

“ *3tio*, That the revoking clause, though general, was not to be understood to mean farther than a revocation of all former settlements, so far as they were different from that now made in 1746, which contained the revoking clause; and to understand it otherwise, and more largely, is *captare verba*; for no one can believe the intention to have been other than has been said; and though it may be true, that in construing conveyances to lands, there is no arguing from intention against plain words, yet that does not apply to this case, where there is no doubt about the validity of the conveyance 1741, but all the question is upon the import and meaning of a revocation which is *animi*; that this case differs from any that is to be met with either in our Law Books or Decisions; all the cases to be met with in either, are of two dispositions, to different persons; *ex. gr.* A disposes to B, a stranger, with a power reserved to alter even on death-bed; he afterwards disposes on death-bed the same subject to C, and the question is, whether the heir of A can quarrel the disposition to C; on which question, besides the authority and decisions referred to in the petition and answers, one was mentioned, of June, 1738, *Irvine* against *Irvine*, where, directly contrary to the doctrine in the answer, it was found, that an heir could not challenge a posterior disposition, though on death-bed, in respect of a prior to a different person, which excluded the heir, and contained a power to alter. But if there was not a doubt on that, where can be the doubt where both first and second dispositions are to the same person, and which is the present case ?

“ The strength of the argument on the other side, was put upon the generality of the revoking clause, in the deed 1746, so expressed as to admit of no dubiety; but that it was by that deed, and that only, that his estate was to be carried, and which was farther confirmed from the circumstance of his suffering that duplicate which was in his own hands, of the deed 1741, to be thrown into the fire; and there was no arguing from the defunct’s *animus*, contrary to a plain declaration that admitted of no dubiety.

“ And as to the point that the pursuer could not approbate and reprobate, it did not apply, unless the pursuer were to take by the deed containing the clause which he reprobates, whereas he proposes to take nothing by it; and, indeed, the import of the revoking clause was the chief question, which the minority considered but as a clause of style, and to be construed from what undoubtedly appeared to have been the *animus* of the granter.”

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1748. *July 23.* M’KINNIE and OTHERS, Merchants in Glasgow, *against* FORRESTERS, Pedlars.

GEORGE and Robert Forresters having been transmitted from Glasgow to the tolbooth of Edinburgh, as mentioned *voce* Summary Application, 23d Dec. 1747, the creditors, John M’Kinnie and others, merchants in Glasgow, in order to bring the matter into the shape of a regular process, raised a summons against them of fraudulent bankruptcy, wherein, upon advising the proof, the Lords “ found the charge of fraudulent bankruptcy proved against George, and that Robert had been aider and assister to him therein; and, therefore, liable *nomine damni* in the debts contracted by George;” and as the Lords were clear that the statute strikes no

less against such as are aiders of, and participant with, the fraudulent bankrupt, than it does against himself; and so it had formerly been found in the case of Sir John Gordon of Embo, and M'Kay of Scourie; "they appointed both the said Robert and George Forresters to be carried back to the prison of Glasgow, there to remain till the 10th of August, and on that day to be set for an hour at mid-day on the pillory, with a paper on their breasts bearing this inscription, *fraudulent bankrupt*, and to be returned to prison, there to remain till the magistrates should find an occasion for transporting them to one or other of the plantations in America, there to remain for the space of seven years, &c."

What should be thought fraudulent bankruptcy, in order to punishment, was in general observed to be a matter of some delicacy; but in this case the circumstances were too strong to admit of a doubt, though none of those concurred, which only the act 1621 mentions, as what were not mentioned with a view to limit the evidence to these, but as instances at the time most frequent, and which gave rise to the law.

*Kilkerran*, p. 54.

1749. *Feb. 24.* The BANK of SCOTLAND *against* The ROYAL BANK and CRAUFURD.

HEW CRAUFURD, clerk to the signet, sent a L.20 bank-note in a letter to his correspondent at Glasgow, which his correspondent declared he never got, and was supposed to have been some way stolen at the post-office. This note was paid to the bearer by the Royal Bank, who sent it in course, with other notes, to the Bank of Scotland to be exchanged; and Hew Craufurd having advertised it in the newspapers, they gave him notice of its coming there, and he raised a multiple-poining in the name of the Bank of Scotland, calling the Royal Bank and himself.

His plea was, That it was *res furtiva*, and, therefore, the property remained with him. The evidence of its being stolen did not appear to be sufficient; as *non certo constabat*, but that it might have come to his correspondent's hand, although nobody suspected that to be the case.

But, for quieting the minds of the public and of the banks, the Lords agreed to decide the general point: And it being obvious, that if the plea was good, and the same rule to be followed as in other *res furtivæ*, there could be no such thing as a public bank, the Court unanimously found that Mr. Craufurd had no condiction of this note, nor any action against either of the banks.

*Kilkerran*, p. 479.

1749. *Feb. 10, and July 12.* DONALDSON *against* DONALDSON and his TUTOR *ad litem*.

A DISPOSITION granted in the year 1716, by Mr. James Donaldson of Murrach, to his second son, James, of the lands of Baunachrae, being now challenged by reduction, at the instance of William Donaldson of Murrach, heir of the grant-