On an appeal, the interlocutors were reversed, and the defenders were obliged to produce the writs and deeds specially called for. They did so; the cause proceeded, and, 27th June 1776, the defenders were assoilyied.

1777. *February* 19. JEAN ROBERTSON *against* WILLIAM FRASER.

FACILITY and lesion by themselves have not been held as sufficient grounds of reduction by the law of Scotland: fraud has been reckoned a necessary ingredient; at the same time, where the other two are great, a lesser degree of fraud will be sufficient, and will, in certain cases, be presumed: great facility and great lesion will presume fraud. The Lords, however, in some late cases, seem to hold that facility and lesion, even without fraud, are sufficient.

The case of *Dallas* against *Dallas*, and of *Macdonald of Shian* against *Mac-Pherson of Killiehuntly*, point this way.

The above reflections occurred in a case this day, under consideration of the Lords, *viz.* a reduction at the instance of Jean Robertson *against* William Fraser, for reducing a transaction between them with regard to Jean's share of a moveable succession to an uncle.

She appeared to be a weak woman, though not extraordinarily so; and the inequality of the bargain seemed, as it turned out, to be considerable; at the same time it was, in some respects, a bargain of chance. It had been transacted openly, not *remotis arbitris*, and was homologated and acquiesced in for years by Jean Robertson. A fraud was not alleged further than appeared from the nature of the transaction, which the Lord Monboddo, Ordinary, not thinking sufficient, refused to allow to the pursuer a proof of the reasons of reduction: But the Lords were of a different opinion, and allowed the proof before answer.

Lord Gardenston gave it as his opinion, that facility and lesion were, *per se*, grounds of reduction sufficient. The other Lords kept in general, and, on a division, allowed the proof.

REGISTER.

1775. *December* 10. RALSTON of RALSTON, &c. Petitioners.

A BOND for L.1300 had been recorded in the Sheriff of Renfrew his register. The debtor having gone to Granada, it was found that an extract of the bond from the Sheriff's Register was, in their courts, held to be a voucher of the debt. There were several persons interested in the bond; some of them for the annualrent,—some for the fee,—some of the last were minors; and the

principal sum was declared not upliftable by the creditors, without the consent of certain persons as trustees for these others. The creditors and trustees applied, by petition, to have up the bond, in order to suit execution upon it in Granada, and recover payment. The Lords, 7th December 1775, pronounced this interlocutor:—"Grant warrant to, and ordain the Sheriff-clerk of the shire of Renfrew, in whose books the within-mentioned bond is recorded, to deliver up the same to the petitioners, upon their finding sufficient caution, and lodging a bond with the clerk to that purpose, to redeliver the said bond to him, or his successors in office, keepers of the said register, under the penalty of L.1300 sterling, and that betwixt and the 6th day of June 1777.

Against this interlocutor the parties petitioned, setting forth, that, as the intention of getting the bond out of the register, was to procure payment; so, if payment was procured, the bond fell to be delivered up to the debtor, and could not be returned. Upon this the Lords remitted the petition to the Ordinary on the Bills, and upon his report they pronounced an interlocutor,—of consent of the petitioners their offering the caution aftermentioned, "ordaining the bond to be delivered in terms of their former interlocutor, but declaring that the caution should be either to return the bond as above, or to apply the sums recovered, from the debtors in said bond, precisely for the purposes mentioned in the bond itself, and for the behoof of all concerned."

This is now held to be a precedent, and has been followed in other cases, *27th January* 1776, *Clark*.

Quere. Should an application of this sort be made to an inferior judge, sheriff, commissary, &c., how must he proceed? In June 1764 a petition was given in to the Sheriff of Edinburgh, setting forth that, in order to carry on a suit in England, it was necessary to act upon a principal bond registered in his register. They offered caution to return the bond. See a case by Forbes.

In a case marked by Kilkerran, p. 479, *Lundie, petitioner*, the Lords granted a like warrant without caution. In this case nobody appeared to have interest in the bond except the creditor-petitioner. They appointed the fact to be marked on the margin of the record.

1778. *December* 16. JOHN SPOTTISWOOD, and JOHN WAUCHOPE, Writer to the Signet, his Attorney, Petitioners.

THIS day, John Spottiswood, Esq. and John Wauchope, his attorney, petitioned the Court, setting forth, that, in summer 1777, having registered in their Lordships' books a bond to him by Mr Davie, an Englishman, at that time residing in Scotland, Davie had now brought a suit in Chancery for setting the said bond aside; therefore it was necessary for him to produce said bond in said suit,—not only to get the better of the action raised, but to obtain payment, so could not return it. But without their Lordships' warrant he could not get the bond from register.

The Lords, though for some time past they had complied with demands like this, only upon a receipt and caution to return the bond within a limited time;