when he is willing to pay, but is prevented by multiplepoinding? *Answer*,—Let him consign. But, in this case, consignation is not offered.

On the 24th July 1770, "The Lords adjudged, reserving exceptions *contra executionem*;" adhering to Lord Hailes's interlocutor.

Act. J. Douglas. *Alt.* W. Nairne, A. Rolland.

Non liquet, Pitfour, Monboddo.

1770. *July* 26. MARGARET MORRISON, Relict of Alexander Macleod, and JOHN, DONALD, and OTHERS, their Children,—*Petitioners*.

JURISDICTION—TUTOR AND CURATOR.

A party having, by his settlement, appointed Tutors and Curators to his children, his wife being one, a petition was presented in her name, praying that she might be appointed *factor loco tutoris*, as the other tutors lived at a distance. But the Lords refused the petition, as it did not appear that the tutors had refused to act, and as, in case of their refusal, recourse might be had to the tutor of law, or to a tutor dative.

ALEXANDER Macleod died, leaving the petitioner, Margaret Morrison, his widow, and the other petitioners, his children, all minors. He left a deed, containing a nomination of certain persons as tutors and curators to his children, bearing, "any three of the said tutors and curators, who shall accept of the said office, to be a quorum, my said spouse being always *sine qua non*, in case she shall survive me."

The persons named as tutors along with the widow, lived in different parts of the country, and at inconvenient distances from each other. But, although none of them had accepted the office, it did not appear that any of them had formally declined it. In these circumstances a petition was given in, in name of the widow and children, praying the Court to appoint the petitioner, Margaret Morrison, to be *factor loco tutoris* for the other petitioners. On this petition the following opinions were delivered:—

HAILES. If this petition for a factor *loco tutoris* be granted, the Court must declare itself the guardian of all infants in Scotland. It is not said that the tutors named have refused to accept, nor that the tutor in law is unwilling to accept, nor that there is any difficulty of procuring a tutor dative: the mother, appointed a tutrix *sine qua non*, desires to be appointed *factor loco tutoris*. This would be going a great way, indeed, with the *nobile officium* of the Court.

COALSTON. The remedy sought for is only to be granted in cases of necessity. The Act of Sederunt, 1730, is founded on absolute necessity. Whether factors, named under that Act, ought to have advice from the Court, is another question, not before us here.

AUCHINLECK. It is not said that the tutors named have refused to accept. This woman wants to have the total management of the pupils' affairs.

JUSTICE-CLERK. The tutors named have not refused to act. The tutor of law may act. The widow may apply to the Exchequer for a tutory dative: so that this petition is, in all these three lights, incompetent.

COALSTON. Factors *loco tutoris* were established upon necessity; but the necessity must be set furth. An Act of Sederunt is not to be overturned *per saltum.*

[This alludes to an apprehension which he had entertained, as if the Court meant to set aside the Act 1730; which was certainly a groundless apprehension.]

PRESIDENT. There is no intention to hurt the Act of Sederunt; but only not to grant factories unless *causa cognita* and from necessity.

ALEMORE. Before the year 1730, there was no difficulty to find tutors: since that time, there is. If the country has lost humanity, it is owing to this Court being too apt to provide something in lieu of tutors.

AUCHINLECK. I like factors *loco tutoris,* for they serve for hire, and consequently better than those who serve for conscience sake.

On the 26th July 1770, "The Lords refused the petition."

For the petitioner, B. W. M'Leod.

1770. *July* 26. MESSRS PETER and BOGLE *against* DUNLOP'S TRUSTEES.

BANKRUPT—FOREIGN—ARRESTMENT.

The enactment of the statute 1696, c. 5, not effectual *extra territorium.* A trust-deed by a bankrupt, for behoof of his creditors, though reduced at home, as falling under the statute 1696, found to be effectual, and a valid title in favour of the trustees to apprehend the possession of the effects of the bankrupt situated in a foreign country;—and, in a competition between the said trustees and certain non-acceding creditors to the trust, who had arrested the effects of the bankrupt sent home from a foreign country, both in the hands of the trustees and the master of the ship—the trustees preferred.

[*Faculty Collection, V.* 100; *App. I. Bankrupt, No.* 1.]

COALSTON. Judgment in the Courts of Virginia would or ought to have been given for the trustees. I think the same judgment ought to be given here. Had there been no bankruptcy the trustees would have been preferable: the only objection is from bankruptcy. A ground of challenge *de jure gentium* ought to be regarded every where—but a ground of challenge by statute of any country is local. The restraints in the statute 1696 are of the same nature as those by inhibition and interdiction. The statute of bankruptcy in England has no effect as to goods in Scotland—and so *vice versa.* The case of *Jackson* was de-