

No 337.

1758. July 7. ROBERTSON *against* KING'S ADVOCATE.

ALL British statutes are presumed to be passed on the first day of the session on which they are made. This is now altered by act 33d Geo. III.

*Fol. Dic. v. 4. p. 135. Fac. Col.*

This case is No 447. p. 11280, *voce* PRESCRIPTION.

No 338.

A testament made in favour of a stranger, by a person in a wavering and infirm state of mind, without any rational motive, will be reduced, tho' not where made in favour of a near relation.

1759. January 26. THOMAS TULLOCH *against* VISCOUNT OF ARBUTHNOT.

IN a process at the instance of a brother next in kin, for voiding a testament made by his deceased sister in favour of a stranger, it came out upon proof, that some time before making the testament, the testatrix, being seized with madness, was locked up; and that not long after making the testament, her madness recurred, and continued till her death; that at the time of the testament she was in a wavering state, at times better, at times worse; in some particulars rational, in others little better than dilirious; never perfectly sound of mind. In particular, it appeared from the proof, that when in better health she expressed much affection for her brother the pursuer; but when the disease was more upon her, she appeared to have some grudge at him without any cause. The testament was holograph, and the scroll she copied was furnished by the defendant, in whose favour the testament was made, who had ready access to her at all times, while her brother lived at a distance. In reasoning upon this case, it was yielded that the woman was capable of making a testament, and that the testament challenged might be effectual at common law. But then it was urged, that though a testament made in the condition of mind above described, preferring one relation to another, a son to a father, or a sister to a brother, might be supported in equity as well as at common law; yet that the testament in question, proceeding not from rational views, but from a diseased mind, occasioning causeless resentment against the pursuer, ought not to be supported in equity, being a deed which the testatrix herself must have been ashamed of, had she recovered health. Weight also was laid upon the following circumstance, that the testament was made *remotis arbitris*, and kept secret; which showed not only the defendant's undue influence, but also his consciousness, that had the testatrix been open to advice, she would have been easily diverted from making so irrational a settlement. In this view, it was considered as a wrong in him to take from her, in these circumstances, such an irrational deed; and consequently that he ought to be restrained in equity from taking any benefit by it. The testament was reduced.

*Fol. Dic. v. 4. p. 132. Sel. Dec. No 151. p. 207.*