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perty of his goods, which he was fraudulently induced to sell upon trust, than an arrester who advanced nothing, and the effect of whose diligence depended upon the property of his debtor. And as to the probation, there could not be any other document afforded of Simpson's insolvency at the time; for he did not keep a regular book; and it is not alleged that he had any effects towards the value of the debts he owed, nor that he had any loss in the course of his small trade, from the date of the bargain of tobacco, to his becoming notour bankrupt. And, in a parallel case, determined in December 1680, Prince *contra* Pallat, No 39. p. 4932., the Lords reduced a bargain in circumstances which quadrate perfectly with the present case; for there Arthur Udney having commissioned three tun of wine, the same were loaded aboard a ship at Bourdeaux, bound for Leith; but Peter Pallat, suspecting Udney's credit, wrote to his correspondent not to suffer the wine to be delivered; and Prince having arrested, and obtained a furthcoming, which was suspended, the LORDS found the property was transferred to Udney; but found it relevant to be proven by his book or oath, that his debts exceeded his estate the time he gave the order, to annul the contract of vendition.' In which case Udney broke, and fled within three months; from whence it was inferred, he was *meditatione fugæ* the time of the order; which quadrates with this case in every circumstance, both as to the relevancy and probation. And albeit that be a single decision, yet the reason of it is good, and it is much safer to follow a rule that has been deliberately determined, than to render the like case uncertain by varying the decision on the same grounds.

' THE LORDS found the fraud relevant against the arrester, and proven.'

*Fol. Dic. v. 1. p. 335. Dalrymple, No 130. p. 181.*

\* \* \* This case is reported by Bruce, No 69. p. 945.

1736. June 16. SIR JOHN INGLIS of Cramond *against* ROYAL BANK.

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All transactions of a bankrupt within three days of bankruptcy were presumed to be fraudulent.

IN October 1734, a bargain was made betwixt Sir John Inglis of Cramond and Joseph Cave, for Sir John's barley of that crop; in pursuance of which bargain, Sir John sent his barley to Mr Cave by parcels, in the months of November and December, and beginning of January thereafter. Mr Cave's circumstances going into disorder, he made a disposition of his effects to his creditors, upon the 21st January 1735; whereupon Sir John insisted in a process, claiming the subject upon this medium, That the contract was fraudulent upon the part of the purchaser, who was at the time insolvent, and incapable to pay the price, and therefore was null *quia dolus dedit causam contractui*, and the property was never transferred. Appearance being made for the creditors, it was *answered* for them, Fraud is not to be presumed; and a merchant, though

at many periods his debts may exceed his effects, yet his continuing to trade is not *eo ipso* fraudulent, because he may entertain reasonable hopes by carrying on a profitable business, to emerge out of his difficulties, and to do justice to every one of his creditors. THE LORDS found it not relevant to reduce the bargain for the purchase of the barley in October 1734; that it appeared by the common debtor's books, that, at the time of the bargain he was insolvent, since he continued his trade till the 21st January, and his bankruptcy was not discovered till that time.

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1736. December 8.—THE pursuer thereafter insisted, That the date of the delivery is the only period that is to be considered as to this question; for, supposing the contract fair, yet if, at the time of the delivery by which the property is transferred, the bankrupt is thinking *cedere foro*, and of giving up his effects to his creditors, it is fraudulent in him to receive the subject sold when he has no prospect of doing justice by paying the price. THE LORDS found the time of delivery must be the rule.

The question next occurred, What period ought to be fixed before the *cessio*, at which it may be presumed the bankrupt was meditating *cedere foro*, after which all purchases made, or delivery accepted by him, must be understood fraudulent? The pursuer insisted, That it ought to be sixty days by analogy of the act 1696. The defender insisted, that it could not go beyond the bounds of three days, building upon the authority of several foreign lawyers, particularly Simon Van Lewen in the following words: *E contra tamen nec fides de prætio habita venditori obstat, quo minus rei suæ dominus maneat, et adhuc rei suæ vindicationem instituire possit; si scilicet emptor dolose, biduo aut triduo antequam foro cedat, emendo merces, cum venditore contraxit, ut eum fallat.* THE LORDS found, that the presumptive fraud must be confined to three days before the *cessio bonorum*, and therefore found the pursuer preferable as to any barley delivered during that period. See APPENDIX. See BANKRUPT.

Fol. Dic. v. I. p. 335.

1752. February 25. ANDREW FORBES against MAINS and Co.

MRS ROLLAND, relict of William Rolland, shipmaster in Anstruther, in the course of trade, run in debt to Andrew Forbes, merchant in Leith, a considerable sum; partly constituted by bills, and partly by decret. In the year 1743, Mrs Rolland, failing in her circumstances, was thrown into prison by some of her creditors, and obtained her liberty upon a *cessio bonorum*. After this period, she began again to deal in trade. In the year 1749, she got two parcels of wine from the Mains at Lisbon, and punctually paid the price. In May 1750, she commissioned another cargo from them, being four pipes of white wine, which arriving at Leith, were arrested by the said Andrew Forbes; and the

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A merchant, after becoming bankrupt, and obtaining a *cessio bonorum*, had been in use to commission wine from merchants in Lisbon, which she paid regularly. One cargo was