

After hearing counsel, “it is ordered and adjudged, that the said sentence or decree of the 30th July, 1729, be and is hereby reversed, and that the said decree of the 2d of the same month be, and is hereby revived and affirmed; and it is hereby further ordered, that the L.1000 secured by the bond in the appeal mentioned, and interest for the same from Martinmas 1725, be paid to the appellant.”

1730.
GORDON,
v.
CRAUFORD.
Judgment
April 9, 1730.

For the Appellant, *C. Talbot*, and *Ro. Dundas*.
For the Respondents, *P. Yorke*, *D. Forbes*,
C. Areskine.

JAMES GORDON of Craigland, *Appellant*;
PATRICK CRAUFORD, the Father, } *Respondents*.
and PATRICK CRAUFORD, the Son, }

28th April, 1730.

FRAUD.—Fraud and circumvention inferred from the distressed state of the granter of a disposition, the deceitful terms of the writings, and the great inequality of the bargain.

PATRICK CRAUFORD was, in virtue of certain decreets of adjudication, in possession of the estate of Craigland, (worth L.220 per annum,) the property of James Gordon (Appellant) who was in very distressed circumstances, and had been for several years a prisoner for debt. Taking advantage of

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his necessitous situation, Crauford obtained from him, in consideration of some temporary relief, a disposition to the estate on very disadvantageous terms. The disposition recited, "that the same" "was granted for certain sums of money now and" "of before advanced, and for certain other onerous" "causes and weighty considerations equivalent to" "the true worth and value of the premises." At the same time no more (it was admitted) than L.120 had been paid, and for this Gordon's bond was taken.

A back bond was granted by Crauford narrating the disposition, and declaring that in consideration thereof, he should pay to Gordon an annuity of L.50 per annum for three years; and that so soon as he had discharged all the incumbrances on the estate, but not sooner, a liferent alimentary provision, to be settled by arbiters, should be paid to Gordon. The benefit of all eases, or deductions to be obtained from creditors, was to belong to Crauford, and not to Gordon. By a subsequent letter, Crauford promised to allow at the rate of sixteen years purchase for the lands, from which were to be deducted the debts, and all charges incident to the sale and management of the property and to the payment of the debts. The current value of such estates at that period was alleged to be thirty years purchase of the free rental.

Gordon having, by the assistance of other friends, been released from prison, brought an action of reduction against Crauford and his son, (the estate having been conveyed to him by his father) for setting aside the above disposition, on the ground of

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fraud and circumvention, he repaying with interest what money he had actually received in consideration thereof. In support of this action, he argued on the several circumstances inferring fraud, obviously arising from his situation at the time of the transaction, and from the nature of the securities themselves pretended to be given to him in consideration of an absolute conveyance of his estate.

The Lord Ordinary “ having considered the former procedure, with the condescendence of the reasons of reduction given in for the pursuer, and the defender’s answer thereto, together with the declaration emitted by Mr. Hamilton of Olivestob, with consent of both parties, with the two missive letters relative thereto, and back bond granted by Mr. Crauford to Mr. Gordon, and other writs in process, finds that there is no sufficient evidence adduced, that Mr. Crauford, by any unwarrantable means induced Mr. Gordon to dispoise to him the estate of Craigland, but that the same came voluntarily on Mr. Gordon’s part; and therefore finds that the said disposition ought to subsist, and repels the reasons of reduction thereof libelled and contained in the memorial of condescendence given in for the appellant, and assoilzies; but finds that Mr. Crauford is bound to communicate to Mr. Gordon the benefit of any eases or compositions he has made or shall make with the creditors of Craigland, and declares that he will hear parties’ procurators further in relation to the particulars performable by Mr. Crauford in the execution of his parts of the agreement; and that for rectifying any

November 6,
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“ grounds of complaint that may have been in-
 “ cident in the execution thereof, and for making
 “ the said execution more ready and effectual.”

Upon a petition to the Inner House, the follow-
 ing interlocutor was pronounced: “ Find that
 “ there is no sufficient evidence adduced, that Mr.
 “ Crauford by any unwarrantable means induced
 “ Mr. Gordon to dispoise to him the estate of Craig-
 “ land; but that the same came voluntarily on Mr.
 “ Gordon’s part; find that the said disposition
 “ ought to subsist; and repel the reasons of re-
 “ duction libelled and proponed there against.”

Entered
January 28,
1730.

The appeal was brought from these two interlo-
 cutors of the 6th November, 1729, and the 14th
 January, 1730.

The argument resolved into discussion upon the
 special facts of the case.

Judgment
April 28,
1730.

After hearing counsel, “ it is ordered and ad-
 “ judged that the said interlocutors complained of
 “ be and are hereby reversed; and the deed of
 “ disposition in question be reduced; and it is
 “ hereby further ordered, that the lands contained
 “ in the said disposition do stand charged to the
 “ respondent, Patrick Crauford, the father, for the
 “ money by him paid for the said estate, or for dis-
 “ encumbering the same, together with interest for
 “ such money.”

For Appellant, *P. Yorke, Dun. Forbes, Ro.
 Dundas.*

For Respondents, *C. Talbot, C. Areskine, Will.
 Hamilton.*