at the dissolution of the marriage. The claim therefore might be more or less, or might be nothing at all.

KENNET. I think this was a donation; and that the marriage-contract was one-half of all moveable subjects to the wife. She renounces the liferent of the conquest as well as the right to moveables,—this was giving up too much.

GARDENSTON. I cannot regret that a widow should get what her marriage-contract gave her. The law has provided that a donation between man and wife may be revoked, and even a transaction, if unequal and prejudicial.

PRESIDENT. I go upon the supposition that the effects were very considerable at the time of the transaction. This was plainly a donation: I do not suspect the husband of fraud in obtaining it; but the law is calculated to prevent donations from affection, where no fraud intervenes. I will not suppose that the husband had any intention of changing the nature of the subjects, in order to disappoint his wife's claim. He was a trading man, and most of his property was vested in goods: it continued so vested until his death, and would probably have continued so, although the deed in question had not intervened.

On the 22d November 1769, "the Lords found the deed revocable."

Act. A. Lockhart. *Al.* R. M'Queen. *Reporter*, Stonefield.

Diss. Kaimes, Coalston, Auchinleck, Barjarg, Elliock, Monboddo.

1769. *November* 24. BESSIE ROWAND, and OTHERS, *against* JAMES COCHRAN.

SALE.

Lands being exposed to Sale, and the articles bearing that the purchaser was to accept such progress as could be delivered, and to be debarred from objecting on that account, found to be an effectual sale, though the progress was defective.

[*Faculty Collection, V. p.* 10; *Dictionary*, 14,178.]

MONBODDO. A man buying by a lame progress, is like a man buying a lame horse, knowing him to be lame: he has no relief. There was no fraud here; but, on the contrary, the faulty part of the progress was produced, which the seller might have secreted.

JUSTICE-CLERK. The words of the articles of roup are irresistible. The sale would have been good, although the progress had been worse. The purchaser may have been ignorant or careless; but that makes no difference.

GARDENSTON. It would destroy the credit of all public roups were we to set aside this sale.

On the 24th November, "the Lords remitted to the Ordinary." [It was understood that he should find the price due, upon turning the decreet into a

libel; but this could not be done directly, because the charge was for the penalty, not for performance, although the parties had joined issue upon the merits of the sale.]

Act. Ilay Campbell. *Alt.* R. Cullen. *Rep.* Auchinleck.

1769. *December* 1. JOHN and WILLIAM WILSON *against* GEORGE WILSON.

CLAUSE—PROVISION TO HEIRS AND CHILDREN.

Meaning of the term "Heirs and Bairns," or "Children," in a contract of marriage.

[*Fac. Coll., V.* 12; *Dictionary*, 12,845.]

MONBODDO. Setting the case of *Kemp* aside, of which I know not the circumstances, I doubt as to the interlocutor. The expression is, "heirs and bairns." When a testator departs from ordinary words of style, I must suppose that he meant something more than heirs. This is confirmed by the clause of division, where he speaks of children, referring to the former clauses.

PRESIDENT. The expression, *heirs and bairns*, may mean as in the interlocutor, when there are no interpreting words: such was the case of *Kemp*. But there may be interpreting words. The clause, as to the provision of 4000 merks, affords evidence that, by heirs and bairns, the testator meant children: for the provision in that clause might chance to be heritage as well as moveables. If it was heritage, then, according to the principles of the interlocutor, the eldest son gets every thing, and the younger children are disinherited altogether.

PITFOUR. What is now stated is new. I supposed that the provisions in the second clause were simply as to moveables. My rule of interpreting was this: *Non tantum Atreidæ uxores suas amant.* Small heritors are as fond of their paternal estates as great ones. A provision of an estate to heirs and bairns, is therefore limited to the eldest son. When a clause of conquest is to heirs and bairns of the marriage, it is to be interpreted *applicando singula singulis*, heritable to heirs, moveable to younger children; the intention is to provide *stirpi*, not for any particular child. It is not new, in the interpreting a deed, to make the same word bear different meanings. This happened in the case as to the succession of the *Earl of Selkirk*, where heirs and assignees whatsoever was found to imply both the heir of line and the heir of conquest. In the appeal, the judgment of the Court of Session was burlesqued, and it was said "that the law of Scotland must be a very strange law, which in the same deed interpreted the same words different ways."

PRESIDENT. I admit that the law is rightly laid down by Lord Pitfour; but still the difficulty recurs, May not a man affix his own meaning on words; and is that not the case here?