

No 89.

Replied; It is a necessary security for all parties having interest, that a confirmation intrinsically null be not sustained; so that it is not *jus tertii*, but *exclusivum juris agentis*. And inferior Commissaries should not be encouraged to continue this informal method after the Commissaries of Edinburgh have laid it aside; for *consuetudo non usque adeo sui valitura memento ut aut rationem vincat aut legem*.

THE LORDS repelled the nullity, and sustained the Children's title.

Fol. Dic. v. 1. p. 578. Forbes, p. 191.

1747. December 3.

MORISON against STEWARTS.

No 90.

A minor whose administrator in law was out of the kingdom, was authorised by the Lords to receive money, and employ it on a security approved by them.

JOHN STEWART, grandson and heir to the deceased Lord Roystoun, having right by progress to an heritable bond granted by William Morison of Craigleith, to Sir William Baird of Newbyth, did, with consent of John Stewart elder, his father and administrator in law, convey the same to Mrs Isabel Stewart, widow of George M'Kenzie, younger of Roystoun, in security of L. 100 annuity payable by said John Stewart the heir to her.

William Morison proposing to extinguish the debt, duly premonished the said John and Mrs Isabel Stewarts to receive the money as at Martinmas last; and understanding that the said John Stewart the creditor was under age, and that his father and administrator was out of the kingdom, applied by bill of suspension, craving that he might be authorised by the Lords to consign or to pay up the money on getting a valid renunciation, and that the said John Stewart might be ordained to chuse a curator, who might concur with him in such renunciation.

This bill was passed upon report, and a tutor *ad litem* appointed to John Stewart on his application; and now at discussing, Isabel Stewart admitted the facts stated in the bill, and consented to the raising the money and re-employing the same; and represented that she had procured an heritable bond for that purpose on the estate of Inverighty, in security of the said L. 100 of annuity to Mrs Stewart, and to the said John himself, ready to be delivered upon payment of the money; and concurred with the debtor in praying that the Lords might, in such a manner as they should think proper, interpose their authority, that there might be a valid renunciation.

The point reasoned on the Bench was, In what manner the Court was to interpose in this case, Whether by directly authorising the payment and acceptance of the security offered for the money, or by appointing an *interim* curator who should find caution? Some of the Lords inclined to the last, doubting how the Court could directly authorise, as they knew not the sufficiency of the person who was to grant the new bond; and that if he was insufficient, the Court was caution for the money. Others again doubted, if the Court could at all appoint an *interim* curator even *ad effectum*, as the minor had an administrator;

but thought, that as the administrator was abroad, they might interpose and directly authorise, and they would no more become cautioners than they do in any case, which frequently happens, of money's being re-employed at the sight of the Ordinary: That in this case, there was little reason to doubt the new security offered, as the liferentrix was so much satisfied with it; mean time, to remove all scruple, it might be remitted to the Ordinary to make further enquiry and to report.

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Which accordingly was done; and thereafter, upon the Ordinary's report, the LORDS "authorised the payment of the money and acceptance of the new security offered."

This was by some said to be what the Court could not refuse, as the administrator was abroad, and the money in effect *in manu curiæ* by the offered consignment; adding, that it were well that the Court had the same, or at least part of the powers the Chancellor has in England of seeing to the application of minors' money.

Fol. Dic. v. 4. p. 6. Kilkerran, (MINOR.) No 7. p. 348.

* * * D. Falconer reports this case:

December 11.—MORISON of Craigleith owed, by heritable bond, L. 1000 Sterling to the late Lord Royston, which coming by progress into the person of John Stuart my Lord's grandson, the debtor made a tender of the money, and thereupon offered a bill of suspension.

Answered for John Stewart; That he was willing to receive the money, and had provided a security to employ it on; but he being minor, and John Stewart his father and administrator in law out of the country, it was necessary he should be authorised by the Court to discharge.

The suspension being discussed upon the bill, two methods were proposed, *imo*, That the Lords should appoint a curator *ad effectum*. To which it was *answered*, That it could not be done while he had an administrator in law. *2do*, That they should themselves authorise him. To which it was *objected*, That they then behoved to consider the security proposed.

THE LORDS remitted to the Ordinary to consider the security, and on report authorised the minor to receive and discharge the money, and to lend it out again thereon.

Susp. *Boswell.*

Alt. *D. Græme.*

D. Falconer, v. 1. No 222. p. 306.

1749. February 22.

JEAN HAY, Spouse to HOME, and their CHILDREN, against GRANT.

THOMAS GRANT purchased the lands of Blackburn from Alexander Home, the price whereof he paid, except 12,000 merks, which he retained to answer a

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The Court
appointed a
curator bonis.