

1743. December 9.

WALKINSHAW of that Ilk, and Others, Tutors nominated by Johnston to his Children *against* GRAY.

No 5.

NOTWITHSTANDING a factory be of its nature revocable by the granter or his heirs, though granted for a certain endurance, yet, where a defunct has appointed tutors for his heir, and granted a factory during his pupillarity, in that case, the factory is considered as a quality of the nomination of the tutors, even though they be in different deeds; upon which ground, the tutors in this case were not allowed during the pupillarity of the heir, to recal a factory granted by the defunct to William Gray during the pupillarity and minority of his heir, unless they could allege malversation; but there appeared no occasion to determine with respect to the minority.

Fol. Dic. v. 3. p. 200. Kilkerran, (FACTOR.) No 6. p. 183.

S E C T. II.

Factors' powers.

1628. June 13.

PURVES *against* SMITH.

IN an action to make arrested goods furthcoming Purves against Smith, one compearing and *alleging*, that the goods arrested desired to be made furthcoming, could not be decerned to be delivered to the pursuer, because the wife of the husband, for which husband's debt the saids goods were arrested, disponed the saids goods to the excipient, long before any arrestment executed thereon by the pursuer, and that for satisfaction of a debt owing to the excipient by her said husband, which wife disponer had a factory and power given to her by her said husband, to pursue for all debts owing to him, and to intromit with the same, and bearing a general clause, 'to do all and whatsoever he might do himself if he were present;' in respect of the which factory and power, and clause foresaid, 'to do as if he himself were present;' the defender *alleged*, that as the husband might have given the saids goods, either *gratis*, or sold the same to whom he pleased at that time, when his wife disponed and assigned the same to this excipient, seeing the husband at that time neither was put to the horn

No 6.

A wife who had a general factory, with a clause empowering her to do every thing the husband himself might do, &c. disponed some goods to another person and acknowledged him to be creditor to her husband. The Lords found the disposition null.