

1775. *November 28.* MRS CARSTAIRS' TRUSTEES, Petitioners.

IN another case, in November 1775, they also refused to interpose. For Mrs Carstairs having made a settlement upon three gentlemen, in trust for several others, the Trustees accepted; but one of them, a merchant, having, from age and infirmity, retired from business, declined to act farther; so did the other two, being clergymen, and unacquainted with business. Whereupon they all, trustees and those interested, applied to the Court, by petition, to name other trustees, or at least factors *loco tutorum*, in their room. The Lords, 28th November 1775, ordered the petition to be intimated on the wall, and allowed the petitioners to give in a memorial, and to print the trust-deed for the consideration of the Court. From the deed it appeared that the trust was to the trustees and the survivor, without power of choosing others. So that it fell by their death. But, as yet, they were all alive, and had accepted. The Lords therefore refused to interfere, or even to name a factor, leaving them to extricate the trust as they best could.

1775. *July 4.* THOMAS BAILLIE of POLKEMMET *against* SIR STAIR AGNEW.

SIR Stair Agnew was married to a daughter of Thomas Baillie of Polkemmet, by whom he had several children. His wife having died, and Sir Stair having contracted unusual habits of drinking, in which he proceeded to high acts of ferocity and maltreatment, and terror to his children, so that, in their grandfather's apprehension, they were in danger of their lives; the grandfather, March 1775, applied by summary petition to the Court, setting forth the facts, and praying the Lords to give such directions for putting the children in a place of safety as they should see proper. The petition being read with shut doors, and the Court having no doubt of their power, *ex nobili officio*, to interpose in this case; Mr Thomas Baillie, and his son Mr William Baillie, emitted a deposition that they had reason to believe that the facts set forth in the petition were true, and that the lives of the children were in danger. Whereupon the Lords issued the following warrant and deliverance:—11th March 1775, "The Lords, having heard this petition, and also the above depositions of Thomas and William Baillies, grant warrant to the macers of Court, or any of them, forthwith to serve this petition upon the within mentioned Sir Stair Agnew of Lochnawe, baronet, by delivering to him personally, or leaving at his dwelling-place, a full copy thereof, and of this deliverance thereon; and appoint him to give in answers thereto against the second Sederunt day of June next. And, in the mean time, the Lords, in respect of the circumstances of the case, and of the necessity of their immediate interposition, sequesterate the persons of the within-mentioned _____ and _____, and decern and ordain the said Sir Stair Agnew their father, and all other persons in

whose custody the said children are, or may be, to deliver them into the hands of the macer of Court, by whom this warrant shall be executed, who is hereby ordered to deliver them into the custody of the said Mr Thomas Bailie, or any person having an order under his hand to receive them: And the said Mr Thomas Baillie is hereby ordained to keep and maintain them, in the most proper manner for their health and education, as he shall be answerable; so to continue until further orders from this Court. And the Lords grant warrant to, and ordain all Sheriffs, Magistrates, and other officers of the law, to give their concurrence and assistance, not only for carrying this warrant properly into execution, but also for the safe transmitting the said children to the place of the said Mr Thomas Baillie his residence, or other place appointed by him, for them, or either of them; and for preserving them under his care and keeping, or under the care and keeping of any other person by him appointed for that purpose, by an order under his hand as said is; and appoint this to be extracted immediately."

This warrant was accordingly put in execution: the children were taken into custody by a macer, and by him put into the hands of Mr Thomas Baillie, and persons appointed by him to receive them.

Sir Stair gave in answers, 13th June 1775, containing a counter-petition, wherein he denied the facts; complained loudly of the affront and injury which had been done him; and demanded back his children in a high tone. He also offered caution for their safety. To this counter-petition Messrs Baillies gave in answers.

The Lords, upon the 4th of July 1775, allowed a proof, before answer, to both parties. This brought on a treaty. Sir Stair petitioned again, praying the Lords to recal the proof, and that his children might be boarded in proper places for their health and education at the sight of the Court. Upon this the whole was remitted to Lord Coalston, and things were adjusted. The children were boarded as above-mentioned; the son with one of the masters of the High School of Edinburgh,—the daughters in an approved boarding school; and Messrs Baillies were reimbursed their full expenses.

NOVODAMUS.

1775. *August 10.* HERITORS of SPEY *against* DUKE of GORDON.

EVERY subject, or right, expressed in a clause of *novodamus*, is deemed to be effectually conveyed to the vassal, though there had been no antecedent title to it in his person,—February 29, 1680, *Scott*; 7th July 1736; adhered to, 15th July 1737, *Heritors of Spey*. This last decision again confirmed, 10th *August 1775*, *Sir James Grant and other Heritors of Spey against Duke of Gordon*: It was a sequel of the former cause in 1737.