

# APPENDIX.

## PART I.

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### TUTOR, CURATOR, AND PUPIL.

1801. July 3. OLIVER COLT *against* GRACE COLT and Others.

OLIVER COLT, as tutor in law for John Hamilton Colt, feued about twenty-one acres of his pupil's estate, to the agent for an English company, with liberty of working the ironstone upon the whole estate.

The feuer became bound to pay 40s. an acre for the lands; to erect on them within three years iron and steel works, capable of consuming 30,000 ton of coal annually; to purchase the whole coals which he should need from the pupil's coal-mines, provided they could be given upon equal terms; and to pay 6d. a ton for the ironstone used by him, for the first three years, and at this rate, or £25 a-year afterwards, in the option of the proprietor, besides paying surface damages.

Oliver Colt brought an action against Miss Grace Colt, his pupil's sister, and his other nearest of kin, concluding to have the transaction declared a proper and necessary act of administration, and sanctioned by the authority of the Court.

A tutor *ad litem* was appointed for Miss Grace Colt; but no appearance was made for any of the defenders.

In a condescence, the pursuer undertook to prove, that the feu-duty was at least double the rent which could have been got for the lands upon a lease; that the ironstone could not have been used with advantage, except in works erected upon the lands, and that the lordship was advantageous; that the consumption of the minor's coal, at the iron works, would, in terms of the current lease of the coal, granted under authority of the Court, (6th March 1800), yield a lordship of nearly £600 a-year to the proprietor; that the increase of population, and demand for the necessaries of life, which the works would occasion, would greatly increase the value of his estate, and that the prospect

#### No. 1.

An action by a tutor-at-law, for the authority of the Court to sanction a feu of some acres of the minor's estate, and of the ironstone in it, from which great advantages were expected, dismissed as incompetent.

No. 1. had actually enabled the pursuer to get a higher rent for a farm lately let, than could otherwise have been expected.

A proof was allowed, and persons of skill were examined, whose depositions confirmed the statement of the pursuer.

A prepared state was reported; and in a memorial on it, the pursuer contended, that the feu-contract granted by him was so expedient, that it might be fairly considered as a necessary act of administration, and from the omission of which, as a similar offer might not again occur, an irreparable loss might have arisen to the minor; and that any *insignior utilitas* as well as payment of debt, is sufficient to warrant the interposition of the Court to sanction an alienation of a minor's heritage; Voet, *ad Pand. Lib. 27. Tit. 9. § 8.*; Ersk. B. 1. Tit. 7. § 17.; 8th March 1757, Plumber and his Tutors against his nearest relations, No. 288. p. 16358; March 1788, Vere of Stonebyres, (the decree pronounced in 1788 was afterwards reduced; see 29th Feb. 1804, No. 319. p. 16389;) July 1798, Children of Crawford, not reported.

The pursuer's counsel were likewise heard in presence.

Observed on the Bench: The Court may with propriety sanction an alienation of a pupil's heritage, where the sale is necessary for payment of debt; for the minor's aliment; and in cases of urgency to avoid loss. But the Court ought not to interfere, merely from views of procuring future advantage to the minor. Here the authority of the Court is asked to sanction a project, the advantage to be derived from which may admit of opposite views, and therefore the pursuer must either take the risk of after challenge upon himself, or apply for an act of Parliament. The propriety of the former judgment between the same parties, authorising even a lease of the coal upon the estate, may be doubted.

The Lords, 'In respect that the contract libelled is an act, not of necessary administration, but of discretionary power exercised on the part of the tutor, in the view of ultimately promoting the benefit of his pupil, found the action incompetent, and dismissed the same, and decerned.'

For the Pursuer, *H. Erskine, M. Ross,*

Clerk, *Pringle.*

*D. D.*

*Fac. Coll. No. 243. p. 547.*