

Tuesday, July 16.

BROWN'S TUTORS, PETITIONERS.

Tutor-Nominate—Lease—Advertisement—Valuation.

Tutors-nominate authorised to grant a new nineteen years' lease to the tenant presently in occupation, at the rent offered by him, after judicial remit to ascertain the sufficiency of the tenant's offer, but without advertisement of the farm for public competition.

This was a petition at the instance of tutors-nominate for authority to grant a lease.

The pupil succeeded to an entailed estate in Berwickshire on the death of his grandfather, Major Brown, in 1866. The estate had been leased by Major Brown, along with some unentailed land belonging to him, to Mr James Weatherley, who held a lease of the whole lands, entailed and unentailed, as one farm, for a period of nineteen years from Whitsunday and separation of crop of 1848, at a rent of £400 per annum, the tenant also paying certain rent charges payable to Government in respect of money spent on drainage and improvement.

The unentailed lands are now held by Major Brown's trustees.

Weatherley's lease expiring on Whitsunday and separation of crop of 1867, Major Brown's trustees and the petitioners obtained a valuation of the lands from Mr Dickson, Saughton Mains. Mr Dickson estimated the rent to be got for the whole lands at £522, £442 being for the entailed lands. This valuation proceeded on the footing of a nineteen years' lease being granted, and certain necessary repairs executed on the farm-house and offices, the proprietor paying the remainder of the rent charges, which expires in a few years.

The tutors-nominate of the pupil now presented a petition to the Court, stating the facts above set forth, and that Major Brown had, shortly before his death, been in treaty with the present tenant, Mr Weatherley, for a renewal of the lease; that Mr Weatherley had made an offer to retake the whole land at an advance of rent slightly above the estimate of Mr Dickson, the effect of this offer being an immediate increase of rent of £37, 5s. for the entailed lands, rising gradually as the rent charges fall in, to £89, 5s., or upwards of twenty per cent. upon the present rent; and craving authority to let the entailed lands to Mr Weatherley at the rent offered by him, or otherwise to let them at such rent as might be obtained.

The Court made the usual remit to the Junior Lord Ordinary, who remitted to Mr Kermack, W.S., to report whether it would be for the interests of the pupil and succeeding heirs of entail that the authority craved by the petitioners should be granted. Mr Kermack, after obtaining another report from Mr Dickson as to certain matters in the petition, reported in favour of the petition. The entailed and the unentailed lands were proposed to be included in separate leases.

The Lord Ordinary then reported the case to the Inner House. The Court thought there were two peculiarities in the case—(1) That there had been no advertisement of the lands, so as to secure competition; and (2) that the valuation founded on in the petition was obtained *ex parte*. They inclined to hold that if it was the practice in such cases to dispense with advertisement, as was indicated by the Lord Ordinary, it would be necessary to make a judicial remit for a valuation of the lands.

The Lord Ordinary accordingly remitted to Mr Low, Berrywell, who gave in a report agreeing substantially with that given by Mr Dickson, and recommending that the petitioners should be authorised to let the lands to Mr Weatherley at the rent offered by him. Mr Low reported against the expediency of advertising the farm for competition.

The Lord Ordinary again reported the case.

The LORD PRESIDENT thought that the question was a delicate one, and that it was indispensable to look at the circumstances of the case. As to the power of the Court there was no doubt. That question was fairly raised in the case of *Morison*, 20th February 1857, 19 D., 493. The matter came again before the Court in another case relating to the same parties in 1861 (*Morison*, 19th July 1868, 23 D., 1313), and there the Court thought it right to consult the Judges of the Second Division. The Lord President in that case stated, in his judgment, the result of that consultation, which was in favour of granting the prayer of the petition. In the circumstances of this case it was very expedient to grant the power craved. In some cases it was quite right to test the value of an offer by public advertisement, but this case differed. There was here a good tenant in occupation, whom it was desirable to retain, and who was not likely to demand such a large expenditure by the proprietor in the way of meliorations as a new tenant would require. The power should therefore be granted.

The other Judges concurred.

The petitioners were accordingly authorised to let the lands to the present tenant on a nineteen years' lease, at the rent offered by him, the details of the lease to be arranged by the tutors at their discretion.

Counsel for Petitioners—C. G. Spittal.

Agents—Paterson & Romanes, S.S.C.

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MORRIS v. RIDDICK.

Donatio mortis causa—Mode of Proof—Legacy. A person *intuitu mortis* gave to another a sum of £300, on condition that if he recovered the money was to be returned to him. The donor died in three days thereafter. In an action at the instance of his executor, for repetition of the money, held that the gift was a *donatio mortis causa*, and not a legacy; and that it could be, and had been, proved by parole evidence.

The pursuer of this action was the executor-dative of the late Hugh Morris, wine and spirit merchant in Greenock, who died on 3d November 1862. The pursuer averred, that on 31st October 1864 the defender had uplifted from bank the contents of a deposit-receipt for £300 belonging to his late brother, and that, instead of paying over the amount to the deceased, that he had retained it, and still retains it in his own possession. The defender averred that the deceased had, on the occasion specified, given to him the said deposit-receipt blank indorsed, and another paper bearing to be an order for payment of its contents; that the indorsation and delivery of the said deposit-receipt were, with the object and for the purpose, as was stated at the time, of making a gift of the contents of the receipt; the sole condition of the gift being, that in the event of Hugh Morris recovering