

FACTOR LOCO TUTORIS.

1776. *August 2.* AGNES BEVERIDGE, Wife of Charles Blackstock, Petitioner.

CHARLES Blackstock, surgeon in Dumfries, having become incapable to manage his own affairs by disease, though not in such a condition as to be cognosced; his wife applied for a factor to manage his affairs, in terms of the Act of Sederunt 1730; in respect not only of his situation in point of health, but that his estate, which was moveable, was of a precarious nature, and settled upon precarious security.

Alongst with this petition, she produced a certificate of the physician and surgeon who attended him, upon soul and conscience, certifying his present state of health.

The Lords did not think this evidence sufficient to authorise them to turn a man out of the possession and management of his own affairs: they desired further evidence, and therefore, in the first place, they ordered the petition to be intimated on the wall; and then no objection being given in thereto, they, (27th July 1776,) remitted it to an Ordinary to inquire into the situation of Mr Blackstock's health, and into the other facts set forth in the petition,—to grant proofs thereof, if proper or necessary, and to report.

The Ordinary accordingly took a proof, and, on report, 2d August 1776, the Lords nominated the factor.

1776. *August 10.* THOMAS RATTRAY, Factor on the Estate of the Heir of James Paterson, Staymaker in India, Petitioner.

A FACTOR upon the estate of a person in India, nominated in consequence of the Act of Sederunt 1730, applied to the Court for authority to repair a dam-head and mill-lead which, as he set forth, was of great consequence to be done immediately. A doubt occurred, how far it was proper for the Court to give directions in that matter, or to do with respect to factors *loco tutoris* as they do as to factors on sequestrated estates. The last are *in manibus curiæ*, and therefore the Court must interpose in directing the management of them; but the first are not. A factor *loco tutoris* is appointed by an exertion of the *nobile officium, periculo petentis*: the powers of the factor are ascertained by Act of Sederunt, and as tutor, by common law; and he must act at his peril. The subject is not in Court: the factor clears out of Court, nay, the factory itself is at an end by the proprietor's returning to the country, or proper powers for management being received from him. The decision in the case of Mr Craigie, factor *loco tutoris* on the estate of Buccleugh, is a decision not approved, and not to be followed. The Lords demurred; but they remitted the

petition to an Ordinary to inquire into the facts, and also into the practice of the Court, and to report. Upon report of the Ordinary, 10th August 1776, the Lords resumed consideration of the petition. The facts were true, and the work craved to be authorised highly proper and expedient. But the Lords made a great distinction betwixt estates sequestrated and *in manibus curiæ*, and those under the management of factors of this kind: they refused to interpose, leaving the factor to act as he thought most for the advantage of the estate under his management.

They did the same, 16th January 1778, in a petition of Robert Donaldson, writer, factor *loco tutoris* to the heir of George Wilson Mason, craving liberty to set tacks beyond the minority and the term limited by Act of Sederunt 1730. The term craved was 21 years. The Lords left him to act, *cum periculo* as he should be advised.

Wotherspoon having disposed his estate to certain trustees, for behoof of two sisters and their minor children, with legacies to several other persons; he named the trustees also tutors and curators to the children, freeing them from omissions or being liable *in solidum*. Upon a complaint against them, on the statute 1696, c. 8, (see *Summary Application*,) they were removed by the Court, as suspected tutors, and discharged from further administration of the minors' effects. Whereupon all interested again petitioned the Court, (December 1775,) that they would, *ex nobili officio*, appoint another trustee to denude the former, and bring them to account. "The Court declined to do this, but they nominated a person factor *loco tutoris*, on the subjects mentioned, with the usual powers; and specially with power to bring a proper process, if he should be advised that the same was necessary for denuding the trustees."—(See *Nobile Officium*.)

1776. November 15. GEORGE FULLARTON, Comptroller of the Customs at Leith, Petitioner.

A FOREIGNER residing in Scotland, and having effects in Scotland, having become delirious, was cognosced; but, having no agnate in Scotland, the Lords, (15th November 1776,) appointed a factor *loco tutoris* to manage his estate, with the usual powers.