have not been hitherto felt, for no question has been moved as to this. When the inconveniency is felt, the question will be tried. The registration of an entail *ministerially* will not hurt that question when it shall occur.

AUCHINLECK. I always thought that in this the Court acted ministerially. We have never read the entails produced before us. Were we to judge of the propriety of entails, we ought to order them all to be printed and lodged in our boxes. If we refuse to register an entail, and then the heir sells, or contracts debt, may we not be liable in damages in the event of the entail being proved a valid deed?

JUSTICE-CLERK. Gave up his opinion as to the first point.

On the 29th February 1776, "The Lords ordered the deed to be recorded."

Petitioner, A. Murray. *Alt.* Absent.

Diss. As to first point, Gardenston, Covington. As to second, Kaimes; but only one vote put, in general terms.

1775. *June* 29, and 1776, *March* 5. AGNES WATSON *against* AGNES MATHIE.

DILIGENCE.—TUTOR AND CURATOR.

Co-curators were not found obliged to recover, from one of their number, funds which had come into his hands *privato nomine*, as he had continued solvent until the expiry of the curatory.

[*Fac. Coll., VII. p.* 294; *App. I., Diligence, No.* 1.]

JUSTICE-CLERK. In the case of *Rae* the question has not been fully agitated, for this good reason, that Rae had the actual intromissions, and consequently would be liable at any rate. It seems pretty extraordinary that minors who may act for themselves, without curators, should be restored against an act which every major would rationally do. Here there was an election by minors, who were *majorennitati proximi*, made in terms of law, with this quality adjected, that the curators should not be liable for omissions. How are the minors lesed, or how can you get curators to act, if that quality is not adjected? I observe that every one authority stands on this side.

HAILES. I will not say that this question was fully agitated from the bar, but I am sure that it was deliberately considered by the bench. [Resumed the arguments as stated in the notes, 16th July 1773.]

COVINGTON. I do not see how the Court can, in decency, give a different judgment here than what it gave in the case of *Rae*. The only difference is as to greater or smaller intromissions. The arguments resumed by Lord Hailes are unanswerable. The contrary doctrine would be exceedingly dangerous to minors, for they act, as we all know, by the advice of those very persons who are named curators. How can we dispense with the making up of inventories?

Even a curator named by the father, with a dispensation as to omissions, would be liable, if he neglected to make up inventories.

Coalston. Of the same opinion with Lord Justice-Clerk, but think that the specialty of omitting to make up inventories is conclusive.

Gardenston. The rule is derived to us from the civil law, from whence we have got so many good lessons. There is strong analogy for supporting this. It is only by virtue of a statute that a father may dispense with the omissions of a curator, whom he names. If we extend this to minors, just coming into the business of life, the worst consequences will ensue. We also have decisions,—one in Forbes, the case of *Little of Liberton*, the other in this very case.

Monboddo. The Ordinary went very far in finding that the judgment against *Rae* was not binding against the other curators. I do not see how we can dispense with the public law which makes curators liable for omissions. This case is clear, both as to common law, and as to statute law.

Justice-Clerk. Candidly acknowledged that he was convinced by the arguments which he had heard, and that he had been misled by an ambiguity in the expressions used by Lord Stair when speaking of the decision, *Curator of the Earl of Buccleugh.*

On the 29th June 1775, " The Lords found that the defender, as representing Mathie, the curator, is liable for omissions as well as for intromissions;" adhering to Lord Auchinleck's interlocutor.

Act. W. Craig. *Alt.* Mat. Ross.

1776. *March* 5. Kennet. There was no such neglect here as to make the curators liable, for *Rae* was solvent for six years after the curatory expired.

Hailes. One of the minors was nineteen years of age when the curatory commenced, so that after his majority *Rae* remained solvent for nine years. What hindered Rae being called to account during that space? And how are we to suppose that the curators could have ascertained the debt in the course of two years, which the parties themselves have not done in a much longer space?

Kaimes. Here was a very intricate account made much more difficult by the delay. The error of the curators was in neglecting to bring the account to a liquid balance.

Covington. If the Ordinary's interlocutor is supported, hard will be the situation of minors. One curator intromits, the other curators never call him to account. They do not even constitute the debt against him. They have failed in their duty. A count and reckoning was requisite.

On the 5th March 1776, " the Lords found the heirs of Mathie, the curator, liable; altering Lord Auchinleck's interlocutor:" but, 8th August 1776, they returned to his interlocutor.

Act. W. Craig. *Alt.* M. Ross.