

it thus secures a benefit to the estate, while it at the same time relieves the tenants who in hard times are deterred from spending so much on artificial manures as they would otherwise do. Therefore, if your Lordships are disposed to agree, I am inclined to grant this application, subject to the condition that the money shall be spent in the way proposed.

LORD DEAS—The applicant here is not the proprietor of the estate; he is merely the *curator bonis* for the true proprietor. I entirely agree that a *curator bonis* is not entitled to allow a deduction of 10 per cent. to all tenants on a large estate like this. The tenants not only may but must stand in different positions. There may be different soils, or there may be different terms of lease, and one lease may be near an end while the other may be just beginning. If it had not been for the proposal to expend the money in a particular way for the benefit of the estate, I should not have been willing to grant the application. But I agree that it makes a most material difference when it is proposed to apply the sum allowed as an abatement in the purchase of artificial manures by means of which the estate will be benefited. It is on that condition, and on that only, that I am disposed to grant the powers craved.

LORD MURE—If this application had been one for power to grant a deduction of so much per cent. of rent over the whole estate, I would have had great difficulty in acceding to it, having regard to the rules which have been laid down and acted on in the cases to which we have referred, concurring as I do substantially in the main objection which your Lordship has stated to the operation in the ordinary case of a general and equal abatement of rents over so large an estate. But I look upon this application as one of a special kind, qualified as it is by the restrictions contained in the passage your Lordship has read from the note for the curator as to the manner in which the proposed abatement is here to be expended, and by the full discretion left to the curator to act in that and other respects as he may deem best, within certain limits, for the interests of the landlord and tenants on the estate, and I agree with your Lordship that the powers, so qualified, should be granted.

LORD SHAND—It was of course necessary that the *curator bonis* should come here for special powers, because he is not entitled to do anything of this sort at his own hand; but I have no hesitation in saying that this proposal should be granted, and without any condition. It cannot be said that this is not a case in which the tenants are not suffering, for on referring to Mr Lyall's report I find that he says that he has "visited the various farms, seen the different tenants, and made inquiry into the circumstances set forth in the note, and he has no hesitation in stating that he would recommend that a deduction of 10 per cent. should be made from the rents of crop 1878. The reporter may here state that he has come to the conclusion that an abatement is wanted, not altogether from any recent inspection he has made, but from his long and intimate knowledge of the district, and from his conviction that the tenantry as a body have sustained heavy losses during the past few years." And he concludes,

that "he considers it for the interest of the proprietor that assistance should be given to the tenantry in exceptional times of severe depression, to enable them to keep up the condition of the land and maintain their full stock, and that in the present instance it would be good and judicious management that the *curator bonis* should have the power granted to make the proposed abatement." This seems to me to be a case in which a deduction of 10 per cent. should be allowed to each of the tenants.

The Court granted the powers craved, subject to the condition above referred to.

Counsel for Petitioner—Kinnear—Mure. Agents—Mackenzie, Innes, & Logan, W.S.

Saturday, June 26.

FIRST DIVISION.

[Lord Lee, Ordinary.]

CAMPBELL AND ANOTHER (RANKINE'S TUTORS-NOMINATE), PETITIONERS.

Tutor—Special Powers—Power to Feu.

Circumstances in which the Court granted authority to tutors-nominate to feu part of the pupils' estate.

This was an application by the tutors-nominate of the three children of the late W. M. Rankine of Dudhope for power to feu portions of that estate, in such lots and upon such conditions as the petitioners might see proper and most advantageous. The petition set forth—"That being situated within the burgh of Dundee, the said estate of Dudhope is peculiarly adapted for feuing. A considerable portion of the estate has already been feued for villas and streets of houses, and applications from time to time are made to feu portions of the estate to be so built upon. That it will be greatly for the benefit of the estate if your Lordships shall see fit to grant to the petitioners power to feu out such portions of the said lands and estate, and that in such lots and upon such conditions and provisions as your petitioners may see proper and most advantageous for the said estate from time to time; provided always that the rate of feu-duty for the portions so feued shall not be less than at the rate of £24 per acre." It appeared from a certified rental of the estate that the gross rental amounted to £3763, 5s. 7d., and that £2562, 9s. 2d. of that rental was composed of feu-duties. It further appeared that the heir was only three years of age.

Being an appeal to the *nobile officium* of the Court, and not within the provisions either of the Act 20 and 21 Vict. cap. 56, sec. 4, or of the Trusts (Scotland) Act 1867, sec. 16, the petition was presented to the Inner House, and was remitted to the junior Lord Ordinary to inquire and report, Mr A. F. Adam W.S., having first been appointed curator *ad litem* to the three pupils, the eldest of whom was heir of provision to the estate. The Lord Ordinary (LEE) remitted to Mr James Salmond, architect and surveyor, Dundee, to examine the subjects proposed to be feued, to inquire into the facts and circumstances set forth

in connection with that proposal, and to report. Mr Salmond's report was in these terms:—

"In obedience to the remit contained in the interlocutor, of which a copy is prefixed, the reporter has examined the subjects proposed to be feued, and inquired into the facts and circumstances set forth in the petition, and he begs leave to report as follows:—

"The estate of Dudhope is wholly within both the parliamentary and municipal boundaries of the burgh of Dundee. Its extent is 382 acres imperial or thereby, and of this about 80 acres have been already feued, and that principally since the year 1869.

"Previous to that date the building extension of the town consisted mainly of erections upon vacant spaces lying nearer to the centre than the estate of Dudhope, but these being almost all now built upon, the lands of Dudhope are at this present time the most centrally situated ground for feuing purposes within the burgh, and are much sought after.

"Lochee, a large and prosperous suburb, being now continuously joined by buildings to Dundee proper, is immediately on the west of Dudhope, and as almost all the ground on the east of Dudhope has been taken up and built upon, the natural extension of the town has been rapidly closing-in upon Dudhope on the south, east, and west boundaries thereof.

"The ground has been feued for various purposes—the better sites for villas and self-contained houses, others for shops and workmen's houses, and a few of the sites for public works.

"It is my decided opinion that it would be a very great inconvenience to the public of Dundee were this property to be withdrawn from the market for a considerable time as a feuing subject, and also a very great loss for the estate itself.

"Excepting some of the southern portions of the lands, which are let at about £4 per acre, the greater portion is of a very inferior description for agricultural purposes, bringing rents of from £1 to £2 per acre, while the rates obtained for the portions feued have varied from £16 to £64 per acre, the rate of feu-duty depending upon the situation. The average rate for some of the better class villa lots nearest to the centre of the town may be stated at from £40 to £50 an acre, while in other less favourable localities a smaller rate is to be expected, varying from the minimum rate of £24 per acre upwards."

The Lord Ordinary, holding that Mr Salmond's report showed that the case was of the class of which *Alexander*, June 26, 1857, 19 D. 888, and *Lord Clinton*, October 30, 1875, 3 R. 62, were illustrations, reported that he was of opinion that power to feu might be granted, and that the minimum rate of feu-duty should be £24 per acre per annum. His Lordship further reported that "it appears to require consideration whether the conditions and provisions should be left to the discretion of the petitioners, or whether a form of feu-charter should be adjusted and approved of by the Court. The Lord Ordinary may mention that in the case of *Clinton* (as appears from the prayer of the petition) the Court was asked to approve of a form of feu-charter or feu-contract."

At advising—

LORD PRESIDENT—The granting of feuing

powers always raises a very delicate question, and requires to be very particularly attended to. As my brother Lord Deas observed in the case of *Clinton*—"It is clear enough from the case of *Vere* that our authority is not an absolute protection to a tutor against subsequent responsibility, so we must be careful not to mislead the tutor." Now, I entirely agree in that observation, and I think we also gather from the case of *Clinton* that the true test of the safety and propriety of granting such an application is the consideration whether there is an urgent necessity for the step in order to avoid loss, it not being sufficient in order to justify our granting the power that it will procure an advantage to the estate. Now, taking that test, I am quite clear that a case for granting the powers asked for has been made out here. The estate is surrounded by houses on three sides, and is not fitted for any other purpose than building. It is plain therefore that any attempt to apply it to any other use would result in loss. I think that the petition should be granted.

LORD DEAS, LORD MURE, and LORD SHAND concurred.

The Court granted authority to feu as craved, at a minimum feu-duty of £24 per acre per annum, without approving of any special form of feu-charter.

Counsel for Petitioner—Asher—Kirkpatrick.
Agents—Pearson, Robertson, & Finlay, W.S.

Friday, July 2.

FIRST DIVISION.

[Lord Rutherford Clark, Ordinary.

LINDSAY (MACGREGOR'S TRUSTEE) *v.*

ADAMSON & RONALDSON.

Bankruptcy—Statute 1696, c. 5—Reduction.

On November 3, 1877, Messrs A. accepted bills from Messrs M., who were part-owners and ship's husbands of a vessel, against her freight "Cronstadt to London," the freight being assigned to them, with power to collect the same on arrival. The vessel's destination was subsequently altered to Leith, and the freights on her arrival there, early in December, were collected by Messrs M., who placed the amount at their bank account, and sent cheques to Messrs A. to the amount of the bills. Messrs M.'s estates were sequestrated on 11th January 1878. In an action by Messrs M.'s trustee against Messrs A., for reduction of the cheques and payment of the amount of the bills, held that though payment was made within 60 days of bankruptcy, it was not struck at by the Act 1696, having been made in implement of the original agreement; and the defenders assolizied accordingly.

Messrs Donald R. Macgregor & Co., merchants and shipping agents in Leith, were part-owners and managing owners and ship's husbands of the steamer "Mikado," which was to sail from Cron-