

1796.

JOHN PRINGLE, at St. Clement's Wells, *Appellant*;
 JANET DOVE and JANE DOVE, Executrixes }
 and Residuary Legatees of ELIZABETH } *Respondents.*
 Tod, deceased, }

PRINGLE
 v.
 DOVE, &c.

House of Lords, 17th Dec. 1796.

REDUCTION OF DEED—MENTAL INCAPACITY.—Circumstances in which a will, conveying her whole moveable estate to a stranger, executed by a party impaired in memory and judgment, eighteen days before her death, was sustained by the Court of Session; but reversed in the House of Lords, and will set aside and reduced.

THIS was a reduction raised by the appellant, to set aside and reduce a deed of settlement executed by his aunt, the deceased Mrs. White, in favour of Miss Elizabeth Tod, on the following grounds:—1. That the said Margaret Pringle, or White, at the time the deed was executed, was so much impaired in her mental faculties that she was incapable to give directions for making out a settlement, far less to understand any settlement that was presented to her to be signed; and, 2d, That it was perfectly plain, that for sometime previous to the 13th day of July 1787, the date of the deed, and during the period she lived thereafter, that she was not of a sound and disposing mind, and in a situation to execute a valid settlement, or to transact any business whatever. Conclusions of count and reckoning were also joined to the summons. He also stated in a condescence, and offered to prove, That “about the
 “end of May, previous to her death, she became so im-
 “paired in her mental faculties, as to be perfectly incapable
 “of managing or giving directions about her own affairs.
 “That about that time she was carried from her own house
 “in the Castlehill, to the house of John Aitken in Brunts-
 “field Links, where she resided a short time; and from
 “thence she was carried to the house of Miss Tod at Laurie-
 “ston, where the settlement under challenge was executed,
 “and where she died” eighteen days thereafter. The appellant also craved the Court to ordain Miss Tod to appear before the Court, to answer such questions as should be put to her respecting the incapacity of Mrs. White, which might render proof by witnesses unnecessary. The Lord Ordinary, on answers from the respondent, disallowed the examination of Miss Tod, and allows to both parties a proof of their averments, reserving to the pursuer,

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appellant, to put all competent questions to Miss Tod, in order that she may answer to the same, in writing under her own hand. This last course was adopted. Answers to the appellant's interrogatories being put in by Miss Tod in writing under her own hand.

A proof was also taken. Janet Allan, a witness, deponed, that she knew the deceased from childhood up till the time of her death. When she went to Bruntsfield Links she appeared to be declining, and in a dying situation: "That the last time deponent saw deceased in her own house, was on 15th May 1787, and *at this time* the deponent observed, in the course of conversation, as well as in many other conversations, she talked incoherently, and did not seem to understand what she was saying, and was so much failed in mind that she repeatedly asked the deponent how she did." Further, "That Mrs. White appeared to the deponent to be incapable, from the state of her mind, to transact any of her own affairs, such as making bargains with her tenants, and other matters which she had been in the practice of doing." Rachel Profit deponed, that at the time above specified "her judgment and memory seemed so far to have left her, that she was incoherent in what she said upon every subject whatever: That the servant came one morning telling the deponent to go to her mistress' house immediately, saying, that her mistress had gone perfectly mad. This was about a fortnight or three weeks before she left the Castlehill. Deponent went and found her in a very disagreeable situation from distress of body and mind: That she had seen her two or three times after she was carried to Miss Tod's house. She appeared to the deponent to be much worse, and her judgment had perfectly left her." Alexander Cameron, another witness, deponed, "That at this time she was wavering and unsettled in her mind; but whether this proceeded from disease or vapours in her head, deponent cannot say." Her own servant, who waited upon her, deponed, "That while in Miss Tod's house, she often believed she was at home: and when she wanted anything she would desire her to go to places where such things had been kept in her own house, apparently forgetting that the furniture in her own house had been sometime previously roused and sold. These slips of memory often occurred. The deponent never saw any one come to do business with her at this time, except two gentlemen to

“ sign a paper, which the deponent understood was a settlement of her affairs, and that this happened after Mrs. White was confined to bed.” There was also the evidence of the writer of the deed, who declared, “ that he was Miss Tod’s usual man of business: That he had never been employed by Mrs. White, and that Miss Tod in this case had sent for him to speak to her about the making of the settlement: That the deponent advised Miss Tod to have nothing to do with the heritage, but that he would make out an assignation to her moveables in her favour, and that he accordingly did so.”

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In the answers given to the interrogatories put in by the appellant, Miss Tod declared, That while Mrs. White was in her house, she did not say any thing in her hearing that betokened either an absence of memory or unsoundness of judgment, and that Mr. Livingstone, the writer who executed the deed, stated, that he sent his clerk to have the deed executed, and that Miss Tod told him nothing about Mrs. White’s state of health, except that she was *very ill*.

Mr. Bisset (Mr. Livingstone’s clerk), on the other hand, deponed, That when he went to execute the will, he found Mrs. White sitting up in bed, and that when he entered, she stated she was glad to see them. “ He handed her the deed, and she then desired him to read it. He read it, and asked her if that was her will? To which she answered, Yes. Upon this she signed it. During the whole of this time she appeared to be perfectly sensible, and of knowing the nature and effect of the deed.” Other witnesses were adduced to prove that she was quite capable to execute such a will. The signature of the deceased to the deed did not present her ordinary subscription. The *surname* was wholly unintelligible, and could not possibly be deciphered.

The Lord Ordinary reported the cause, with the proof and informations, to the Court. The Court, after hearing parties in debate, “ repelled the reasons of reduction, and assoilzied the defender from the process, and decern.” On petition, the Court adhered, there being five judges for adhering, and the Lord President Campbell and three other judges against the judgment. May 16, 1793.
July 3, —

In these circumstances the present appeal was brought.

Pleaded for the Appellant.—It is clearly established by the evidence, that at the time of making the will or settlement in question, as well as for several weeks before that period, and afterwards till her death, Mrs. White,

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the testatrix, was not of a sound or a disposing mind; but that the powers and faculties of her mind, judgment, and memory, which had been progressively failing during the course of the winter and spring preceding her death, were become so greatly impaired, as to render her totally incapable of managing her own affairs, and utterly unfit her for any exercise of reason. Besides, the conduct of Miss Tod in carrying her to her own house, and excluding access to her on the part of her friends and relations; in calling in no medical aid or assistance, and in procuring the will to be executed in the manner she did, was sufficient to set aside the deed. 2d. The deed, as signed by the deceased, cannot be sustained. The surname adhibited is totally unintelligible, and cannot be considered more than as a mere mark adhibited by the deceased, which mark cannot in the law of Scotland be admitted as a valid subscription to deeds of importance, *i. e.* deeds in relation to property above the value of £100 Scots. In this case, the rule laid down in the case of Crawford of Doonside, (App. to Mor. Dict.), must apply, that no deeds of such a nature, signed by a mark or by initials, can be sustained.

Pleaded by the Respondents.—The appellant has not proved that the deceased was deranged in her mental faculties at the time she executed the will in question. The evidence only amounts to this, that at times she was wavering and incoherent in conversation, a failing incident to all in old age, and while under a weakly state of body. While the evidence, on the other hand, is clear that the deceased gave instructions for making her will as it stands, a considerable time before it was executed, and that she appeared to the gentlemen who took those instructions to be perfectly sensible; and not only was the will read over to her at the time she signed it in presence of the attesting witnesses, but, in discourse with them at the moment, she showed her perfect understanding of its import and effect.

After hearing counsel, it was

Ordered and adjudged that the interlocutors be reversed. And it is further ordered, that the reasons of reduction be sustained; and that the cause be remitted back to the Court of Session in Scotland to proceed accordingly.

For Appellant, *Sir John Scott, W. Adam, H. Erskine.*
 For Respondents, *W. Grant, J. Anstruther.*