

was a fraud not to tell Patrick of the mutual agreement and oath, which could have no design but to make Patrick alter his disposition.

THE LORDS found the reply relevant, " That the Doctor sent his son with the disposition to Denmark, and that the brother altered the same there," to infer fraud, to evite the Doctor's oath ; but if Patrick had been alive, it is like the Lords would have taken his oath how he made the alteration. See LOCUS PARENTENTIÆ.

*Fol. Dic. v. 1. p. 333. Stair, v. 2. p. 890.*

1682. November. BALLANTYNE against NEILSON.

BALLANTYNE having entered into a contract with Alexander Bonnar, whereby they obliged themselves to divide equally betwixt them, whatever means should fall to either through the decease of James Bonnar, uncle to Ballantyne ; and submitted any difference that might arise, to the determination of Cornelius Neilson ; to whom for his pains they granted a bond, whereby they obliged themselves, that a fourth part of what they should succeed to in manner foresaid, charges deducted, should belong to him ; which contract and bond were ratified by both parties the day after James Bonnar's decease. Cornelius Neilson having afterwards acquired a right to Alexander Bonnar's half, he charged Ballantyne upon the agreement and bond to denude thereof, and of the foresaid fourth part ; who raised suspension and reduction upon the reason of fraud and circumvention, qualified thus : That Ballantyne was grossly imposed upon, under pretence of friendship, by Neilson, to go into so disadvantageous a contract, about the succession to his uncle's estate, with one who was nothing related to the defunct, but only one of his name, and had not the expectation of a sixpence from him ; by reasons falsely representing the succession transacted as a thing uncertain, in so far as James Bonnar had a great inclination to make Alexander his heir ; and that Neilson had deceitfully elicited the bond in favour of himself, without any onerous cause, for his pretended pains in securing James Bonnar's means to one or other of the contractors ; and to palliate the contrivance, had caused them transcribe and direct a letter to him from a copy wrote by himself, for drawing of the contract, and take an oath of secrecy not to discover what was done to any body ; nay, further, had endeavoured to bribe Ballantyne's friends to desert him in the affair ; and one of the witnesses in the contract did not remember that the papers were read at subscribing. Again, such a contract is *pactum de hæreditate viventis*, which law reprobates as *contra bonos mores* ; albeit an agreement with a person concerning the future succession to his own estate is allowed, as in the case of tailzies and contracts of marriage.

*Answered* for Cornelius Neilson ; That Ballantyne being major, *sciens et prudens*, might enter into such a contract ; which was rational at the time, when it

No 19.

No 20.

An heir of line agreed with a remoter relation to divide whatever should fall to either, through the death of the uncle of the former. The agreement contained a submission to an arbiter named. This contract was ratified by both parties the day after the decease of the predecessor. The heir of line, on whom the estate devolved, obtained reduction of the contract, upon proving that the arbiter had imposed upon him, by falsely representing that the defunct had a great inclination to make the other party his heir, and that when he ratified the contract, the arbiter concealed from him that the succession had devolved to him.

No 20. was dubious which of the parties would succeed ; Alexander Bonnar being one of the same name, though a remoter relation than Ballantyne, who now eventually comes to have it *jure sanguinis*. 2do, Ballantyne's ratification after his uncle's death, when there was *jus delatum* to him, takes off all suspicion of circumvention.

*Replied*, As Ballantyne was deceitfully induced to subscribe the contract, so he was imposed upon to ratify the same, the very day after his uncle's death, while he was ignorant of his having right as heir to the defunct's estate ; which was but a continuation of the former fraud.

THE LORDS, before answer, allowed a mutual probation; Ballantyne to prove the qualifications of circumvention, and Neilson to prove his answers.

And the foresaid qualifications of circumvention being proven, the LORDS found the agreement and bond were elicited by fraud and circumvention; and that the same fraud and circumvention was continued in impetrating the ratification; so as it cannot confirm and validate the foresaid fraudulent deeds; and therefore reduced the contract, bond and ratification.

*Fol. Dic. v. 1. p. 333. Harcarse, (FRAUD & CIRCUMVENTION.) No 502. p. 139.*

No 21.

1733. July 13.

SHEARER against SOMERVILL.

A HUSBAND and wife, during the marriage, having made two mutual onerous deeds in favour of one another, to this import, that the survivor should bruik all; it was *objected* to the wife, by the representatives of the predeceasing husband, That she having privately, without the knowledge of her husband, executed a revocation of the deed granted by her; this, though effectual in law to revoke an onerous deed, was yet an intended fraud, sufficient to bar her from reaping any benefit of the deed granted by her husband in her favour.—THE LORDS, notwithstanding, repelled the objection. See APPENDIX.

*Fol. Dic. v. 1. p. 334.*

No 22.

1743. January 19.

JAMES WATSON against DAVID MAULE.

A purchaser of lands at a voluntary roup, is not liable to a personal creditor arresting the price; if he prove that the purchase was made on account of the seller.

HEPBURN of Keith having exposed his estate to a voluntary roup, he prevailed on David Maule to offer on his account, for the same, to a certain extent, and by a letter obliged himself, *if the lands fell into Mr Maule's hands, to relieve him of the same*,

It happened that Maule was the highest offerer, so the lands were declared to belong to him; and, in terms of the articles, he enacted himself to pay the price. James Watson being creditor by two bills of Mr Hepburn's, arrested the price of the lands in Maule's hands.