

in Favour of a conjunct Person to the Grantor's Dehors, and contrived to defraud such as he was trading with, was sustained probable only by Writ or by Oath of the conjunct Person who received the Disposition of his such pregnant ^{assumptions and Evidences} as might necessarily infer the fraudulent Design. *28 Nov 1679* Cathcart contra Glass. As it is one Presumption of a fraudulent Disposition, that the same was made without any true or good just and necessary Cause. So, that the Price of the Subject alienated was converted or to be converted to the Debtor's own Use, or to the Dehors of his Wife and Children in such another, ^{Presumption} *Arg. Act. 14. Dec. 12. §. 6* Which infers Simulation, a Pretence of a thing that is not and differs from Disimulation a Disguise or concealment of something that is. Whereof we find a notable Instance in *Hop's Collections* (the *Matt. Pitt. de delo Sander contra Kinchard*) where ones Effort to get that had fallen to the Superior upon a Denunciation for non Payment of his Fee Duty was redressed upon this ground, that he the Superior had a Day or two after the Denunciation received and discharged that Fee Duty, without denouncing the Effort. That he was denounced, till Year and Day were elapsed. Because if such a thing had been intimated to the Vassal, he might have got himself relieved from the Horn within the Year. When a Disposer of a Reversion retains Possession thereof, there is a shrewd Presumption that the Disposition is simulate or feigned and to be void non Dehors. Therefore a Disposition of Goods was found to be simulate, when the Disposer remained in Possession till his Death *15 June 1624 Strachan contra Scots*. And a Disposition in common by one Merchant to meet in Security of Debt, was found voidable as to Goods in the Shop and household furniture upon this ground, that the Disposer retained Possession of the said Goods therein and household Menishings till he brake *27 July 1703 Bly contra Walford*. But if the Disposition bear expressly that it is to take Effect at the grantor's Death, the Disposer retaining Possession during his Life, will annul it *8 March 1626 Traynair & Robertson contra Bluffield*. *Nov. 12. 3. Till 2. 11. 12. in fin.*

Not only are Dispositions reducible at the instance of ^{his} Creditors, but also upon the same ground of Equity, Rights acquired by a Debtor means from a Stranger in the Name of a conjunct Person or Trustee, may at the instance of his prior Creditors, be got declared liable to their Debts in the same Manner as if said Rights had been taken in the Debtor's Name. Which must be done by Way of Declarator: For that a Redemptio writ is vain, since that annuls only the Debt, quarrelled and brings back the Subject depend to its former Condition; and the Thing that Creditors here would affect, was never in the Debtor's Person. Where a Disposition is made by a Stranger to a Debtor's Child in familia, the same is presumed to have been acquired by the Father's Means: Because a Child in familia, supposed to be Nothing except what flows from the Father. Which Presumption the Defender must take off by proving that the Child had an Estate alunde. But if the Right claimed to be affected is granted to one who is Major and forisfamiliat, the Defender must prove, that the same was truly acquired by his Debtor's Money or Effects.

The Deeds for a valuable Consideration in Favour of a conjunct or confident Person, are not quarrellable by anterior Creditors who had done no Diligence against the Debtor; yet the Debtor, or his interposed Confident, privy to the Fraud, cannot to the Prejudice of the more timely Diligence by inhibition or Arrestment, Warning, Apprehension or Adjudication, or other ways used by one creditor to affect the Bankrupt's Estate, or free himself probably another creditor of any voluntary Disposition or Right of the Estate. For such Right is reducible at the instance of the Diligence, to whom the Creditor preferred by partial favour is liable to make forthcoming what he so received *d. Act. 12. Nov. 23. §. 6*. Because, tho' he so do not commit Fraud who receives from his Debtor what is due to him, and does nothing but by taking care of his own Interest *l. 6. §. 6. h. quae in fraude*. Yet it is reasonable that Payment made to him in Prejudice of another *qui sibi vigilavit* without neglect of his Interest by being Diligent, should not be sustained. As in the *Nov. Laws* *§. 10. postquam Creditors in possessione morantur* a magistrali modo extol. *Act. a Revisor. d. Act. 12. §. 6* after he has assigned over his goods for the Satisfaction of his Creditors, said not prefer one creditor to another *l. 6. §. 6. h. quae in fraude*. By voluntary Rights and Payments in Favour of some Creditors, which are reducible at the instance of others, I understand intended as are made without any previous Diligence, that in Suppliment of a preceding Minute or Requisition whereupon the Debtor might have been compelled to make them. For that such are necessary to avoid the Debtor if other Creditors were not in the Days they are accounted voluntary, in in far as he prefers one Creditors some to the Prejudice of the timely Diligence of others. By whom he might have been compelled as well as by the Creditors he satisfied, and who, had it not been for the Disposition, might have affected the Subject depend, notwithstanding the personal Obligation in the Minute, tho' distinguishing whether the antecedent Minute contain a specified Obligation to grant expressly the Debt quarrelled, or only a general Obligation to dispose Loans in general. For in both Cases, a subsequent Disposition in Satisfaction of either without previous Diligence, would in the Sense of the Law *(d. Act. 18.)* be reckoned voluntary. There is a great Difference betwixt a Debtor Bankrupt, and a Debtor inhibited: For the latter disposing what he was bound to by an Obligation prior to the Inhibition, does not contraven the Command thereof which forbids only the doing any new Deed to the Prejudice of the Inhibitor, and the Disposition is drawn back ad suam Causam; whereas the former being unable to satisfy all his Creditors incurs the Contravention of the said Law, when without Force of Diligence he gratifies one to the Prejudice of others who had used Diligence.

The Words of the Law *(d. Act. 18.)* that Deeds in Favour of one Creditor to the Prejudice of another, who hath done more timely Diligence