

No 5.

who might readily mistake such a punctilio.—*Alleged* against Hyslop, That he could never quarrel the decret, because he had accepted of a discharge, and given a ratification of the decret.—*Answered*, Being in a communing about his marriage, the woman's friends refused, unless he got a discharge of that decret, which made him enter into that transaction, being *in actu amoris*, at which time he would refuse nothing.—THE LORDS repelled the nullities; and found the *actus amoris* might be pretended as a ground to reduce things granted to a wife or her friends, but not what was done to third parties not concerned in the treaty of marriage.

*Fol. Dic. v. I. p. 421. Fountainball, v. I. p. 728.*

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S E C T. III.

Persons Dumb and Deaf.

1663. July 9. HAMILTON *against* A DUMB MAN in Glasgow.

No 6.

Consent of a dumb man not inferred from his subscribing a discharge by the initial letters of his name, the money for which it was granted, being delivered, not to himself, but to his sister, in his presence.

THIS dumb man having right to an annualrent of L. 20 yearly out of a tenement in Glasgow, thereupon Hamilton, his creditor, having arrested, and obtained decret for payment of this annualrent, in satisfaction of the dumb man's debt, it was *alleged* for the person whose bond was liable for the annualrents, absolvtor for five year's thereof, because he had paid these years to the dumb man's sister by his consent; in so far as he delivered the money to the sister in presence of the dumb man, and obtained her discharge thereupon in his name, subscribed also by him, with the initial letters of his name.—It was *answered, non relevat*, because the discharge bore not that the dumb man received the same, but his sister; and bears, that she is obliged to warrant it at the dumb man's hand; and his presence, and seeing of money delivered, and his subscription, cannot import his consent, because he being dumb, could not know what the extent of the sum was, nor for what years it was.

THE LORDS repelled the defence in respect of the reply.

*Fol. Dic. v. I. p. 422. Stair, v. I. p. 197.*

See FRAUD.

APPENDIX.