

1745. *January 15.*

MARJORY FIDLAR and WILLIAM Her FATHER, Supplicants.

No. 277.

Effect of exclusion of the father's administration.

Marjory More, relict of William Johnston, druggist in Edinburgh, having right to 1,000 merks, contained originally in a bond granted by Mr. Alexander Laing of Yardheads of Leith, and in a bond of corroboration by Barbara Kay his relict as principal, and William Chalmers, writer in Edinburgh, as cautioner, assigned the same to Marjory Fidlar, her grandchild, daughter to William Fidlar, writer in Edinburgh, excluding always the said William Fidlar from the succession or administration, and providing, that it should not be in her power to uplift or assign the money till her marriage or majority.

Mr. Fidlar gave in a petition in his daughter's name, who was under the age of pupillarity, and in his own, as her administrator in law, showing, That the cautioner was become free by the septennial prescription; that the money was not sufficiently secured; that the grandmother, when she excluded him, had named four tutors and curators, three of whom had positively refused to accept, and the fourth had not signified his inclination either way; that by this the administration returned to the legal course; and therefore craved warrant for a bill of horning.

The Lords granted warrant to the Ordinary to pass the bill of horning, on Mr. Fidlar's lodging security in the hands of the clerk to the bills, to re-employ the money in the terms of the assignation, excluding his own administration.

D. Falconer, p. 45.

1746. *November 11.*

JOHN RIDDEL, Supplicant.

No. 278.

A factor *loco tutoris* was appointed with power to serve an infant heir to his predecessor, *cum beneficio inventarii*, on its being represented that the service behoved to be expedite within a year, and till that was elapsed, no tutory dative could be obtained.

John Riddel, writer to the signet, deceased, leaving a nomination of tutors and curators to John Riddel his son, of whom Christian Nisbet the defunct's relict was appointed *sine qua non*; but the other tutors not thinking proper to accept, and the pupil's friends finding it adviseable that he should be served heir to his father *cum beneficio inventarii*, a petition was given in to the Lords in name of him and his mother, showing, That no tutory-dative could be obtained for a year, within which time it was necessary a service *cum beneficio* should be expedite; and therefore craving that she might be appointed factor to him *loco tutoris*, or else, as she was named tutrix *sine qua non*, she might be authorised by herself to give up inventory.

A former petition had been given in, praying to have her appointed tutor, which was refused; but some of the Court observing, that they had formerly named a factor with these powers, the above petition was thereupon presented.

The Lords appointed Christian Nisbet to be factor to the petitioner *loco tutoris*, to the effect that she might make up inventories, and serve him heir to his father *cum beneficio inventarii*.

Petitioner, *Murray.*

D. Falconer, p. 180.

* * Kilkerran reports this case :

No. 279.

The tutors appointed by John Riddel, deceased, to John Riddel his son, refusing to accept, application was made by the pupil, with concurrence of his mother, who had been named tutrix *sine qua non*, craving that she might be appointed factor *loco tutoris*, and that special power might be given her to serve the pupil heir *cum beneficio* to his father. And it having been observed from the Bench, that the like had been done in the case of Baird of Saughtonhall, January 13, 1741 ; and *in anno* 1711, in the case of the Lord Bargany, the Lords “ Granted the desire of the petition.”

Kilkerran, No. 8. p. 586.

1747. January 13.

RABINA POLLOCK, Supplicant.

No. 280.

Where a pupil was both apparent heir and creditor to her father, and it appeared more expedient for her to betake herself to her debt than to represent, so that an adjudication was necessary, and which behoved to be led against herself, the Lords, upon the pupil's application, with concurrence of her mother, appointed the mother factrix *loco tutoris*, with power to do diligence for recovery of the debts, and in order thereto to make them over to a trustee.

A factor *loco tutoris* appointed for leading an adjudication for behoof of the apparent heir against herself.

Kilkerran, No. 9. p. 587.

* * D. Falconer reports this case :

A petition was given in in name of Rabina Pollock, only child to the deceased Captain John Pollock of Balgray, and Anna Lockhart her mother, showing, That, by her parents' contract of marriage, she was entitled to £.1000 Sterling of portion ; that she was also creditor to her father for a sum left her in legacy by a friend, with which he had intromitted ; that part of his estate was settled on heirs-male, who declined to enter, and part on her, as heir whatsoever ; that it was thought expedient she should betake her to her provision and debt ; and thereon, by adjudication, affect the estate ; in which process it was necessary she herself should be summoned as heir, and that her claims should be made over to a trustee for that purpose, which she being under the age of pupillarity, and without tutors, could not do, and therefore craving the interposal of the Court.

The substance of the interlocutor was, “ Appointing Anna Lockhart the petitioner's mother to be factrix *loco tutoris* over these two subjects, with power to her to do diligence for the recovery of them, and in order thereto, to assign them over to a trustee.”

Petitioner, *H. Home.*

Clerk, *Murray.*

D. Falconer, v. 2. No. 152. p. 195.