

bankrupt himself was no longer in Court, the process of *cessio* having been finally concluded. Here, however, both the bankrupt and his creditors are properly in Court, his process of *cessio* being still in dependence, and his effects are in some measure in *manibus curiæ*, his books and bills being actually lodged in process, and his whole effects being under the protection of the Court.

No 104.

But, in the *second* place, even supposing that the particulars now mentioned should not be considered as placing the effects of the bankrupt under the direction of the Court; yet the peculiar circumstances of the present case do most justly merit the equitable interposition of the Court, by appointing the petitioners, or any other person that may be thought more proper, factor upon the effects of Whyte, pursuer of the process of *cessio bonorum* above mentioned, and upon the said factor's finding sufficient security for his management, appointing the bills and other vouchers of debt due to Whyte, produced in the process of *cessio*, to be delivered up to him the said factor; and further, authorising him to take all other measures necessary and proper for the management of the bankrupt's funds for the benefit of all concerned.

"THE LORDS refused this application as incompetent;" seeing the bankrupt has already granted a disposition to his creditors *omnium bonorum*, therefore a meeting of the creditors may be called by themselves, and the majority of such meeting may choose a factor.

For Petitioner, *R. Cullen.**Fac. Col. No 156. p. 26.*1775. November 17. *DICK against MORISON and Others.*

No 105.

DICK pursued a *cessio*, which some of his creditors opposed, pleading, that he was not entitled thereto; but, at any rate insisting, as upon perusing the proof which he has brought, it appeared his losses, all except some trifles, had been occasioned by smuggling, he must be obliged to wear the dyvour's habit if he shall get out of prison without satisfying his creditors, agreeably to the authority of Mr Erskine, B. 4. tit. 3. § 27, and the decisions in similar cases there cited.

"THE LORDS decerned in the *cessio*, but refused to dispense with the wearing of the habit."

*Act. Geo. Ferguson. Alt. J. Boswell. Clerk, Tait.**Fol. Dic. v. 4. p. 138. Fac. Col. No 198. p. 135.*1779. February 3. *M'KENZIE against HIS CREDITORS.*No 106.
Tho' the imprisoning creditor consent to the bank...

M'KENZIE was, on the 12th November 1778, incarcerated at the instance of BROWN, and, on the 13th December, executed a summons of *cessio bonorum*.