

WILSON'S  
TRUSTEES

v

BRUCE.

PRESENT,

LORDS CHIEF COMMISSIONER AND CRINGLETIE.

WILSON'S TRUSTEES v. BRUCE.

1828.  
Jan. 9.

AN action of reduction of a disposition on the ground of imbecility and facility, with fraud, circumvention, and lesion.

Finding for the pursuers in a question of facility, circumvention, &c.

DEFENCE.—A denial of imbecility or fraud.

ISSUE.

“ Whether it was not the deed of Wilson ? ”

*Brown*, for the pursuer.—Wilson was incapable of giving instructions for this deed, or of recollecting one clause of it while the other was reading. He was imbecile, but at times was obstinate.

*Jeffrey*, for the defender.—If there was sufficient mind in this person to enable him to choose to whom his property should descend that is sufficient.

In the course of examining a witness as to handwriting,

To prove handwriting, the witness should be examined as to his *belief* that it is genuine.

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THE LORD CHIEF COMMISSIONER observed, —If I were proving handwriting, I would ask the witness whether he knew the handwriting of the party—whether he ever saw him write—whether he had corresponded with him—and whether *he believed* the writing to be that of the party?


*Moncreiff.*—This is a case in which you have to balance the evidence; and the question is, whether the pursuer has made out his case?

LORD CHIEF COMMISSIONER.—It is true that a person to be able to make a will does not require to have the same capacity as to manage a complicated transaction; but he must have competent understanding to know what is done, and the power of volition. This is not a case of compulsion or of fraud, but part of it has to do with a degree of art and management; and in deciding whether it is his deed, you must consider whether this person was so dealt with that he has not executed his volition. You will consider the character and credit of the witnesses, and give due weight to the facts they state. Great failure of sight and hearing does not incapacitate a person from making such a deed, but makes it peculiarly necessary that the per-

son who is to frame the deed should have instructions so clear, that he is sure he understands the intention of the party. In this case many of the witnesses on both sides agree that Wilson's judgment was not gone, but that his memory was so impaired that he could not recollect the different parts of the deed; and it is difficult to say whether he understood the substance of it when explained to him. The manner in which the deed was read and explained to him at the time when he did not sign it, gives a character to the case which cannot be taken off by the defender. His refusal to sign at that time does not prove that he did or did not understand it; but you will recollect that when he so refused, the witnesses went away. That when they were called back he signed without farther explanation, the person interested in the deed observing, that they should not plague him with further explanation, as he was now ready to sign; and permitting this is the only thing which appears to me incorrect on the part of the writer.

You must consider and balance the evidence, and attend to the dates, and particularly to the documents, as, if you consider them pure and unsullied, they go far to counteract the evidence of the witnesses for the pursuer, who may have

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been mistaken in the opinion which they formed ; and, on the whole facts, you will consider whether this individual was of a sound or wandering mind.

Verdict—For the pursuers.

*Moncreiff, D. F., and M. Brown, for the Pursuers.*

*Jeffrey, and Cuninghame, for the Defenders.*

(Agents, *John Campbell Jun., w. s. and William Waddell, w. s.*)

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PRESENT,

LORDS CHIEF COMMISSIONER AND CRINGLETIE.

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1828.  
Jan. 10.

SMITH v. KEMP.

Damages against  
a law-agent for  
not obtaining a  
valid security  
from a married  
woman.

AN action of damages against a law-agent for negligence and error in not obtaining a valid bond in security.

DEFENCE.—The defender was not employed by the pursuers ; and the bond he obtained was in conformity with the instructions he received. The pursuers accepted of the bond, and are barred by homologation.