

the quorrelling of Deeds upon the Account of intrinsic Fraud in the Thing itself, or the rescinding of a Sale because of the Meanness or Extravagancy of the Price; so be the Ware is not sophisticated or insufficient. *Stair Lib. 3. Tit. 9. §. 10.* of which I have said more in the proper Place. What a Seller speaks at Random to set off the Merchandize which he sells, is very often contrary to Truth, and consequently against Justice, is not reputed to be such a Fraud as is sufficient to annul the Sale if there be only such cunning Artifices as the Buyer may easily guard himself against, and on which the Sale doth not depend. But if the Seller declares a Quality of the Thing which he sells which is not due to it, and thereby engages the Buyer to purchase it: This will be a Fraud sufficient to annul the Sale. *F. de dolo l. 19. ff. de Acq. V. l. 1.* For clearing the Nature of Fraud, distinguish a Deed elicited by Fraud from a fraudulent Deed: By the former the Grantor is deceived and imposed upon; by the latter, he deceives or defrauds his Creditors or others.

### Sec. 3.

Of Deeds elicited by Fraud and Circumvention.  
What Deeds are intended to be elicited by Fraud

The Ways of eliciting Deeds by Fraud, or cheating those Men who with being innumerable it is not possible to reduce them into a Rule, which *Ulpian l. 3. de Off. Cap. 17.* Doth furnish us with this notable Instance. *Dythus* a *Banker* by *Syracuse* called some Fisher Men come with a Company of Boats to fish just before his gardens at a Time when he was giving a splendid Dinner there to *Cannius* a Knight of *Rome*, every one of which Fisher Men, according to instructions received from *Dythus*, brought the Fish he had caught and laid them down before him: Upon *Cannius* asking the Meaning of so many Fishes and Boats, *Dythus* told him that all the Fish which supply the City of *Syracuse* must be taken here and none of these People could ever live, if it were not for their intentions which set *Cannius*'s eyes upon purchasing the Place and induced him to buy the gardens of *Dythus* at his own Price and give as much for them as he demanded. But *Cannius* was in a Rage next Day when he understood that no Fisher Men used to be there, and that a Design of loking him into such a Bargain had brought them there the Day before. In Cases where the Question is to know if there be any Fraud, it depends on the Prudence of the Judge to find it out, and to furnish, according to the Quality of the Fact and Circumstances. And as we ought not on the one hand easily to annul Contracts for every Thing that may not be within the Bounds of a perfect Sincerity: So on the other hand we ought not to suffer Simplicity and Honesty to become a Prey to double Dealing and Knavery. A Disposition granted by a simple Woman of all her Means extending 3000 Pound in Favour of one that had lately been her Curator and

reditas rationes, with a Substitution likewise in her Contract of Marriage with his Sister's Son, wherein he the late Curator provided, were reduced as being presumed unwarrantable and fraudulent. *18 Feb. 1669 French contra Watson.* Mutual Contract betwixt two Persons, whereby they oblige themselves and their respective Representatives to divide equally betwixt them whatever Means should fall to either thro' the Decease of a third Party, under the Pain of a certain Sum in case of non-performance; and a Bond granted to a Trustee made Arbitrator of any Difference that should emerge betwixt them, whereby they appropriated to him a fourth Part of what they should succeed to in Manner and Form. *18 Feb. 1669* deducit, with their Ratification of the Contract and Bond made the Day after the Death of the Person whose Estate they had agreed to divide equally in. Were all reduced at the Instance of one of the Contractors against the Trustee who had required Right to the other's Part as elicited by Fraud and Circumvention. In respect the Pursuer was not a literal Man was imposed upon by the Trustee, under Pretence of Friendship to go into the Contract, and also to grant the Bond without any meritorious Cause: By his falsely giving out and misrepresenting (as the Narrative of the Contract imported) that the Person who had agreed to divide was equally related to the Pursuer and the other Contractor, whereas the former was his nearest of Kin, and the latter nothing related to him but only one of the Name; and telling that the Succession was a Thing uncertain. Besides that the Trustee, to facilitate the Contrivance, caused the Parties sign a Letter to him, transcribed from a Copy writ by himself for drawing the Contract, and also made them take an Oath of Secrecy not to discover what was done to any Party, and further had endeavoured to bribe the Managers of the Pursuer's Process to desert him. And one of the two Witnesses in the Contract did not remember that the Papers were read at subscribing, and the procuring the Ratification from the Pursuer, was a Continuation of the former Fraud.

An Agreement being made by *Jath* betwixt a Brother of the first Marriage and a Sister of the second, that which of them got a Disposition from a Brother of the second Marriage should dispose certain Lands to the other, and the Brother of the first Marriage having after he got a Disposition to himself, sent his Son abroad to his Uncle with the Disposition who altered it in the Son's Name. The Lords found this relevant to infer a Fraud in the Brother of the first Marriage to evade his Agreement made by Oath 13 July 1661. *Comptel contra Moir.* The not reading of a Writ to a Person at his subscribing thereof is not per se a sufficient ground to infer Fraud: Because it might have been read before. *Stair Lib. 3. Tit. 9. §. 11.* Yea, an irredeemable Right of Lands was found not reducible upon this ground, that tho' the Commission run only upon a Wadset.