to have received payment; for, if Mr Tait were to become bankrupt, the creditors for whom he appears would still have their full claim of debt.

COVINGTON. This is raising a question upon a *species facti* which does not exist.

On the 24th February 1780, "The Lords found that Mr Tait, and the other creditors for whom he acts, can only be ranked upon the price of the heritable estate for the balance remaining due to them, after deducting what they have recovered out of the executry-funds;" altering their interlocutor of ———.

Act. Ilay Campbell. *Alt.* A. Elphinston.
Reporter, Justice-Clerk.
Diss. Gardenston.

1780. *February* 25. JOHN RAMSAY *against* JOHN GRIERSON.

ARRESTMENT.

The habile diligence for affecting the price of Heritable Subjects, in the hands of a Trustee for Creditors.

[*Faculty Collection, VIII.* 203; *Dictionary*, 759.]

COVINGTON. The first question *here* is, Whether there is a debt at all? I do not understand how an arrestment can be laid on a *conditional* debt, which may not become *pure* in twenty years. I always understood that in the law of Scotland a conditional debt is not the subject of arrestment. There may be a creditor where there is no debtor, as in an infeftment of annualrent without a personal obligation to pay. Dickson ceased to be debtor in consequence of the discharge granted by his creditors: the only action, if any, must be against his trustee. The trustee is liable to account, but that obligation is not a subject of arrestment: the creditors may come at it another way, by compelling the trustee to dispone the subject and divide the price.

KAIMES. *Here* a man dispones his subjects, heritable and moveable, to a trustee, for his creditors' behoof. I cannot see how an arrestment by the creditors of the cedent can have any place. The purpose of an arrestment is to put the arrester in the room of the common debtor. The right of the common debtor is merely to account to the creditor: how can any diligence prevent the effect of the trust-right?

BRAXFIELD. The subject of the hearing was, "How far the arrestment affected the heritable estate?" If the interest in question be *heritable*, it cannot be affected by arrestment; if *moveable*, it can. The different creditors have not an heritable estate in the subject of the debtor, for then inhibition might be used against each of them, which would embarrass the trust-right and

render it inextricable. When an estate is conveyed to a trustee, as in this case, what is the purpose? It is to have the whole sold and the price divided. This only gives a *jus crediti* to each creditor. The right of each creditor is a personal right against the trustee. It is impossible that an adjudication can carry this; it must be carried by arrestment. This is illustrated by the case of copartners having houses and heritable bonds. Their creditors cannot affect such subjects by adjudication: they must be affected by arrestment. The principle applies to the one case as well as the other.

KAIMES. I misunderstood the fact, and supposed the arrestment to have been laid on by a creditor of Dickson.

ALVA. I do not understand an arrestment of a thing that is not *in medio*. This subject is not *in medio*. He who wishes to arrest must wait till the subject comes to be *in medio* by a sale.

COVINGTON. A claim *ad factum præstandum* is not arrestable: but the claim here is something more,—it is for payment of the money. The personal claim of Hepburn would have gone by a confirmation: why may it not be carried by arrestment? Many debts are arrestable, although not actually due: thus, arrestments may be used of rents *currente termino*.

On the 25th February 1780, "The Lords sustained the arrestment, and found it effectual to carry the heritable and the moveable subjects."

Act. R. Corbet, A. Crosbie. *Alt.* A Ferguson, Ilay Campbell.

Diss. Alva, Westhall; *non liquet*, Covington, Elliock.

Hearing in presence.

1780. *February* 19. ROBERT MONTGOMERY *against* GEORGE FERGUSON.

MEMBER OF PARLIAMENT.

[*Folio Dict. III.* 428; *Dict.* 8820.]

BRAXFIELD. The catholic right is a blanch duty. *That* cannot be divided. The vassal is not bound to pay *part* of a penny Scots; and, if so, the superiors are not in possession.

ELLIOCK. The possession is just as good as the possession of any blanch superiority.

MONBODDO. The freeholders had not only power, but right to inquire into the possession. When it appears *ex facie* that there neither was nor could be possession, the freeholders did right to refuse enrolment.

COVINGTON. My doubt is as to the power of the freeholders to challenge.

ALVA. The freeholders are entitled to inquire whether the subject claimed on exists.

KENNET. A superior is not entitled to impose a number of superiors on his