

William Forbes of Tolquhon, - - - *Appellant*; Case 13.
 Alexander Forbes of Ballogie. - - - *Respondent.* Fountain-
 hall, 2 Jan.
 1711.

10th April 1712.

Fraud and Circumvention.—In a reduction of sundry deeds upon this ground, various circumstances found irrelevant or not proved.

SIR Alexander Forbes of Tolquhon, deceased, the appellant's uncle, had various transactions and dealings with the respondent; in the course of which sundry deeds were granted by the former in favour of the latter, which form the subject of the present question.

In October 1694, Sir Alexander granted bond for repayment to the respondent of 10,000*l.* scots, which the bond recites to have been borrowed from him. On the 4th of September 1697, Sir Alexander further executed a disposition in favour of the respondent, disposing to him, his heirs, and assignees, heritably and irredeemably all his right, title, and interest in, and to the lands of Loanmay; and the deed recites, that the same was granted for onerous considerations. On the 16th of May 1699, Sir Alexander by another disposition executed by him in favour of the respondent, disposed to him, his heirs, and assignees, heritably and irredeemably all his right, title, and interest in and to the lands of Shives; and this deed also recites, that it was granted for onerous considerations. To these lands of Loanmay and Shives, Sir Alexander's own titles were not clear, there being great incumbrances upon the same. And he also by sundry deeds, conveyed to the respondent several adjudications and other incumbrances which he had upon these and other lands.

Various reports being circulated in the country respecting these transactions, Sir Alexander, on the 2d of September 1699, executed a deed ratifying and confirming to the respondent the said 10,000*l.* bond, and all his right, and title, to the said lands of Loanmay and Shives, and declaring that the dispositions thereof, were not in satisfaction of the bond, or any part thereof, but that the bond still remained due and unpaid: And further on the 7th of February 1700, Sir Alexander by another deed, did disclaim and renounce to the respondent, his heirs, and assignees, all trust which might be alleged against their rights and titles to the said lands of Loanmay and Shives. These lands had been purchased and acquired by Sir Alexander himself.

On the 4th of December 1700, Sir Alexander by a disposition executed by him, disposed to the respondent, his heirs, and assignees, heritably and irredeemably his lands of Upper Tolquhon, (being part of the family estate); and the respondent of the same date executed a back bond in Sir Alexander's favour, declaring that this disposition was made to him only as a security for such debts, as were therein mentioned, for which the respondent stood bound; and that upon payment thereof, the
 respondent,

respondent, his heirs, and assignees, would reconvey to Sir Alexander and his heirs.

On the 18th of April 1701, Sir Alexander executed an entail of his family estate, including the lands last mentioned, with the incumbrance thereon, in favour of the appellant, and certain other heirs, the respondent being one of the substitutes therein.

About this period, Sir Alexander was challenged by one Thomas Forbes of Watertown, with having made irredeemable conveyances of his estates to the respondent; but he denied the same, and entered into a written contract of wager, with this Thomas Forbes, denying that he had given irredeemable rights of his lands to the respondent, and obliging himself to pay 1000*l.* scots, if these deeds were irredeemable, and he was to receive a like sum, if they were found to be only upon trust and security.

After this, on the 24th of June 1701, Sir Alexander executed his last will and testament, setting forth among other things, that he had granted the aforesaid bond for 10,000*l.* and disposed the lands of Loanmay and Shives, to the respondent for onerous considerations, and that he had made the disposition of the Upper lands of Tolquhon to the respondent for his security and indemnity; and he thereby appoints seven gentlemen to be curators, to the appellant, the respondent being *sine quo non*, and named the respondent and two other persons to be his executors. He died soon after on the 31st of July 1701, at the age of 77 years.

The appellant being a minor at the time of his uncle's death, when he came of age in 1706, brought an action before the Court of Session for reduction of the bond and deeds granted in favour of the respondent, as having been obtained by fraud and circumvention, when the grantor had lost his judgment, and when the respondent could not instruct the onerous considerations thereof. On these points the Court allowed the parties a joint proof, and many witnesses were examined on either side. After hearing this cause, and considering the proof adduced, the Court by interlocutor on the 2d of January 1711, "repelled the whole reasons of reduction of the writs libelled and produced, as irrelevant or not proved." The appellant reclaimed, but on the 8th of February following the Court adhered to their former interlocutor.

Entered, 13
Dec. 1711.

The appeal was brought from "an interlocutory sentence or decree of the Lords of Counsel and Session, pronounced the 2d day of January 1710-11, and the affirmance thereof."

The qualifications of fraud insisted on by the appellant were, that Sir Alexander Forbes had had a free estate of £10,000 Scots *per annum*; but that before his death, being old and infirm, he gave himself up to the management of the respondent and a housekeeper; and though he lived penuriously, he contracted in that period great debts, and executed in the respondent's favour the deeds before mentioned: that it appeared from the contents of these deeds and the contract of wager that he was ignorant of their import: that, by the respondent's means, the letters of his relations were kept back, and access denied to them: that his memory and judgment were de-
cayed

cayed in so much that he did not know his oldest friends: that he would have craved his tenants for rents paid only the day before, &c.

The respondent answered, that the deeds bearing to be for onerous causes proved their recitals, unless the contrary was proved: that Sir Alexander was short sighted, of a very peculiar humour, and always craved his tenants for rent when he saw them: that the appellant's witnesses were persons of inferior degree, but that the respondent had proved by noblemen, gentlemen, and other persons of probity, that Sir Alexander conversed with them as rationally as ever, during the period in question.

After hearing counsel, *It is ordered and adjudged that the petition and appeal be dismissed, and that the sentence or decree and the affirmance thereof complained of in the said appeal be affirmed.*

Judgment,
10 April,
1712.

For Appellant. *Edward Northey, Sam. Dodd.*
For Respondent. *Robert Raymond, David Dalrymple.*

William Dunbar, second Son of Sir William

Case 14.

Dunbar of Durn, - - - - *Appellant;*
Colonel John Erskine, - - - - *Respondent.*

16th May 1712.

Act of Parliament 1693, c. 9.—The accounts of a magazine keeper, taken and verified in terms of this act, need not be verified anew before the Court of Session.

Expences.—Expences of the Court below given against a Respondent.

THE Privy Council of Scotland, in 1690, by a proclamation ordained the Commissioners of Supply to furnish forage for the forces, then stationed in the several counties, to prepare magazines for keeping the same, and to appoint the Collectors of Supply to be magazine keepers. The appellant was Collector of the Supply and magazine keeper, for the county of Banff.

More money having been advanced in some parts of the kingdom for forage, than was due on account of the supply, in 1693, an Act of Parliament was made for discharging the same, and the method of proceeding and determining upon claims was laid down by that act.

1693. c. 9.

In consequence thereof applications were made to a committee of the Privy Council, on behalf of the freeholders of the county of Banff, and by the appellant who gave in a claim for 1727*l.* 3*s.* 10*d.* scots, due to him as magazine keeper. There being some difficulty in settling the proportions due to the several freeholders of the county for their furnishings, Sir James Abercromby and Mr. Duff, their two representatives in parliament, to whom they had given authority to act for them, assigned and made over the whole arrears, due for the county of Banff, to the respondent, amounting to the sum of 6200*l.* scots, in which was included the 1727*l.* 3*s.* 10*d.* claimed by the appellant with a power to receive the same.

The