

interest therein, purchased or taken by the promoters of the undertaking from any corporation, heir of entail," shall, if over £200, be consigned in bank, to be applied, subject to the authority of the Court, to some one or more of the following purposes, viz., "In the purchase or redemption of land tax, or the discharge of any debt or incumbrance affecting the land in respect of which such money shall have been paid: . . . In the purchase of other lands to be conveyed, limited, and settled upon the same heirs, and the like trusts and purposes, and in the same manner as the lands in respect of which such money shall have been paid stood settled; or, If such monies shall be paid in respect of any buildings taken under the authority of this or the Special Act, or injured by the proximity of the works, or in removing or replacing such buildings, or substituting others in their stead, or in such manner as the said Court shall direct; or In payment to any party becoming absolutely entitled to such money."

The Lord Ordinary having heard counsel for the petitioner, and also for the *curator bonis* of the next heiress of entail, granted warrant in terms of the prayer of the petition.

His Lordship added this note—"The Lord Ordinary is of opinion that the petitioner in this case is entitled to uplift the money paid for the coal by the railway company, and this by reason of the last part of the 67th section of the Lands Clauses Consolidation (Scotland) Act, by which it is directed that the money shall be applied 'in payment to any party becoming absolutely entitled to such money' The petitioner was entitled to work out, either by herself or by her tenants, the coal which she was compelled to leave under demand of the railway company. If she worked her coal by means of tenants, her return was in the shape of a lordship, and unless she obtains the consigned fund as prayed for in the petition, she will not obtain a lordship in reference to the coal so left. The distinction between agricultural ground and minerals below is obvious enough. The former may go on for ever yielding agricultural produce; it is not consumed in the use, and the taking it away from the estate by the railway company is a permanent depreciation of the agricultural value of the land. Hence it was only right and proper to look upon compensation given by a railway company for such surface abstraction from the estate as a fund paid for the benefit of the estate, and not for the then heir in possession—a fund, therefore, which ought only to be applied to the improvement of the estate in one or other of the ways pointed out in the 67th section of the Lands Clauses Act. But with regard to minerals the case is different. They can only be enjoyed by successive heirs of entail by consumption of the *corpus*, and the *corpus* of a coal-seam wrought out in a fair and reasonable way belongs to the heir of entail in possession. That *corpus* was taken away in the present case by the railway company, and the compensation paid therefor ought in justice to pertain to the heir of entail, who lost this source of revenue in the shape of lordships. In this case, if the railway company had not intervened and paid the money, the coal would have been wrought out and the lordships received, and the petitioner by getting the consigned fund only obtains by the payment of

one lump sum the same amount of income which she would have got from her own tenac."

In this interlocutor the parties acquiesced.

Counsel for Petitioner—Thorburn. Agents—Hope, Mann, & Kirk, W.S.

Counsel for *Curator Bonis*—Dundas. Agents Dundas & Wilson, C.S.

Tuesday, July 12.

OUTER HOUSE.

[Junior Lord Ordinary.

HUTCHISON, PETITIONER.

*Curator Bonis*—Minor Pubes—Appointment by Court.

In a petition praying for the appointment of a *curator bonis* to two children, minors who had attained puberty, presented by their elder sister, the Court made the appointment on production of letters from the minors concurring in the application.

This was an application presented by Susan Buttar Hutchison praying for the appointment of a *curator bonis* to Thomas Hutchison and John Hutchison, her brothers. Under a previous application in 1872 the Court had appointed a *curator bonis* to the present petitioner, and a factor *loco tutoris* to her three brothers Alexander, Thomas, and John. When the petitioner attained majority in 1879 the person so appointed was discharged of his office *quoad* her estate, and on Alexander attaining majority in February 1881 a petition for discharge in so far as his estate was concerned was presented by the factor. Before the procedure in this petition was completed the factor died, and the present application was presented for discharge of the late factor and his representatives, and the appointment of a person named as *curator bonis* to Thomas and John Hutchison, who were now past pupillarity. The value of the estate was somewhat less than £400.

The Lord Ordinary (FRASER) having called attention to the doubts expressed by the First Division of the Court as to the competency of appointing a *curator bonis* to a *minor pubes*, the petitioner undertook to obtain a written concurrence from each of the minors, and craved the Lord Ordinary thereafter to make the appointment.

Authorities—*Mayne*, March 11, 1853, 15 D. 554, Lord Ivory's opinion; *Accountant of Court v. Buchanan*, March 3, 1854, 16 D. 717; *Fraser on Parent and Child*, 458; *Thoms on Judicial Factors* (Fraser's ed.), 255.

Written concurrence having been produced, the Lord Ordinary made the appointment.

Counsel for Petitioner—Gillespie. Agents—Magregor & Co., S.S.C.