IRELAND.

APPEAL FROM THE COURT OF CHANCERY.

JAMES BUTLER, Esq. (commonly called Lord Dunboyne) . . . . } *Appellant.*
DANIEL MULVIHILL, and others . . *Respondents.*

A LEASE obtained by fraud and circumvention, from a person in a state of intoxication, is void in equity.

A lease for lives of lands in Ireland, renewable for ever, is not absolutely forfeited by extinction of all the lives and neglect to pay the fines for renewal, even after notice from the lessor. Under particular circumstances, (as in the following case,) the right of renewal may still exist and be enforced.

In a case where A. the heir of the lessee, having such right, had entered into an agreement with B. respecting an independent lease of the lands held under the renewable lease by the ancestor of A., which independent lease B. had obtained from the landlord when in a state of intoxication, and by circumvention:—It was held, that the heir of A. and purchasers for valuable consideration, claiming under him, were entitled in equity to the benefit of the agreement between B. and A., and that the heir of the landlord (lessor) was entitled to the benefit of the same agreement, so far as B. took an interest.

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LEASE FOR LIVES.—FRAUD.—INTOXICATION.—LAPSE BY LACHES.—RIGHT OF RENEWAAL.—REMITTER.—EQUITIES.

THE Respondent, Daniel Mulvihill, filed his bill of complaint in the Court of Chancery in Ireland, against the Appellant, praying that the Appellant might be decreed to grant to the Respondent D. M. a renewal of a certain lease in the bill, stated to bear date the 5th of July 1718, by inserting the life of Walter Molony in the place of Anthony Brady. The bill stated the following case:

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Garret Gough, being in and before the year 1718, seised of the town and lands of Ballyvannon and Tullahara, with their sub-denominations, by indenture, bearing date the 5th day of July, 1718, demised the said premises unto Joseph Ringrose, subject to the yearly rent of thirty pounds; to hold unto the said Joseph Ringrose, his heirs and assigns, for and during the life and lives of the said Joseph Ringrose, Richard Ringrose, and Elias Ringrose, and the survivor of them, and the lease contained a covenant for perpetual renewal, on payment of five pounds, as a renewal fine on the fall of each life, and the nomination of another life.

Joseph Ringrose, by virtue of the lease, entered into, and continued seised and possessed of the premises, until the time of his death, which happened in the year 1758. He left two sons, Jacob Ringrose and Philip Ringrose. Jacob, as eldest son and heir at law, entered into and became seised of the said lands, and continued so seised to the month of July, 1778, when he died without issue, leaving Philip Ringrose his brother and heir at law, who thereupon became entitled to the said lands and premises.

John Brady, nephew of Jacob Ringrose, having alleged that Jacob Ringrose had devised the said lands and premises to him, and all the persons named in the said original lease, as *cestui que vies*, being dead, obtained a renewal thereof in his own name from James Butler, the Appellant's father, in whom the fee of the said lands and premises were then vested, for the lives of him

the said John Brady, Mary his wife, and Anthony Brady his son, by a deed, bearing date the 11th day of July, 1783.

By indenture, bearing date on the 4th of July 1793, John Brady declared that he had taken the said renewal in trust for Philip Ringrose; and by the same indenture, Philip Ringrose demised the said premises to John Brady, for the life and lives of him the said John Brady, Anthony Brady his son, and Mary Brady his wife, at the yearly rent of one hundred and forty-two pounds; by virtue of which demise, John Brady became, and continued seised and possessed of the premises.

By a deed bearing date the 26th day of July, 1793, Philip Ringrose, for the considerations therein mentioned, conveyed and assigned all his estate, right, title, and interest, in and to the premises to Walter Weldon Molony, his heirs and assigns.

By indenture, bearing date the 27th day of December, 1794, Philip Ringrose and Walter Weldon Molony, in consideration of a marriage then intended to be solemnized between Walter Weldon Molony and Mary Spellisy, granted &c. to the respondent Daniel Mulvihill and Walter Weldon since deceased, the towns and lands of Ballyvannon aforesaid, with its subdenominations, subject as therein mentioned, to hold, &c. for three lives, renewable for ever, in trust for the several uses, intents, and purposes in the deed mentioned.

James Butler died in the year 1784, and one of

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the lives named in the renewed lease granted in July, 1783, having dropped, Daniel Mulvihill made several applications to the Appellant, who upon the death of James Butler, his father, became seised of the reversion of the said lands, for a renewal of the said original lease of 5th day of July, 1718, by inserting the life of Walter Molony, in the place of Anthony Brady, named in the renewed lease; and offered to the Appellant the sum of five pounds, with interest from the death of Anthony Brady, and also the proportion of a renewal-fine for the time which had elapsed since the death of the said Anthony Brady.

The Appellant having refused to renew the lease of 5th July, 1718, according to the request, and upon the terms proposed, the bill was filed against him, containing such allegations and prayer as before stated.

The Appellant, by his answer, after admitting many of the principal facts alleged in the bill, proceeded to state, that although, upon the death of Joseph Ringrose in 1758, Jacob Ringrose, his son, became seised under the lease of 1718, and so continued until 1778; yet the said Jacob omitted to renew the said lease, by nominating any other life in place and stead of Joseph Ringrose, and omitted to pay the rent and renewal-fine; and although, in the life-time of the said Jacob, namely, between the said years 1758 and 1778, Richard Ringrose, another of the *cestui que vies,* died, Jacob Ringrose also omitted to renew the said lease, by nominating a life in

the place and stead of the said Richard Ringrose, or by paying the rent and renewal-fines; and although, immediately after the death of the said Jacob in 1778, the said Elias Ringrose, the last life in the said lease, died, yet Philip Ringrose omitted to renew or pay the renewal-fines, rent, or arrears, pursuant to the covenant of renewal contained in the said lease of 1718, and withheld the yearly rent of the said lands reserved thereunder to a large amount, which arrears of rent and renewal-fines remain still unpaid, whereby the said lease of 1718 became forfeited in the life-time of Jacob Ringrose, and all benefit of renewal thereof for ever lost to the Ringrose family, or any other person claiming under the said lease of 1718.

The answer denied that John Brady, at any time, obtained a renewal of the lease of 1718 in his own name; and stated, that James Butler, who, upon the death of his uncle in or about the year 1778, succeeded as heir at law to the inheritance of the said lands, was a man of weak understanding, and addicted to excess in the use of spirituous liquors, and being educated in a foreign country, and bred up an officer in the German service, was unacquainted with his family affairs; that John Brady, being well aware of the laches and nonpayment of rent and renewal-fines under the lease of 1718, and of the forfeiture of the lease of 1718 thereby incurred, by the most fraudulent means, at a time when James Butler was in a state of intoxication, prevailed upon him to execute an instrument, purporting to be a new lease of the lands comprised

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in the lease of 1718, bearing date on or about the 11th July, 1783, at the yearly rent of thirty pounds sterling, for the lives of the said John Brady, Mary his wife, and Anthony Brady his son, subject to a renewal-fine of five pounds on the fall of each life, with a covenant for perpetual renewal.

That Philip Ringrose, on the 15th day of October, 1789, filed a bill in the Court of Chancery in Ireland, against John Brady, impeaching the will alleged by John Brady to have been made in his favour by Jacob Ringrose, and praying possession of the said lands; to which bill John Brady filed his answer, insisting upon the validity of the said will, and that all the lives named in the said lease of 1718, were extinct, and that the term thereof was expired; and stating that he treated with the Appellant's father in whom the fee of the lands was vested, and who alleged that he was not then bound by the covenant of renewal contained in the lease of 1718; and that for several valuable considerations, he obtained a lease of the lands from the Appellant's father, which was executed in 1783, for three lives, renewable for ever, discharged from any claims on the part of P. Ringrose, or any person claiming in his right. And Brady by his answer, further denied that he accepted the said lease as a trustee for Ringrose.

That after a variety of proceedings in the cause between John Brady and Philip Ringrose, they came to an amicable settlement; and that a certain deed, dated the 3d of July, 1793, was executed between them, by which, after reciting that Garret Gough was seised of the lands, and

that he executed the lease of 1718, to Joseph Ringrose, and reciting the seisin and possession of Joseph until his death, and the seisin and possession of Jacob till his death, and that all the lives were extinct; and that said Brady thereupon took the lease of 11th July, 1783; it was thereby declared, that the lease of 1783, was taken by Brady in trust for Philip Ringrose, in consideration whereof, Philip Ringrose thereby agreed to execute a lease for three lives, renewable for ever to John Brady, at the yearly rent of one hundred and forty-two pounds, and five pounds as a renewal-fine for each life to be renewed; which lease the said Philip Ringrose, on or about the 4th day of July, 1793, executed to Brady pursuant to the terms of the agreement; and that by the aforesaid deed of 3d July, 1793, John Brady covenanted that all rent then due out of the said premises should be paid by Brady, his heirs, &c. and that Brady would also indemnify Philip Ringrose from all debts and incumbrances due by Jacob Ringrose.

That after the execution of the said deed of compromise of 3d July, 1793, and the said lease of 4th July, 1793, Philip Ringrose, on the 15th of July, 1793, executed a mortgage of his interest in the lands to Walter Weldon Molony, his solicitor, to secure a bill of costs claimed by Molony against Ringrose for a sum of 1512*l.*

That Walter Weldon Molony, about the 25th or 26th of July, 1793, prevailed on Philip Ringrose to convey to him the equity of redemption in the lands in consideration of an annuity of forty-

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five pounds ten shillings, for the life of Philip, in addition to the former consideration of 1512*l.*

That about the 22d of March, 1800, Philip Ringrose caused a bill to be filed in the Court of Chancery against Walter Weldon Molony and others, impeaching the said mortgage and conveyance for fraud, and charging, that the trustees named in Walter Weldon Molony's marriage-settlement or articles of 1794, had full notice of it; and praying that said deed of mortgage and bond executed therewith, and the said deed of conveyance of 25th or 26th days of July, 1793, and the marriage settlement of Walter Weldon Molony of 26th and 27th December, 1794, so far as same affected Philip Ringrose might be decreed fraudulent and cancelled, and praying a re-taxation of Molony's costs.

That Molony and his wife, about the 3d of April, 1801, filed a cross bill against Philip Ringrose, insisting that John Brady obtained the said lease of 11th July, 1783, as a new lease for his own benefit, and discharged from the said old lease or any covenant of renewal therein contained.

That Philip Ringrose, about the 19th November, 1801, filed his answer to the said cross bill, in which he does not deny that forty-five pounds were due for rent and renewal-fines of the said lands in 1766, and that some rent remained unpaid at the death of Elias Ringrose, the survivor of the persons named as *cestui que vies*, in the said original lease of 1718. He admitted that Brady wished to get a new lease to himself of the said

lands discharged from the said old lease of 1718, or any covenant for renewal therein contained, or any claim of Philip, and in consequence thereof said Brady obtained the said lease of 1783.

That before any decree was made in the said cause, Ringrose acceded to some amicable settlement.

That the Appellant attained the age of twenty-one years in July, 1801, and never since had received any rent for the lands comprised in the lease of 1783.

That in the year 1801, the Appellant brought an ejectment to recover possession of the lands in question, upon the trial of which, John Brady produced and for his defence relied upon, the lease of 1783, and the jury gave a verdict in his favour.

That the very limited circumstances of the Appellant prevented his taking proceedings to set aside the said lease of 11th July, 1783, as having been obtained by fraud and imposition.

That James Butler died about the month of May, 1784, and not shortly after the said deed of release of 1794, as by bill alleged, leaving Appellant, his only son; who thereupon became seised of the said lands.

That Anthony Brady, one of the lives in the lease of 1783, died on the 13th day of April, 1804.

Finally, the Appellant, by his answer, admitted that he refused to execute a renewal to the Respondent, Mulvihill, of the lease of 11th July, 1783, or the lease of 1718, on the grounds before stated.

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The Respondents, on the 25th day of July, 1809, amended their bill, and thereby stated the death of John Brady. To which amended bill the Appellant put in his answer.

The Appellant filed a cross bill against Daniel Mulvihill, Walter Weldon Molony and Mary his wife, and various other persons interested in the lease; and therein stated the fraudulent means by which the said lease had been, in the year 1783, obtained from his father, the said James Butler, and praying that the same might be declared to have been fraudulently obtained, and be given up to be cancelled.

The Respondents by their answers, respectively insisted on the validity of the lease of 1783, and that they were purchasers of the beneficial interest of the same, without notice of any fraud.

The original and cross causes being at issue, the Respondents respectively exhibited the several instruments under which they claimed to be entitled; and examined a person of the name of Dannaher, to prove that the lease of 1783 had been fairly obtained, and that the fines and rent then due had been paid at the time of the execution of the lease.

The Appellant examined witnesses to prove, First, That the lease of 1783 was not a renewal of the lease of 1718: Secondly, That the lease of 1783 was obtained by fraud, practised on his father when he was so intoxicated as to be incapable of transacting business. Thirdly, That the Respondents, Mulvihill, &c. or those under whom they claimed, had at the time when they became,

as they pretended, purchasers of the beneficial interest thereof, notice, that the same had been fraudulently obtained from the Appellant's father, and that the Appellant was an infant, and incapable of doing any act in confirmation of the said lease.*

July 25.

The causes came on to be heard in 1811, when the Lord Chancellor of Ireland declared, that the Respondent, Daniel Mulvihill, was entitled to the benefit of the covenant for renewal, contained in the lease of the 5th of July, 1718, and directed the Appellant to execute a renewal thereof to the Respondent, Daniel Mulvihill, for the lives of the Respondents, Walter Molony and Arthur Molony, pursuant to the true intent and meaning of the covenant And in case the parties should differ as to the form of such renewal, or as to the premises contained in the said original lease, it was ordered that it should be referred to the master to compare the lease of the 11th of July, 1783, with the said original lease of the 5th of July, 1718, and thereupon to settle and approve of a proper renewal to be executed between the parties pursuant to the said decree.

The Appellant thinking himself aggrieved by the decree, appealed to the House of Lords upon the following grounds:

The said decree assumes, that the lease of 1718 was in such force, as to entitle the Respondents to a renewal of it, by virtue of the

* Upon some of the points, and particularly the intoxication, see the depositions, *post*, p. 150.

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covenant for renewal therein contained; whereas the lease of 1718 had expired in the year 1778; and though the same might, under the Irish Tenantry Act, have been renewed at any time before notice given by the lessor to renew or within a reasonable time afterwards, upon payment of the rent in arrear and renewal fines; yet the lessor was not bound to renew, except upon such terms, and the Appellant's father having given notice, and the same not having been complied with in a reasonable time, he was not afterwards bound to renew, and therefore the court ought not to have decreed a renewal after an interval of upwards of twenty years.

The lease of 1783 does not even purport to be a renewal of the lease of 1718; the several answers of John Brady and Philip Ringrose shew that it was not so intended, and that it includes lands not demised by the said lease of 1718.

The evidence adduced by the Appellant proves, that the lowest rent which was at any time mentioned as the rent to be reserved, was two hundred pounds a year; whereas that actually reserved was thirty pounds a year, and the annual value of the premises very far exceeded even such rent of two hundred pounds a year.

The Appellant's father, at the time when he executed the said lease, was in a condition of mind which did not allow of his duly judging of its contents.

The lease so fraudulently obtained has not been confirmed by any subsequent act, either of the Appellant or his father.

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The Respondents who claim as purchasers for a valuable consideration, had notice of the fraud practised in obtaining the lease, and also of the Appellant's intention to impeach the same; and although this objection were founded in fact, it would not follow that the Respondents, as purchasers for valuable consideration, and without notice of a fraud, would be entitled to the assistance of a court of equity to give effect to a fraud practised by a person under whom they claim, more especially to the prejudice of an infant against whose estate such fraud is to be made effective.

On the part of the Respondent it was insisted, that no fraud appeared on the deed of 1783, and that at this distance of time it would be impossible for the Respondents to enter into any proof respecting it. That the Respondents are purchasers for a valuable consideration, without any notice of fraud, (if any were practised by John Brady.) That Walter Weldon Molony gave a full and fair value for the conveyance of the lands to him; and there is no evidence whatever that Walter Weldon Molony knew any thing improper respecting the execution of the said renewal; that the said renewal, though not technically drawn, yet being made by James Butler, as heir-at-law of Doctor James Butler, of Thurles, to John Brady, as devisee of Jacob Ringrose, and at the rent and fine for renewal in the lease of 1718, must be equitably and substantially considered as a renewal, and not as an original lease.

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In support of the allegations of the bill filed by the Appellant, a passage from the answer of John Brady to the bill of Philip Ringrose was read; and upon the subject of the notice to renew, the value of the lands, the intoxication, the fraud practised, and the notice to the purchasers, the following evidence was adduced.

Michael Donnellan deposed, that, in the beginning of July, 1783, a conversation took place, in deponent's presence, between John Brady and James Butler, touching a lease, or a renewal of a lease; the particulars of which conversation were, as well as deponent now recollects, as follows: "James Butler told John Brady that his lease of "part of the lands which he held was out, for that "the lives were extinct; and that although he "had been served with notice to renew, and pay "the rent and renewal-fines, yet he had neglect-"ed to do so; but James Butler added, that "he would take no advantage of Brady's neglect; "and Brady said, that he could hold the lands "in spite of James Butler, and make them his "own property, for that the statute of limitations "had nearly run against James Butler, but that "if James Butler would grant him a new lease, "he would take the entire lands; and after some "farther discussion, it was determined to post-"pone any agreement until they should go over "the lands in the morning:" and deponent saith, that on the next morning Brady shewed deponent two of the farms on the lands, namely, Ballyvannon and Tullyhara, and sent an old man of his

to shew deponent the other two farms, which lay at some distance, namely, Tenehire and Island Grady; and deponent saw, examined, and valued all the lands: that after dinner on that day the conversation was renewed touching a lease or renewal of the lands; and James Butler alleged that the renewal-fines and arrears, which were due to him, amounted to eight hundred pounds, to which Brady replied that they could not amount to six hundred pounds; but Brady said that the better way would be for James Butler to forgive him all the renewal-fines and arrears, and to make him a lease of all the lands; and Brady said, that he would make it up to James Butler, by giving him a good rent for the lands; and James Butler having asked Brady what rent he would give, Brady said he ought not to give as much rent as another, he being then in possession of the whole, part thereof under James Butler, and part thereof, to wit, Tenehire and Island Grady, as devised to his uncle Ringrose, and he and family being old tenants to James Butler and his ancestors to that part of the lands called Ballyvannon and Tullyhara; that Brady, after some further observation, said, that he *would give* James Butler *two hundred pounds* a year for the entire lands, on getting a lease thereof for three lives, renewable for ever; and deponent saith he then interfered, and desired said Brady to double his offer, and that he would have the lands for their value, and said that his valuation of the lands was higher, for that he had *valued them to five hundred pounds* a year, but that he would recommend to James Butler

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to make a lease of the lands to John Brady at four hundred pounds, as an old tenant; which offer Brady peremptorily refused; that he then recommended James Butler and Brady to go in the morning into the town of Ennis, and to lay all their papers before Counsellor Gregg, who was a man of honour and ability, and to be advised by him as to their respective rights and powers, to which they agreed.

Saith, That James Butler and deponent, on the day after, went together from John Brady's house at Ballyvannon, into the town of Ennis; and James Butler remained at a low whiskey house in the town; and deponent slept at a friend's house; that in a day or two afterwards, Brady also came into the town of Ennis, and renewed his treaty for a lease with James Butler; that Counsellor Gregg having been sent for, he enquired for their title deeds and papers, and neither James Butler nor John Brady having brought them, Counsellor Gregg said it would be impossible for him, without seeing such deeds and papers, to determine whether James Butler had a right to make a lease for three lives, or whether John Brady had any right to withhold any part of the lands: and Counsellor Gregg thereupon refused to interfere: and deponent saith that, perceiving John Brady was very pressing upon James Butler, and knowing from the state of intoxication in which James Butler was constantly, that he would be easily led to make a foolish bargain, deponent sent to Mrs. Butler, &c. &c.: and deponent saith, that on the following day,

deponent was in the bed room with James Butler, when John Brady, and a clerk of the name of Michael Dannaher came into the room with a pair of leases, one of them ready filled, and the counterpart about half filled up; that John Brady left the clerk in the room filling up the counterpart of said leases; and in some short time returned with Counsellor Gregg, and Brady asked Counsellor Gregg to look at the lease, which he refused to do, perceiving that James Butler was intoxicated: and Gregg immediately directed that Butler should be put to bed, and desired he would get no more liquor; and told Brady, that it was shameful of him to attempt to get leases executed by a drunken man; and said, that any act which Butler did in his present drunken state would certainly be set aside: that Gregg then went away, and Michael Dannaher then filled up the counterpart of the lease: and deponent saith, that two men had come into the room, one a tenant of James Butler, namely, Bartholomew Scanlan, and the other of the name of Sheehan, a kinsman of James Butler: and Brady turned both said men out of the room, and caused James Butler to sit up in his bed, and Brady and Dannaher produced the leases to James Butler, who then signed the leases in presence of this deponent and Michael Dannaher, who subscribed their names as witnesses thereto, deponent having become a witness thereto, not considering the leases as fairly and honestly executed, but at the desire of Mrs. Butler, in order to be enabled, at a future day, to state the manner in which they were executed and the

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unfairness of the transaction; and deponent positively saith, that James Butler was, at the time of the execution of the said leases, which was about two o'clock in the day, *intoxicated and totally unfit and incapable of doing any solemn or serious act:* and deponent saith, that in some short time afterwards Mrs. Butler came into town, and on hearing that her husband had executed the leases, she enquired what the rent was, and for what term: and deponent saith, that upon investigating the leases, deponent for the first time discovered that they had been filled up at the yearly rent of thirty pounds, instead of two hundred pounds, as deponent had supposed, according to the low proposal made by John Brady.

Jonathan Gregg in his deposition stated, " that " Brady had consulted him on the subject of " the renewal, and the differences between him, " (Brady,) and Butler; that he, Brady, on account " of Ringrose's claim, had been in treaty with " Butler to obtain a lease of the lands to himself; " —that Butler, in the presence of deponent, had " insisted that all right to renewal had been for- " feited by the neglect of the tenants;—that on " a subsequent day, between twelve and one " o'clock, deponent accompanied Brady at his " request, and upon his allegation that Butler had " agreed to execute the leases which Dannaher " was preparing at a public house in the neigh- " bourhood; that upon going to the house, " he found Dannaher writing at a table, and James " Butler seated on the side of the bed, with a " table, a jug, and glasses near him; and that

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" upon addressing himself to James Butler, he
" found him *so stupidly intoxicated, that he could*
" *not give a collected or rational answer*, where-
" upon he immediately remonstrated,—repre-
" sented to Brady the invalidity of the lease
" proposed to be executed under such circum-
" stances, and departed."

Several other witnesses deposed to the same facts, and the intoxication of Butler was denied only by Dannaher. There was also proof that John Brady, after having obtained the lease, called upon Mrs. Butler, and declared "that he " never intended to make use of it;—that he had " obtained it only to drive Ringrose to a com- " promise, and when that object was effected, he " would give it up to be cancelled."

Depositions were also made to establish the allegation, that Walter Weldon Molony and Dr. Spellisy, his wife's father, had full notice before the settlement was executed, that the lease in question had been obtained by fraud, and that it was the intention of Mrs. Butler and the Appellant to question its validity.*

All the material deeds set forth in the pleadings were proved in the Court below, and in evidence before the House.

* According to the view of the case taken by the House of Lords, the question of notice became immaterial.

The judgment was moved by Lord Redesdale, with very few observations. The Order penned by the noble lord is so distinct, accurate, and comprehensive, that a report of the judicial observations would be superfluous.

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For the Appellants, *Mr. Fonblanque*, *Mr. Horne.* —For the Respondents, *Serjeant Copley*,* *Mr. Wingfield.*

After hearing arguments for the parties, the following order was pronounced: " It is ordered " and adjudged, That the decree complained of " in the Appeal be reversed: And it is hereby " declared, That the indenture of lease of the " 11th July, 1783, in the pleadings mentioned, " from James Butler, deceased, father of the " Appellant, to John Brady, deceased, in the " pleadings mentioned, ought to be, and is hereby " deemed to have been obtained by the said John " Brady by fraud and imposition; and the same " ought to be, and is hereby deemed void, and of " no effect, so far as the said John Brady had any " interest therein, after the agreement entered " into by him with Philip Ringrose, in the plead- " ings mentioned, but without prejudice to the " rights gained under such agreement by the said " Philip Ringrose, claiming to be entitled to the " benefit of the lease of the 5th July 1718, from " Garret Gough to Joseph Ringrose, in the plead- " ings mentioned, and of the covenant for per- " petual renewal therein contained, as the heir " at law of Jacob Ringrose, deceased, son of the " said Joseph Ringrose, and impeaching the will " of the said Jacob Ringrose, under which the " said John Brady claimed and had obtained pos- " session of the lands comprised in the said lease

* Since appointed Solicitor-General.

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" of the 11th July, 1718; in as much as it does
" not appear that the said Philip Ringrose, under
" the particular circumstances of the case, might
" not, if he had established his right as heir in
" contravention of such will, have been entitled
" to have compelled a renewal by the said James
" Butler, deceased, in his favour of the said lease of
" the 5th of July, 1718; and especially as the ex-
" ecution of the said lease of the 11th July, 1783,
" from the said James Butler, deceased, to the
" said John Brady, compelled the said Philip
" Ringrose to assert such right against the said
" John Brady: And it is hereby further declared,
" that the Respondent, Daniel Mulvihill, surviv-
" ing trustee in the marriage settlement of the
" 27th of December, 1794, in the pleadings men-
" tioned, in trust for the purposes in the said
" settlement expressed, claiming under the said
" Philip Ringrose, is entitled as against the Ap-
" pellant claiming under the said James Butler,
" deceased, to the benefit of the agreement en-
" tered into between the said Philip Ringrose and
" the said John Brady, so far as the same was for
" the benefit of the said Philip Ringrose: And
" it is further declared, that the said Respondent,
" Daniel Mulvihill, as such surviving trustee in
" the said marriage settlement, is entitled to have
" a lease of the lands comprised in the said lease
" of the 5th of July, 1718, in trust for the pur-
" poses in the said settlement expressed, subject
" to the terms of the agreement between the said
" Philip Ringrose and John Brady, save so far as
" such agreement was for the benefit of the said

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" John Brady: And it is hereby further declared,
" that the Appellant, as heir of the said James
" Butler, deceased, being charged with the effect
" of such agreement, for the benefit of the said
" Philip Ringrose, is entitled to the benefit which
" the said John Brady might claim under the said
" agreement, and the lease of the 4th of July
" 1793, from the said Philip Ringrose to him the
" said John Brady:—And it is further ordered
" and adjudged, that the said indenture of lease
" of the 11th of July, 1783, and the said lease of
" the 4th of July, 1793, be respectively delivered
" up and cancelled:—And the Appellant, under
" the circumstances aforesaid, waiving by his
" counsel his claim to dispute the right of the said
" Daniel Mulvihill, as such surviving trustee, as
" aforesaid, to the lands of Tenehire and Island
" Grady, comprised in the said leases of the 11th
" of July, 1783, and 4th of July, 1793, and sub-
" mitting to execute to the said Daniel Mulvihill,
" as such surviving trustee as aforesaid, a lease of
" the whole of the said lands comprised in the
" said leases respectively, according to the terms
" of the agreement between the said Philip Ring-
" rose and John Brady, save so far as such terms
" are varied by this judgment:—It is further or-
" dered and adjudged, that the Appellant do ex-
" ecute to the said Daniel Mulvihill, as such sur-
" viving trustee as aforesaid, a lease of all the said
" lands, as if the same had been all comprised in
" and specially described by the said lease of the
" 5th of July, 1718, subject to the rents and co-
" venants, and according to the covenant for per-

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" petual renewal contained in the said lease of
" the 5th of July 1718; and that thereupon the
" said Daniel Mulvihill, as such surviving trustee
" as aforesaid, do execute a lease to the Appellant
" for three lives, renewable for ever, of all the
" said lands, reserving the same rent, and
" under the same covenants and agreements as
" are contained in the said lease of the 4th of July,
" 1793, from the said Philip Ringrose to the said
" John Brady; and that such leases respectively,
" be settled by one of the Masters of the said
" Court of Chancery, in case the parties shall
" differ about the same:—And it is further or-
" dered and adjudged, that such of the Respon-
" dents who are or may be in possession of the
" lands in question, or any part or parts thereof,
" do forthwith deliver possession thereof to the
" Appellant:—And it is further ordered and ad-
" judged, that the Appellant is intitled to an
" account of the rents and profits of the said
" lands, from the time of filing his bill, subject to
" the rent of 142*l.* reserved by the said lease of
" the 4th of July, 1793, of which there ought to
" be paid to the Appellant the rent of 30*l.* re-
" served by the said lease of the 5th of July, 1718:
" —And it is further ordered, that the said Court
" of Chancery do give directions for taking such
" accounts against the several persons who have
" been in possession of such lands since the filing
" of the Appellant's said bill, and do order the
" payment by such persons, or their representa-
" tives, of what shall appear to be due thereon:—
" And it is further ordered, that an account be

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"taken of all sums of money which may have "accrued due to the Appellant for renewal-fines, "according to the terms of the said lease of the "5th of July, 1718, since the date of the deed of "the 3d of July 1793, whereby the said John "Brady declared the said lease of the 11th of "July, 1783, to have been taken for the benefit of "the said Philip Ringrose; such account of re-"newal fines to be taken according to the or-"dinary course of the said Court of Chancery in "taking accounts of such fines:—And it is further "ordered and adjudged, that if any thing shall "appear to be due to the Appellant on such ac-"count, the same be paid by the Respondent, "Daniel Mulvihill, as such surviving trustee as "aforesaid, to the Appellant, before the delivery "to the said Daniel Mulvihill, as such surviving "trustee as aforesaid, of the lease hereinbefore "directed to be made to him by the Appellant:— "And it is further ordered, that the Court of "Chancery do give all necessary directions for "carrying this order and judgment into execu-"tion; and particularly such directions as may "be necessary on the return of the reports of the "Master in Chancery, to whom any reference "shall be made, in pursuance of this order; and "do give such orders and directions touching any "costs which may be incurred by any of the "parties in carrying this order and judgment into "execution as may be just.

*** According to modern decisions, the father of the Appellant, and, *à fortiori*, the Appellant himself, upon the evidence

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appearing in the depositions, if the same had been given in the trial at law, ought to have recovered a verdict.

In *Cooke* v. *Clayworth*, 18 Ves. p. 16. Sir W. Grant, M. R. said, he apprehended that a deed obtained from a man in such extreme state of intoxication as to deprive him of his reason, would be invalid even at law; and by *Cole* v. *Robins*, which is cited in Buller's N. P. p. 172, it seems, that in an action upon a bond, the Defendant pleading *non est factum*, may give in evidence that he was made to sign the bond when he was so drunk that he did not know what he did. In *Pitt* v. *Smith*, 3 Campbell's Rep. p. 34. Lord Ellenborough appears to have laid down a similar doctrine with great latitude. For according to the Report, he says, "Intoxication" (without limiting the degree) "is "good evidence, upon a plea of *non est factum* to a deed; of "*non concessit* to a grant; and of *non assumpsit* to a promise."

This doctrine appears to be contrary to the law, as laid down in Co. Litt. 247 a, who says, "As to a person who, by his "own vicious act, depriveth himself of his memory and un-"derstanding, as he that is drunken,—that kind of *non compos* "*mentis* shall give no privilege or benefit to him or his *heirs*." And again, "As for a drunkard who is *voluntarius dæmon*, he "hath no privilege thereby," &c. The doctrine seems to be also contrary to the principle upon which it has been held that a man who is *non compos* shall not disable himself. The opinions have been various upon that subject:—But Littleton, in sect. 405, and Sir Ed. Coke citing the passage, and Beverly's case, are of opinion, that a man *non compos* cannot avoid his own act by entry, plea, or writ. And with that opinion accords the case of *Stroud* v. *Marshal*, Cro. Eliz. 398.

As to relief in equity against a deed or agreement obtained from a man when drunk, it is laid down, that the having been in drink is no reason for granting relief; for this were to encourage drunkenness. But if, through the management or contrivance of the party who obtains the deed, &c. the grantor, &c. was drawn in to drink, relief is administered upon the ground of fraud. See *Johnson* v. *Medlicott*, 3 P. W. 130. note A. See also *Rich* v. *Sydenham*, 1 Ch. Ca. p. 202.; *Cory* v. *Cory*, 1 Ves. 19.; *Cooke* v. *Clayworth*, supra, and *Cragg* v. *Holme*, there cited.

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The Scotch law makes an important and necessary distinction:—" Persons while in a state of absolute drunkenness, and " consequently deprived of the exercise of reason, cannot oblige " themselves; but a lesser degree of drunkenness, which only " darkens reason, has not the effect of annulling the contract." See Stair, July 29, 1672, Ld. Hatton. So Erskine in his Instit. p. 822, says, " An obligation granted by a person in a state of " *absolute and total* drunkenness, is ineffectual, because the " granter is *incapable of consent*."

The rule of the French law, in cases of contract, is similar. See Pothier Traité des Obligations, p. 1. c. 1. art. 4. " Il est " evident que l'ivresse, lorsque elle va jusqu'au point *de faire* " *perdre l'usage de la raison*, rend la personne qui est en cet etat, " pendant qu'il dure, incapable de contracter, puisque elle le " rend incapable de consentement."*

To satisfy this rule, the drunkenness must amount to a privation of reason; but in gambling contracts, the protection afforded by the French laws to drunkards is more ample.

For in such cases something far short of a privation of reason is sufficient to annul the contract. Pothier says, " Lorsque " l'un des joueurs est dans un etat d'ivresse, le contrat que " renferme le jeu est nul, &c. Nous parlons d'une ivresse qui, " sans rendre la personne absolument incapable du consente- " ment, peut seulement rendre imparfait son consentement en " l'empêchant de faire les reflexions qu'elle eût pu faire si " elle eût ete a jeun." Traité du Jeu, c. 1. § 1. art. 2.

So the law stood before the Revolution; and although the " Code Civil" forbids gaming, except upon martial or gymnastic exercises, and in general affords no remedy to the parties concerned, either to enforce the payment, or the recovery of money won or lost, yet the intoxication of loser at the time of playing, would form an exception, and the case would fall under the rule of the old law.

The Civil Law has no text upon this head. The only allusion to the subject, so far as I can discover, is in the Digest, lib. 49. tit. 16. s. 6. De Re Militari. " Per vinum aut lasciviam lapsis " capitalis pœna remittenda est, et militiæ mutatio irroganda."

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* See the translation of Pothier on Contracts, by Evans.