

And it makes no difference in this rule, that the granter had reserved power, in a previous deed executed in good health, to dispose of or charge the estate on deathbed; because, if this were allowed, every man might have it in his power, by so doing, to annul the law of deathbed altogether. The bonds of provision, therefore, executed in virtue of the power reserved, were null and void, on the ground of deathbed, and good neither for principal nor for interest. *2d* and *3d*, But even assuming them good as to principal, it did not follow that interest was chargeable from Lord Forbes' death; because Lady Forbes had disposed of that question by the agreement, and she was bound, as liferenter, in any event, to keep the heir free of such charge.

1758.

WILSON, &c.
v.
BURNTON, &c.

After hearing counsel, it was

Ordered and adjudged, that the bond of provision in question having been granted in execution of a faculty reserved in the contract of marriage, the exception of deathbed did not lie either against the principal sum of £2000, or the annualrents or interests thereof: and it is therefore ordered, that so much of the said interlocutors as are complained of (sustaining the defence of deathbed to the extent of the annualrents) be reversed, and that the defence of deathbed be repelled; and it is further ordered, that the cause be remitted to the Court of Session in Scotland, to proceed therein accordingly.

For Appellants, *Ro. Dundas, C. Yorke.*

For Respondent, *W. Murray, Al. Forrester.*

NOTE.—*Vide* Kames, p. 109; also Kilkerran. The Lord Chancellor, Hardwicke, according to the note on his papers, written by himself, sustained the deathbed deed, because it was executed in virtue of a reserved faculty.

[Mor. 4549.]

JOHN WILSON, Collector of His Majesty's Customs at Stockton, in the County of Durham; and RICHARD SWANSTON, Solicitor of Customs, His Attorney. - } *Appellants;*

ROBERT BURNTON, and JAMES CHALMERS, both Merchants in Edinburgh, - } *Respondents.*

House of Lords, 20th Feb. 1758.

FOREIGN DECREE.—Effect of foreign decree in seeking its execution in the Courts of this country.

The Court of King's Bench in England, in a suit brought

1758. there by Scotch merchants, against his Majesty's collector
 of customs at Stockton in Durham, for delivery of wheat,
 which belonged to them, and which was shipped from Leith
 to New Zealand in their ship, but which had stranded in the
 course of its voyage near that port, and the wheat saved by
 the collector and others, and taken possession of, subject to
 a claim of salvage, had pronounced judgment in favour of
 Wilson with £60 costs. Wilson then raised action against
 the respondents for the £60 costs, in the Court of Session,
 within whose jurisdiction the respondents resided; and
 founded on his decree in England, with the view of obtain-
 ing decree conform to the decree given in the Court of
 King's Bench. In defence, it was stated that the decree was
 iniquitous. In reply, it was answered, that it was not compe-
 tent to enquire into the merits of that decree; and that it
 must be deemed *quoad res judicata pro veritate habetur*.
 On report to the whole Lords, the Court refused to give ex-
 ecution for the £60 sterling of costs, awarded by the Court
 of King's Bench, and sustained the defence founded on the
 iniquity of the decree.

Jan. 7, 1756.

Against this interlocutor the present appeal was brought.

This day being appointed for the hearing counsel, upon
 the petition and appeal of John Wilson, complaining of an
 interlocutor, 7th Jan. 1756, made on behalf of Robert Burn-
 ton and James Chalmers, and praying reversal of same; to
 which appeal the said Robert Burnton and James Chalmers
 have not put in their answer, though peremptorily ordered
 so to do. Counsel were accordingly called in to be heard;
 and one counsel only appearing for the appellants, (none ap-
 pearing for the respondents); he was heard to state and ar-
 gue the case on behalf of the appellants. And having pray-
 ed a reversal of the interlocutor complained of, the said in-
 terlocutor was read; and then the counsel was directed to
 withdraw, and due consideration had of what was offered.

It is ordered and adjudged, that the said interlocutor com-
 plained of be reversed; and it is hereby declared, that
 the respondents are liable to answer and pay the sum of
 sixty pounds sterling costs, awarded by the Court of
 King's Bench; And it is further ordained, that the de-
 fence of the said respondents be repelled; and that the
 said respondents do accordingly pay the said sum of
 sixty pounds to the appellants, together with their ex-
 penses of the suit in the Court of Session; and that an
 account thereof be given in. And it is further ordered,

that the said Court of Session do give proper directions for carrying this order and judgment into execution.

1758.

GRAHAM
v.
KER.

For Appellants, *C. Yorke*.

Note.—“ The judgment was reversed, singly upon this footing, as I am informed, that in England the decrees of sovereign courts abroad are put in execution by the Courts of Westminster-Hall, without admitting any objection against them.”—Kames’ Decisions, p. 131.

The Act 12 Queen Anne, c. 18, made perpetual by 4 Geo. I. c. 12. entitles the party who has a claim for salvage to payment within 30 days after the service performed, “ and in default thereof, that the ship or goods shall remain in the custody of the collector until paid, or good security given.”

[M. 3529.]

JAMES GRAHAM, - - - - - *Appellant* ;
ELIZABETH KER, - - - - *Respondent*.

House of Lords, *9th March 1758*.

NEGOTIORUM GESTOR—INTERDICTION.—Held a party who acted voluntarily, and without any legal authority, for another, in changing the security of money lent, was liable, on failure of the new borrower, notwithstanding the person for whom he acted was of age—was present on the occasion, and consenting to the whole transaction, but was unable to manage his own affairs, from weakness of mind, and was soon thereafter interdicted.

FROM his living near the farm, Graham, the appellant, was induced to take an active part in the management of Thomas Ker’s affairs. While in minority he had acted as his curator. This curatory was discharged on his coming of age. Yet Ker being weak in intellect, his mother continued to manage his farm after his attaining majority, and was in the practice of receiving aid in so doing from the appellant. This assistance was rendered after the appellant was discharged from the office of curatory, and before he was appointed one of Ker’s interdictors, which took place sometime afterwards.