## Sect. 2.

## Of fraudulent Deeds.

A Fraudulent Deed is that of a Debtor to deceive his Creditors, and de-
feat or disappoint the Payment of what he owes to them. By a Debtor here
understood I Bankrupt or Dyvour or Person actually insolvent, whose Estate
is by such a Deed rendered insufficient to satisfy his Debts. We need not
much solicitous about the Extract of the Word Bankrupt or Bankroute, w
is thought to be a Compound of the Italian Banco and the Latin Rump
or from the Italian Banco rotto broken Bench; because Merchants
Merchants in old time when they found themselves no longer able to pay the
Debts use keep up the Face of a Credit to continue their Business
were wont to break the Bench they sat upon, or the Bank their Table
as become useless to them. We need not likewise be much solicitous to dete
the Pedigree of that ignominious Word, whereof we have more Law
Synonima's in Barrman and Dyvour: since Bankrupt in general sig
fied to signify any insolvent Person. The Import of Barrman may be
Debtor without an Etymologist. Dyvour or Dywour is derived by Skene
verb. quia vere Dywes from Deuis, as if he who makes a Cessio
prive is Favour of his Creditors did his Duty. But Sir George M'Kenzie
(Observ. on Act 18. Par. 23. J. 6.) brings it from a more unfavourable
Root, viz. the Irish Word Dyer signifying a Knave.

Bankrupts are either such as are actually insolvent at their Conveyi
as not supposed to be generally known, or those whose Insolvencies are
stood in the Eye of the Law to be universally known, called notour Ba
rupts.

### §.

### Concerning the Deeds of Bankrupts whose Condition is not generally known.

One is understood to defraud his Creditors by granting to their Prejud
Alienations, Dispositions, Assignations, Translations Act 18. Par. 23. J. 6
or by Parity of Reason Bonds 5 Decemb. 1707 M'Clerie contra contra Gi
Talks in so far as they may be the Ground of Apprising or Adjudication
poinding or other Diligence against the Debtor's Estate, [redacted]
[redacted]. The Alienations
Dispositions Assignations and Translations only be expressly mentioned in the
Statute. Because in Laws introduced for obviating Fraud, Extension is nec
sary: Seeing the same deceitful and subtile Inclination that tempted the Deb
to cheat his Creditors, will probably move him to cheat the Law, if the
Circumspection of a prudent Judge did not meet him wherever he
turned. And generally a Law especially a favourable one as this, when
the Reason of it is expressed, reacheth to all Particulars to which that
Reason



Reason is adapted; and the Particulars specified are not considered as Res-
trictions but rather as Examples unless the taxative Particle of Only
allenerly, or the like be subjoined. For Decisions do even extend Laws
from conjectural Reason, where the Reason is not expressed: As the 40
Year's Prescription of Obligations Act 24. Par. 5. J. 3. is extended to
Decrets and Testaments; and the Security of Tacks of Land against
Singular Successors Act 17. Par. 6. J. 2. is extended to Tacks of Salmon
Fishing and to Tacks of the like Quality. But when Reason is so far

Under Alienation not only an express transferring of a Right is
comprehended, but also any Act whereby the Debtor exits from, loses or di-
minishes his Property or Stock of some directly or indirectly: As Sales
at an under Price, or for a counterfeit Price for which the Debtor gives
no Acquittance; Retirement, Discharges or Acquittances to Debtors without
Payment; or if to defraud Creditors a Debtor entering with his Superiors
places up a Mortgage or Bond, would be for the Security of his Estate;
or if he extinguishes a Debt he himself owes his Debtor with Exceptions he had
no Title to. L. 3. §. 2. L. 2. L. 3. pr. L. 17. pr. ff. quæ in fraud. Cred. or if
he refers to the Debtor's Oath a Debt which he had sufficient Evidence
to prove L. 7. §. 5. ff. eodem. For if he compounds the Matter by Transac-
tion with an inquiry and dishonest Intention L. 3. §. 9. ff. eodem is
fraudulent. Item. If a Debtor moved by a collusive Transaction wrongs
his Markets; or if he should relinquish a Thing that a conjunct or con-
fident Person might respect it; or should by private Connivance or Collu-
sion suffer a Decreet to go out against him in a Suit where he had just and le-
gal Defences or should dolose suffer himself to be nonsuited in a just De-
mand or suffer the Term to be circumduced against him for not com-
pearing to Process; or if he drop an Action commenced, or confess a Debt to
prescribe by Collusion with his Debtor L. 3. §. 1. ff. quæ in fraud. Cred. These
all would come under the Denomination of a fraudulent Alienation and
be annulled. Thus it was not found relevant for one Brother to extinguish
a Debt due by him to another out of the Kingdom, by holding him as con-
fest to the Prejudice of that other's Creditors, but only by reporting his Oath
acknowledging the Debt 2 Decemb. 1718 Nairn contra Sgilvie. Because
there might be Collusion betwixt such conjunct Persons.

By the Civil Law, he is not understood to alienate in Prejudice of
his Creditors, who omits to acquire what he might have had as by refusing
to accept of a Legacy or to enter Heir L. 6. pr. ff. quæ in fraud. Cred.
For the old Romans did not look upon any Thing as a Fraud done to
the Prejudice of Creditors, except what was a Diminution of the Estate
which the Debtor had already acquired. To maintain the Reasonableness
of this, the Doctors torture themselves confoundedly with the Distinction
betwixt