

Thomas: all he did, was to put money into Thomas's hands to purchase a tenement for him, which Thomas did; but, by concert between them, on account of Colin's creditors, took the rights in his own name. This was not the case under the statute.

1777. July 8. The EXECUTORS OF MRS MARY STEWART *against* M'ARTHUR STEWART OF ASCOG.

It has been found, by several late decisions of the Court, that trusts may be inferred from circumstances, and this notwithstanding of the Act 1696. The decisions have not gone the length that a trust can be proved by parole evidence alone; but parole evidence will be received in part, and, joined to written evidence and documents, will make out a trust effectually. A case of this kind was decided between Mr M'Arthur Stewart of Ascog and the executors of Mrs Mary Stewart, sister of the late Blackbarony. For Chief Baron Montgomery, a creditor on the tailyied estate of Blackbarony, having received payment of his debt, he conveyed it to Mrs Stewart, and it stood in Mrs Stewart's person at the time of her death; but, from certain facts and circumstances, both from writing and parole evidence, it truly appeared to be vested in her person in trust for the late Blackbarony, who, it would appear, intended to keep it up as a debt due to his heir out of the tailyied estate of Blackbarony. And the Lord Gardenstone having, 6th February 1777, found "that there was sufficient legal evidence from the writs produced, the parole evidence, and other circumstances, that this was truly a trust in the person of the sister;" the Lords, this day, upon advising petition and answers, "adhered to the Ordinary's interlocutor, and refused the petition."

See Kilk., 30th July 1748, *Ramsay against Butchers of Perth*, under the title of "Trust implied from Circumstances." 11th December 1765, *Gilmor*; 13th June 1766, *Moodie against Auchterlony*; 1765, *Alison against Fairholme*.

TUTORS AND CURATORS.

1775. July 30. MATHIE *against* WATSON.

THE power of freeing curators from omissions and from being liable *in solidum* is competent to the father only: the minor cannot do it in any no-

mination made by him. So found by Lord Auchinleck, 12th December 1772, and adhered to by the Court, 16th July 1773, *Rae against Watson*; and the decision held good in another branch of the same cause, 30th July 1775, *Mathie against Watson*. See 8th February 1710, *Lord Liberton against Johnston*, observed by Fountainhall and Forbes: but, it is to be observed, they report the fact somewhat differently.

1769.

GIB *against* GIB.

TUTORS and curators are accountable for insolvencies while they are in office, if culpable neglect can be imputed to them, but not for unforeseen or sudden disasters happening even then: so found 1769, *Gib against Gib*. The case here was, that a tutor, having received payment of an heritable debt due to the minor, from a debtor who offered it, lodged it with Messrs Fairholmes, bankers, at that time in good credit: it was found that their failure, nine months after, did not make the tutor liable. See also Fount., 7th July —, and Dalrymple, 26th November 1699, *M'Murdoch*.

1776. November 20.

MATHIE *against* WATSON.

As to insolvencies occurring after the office is at an end, it would seem that tutors and curators are not liable for these in any event whatever. In a case, *Mathie against Watson*, where this point was disputed, the Lord Auchinleck, Ordinary, 16th January 1776, found, "That, as the debtor was solvent at the expiration of the curatory, and continued to be so for above six years after, therefore the children had themselves to blame for not recovering payment from the debtor, and that the curators were not answerable." On a reclaiming bill, the Lords, 6th March 1776, altered this interlocutor; but, on another reclaiming bill, — July 1776, they altered back again, and found the curators not liable. What induced the Court to pronounce the second interlocutor, finding the curators liable, seemed to be, that, in this case, the management of the curators had been very remiss,—no inventories made up; that the debts pleaded on were due by open account, which ought at least to have been constituted; and that, when action was brought by the children against the debtor, the other curators joined in defending him, and thereby protracted the time until at last he failed in his circumstances. But these things being better explained, the Lords pronounced the last interlocutor, finding the curators not liable. And Lord President observed, that, even as to minors, the decision was a safe one; otherways, by drawing the rein too short round the neck of curators, no persons might be found hardy enough to accept of the office.

20th November 1776, refused a reclaiming petition without answers.