

1773. June 22.

JOHN SCOTT, indweller in Douglas, GRIZEL WILSON his wife, and JOHN and ELIZABETH SCOTTS their Children, and Mr WILLIAM M'CUBBIN, Minister of the Gospel at Douglas, their Trustee, *against* JOHN WILSON.

GRIZEL WILSON being entitled to a legacy of L. 1000 Sterling, that was bequeathed by her brother James's last will, she empowered John Wilson, another brother, to uplift that money from his brother's executors, which he did accordingly; but the money remained in his hands.

Thereafter, Grizel Wilson, and her husband John Scott, executed a deed, whereby they assigned and disposed, to the said John Wilson, as sole trustee for Robert, John, Mary, Margaret, Christian, and Elizabeth Scots, their children, the sum of L. 740 Sterling, part of the L. 1000 legated to her, by certain proportions and divisions therein mentioned; the remaining sum of L. 260 being thereby reserved to the said John Scott, for his own proper use: 'Surrogating and substituting the said John Wilson, as trustee for our said children, in our full right and place of the premises for ever; with full power to the said trustee, for behoof of our children, to uplift and receive the sums above assigned, call and pursue therefor,' &c. And without prejudice of the foresaid nomination of trustee, 'I, (*i. e.* the said Grizel Wilson), hereby name and appoint the said John Wilson to be sole tutor and curator to our children, for guiding and governing them in their affairs and business, *tam ad lites quam ad negotia*, until they arrive at the age of 21 years complete; with full power to him, as tutor and curator foresaid, to give up inventories of our said children, their means and estate, before any judge competent,' &c.

By another deed, proceeding on a recital of the aforesaid settlement, and of their being resolved to alter the same, particularly the nomination of trust in favour of the said John Wilson, in regard they were not satisfied that he should have any concern with their childrens funds or affairs after their death, Grizel Wilson and her husband revoked said settlement, and nomination of trust, in favour of John Wilson; and then they brought an action before the Sheriff against Wilson, for payment of L. 800, and interest due thereon. To which he *objected*, That the deed was irrevocable, and that, in respect of the interest the children had therein, he could not be compelled to part with the money.

While this matter was depending, the pursuers, and, with them, their six children, all of full age, except the two youngest, John and Elizabeth, both of them past the age of pupillarity, concurred in executing a new trust-right in favour of Mr William M'Cubbin; and the Sheriff gave decree against Wilson; who having brought a suspension, the pursuers declared they had no intention to deprive their children of any *jus quæsitum* they had by virtue of the first deed; but did only insist, in so far as concerned the nomination of the defen-

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The nomination of a trustee, in a deed executed by a man and his wife, for behoof of their children, is revocable by the father, as their administrator in law, though the deed should contain no express power of revocation.

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der, that it was under the power of the father, and that it depended on his pleasure to recall the same, and to nominate other managers, as he thought proper.—And the Court being of that opinion, whether Wilson was to be considered in the light of a trustee, or in that of a factor, appointed by the father :

THE LORDS repelled the reasons of suspension, and found the letters orderly proceeded.

Act. Dean of Faculty.

Alt. M^{rs} Queen.

Clerk, Robertson.

Fol. Dic. v. 3. p. 307. Fac. Col. No 72. p. 175.

See APPENDIX.