

ordained Mr Mark to be confronted as to these expressions, with Mr A. Swinton ; and being called in this day, Mr A. Swinton averred it in his face ; and, by the Paesident's order, for refreshing Mr Mark's memory, rehearsed the matter of fact ; which Mr Mark denied. However, he agreed with the pursuers at last, and gave them a part of their legacies.. *Vid.* 10th Dec. 1679.

No 58.

1679. *December 10.*—In the action Mr William Gairden, Mr John Frank, and other legatars of Isobel Ker, relict of Mr Robert Bruce, against Elphingston of Quarrel, as being nearest of kin to the husband, ' The LORDS having heard Lord Newton's report, they found the grounds of fraud condescended upon by Quarrel not relevant, viz. that Mr Robert Bruce the husband had interdicted himself to the said Isobel his wife, and so she could not, being an interdictor, take a disposition or assignation from him, and that she renewed her husband's bonds, and lent out his monies in her own name in fee, he not being present, and the bonds not being read to him ; and therefore they preferred Mr Alexander Swinton and the rest of the legatars, and found the letters orderly proceeded against Hay of Woodcockdale the debtor.' These acts of circumvention seem very pregnant ; only there were two exceptions against the interdiction : *1st*, That it does not hinder the free disposal of moveables, as these sums were. Only it is *alleged*, that if a man's whole estate consist in moveable sums, (as Mr Bruce's sums were), shall not the law permit an interdiction to secure that to him, as it doth heritage to another? But there is no law nor practice for this. *2do*, The interdiction seemed to be null, being of a husband, (who in law is *dominus et caput familie*), to his wife. This were to invert the order of nature ; besides, he permitted her to manage his affairs, lift his monzys, renew his bonds, &c. and he gave her right thereto ; all which, though they were deeds of much facility and weakness, yet they were acts lawful in themselves. I hear that, in the year 1662, the Lords found, in the case of the Laird and Lady Milton, that a man could not be legally interdicted to his wife, but the power of administration recurred back to his person again by virtue of his *jus mariti*. See HUSBAND AND WIFE.

*Fountainball, v. i. p. 29, & 68.*

1752. *November 24.* BARBARA MACKIE and Husband *against* MAXWELL, &c.

JEAN MACKIE, heiress of Maidland, being quite abandoned to drunkenness, which made her an easy prey to sharpers, and having thereby involved herself in much debt, was persuaded to divest herself of her lands in favours of her younger sister Barbara, who was the next heir, upon condition of undertaking the burden of her debts, and securing her in an yearly annuity. Barbara, reckoning that by this transaction she had paid the full value of the lands, brought a reduction against several persons, mostly innkeepers in Wigton, of

No 59.

A disposition of land was reduced, upon the dissolution and profligacy of the disponent, and upon the great inequality in the bargain, tho' there was neither fraud nor circumvention.

No 59.

dispositions they elicited from Jean Mackie of parcels of land lying about the town, before the pursuer's purchase. By the proof it came out, *imo*, That Jean Mackie was a habitual drunkard; that she sold her very clothes to purchase liquor, scarce leaving herself a rag to cover her nakedness; and that it was in any person's power, by bribing her with a few shillings, to make her accept of a bill for any sum, or to make her dispoñe any part of her lands. *2do*, That the dispositions challenged were granted for no adequate cause.

Upon these and other facts, the Court had no difficulty to find the reasons of reduction upon the head of fraud and circumvention, relevant and proved.

The singularity of this case is, that however well founded the reduction was, there was no ingredient of fraud or circumvention in the case. There was not the least evidence that Jean was imposed upon, or circumvened in any manner, nor was there a necessity for such indirect dealing. Five shillings to buy drink would have tempted her at any time, drunk or sober, to give a dispoñtion to any subject that belonged to her. And she herself being called as a witness, deponed, that she granted these dispositions voluntarily, knowing well what she did.

Therefore fraud and circumvention must be laid aside; and then where lies the ground of reduction? It is certainly unjust to take advantage of weak persons, who cannot resist certain temptations; and to make use of such temptations to rob them of their goods. Let us examine the foundation of a judicial interdiction. It is nothing but a notification to the lieges of the weakness of the person interdicted, and to caution them against dealing with that person, unless upon an equal footing. It was therefore wrong in the defenders to take advantage of the known facility of Jean Mackie, and to elicit from her dispositions for a song, at least far under the true value.

Where a weak person makes a deed, perhaps foolish, but voluntary, in favour of any person who is entirely passive, such a deed admits of a very different construction. It is not reducible, however strong the lesion may be.

Elchies *observed*, That, for ought he knew, the disposition in favour of the pursuer might be under the same challenge; but that, as there was no reduction of it, the Court were not called upon to take it under consideration.

*Fol. Dic. v. 3. p. 245. Sel. Dec. No 22. p. 25.*

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1789. November 17.

Mrs HELEN SCOTT *against* ARCHIBALD and JEAN JERDONS, and their Tutors and Curators.

No 60.

A deed was sustained, though the grantor, at the date of it, was in his

AN action was brought by Mrs Scott, the niece and heir at law of Mr Jerdon of Bonjedward, for setting aside certain deeds executed by him in the year 1783, in favour of Archibald and Jean Jerdons, his grandchildren by a natural daughter.