

there. [He attempted an illustration from the case of our own jurisdictions, and he supposed that a Sheriff had no jurisdiction to arrest the person of one subject to the jurisdiction of another Sheriff, when passing transiently through his territory.]

PRESIDENT. Any stranger may sue for justice in Scotland. Every person coming into our jurisdiction is subject to it, and owes a local obedience: but *that* will not resolve the point, for there may be a declinature to prevent the jurisdiction being followed out the length of a decree. A man passing transiently through our jurisdiction is not subject to it the length of execution. This is well expressed, *L. 19, § 2, D. de Judiciis*: A caution *judicio sisti* is in the event *judicatum solvi*. I am therefore clearly of opinion as to the general point. I think, however, that what is said as to one Sheriff not having power to aid another, is erroneous: they ought to aid each other, because they are judges of the same state, and are equally under the Court of Session, who will try the cause in the event. I have some difficulty as to this particular case: there may be a jurisdiction where there is any fraud alleged; but, upon the whole, fraud is not brought home to the prisoner.

ELLIOCK. If the goods may be arrested, why may not the person be arrested? This is the law over all Europe, and no bad consequences arise from it.

On the 6th December 1775, "The Lords suspended the letters, and ordained Carmichael to be set at liberty."

For Carmichael, J. Boswell, A. Crosbie. For Scott, J. M'Laurin, Ilay Campbell.

Diss. Kaimes, Coalston, Alemore, Ellick, Stonefield.

1775. December 15. MARY WITHERSPOON and OTHERS, *Petitioners*.

JURISDICTION—TUTOR.

The original trustees named in a settlement had been removed by the act of the Court. Found that the Court could not name new trustees; but they appointed a factor with the ordinary powers, and also with power to bring an action for compelling the trustees to denude.

[*Folio Dict. VII. 153; Dict. 16,372.*]

COALSTON. I doubt how far a factor, with the ordinary powers, can discharge the trust. The trustees, in so far as they were tutors and curators, have been removed as suspect; but they are still vested in the right to the subject. They must be denuded of the right in them, and that can only be done by an action against the trustees for denuding in favour of the constitu-

ents, or of trustees to be named by them. This is a case which may happen every day, as in the case of trustees for a debtor, when they act improperly.

KAIMES. On the supposition that there was a conveyance to the trustees, investing them in all the effects of the disponer, I admit the consequence, for he who is invested must be divested; but I think that there is no vesting here, and that no more is meant than to convey an office. It is a deed wrote by an ignorant person who knew not the force of the words which he used. I would explain it in the manner which seems most rational. I doubt whether we can name either trustees or factor: we never interpose unless where there is a necessity; but *here* there is no necessity, for the right will fall to the executors *ab intestato*; but if the trustees are invested, they must be divested at the instance of the persons honoured by the deed.

ALEMORE. Trust-rights are new in this Court, and they are still in a very crude state. The truster here names his friends *fiduciaries* and *assignees*, and the like: this means no more than an extending of the word *dispone*. As all these things are in consequence of the main trust, if *that* cannot subsist, the Court will take into their own hands, for the best of all reasons, from necessity.

COVINGTON. Supposing the property to be established in the person of the trustees, there would be a necessity of denuding them; but their right is no more than a title authorising confirmation; and it is admitted that no title by confirmation has been made up. There is no vesting here: even if the trust had been to the nearest of kin, it would not have vested, as things stand at present.

COALSTON. We are bringing this cause into difficulties which do not occur in it. This Court will give assistance to carry the just will of the deed into execution, as in the case where trustees will not accept. I suppose the fee to be vested in the trustees, and they must be denuded of it. Should we appoint a factor, what will be the consequence?—The right will still remain in the trustees. We have not declared the trust at an end, although we have divested the trustees of the offices of tutors and curators.

AUCHINLECK. There is a total stop at present: if we name a factor *loco tutoris*, he will bring a process for denuding the trustees.

HAILES. I am for appointing a factor from the necessity of the thing, and the hazard of delay; for the trustees are broken men, and have found no caution.

On the 15th December 1775, “The Lords appointed a factor *loco tutoris*, with power to him to bring a process against the trustees for denuding them of the subjects.”

For the petitioner, G. Ferguson.

Diss. Coalston.
