

1816.

 MOFFAT
 v.
 MOFFAT, &c.

He was completely under the influence of the appellant, as is proved by several witnesses, which influence was produced by fear, by persuasion, or the joint operation of both, of the appellant, in whose favour these deeds were executed.

2d, That he was kept in a state of imprisonment, from which he was anxious to get free. He was not permitted to see any person with the appellant's knowledge; and, in particular, that watch was put upon him, with strict orders to have the appellant instantly sent for, whenever the deceased should be seen speaking to a man of business.

3d, The deeds in question were, besides, made out by the agent, and under the orders of the appellant, and not of the deceased; that the appellant was present, and gave his directions when they were executed; and that the deceased, the grantor of the deeds, repeatedly and solemnly declared that he did not know their import, as is proved both by the depositions of numerous witnesses, and by the undoubted fact that he understood them to have been *mortis causa* settlements. The deceased was most anxious to alter these deeds, and that he was prevented from doing so, by the direct and personal interference of the appellant himself, at the moment when he had got a new settlement written out, ready for subscription, by which he intended to alter them.

4th, That the examination of Anthony MacMillan was admissible, according to the principles of the law of Scotland, but that it was incompetent to examine the Stotts as to the points proposed by the appellant.

After hearing counsel,

It was ordered and adjudged that the interlocutors complained of be, and the same are hereby affirmed.

For the Appellant, *H. Brougham, R. Jameson.*

For the Respondents, *Francis Horner, Robt. Bell.*

NOTE.—Unreported in the Court of Session.

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 MAXWELL, &c.
 v.
 GORDON.

[Dow., Vol. iv., p. 279.]

SIR DAVID MAXWELL of Cardoness, Bart., and Others, Heritors of the parish of An- woth, in the Stewartry of Kirkcudbright,	}	<i>Appellants;</i>
ROBERT GORDON, Writer, Factor, appointed by the Reverend the Presbytery of Kirk- cudbright,	}	<i>Respondent.</i>

House of Lords, 20th June 1816.

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CHURCH—PRESBYTERY'S POWERS TO ORDER THE BUILDING OF
 Do.—Held that the Presbytery's powers were rightly exercised,
 in ordering a new church to be built, and failing the heritors
 obeying that order, of proceeding themselves to get the church
 built, and decerning for the expense thereof against the heritors.
 Affirmed in the House of Lords, with a declaration.

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A complaint having been made to the Presbytery of Kirkcudbright, of the insufficient and ruinous state of the church of the parish of Anwoth, they, after examining tradesmen as to that fact, decided that a new church was absolutely necessary. Although almost all the heritors of the parish were present, by themselves or agents, when this investigation and decision took place, the presbytery afterwards proceeding with all the regularity and form capable of being observed in such cases, repeatedly called upon the heritors to take the necessary measures for rebuilding the church, and to assess themselves in the expense; but the heritors having failed to do so, the presbytery, after various meetings, and much deliberation on the matter, were obliged to take upon themselves the exercise of the jurisdiction conferred upon them by the law of Scotland. They accordingly procured plans of the proposed church, and estimates of the expense of building it; they contracted with tradesmen, and got the church built; they then decerned against the heritors for the amount of the necessary sums, and payment having been refused, letters of horning were raised on the decree, on which the heritors were charged at the instance of the respondent, factor, appointed by the presbytery to collect the assessment.

A bill of suspension of the charge was brought on the ground, that the proceedings of the presbytery were not only precipitate, but altogether irregular and illegal;—That it was not within the province of the presbytery to interfere, but belonged of right to the heritors, and that on assessing the heritors for the amount, they had omitted to assess the feuars of the town proportionally, in terms of a former decision of the House of Lords.

The Lord Ordinary and the Court refused the bill.

Upon appeal to the House of Lords, the following judgment was pronounced.

It is ordered, that the interlocutors complained of, excepting in as far as the same relate to the allocation of the

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expenses of rebuilding the church be affirmed. And it is ordered, that, with regard to such allocation, and particularly the questions, whether such allocation ought to be made according to the real or valued rent of the persons liable to pay the same, and whether the feuars of the village of Gatehouse-of-Fleet are liable to such allocation, the case be remitted back to the Court of Session to reconsider these points, in case the appellants shall, within four months after the date of this judgment, apply to the said Court by petition for such reconsideration, the said Court, in the event of such reconsideration, having regard to the rule declared by the judgment pronounced by this House in the case of Peterhead, on the 24th June 1802; and it is further ordered, that in case the said appellants do not apply to the said Court within four months, as above directed, that the said interlocutors be, and the same are, wholly affirmed.

Ante, vol. iv.
p. 356.

For the Appellants, *Sir Saml. Romilly, Fra. Horner.*

For the Respondents, *Wm. Adam, H. Brougham.*

1816.

STEWART, & C.
v.
ELDER, & C.

HOPE STEWART of Ballechin, CATHERINE MERCER, Daughter of the deceased COLONEL MERCER and Others, heirs portions of CHAS. and ROBERT MERCER of Lethindy, and Others, . . . } *Appellants;*

Mrs ISABELLA ELDER, Spouse of the Rev. Dr GEORGE BAIRD, and Others, Representatives of the deceased WM. ELDER of Loaning, } *Respondents.*

House of Lords, 21st June 1816.

TRUSTEES FOR CREDITORS—LIABILITY FOR NEGLECT—FACTOR—RELIEF.—(1.) Held that trustees were conjunctly and severally liable to the creditors for neglect in not calling the factor appointed by them to account for his intromissions, by which the whole trust funds were lost to the creditors; (2.) Held that the acting or managing trustee was not entitled to claim relief against the other trustees, for the proportional amount found due to the creditors, in consequence of his liberating the factor, when apprehended, at the instance of the trustees on caption, without the consent of the other trustees. Affirmed on appeal.