveyances of the evidents respecting the one and the other.

PRESIDENT. At first I thought that the intention was to convey all: but, upon reconsidering the case, I am for adhering to the interlocutor of the Ordinary. I am not bound to account for the omission of any subject. The letter of the 6th October shows that Ross imagined he had little or nothing to leave but the farm of *Little Dean.* In his whole deed he does not say a word of debts to be paid. The deed consists of two parts: *First,* The lands of *Little Dean; Secondly, Goods, &c. All effects* must be explained by what went before. It never can imply heritable subjects of more value than his land estate specially conveyed.

There are two parts also in his assignation to evidents. The same idea is followed out in the whole.

On the 2d March 1770, "the Lords found that nothing was conveyed to the defender except the lands of Little Dean and Mayblainie, and the moveable goods, gear, and effects, which belonged to Alexander Ross; and that there are no general clauses in the deed sufficient for conveying to the defender any

other heritable subjects belonging to him; and therefore reduced the rights in the person of Elizabeth Ross;" adhering to Lord Kennet's interlocutor.

*Act.* A. Lockhart. *Alt.* D. Rae.

1771. *April* 10, 11. Affirmed on appeal.

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1770. *March* 8. THOMAS SCOTT *against* SIR THOMAS FLUDYER and COMPANY.

## ARRESTMENT.

**An arrestment at the Market-cross of Edinburgh, Pier and Shore of Leith, against the common debtor's debtor, a Scotsman, living abroad, found ineffectual, as the money had been afterwards, *bona fide*, remitted to the common debtor, in ignorance of the arrestment.**

[*Faculty Collection, V. p.* 80; *Dictionary, App. I. Arrestment I.*]

MONBODDO. I understand that arrestment gives a *nexus realis*: It was so determined in the case of *The Earl of Aberdeen*, 1738. An argument there used was thought conclusive—that an arrestment in the hands of the defunct was preferable to a confirmation by the heir. Suppose a *corpus*, such as a quantity of tobacco, arrested in the hands of Tait, and that the *corpus* should come into the hands of Marshall, agent for the creditors, and be there arrested, the arrestment in the hands of Tait would be preferable. If you once hold that there is a *nexus realis*, suppose the agent to convert the *corpus* into money, the case would be the same, if there is such a thing as a *surrogatum* in law. The only difference between the supposed and the real case is, that a bill was sent instead of goods.

JUSTICE-CLERK. An arrestment at market-cross, pier, and shore, is a valid diligence against all Scotsmen, and may be made effectual; but I would be sorry that it should have any effect before it came to his knowledge. Here Tait knew nothing of the arrestment, and, therefore, cannot be liable in second payment. If Tait had sent cash, and Herries had given it to his agent upon bond or note, would not this have discharged Tait and constituted an obligation against the agent? Such is the case here. The two arrestments are not *ad idem*. Scott's arrestment in the hands of Tait will not carry money in the hands of Marshall.

PITFOUR. If arrestment at pier and shore is good, then all Lord Monboddo's argument is demonstration. Here the subject is still extant: action lies against Tait for breach of arrestment. Tait's defence is, I sent the money home *bona fide*, not knowing of the arrestment. The arrester may answer, All this is well; but you have an action of forthcoming against Marshall: the debt is still *in medio*. I can force you to assign to me that I may chase the money, into whose