

their own peril; and albeit their payment, and acting *bona fide* is sometimes good, though made to those who had not a valid, but a colourable right, by those who knew not a better right; and might have been compelled to pay upon the colourable right; yet other deeds, though *bona fide* done, are upon the peril of the actor.—To which it was *answered*, That by the common law and custom of this nation, all fraudulent deeds are reducible; and there can be no deed more fraudulent than this of a father to his own infant son, for whom he is legal administrator, and must accept the right he gives himself, and so colludes with himself to make a snare to intrap merchants and strangers, in the midst of a course of trade with them; which is a common ground of law, whether the debt be prior or posterior to the son's infestment; and albeit the merchants bond be posterior, yet seeing it bears to be for ware, witnesses, according to the ordinary custom, are receiveable for affructing the writ, to prove what the ware was, and when received; which will not be prejudged, though there had been a discharge of the ware granted the time of the bond, unless there had been a real and true payment of the money; for there being nothing then paid, this bond ceases not to have a true anterior cause, as if it had been granted on death-bed upon a discharge then given, it would be valid, as being upon an anterior cause before the sickness; neither is there any difference to be made of the parts of the traffic after the son's infestment; but seeing the correspondence began before, and is once continued as a constant correspondence and traffic, it must all be drawn back to its beginning, as if the merchants on both sides had contracted when they began their correspondence, that they should faithfully pay what either of them received from other, till the correspondence was given up.

THE LORDS found that this bond, although posterior to the son's infestment, not bearing borrowed money, but merchant ware, that the quantity and times of furnishing thereof might be proven by witnesses; and albeit there had been a discharge of the ware, yet so much thereof as was furnished before the son's infestment would affect the same: But found, That the son's infestment being public and registrate, no posterior deed of the father's, by continuing traffic or correspondence, nor no pretence of fraud of his, could annul or burden the said infestment for any debt contracted posterior thereto.

Fol. Dic. v. I. p. 74. Stair, v. I. p. 645.

1679. November 28. CATHCART against GLASS.

GEORGE CATHCART pursues reduction of a disposition made by Glass to his good-brother, who married his sister, as being fraudulent betwixt conjunct persons, in prejudice of the pursuer, a lawful creditor, in this manner, viz. Glass, though but a shoemaker, took up a trade of buying seeds in Holland, and sold them to gardeners in Scotland, a parcel whereof he sold to the pursuer, which being corrupt and insufficient, the pursuer obtained decret against him for repetition of

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No 111.

No 112.

A gratuitous disposition reduced at the instance of a prior onerous creditor, by an implied warrandice, though the decree esta-

No 112.

blishing the debt, upon incurring the warrandice, was not obtained, till after the disposition.

the price.—It was *answered*, That there was no debt constituted against Glafs before the disposition, but by a process long after the same.—It was *replied*, That the process did not constitute, but declare the debt; but the debt was constitute before the bargain for the feeds, which did imply warrandice against latent insufficiency: And suppose the bargain had been after the disposition, yet it being betwixt two good-brothers, without a cause onerous, it must be presumed to have been a contrivance *animo fraudandi*, to let Glafs go on to trade and to deceive him; and in case he should be questioned, his good-brother should enjoy his tenement, as was found in the case Street *contra* Jackson and Masson, Stair, v. 2. p. 197. *voce* FRAUD, where a disposition by a father to the son was reduced upon debts contracted thereafter; and the like, Reid of Balloch mills *contra* Reid of Daldilling, Stair, v. 2. p. 144. and 234. *voce* FRAUD.

THE LORDS found the reasons of reduction relevant; that the bargain for the feeds was before the disposition, or though posterior, that the disposition was made upon the fraudulent design alleged; but found it not inferred, because it was granted to a conjunct person, unless he were partaker of the fraud; therefore found the contrivance only proven by writ or his oath; but if other pregnant circumstances in fact were adduced to infer the contrivance, the Lords would consider the same.

Fol. Dic. v. 1. p. 74. Stair, v. 2. p. 710.

1702. July 25.

JAMES MAN Merchant in Dundee *against* ANDREW WALLS, and OTHERS, his Creditors.

No 113.

In a declarator of bankruptcy, the Lords would not sustain the presumption, that a bill had been accepted the same day it was dated. The acceptance being posterior to a disposition by the bankrupt to other creditors, it was found that the party claiming on the bill had no title to challenge the disposition, unless he could show evidence otherwise, of a debt owing to him, prior to the disposition.

THE said Andrew Walls being debtor to sundry persons, he, on the 14th of February 1700, grants a disposition of the whole ware of his shop, and plenishing of his house, and other moveable debts, in favour of some particular creditors therein named; and the very same day there is a bill drawn on him, payable to James Man, another creditor, but not contained in the disposition foresaid, which is accepted by the said Andrew Walls, but without any date; but it is protested on the 15th of February for non-payment. After this, Walls leaves the town of Dundee for some weeks, and then returns, and is imprisoned by some of his creditors. This being the case, James Man raises a declarator of bankrupt against the said A. Walls on the 5th act of Parliament 1696, and thereon concludes reduction of the said disposition made by him in favour of some particular creditors to the prejudice of the rest; and he founded on this new act, in regard the act of Parliament 1621, against fraudulent alienations of bankrupts, will not comprehend this case, the disposition not being to conjunct persons, nor did it want onerous causes; nor was it in defraud of any diligence done by James Man, anterior to the disposition quarrelled; but he contended it fell precisely within the terms of the said last act 1696, because it was in prejudice of him, a creditor; and after he was under horning and caption at another creditor's instance, though not at his, and that he was then insolvent, and fled, and absconded. *Alleged* for the creditors in