

betwixt jus delatum et quæsitum, and jus non delatum, or at least non-
dum quæsitum; as if the latter, and not the former could be repudiated but the
Customs of some Countries as France, (Les Loix Civiles &c. Tom.
Dort. i. Liv. 2. Tit. 10. pr.) direct, that if a Debtor renounces a Succession
that is fallen to him, his Creditors may demand to be substituted to his
Right that they may accept the Succession if they hope to find their Money
in it. Which does no Harm to the Debtor; For if the Succession be profitable
it is but just that his Creditors should reap the Benefit of it; and if on the
contrary it be burthensome, they do not any ways engage him, and charge
themselves to the Charges of the Succession. Not hath our Law left it in the
Power of a Debtor to repudiate any Thing whereby his Creditors might be paid.
For upon a special Charge to enter their Debts in his Predecessor's Estate, the same
may be appraised Act 106. Bar. 7. §. 6. or adjudged from him in the same
Manner as if he had entered heir. And the Creditors of one's nearest of Kin
are by wit and will not confirm themselves Executors to him may either re-
quire the Procurator Fiscal to confirm and assign to them, under the Pain
being liable for the Debt; or may obtain themselves ^{receivers} Executors
- as if they were his Creditors Act 41. Sep. 5. Bar. R. W. Again it is
should not accept of a Legacy left to him from an evil Design against his Creditors
the Creditor may establish a Right to the Legacy in his own Person either by
Dareest of Forthcoming upon an Arrestment of it in the Hands of the Execu-
- tor; or if the Executor refuse or decline to confirm, the Creditor may leave the
- Curator Fiscal to it. When a Debtor refuses to fulfill the Condition of an Ar-
- restment, whereby he might be put in a Capacity to pay his Debt, as if he should
- decline to confirm one of his Vassals upon doing whereof the Vassal should
be bound to pay him a certain Sum: The Superior's Creditor may affect that
Money, by depriving or adjudging from him the Right of Superiority (which
both capacitate the Creditor to fulfill the Condition upon which it was pay-
- able) and then arresting the Money in the Vassal's Hands and forcing him
make it forthcoming; or he may adjudge the aforesaid Right of Superiority
together with the conditional Obligation, or affect the said Obligation
by Arrestment or some other legal Diligence, and pursue an ordinary
- action against the Vassal, concluding that the Defender being obliged to pay
such a Sum to the Pursuer's Debtor, upon getting a Confirmation from him
should be now decreet to make Payment to the Pursuer as come in
Place of the said Debtor by having appraised his Right of Superiority, and
so capable to perform the Condition of the Payment, and also having af-
- fected the Defender's Obligation. But if a Person be obliged to pay a certain
Sum to another's Debtor when he should build him a House, Law would
- allow no Recourse to the Creditor against his Debtor designing to defraud
him of the Money, by not fulfilling the Condition. And a Debtor's Disposi-
- tion for the Title of jactus retis or a Hazard bought by him, as a Woman
Liferent at so many Years Purchase, cannot be quarrelled by his Creditor
upon eventual Prejudice thro' the Liferenters dying within a year the
- after

after, if the Casualty was translatio bona fide in the usual Way and for the ordinary Profit. Because the Lieges are not discharged to transact with a Debtor in such a Case, where said Debt or event is et confilio both not concur. persons are allowed to buy or sell in the hands of trustees, and in canonical and civil law. ^{inferred to act in their own right} The such Alienations, Dispositions, Assignations, and Translations made by Debtors of their Lands, Tithes, Rowerfishes, Actions Debt or goods whatsoever, to any conjunct or confident Person, without true just and necessary causes, and a just Price ready paid may be declared null in the Instance of their true Debtors, by Way of Action Exception or Reply Act is. ver. 23. p. 6. made Anno 1024.

The Nullity arising from this Statute is declared recoverable by Way of Exception as well as Action. But by our Practice it is seldom sustained against Infestments except by Way of Exception in June 1663 Red contra Harper 22 July 1674 L Love contra Lady Cowper Principis pro his Receipts. But the ~~Statute~~ or Dispence may be called a maintenance and Right who may possibly have Exceptions against the Debt upon Account where if it is quarrelled which could not be known to the Dispence. But tho' real and heretable Rights ordinarily must be recovered by Dispositions of Novelles 16 June 1671 Crover contra Lady Cowper quoniam illis est possessio and Rights of small Portion where in Parlat in Decr 5 January 1669 Simmes contra Brown may be annulled by Execution. And in a Cause of small Importance the Matter of Fraud was taken to Consideration by Way of Reply of Decemr 1668 Thomson contra Henderson. Fit de minimis non curat Lex; and de minimis summarie per hunc Doctor. Because the subject Matter will not bear large Expenses & Right may be also warranted by Way of Exception upon a Reason of Fraud either instantly verified; or arising incidenter in a depending Process, least that Process should sist. Again a Right between most conjunct Persons as Father and Son may be impugned upon a Reason of Fraud &c Exceptionis; Both for that the Cheat is most easie and less favourable; and because the Receiver of a Right from so near a Friend might have got his share willingly to concur in the Defence of it without being cited. It is the Reason for the Verdicty. If the Defendant's Rights may not be quarrelled at any time before the Trial as they were shall in the Defendants Pleas & Reductions. Any Creditor whether he be gratuitous or onerous, whether he hath done Diligence or not, and whether the Term of Payment of his Debt be come or not may quarrel Deeds made by his Bankrupt Debtor, in Favour of a conjunct or confident Person, without an onerous and necessary Cause, so the posterior of two gratuitous Assignations was voided at the Instance of the first Assignay, upon the Warrantie from Fact and Deed expressed or implied in the Reductor's Right; tho' the posterior Assignation was first intimated. Because the prior Intimation could make it preferable only so long as it stood 15 July 1675 Alexander contra Lundies. But an Assignay to an heretable Bond was not allowed as Creditor to the Grantor of the Bond to quarrel a Disposition of his Lands made thereafter to the Cedit his own Brother as in fraudem of the Assignay, in a Compertition with the Cedit's Creditor by Infestment upon heretable Bonds.