

No 53. 1729. February 7. GORDON *against* ROSS.

IN the reduction of a contract, whereby the pursuer, a very weak and facile man, was enormly lesed, the LORDS refused to sustain the reduction, because there were no such qualifications of weakness in the pursuer proved as to disable him to contract, nor no fraud nor circumvention proved on the part of the defender. See APPENDIX.

Fol. Dic. v. 1. p. 336.

No 54. 1729. February 13. MAITLAND *against* FERGUSSON.

A CREDITOR having elicited from his debtor, (who was proved to be a weak and facile man,) at different times dispositions of valuable subjects in security and payment of trifling patched-up claims, and at last a total discharge of the reversion for an inconsiderable sum, the debtor at that time being much pinched in his circumstances; the LORDS reduced the discharge upon fraud and circumvention, which was principally presumed from the facility and weakness of the granter, joined with the very great inequality of the bargain. See APPENDIX.

Fol. Dic. v. 1. p. 337.

*** See No 3. p. 53.

SECT. IX.

Deeds elicited by Curators upon Majority.

No 55. 1635. July 4. L. MONYMUSK *against* L. LESLY.

A wadset granted by a person in favour of his uncle, who had been his curator *sine quo non*, was sustained; though it was maintained in support of a reduction, that the

IN a reduction, the L. Leslie being uncle to the L. Monymusk, and tutor to him *sine quo non*, after the L. Monymusk was past curatory about the space of half a year or seven months, and no more, Leslie contracts with him for a wadset of his lands of Banchrie, whereby Leslie furnishes to him 30,700 merks upon the wadset of these lands, and provides therein, that if any time within six years thereafter, he should pay to him 6000 merks more, that then the lands should pertain to him heritably and irredeemably for ever; and this contract bore no clause giving power to Monymusk to redeem the land, either within that space of six years, within which Leslie might pay the rest of the price,

nor at any time thereafter; and by this same contract also, Monymusk sells and disposes to Leslie some plenishing and moveables in the house of Banchrie, which were valued at the sum of —; and beside the said contract, by another writ at that same time, he grants to Leslie a right and licence to fish and draw upon this pursuer's lands of Torrie, next adjacent to Banchrie, which gave him a great privilege within his proper fishing, and made the same unprofitable to the L. Monymusk; and which privilege bore, to be granted to Leslie, during his right of the lands of Banchrie. This contract being desired to be reduced by Monymusk, and he to be reponed against the same, as done by circumvention, and to his great prejudice, by reason that it was craftily conveyed and purchased by him who was his curator *sine quo non*, immediately before; for albeit the pursuer was major, yet being done but about six months or thereby after majority, and no more, and consequently *in confinio curatela*, it was not then lawful to him, who was immediately before his curator *sine quo non*, to circumvene him, by acquiring the heritable and irredeemable right of his lands, under colour and pretence of a simple wadset, as manifestly appears by the draught and course of the contract, and under pretence thereof, to cast in a clause of a right irredeemable, which depends also upon the pleasure of the party, and whereby he had six years option to pay the price, and that to the pursuer's sensible and great prejudice, delaying the payment of the price the space of six years, which made the lands not to be worth in price 15,000 merks; whereas, to buy and sell in the country, the same was worth in true estimation 30,000 merks, by and attour the moveables disposed thereby, and by and attour the licence of fishing; which contract was never read by the pursuer, but subscribed by him on trust, thinking that it was only a simple redemptible wadset; likewise there was neither friend nor other person, who ever knew of such a bargain, nor any witnesses inserted, who ever heard the contract read, or knew the contents thereof; and the defender had not before the contract given *rationes curatela*; and seeing in law *ante redditas rationes etiam post majoritatem, per autbent. ut hi, &c.*, the person once curator cannot take an assignation to any debt owing by him who was minor; far less ought he *ante redditas rationes*, be permitted to contract with him, to his so great and enorm lesion, and so indirectly without treaty preceding, *nemine conscio et testibus ignaris*; and by so indirect and unusual clauses; which all in law presumes fraud, and at least furnishes just cause to repon him against the contract; notwithstanding of all which, the LORDS assoilzied from the reason, and sustained the contract, seeing it was done the time when the pursuer was major, *me reclamante*.

Act. *Advocatus, Stuart & Burnet.*Alt. *Nicolson & Baird.*Clerk, *Gibson.**Fol. Dic. v. 1. p. 337. Durie, p. 770.*

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granter at the date of it was only six months major; that at payment of the sum for which it was granted, it was stipulated, that if within six years a smaller sum should be paid by the uncle, the lands should be his irredeemably; that it did not give the granter a power of redemption; that the furniture of his house was also assigned *in cumulo*; that it was not read by the granter and witnesses; and that it was granted *ante redditas rationes curatela*.