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 multiplepoinding 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-

er, against James the infant, heir of the disponee, on the act 1696, prohibiting the use of blank writs; the Lords, on report "Found, 10th February, 1749, that there was sufficient evidence to presume that the disposition quarrelled was blank in the disponee's name, when it was signed by Mr. James Donaldson the disponer; and, therefore, sustained the reason of reduction on the act of Parliament 1696, concerning blank writs, unless the defender shall prove, that the said disposition was filled up with the disponee's name at subscribing thereof, or afterwards in presence of the witnesses signing to the same; and repelled the defence of homologation founded on by the defender, as also the defence that *minor non tenetur placitare;*" and on the 12th July "adhered."

The evidence found sufficient to presume that the disposition was blank in the disponee's name at subscribing, was, "That the disponee's name was written with a different hand and fresher ink than the rest of the writing, and that to this hour it stands blank in the clause immediately preceding the testing clause, in these words, "And last of all it is hereby declared, that notwithstanding the premises, yet this present right is only understood as granted to the said &c." And, indeed, without the aid of this last circumstance, if the disponee's name, being written with a different hand and ink, were not a sufficient ground to presume its having been blank at signing, and the presumption were sustained without proof, that *omnia præsumuntur solenniter acta,* that part of the act which requires the upfilling to be in presence of the same witnesses might be struck out of the statute: And that evidence being supposed sufficient, it is a consequence, that, as the statute declares the deed null, with an exception only in case it shall be filled up so and so, the user must prove in terms of the exception; so that even its being filled up with the granter's own hand would not be sufficient to satisfy the statute: Of which the defender's doers were so sensible, that though it was affirmed in point of fact, that the upfilling was by the granter's own hand, that was not pleaded to be sufficient, supposing the deed to have been really blank at signing.

The homologation pleaded in this case was no less than a letter from the granter in 1722, to the disponee his second son, then in Maryland, wherein he says, "That never man had been more vexed and troubled with another, than I have been with your eldest brother about the Baunachrae; however, I have been firm to you, and I have infeft you in it in spite of all his malice." *Item,* A bond of corroboration in 1722 by the father disponer, to Leckie of Ardmore, who had married his daughter, wherein the disposition to his son James is fully narrated, and he burdened with the payment of the debt. *Item,* A bond of provision to Henry, his third son, in 1722, wherein he also narrates the disposition to James, and the reserved power to burden the same, in pursuance of which, in the event of James's dying unmarried, or without issue, he burdens the lands of Baunachrae with 12000 merks to Henry.

But as these deeds proved no more than that the old man was in the belief that he had granted a valid disposition to James, they were not found sufficient to render the deed itself good, which was void in point of solemnity.

And as to the third point in the interlocutor repelling the defence, that *minor non tenetur placitare,* it was laid on this, that the disposition, and consequently the infeftment following on it being void, there was no *hæreditas.*

Kilkerran, p. 92.