

No 20.

was dubious which of the parties would succeed ; Alexander Bonnar being one of the same name, though a remoter relation than Ballantyne, who now eventually comes to have it *jure sanguinis*. 2do, Ballantyne's ratification after his uncle's death, when there was *jus delatum* to him, takes off all suspicion of circumvention.

*Replied*, As Ballantyne was deceitfully induced to subscribe the contract, so he was imposed upon to ratify the same, the very day after his uncle's death, while he was ignorant of his having right as heir to the defunct's estate ; which was but a continuation of the former fraud.

THE LORDS, before answer, allowed a mutual probation; Ballantyne to prove the qualifications of circumvention, and Neilson to prove his answers.

And the foresaid qualifications of circumvention being proven, the LORDS found the agreement and bond were elicited by fraud and circumvention; and that the same fraud and circumvention was continued in impetrating the ratification; so as it cannot confirm and validate the foresaid fraudulent deeds; and therefore reduced the contract, bond and ratification.

*Fol. Dic. v. 1. p. 333. Harcarse, (FRAUD & CIRCUMVENTION.) No 502. p. 139.*

No 21.

1733. July 13.

SHEARER against SOMERVILL.

A HUSBAND and wife, during the marriage, having made two mutual onerous deeds in favour of one another, to this import, that the survivor should bruike all; it was *objected* to the wife, by the representatives of the predeceasing husband, That she having privately, without the knowledge of her husband, executed a revocation of the deed granted by her; this, though effectual in law to revoke an onerous deed, was yet an intended fraud, sufficient to bar her from reaping any benefit of the deed granted by her husband in her favour.—THE LORDS, notwithstanding, repelled the objection. See APPENDIX.

*Fol. Dic. v. 1. p. 334.*

No 22.

A purchaser of lands at a voluntary roup, is not liable to a personal creditor arresting the price; if he prove that the purchase was made on account of the seller.

1743. January 19.

JAMES WATSON against DAVID MAULE.

HEPBURN of Keith having exposed his estate to a voluntary roup, he prevailed on David Maule to offer on his account, for the same, to a certain extent, and by a letter obliged himself, *if the lands fell into Mr Maule's hands, to relieve him of the same*,

It happened that Maule was the highest offerer, so the lands were declared to belong to him; and, in terms of the articles, he enacted himself to pay the price. James Watson being creditor by two bills of Mr Hepburn's, arrested the price of the lands in Maule's hands.