

1745. *January 15.*

MARJORY FIDLAR and WILLIAM Her FATHER, Supplicants.

No. 277.

Effect of exclusion of the father's administration.

Marjory More, relict of William Johnston, druggist in Edinburgh, having right to 1,000 merks, contained originally in a bond granted by Mr. Alexander Laing of Yardheads of Leith, and in a bond of corroboration by Barbara Kay his relict as principal, and William Chalmers, writer in Edinburgh, as cautioner, assigned the same to Marjory Fidlar, her grandchild, daughter to William Fidlar, writer in Edinburgh, excluding always the said William Fidlar from the succession or administration, and providing, that it should not be in her power to uplift or assign the money till her marriage or majority.

Mr. Fidlar gave in a petition in his daughter's name, who was under the age of pupillarity, and in his own, as her administrator in law, showing, That the cautioner was become free by the septennial prescription; that the money was not sufficiently secured; that the grandmother, when she excluded him, had named four tutors and curators, three of whom had positively refused to accept, and the fourth had not signified his inclination either way; that by this the administration returned to the legal course; and therefore craved warrant for a bill of horning.

The Lords granted warrant to the Ordinary to pass the bill of horning, on Mr. Fidlar's lodging security in the hands of the clerk to the bills, to re-employ the money in the terms of the assignation, excluding his own administration.

*D. Falconer, p. 45.*

1746. *November 11.*

JOHN RIDDEL, Supplicant.

No. 278.

A factor *loco tutoris* was appointed with power to serve an infant heir to his predecessor, *cum beneficio inventarii*, on its being represented that the service behoved to be expedite within a year, and till that was elapsed, no tutory dative could be obtained.

John Riddel, writer to the signet, deceased, leaving a nomination of tutors and curators to John Riddel his son, of whom Christian Nisbet the defunct's relict was appointed *sine qua non*; but the other tutors not thinking proper to accept, and the pupil's friends finding it adviseable that he should be served heir to his father *cum beneficio inventarii*, a petition was given in to the Lords in name of him and his mother, showing, That no tutory-dative could be obtained for a year, within which time it was necessary a service *cum beneficio* should be expedite; and therefore craving that she might be appointed factor to him *loco tutoris*, or else, as she was named tutrix *sine qua non*, she might be authorised by herself to give up inventory.

A former petition had been given in, praying to have her appointed tutor, which was refused; but some of the Court observing, that they had formerly named a factor with these powers, the above petition was thereupon presented.

The Lords appointed Christian Nisbet to be factor to the petitioner *loco tutoris*, to the effect that she might make up inventories, and serve him heir to his father *cum beneficio inventarii*.

Petitioner, *Murray.*

*D. Falconer, p. 180.*