

1711: November 30.

SIR ROBERT GORDON of Gordonston *against* DUNBAR of May and DUNBAR of Myrelands, two of his Curators.

Lord Minto reported this cause.—The estate being large and opulent, required a factor to undergo the burdensome part of the management and administration; which servility could not be imposed upon the curators; therefore they agree on William Cumming of Craigmill, who offers Brody of Lethem, and other unexceptionable landed gentlemen, to be cautioners for his fidelity and counting; but they finding discord betwixt the minor and his curators, decline to meddle; whereon other gentlemen, substituted in their place, offer to bind; but the curators refuse to give their consent, in regard, if a factor fall short, they will be liable in the last resort. Alleged, It is your duty to concur in all deeds tending to your minor's utility, and you cannot withdraw, unless you give a reason of your refusal; otherwise, the minor's affairs must run into the utmost confusion; which neither answers the design of the law, nor the defunct's expectation when he named you. Answered, They had no design but to honour the memory of that worthy person who trusted them; but they could not consent to this factor's cautioners, because those he first gave in, in list, refusing, they cannot be put to so odious and invidious a task to object against gentlemen's sufficiency, especially seeing they had a complaint of malversations to remove them, as suspected, as underselling the victual, breaking the tenants' facks, letting his money lie dead, maltreating their pupil, &c. and, till their reputation were vindicated from these injurious expressions, and they assoilzied, they could not act in his affairs. And the truth was, they saw his mother and her associates so grasping at the administration, that it would render their service uneasy; therefore they offered to demit, and leave the minor to act with those who were more complaisant and gracious to him. Replied, They were not insisting *hoc loco* on the malversations, but only that the Lords would either ordain them to concur with the minor in naming a factor, and receiving his caution, or give a reason of their refusal. And as to their offering to demit, the Lords never accepted such offers, though the minor should consent to exonerate them. And where minors are headstrong, and will uplift their rents *manu forti* by violence, the Lords, in such cases, have found curators not countable, if they did what in them lay to hinder it. The Lords found they could not resign their office, unless they were removed for malverses; and that they ought to give their consent to the factor's admission, unless they gave relevant objections against him or his cautioners; and recommended to the Ordinary to hear them thereupon.

I remember, in the case of The Duchess of Buccleugh's Curators, the English Judges found they might demit, where things were carried on contrary to their protestations and consent.

No. 255.

Curators having accepted the office, can not resign when they please, and, if complained of for mismanagement, may be obliged, by sentence of the Lords, to consent to the nomination of a factor to manage the minor's estate. But a minor having given in a nomination of a sufficient person to be his curator, in place of those who offered to demit, the Lords accepted of their demission.

\* \* Forbes reports this case :

No. 255.

1712. *February 22.*—Sir Robert Gordon having summarily complained, to the Lords of May and Myreland, two of his curators, for several malversations in the management of his affairs, and craved that they might be ordained to consent to the nomination of William Cuming of Craigmill to be factor for managing the estate, upon his finding sufficient caution, these two curators declined to consent to the factory, pleading, That in a matter where they were to act at their peril, they must be allowed the freedom of their will and choice. They judging it uneasy, if not impracticable, for them to prosecute duly their trust, when the minor so breaks in upon them, and, being totally alienated from their counsels, forceth them to follow, and not to advise him by bringing the administration in every material article to the arbitrement of the Judge, did, for their own ease, and exoneration, offer a demission, craving that the Lords would appoint Sir Robert to choose new curators, seeing the office of curatory, as most other gratuitous offices, is of its own nature resignable upon several occasions, Stair, Lib. 1. Tit. 6. §. 26.

Answered for Sir Robert Gordon : Where curators unreasonably refuse to interpose their consent with the minor, the Lords ordain them to do it ; and their duty always binds them whether performed voluntarily, or by decret of the Judge, which supplies their consent. They may well discharge their duty and trust, notwithstanding there is a factor necessarily appointed for the more immediate and troublesome part of the management. The curators may resign, or refuse to act upon their peril, but can never expect that the Lords will receive such a demission ; especially when given in after this manner, before counting, or any legal process of exoneration.

The Lords 29th November last, found, That the curators, having once accepted the office of curatory to Sir Robert Gordon, cannot demit, but must continue in the administration, and consent to the nomination of a factor for managing the estate.

But Sir Robert Gordon having this day given in a nomination of Mr. Robert Gordon of Cluny, a sufficient person, to be his curator in the room of May and Myreland, the Lords did thereupon accept of their demission.

*Forbes, p. 592.*

1713. *February 18.*

MARY COUNTESS OF CASSILLIS *against* The EARL OF RUGLEN.

The Countess of Cassillis, as donatar of the taxward-duties of some lands held by the Earl of Cassillis of the Crown, pursued the Earl of Ruglen, as intromitter with the rents of the said lands the years libelled.

Alleged for the defender : Any intromission he had being as tutor to the Earl of Cassillis, he could not be liable to pay the taxward-duties, unless he had as

No. 256.

A tutor who had intromitted as such, with several years rent of his pupil's lands, held