

1669. February 18. TRINCH against WATSON.

## No 56.

It was found fraudulent for a curator to elicit a disposition from one who had been his pupil, and just entered majority, before his accounts were given up. Here it was alleged, that the disponent was facile, and the onerous cause far less than the subject disposed.

JOHN WATSON being curator to Margaret Trinch, and having contracted her in marriage with his own sister's son, there is a disposition granted by her to the said John Watson, of ail her means; and in the contract, he contracts with her L. 1000, whereunto the heirs of the marriage are to succeed; and failing these, to return to the said John himself. She died before the marriage, and David Trinch stationer being served heir to her, raises reduction of the disposition and substitution in the contract of marriage, upon two reasons, *1st*, That albeit the disposition contain sums of money, yet being of the same date with the contract of marriage, in which John Watson contracts L. 1000 with the said Margaret Trinch, which unquestionably has been all that has been gotten for the disposition, the said disposition is a part of the agreement, in relation to the marriage, and must be understood as granted in contemplation of the marriage, as if it had been contracted in the contract of marriage; so that the marriage not having followed, the disposition is void, as being *causa data causa non secuta*. *2dly*, Both the disposition and provision in the contract, that failing heirs of the marriage the L. 1000 should return to John Watson, were obtained by fraud and circumvention, being granted to a curator, *ante redditas rationes*, by a person who lately was his minor, and who was of a weak capacity, stupid and half deaf, and upon such unequal terms; her means being worth L. 3000, as appears by a decret obtained at her instance, and all she got being but L. 1000, to return to Watson in case there were no children, and nothing secured on the husband's part.—The defender *answered* to the *first*, That albeit the disposition was of the same date with the contract of marriage, it did not conclude that it was in contemplation of the marriage, and might be, and truly was an absolute bargain. As to the reason of circumvention, it is not relevant, although the terms had been as unequal as they are alleged; for the said Margaret Trinch might freely dispose of her own at her pleasure, and leave it to John Watson, who was her mother's brother, if she had no children; especially seeing David Trinch, the nearest on the father's side, is but her goodsir's brother's eye, and never took notice of her; whereas John Watson alimented her from her infancy, and obtained decreets for her means, and never received a groat thereof; neither was there any inequality betwixt the L. 1000 and her means; for which, albeit there be a decret in absence of a greater sum, yet there are unquestionable defalcations, which being deducted with her aliment, there will not be L. 1000 free.

THE LORDS conceiving the matter to be very unwarrantable on the curator's part, in taking this disposition and substitution, before his accounts with his minor were given up, did reduce both the disposition and substitution, not only as done in contemplation of marriage, but as being presumed fraudulent and unwarrantable. See IMPLIED CONDITION.

*Fol. Dic. v. 1. p. 337. Stair, v. 1. p. 607.*

\* \* \* Gosford reports the same case :

No 56.

IN a reduction pursued at the instance of David Trinch against Watson, as heir to Margaret Trinch, who had made a disposition in favour of the said Watson, of her whole estate, extending to above L. 3000, upon these two reasons, *1st*, That it was of the same date of her contract of marriage with Watson's nephew, wherein Watson was only bound in tocher for L. 1000, and so was a part of the matrimonial contract, which being dissolved by the death of the said Margaret within year and day, the same ought to be reduced as being granted in contemplation of the marriage ; *2do*, The said disposition was procured by Watson, who was curator to the said Margaret, who was an ignorant simple woman, *ante rationes redditas*, and was null by the law. Both these reasons were found relevant *per se et separatim* ; albeit it was answered, that Watson was not a party contractor in the matrimonial contract, which was dissolved ; and could only respect the provisions made in favour of the husband or wife, but could not dissolve the disposition, which was a deed apart, and did not relate to the contract ; as likewise the said Margaret was major, and not under curatory, and so might dispose of her own as she pleased.

*Gosford, MS. No 119. p. 44.*

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S E C T. X.

Deeds not Read at Subscribing.

1672. December 5. ELIZABETH GALLOWAY against WILLIAM DUFF.

ELIZABETH GALLOWAY having pursued reduction of two dispositions by her to William Duff, one of her part of a tenement in Aberdeen, and another of some bonds, and of all moveables she had, or should have the time of her decease, upon two reasons, *imo*, That these dispositions were elicited from her by fraud and circumvention, in so far as she having taken a bleeding at the nose, which continued for many days, and being out of all hope of life, the said William Duff, who married her sister, presented to her the said dispositions, whereby she is denuded of all she had in the world, without reservation of her own liferent, or so much as an aliment ; which disposition was never read to her, neither did she give order for drawing thereof. *2do*, Albeit the disposition had been sub-

No 57.

A disposition was granted by a woman to her brother-in-law of her effects, not even reserving a liferent. It was reduced on the following grounds ; that the disposer was in a dying condition when