

by serving Inhibition, or using Horning, Arrestment, Comprising, or other
 Lawful Means, only to affect the Debtor's Lands or Goods or the Price thereof
 his Cheaf etc. are not so to be understood, as if any of these Diligences
 in deum of the Bankrupt's Mortality, were a sufficient ground to annul
 vel prematurely any Right granted by the Bankrupt to his beloved Creditors;
 that not proper or habeat per se, to affect the same. viz. That the use
 of Inhibition should be a ground to quarrel a Right to Movables, or the selling
 of Investment a ground to reduce an heritable Right; which were an
 -und Transgression de genere in genere. But we must here as in all general
 Clauses apply singula singulis. That is, heritable Rights may be protected
 by the Use of Horning, Inhibition or Apprising; and Disposition of M
 -ovables by such as have used Horning or Arrestment for affecting the same.
 Because Law never privileges an improper Diligence, which of its own
 Nature cannot affect the Subject, and so cannot be disappointed by the
 Consequence of its Person who are said to buy Lands, in respect the Rights
 only in Inhibition or Apprisings or Liquidations, without being at pains
 to enquire if there be any Arrestments against the Seller. It was insisted
 -that a competent Diligence to reduce upon the Act of Mortmain. But a Right
 is said to be lying in another's Site than where it was served.
 Nelsen contra Fornier, being said contra juris requirit ut nullum habet
 -Nor are Creditors who have completed their Diligence in any privilege,
 a duly registered Inhibition, or a Comprising completed by judgment, or a
 -Arrestment with a Decree of Forthcoming, better of their own Nature
 -than any posterior Right of the Subject without the Remedy introduced
 by the Statute. The Reasoning whereof is that no Debtor can in prejudice
 his Creditor who is in cursum diligentiæ or have only made some Step in
 -Diligence as by Execution of Horning or Inhibition, or a Summons of Dy
 -dication, or by a Denunciation of Lands to be appraised, or by a Charge
 of a Decree of pointing. For the Act mentions the serving of Inhibition
 of Horning &c. Which implies that the mere raising of either without exe
 -cuting is not sufficient, unless where it is made appear, that the Bankrupt
 -intentionally to disappoint his Creditors ~~intentionally~~ whom he knew to have
 -served such Diligences, grant collusive Rights to others partaking of the
 -Fraud; which no Creditor doing the most exact Diligence at omne quod
 -erat could prevent. But then a Charge of Horning without Denunciation
 is a sufficient Diligence to entitle one to the Benefit of this Law & Jan
 -1681 Cathgate contra Bowdoin. A Charge of Horning without Denunciation
 or Registration was found a sufficient ground to reduce a posterior voluntary
 -Disposition granted in Favour of another Creditor by the common Debtor to
 -the Abbay for personal Protection 23 Feb. 1779 Hamilton
 and McKenzie contra Campbell of Merubill. A personal Charge upon a
 -Mackenzie Observ. on Act 10. Cap. 23. f. 6. Denunciation of Lands to
 -ap

to prevent the effect of the Inhibition or Comprising or Arrestment by performing another Creditor who has done diligence or perhaps none at all

apprized or Execution of a Summons of Appudication are Grounds
 to reduce posterior Rights in Favour of Creditors not so far advanced in Dil
 -gence than Lib. i. Tit. 9. §. 18. 2. v. 2. Severely. A Charge upon a Decree of
 -pointing is reckoned a legal Step of Diligence for reducing posterior
 Rights. Because the Act of 18. 2. v. 2. reduces Reduction of Lands of Particular
 -granted to Creditors in Frequency of Office who have served Inhibition or used
 Horning, Arrestment, comprising or other lawful Means under which
 -Word other lawful Means a Charge upon a Decree of pointing is compre
 -hended Mackenzie Vid. But the Regulators of the Bond was found not to be
 -such a legal Step of Diligence January 1793 Necht. ubra generalis. Because
 that is considered rather as a Decree for preservation of the Bond; and a Decree
 -that doth not prove it late in competition for that a Decree could be got
 -and of any date without respect to the time when it was given in.

~~severely or perhaps none at all~~
~~the effect of the Inhibition or Comprising or Arrestment~~
~~by performing another Creditor who has done diligence or perhaps none at all~~

But long and severe Diligence or Delay is complete the in whole or imper
 -fect Diligence hath been found to hinder Reduction of Rights posterior thereto
 -July 1750. Burns in Syle contra Jaimesple 3. Tit. 10. 21. Nelsen contra
 -Act 9 July 1709 Drummond contra Gemety and Reid 28. March 1700 1700
 -of Davack contra Duff of Duple 23 January 1712. Mackenzie of Redburn
 -contra Fledler and her Husband

A Bankrupt's Disposition of Lands or heritable Rights is partial Favour
 -to one of his Creditors to the prejudice of the current Diligence of others, and is
 -voidable at the Instance of those other Creditors as in the Person of a Singular
 -Successor acquiring the same bona fide for a competent Price from the gratified
 -Creditor in the same Manner as if it had continued in the Author's Person d. 1. 18.
 -Act 23. f. 6. For if the Reduction allowed to the Creditor whose Diligence was
 -injured by the common Debtor's preferring another, could be defeated by any
 -Disposition that other Creditor could make. The legal Check upon a Debtor's
 -partial Favour to some of his Creditors might easily be eluded and disappoint
 -ed by a Translation to a third Party. This as is before observed, Rights with
 -out merous and necessary Causes made in prejudice of the granter's antea
 -rior Creditors who had done no Diligence, are not quarrelable in the Person of
 -a third Party acquiring them bona fide for merous Causes from the grantee
 -ceiver d. 1. 18. The Reason why third Parties are more favourably dealt by
 -in the one Case than in the other is: Because gratuitous Rights in Favour of
 -Diligence, are liable to be annulled as fraudulent, which Nullity could not be
 -extended against singular Successors innocent of the Fraud. Whereas in the
 -other Case, the common Debtor's Deceit are not quarrelled upon any personal Ac
 -count