

named Mrs Rae. Oddly enough the drawer of the bill has not signed, but there are notes of the payment of interest on the back of the bill which are signed by the late William Duguid as creditor. The action is met by the plea of the sexennial prescription, and there is not the least doubt that the bill has prescribed. Accordingly the Sheriff-Substitute has sustained the plea of prescription. But the question remains, whether the pursuer has succeeded in showing by the writ of the defender that the debt is resting-owing?

Now, the writ relied on is a letter of the defender dated 13th May 1878, and that letter contains an admission undoubtedly that a debt is due by the defender to the pursuer, but the defender maintains that the letter is quite insufficient to prove that the debt referred to is the debt in the bill. Now, if the letter had stood alone, there might have been some difficulty in construing it to refer to the debt in the bill; but I have no doubt at all that in reading this letter it is competent to take into account the letter to which it is an answer. That is a letter, not to the defender but to Mrs Rae, the co-debtor in the bill. It is from Mr Giles, one of Mr Duguid's executors, who says—"I was requested to write to you to say that we hope you will be able to pay off the amount due between you and Mr Urquhart and Mr Duguid, so that we may be cleared of our executorship." And the answer, not by Mrs Rae, but by the defender, to whom apparently Mrs Rae had handed the letter, is in these terms—"Mrs Rae got your letter regarding the Ardmore money. I would ask you for a favour to let it lie with us just now. I am quite willing to pay interest for it, as I know of a farm to let," and so forth; and he concludes—"I trust you will not ask it at this time, as I have told you the disappointment I got about the farm." Now, taking the two letters together, I think that it is proved that there was a debt due by the defender and Mrs Rae, and that that debt was due to Mr Duguid of Ardmore, and further, that it was in some way concerned with Ardmore farm, or at least with Mr Duguid's affairs there. It was, besides, plainly not a debt of a trifling amount—the tone of Mr Urquhart's letter makes that clear—but one of some importance. Now, the only debt which he admits to be due is one of £3 which cannot possibly be the one referred to in his letter. It therefore appears to me that the debt in the bill is the debt referred to in the letter, because it cannot possibly refer to any other.

LORD DEAS, LORD MURE, and LORD SHAND concurred.

Appeal refused.

Counsel for Appellant (Defender)—Rhind—J. M. Gibson. Agent—W. Officer, S.S.C.

Counsel for Respondent (Pursuer)—Jameson. Agent—John Bell, W.S.

Friday, June 25.

FIRST DIVISION.

[Lord Lee, Ordinary.]

SIR GEORGE MACPHERSON GRANT (MACPHERSON GRANT'S CURATOR BONIS),
PETITIONER.

Judicial Factor—Curator Bonis—Special Powers—Abatement of Rents.

As a general rule a *curator bonis* will not obtain special powers to grant an abatement of rent at so much per cent. to all the tenants of a large estate indiscriminately in respect of losses during a particular year; but where it was proposed that the sum allowed as an abatement should be expended in the purchase of artificial manures to be applied to the estate, power to grant an abatement which should not exceed 10 per cent. to all the tenants was on that condition granted.

Opinion (per Lord Shand) that in the circumstances of the case the application should be granted without imposing any such condition.

This was a note by Sir George Macpherson Grant, Bart., *curator bonis* to Thomas Macpherson Grant of Craigo, praying for special powers to grant abatement of rents to the tenants on the estate of Craigo. The petitioner in his report to the Accountant of Court set forth that "the agricultural tenants on the ward's estates, like other farmers all over the country, have of late years suffered from a succession of bad seasons, foreign importation, and the prevailing general depression of agriculture. The tenants have hitherto, at least up to 1878, paid their rents regularly, but they have sent to the *curator bonis* the following application for an abatement of their rents for crop and year 1878, which were payable at Candlemas and Lammas 1879, viz. :—

" Montrose, June 1879.

" To Sir George Macpherson Grant of Ballindalloch, &c., Baronet.

" We, undersigned tenants on the estate of Craigo and other properties belonging to Thomas Macpherson Grant, Esq. of Craigo, beg to call your attention to the depressed state of agriculture which has existed for several years, and which during the past two years has been excessive, and we respectfully request that you will take our case into consideration, and grant such a reduction of rent as in keeping with what has been done by several of the leading proprietors in this neighbourhood, or as you may deem proper in the circumstances."—[Here follow the names of eighteen tenants.]

" In addition to the tenants who have signed the above application, there are other two who occupy small farms on the ward's properties, and who desire to be included in the application.

" The *curator bonis* on receiving this application made inquiry as to what had been done by the leading proprietors in the county, and he has been informed and believes that the following proprietors have each allowed an abatement of 10 per cent. from the rents of crop and year 1878, viz. :—[Here follow the names of nine large proprietors in Forfarshire and Kincardineshire.]

“The *curator bonis* after receiving this information, and inquiring into the other circumstances, felt that it was necessary to give the tenants an abatement, and he was the more induced to do this in respect that some of the tenants had been unable to meet payment of their rents in full, and are in arrear for crop and year 1878. He proposes, therefore, to allow to the tenants an abatement not exceeding 10 per cent. from the rents of that crop and year, under an obligation that they shall expend the amount allowed to them on extraneous manures to be applied to the farms, so as to maintain the land in good heart and condition. In this way the land will be kept up to its normal state, and be prevented from being run out or exhausted.

“The *curator bonis* therefore requests authority to make an abatement not exceeding 10 per cent., or such lesser abatement as he may ultimately become satisfied should be sufficient.”

The petitioner therefore prayed the Court “to allow an abatement to the agricultural tenants on the estate at a rate not exceeding 10 per cent. of their rents for crop and year 1878, said abatement to be applied in the manner specified in said report and opinion thereon, or in such other manner as may be agreed upon.”

The Accountant of Court in his opinion stated, *inter alia*, that “this application involves the general question whether the Court will confer on the factor discretionary power to judge of each case, and to grant such abatements as he may in his own judgment find necessary. The Accountant is not aware that such general powers have ever been granted by the Court, and it will be for the consideration of the Lord Ordinary whether the special disadvantages under which farming tenants have been suffering of late years form sufficient grounds for dealing with this application exceptionally.”

The Lord Ordinary (ADAM) remitted to Mr Charles Lyall, factor, Old Montrose, “to inquire into the circumstances set forth in the note, and to report whether any and what abatement should be allowed in each case.”

The following was Mr Lyall's report:—“The reporter has carefully considered the representations contained in the note, in so far as these relate to the application made by the tenants for an abatement on their rents for crop 1878. These representations he considered fairly stated, and whilst he can without any hesitation express an opinion that an abatement should be made, he has taken up the remit with some reluctance, as he finds it impossible for him to report in accordance with the exact terms of the interlocutor.

“Under the remit the reporter is asked to inquire into the circumstances set forth in the note, and to report whether ‘any and what abatement should be allowed in each case,’ and in the Accountant's ‘opinion’ on the note for the *curator bonis*, under No. 7 (abatement of rent), it is stated that ‘the authority that may be given to the factor will be limited to the rents of crop and year 1878.’

“The crop and year of 1878 are things of the past, and therefore the reporter finds it impossible, from any inspection he could make, to state what abatement he would recommend to be made in each case. He has, however, in terms of the remit made to him, ‘visited the various

farms, seen the different tenants, and made inquiry into the circumstances set forth in the note, and he has no hesitation in stating that he would recommend that a deduction of 10 per cent. should be made from the rents of crop 1878. The reporter may here state that he has come to the conclusion that an abatement is wanted, not altogether from any recent inspection he has made, but from his long and intimate knowledge of the district, and from his conviction that the tenantry as a body have sustained heavy losses during the past few years.’

“The grain crop of 1878 was about an average in quantity, but the prices were exceptionally low, especially for wheat and oats, the fiars prices for the county being—

Wheat,	36/9.
Barley,	29/4.
Oats,	21/7.

“The eastern district of Forfarshire, in which the properties under the curatory are situated, is very much dependent on the turnip crop, and the reporter is well aware that the profit from cattle-feeding from the turnip crop of 1878 may be said to have been altogether a blank.

“The reporter cannot say that all the Craigo tenants are suffering in an equal ratio. To ascertain this would imply a re-valuation of every farm, and in the present depressed and transition state of agriculture it is impossible to form a reliable opinion on the value of land. That they are all suffering the reporter has no doubt, and as the abatements proposed to be allowed are of a temporary nature, the reporter can see no other way under the circumstances but to make all tenants alike. This course was adopted by several of the large landed proprietors of Forfarshire in regard to the rents of crop 1878, and many others have intimated their intention of allowing an abatement generally of 10 per cent. from the rents for crop 1879, which has been the most disastrous year for the Scotch farmer in the memory of man.

“The reporter may here take the liberty of stating that on a property of considerable extent on which he is factor (Kinordy) a similar application was made by the tenantry in 1879, and on his recommendation 10 per cent. of an abatement was allowed from the rent for crop 1878.

“In conclusion, the reporter would state that he considers it for the interest of the proprietor that assistance should be given to the tenantry in exceptional times of severe depression, to enable them to keep up the condition of the land and maintain their full stock, and that in the present instance it would be good and judicious management that the *curator bonis* should have the power granted to make the proposed abatement.”

The Lord Ordinary (LEE) reported the application to the First Division, adding the following note:—

“Note.— On considering the terms of Mr Lyall's report, the present Lord Ordinary is unable to find that it deals with each case separately, and in such a manner as to establish a necessity for abatement in order to avoid the loss which may be occasioned by renunciation of the lease, or the tenant's want of means to carry on the cultivation of the farm in a proper manner. Mr Lyall has not attempted to give the circumstances of each tenant. But he states that he has no doubt they are all suffering

in an equal ratio, and he concludes by reporting that 'he considers it for the interest of the proprietor that assistance should be given to the tenantry in exceptional times of severe depression, to enable them to keep up the condition of the land and maintain their full stock, and that in the present instance it would be good and judicious management that the *curator bonis* should have the power granted to make the proposed abatement.'

"The Lord Ordinary thinks it his duty to report the matter to the Court, being of opinion that however desirable it may be in the present case that such powers should be granted, the question raised by the Accountant is one which ought not to be decided in favour of the petitioner without being submitted to the opinion of the Court.

"The only cases referred to in which such powers appear to have been granted were those of *David Milne, petitioner*, Dec. 20, 1834 (13 Sh. 222), and *Murray Macgregor, petitioner*, June 7, 1837 (15 Sh. 1092). In the latter case, however (which was that of a *curator bonis* to John Duke of Atholl), the petition related to three particular farms only, as to which there were reports by men of skill.

"There are also certain cases in which certain powers of this description appear to have been granted to factors upon estates under sequestration after intimation to the creditors—such as *Anderson*, Feb. 28, 1822 (1 Sh. 363); *Peddie*, Dec. 13, 1822 (2 Sh. 88); and *Robertson*, Jan. 22, 1823 (2 Sh. 150). But in the later case of *Brodie*, March 11, 1843 (5 D. 1024), the petition was refused.

"It appears to the Lord Ordinary that the granting of such a general power of abatement is attended with great difficulty in principle, and is not supported by practice."

The petitioner in argument relied mainly on the proposal to apply the sum allowed as an abatement in the purchase of artificial manures to be expended on the lands.

At advising—

LORD PRESIDENT—This note by the curator for Mr Macpherson Grant raises a question of considerable importance. It proposes in respect of bad seasons to give a reduction of rent to all tenants on the estate under his management. The estimated rental of that estate is, as we have been told, between £5000 and £6000 a-year, and it is paid by twenty tenants. Now, the proposal of the curator is thus expressed—"to allow to the tenants an abatement not exceeding 10 per cent. from the rent of that crop and year (1878), under an obligation that they shall expend the amount allowed to them on extraneous manures to be applied to the farms so as to maintain the land in good heart and condition." When this application came before Lord Adam as junior Lord Ordinary he pronounced an interlocutor remitting to a person of skill "to inquire into the circumstances set forth in the note, and to report whether any and what abatement should be allowed in each case." The gentleman who reported (Mr Charles Lyall) said that he found it impossible to form a reliable opinion as to each separate case, but that he was of opinion that it was for the benefit of the proprietor as well as the tenants that assistance should be given and

in the form proposed. In these circumstances Lord Lee, before whom the case subsequently came, has reported the case to this Division, and has expressed grave doubts about the propriety of his granting the general powers craved. I must say I sympathise very much with the doubts which have been expressed by the Lord Ordinary. The inquiry as to what special powers should be conferred upon a *curator bonis* in the management of the estate committed to him must always involve this consideration among others—what would a prudent owner himself do under the same circumstances in the exercise of his discretion.

Now, I do not think that a general indiscriminate 10 per cent. reduction over a whole large estate would be a judicious or a prudent act on the part of any landlord. In its results it might be reasonable as regards one tenant and exorbitant as regards others. You will find on every large estate tenants in every variety of position. One who is approaching the end of his lease has in the earlier years of it realised large profits, and is only now making some comparatively slight losses. Another, who is in the first years of his lease, has met with heavy reverses just at the first, which have swept away his reserve of capital, and left him struggling to keep his head above water. Again, you may have a bad tenant who is hopelessly insolvent and past all help, even if deserving of any, and you may have a good tenant doing his utmost and just wanting a little support to tide him over a time of difficulty. Or, to take another point of view, on every large estate you will have different farms differently affected by the seasons. The effect of bad weather depends in part at least upon soil, aspect, mode of cultivation, kind of stock, condition of drainage, and a variety of considerations. Therefore, to say that you must grant a general reduction indiscriminately, if you are to grant one at all, is to my mind practically absurd. Accordingly, though I know that it is not an uncommon practice among landlords, I cannot say that it is the course which a prudent and just landlord should adopt. It may save him trouble, but if a landlord is to deal with such an emergency at all, he ought not, in my opinion, to shrink from the trouble necessary to enable him to act with a just discrimination in the circumstances of each case. I cannot therefore accede to a proposal to give the *curator bonis* a general power to abate the rents 10 per cent. all round, because I should be authorising him to deal with the tenants as no prudent or just landlord would do in the conduct of his own affairs.

But in this particular case there are considerations which go far to remove or diminish the objection. In the first place, the curator does not ask for power to grant an abatement of 10 per cent. in each case, but an abatement not exceeding 10 per cent., and desires to have it left in his hands how far he should grant the abatement in each particular case. That is certainly a very large and delicate discretion to have committed to him. But then there is this other proposal—that the money should not be remitted directly in cash, but that the tenants should be required to expend the same in artificial manures to be applied to the land to keep up its condition. Now, subject to that condition, I am inclined to listen favourably to the proposal of the curator, because

it thus secures a benefit to the estate, while it at the same time relieves the tenants who in hard times are deterred from spending so much on artificial manures as they would otherwise do. Therefore, if your Lordships are disposed to agree, I am inclined to grant this application, subject to the condition that the money shall be spent in the way proposed.

LORD DEAS—The applicant here is not the proprietor of the estate; he is merely the *curator bonis* for the true proprietor. I entirely agree that a *curator bonis* is not entitled to allow a deduction of 10 per cent. to all tenants on a large estate like this. The tenants not only may but must stand in different positions. There may be different soils, or there may be different terms of lease, and one lease may be near an end while the other may be just beginning. If it had not been for the proposal to expend the money in a particular way for the benefit of the estate, I should not have been willing to grant the application. But I agree that it makes a most material difference when it is proposed to apply the sum allowed as an abatement in the purchase of artificial manures by means of which the estate will be benefited. It is on that condition, and on that only, that I am disposed to grant the powers craved.

LORD MURE—If this application had been one for power to grant a deduction of so much per cent. of rent over the whole estate, I would have had great difficulty in acceding to it, having regard to the rules which have been laid down and acted on in the cases to which we have referred, concurring as I do substantially in the main objection which your Lordship has stated to the operation in the ordinary case of a general and equal abatement of rents over so large an estate. But I look upon this application as one of a special kind, qualified as it is by the restrictions contained in the passage your Lordship has read from the note for the curator as to the manner in which the proposed abatement is here to be expended, and by the full discretion left to the curator to act in that and other respects as he may deem best, within certain limits, for the interests of the landlord and tenants on the estate, and I agree with your Lordship that the powers, so qualified, should be granted.

LORD SHAND—It was of course necessary that the *curator bonis* should come here for special powers, because he is not entitled to do anything of this sort at his own hand; but I have no hesitation in saying that this proposal should be granted, and without any condition. It cannot be said that this is not a case in which the tenants are not suffering, for on referring to Mr Lyall's report I find that he says that he has "visited the various farms, seen the different tenants, and made inquiry into the circumstances set forth in the note, and he has no hesitation in stating that he would recommend that a deduction of 10 per cent. should be made from the rents of crop 1878. The reporter may here state that he has come to the conclusion that an abatement is wanted, not altogether from any recent inspection he has made, but from his long and intimate knowledge of the district, and from his conviction that the tenantry as a body have sustained heavy losses during the past few years." And he concludes,

that "he considers it for the interest of the proprietor that assistance should be given to the tenantry in exceptional times of severe depression, to enable them to keep up the condition of the land and maintain their full stock, and that in the present instance it would be good and judicious management that the *curator bonis* should have the power granted to make the proposed abatement." This seems to me to be a case in which a deduction of 10 per cent. should be allowed to each of the tenants.

The Court granted the powers craved, subject to the condition above referred to.

Counsel for Petitioner—Kinnear—Mure. Agents—Mackenzie, Innes, & Logan, W.S.

Saturday, June 26.

FIRST DIVISION.

[Lord Lee, Ordinary.]

CAMPBELL AND ANOTHER (RANKINE'S TUTORS-NOMINATE), PETITIONERS.

Tutor—Special Powers—Power to Feu.

Circumstances in which the Court granted authority to tutors-nominate to feu part of the pupils' estate.

This was an application by the tutors-nominate of the three children of the late W. M. Rankine of Dudhope for power to feu portions of that estate, in such lots and upon such conditions as the petitioners might see proper and most advantageous. The petition set forth—"That being situated within the burgh of Dundee, the said estate of Dudhope is peculiarly adapted for feuing. A considerable portion of the estate has already been feued for villas and streets of houses, and applications from time to time are made to feu portions of the estate to be so built upon. That it will be greatly for the benefit of the estate if your Lordships shall see fit to grant to the petitioners power to feu out such portions of the said lands and estate, and that in such lots and upon such conditions and provisions as your petitioners may see proper and most advantageous for the said estate from time to time; provided always that the rate of feu-duty for the portions so feued shall not be less than at the rate of £24 per acre." It appeared from a certified rental of the estate that the gross rental amounted to £3763, 5s. 7d., and that £2562, 9s. 2d. of that rental was composed of feu-duties. It further appeared that the heir was only three years of age.

Being an appeal to the *nobile officium* of the Court, and not within the provisions either of the Act 20 and 21 Vict. cap. 56, sec. 4, or of the Trusts (Scotland) Act 1867, sec. 16, the petition was presented to the Inner House, and was remitted to the junior Lord Ordinary to inquire and report, Mr A. F. Adam W.S., having first been appointed curator *ad litem* to the three pupils, the eldest of whom was heir of provision to the estate. The Lord Ordinary (LEE) remitted to Mr James Salmond, architect and surveyor, Dundee, to examine the subjects proposed to be feued, to inquire into the facts and circumstances set forth