

than their author; and it is upon this foundation, that reductions on the act 1621 are competent against purchasers, even for onerous causes, from such in whose persons, if the right had remained, they would have been reducible upon that act.

*2do*, Supposing the creditors had got no voluntary assignation, but had legally evicted the sum; yet, even in that, in competition with them, the contract behoved to be found simply null, as was found in a parallel case, 24th December 1680, Prince against Pallat, No 39. p. 4932. where the LORDS preferred the seller of goods before the buyer's creditors, the buyer, the time of the contract, being conscious of his own insolvency; and though, by law, fraud has no effect against the defrauder's successors *bona fide*, yet that cannot concern the case where *dolus dedit causam contractui*; since there is no consent understood to be interposed more than in deeds extorted *metu*, which are ineffectual even against singular successors, which holds much stronger in the present case, than in the case of *metus*; for *in dolo* there is no consent, in *metu* there is, though it be forced. *Lastly*, Whatever might be said as to lawful purchasers, (which can scarce be supposable in acquiring debts, these not being a proper lawful subject in commerce,) yet, as to creditors, they are obnoxious to whatever exceptions would be competent against their author upon his fraud, as is plain in our law from the above decision, as well as it is consonant to the rules of justice it should be so.

“THE LORDS found the tocher subject to the bygone aliment; and, in case of lawful separation, found it subject to the aliment in time coming, during the separation; reserving to their Lordships, at advising the probation, to consider how far the separation was warrantable; and found it subject, in the like manner, to the liferent provided to the wife, in case of her surviving; but (though here there was no contradictor) yet they found the obligation for the tocher not reducible any further in prejudice of the creditors of the husband.”

Procurator for the Pursuers, *Bosewall.*

Clerk, *M'Kenzie.*

*Bruce; v. 2. No 52. p. 70.*

1732. *July.*

CREDITORS OF HOPE *against* HIS RELICT.

No 47.

THE husband's creditors, after his death, insisting against his relict for payment of the tocher, the LORDS found, that she might retain it for security of her liferent provision. In this case, though the liferent provision was purified by the husband's death, the relict did not plead the point so high, as to insist for voidance of the contract; she only insisted to have retention for security of her liferent, which the husband had failed to secure to her.—See APPENDIX.

*Eol. Dic. v. 1. p. 596.*