

GRANT  
v.  
LAUDER, &c.

Verdict—For the defender on both issues.

*Jeffrey and Sandford*, for the Pursuer.

*Moncreiff, D. F., Cockburn, and Ivory*, for the Defender.  
(Agents, *Arch. Duncan and Alex. Forsyth.*)

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PRESENT,

LORDS CHIEF COMMISSIONER AND MACKENZIE.

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1828.  
July 22.

GRANT v. LAUDER, &c.

Finding for the  
defender on  
question of  
fraud, facility,  
&c.

AN action to reduce a disposition by the late Peter Grant, the father of the pursuer, in favour of David Baird, and of a disposition by Baird in favour of Lauder, on the grounds of fraud, &c. practised by Baird, and facility, &c. on the part of Grant.

DEFENCE for Lauder. \*—Fraud in Baird cannot affect a *bona fide* purchaser. At the time of the original sale, Grant was capable of managing, and did manage his own affairs.

ISSUES.

1st, Whether the disposition to Baird was not

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\* There was no appearance at the trial for Baird.

the deed of the party? 2d, Whether he was of weak and facile mind, &c.?

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*Maidment* opened for the pursuer, and stated the facts, and that a deed obtained by fraud was not the deed of the party: That a person kept in a state of intoxication was the same as a facile person.—*Mackie v. Maxwell*, 24th November 1752. Mor. 4963.


An objection was taken to a question put as to the age of the late Mr Grant.

General evidence admitted that a person appeared aged.

LORD CHIEF COMMISSIONER.—It is competent to prove in general that he was aged, but if you are to prove specifically his age, you must do it in a specific manner. If, for instance, you are to calculate an annuity, you must prove the age with precision.

*Hope, Sol.-Gen.* for the defender.—On the first issue there is no evidence, and, therefore, there must be a verdict not only for Lauder but Baird. On the second the pursuer was bound to prove not only that his father was frequently intoxicated, but that drink made him easily imposed on, and ready to part with his property below its value; and also that fraud was practised on him to induce him to grant this disposition. None of these have been proved.

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LORD CHIEF COMMISSIONER.—There are various ways in which a deed may not be the deed of the party, if it wants the legal solemnities, or if the person is insane, and thus has not a mind capable of executing it, or the incapacity may be temporary. In the present case the nature of the incapacity insisted in is, that the pursuer's father was so constantly drunk that there was not a time when he could have executed this deed; and it is essential that the pursuer should make out his case clearly to the Court and jury, as this is to cut down a regular deed. There was strong evidence of habitual intoxication, but there is distinct evidence that it was not constant; and it is not impossible that this deed was executed during an interval of sobriety, and there is other matter bearing strongly on the validity of the deed. This action might have been brought seven years earlier, and during the life of the solicitor who framed the deed; and had he been alive he must have been called; and the subscribing witnesses ought to have been called.

On the second issue there was no evidence of facility; on the contrary, his mind was strong; and I cannot tell you that you are to infer facility from the general evidence of drinking, when there is nothing direct on the subject.

As to the lesion, this was not an ordinary case of purchase and sale; but the consideration given was an annuity, and the question turns on the value of the annuity. To make out this part of the case, it would be necessary to calculate the value of an annuity for a person of fifty-two years of age, and make some deduction for his habit of intoxication; but you would also have to consider that he lived for two years, and did not die from the effects of this habit. If you are of opinion that he received an adequate value, then the lesion is done away with, and the fraud arising from the lesion is also done away with.

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On the whole, if the questions were as to the habits of this individual, then the verdict would be for the pursuer; but the facility, fraud, or lesion are not so made out as they ought to have been in such a case.

Verdict—For the defenders on both issues.

*Jeffrey and Maidment*, for the Pursuer.

*Hope, Sol.-Gen.*, and *More*, for the Defenders.

(Agents, *J. J. Fraser*, w. s., and *W. & A. G. & R. Ellis*, w. s.)