

Persons their Lib. 1. Tit. 9. v. 15. Vers. Eighty. It is more doubtful, if a Bastard be understood a conjunct Person in this Matter. For because Bastards cannot in-  
-tend demonstrate, and so have no Kindred on the Father's Side Paleot  
(Cap. de nothis) says, that they are conjunct by the Mother; and not by the  
-ther; and Alex. (Consil. 60) will have them conjunct only with respect to  
-nage, so as a Bastard's Brother cannot marry his Bastard Sister. But  
-the Bastards be not conjunct Persons in strict Law, they are conjunct in  
(Felin ad Cap. per hanc de probat.) and are presumed to have natural affection  
-to their natural Parents: So as Law repudiates their Testimony in Cases con-  
-cerning their natural Father; and allows them Action against him for

ment. And tho' they have no Advantage by their Birth, they should not  
-there be capacitated to cheat <sup>disturbance</sup> <sup>the Creditors</sup> <sup>by a latent Bond</sup> <sup>payable by the Grantors Heirs</sup> <sup>if he</sup>  
-be Heirs of his own Body, and redeemable by his Grantor in his Life  
-of a Penny 24 January 1577 Blair contra Wilson. For by such  
-a Dispositive of all kinds, all Creditors might be easily included and in-

-cluded. A Disposition in favour of a Stranger, is not more effectual  
-a Disposition to conjunct or conjunct Person. For both are presumed to be  
-granted in fraudem creditorum, unless made for onerous Causes; and neither  
-of them can prove its onerous Cause is. Inverness, 1660 Henderson contra  
-Mrs. Stewart Answer to Inlet. Inlet Tit. Disposition. And a Disposition  
-in favour of one Creditor, makes the Debtor bankrupt as to the re-  
-mains for which Payment he has nothing remaining in which Life he did not  
-being one by any of the Creditors they were brought in pari passu, nota  
-standing the Disposition is November 1655 Brown contra Watson and  
-Summers 14 November 1679 Collich contra Kirk Session of Litch

A Bond of borrowed Money granted by the Magistrates and Majority of  
-the Council of a Burgh without a previous Act of the Council fully convened  
-for that End to a Magistrate for the Time, was not sustained to prove its  
-onerous Cause, and was allowed to be a Charge against the Town only in  
-far as could be made appear, that the Money for which the Bond was granted  
-was applied for the use of the Community (3 Feb. 1711) Ross and McCleod  
-Magistrates of Fyvie. For albeit Magistrates and others who contract Debts  
-and grant Bonds without a previous Act of the Town Council fully convened  
-are and their Heirs personally liable to discharge the Town of such Debts,  
-without Prejudice to the Right and Security of the Party Creditor, Act  
-Sess. 4. Parl. W. C. M. The Magistrate who had the Bond been granted to  
-any extraneous Creditor would have been liable to relieve the Town there  
-could not by taking such a Bond to himself subject the Town to pay it  
-except in so far as he and his Representatives did instruct an onerous Cause  
-and that the Money was in remission to the Community.

shall only be...  
-Senti

It hath been a great Controversy among our Lawyers, whether the  
-Act of Parliament 1621 anent Bankrupts doth strike only against the  
-nationals made by Persons actually insolvent whose Estates are thereby rendered  
-insufficient to satisfy their Debts?

It is alleged on the one Hand, that only Estates of a Person insolvent to the Pre-  
-judice of his Creditors are reducible upon the said Statute. Arguments a subro ad  
-migrant, because the Title runs only against Persons of that Nature, Bankrupts may  
-distant being there used as equivalent and equivalent Terms. 2. A Creditor ought  
-not to resort to an extraordinary Remedy of Reduction, while he may recover  
-his Money by the ordinary Remedy and Diligence of arresting or sequestrating  
-his Debtor's Estate: In which Case he is not supposed to be the design of the Act  
-of Payment, and many honest Families come to utter Ruin. Nothing of all which  
-is to be feared, when there are other Funds for the Payment of Creditors, and of  
-which it might have been provided by doing Diligence, and if they continue to  
-give longer Trust to their Debtor, who is impotent, the Ruin is incurred thereby  
-must be upon themselves. 3. A Design of defrauding Creditors cannot be in-  
-ferred from an Act suspending one of his Estates, when he knew that he had not  
-and enough to pay his Debt. And to reduce them without Fraud other in state  
-or accident, were to violate the Statute into an prohibition or prohibition: as  
-to favour a Man who has any Debt, however against his Estate, he is to qualify  
-Friend or provide Assurance, unless the Negligence of Creditors is such that  
-those who obtain fraudulent Credit in their Funds, altho' quaque sebet sibi in-  
-vigilare.

It is urged on the other Side of the Question by Sir John Mifflin (Deas 237)  
-et 418 and others. 1. That the Fraud of Bankrupts might have given Hope  
-to the Statute, the judgment thereof is not simply to annul such Estates, but even  
-to secure Creditors from making away any part of their Estate without an onerous  
-Cause or just Occasion in respect of unknown Creditors. For Persons might have used  
-the Statute to their Advantage, and so the meaning of the Act  
-would be evaded in making 2. If it were a Principle, that a Debtor can do Nothing  
-to the prejudice of his Creditor without an onerous Cause, he cannot give away to his  
-Friend that part of his Estate, which his Creditor might have affected, upon Pre-  
-tence that there is enough behind to satisfy him. For otherwise, by the same Prin-  
-ciple it might be pretended in Reduction, or a pile in inhibition, that the Party  
-inhibited did Nothing in prejudice or defraud of the Pursuers. In respect, after  
-granting of the Right craved to be reduced, he continues abundantly solvent, espe-  
-cially considering, that prohibition runs in these Terms, that the Party inhibited  
-shall do no ~~thing~~ <sup>deed</sup> in default of the pursuer. 3. It were to put Creditors  
-to dispute their Debtors condition, the Time of his making gratuitous Gifts or  
-Donatives, and whether he had Maintenance of Estates, and Effects to satisfy all his  
-Debt, which may be unknown to them. Nor can it be objected to Creditors that they  
-were negligent to do Diligence in Time for recovering Payment, since the Law  
-obliges them to no such Thing. And the same Objection may be retorted against  
-these posterior <sup>Donatives</sup> <sup>Creditors</sup> <sup>or</sup> <sup>sequestrations</sup> by justly, for omitting to secure them-  
-selves by Diligence against the common Debtors other Estates, when it  
-was to be had if they knew not of any such Estate, they cannot defend their  
-taking