

and the expense of management. He therefore craved to be allowed to borrow such sums of money upon the credit of the estate as should be necessary, in order to provide for the deficiency.

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The Court considered both branches of the petition as falling within the ordinary powers of a *curator bonis*, and were of opinion, that it was not their province to superintend every common step taken respecting an estate under judicial management. They therefore refused the petition as incompetent.

Mr. Home presented a petition, reclaiming against this interlocutor, in so far as the Court had thereby refused to interpose their authority to his contracting debt. He stated, that Sir Alexander Stirling, by his deed of trust, had allowed his trustees to borrow money only to pay off the principal sums of the debts upon the estate, in case they should be demanded before they could be paid out of the rents and price of woods, and had not provided for other exigencies, such as the present, which might equally demand the borrowing of money to a certain limited extent, in order to carry on the management. That this act of administration was therefore of an extraordinary nature, though in the circumstances of the case absolutely necessary; and consequently the warrant for it must flow from the Court, both for the sake of getting the money more readily, and in order to render it an effectual burden on the lands.

The Court in so far altered their former interlocutor, and granted this prayer of the petition.

For the Petitioner, *Rolland, Cha. Hope.*Clerk, *Home.**R. D.**Fac. Coll. No. 46. p. 96.*

\* \* \* On 19th January, 1803, a *curator bonis* applied for a warrant to borrow money. The petition was refused. See Henderson, Petitioner, No. 23. p. 14982. *voce* SUMMARY APPLICATION.

1794. February 22.

GRAHAM *against* DUFF.

Mr. Abernethy of Mayen granted a bond, obliging himself to pay to Mrs. Graham, his sister, an annuity of £.25, exclusive of her husband's *jus mariti*, and £.500 to her children, at the first legal term after her death.

Mr. Duff having purchased the estate of Mayen, under burden of this bond, he was, upon Mrs. Graham's death, charged by her husband to pay to him, as administrator-in-law for his children, the £.500 above mentioned.

Mr. Graham did not reside in Scotland, and was much embarrassed in his circumstances.

Mr. Duff, in a suspension, contended, that he therefore was not *in tuto* to pay the money to Mr. Graham, without obtaining security that it should be properly applied.

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No. 312.

When a father is in embarrassed circumstances, and not resident in Scotland, persons indebted to his children cannot safely make payment to him as their administrator-in-law, without

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security that  
it shall be  
applied for  
their behoof.

The charger, on the other hand, maintained it as a settled point, that a father acting as tutor or curator for his children is not obliged to find security.

Upon advising minutes, it was

Observed on the Bench : The ordinary rule, that a father is not obliged to find security for his intromissions, does not apply to this case.

The Lords unanimously found, that the money could not be paid without security.

Lord Ordinary, *Meikven*.

For the Suspenders, *Ja. Gordon*.

Alt. *Ja. Fergusson, jun.*

Clerk, *Menzies*.

*D. D.*

*Fac. Coll. No. 108. p. 239.*

1796. *March 9.*

*MACKAY against HOUSTON.*

No. 313.

In the county of Sutherland where enrolment to vote for a member of Parliament is competent on lands held of a subject superior, a charter granted by a factor *loco tutoris* for the superior who was fatuous and cognosced, was sustained by the Court of Session, though it was urged that such deed was beyond the ordinary acts of administration.—See APPENDIX.

*Fol. Dic. v. 4. p. 385.*

1798. *February 22.*

DANIEL HAMILTON MACNEIL, *against* ROGER H. M. MACNEIL, and DR. MACNEIL.

No. 314.

A declarator of contravention and irritancy raised in name of an infant against his father, allowed to proceed under authority of a tutor *ad litem* afterwards appointed.

A declarator of contravention and irritancy was raised in name of Daniel Hamilton Macneil, a boy of ten years of age, second son of Roger H. M. Macneil, against his father, as heir in possession of an entailed estate, and against Dr. Macneil, to whom the former had granted an heritable bond over it.

The action was brought by direction of the boy's mother, who lived separate from her husband.

The competency of the action was objected to ; but the Lord Ordinary allowed it to proceed in name of a tutor *ad litem*, and appointed the counsel for the pursuer to suggest a proper person for the office. The defender, in a petition, contended, That it was incompetent and *mali exempli* for a married woman, herself under curatory, to bring an action in name of her infant child against his father, his legal administrator ; 16th November, 1704, Ross, No. 258. p. 6050. Ersk. B. 1. Tit. 7. § 13, 14. : That no injury could be qualified from allowing the claim to lie over till the infant came of age ; and that there was a hardship in permitting the action to proceed under authority of a tutor *ad litem*, whose duty would be