

account, but afterwards because they are prejudicial to the Diligence of lawful Creditors, which they continue to be whatever Names they come to, and so the Creditor ought to work against all singular Exceptions. Where one Creditor appropries and another gets thereafter a Disposition in Satisfaction of his Debt upon which he is infest, and a third after all obtains a Comprizing with Justification of the first Creditor who had approved may reduce the Disposition in favour of the Second as made after his Diligence, and so will be preferred to the other two, altho' the third Creditor as being infest upon his Comprizing before the first, would have been preferred to him. Because a Creditor receiving a Disposition in Defraud of another's Diligence, is obliged to make his Disposition and Justification were anterior to the third's Apprising. For the Ratio vincendi, ~~ubi non est eadem ratio potest~~ *ubi non est eadem ratio potest* as where the last of three Apprisers is first infest and then first is infest and after him the Second. *ubi non est eadem ratio potest* quia vincere vincendum me et tamen non vincere me. As if the second Appriser had inhibited the common Debtor before contracting of his third Appriser's Debt, the Second would be preferable to the Third, who would be preferred to the first, and yet the first would be preferable to the Second. Now there is a special Privilege given to a Creditor using Diligence before the common Debtor's doing a voluntary Deed in Favour of another by which whereof he prevails. d. Act 10.

But tho' heretofore Rights granted by a Person insolvent to one or more of his Creditors, to the Prejudice of the current Diligence of others, are revocable at their instance even against third Parties innocently acquiring from the Creditor preferred yet a third Party so acquiring a Right to hold such a Right to be called in Question, would destroy all Commerce, and such a Right to be called in Question, would destroy all Commerce, and such a Body could trade safely. Yea a Merchant's Disposition of the goods in his Shop to some of his Creditors, while he acted in the Office of a Magistrate and kept the publick Street, was found not Feasible upon the Act of Parliament 1625 at the Instance of Creditors who had done no Diligence before granting thereof. Albeit there was anterior Diligence by the Instance of other Creditors, and the common Debtor retired to the Abbey for Sanctuary in some few Days after, 22 July 1607 Chancellor & others contra Hamilton Drummond and others.

As no Bankrupt can prefer one of his Creditors to another who has done more timely Diligence: Neither can he by a Disposition to any lawful Person for the Payment of his Debts to the Value of the Subjects disposed, empower the Trustee to prefer such Creditors as he pleases, after Diligence done by others against the Disposer, tho' no Diligence were used before the Disposition. Because such a Faculty can be exercised only legitimo modo et in forma = minist

= minist habilibus, by preferring Creditors according their Diligence, as the common Debtor himself behoves to have done. But such a Trustee was preferred as to hold out to himself before the Disposition: Because seeing his obligation as any Diligence, he could as to affect the same in another Person & January 1669. Newman contra Weston 29 July 1607 Crispina contra Anderton. One mentioned in the Disposition, and taken from him for certain money or Payment in the Name of a Trustee; who upon his Death was for some time admitted the Disposer and paid several debts for him, and to secure those Payments from being questioned by his other Creditors, took a gift of the ten in Law's Book: The said gift was found sufficient to prefer and support the Trustee against the other Creditors for being unjustly preferred for the Reason to whom he assigned a Debt of 1000 shillings. Contra Creditors of S. Vincent. But if a gift be not intended, the Payments by the Trustee to the common Debtor are void and his Creditors would not have been sustained to receive prior Creditors who made before any Action at their instance, for the same to be Trustee being at first quarrellable at their instance, a grantee to the Debtor of the same in Debt to them prejudicially could not hereafter be revocable nor voidly affected by Payment to the Debtor. d. Act 10. supra pag 992. If a third party purchases may void the Deed in Favour of the Receiver, if he was not a Disposer of the grantor's Estate. As tho' a Disposition from one insolvent to a competent Person, who is ignorant of the Disposer's evil Condition, might be received as granted to the Disposer of Creditors yet if the Receiver should upon Truth thereof bona fide pay Debt due by the Disposer before any Diligence done by other Creditors, the Disposition will be sustained by Law.

Not only are voluntary Deeds of a Debtor in Favour of one of his Creditors to the Prejudice of another, revocable (d. Act 10. Part 23. p. 6.) but also any sort of Diligence that one Creditor gets, by the common Debtor's concurring with him, the opposing thereof, or not opposing him and resisting others, which is a kind of Fraud termed collusion, may be impugned. Thus a Comprizer who had consented upon 60 Days, when his Debtor was out of the Country, was preferred to a prior Appriser upon a posterior 15 Days Denunciation: For that the common Debtor had been industriously brought home to gratify that prior Appriser, that he might be obliged to denounce him upon 15 Days, and so get his Comprizing expedite before elapsing of the Term of the first Denunciation. Hope May. Grath. Wardlaw contra Galzeil. Again a Creditor done by the former, but also has Action to recover what is voluntarily paid by the Bankrupt to that other Creditor to his Prejudice. d. Act 10. which doth not hinder Commerce of selling to or buying from Bankrupts Goods for Money presently delivered by or to them, or the Part exchanging of Goods for Goods, where the Bankrupt doth not become Debtor, or the Seller Creditor. Thus a Merchant