

that the said Court of Session do give proper directions for carrying this order and judgment into execution.

1758.

GRAHAM
v.
KER.

For Appellants, *C. Yorke*.

Note.—“ The judgment was reversed, singly upon this footing, as I am informed, that in England the decrees of sovereign courts abroad are put in execution by the Courts of Westminster-Hall, without admitting any objection against them.”—Kames’ Decisions, p. 131.

The Act 12 Queen Anne, c. 18, made perpetual by 4 Geo. I. c. 12. entitles the party who has a claim for salvage to payment within 30 days after the service performed, “ and in default thereof, that the ship or goods shall remain in the custody of the collector until paid, or good security given.”

[M. 3529.]

JAMES GRAHAM, - - - - - *Appellant* ;
ELIZABETH KER, - - - - - *Respondent*.

House of Lords, 9th March 1758.

NEGOTIORUM GESTOR—INTERDICTION.—Held a party who acted voluntarily, and without any legal authority, for another, in changing the security of money lent, was liable, on failure of the new borrower, notwithstanding the person for whom he acted was of age—was present on the occasion, and consenting to the whole transaction, but was unable to manage his own affairs, from weakness of mind, and was soon thereafter interdicted.

FROM his living near the farm, Graham, the appellant, was induced to take an active part in the management of Thomas Ker’s affairs. While in minority he had acted as his curator. This curatory was discharged on his coming of age. Yet Ker being weak in intellect, his mother continued to manage his farm after his attaining majority, and was in the practice of receiving aid in so doing from the appellant. This assistance was rendered after the appellant was discharged from the office of curatory, and before he was appointed one of Ker’s interdictors, which took place sometime afterwards.

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At this particular intervening juncture notice was given that a bond for £172, due by Mr. Fotheringham to Ker was to be paid up, unless the sum was allowed to lie at $4\frac{1}{2}$ per cent. interest. Whereupon the appellant ordered the money to be received, and lent out to one Kinnear, a merchant, at 5 per cent. Kinnear failed, and the question was, Whether the appellant Graham was liable for the money so lost as *negotiorum gestor*?

Nov. 1756. The Court of Session held he was liable; and against this judgment the present appeal was taken.

Pleaded by the Appellant:—Thomas Ker being of age at the date of Kinnear's bond, and being present and concurring in the whole transaction, the same in law must be received as his own act. At that time he was not under any legal incapacity from acting in his own affairs, and under no constraint against lending his money; and the part the appellant took was merely that of a friend, lending his assistance to, instead of acting for another, in procuring an additional per centage for his money. This being the nature of the appellant's interference, none of the characters of *negotiorum gestor*, or of *mandatory*, apply to the case, and consequently no obligation arises which can make him responsible for the debt so lost; but, separately, John Ker, Thomas Ker's uncle, who acted as guardian to Thomas Ker's children after his decease, during which time Kinnear was solvent, ought to have called up the money from Kinnear, if he thought the security insufficient. Instead of this, the respondent, and John Ker, who acted for her children, remained satisfied with that security for two years.

Pleaded for the Respondent.—A person who voluntarily, and without any authority, takes the management of another's affairs, makes himself responsible for all the consequences. He excludes all others from acting, and therefore is bound to bestow great care, so much so, that mere negligence, without any ill design, will subject him in liability. The appellant, therefore, having managed Thomas Ker's affairs in the loan in question, without any authority, is liable for the loss of the money lent to Kinnear by the latter's failure. And it is no answer to this to say, that Thomas Ker was himself present, and acting in the affair, because Thomas Ker was notoriously at the time of weak and facile mind, and unable to comprehend, far less to give his sanction to any such transaction.

After hearing counsel, it was
 Ordered and adjudged that the said interlocutors be, and
 the same are hereby affirmed.

For Appellant, *R. Dundas, Al. Forrester.*
 For Respondent, *C. Yorke, Al. Wedderburn.*

1758.

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 HIS MAJESTY'S
 ADVOCATE, &C.
 v.
 DUKE OF
 MONTROSE,
 &C.

HIS MAJESTY'S ADVOCATE, in behalf of the
 PRINCIPAL and PROFESSOR of the COLLEGE } *Appellant* ;
 of GLASGOW - - - - - }

His Grace the DUKE of MONTROSE, and Others, *Respondents.*

House of Lords, 15th March 1758.

TEINDS—OLD VALUATIONS UNRATIFIED.—The Tithes of a parish were valued, but the decret of valuation was lost, and the only evidence was an old book, containing the valuation of the Subcommissioner of Teinds not ratified by the Chief Commissioners. Held it competent for the Teind Court, at the distance of 100 years, to ratify the report of the old valuation of the Subcommissioners.

THE respondents, the Duke of Montrose and Others, were heritors and landowners in the parish of Drymen, in the county of Dumbarton, and brought an action before the Court of Session, as Commissioners for the Valuation of Teinds, to have it declared that their teinds were valued, and to interpose their authority, and to certify and approve of the old valuation of the subcommissioners in the following circumstances.

It was stated, that their tithes were all valued, but, in consequence of the wreck of the vessel which brought back the records of Scotland from England after the Restoration, and also the great fire that destroyed the records of the Teind Court, where most of the decrees of valuation made by the commissioners and subcommissioners were deposited, the valuations could not be proved, yet a book had been discovered in the Lower House of Parliament some years ago, containing valuations of the subcommissioners in seventeen presbyteries in Scotland ; and this book contained the report of those subcommissioners of the tithes for the presbytery of Dum-

1744.