

1780. November 13.

LORD MACDONALD *against* ALEXANDER MACKENZIE MUIR.

DURING the minority of Sir James Macdonald, Mr John Mackenzie, who was doer for the family, and one of Sir James's tutors, purchased, for behoof of the pupil, some lands which were interspersed with his. As this measure, though extremely advantageous to the pupil, could not be pursued by Mr Mackenzie in his character either of agent or tutor, the purchase was carried into execution in his own name, and the money for payment of the price borrowed on his credit. It was however ratified by the other tutors, and by Sir James himself when he came of age.

Sir James Macdonald was succeeded by Lord Macdonald, who brought an action against Mr Mackenzie, concluding for his being obliged to account for his intrusions, and to divest himself of the lands purchased by him. In this litigation Mr Mackenzie demanded a remuneration on account of the risk undertaken by him in making the purchase; and this demand, after his death, was continued by Mr Alexander Mackenzie Muir, his universal disponent, who *Pleaded*; In completing this transaction, which was uncommonly beneficial to the minor, Mr Mackenzie underwent a very great degree of hazard. His personal credit was endangered, and in the event of any disorder arising in the fortune of the pupil, might have been much hurt. Had the bargain, from a defect in the rights of the seller, or from any other circumstance, proved a losing one, it was in the power of Sir James Macdonald, or his heirs, to have reprobated it altogether. It is consistent with equity, that so singular an exertion should meet with a proper reward; and it is much for the interest of persons under age, that by a gratification, such as is here demanded, their guardians should be incited to advance their interests.

*Answered*; The execution of the office of tutor, which is undertaken from the honourable motives of friendship and benevolence, although meriting a grateful return, is incapable of pecuniary estimation; and the obligation by it imposed on the pupil, cannot, without a total derogation from its nature, be enforced by a Court of law.

Such was the idea of the Roman law; and no instance can be shewn in the practise of this country where a demand of this nature was ever thought of.

THE COURT were of opinion, That the claim was of that imperfect nature which could not be ascertained by a court of law. And it was likewise observed, That by encouraging tutors to enter into hazardous transactions, the fortunes of persons under age might be exposed to great danger.

'THE LORDS found no remuneration due.'

Lord Ordinary, *Cardenston.* Act. *Maclaurin, Crosbie.* Alt. *Hay Campbell.*  
C. *Fol. Dic. v. 4. p. 219. Fac. Col. No 127. p. 233.*  
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No 45.  
Whether any remuneration be due to a tutor, who had, to the advantage of the minor, at his own risk, made a purchase for him of a landed estate?