

it was granted irredeemably, *implicata fide* without being read at sub-  
 -scribing, by a Person to his great Prejudice about 6 Months after  
 his Majority, in Favour of one who had been his Curator *sine quere*  
 and did not cleared the Curatory Accounts 9 July 1635 S. Monamus &  
 -tra S. Lafflic. But Durie tells us. that the Lord decided so se re-  
 -mantz. and the Lord Stair (Lib. 1. Tit. 9. §. 11) is of Opinion that tho' the  
 were not relievant to be proved by Witnesses, they would certainly have  
 relievant, if proved by Writ or Title of Party, yea Witnesses were enjoined  
 to be examined upon this ground of Circumvention, in citing a Widow  
 Consent to a Right granted by her Husband, that when she subscribed it  
 it was not read to her, but represented to be of another Tenor than it wa  
 and to her Advantage 29 Feb. 1673 Hamilton contra Chifley, So Fraud  
 and Circumvention was found to reduce a Disposition *omnium bonorum* in  
 of Lewis without Reservation of Libertie or Consent, subscribed by a Man  
 then brought out of Hospit of S. Lie lying Bleeding, to whom the Disposition  
 was not read nor the contents shown at subscribing, and by which no Ma  
 -vant was given to draw the Writ & Decree 5 6 7 2 Yellumony contra  
 Duff. A Wife consent to a Right granted by her husband *sub scripto*, her  
 Days after his death was found not receivable as being done in recenti Cade,  
 which reason of Reception is not regarded by our Law or Custom 29 Feb. 1673  
 Hamilton contra Chifley.

~~2.~~

The legal Remedy against Deeds elicited by Fraud  
 or Circumvention.

For Reducing Persons injured by Deeds deceitfully procured from the  
 the Civil Law affords *actio in doli* and distinguishes it into *actio in doli* and  
 -fidei contractu when a Person is deceitfully drawn in to a Bargain, a bargain  
 otherwise he had no inclination to; et *actio in doli* in contractum, which  
 one is overreached only in the Form of a Bargain holding that the former  
 -deas a Contract *bona fidei* *nihil in so jure* l. 7. pr. ff. de dol. mal. l. 16. §. 5.  
 sanc. pr. ff. de minor. l. 3. §. ult. ff. pro socio. Tho' a Contract *strute juris*  
 struck up in that Manner subsists till it be rescinded l. 7. §. 3. l. 36. ff. de veris  
 Oblig. l. pen. C. de inutil. stip. and that the latter doth not annul the Contract  
 whether it is *bona fidei* or *strute juris*, but affords only ground of a Reduction  
 ll. de l. 9. pr. ff. de dolo l. 13. §. 4. 5. 6. ff. de act. empt. But with us no Con-  
 -tract can be declared *nul* ex *dolo malo*, without a formal Reduction. The  
 the Difference our Law makes, is to require greater Presumptions, or as we  
 call them Qualifications of the Deceit, when it falls in, without giving the first  
 Rise to the Contract M. Kenzie Treat. of Actions Cap. 2.  
 Deeds elicited by Fraud may be annulled by Reduction *ex capite doli*  
 the Instance of the Party concerned, or his Heirs or Creditors or Assignys, unless  
 he or they chuse rather to adhere to the Deed and seek their Damages to be  
 made up. For Law puts it in their Option either to Reduce and annul

Deed, or to stand to it, *renunciando juri pro se introducto* and pursue the de-  
 -ceitful Deed for Damage and Interest so. Act. Comm. de ff. Lib. 4. Tit. 3.  
 n. 7. Stair Lib. 1. Tit. 9. §. 14. But an agreement-Heir cannot quarrel a Deed  
 elicited from his Predecessor upon Fraud in Circumvention until he be  
 -scribed Heir to the Person circumvented 23 July 1713 Louisa de Hoffe  
 -tra contra General de Kennach. Because a Heir is bound by a Deed upon  
 that Head but he who subjects himself to perform what is in the Deed  
 would have been liable to in the Event of the Deed being annulled. And an Heir  
 solution of the Deed or in a Process at the Instance of an Approver having  
 -written not secure him from being punished by the Approver for the  
 -tance of the Deed. Nor was a Deed in quarrel upon the Head of  
 Fraud by a Predecessor a well used Cause *transactio bona fidei* pro-  
 -pria *transactio* and *actio in doli*. Argued by the other Party l. 10  
 ff. de injur. p. U. l. ff. de dolo. Because nothing is injured willingly  
 and willingly. This Reduction lies against Heirs and the Heirs or  
 -heirs, but not against Assignys. Argued by the other Party l. 10  
 ff. de veris Oblig. l. pen. C. de inutil. stip. l. 7. §. 3. ff.  
 -red. mal. et not. except. 22. Decembris 1660 Prince contra Pallat.  
 But a Bargain of Wine received in the Buyer's Store was a Direct  
 -of Forfeiting at the Instance of his the Buyer's Creditor who  
 -has arrears the same before it came to his Store, was annulled upon  
 -commissione the Wine 22 Decembris 1660 Prince contra Pallat. For  
 -Law doth not receive a Deed annulled at a bona fide Auctione *Actio doli* among  
 -the Romans was not convenient to them against their Inventors, or to the Victim,  
 -against such as were of high Degree, or to safe Persons against those of an inferior  
 -infamous. But with us Reduction ex *dolo* lies against all and suffers be-  
 -ceivers and their Heirs without Exception. In the Case of mutual Actions  
 -whilst two Parties ex capite doli, the one's Fraud may be sustained to con-  
 --pende the other's l. 36. ff. de veris Oblig. in d. l. n. 2. But the Exception  
 -of Fraud cannot be elicited by the other replying upon Fraud also committed by  
 -the Defend. l. 4. §. 13. ff. de excep. dol. mal. especially if the Pursuer be in  
 -Luceo captand. Brunnem. in d. l. 4. n. 14. 16. Albeit the Reason of Fraud  
 -was found receivable by Way of Reply 4 Decemb. 1665 Thomson contra  
 -Kenderfon.

Seeing Fraud is a Crime, it is not to be presumed unless there be a  
 -Proof of it l. 18. §. 1. ff. de prob. Menoch & Præsumpt. 3. n. 19. Because  
 -quilibet a natura bonis præsumitur. But seeing it links in the Mind, it  
 -cannot be gathered or judged of better, than by rational grounds of Conjecture  
 -and Presumption arising from the Quality or Nature, and Circumstances of  
 -the Deed and Parties l. 4. l. 8. l. 10. C. de rescind. vend. l. 6. C. de dol. mal.  
 -We find many such grounds of Conjecture adduced by Lawyers. Lucas  
 -~~per~~ a penna furnisheth his Readers with a vast Number Joseph Mas-  
 -cardus