

No 175. thorise those interested in the management to require some security from him ; but the majority seemed to be of a different opinion. As, however, the trustee was desirous of giving up the office, the determination of the Court in this case cannot be considered as entirely decisive on this point.

As to the nomination of a new trustee, it was observed, that at an early period, the Judges in the Court of Session had exercised very extensive powers, in supplying the defects of family-settlements and trust-rights, as well as by giving particular instructions to those who had been named by them for managing the estates of persons under age, or labouring under other temporary disabilities. But of late much more caution had been used ; and now it was only in the case of trusts created by statute, or where, as in estates destined to charitable uses, no person had any immediate interest in the management, that the Court would interpose in this manner ; 24th July 1785, Paton, No 29. p. 4071.

The interlocutor was in these terms :

“ THE LORDS having advised the mutual informations for the parties, find the trust-right in question at an end by the bankruptcy of the surviving trustee, and the death and non-acceptance of the other trustees, and decern and declare accordingly ; and find the surviving trustee bound to denude of the trust-funds vested in his person, in favour of the pursuer James-Anne Macdowall ; and decern.”—See TRUST.

Reporter, Lord Justice-Clerk. Act. Wight. Alt. George Fergusson. Clerk, Home.  
C. Fol. Dic. v. 3. p. 349. Fac. Col. No 91. p. 165.

No 176. 1790. February 13. & March 2. GRANT, &c. Petitioners.

IN a case where the trustee appointed by a family-settlement had failed, the Court refused to name another trustee ; but, upon application from the parties, they named a *curator bonis* with the usual powers.

Fol. Dic. v. 3. p. 349.

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## S E C T. VIII.

### Power in the Court of Session to name Factors.

No 177. 1790. July 12. CARMICHAEL, Petitioner.

SIR GEORGE LAUDER of Iddington being deceased, and his immediate younger brother Robert, and apparent heir, being abroad as chirurgion to a ship in the