

## FACTOR LOCO TUTORIS.

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1776. *August 2.* AGNES BEVERIDGE, Wife of Charles Blackstock, Petitioner.

CHARLES Blackstock, surgeon in Dumfries, having become incapable to manage his own affairs by disease, though not in such a condition as to be cognosced; his wife applied for a factor to manage his affairs, in terms of the Act of Sederunt 1730; in respect not only of his situation in point of health, but that his estate, which was moveable, was of a precarious nature, and settled upon precarious security.

Alongst with this petition, she produced a certificate of the physician and surgeon who attended him, upon soul and conscience, certifying his present state of health.

The Lords did not think this evidence sufficient to authorise them to turn a man out of the possession and management of his own affairs: they desired further evidence, and therefore, in the first place, they ordered the petition to be intimated on the wall; and then no objection being given in thereto, they, (27th July 1776,) remitted it to an Ordinary to inquire into the situation of Mr Blackstock's health, and into the other facts set forth in the petition,—to grant proofs thereof, if proper or necessary, and to report.

The Ordinary accordingly took a proof, and, on report, 2d August 1776, the Lords nominated the factor.

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1776. *August 10.* THOMAS RATTRAY, Factor on the Estate of the Heir of James Paterson, Staymaker in India, Petitioner.

A FACTOR upon the estate of a person in India, nominated in consequence of the Act of Sederunt 1730, applied to the Court for authority to repair a dam-head and mill-lead which, as he set forth, was of great consequence to be done immediately. A doubt occurred, how far it was proper for the Court to give directions in that matter, or to do with respect to factors *loco tutoris* as they do as to factors on sequestrated estates. The last are *in manibus curiæ*, and therefore the Court must interpose in directing the management of them; but the first are not. A factor *loco tutoris* is appointed by an exertion of the *nobile officium, periculo petentis*: the powers of the factor are ascertained by Act of Sederunt, and as tutor, by common law; and he must act at his peril. The subject is not in Court: the factor clears out of Court, nay, the factory itself is at an end by the proprietor's returning to the country, or proper powers for management being received from him. The decision in the case of Mr Craigie, factor *loco tutoris* on the estate of Buccleugh, is a decision not approved, and not to be followed. The Lords demurred; but they remitted the