

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-