KAIMES. The only question is, whether the reparation of churches falls within the general words. From the nature of the contract, the feuar must repair his own house, unless the contrary were stipulated: The church is his own house.

HAILES. Wherever there is any ambiguity in the contract between superior and vassal, usage must explain it. Any other rule would be dangerous.

PITFOUR. Public burden is properly a burden paid to the public: yet still the words ought to be liberally constructed, so as to comprehend every burden generally paid.

AUCHINLECK. *Cujus commodum ejus est incommodum.* If we were to find that the feuars were not to club for upholding the church, what title have they to seats in the church?

PRESIDENT. They are entitled to seats as heritors. The question turns upon the import of the contract. I doubt whether a practice, if erroneous, will form a rule of law. The words are very broad: all the expressions, however varied, seem to tend to this, that the feuars were to pay nothing but feu-duty.

KAIMES. Were the terms clear, I would not open my mouth in defence of the interlocutor; but they are doubtful, and I will explain them from practice.

JUSTICE-CLERK. The parties had not this case in their view. Their only idea was of annual prestations payable to third parties, not of precarious and contingent burdens. I go upon this principle, that the sense and understanding of the parties must be the rule of interpretation.

MONBODDO. The distinction between annual and contingent burdens solves not the difficulty. Anciently, all public burdens were contingent, and may be so hereafter.

On the 5th March 1773, "The Lords found that the vassals were not entitled to relief from their superior;" adhering to their interlocutor of 23d Jan. 1773.

Act. J. M'Laurin. *Alt.* A. Lockhart.

Diss. Coalston, Pitfour, Gardenston, Monboddo, President.

1773. *March* 10. ROBERT JOHNSTON and DONALD SMITH *against* ALEXANDER CHISHOLM and OTHERS.

BANKRUPT—PERSONAL PROTECTION.

[*Faculty Collection, VI. p.* 169; *Dictionary,* 10,473.]

COALSTON. I doubt whether the nomination of trustees takes the matter out of the jurisdiction of the Court, so far as to prevent the Court from giving aid.

PITFOUR. As to the powers of the Court, the giving a protection is for the

benefit of the creditor, not for the conveniency of debtors. I do not see that the statute has made a difference when the estates are vested in trustees.

PRESIDENT. I differ totally from what I have heard: Creditors may give a *supersedere*,—the bankrupt may suspend. There is no word in this statute which gives the Court a power of granting personal protections after trustees are once named. If the creditors incline to have affairs conducted by trustees, every thing returns into the course of the common law.

JUSTICE-CLERK. It shall not be the interpretation of a doubtful clause in the statute, which will make me hold that a personal protection may be granted in opposition to the Act, 5th Geo. III.

On the 10th March 1773, "The Lords found that the Court is not empowered, by Act of Parliament, to grant the personal protection; and therefore refused the petition.

For the petitioner, A. Lockhart. *Alt.* J. M'Laurin.

1773. *June* 16. MESSRS ASHTON, HODGSON, and COMPANY, *against* SARAH MACKRILL.

FOREIGN.

Arrestment, *jurisdictionis fundandæ causa*, of effects, in this country, belonging to a Foreigner at the time of his death, used by another Foreigner, his creditor, whereon he brought an action of constitution and payment against the defunct's widow and daughter as his representatives, founds a jurisdiction to this Court to pronounce decree of constitution against the widow, executrix appointed in her husband's will, who, in pursuance thereof, had taken letters of administration, and, though not confirmed according to the Scots form, was maintaining actions against the debtors to the executry in this country, and likewise a party in multiplepoindings brought by them.

[*Fac. Coll., VI.* 171; *Dictionary*, 7669 and 4835.]

GARDENSTON. The single question is as to jurisdiction. I do not think the objection solid. The effects of a stranger, debtor in this country, while he is alive, may be affected by arrestment *jurisdictionis fundandæ causa*. The question is, Whether the same form ought not to be observed when the debtor is dead? I see no reason or authority for making a difference. The executor nominate is *eadem persona cum defuncto*. Sarah Mackrill has appeared in a multiplepoinding, whereby she has acknowledged the authority of this Court.

HAILES. Sarah Mackrill, as administratrix, has received powers from the Ecclesiastical Judge to act in that capacity, and has found security. She acts for Messrs Ashton and Company as much as for any other creditor; and, if there is any dividend due and payable to Messrs Ashton and Company, she must pay it. This action, therefore, is not to obtain a legal right by the law of England: *that* is already secured; but it tends, by a new form, to invert