extent, or to find caution for the sum of £17, 3s. 3d., and the sum of £2, for which reserve the petitioner's claim and the appellants answer thereto, and remit to the Sheriff to proceed in conformity with these findings; find no expenses due to or by either party in this Court, and decern."

Counsel for Appellant—Rhind. Agent—D. Murray, L.A.

Counsel for Respondent—M'Kechnie. Agents—T. & W. A. M'Laren, W.S.

Saturday, Oct. 30.

FIRST DIVISION.

[Lord Curriehill.

LORD CLINTON AND SAYE, PETITIONER.

Tutor and Pupil—Property—Feu.

Circumstances *held* to import necessity sufficient to warrant the Court to grant authority to a tutor and administrator-in-law to feu portions of his ward's estate.

The petitioner, as tutor and administrator-in-law for his son, the Hon. Charles Trefusis, the proprietor of Pitsligo and Fettercairn, applied for authority, *inter alia*, to grant feus of that portion of ground surrounding the village of Sandhaven, which formed a part of the Pitsligo estate. The Lord Ordinary having received reports on remit from Mr William Moncreiff, C.A., and Mr Fletcher N. Menzies, Secretary of the Highland Society, pronounced an interlocutor reporting the petition to the First Division. The circumstances of the case are set forth in the following note, which his Lordship subjoined to his interlocutor:—

"*Note.*—The petitioner, Lord Clinton, as tutor and administrator-in-law for the Hon. J. R. H. Stuart Forbes Trefusis, the proprietor of the estates of Sligo and Fettercairn and others, has presented this petition for authority to accept renunciations of leases, and to grant new leases of certain farms on these different estates, and to expend various sums of money in repairs and improvements on these farms, and to feu certain parts of the estate of Pitsligo. Although the petitioner is not a tutor under the superintendence of the Accountant of Court, or within the operation of the Pupils Protection Act, I considered it expedient to remit the application to Mr William Moncreiff, C.A. (the Accountant of Court), to inquire into the circumstances and to report, empowering him to consult with Mr F. N. Menzies, Secretary of the Highland Society, as to the amount of the proposed feu-duty and as to the leases, &c.

"After considering Mr Moncreiff's report, special powers were granted to the petitioner, by interlocutor of 16th July 1875, in terms of the prayer of the petition, except that part in which he asks authority to feu, as to which I entertained some doubts.

"The village of Sandhaven is situated on the sea-coast of Aberdeenshire, and forms part of the pupil's unentailed estate of Pitsligo; and the petitioner asks authority to grant feus of about 20 acres of land surrounding the village. It appears that herring-fishing is extensively carried on there, but that there is a great scarcity both of harbour and of house accommodation. With a view to enlarge and improve the harbour, the petitioner in 1873 applied to and obtained from Parliament a provisional order authorising his ward to execute various works which are at present being carried on, and by which it is expected that the harbour will be materially improved and enlarged. It also appears that there is a great demand at present for house accommodation in and about the village; that the whole available ground in and around the village belongs to the pupil, and that accommodation cannot be had upon any other ground in the district. Mr Menzies reports that the ground proposed to be feued is conveniently situated and well adapted for the purpose; and that he has no doubt that it will be a great advantage to the property if the feus proposed were to be granted. The present agricultural rental is stated to be £2 per acre, while the minimum rate of feu-duty recommended by Mr Menzies and approved of by Mr Moncreiff is £10 per acre.

"Although it is evident that if the 20 acres in question were to be all feued out at the rate suggested the return would be increased from about £40 to £200 per annum, it does not appear to me that, so far as regards the interests of the pupil and of the property of Pitsligo, there is any case of necessity for feuing made out by the petitioner. The income of his ward appears to be ample, and it would not be increased by the proposed feuing to such an extent as to make the granting the powers sought a matter of necessity, or even of great expediency, so far as regards the ward himself or the estate. The desire of fishermen and others to become householders in Sandhaven can hardly be said to make it a necessity for the ward and his estate that the proposed feus should be granted.

"On the other hand, if feus are not granted, the result may perhaps be—although I do not see this noticed in any of the reports—that fishermen and skippers may fail to resort to the harbour, and that the harbour dues may thus become inadequate as a return for the funds of the ward which have been expended in enlarging and improving the harbour.

"In the general case, the Court will not give powers to the guardian of a pupil or other person under disability to grant feus of his ward's heritage unless in the case of necessity—the avoidance of considerable loss to the ward's estate being generally held to amount to necessity. The general rule applicable to such cases is laid down in the case of *Maconochie*, 3d February 1857, 19 D. 366. As illustrating the class of cases in which such special powers may be granted, reference may be made to the cases noticed by Mr Moncreiff in his report, and to the case of *Alexander*, 26th June 1857, 19 D. 888. But in the latter case, and in the case of *Jamieson* (1868), the special powers were granted because the ward had himself, before becoming incapable, commenced feuing on an extensive scale, the interruption of which would have seriously diminished the value of his estate. And in the case of *Jamieson* (1873), where the Court refused to grant general feuing powers, they authorised the curator to grant three long leases of small specified lots of ground, after in-

quiring into the special circumstances of the case.

"On the other hand, as illustrating the class of cases in which authority will be refused, reference may be made to the cases of *Thomson* and of *Vere*, referred to by Mr Moncreiff, the last of which resembles the present in many points, and to the cases of *Watt*, 23d February 1856, 18 D. 652, and *M'George*, 8th March 1856, 18 D. 792.

"The question raised by the report of Mr Moncreiff is thus attended with difficulty, and as the 'necessity' for alienating a pupil's heritage is less a matter for legal proof than for the discretion of the Court, I have thought it better, instead of disposing of the case by a judgment, to report it for the consideration of the Inner House. And I should have followed the same course even if I had been clearly of opinion that the special powers sought ought to be granted, because I think that, as the petitioner has no contradictor, these powers, if they are to be granted at all, should not be granted by a single Judge.

"In the event of power to feu being granted, it is right to notice that, although the minimum feu-duty suggested by the petitioner was only £5 per acre, Mr Menzies and Mr Moncreiff are both of opinion that £10 should be the minimum. But it will be seen from the report of Mr Menzies, that even that sum is considerably less than the feu-duty paid for the existing feus in the village, eleven of which were granted by the late Sir John Stuart Forbes, a former proprietor, at the rate of £11, 19s. 7d. per acre; and the minimum feu-duty ought therefore not to be less than £12."

Authorities—*Maconochie*, 3d Feb. 1857, 19 D. 366; Fraser, Parent & Child, 493; *Crawford*, 6th July 1839, 1 D. 1183; *Buchan*, 7th March 1839, 1 D. 637; *Colt's Tutors*, M. App. *voce* Tutor 1, 1801, F. C.; *Mackenzie*, 27th Jan. 1855, 17 D. 314; *Kincaid*, 5th July 1856, 18 D. 1208; *Finlayson*, 22d Dec. 1810, F. C.

At advising—

LORD PRESIDENT—I think the general rule applicable to cases of this kind is that the Court will not sanction any alienation of a pupil's heritage by his tutors unless its necessity is made clear. But there may be a difficulty in determining what constitutes necessity, and I think the plain rule is that to be found laid down in the case of *Colt*:—"The Court may with propriety sanction an alienation of a pupil's heritage where the sale is necessary for the payment of debt, for the minor's aliment; and in cases of urgency to avoid loss. But the Court ought not to interfere merely from views of procuring future advantage to the minor."

Now, proceeding on that rule, it is clear that the Court went wrong in the case of *Vere* v. *Dale*, 20th Feb. 1804; Mor. 16,389, for their only reason for sanctioning that sale was that it was likely to be for the pupil's advantage. But in other cases, as that of *Mackenzie*, the Court have gone on high expediency, practically amounting to necessity. In the present case the circumstances are somewhat peculiar. It appears that in 1838 the late Sir J. S. Forbes began erecting the village of Sandhaven. He had a feuing plan, with roads and streets laid out, and including a space of twenty acres, and in Sir John's own time the scheme had been acted on to the extent of eleven feus. This was the state of matters when he died, and his daughter, Lady Clinton, succeeded. This application is made by her husband, Lord Clinton, the father of her son, the present proprietor, since whose succession a provisional order has been obtained from Parliament sanctioning expenditure on the works of Sandhaven harbour, and these are now being carried on, and a considerable sum has been already expended on them, and power is also given to borrow £10,000. It is obvious that the pupil has a strong interest in the prosperity of the village, and it is equally obvious that the order would never have been granted except upon the supposition that Sandhaven was an increasing place, and so it seems to me that the provisional order makes it necessary to grant this application. I do not entertain much doubt that we ought to grant it; on the contrary, I think the petitioner has made out a strong case of necessity.

The other Judges concurred.

The Court pronounced this interlocutor:—

"The Lords, on the report of Lord Curriehill, having heard counsel for the petitioner, and considered the petition and report by the Accountant of Court and Mr Fletcher Menzies, Remit to the Junior Lord Ordinary to grant the power and authority to feu as prayed for, but under condition that the minimum feu-duty shall not be less than twelve pounds per acre."

Counsel for Petitioner — Solicitor-General (Watson)—Lee. Agents—Mackenzie & Kermack, W.S.

REGISTRATION COURT.

Monday, November 1.

ANDREW AND WILLIAM GIRVAN *v.* JOHN CAMPBELL.

Franchise—Shootings—Defeasible Title—Valuation Roll.

A claimed the franchise as joint-tenant of land. The subject let was a rock in mid-ocean, and was let "with power to kill wild fowls, goats, and rabbits." The landlord reserved "full power to shoot, kill, and carry away fowls, goats, and rabbits." The rock was not stocked in any other way, nor was it capable of grazing cattle. The lease included a cottage valued at £7, 10s., and the total rent was £30, at which value the subjects were entered in the valuation roll. *Held* (diss. LORD ARDMILLAN) (1) that the right which A possessed as joint-tenant was of such a nature as to entitle him to the franchise; (2) that the power reserved to the landlord did not render A's tenure defeasible.

Andrew Girvan stood enrolled as a voter for South Ayrshire as "joint-tenant" with his brother of "Ailsa Craig," under missives of lease, dated October 1873. They had power under the missives "to kill fowls, goats, and rabbits on the Craig, but so as not to reduce the existing stocks thereof, and no fowls, goats, or rabbits are to be killed excepting during the