

Sinclair against Sinclair, (See Appendix ;) 21st February, 1671, Armour against Lands, No. 168. p. 16284 ; see also, Kames, Preface to Dict. and Select Decisions, and 9th March, 1775, Gillon against Muirhead and Husband, No. 168. p. 15286. No. 316.

The Lord Ordinary reduced the lease, and ordered a condescence as to meliorations.

Upon advising a petition, with answers, the Court, upon the general principles, unanimously adhered.

Lord Ordinary, *Craig.* Act. *Solicitor-General Blair.* Alt. *W. Baird.* Clerk, *Pringle.*

D. D.

Fac. Coll. No. 163. p. 366:

* * The Court have also, in particular circumstances, authorised such leases to be granted, for the evident utility of the pupil, 6th March, 1761, Roebuck against Duke of Hamilton, (not reported ;) and 6th March, 1800, Colt against Colt, No. 317. *infra.*

1800. *March 6.* OLIVER COLT *against* GRACE COLT and Others.

Robert Colt died in the year 1797, leaving his son John Hamilton Colt in pupillarity.

Some years prior to his death, he had granted a lease of some valuable coal-works for a period of twenty years, but in consequence of the insolvency of the lessee, the coal came again into the natural possession of his infant son.

Oliver Colt, his tutor-at-law, after making an ineffectual attempt to let a new lease of the coal for twelve years, being the period of his ward's minority, entered into agreement with William Creelman for a lease of twenty-five years endurance.

As this lease extended considerably beyond young Mr. Colt's minority, it became requisite that it should receive the sanction of the supreme Court.

Oliver Colt accordingly brought an action against the next heirs of the pupil, concluding that it should be found that the granting of the lease was a rational act of administration, and that the Court should interpose their authority to it.

When the action came into Court, the pursuer gave in a condescence, in which he offered to prove, *1st*, That notwithstanding every proper exertion, he was unable to find a tenant who would take a lease of the coal, on suitable terms, for so short a period as twelve years ; *2do*, That the pursuer could not himself work the coal to advantage for his pupil's behoof ; *3tio*, That leases of coal are often, if not generally, granted for twenty-five years, on account of the great outlay of money for machinery, &c. which is indispensable at the commencement of a work of this kind ; *4to*, That the lease in question was, in the opinion of persons of skill, beneficial for the pupil.

No. 317.

A tutor authorised by a decree of cognition to let a lease of coal for a term of years beyond his ward's minority.

No. 317. The pursuer also founded on the case, 6th March, 1761, Roebuck against Duke of Hamilton, (not reported) where the Court interponed their authority to a lease of a very similar kind.

The pursuer was allowed a proof of his condescence; and having established it to the satisfaction of the Court,

The Lords found and declared, That the tack was a necessary and proper act of administration on the part of the pursuer, and for the interest and benefit of his pupil; and therefore interponed their authority thereto, and ratified and approved of the same, and whole clauses thereof.

Lord Ordinary, *Bannatyne*.

Clerk, *Pringle*.

R. D.

Fac. Coll. No. 171. p. 390.

1802. May 20.

BLAIRS against MITCHELL.

No. 318.

In what circumstances a tutor or curator is entitled to useful advances beyond the interest of the pupil's provisions?

David Mitchell, merchant in Down, executed a settlement of all his effects in favour of David, his eldest son, taking him bound, among other provisions, "to pay to each of Alexander and James Mitchells, my younger sons, the sum of £.150, and to each of Mary and Marjory, my daughters, the sum of £.100 each; which sums are to be paid to each of my said children at their respective marriages or majority, with interest thereof from my decease till the said term's payment, with a fifth part more of each principal sum of penalty in case of failure, the interest being intended as a fund for the children's maintenance from the time of my decease till the principal sums fall due." In case of the death of any of the children before marriage or majority, it was also provided that their provision should fall to the surviving children. David was appointed tutor *sine quo non*. He took charge of the education of his brothers and sisters; in the course of which he borrowed various sums of money from William Blair, writer to the signet. For these it was necessary to raise letters of horning and caption, and to arrest the funds belonging to him in the Stirling Bank. A multiple-pounding was brought by the Bank, (February, 1795) in which, besides Blair, the widow and younger children of the deceased David Mitchell also appeared, who insisted, that the common debtor was not at liberty to expend upon their maintenance and education more than the interest of their respective portions: While, on the other hand, the representatives of Blair contended, that a tutor was entitled to claim reimbursement for whatever was *utiliter impensum* upon his pupil.

The Lord Ordinary, 12th November, 1800, found, "That the money to be expended for the maintenance of the children from the time of the late David Mitchell's death till the principal sums fell due, is limited to the interest thereof; and therefore, that credit is not to be given to David Mitchell, junior, for any advance beyond that sum."

The children of William Blair reclaimed, and