IDIOTRY AND FURIOSITY.

1583. *June.* CRAWFORD *against* ———.

No 1.
Although deeds executed by furious persons may be reduced, they ought not to be found null by exception.

ONE Crawford in Kinneil pursued the reduction of a decreet given by certain young advocates being judges delegate, who decerned a rental of a liferent of a piece of land near Kinneil to be of no force nor effect, because James Earl of Arran setter thereof, the time of the setting thereof was furious and idiot, and so declared by the cognition of an inquest past upon a brief of idiotry, directed out of the chancery, so that all done by him since the 1561, by reason of the sentence foresaid, is null and of no force. The reason of his summons of reduction was, that the judges had done wrong in taking away of his rental by nullity of exception, which behoved to be declared null by way of action, as may appear by the act of Parliament, Ja. III. Parl. 8. c. 66., whereby it is ordained, that all deeds done by furious persons shall be retrieved and rescinded, but not taken away by way of exception; for all furious persons are not alike, *nam alii continua mentis alienatione, omni intellectu carent et perpetuo mente capti sunt; alii vero dilucida habent intervalla;* and so it must be that the Earl, the time when he set the rental, had intermission of his sickness, and was not in his fury, and therefore the same could not be taken away by way of exception, but behoved to have a special declarator. THE LORDS found the reason of reduction relevant, and that the judges *male judicarunt.*

Spottiswood, (IDIOTS AND FURIOUS PERSONS.) *p.* 162.

*** Colville reports the same case:

THERE was one Crawford in Kinneil, that pursued for the reduction of a decreet given before certain of the young advocates, being judges delegate, who decerned a rental of liferent of a piece of land called the Deanland beside Kinneil, to be of no force nor effect, because James Hamilton, the setter thereof, and some time Earl of Arran, the time of the setting of the same, was furious *et idiota,* and was so declared by the cognition of an inquest, which

No 1.

was past by a brief of idiotry directed forth of the Chancery, so that all things done by him, and all alienations and dispositions made since the —— year should be of none effect by reason of the said sentence. It was *alleged* into the reason of the summons reductive, that the judges had done wrong to have taken away the rental by nullity of exception, but it behoved to be declared null by way of action; and, for the corroboration of this allegeance, there was alleged the act of Parliament made by King James the 3d, cap. 66., anent the brief of idiotry and furiosity, whereintill it is contained, that all alienations made by furious persons should be retracted and rescinded, and not taken away by way of exception; for, of the law, est textus expressus, D. De officio præsidis in L. 14. in qua fit distinctio furiosorum, nam alii qui continua mentis alienatione omni intellectu carent, et perpetuo furiosi vel mente capti dicimus; alii lucida intervalla habent; and so it might be that dictus Jacobus Arran, during the time that he had set the said assedation and rental, had intermission of his sickness, and was at that time *compos mentis*, and the same not to be done in his fury, and *ideo* the same could not be taken away by way of exception, but behoved to have a special declarator. It was *answered* to this, That by the act of Parliament, nullities come in by way of exception, as there was practised betwixt Wedderburn and Blackadder, *voce* REMOVING; where a sasine was made null by way of exception; and the decreet that was given, making all things done by James Earl of Arran to be null since the beginning of his fury in *anno* 1561, made no distinction whether he was perpetuo furore agitatus vel si habebat intermissionem et lucida intervalla; et ubi lex non distinguit non aliter distinguendum. THE LORDS, after long reasoning, and that the matter was heard under the payment of an amand, found *definitive* that the said reason of the summons was relevant, *et quod judices male judicarunt*, and yet assoilzied them from the pain, *et hæc omnes domini una voce dicebant, quod rarum est.*

Colville, MS. p. 369-70.

No 2.
The King may grant gifts of curatory to idiots when the nearest agnates do not pursue their interest, but if these agnates afterwards serve themselves curators, the King's gift will fall.

1628. *February* 22. COLQUHOUN *against* WARDROP.

IN an action of advocation of the service of brieves of idiotry betwixt Colquhoun and Wardrop, wherein the LORDS having heard the reasons of both parties, why the service should proceed, or why no such service should take effect, before they gave answer to the advocation, or remit; and the question being betwixt one, who was nearest agnate to the idiot, and who thereby, conform to the 18th act, Parliament 1585, claimed to be served curator to the idiot, and betwixt another who had obtained a gift of tutory-dative from the King, to be tutor and curator to the idiot, by reason that the agnate had not raised the brieves, and desired that service, but only since the obtaining of his