[He spoke at considerable length, but with so low a voice that it was impossible to collect his argument.]

GARDENSTON. This is a judgment of great moment in point of precedent. No assignation can be effectual where the sum is blank; *that* is truly the case *here*. Were this to be sanctioned, innumerable frauds would arise. What can you intimate to the debtor?—that some time or other you may chance to become a creditor for some extent or other?

KAIMES. An assignation must always be in security of some debt. Can I assign a sum in security for any debt which I may hereafter contract?

ALEMORE. No clause in a copartnery can be good *contra communes juris regulas*. This is an assignation of a possible sum in security of a possible debt.

JUSTICE-CLERK. I am glad to hear that there are so few instances of such a clause. I did not think that there could have been any. If such clauses were held effectual, there would be an end of all commerce. It would at one stroke ruin the credit of the country. No man would contract with the partner of a company.

PRESIDENT. The clause is contrary to all ideas that I ever heard of in mercantile business. I am sorry to see new clauses introduced into copartneries. Under it, it would not be safe to contract with any man who *was* of a company, nor indeed with any man who *might* be of a company. All men in labouring circumstances would go into copartneries to save themselves and cut out their creditors.

On 27th July 1774, "the Lords preferred Goldie;" adhering to their interlocutor of 16th June 1774, and to Lord Hailes's interlocutor.

Act. A. Rolland, Ilay Campbell. *Alt.* R. M'Queen, H. Dundas.

Diss. Monboddo.

The writings of the lawyers on both sides received great and just commendation.

1774. *July* 28. MARGARET THOMSON *against* WILLIAM SIMSON.

PRESCRIPTION—MULTIPLEPOINDING.

A process of multiplepoinding, brought in consequence of an arrestment, preserves the arrestment from prescribing, although the arrester's interest is not produced in the multiplepoinding.

[*Faculty Collection, VI.* 343; *Dictionary,* 11,049.]

MONBODDO. A multiplepoinding has the same effect in moveables that a ranking and sale has in heritable subjects. But as, in the latter case, the creditors must produce their grounds of debt in order to save from prescription, so also, in the former, the raising of a multiplepoinding by the debtor is not equivalent to the creditor producing the ground of debt. The decision 1732 seems an erroneous decision.

GARDENSTON. Should not think that a lawyer's acknowledgment was sufficient without any thing more; but I think that a *production* is necessary, in order to interrupt prescription.

KAIMES. An arrestment makes a subject litigious. The law says that arrestment shall prescribe in five years; that is, that the common debtor may after that time give away the goods without breach of arrestment. This is not the case here. I doubt how far the arrestment 1761 is prescribed, so as to give a preference to Simson.

COALSTON. The objection is negative prescription. That must be clearly made out. There is one decision in point: it has gone abroad, and the public may have been guided by it in the conduct of affairs. Dangerous to pronounce a contrary decision.

PRESIDENT. The decision 1732 is not inconsistent with principles.

AUCHINLECK. Will the calling a person in a multiplepoinding stop the course of prescription, either short or long? There is no document taken on this arrestment.

KAIMES. There is a good excuse offered for not doing diligence. The subject was litigious: What could the arrester do? I would have advised him to lie by till it could be known whether he could draw any thing. Besides, there was no use for a furthcoming: the question might have been determined in the multiplepoinding.

KENNET. I think that the process is sufficient to interrupt prescription as being *seen and returned.* I hold it as *seen and returned,* for all the creditors.

COALSTON. No man is obliged to bring an action merely to interrupt prescription.

GARDENSTON. When an entail is in the course of being contravened, and a separate title set up, a remote heir of entail may bring an action, and must bring an action to interrupt prescription; but I am moved with the decision 1732.

MONBODDO. In the case put by Lord Gardenston, the remote heir has an interest to set aside the right of the person in possession.

On the 28th July 1774, "the Lords found the prescription sufficiently interrupted."

Act. G. Ogilvy, H. Dundas. *Alt.* J. Boswell, A. Lockhart.

Reporter, Auchinleck.

[This seems a narrow case. It was carried through by the authority of the decision, *20th July* 1732, *Crawfurd* against *Simson,* observed in *Dictionary,* vol. II., p. 117. I wished to have seen the papers in that cause, for I suspected that in it the arrester had claimed, though the collector omitted that circumstance. The Court however inclined to give implicit credit to the collector.]