

1861.
Feb. 11th.

DUMBRECK, APPELLANT.
STEVENSON, ET AL., RESPONDENTS.

Father's Right of Administration.—A father is entitled, as his child's administrator, to demand his child's trust money.

Where a father was in embarrassed circumstances the trustees were held justifiable in paying to him a sum of money belonging to the child, the father having given caution substantial and unobjectionable at the time, though extrajudicial, against misapplication.

THIS was an action of multiple-pounding and exoneration brought by trustees to be discharged from their administration. The Appellant charged them with having unduly paid to his father a sum which the father afterwards misapplied.

The defence of the trustees was that before paying the money to the father, they exacted caution from him against misapplication. They insisted that the father was by law, as the child's administrator, entitled to receive it, and that if the money was afterwards misappropriated they were not responsible.

The Court of Session (First Division) on the 18th February 1857 repelled the objections of the Appellant, who accordingly presented his Appeal to this House.

Mr. *Mundell* and Mr. *Mair* for the Appellant.

Mr. *Rolt* for the Respondents.

The noble and learned Lord on the Woolsack delivered the following opinion :

Lord Chancellor's
opinion.

The LORD CHANCELLOR (*a*) :

It is allowed that by the general law of Scotland the father is the administrator for the pupil ; and

(*a*) Lord Campbell.

when we look at this settlement we see that there clearly was nothing in the settlement that was at all to abridge the power of the father as the administrator for the son. Then that being so, we have to consider whether the mere poverty of the father would be a sufficient ground for refusing the payment to him of what was due to the son. I am clearly of opinion that poverty of itself would not be a sufficient ground. Men in Scotland and in England, although they are poor, are honest, and it is unreasonable to say that a cottager whose son has had a small legacy left to him is not to be entitled, because he is poor, to receive the money which may enable him to send the boy to school and give him a chance of making his way in the world, but that he must waste his money in applying to the Court of Session for security that it shall be duly administered. Looking at the admission (of which I give the Appellant the advantage) that there was something more than pure poverty, that there was embarrassment of circumstances, that might have rendered something more necessary to be done than barely paying over the money to the father and allowing him to dispose of it as he pleased. I think, upon the authority of *Govan v. Richardson* (a), and the other cases which have been referred to, that there would have been strong ground for contending that it would have been unjustifiable in this case for the trustees, under the circumstances which the trustees acknowledge to have existed, simply to pay the money over to the

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(a) Morr. 16,263 (12th Feb. 1633.), where the Court held that as the father "was but a poor man he ought to give caution lest he might spend the money to the bairn's prejudice." The other cases that were cited were the following, viz., *Wilkie*, Feb. 1688, Morr. 16,311; *Graham v. Duff*, 22nd Feb. 1794, Morr. 16,383; *Johnstone v. Wilson*, 11th July 1822.

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father. But instead of that, they do what, if there had been an application to the Court, the Court would have directed. They obtain caution from two cautioners, who were substantial at that time, and their solvency was inquired into and established to be perfectly sufficient for this purpose. And it was under these circumstances that the payment was made. Whether it was made directly to the father or to Waddell the cautioner, and the father got the money afterwards seems to me immaterial. Whether it was given to Waddell, or whether it was given to the father, I think that after the caution had actually been given the trustees had a right to make the payment as they did.

My Lords, I think it would be a waste of your Lordships' time if I were to enter more into detail upon the facts of the case and the law which belongs to them, and I shall therefore only move your Lordships that the Interlocutors be affirmed and the Appeal dismissed. But as the Appellant is suing *in forma pauperis* of course there will be no costs.

Interlocutors affirmed and Appeal dismissed.

DODDS AND GREIG—DEANS AND ROGERS.