

Civil Law l. 11. §. 1. ff. qui potior. in pig. The Reason why Reduction is competent to Creditors in Jure or sub conditione is, least it should prove useless when the Term of Payment is come or the Condition fulfilled, by the interim Insolvency of the Receiver of the Alienation. However, it imports not whether he be insolvent or not, if the Subject disposed be still in his Hands, Reduction being in rem concepta and if transferred to a third Person for an onerous Cause, Reduction is still ineffectual, unless the Creditor had before that Transmiss secured his Interest by inhibiting the Grantor. In Effect, such a Reduction is Way of prevention, at the Instance of a Conditional Creditor or one whose Term of Payment is to come, resolves in a Decree, not notwithstanding of such a fraudulent Conveyance, his Debtor's Estate shall be liable to Execution at his Instance, as if it were not so.

By the Civil Law *ad hoc* *revoletoria* seems to have been competent to such as were Creditors *ex delicto* arg. l. 12. pr. ff. de ven. signif. But with us the Lords are averse from a Reduction, at the Instance of a Creditor of a Disposition made to the Defendant by him who had married his Wife after committing of the Murder, to the Prejudice of the Plaintiff due and thereafter decerned to her by the Exchequer, because the Defendant was not obliged in Law to know of the Murder, it not being discoverable from the public Registers, which only his legal Successors are bound to consult. And the Husband having only a part of the Murderer's Escheat (who was denounced in Absence) for Satisfaction of the Plaintiff, could not pursue real Actions but only a Declarator Escheat. For generally a Reduction upon the Statute 21 is neither obtained where a Criminal's Escheat falls only upon his being denounced Fugitive; nor where an Escheat is due upon his getting a Commission. However to Sir George Mackenzie it seems severe, if not unreasonable, that a Person should be disappointed of that Satisfaction and just Reparation for a Crime committed against himself by the Criminal's disposing his Estate to some conjunct or confidential Person. Yea he thinks it even contrary to Law; For that a Man hath equal good Right to reduce the voluntary Deed of his Debtor *ex delicto*, as to reduce such a Deed of his Debtor *ex obligatione civili*; seeing tantum factum quod delinquendo, quantum factum se obligando; and the rather, because Creditors *ex delicto* are preferable to all others, in so far as concerns their necessary Reparations Act 74. Par. 14. §. 2. Act 174. Par. 13. §. 6. Act 26. Par. 1. Ch. 2. But tho' he be of Opinion, that Creditors *ex delicto*, as those to whom Escheats are due, may quarrel gratuitous Dispositions to their Prejudice; he will not allow a Disposition for an onerous Cause to be reduced *ex tali capite*: Because the Receiver of such a Right was *bona fide* to take it, finding Nothing against the Grantor in the

Register of Hornings or Inhibitions, even tho' he knew that his Ancestor had committed the Crime; since he was not bound to know him to be thereby legally incapacitated to dispose. For clearing here for the Fisk has Interest upon the Commission of a Crime, to reduce the Criminal's posterior voluntary Deeds, Sir George Mackenzie (Observ. on Act 10. Par. 23. §. 6.) is pleased to distinguish thus. 1. The Fisk cannot reduce any Right anterior to the Crime, unless it was granted of Purpose to disappoint the Fisk, when the Crime then intended should be committed; as if a Person resolved to kill the Sovereign, or to run in to the Enemy, should immediately before the Intention, dispose his whole Estate without an onerous Cause; such a Disposition were quarrelable as made in fraudem legis. 2. If the Receiver of a Disposition, whether general or special, or without an onerous Cause, was conscious of the Disposer's Design of committing Treason; he is guilty of the Crime, and the Disposition with all his own Estate goes to the Fisk. 3. All Dispositions subsequent to the Grantor's committing Treason tho' upon Citation or Indemnification, are null after Sentence, which is drawn back to the Date of the Crime Act 30. Par. 2. §. 6. 4. Dispositions of Hereditaries cannot be quarrelled upon the Grantor's guilt of any other Crime than Treason, for that only confiscates Hereditaries. But Rights of Moveables are quarrelable by the Fisk if made after Sentence, and perhaps if after Citation for a Crime importing Confiscation of Moveables. The Lawyers are of Opinion, that the Offender cannot in such a Case pay his former Creditors. 5. Some think, that after Commission of a Crime which Law declares punishable by Confiscation of Goods, the Criminal cannot even before Denunciation or Citation, dispose of any Part of his Moveables. It seems indeed, that Confiscation *ipso jure* should import more than Confiscation resulting from the Nature of a Crime. For it would appear, that Law having confiscated a Person's Moveables at the very Time of his committing a Crime punishable by Confiscation, the Property is thereby transferred to the Fisk, and the former Owner divested of it.

The Lords do reduce not only Deeds to the Prejudice of anterior Creditors, but even such as are hurtful to Creditors contemporary with the fraudulent Right. As one grants a Bond to his Friend in Order to procure him a suitable Match and Tack, and secretly takes a Discharge from him of the Bond; such a Discharge is reducible at the Instance of the Woman or her Friends imposed upon in Contemplation of the Sham Bond, to contract with the pretended Creditor therein. A Person having disposed a Finesment to his Son and his Wife in their Contract of Marriage in conjunct Fee and to their future Children in Fee, and having at the same Time deceitfully taken a Tack from his Son of the