

lading. We must then take the only evidence that remains. I would rest upon the certificate as a probative writing.

GARDENSTON. I still incline to think that *here* is a valued insurance. If the value proved is near the value insured, every thing was fair on the part of old M'Nair. Had the ship come to port, the premium would have been exigible, and no inquiry would have been made as to the value.

KAIMES. The father is not to blame for his son's offence, but he must not profit by it. The son's fraud is proved, so that there is no necessity of recurring to other evidence.

GARDENSTON. Suppose that I insure a value of £1000, there is some evidence that the value was greater, some that it was less. This, the case here, very different from an elusory value, which is gaming.

PITFOUR. Here a valued policy, unless an exorbitant excess appears.

ELLIOCK. Here a valued policy. If M'Nair had, *bona fide*, value on board, it would be good. It is not sufficient to object that the cargo was not just equal to that value. If you hold otherwise, you will make place for endless lawsuits. If there is a gross overvalue, the policy may be set aside.

On the 11th February 1772, the Lords found that M'Nair is not entitled to his full insurance. That the certificate must be the rule as to quantity : Hood's invoice as to value. That the real sum recovered by Smith must be deducted. They also allowed him the value of the freight and charges, and interest from the date of the Admiral's interlocutor.

*Act.* J. Swinton, jun. *Alt.* R. Cullen, &c.

*Reporter,* Auchinleck.

*Diss.* As to first point,—Gardenston, Barjarg, Elliock, Stonefield.

Reversed on appeal.

1772. February 14. SIR JOHN SINCLAIR *against* JAMES BRODIE of Brodie.

#### SUPERIOR AND VASSAL.

Title to insist in a reduction of a decree of tinsel of superiority and casualties thereof.

[*Faculty Collection*, VI. 11 ; *Dict.* 15,082.]

COALSTON. Where a superior remains unentered, the vassal must have a remedy ; for, until he obtains a charter, he can neither remove tenants nor burden his estate. Here the requisition is not proper, being a charge to enter to the predecessor not the last infest. This objection would be good at the instance of the heir-of-line. But Brodie is not heir-of-line ; he is nothing more than a creditor.

KAIMES. I cannot discover what interest Brodie has to move the objection.

JUSTICE-CLERK. There is an extraordinary defect in the law of Scotland if a vassal shall not have it in his power to procure a title to dispose of his estate.

At present Brodie has no more title than I have ; but he says, " Wait till creditors are ranked, and then you shall have an entry."

ELLIOCK. All that Brodie can claim is, to be reponed against the decret, in so far as he himself is concerned. But *that* will not entitle him to plead in the character of the heir-of-line.

On the 14th February 1772, the Lords found that Brodie had no title to move the objection, and decerned ; adhering to Lord Stonefield's interlocutor.

*Act. R. M'Queen. Alt. Cosmo Gordon.*

1772. February 18. HENRY DAVIDSON of Tulloch *against* SIR HECTOR M'KENZIE and his CURATORS.

TUTOR AND CURATOR—*SOLIDUM ET PRO RATA.*

A single curator may interpose for the evident utility of the minor, although, by the nomination, the right of acting be vested in the majority who dissent.

[*Faculty Collection, VI. 13 ; Dict. 14,705.*]

AUCHINLECK. The question is, Whether there was a completed bargain with Sir Alexander M'Kenzie ? According to the entail, a sale was only allowed when the estate came to be affected by adjudication or otherwise : there was no adjudication here. The minor and one of his curators oppose the sale : the curator offers to furnish the money and pay the debt : this is sufficient. If the other curators oppose this, we can remove them as suspect.

GARDENSTON. Sir Alexander M'Kenzie had no power to sell the estate unless *causa cognita*.

PRESIDENT. The sale would have been valid against Sir Alexander M'Kenzie : but Sir Hector does not represent him. Without an adjudication there can be no sale. How can there be an adjudication if Sir Hector is willing to pay ?

On the 18th February 1772, the Lords found that Sir Hector M'Kenzie is not bound to sell, in respect he does not represent Sir Alexander ; and found Sir Hector entitled, upon payment, to stop the constitution of the debts in Mr Davidson's person.

8th July 1772, adhered.

*Act. H. Dundas. Alt. Ilay Campbell.*

*Reporter, Monboddoo.*