

1789. June 26. GEORGE, &c. WILSONS against JAMES WILSON.

TUTOR, CURATOR, AND PUPIL.

A tutor, obtaining, in his own name, a lease of lands formerly held by his pupils, accountable to them for the profits.

*Fac. Coll. X. 137; Dict. 16,376.*

ESK GROVE. A tutor cannot acquire to himself during the tutory. But the question is, as to the effect of the surrender of the tack during the tutory. The tack was something profitable, for the tutor charges himself with L20 on that account. The power given by the pupil's relations is not enough; the words are not sufficiently explicit, neither had they authority to that effect. Besides, the day before, the defender surrendered the lease and took a lease to himself. When the defender became tutor he omitted the tack out of the inventories. It seems to have been a possible thing to manage by an overseer. The defender had no right to limit the profit to L20 per annum. The first lease must be held to have been taken for the behoof of the pupils, and so also the second.

JUSTICE-CLERK. The case of tutor and pupil is still stronger than that of trustee and truster. If there had been a subtack, the tutor could not have acquired right to it, although the pupil himself had no right to it. It may often happen that to surrender a lease would be a prudent point of management, and the Court would authorise it. But there is no call upon a tutor to purchase for his own behoof. If he had surrendered the lease for a trifle, he might have been liable *ex culpa*. But here there is no surrender to the landlord; it is a surrender to himself. All the pupils were under age at the time of taking the second lease; so the rules applicable to the first are applicable to it also.

DREGHORN. No knowledge of law was requisite to the tutor; his own feelings must have taught him that his conduct was wrong. The English case quoted is very applicable, and it proceeds on general principles.

PRESIDENT. The discharge by the pupils is the only thing material in way of defence; it refers to an account, and that account gives credit for L20, for two years, as the surplus rent of the farm.

JUSTICE-CLERK. The pupils had no access to know the annual profits of the farm, and it was fraudulent in the tutor to produce such an account for their approbation.

On the 26th June 1789, "The Lords repelled the defences."

*Act. R. Dundas. Alt. —*

*Reporter, Dunsinnan.*

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