wife's favour. I cannot think that all the deeds in his repositories are to be considered as still subsisting.

PRESIDENT. The deed of settlement is the *ultima voluntas.* Logie may have made various destinations before, but that is the final result of all his destinations.

COALSTON. If the last settlement had kept in generals, without mentioning any particulars, there might have been difficulty; but here there is a special reservation of all that Logie meant to bestow on his wife.

On the 24th July 1770, " The Lords sustained the reasons of reduction."

Act. A. Lockhart. *Alt.* J. Scott. *Reporter,* Gardenston.

1770. *July* 24. JOHN THAINE *against* SIR WILLIAM MONCRIEFFE.

ADJUDICATION—MULTIPLEPOINDING.

Process of Adjudication cannot be stopped or delayed by a Multiplepoinding raised by the debtor, who was doubly distressed for the debt adjudged for.

[*Faculty Collection, V.* p. 99; *Dictionary, App. I. Adjudication, No.* 4.]

PITFOUR. This is a first adjudication: no damages can arise from delay,—How can the debtor have a penalty inflicted against him, while there is a multiplepoinding depending?

COALSTON. The debtor is doubly distressed: it is *in dubio* whether Thaine is preferable or not. The debtor is not *in mora,* and therefore why adjudge? The practice of the Court reserves objection *contra executionem;* but that will not apply to a first adjudication.

PRESIDENT. The *mora* is on the part of the debtor; for the creditor has done nothing to hinder his payment. Why should he be stopped from taking legal execution in order to secure payment.

PITFOUR. The distress arises from the pursuer; for he does not clear up his own preference.

GARDENSTON. If he who seeks adjudication is not a true creditor, he will have his labour for his pains; if he is, he will make his diligence good.

JUSTICE-CLERK. It is not difficult to rear up objections, and to bring a multiplepoinding. This will not stop the course of the law. If, in discussing the multiplepoinding, it be found that the creditor has adjudged for too much, he himself will be the loser.

AUCHINLECK. The bond is dated in 1765. It is hard to keep so much money dead. The interlocutor is right.

KAIMES. A suspension only stops personal diligence, not real. This may answer the decision 1707, *Tod.* How can a man have his estate adjudged,

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.