Chap. 3.

Of Persons differenced from others by some Incapacity of Mind or Body.

These are Ideots, Madmen, dumb and deaf Persons, whose natural Condition renders them incapable to manage their own Estates; and Pupils, who because of their bad Conduct are cutted the Management of their own Affairs.

Tit. 1.

Ideots Madmen dumb and deaf Persons and their Tutors and Curators.

An Ideot is a person that cannot give a suitable answer to any plain or vulgar Question.

An Ideot in the Sense of Law, is a Natural, or natural Fool who never had Understanding from his Birth, and not one who had once Understanding and became a Fool by Chance or Misfortune, or who does the Wheel, or can read by the Instruction of another, for can tell who was his Father or Mother, or count 9 is not accounted an Ideot: John Sylvest. pandect. of the Roman civil Law Vol. 1. Book 2. Reg. 239.

Old Age or Sickness Mckenzie Observ. on Act 67. Par. 8. J. 3. thro the Law of England, if one have so much Knowledge as to measure a Yard of Cloth, Number Twenty Pence, or rightly name the Days of have attained the Age in which they ought to have it, whether it be Accident. There are two Sorts of Madmen. 1o Some are continually out of their Senses, who are not allowed to do any Manner of Business l. 5. l. 4. ff. de reg. jur. and whose Deeds are declared null Act 67. Par. 8. J. 3. tho those may sometimes effectually oblige themselves, as Absents and Pupils may be obliged l. 45. ff. de oblig. et act. l. 12. ff. de reb. cred. Mckenzie Vol. 2o There are those whose Madness does abate and admit of lucid Intervals who are sometimes of good and sound Memory and Understanding and sometimes not, called Lunaticks. Such are in their lucid Intervals under the same Circumstances with other Men and have all the Advantages of the Law: For Deeds done by them at that Time, are valid notwithstanding of any Return of their Defease l. 20. §. 4. ff. qui testam. fac. poss. 26 July 1630 Loch contra Dick.

Persons can be declared Ideots or furious only by an Inquest upon a Brieve of Ideotry or Furiosity. But their Deeds may be annulled by an ordinary Action of Reduction Mckenzie ibid. tho not by Exception Spotswood Practt. Tit. Ideot Crawford contra Kinnier. Deeds may be be reduced ex capite furoris at the Instance of the Granter, after Recovery of his right Senses, if it be clearly

clearly proved by Witnesses that he was furious at the Time, he was [illegible] had never been under the Inquisition of an Inquest 21 Feb. 1632. Mc Ardes contra Kinnier. It being unreasonable that the Omission of Friends to seek the Precognition of an Ideots [illegible] of such a Deed more than was sustained at the Instance of [illegible] the Declarator of Furie, it was found in the first case relating to this 1638 Loch contra Dick. That a Deed not [illegible] weak simple Person [illegible] circumvention without a Service of Furie. But for [illegible] his Name who understood not what he was doing [illegible] 1 July 1673. Hairman contra Symes. Because the [illegible] for taking away all Deeds done [illegible] questioned it may be taken away upon the Reason, that the Person [illegible] was not compos mentis, or what circumstances [illegible] Induction of a Person's Deed, such condition has not been presumed [illegible] quest is harder to be obtained, Reason of the Difficulty to prove it [illegible] other Times: Whereas the Verdict of an Inquest supplies that Want. Reduction of Deeds of Ideots or furious persons is expressly [illegible] Act 67. Par. 8. J. 3. For understanding what Construction Law puts upon Deeds of various Persons, whose Madness comes and goes by Intervals, we must distinguish between one declared furious by an Inquest, and a Person whose Condition has not been tried by an Inquest. Where one is found to be furious by Verdict of a Jury, his after-Deeds are presumed to have been done during the Fury, and not in a lucid Interval. The Deeds of one whose Folly or Furiosity hath never been under the Knowledge of an Inquest are presumed to have been done in his Fury or lucid Interval, according to the Reasonableness of the Thing. Mckenzie Observ. on Act. 67. Par. 8. J. 3. That is if the Deed be rational, it is presumed to have been done in a lucid Interval, and will stand good unless Furiosity at the Time of making the Deed be proved; every one being presumed rational. But if the Deed be irrational, it is sufficient to reduce it, that Furiosity anterior to it is made appear according to the Rule, Quisque supponitur durare in statu in quo est, donec contrarium probetur. The madness or Folly of

Not only Ideots and Madmen who have no Judgment, are put under the Tuition of others for managing their Estates; But also our Custom doth allow Tutors and Curators to dumb and deaf Persons, because these tho they want not Judgment, cannot express themselves and act by it Stair Lib. 1. Tit. 6. §. 25. Mckenzie Observ. on Act 18. Par. 10. J. 6.

A Father may name Tutors and Curators to his [illegible] or dumb and deaf Child. And if the Father has omitted to do so, the nearest Agnati or Kinsmen on the Father's Side past 25 Years of Age Stair Lib.