‘ with due regard to the direction contained in the said order or ‘ judgment, on hearing the petitioners’ appeal; and having gone “ through the whole account, and heard as well the parties themselves, as their agents, were further of opinion, in regard the “ petitioners in divers particulars in their said bill of costs had “ made extravagant demands, they ought not to be allowed any costs “ in respect of the taxation of their costs: and their lordships in “ going through the said account, did adjust and ascertain the costs “ they conceive right to have been allowed in respect of the several “ articles charged by the petitioners, some of which were disallowed “ by the Lords of Session, and others concerning which the said “ Lords had made no determination: and having done so, the “ committee did then cause the several articles approved of to be “ cast up, which amount in the whole to the sum of 640*l.* which “ sum the committee conceive the petitioners are entitled to, and “ are of opinion the same ought to be forthwith paid to them by “ the said Mr. Sharp.”

On the 24th of May 1723, this report was taken into consideration by the House and agreed to, and an order made accordingly in terms thereof, “ that the said George Sharp do forthwith pay, “ or cause to be paid to the said Charles Maxwell and Janet his “ Wife the sum of 610*l.* pursuant to the said report.”

Alexander Munro the younger of Auchinbowie, - - - - - *Appellant*; Case 86.

Grizel Bruce of Riddoch, - - - *Respondent.*

17th *May* 1721.

Vis et metus.—A disposition is granted by a woman to her heir at law, reserving her own life-rent, and the courtesy of a future husband, and declaring that it should not affect the heirs of her own body, and is followed by a more formal disposition a few days afterwards, on which infeftment followed: she brings an action for reduction on the ground, that being under arrest at London at the suit of a creditor, her heir had refused to bail her, unless she executed the deed first mentioned, and the bailiff threatening to carry her to Newgate, she gave her consent, and executed the deed as soon as bail was granted, and before she left the spunging-house: The Court reduces the deed and all that followed thereon; but the judgment is reversed.

THE respondent was proprietor of the estate of Riddoch and other lands in the county of Stirling, of considerable yearly value; and she was also possessed of a considerable personal estate. Of these estates, she had executed a voluntary and revocable settlement in favour of a person in Scotland, who was a distant relation, and to whom she had also granted powers to receive her rents.

Being in London in 1714, she was betrayed into a marriage with a person of the name of Colquhoun, who had been a ser-

jeant in the Foot Guards, who gave himſelf out to be a man of a great eſtate, and who at ſame time was married to ſeveral other women.

The appellant, who ſtates himſelf to be heir at law to the reſpondent, mentions, that hearing of her misfortune, he went and viſited her, and in conſequence of an offer from him to do all he could to relieve her, a proſecution for bigamy was inſtituted againſt Colquhoun, in which the appellant was aiding to her both with his credit and his own perſonal ſervices: That the reſpondent thereupon declared her intention to make a ſettlement of her eſtate upon the appellant and his heirs, failing iſſue of her own body: That the factor in Scotland having declined to remit any money to the reſpondent, or to anſwer her bills, ſhe incurred ſeveral debts; and in May 1715, as ſhe and the appellant were in a coach together, ſhe was arreſted at the ſuit of one Cuerton an attorney: That the appellant procured bail for the reſpondent, and ſhe was ſet at liberty accordingly; and the appellant paid all the expences of the reſpondent while ſhe remained in the ſpunging-houſe: That the reſpondent propoſed inſtantly to execute the deed in the appellant's favour which ſhe formerly intended, and to put it out of her power afterwards to do deeds to his prejudice; and ſuch deed was drawn and executed accordingly. But this firſt deed not being written upon ſtamped paper, a ſecond deed was drawn by Sir David Dalrymple, then Lord Advocate; and this ſecond deed, after ſhe was admitted to bail and at her free liberty, was read over to her, approved of and executed in the preſence of Henry Cunninghame Eſq; a member of the Houſe of Commons, Thomas Crawford of Lincoln's Inn, then attorney for the reſpondent, and Thomas Buchanan, clerk to Sir David Dalrymple; and ſhe in the preſence of theſe witneſſes declared the ſaid deed to be exactly according to her intentions, and that ſhe executed the ſame freely and voluntarily: That by this deed, which was in terms of the former one, the reſpondent conveyed her real eſtate to the appellant, her heir at law, and the heirs of his body, whom failing, to the reſpondent's heirs whatſoever, reſerving her own life-rent of the premiſes, and with a power to give any huſband ſhe ſhould marry the life-rent thereof; under a proviſo that the iſſue of the reſpondent's body ſhould not be prejudiced thereby, but that they ſhould have full power and liberty to enjoy the ſame freely as if the ſaid right had never been paſt; and thereupon the appellant was infeft: That after the execution of this deed the appellant continued about two months in London in perfect friendſhip with the reſpondent, aſſiſted her in proſecuting the ſaid Colquhoun, and furniſhed her with ſeveral ſums of money for that purpoſe; and accordingly judgment was obtained againſt him, and he was burnt in the hand.

The reſpondent afterwards brought an action againſt the appellant before the Court of Seſſion, to have the diſpoſition ſet aſide, and declared void, on the ground that the ſame had been obtained by concuſſion, and that ſhe had been compelled to execute the ſame *vi et metu*.

An

An act and commiſſion being granted to examine witneſſes in England, witneſſes were accordingly examined, and it appeared by the evidence of two of the inſtrumentary witneſſes, that the deed in queſtion was all read over to the reſpondent, ſeveral clauſes were read a ſecond time, and ſhe approved thereof and executed the ſame, and declared ſhe did it voluntarily and willingly, and that ſhe delivered the ſame to the appellant in their preſence; all which was after the bail-bond given, the bailiff paid his fees, and ſhe declared at liberty; that nothing of force or conſtraint was uſed, but every thing tranſacted according to her own directions, and with her approbation. The appellant's witneſſes ſwore that ſhe was in the bailiff's houſe at the time of executing the deed in queſtion; that the appellant refuſed to procure her to be bailed, or to give her any money, unleſs ſhe would execute the ſaid deed; and that the bailiff threatened to carry her to Newgate, and that they believed the ſame was executed through fear. Theſe depoſitions related ſolely to the deed firſt executed.

The Court, on the 8th of July 1720, having conſidered the ſtate of the proceſs, and writs produced, and teſtimonies of the witneſſes aduced, and having adviſed the ſame with the debate, they, by a majority of one vote, "found the reaſon of reduction, "viz. that the diſpoſition quarrelled was elicited from the re- "ſpondent by concuſſion is relevant and proved, and therefore "reduced the ſaid diſpoſition, with all that had followed there- "upon:" and to this interlocutor the Court adhered on the 13th of January 1721.

The appeal was brought from "an interlocutory ſentence or "decree of the Lords of Seſſion in Scotland of the 8th of July "1720, whereby they found that the diſpoſition quarrelled was "elicited from the reſpondent by concuſſion, was relevant and "proved, and therefore reduced the ſaid diſpoſition with all that "followed thereupon; and alſo from another interlocutor of the "ſaid Lords, of the 13th of January 1721, affirming the former "interlocutor." Entered, 18 Feb. 1720-1.

Heads of the Appellant's Argument.

There is no concuſſion proved in this caſe; for where a deed is queſtioned upon pretence of concuſſion, one of two things ought to be proved; either that the reſtraint and compulſion were impoſed by the perſon to whom the deed was granted; or that, though it were impoſed by another perſon, yet it was in view and in order to extort the deed: but neither of theſe is found in this caſe. Though the reſpondent was in cuſtody of a bailiff, yet that was not at the ſuit, nor by the procurement of the appellant, the grantee. It is not attempted to be proved that the appellant was in any concert with the perſon who arreſted her, or that he ever ſaw him; and the bailiff himſelf ſwears, that it was at the ſuit of one Cuerton; that he never ſaw nor knew any thing of the appellant, till he ſaw him in the coach with the reſpondent when ſhe was arreſted. There is not the leaſt pretence, that the re-

ſpondent was impriſoned with any view to compel her to execute this deed. No doubt a perſon in cuſtody may execute deeds to a third party, and thoſe deeds will ſubſiſt though they were in cuſtody; eſpecially in a caſe where the impriſonment was not at the ſuit of the appellant, nor of any perſon in concert with him.

The moſt that was pretended againſt the appellant was, that he would not interpoſe to relieve her from reſtraint and procure her bail, unleſs ſuch deed was granted. Surely this was no concuſſion in the appellant, in order to have a deed executed that his natural right of ſucceſſion ſhould not be ſet aſide by poſterior, raſh and unneceſſary deeds; nor was it extortion in the appellant, that he would not interpoſe his credit for a perſon of a pretty inconſtant temper, unleſs ſhe would give ſome reaſonable ſecurity not to evacuate the appellant's right of ſucceſſion. There can be no extortion, but where there is ſome poſitive fact, done by the extorter, impoſing the fear: but refuſing to do, to interpoſe credit, or grant any other favour, was no extortion.

The deed itſelf was a rational deed, being a ſettlement of the eſtate upon the appellant her right heir, upon failure of iſſue of her own body: the life-rent of the whole was reſerved to her; her future huſband was ſafe as to his courteſy, and the iſſue of her body as to the eſtate. So that the only bar put upon the reſpondent was a ſtop to importunities upon her to ſettle the eſtate from the right heir, and prevent her from diſinheriting the appellant.

This deed was executed willingly and freely, and ſo the reſpondent declared to the two inſtrumentary witneſſes, and likewiſe to the gentleman who was bail for her. Had ſhe been under any force, it is moſt probable ſhe would then have declared it, that gentlemen of character, as they were, might have relieved her from that force. But in fact, ſhe was at liberty when the when the deed was executed; the bail-bond was given, the bailiff paid his fees, and ſhe declared to be at liberty. So, had ſhe been under any conſtraint, that was at an end before the deed was ſigned.

All the depoſitions of the witneſſes for the reſpondent reſpecting the appellant's refuſing his aſſiſtance to her, unleſs ſhe executed a deed, relate to the firſt deed, and not to the ſecond, which is the deed in queſtion. And, ſuppoſing and undue methods had been uſed to procure the firſt (which is poſitively denied,) there is no inference that it was ſo with regard to the ſecond, nor is there any proof of it.

(The reſpondent's caſe contains no argument whatever on her part; ſhe merely ſtates the circumſtances of the caſe, with regard to the firſt deed.)

Judgment, 17 May 1721. After hearing counſel, *It is ordered and adjudged, that the ſaid interlocutor of the* 8th *of July* 1720, *and the ſaid interlocutor of the* 13th *of January in affirmance thereof, be reverſed.*

For Appellant, *Ro. Dundas. Tho. Kennedy. Will. Hamilton.*
For Reſpondent, *Rob. Raymond. C. Talbot.*

In

In the appellant's caſe, ſeveral interlocutors of the Court are ſtated as to the admiſſibility of female witneſſes, to other facts than thoſe within doors, and in their own houſes; and as to the allowing of objections to the characters of witneſſes: he alſo uſes argument thereon, but theſe formed no part of the judgment appealed from.

Dr. George Middleton, - - - *Appellant;* Caſe 87.
Mr. George Chalmers, Principal, and the reſt of the Maſters and Regents of King's College, Aberdeen, - - - *Reſpondents.*

9th *June* 1721.

Arbitration.—On a day appointed by two arbitrators for determining a matter, one of them declined to act, and the overſman thereupon pronounced an award; the Court having reduced this award as incompetent, the judgment is reverſed.

THE appellant, who had been for many years principal of King's College, Aberdeen, was in 1716, among others, ſuperſeded by certain perſons having his majeſty's commiſſion under the great ſeal of Scotland, to viſit that univerſity; and the reſpondent Chalmers was appointed to his place.

It being ſtated to theſe commiſſioners, that the appellant had received and had not accounted for certain ſums of money, ariſing from a mortification, or grant of his late majeſty King William, and for the *Bibliotheck money*, which laſt conſiſted of ſmall ſums payable towards the college library, by thoſe on whom the degree of maſter of arts was conferred, the commiſſioners directed the reſpondents to ſue the appellant for the ſame.

An action was thereupon commenced, but inſtead of proceeding therein, on the 5th of October 1719, a ſubmiſſion was entered into between the appellant and the reſpondents, for referring the matters in diſpute to the arbitration of Sir Alexander Bannerman, of Elſick, on the part of the appellant, and of Thomas Forbes, of Echt, on the part of the reſpondents, and in caſe of variance or diſcrepance between the arbiters, to Colonel John Buchan, of Cairnbulg, as overſman or umpire, elected and choſen by both parties: by this ſubmiſſion the parties were bound to ſtand to the decree to be pronounced under the penalty of 500 merks, and ſuch decree was to be made on or before the 8th of November 1719.

The reſpondents gave in their charge againſt the appellant, to which the appellant gave in his anſwers, and both parties having been ſeveral times heard before the arbiters and the overſman, the arbiters appointed the 28th of October 1719, for pronouncing