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In the present case, there neither was nor could be any real or symbolical delivery to complete the sales; therefore the property remained with the debtor, and was lawfully affected by the pursuer's poinding; and, at any rate, as those sales could not be completed, nor the property transferred to the purchaser, till after they came to take possession of the corns, by reaping them, which was after the pursuer's diligence by horning and poinding; therefore, the sales are plainly reducible upon the act 1621.

Answered for the defender; The sales in question were publicly made, and not clandestinely gone about, by interposing persons, to give an unjust preference to particular creditors; some of Cuming's creditors having their diligences ready to poind his effects, which would have made them preferable to this pursuer, the corns were fairly sold to them in payment of their debts; and the sales were completed in every shape they were capable of, from the nature of the thing. The corns were delivered over to the buyers, and remained upon their risk, and servants were appointed by them to take care of them. That growing corns may be bought and sold, and the property transferred, as was done in the present case, is agreeable to the opinion of all our lawyers, and the universal practice over the whole country; and if these sales should be reduced and rendered ineffectual, a very common and necessary branch of commerce would be stopped, to the great detriment of the public. The pursuer, in this case, has the less reason to complain of these sales, which were openly made to onerous creditors, because, after these partial purchases, there remained upon Cuming's possession other corns and effects, more than sufficient to have paid the pursuer's debt, and which he could easily have poinded for that purpose, without interfering with what had been allotted to the other creditors.

"THE LORDS sustained the defences; and assoilzied."

Act. *Fra. Garden.* Alt. *Wal. Stuart.*

G. C. *Fac. Col. No. 154. p. 274.*

1758. *December* 14. MACLEOD *against* FRASER.

No 95.
It is no defence against an action of relief, that the sum engaged for by the pursuer was the price of the transaction of a criminal process brought against the defender.

NORMAND MACLEOD of Macleod pursued William Fraser for relief of a bill of L. 70, granted by him, Macleod, to the Magistrates of Inverness, in the year 1745.

The facts on which he qualified his claim of relief were, That at the time of granting the bill, William Fraser was under trial in the Court of Justiciary, in the name of the King's Advocate, but at the expense of the town of Inverness, for the forcible abduction, rape, and marriage, of his now wife: That William Fraser had applied to him to make up the matter with the town of Inverness, and that he made it up with the town, by granting the bill in question, being the neat expense which at that time had been laid out on the

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trial; and that in consequence thereof, the prosecution was dismissed against Fraser.

Answered for William Fraser, Supposing the facts to be true, they were not relevant to give a title to relief; for transacting a crime is in itself a crime, a null act; and the rule of law takes place, *Quod in turpi causa melior est conditio possidentis.*

"THE LORDS found William Fraser liable for the contents of the bill."

Act. *Ross, And. Pringle, Ferguson.* Alt. *J. Dalrymple, Lockhart.*

J. D. *Fol. Dic. v.* 4. *p.* 30. *Fac. Col. No* 146. *p.* 264.

1765. *December* 1765.

JOHN YOUNG *against* PROCURATORS of the Bailie-court of Leith.

No 96.
A regulation made by the bailies of Leith, confining the office of procurator before their court to those who had been apprentices to their procurators, or to their clerk, was found illegal.

IN the year 1722, certain regulations were made by the Bailies of Leith concerning the forms of procedure in the administration of justice, and the qualification of practitioners before that Court; among other articles, providing, "that when the procurators are not under three in number, none shall be allowed to enter except such as have served the clerk or procurator for the space of three years as an apprentice, and one year at least thereafter, beside undergoing a trial by the procurators of Court, named by the Magistrates for that effect." Upon this article, an objection was made against John Young, craving to be entered a procurator, as having served an apprenticeship to an agent of character before the Court of Session, and demanding to be put upon trial. The Bailies having found the petitioner not qualified in terms of the regulations, the cause was advocated; and the Court found the said article void as *contra utilitatem publicam* by establishing a monopoly.

Fol. Dic. v. 4. *p.* 32. *Sel. Dec. No* 235. *p.* 309.

1766. *January* 21. BARR *against* CARR.

No 97.
An unlawful combination among the journeymen weavers in the town of Paisley found null, so as not to found an action.

THE journeymen weavers in the town of Paisley, emboldened by numbers, began with mobs and riotous proceedings, in order to obtain higher wages. But these ouvert acts having been suppressed by authority of the Court of Session, they went more cunningly to work, by contriving a kind of society termed the defence-box; and a written contract was subscribed by more than six hundred of them, containing many innocent and plausible articles, in order to cover their views, but chiefly calculated to bind them not to work under a certain rate, and to support, out of their periodical contributions, those who, by insisting on high wages, might not find employment. Seven of the