by death from performing this duty, he ought to put another in his place. Nor is it against any principle of law, to put under guardianship a child who has neither power nor will to act for itself. And if such be the duty of fathers, the scarcity of good men to chuse for guardians must infer a power of qualifying such a nomination, so as to make up the want of personal merit by good regulations. Accordingly, nothing is more ordinary, nor more natural, in a nomination of tutors and curators, than to fix a *quorum*, a plan of management, and what omissions shall subject the guardians. In particular, nothing was more usual among the Romans than to distribute the management among the tutors, or to appoint one to be the sole manager. And it really implies no more power to appoint one of them to be the factor; which is the present case; or to appoint a factor who is none of the tutors. To the *secoud* objection it was answered, That this is not the time to determine the question, Whether the nomination of Gray to be factor must subsist during the minority of the heir? It is enough to say at present, That a factor named by the tutors to act during the heir's pupillarity, ought not to be preferred before a factor named by the predecessor.

No. 275.

"The Lords sustained the factory granted by the predecessor to subsist during pupillarity; and found no necessity at present to determine, Whether it must subsist after pupillarity, while the heir continued minor"

Rem. Dec. v. 2. fi. 60.

1744. *January* 27.

LORD DRUMORE, SIR JOHN BAIRD, and SIR JAMES DALRYMPLE, Petitioners.

No. 276.

If there be a remedy, where the minor refuses to concur with his curators?

Curators applied by summary petition, representing, That the minor refused, without reason, to concur with them in appointing a factor; and therefore craving that the Lords might authorise them to act in the management of the minor's affairs without her concurrence, or that they might give such other remedy as to their Lordships should seem just.

Upon advisng this petition, with the answers thereto, it was the general opinion, that there was no authority in the Court to compel a minor to act with his curators, more than to compel a major to act with his interdictors; that as the Court could not compel a minor to chuse curators, so it could not authorise them to act without the minor. And though the consequence of this should be to elude the act 1696, there was no help for that; nor was that act of Parliament ever so understood, that the father could force the minor to submit to his nomination, though at the same time it is true, that where the father has nominated, the minor cannot chuse others.

However, as the answer made to this petition was thought satisfying in point of fact, the petition was refused without giving judgment upon the general point of law.

Kilkerran, No. 7. *fi.* 586.