

1774. January 14. ALEXANDER CRAWFURD *against* PATRICK CRAWFURD.

FOREIGN.

Testament executed abroad.

[*Faculty Collection, VI. 258 ; Dictionary, 4,486.*]

MONBODDO. This deed has a strong resemblance to the will in the civil law. *L. 88, § ult. D. de Legat. 2.* James Crawford desired that it might be valid either as a testament or as a partition among his children. He mentions the word *heirs*. We ought to give effect to this deed. The children cannot take the heritable subjects in Scotland directly, but they may, by a circuit, oblige the eldest son to make up titles and denude *pro rata*.

PITFOUR. It is impossible that this deed can be held as any thing else than a testament. It has no disposing words; it does no more than express Mr Crawford's intention at that moment. Heritable subjects in Scotland cannot be conveyed by a deed in form of a testament.

COALSTON. Our countrymen in foreign parts constantly fall into the snare of using *testamentary* words, when they should use *dispositive*. It may be wished that this nicety of our law were altered; but we cannot alter the law.

KAIMES. If heritable subjects in Scotland could not be carried by a Scottish testament, much less can they by a Dutch testament.

HAILES. I gave my opinion to the parties that the deed was a valid deed, as being executed in the form required by the law of the place. I doubted whether the heritable subjects in question were meant to be comprehended under the phrase _____; but this doubt was removed by the opinion of Dutch counsel. As the pursuer sought not to take any thing by the deed, I considered it as ineffectual to convey heritable subjects in Scotland.

On the 14th January 1774, the Lords found that the deed in question could not convey heritable subjects situated in Scotland.

Act. Ilay Campbell, A. Lockhart. *Alt.* R. M'Queen.
Reporter, Hailes.

N.B. In the argument on this case the cases of *Barclay of Buenos Ayres*, *Lord Banff's Succession*, *Mary Gainer*, *Auchterlony*, were mentioned. I believe that none of them applied: they were talked of from memory.

1774. January 15. ELIZABETH MOODIE *against* ROBERT RHYND, &c.

EXPENSES.

IN this case the Lords repelled the objection that the account of expenses exceeded the sum libelled for in name of expenses.