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ought to be ordained to meet at the parish kirk of Reay, and there to provide a school-house, and settle and modify a salary.

THE LORD ORDINARY, before whom the action came, adopted the last alternative of the libel, and made a special order for a meeting of the heritors, to obtemper the statute 1696, previous to any interposition or decree of this Court. None of the heritors, however, appeared on the day appointed for the meeting, excepting Mr Innes of Sandside, one of the principal heritors of the parish, who having joined with the pursuer, the minister of the parish, they took under consideration the act and order of the Lord Ordinary, and drew up and transmitted a report thereon to the clerk to the process, *inter alia*, expressing their opinion, that no less than 200 merks Scots, the *maximum* allowed by the statute, was necessary to maintain a well qualified teacher in such a remote part of the country. And the pursuers having preferred a memorial in support of the report, and also upon the competency of the Court to interpose in this case, judgment was given in the following terms :

‘ Find, That 200 merks is a proper and necessary salary for a schoolmaster of the said parish of Reay, and that L. 20 Sterling is necessary to build a proper school-house in the said parish, to be built upon an acre of land called the *school acre*, given in donation by Mr Innes of Sandside ; and remit to the Ordinary to proceed accordingly ; and, particularly, to allocate and proportion the said yearly salary, and expense of building the school-house, upon the several heritors liable in payment, agreeable to law.’

Alt. D. Dalrymple.

Clerk, Campbell.

Fac. Col. No 84. p. 212.

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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.

1775. December 15. MARY WOTHERSPOON and Others, Petitioners.

IN June 1769, the deceased James Wotherspoon executed a trust-disposition and settlement of his moveable estate, which was considerable, in favour of three persons unnecessary to be named. The disposition was granted for behoof of Janet and Mary Wotherspoons, the sisters of the defunct, and their children ; and the trustees are also nominated tutors and curators to the children ; and there is a clause declaring, that they shall not be liable for omissions, nor yet *in solidum*. As the three trustees were in embarrassed circumstances, to say no more, a petition and complaint, upon the statute 1696, cap. 8. was presented in December 1774, and, in consequence thereof, the Court removed the said tutors and curators as suspect, and discharged them from farther administration of the pupil's affairs.

These facts were stated in a petition now given in, in name of Mary Wotherspoon and others ; and farther, that, after obtaining this interlocutor, the petitioners applied to the trustees to account for their intromissions with the effects, requiring them to convey the bonds and other securities in their favour, or to

make payment of the sums therein contained. But this the trustees have refused to do, upon pretence that, as the bequest in the will depends on a variety of contingencies, they are not in safety to make payment. Wherefore the present application was made, hoping that, in the special circumstances of this case, and when the trustees named by James Wotherspoon stand removed by the interlocutor upon the petition and complaint, the Court will not suffer the settlement to be evacuated through the fault of the trustees, but will interpose *ex nobili officio*, and name a new trustee or trustees upon the joint suggestion of all persons having interest. And they cited the case of Lord Monzie and others, No 163. p. 7440. as analogous to the present. At the same time, in case there should be any difficulty upon this head, an alternative prayer was thrown in, to appoint a factor upon the subjects.

The petitioners were ordered to print the trust-right for the consideration of the Court, and to subjoin their reasons for having a trustee rather than a factor. And, as it appeared from the deed itself, that the trustees were thereby appointed executors, and vested with discretionary powers, the doubt as to this Court having a power to name trustees with similar powers, became the greater, though there appeared no objection to their taking this estate under their care, and appointing a factor to manage it. Accordingly,

'THE COURT appointed a factor, with the usual powers; and also, with power to bring an action for denuding the trustees, in case that should be thought advisable.'

For Petitioners, *Geo. Fergusson.*

Fol. Dic. v. 3. p. 349. Fac. Col. No 207. p. 153.

1781. February 20.

CAPTAIN DAVID COLLINS, *against* The JUDGE of the High Court of Admiralty.

A COMPETITION with respect to a Dutch prize-vessel, which had arisen between Captain Collins of his Majesty's navy and three other parties, came before the High Court of Admiralty. But one of the three ordinary procurators belonging to that court being retained by each of the last mentioned parties, no one remained to conduct the suit in behalf of Collins. He, therefore, presented a petition to the Judge, praying that William Sprott, solicitor before the inferior courts of Edinburgh, might be permitted to act on this occasion as his procurator. His petition, however, being refused, he then applied to the Court of Session by bill of advocation; in opposition to which the Judge-Admiral,

Pleaded; According to immemorial consuetude, the only persons-entitled to practise in the Admiralty Court, beside the limited number of three ordinary

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There having been only three procurators in the High Court of Admiralty; in a case in which four parties were concerned, the Judge-Admiral refused to admit an interim procurator; but the Admiral's judgment having been advocated, the