

= Cordus reduceth them to 110 and Menochius makes them yet fewer. The most approved of such grounds are these 5. The committing a grievous Crime or Injury l. 3. C. de L. Cornel. re sicar. l. 6. C. de injur. Menoch. p. 45. 46. 2. The telling a Lie that is profitable to the Teller l. 7. 8. 50. l. 5. j. l. 37. ff. de del. mal. Menoch. lib. n. 53. 62. 3. A person's not doing that which his office obliges him to do. l. 44. ff. de offic. l. 41. ff. de l. fac. Menoch. lib. n. 66. as if a Tutor should neglect to inventory his Pupils's Goods or a Buyer neglect to intimate a Proceet of Evidence to the Seller 4. One concealing from <sup>the</sup> ~~the~~ he deals with Privileges competent to him by Law Menoch. lib. n. 74. 5. The buying from one after Intimation by his Creditor not to do it, as being a Sale to their prejudice l. 50. s. 3. ff. qui in frau. Cr. Menoch. lib. n. 21. 6. Disobedience to Magistrates l. 189. ff. de reg. jur. Menoch. lib. n. 86. 7. A person's seeking that which he must instantly restore l. 573. s. 3. ff. de reg. jur. l. 8. ff. de del. mali & mal. except. Menoch. lib. n. 88. 8. One's using a thing unprofitable to himself and hurtful to another Menoch. lib. n. 97. 9. The Quality of the Parties, as when a cunning or cunning Man contracts with a simpleton, or with a Minor, or with a Woman Menoch. lib. n. 100. 10. Deceit in Diligence and Caution l. 7. ff. de cond. inst. Menoch. lib. n. 102. 11. Unusual Clauses in a Writ argue Fraud. Menoch. lib. n. 103. 12. The doing a Thing in a secret or clandestine Way that is to be publicly performed l. ult. ff. de rit. nupt. and the going obliquely & indirectly a business l. 7. C. de naviat. Menoch. lib. n. 108. as when one borrows Money privately and desires to conceal his Condition 13. Persons borrowing Money for above their Fortunes. 13. The Trading of Money to a prodigal Spent-horner Menoch. lib. n. 112. 14. The doing a Thing in articles mortis, whereby some body is wronged Menoch. lib. n. 119. 15. A Design of changing a Creditor's preference either from the borrowing of Money by the grantor, or a Disposition immediately thereafter, or from a Person's suspending all his Estate without reserving his own Interest, for no meritorious Cause or for a Cause nothing adequate, being no Man is supposed to dipost himself of all his Estate without some well Design. I shall add no more concerning these symptoms and conjectural grounds of Fraud in general, but only that they may be taken off by clear contrary Proof. Menoch. lib. n. 110. and that Frauds will hardly be presumed in a Person of intire Reputation and Honesty, but more slender Qualifications will be sustained against one who hath formerly been found guilty of Fraud, or who is reputed a Sharpster Stair Lib. i. Tit. 9.

Fraud is always probable by the Committers Oath or Writ in any Proceet against him at the instance of the deluded Party Stair Lib. i. Tit. 9. s. 11. if the Fraud of a Buyer of Wine, inferred from his Knowledge of his own Incompetency at the making of the Bargain, was found probable by his Oath or by the Books to exclude the Creditor who had arrested the Wine 22 Decemb. 1600. contra Pallat. Fraud of a Fisherman who having obtained a Bond blank in the Time of his Insurance, thereof, and had filled up 88 Years in Stead of 19 instructed to have been committed upon by the Fisherman's Bonds-bonds of the same Date with the Tack, was found relevant to reduce the Tack as to the Fisherman, but not as to a singular Successor acquiring from the Fisherman for an overpaid Cause.

Cause, bona fide without being Portender of or privy to the Fraud when he bargained 1 Decemb. 1551. Crichton contra Crichton and Corritthers. But it was not found relevant to reduce a Disposition in Favour of some of the Dispositors Creditors, that it was offered to be proved by the Oaths of Writer and Witnesses, that it was not read the Time of subscribing, and was in substance given over to draw the Disposition in Favour of all his Creditors in general 22 July 1607 Hamilton contra Hamilton Drummond and others. Because if such a Thing were sustained probable by Witnesses, it would endanger all sorts of Securities. It being ordinary for both Parties and Dispositors to allege contrary or different instances of Fact to wear or conceal Fraud, which are wholly concerned The Benefit or Burden of Proof is not given to or imposed upon any one of the Parties. But ~~the~~ the material Point for clearing the Truth is stated and a Joint Proof allowed where the Parties Allegations are not contrary to one another, but where they are contrary, the Load lies for clearing up the Matter to state abstract Points concerning the Condition of the Parties. The Management of evidence, as the like, and to obtain it they ought to produce some small Number of Witnesses, or bringing them at their Trial. In the Loades allowed the Jurors to prove the Qualification of the Conventor and the Creditor, to prove his Answers March 1682 Ballantyne contra Bannan and Bannan contra Bannan having given in a Declaration to the Lords against a Person, who by Virtue of a Disposition taken from the Deceased in some Infringment of Disposition was taken, had got his Jones requisited representing that the Receiver of the Disposition had circumvented the grantor, in making a Woman to subscribe it in Place of a Discharge of some Annualrent due to her, whereof she had intrested the Receipt to him as her Writer, and that she desired so much at her subscribing her Answer, desired the Receiver of the Disposition to produce the Story of the instrument, that he might examine on the Verity thereof, and likewise desired the Deceit to produce the Witnesses in the Testament, and any other credible Witnesses to be examined, as to the Carriage of the deceased when she subscribed the Testament, and as to what she declared then & at any Time after in Relation to her granting of the Disposition March 1682 Ogilvie contra Forrester. But the Quality of Circumvention, that a Lady was induced to give Warrant to a Notary to subscribe her Testament unread of a Tutor contrary to what she expressed was not admitted to be proved even by Witnesses in the Testament Home May. 1744 Testaments Crichton contra Ewart of Ledy Innerlieith. Nor were Witnesses received to prove that a Debtor deliberately retired his Bond from a Person who was inserted Creditor therein only by Way of Trust for the Relief of another, to whom the Debtor had paid Annualrent