

No 175. thorise those interested in the management to require some security from him ; but the majority seemed to be of a different opinion. As, however, the trustee was desirous of giving up the office, the determination of the Court in this case cannot be considered as entirely decisive on this point.

As to the nomination of a new trustee, it was observed, that at an early period, the Judges in the Court of Session had exercised very extensive powers, in supplying the defects of family-settlements and trust-rights, as well as by giving particular instructions to those who had been named by them for managing the estates of persons under age, or labouring under other temporary disabilities. But of late much more caution had been used ; and now it was only in the case of trusts created by statute, or where, as in estates destined to charitable uses, no person had any immediate interest in the management, that the Court would interpose in this manner ; 24th July 1785, Paton, No 29. p. 4071.

The interlocutor was in these terms :

“ THE LORDS having advised the mutual informations for the parties, find the trust-right in question at an end by the bankruptcy of the surviving trustee, and the death and non-acceptance of the other trustees, and decern and declare accordingly ; and find the surviving trustee bound to denude of the trust-funds vested in his person, in favour of the pursuer James-Anne Macdowall ; and decern.”—See TRUST.

Reporter, Lord Justice-Clerk. Act. Wight. Alt. George Fergusson. Clerk, Home.
C. Fol. Dic. v. 3. p. 349. Fac. Col. No 91. p. 165.

No 176. 1790. February 13. & March 2. GRANT, &c. Petitioners.

IN a case where the trustee appointed by a family-settlement had failed, the Court refused to name another trustee ; but, upon application from the parties, they named a *curator bonis* with the usual powers.

Fol. Dic. v. 3. p. 349.

S E C T. VIII.

Power in the Court of Session to name Factors.

No 177. 1790. July 12. CARMICHAEL, Petitioner.

SIR GEORGE LAUDER of Iddington being deceased, and his immediate younger brother Robert, and apparent heir, being abroad as chirurgion to a ship in the

Indies, there is a bill given in to the Lords by my Lord Secretary Carmichael, and other creditors of the said Sir George, craving that, till the return of the heir, or certioration to be given him, they would appoint Mr Lauder, the youngest brother, to be factor, for shearing the crop, disposing of the stock on the ground, and uplifting the rents, upon caution, to hold compt to the heir, when he returns, and to the creditors *medio tempore*. THE LORDS demurred, because the estate was not encumbered, nor affected by diligence or adjudications, in which case only, during the ranking of creditors, the Lords used to name factors; yet, the case being extraordinary, they interposed their authority to his being factor only for a year, in which time the apparent heir might return, and only to intromit with what falls to the heir; for as to the bygone rents and stocking, these falling under executry, they might apply to the Commissaries, and get a warrant to dispose on these; for, where law has provided a remedy, we are not to recur to extraordinary methods. In such cases the Lords have varied, sometimes allowing a factor, and at other times refusing, and leaving parties to follow their own way, as they think best, without interposing their authority.

Fol. Dic. v. 1. p. 499. Fountainball, v. 2. p. 103.

1708. July 13.

WILLIAM STUART Brother-german to Charles Stuart of Polcalk, Supplicant.

WILLIAM STUART having represented to the Lords by petition, that his brother Charles was at Barcelona, without having named a factor to manage his estate in Scotland, whereby his rents might perish in tenants hands, his debtors prove insolvent, and his creditors use diligence against his estate for want of one authorized to take course with them; and therefore craved their Lordships would grant warrant and commission to the petitioner for managing his brother's affairs in his absence, upon finding caution to compt for his intromissions to the said Charles Stuart, and all others concerned. THE LORDS refused the desire of the bill.

Fol. Dic. v. 1. p. 500. Forbes, p. 263.

1758. January 10.

Supplication of Mr JOHN CRAIGIE, Advocate.

AN application being made to the Court of Session, in behalf of Henry, Duke of Buccleugh, an infant, craving, that the Lords would name a factor *loco tutoris*, as no person appeared to undertake the management, Mr John Craigie advocate, February, 1756, was named factor, with instructions to follow the rules laid down in the act of sederunt 1730.

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A commission to manage the affairs of an heiritor who had gone abroad, without leaving a factory, refused to be granted to one who offered caution to account for his intromissions to the absent heiritor and all others concerned.

No 179.

The nature and effect of a factory *loco tutoris*.