

second right? Some of the Lords thought that it only held in the case of a second purchaser of an irredeemable right; for this reason, that double redeemable rights are compatible, as the debt due to the acquirer of the prior right may be *aliunde* paid, and that in the case of creditors, *vigilantibus jura subveniunt*.

Others doubted if that distinction would universally hold. Suppose, for example, the debt, for security whereof the prior right was granted, manifestly to exceed the value of the subject, and the debtor, grantor, in no condition otherwise to pay: And the maxim *vigilantibus, &c.* only applies to the case of legal diligence. But all agreed in this, that where the subject was at the time equal to both debts, and which happened to be the present case, as there was no fraud at the time in the acquirer of the second right, so it could not *ex post facto* become a fraudulent act by the eventual insufficiency of the subject, through its being drawn away by other creditors obtaining themselves in first before the obtainer of the first right. See No 34. p. 904.

*Kilkerran, (FRAUD.) No 4. p. 218.*

1778. August 4. WILLIAM BOGLE against JOHN YULE.

JOHN BOGLE, a short time before his death, granted an heritable bond over the lands of Hamilton-farm to Yule, for L. 4850, on the narrative that he stood indebted to Yule in that sum, by bills, and other vouchers, delivered up when the bond was given. On the death of John, William Bogle, heir of provision to him in these lands, took an *ex parte* precognition before the Magistrates of Glasgow, relative to the manner in which this bond was granted; and, in this precognition, Yule himself was examined. The papers found in Bogle's repositories were, likewise, upon the application of the heir, taken into the custody of the Magistrates.

The heir afterwards brought a challenge of this heritable bond, as granted on death-bed, without any just or onerous cause; and insisted, that the defender should, in the *first* place, be personally examined on the value alleged to have been given for this bond, and all circumstances relative thereto.

The defender did not object to the examination, but *contended, 1mo*, That the precognition previous to the civil action, tending to prejudicate the witnesses, was illegal; and that, before being examined, he was entitled to see, not only his own declaration, but the whole precognition.—*2do*, He is likewise entitled previously to see the vouchers of debt, given up when the bond was granted, and the other papers found in Mr Bogle's repositories.

*Answered* for the pursuer; *1mo*, The precognition was taken from a suspicion, at the time, that the deed was forged, in order to know whether there were grounds for a criminal prosecution. The defender is entitled to see the whole precognition *before* the proof goes out, but not before his examination; for that

Effect of a precognition taken previous to a civil action; and of the examination of the defender on a charge of fraud.

No 26. would defeat the purpose of it, and enable the defender to frame a story consistent with the evidence. *2do*, For the same reason, the defender is not entitled to see the vouchers, and other papers, found in Mr Bogle's repositories.

The Court highly condemned the conduct of the pursuer in taking the precognition; but did not think the defender entitled to see the evidence of the witnesses in it, nor the writings found in Mr Bogle's repositories, previous to his examination.

The COURT remitted 'to the Lord Ordinary to take the defender's declaration on the facts and circumstances set forth in the condescence; but, before proceeding thereto, ordains the former declaration, emitted by the defender before the Magistrates of Glasgow, to be shown to the defender, and thereafter to be again sealed up.'

*Fac. Coll. No 40. p. 69.*

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(COURT OF JUSTICIARY.)

1793. *March 18. and December 23.*

HIS MAJESTY'S ADVOCATE *against* ALEXANDER BROWN and JOHN MACNAB.

No 27.

Falsehood and forgery in revenue matters may be punished at common law, even though the thing counterfeited be liable to legal objections.

By sect. 2. of the statute 26th Geo. III. c. 51. relating to the duties on starch, the manufacturers are directed to paper each piece of starch, and to tie it with strings, crossing each other on that side of the piece where the ends of the paper are folded, and to affix with warm glue, on each piece of starch so papered and tied, a label or thin piece of paper, of certain dimensions, and of a different colour from the paper inclosing the starch, and this on that side of the piece where the ends of the paper are folded, so as to prevent the opening of the piece, without tearing the label. All these things are directed to be done in presence of the revenue officer, who 'shall cause every piece of starch, so papered as aforesaid, to be stamped or sealed upon each label or thin piece of paper aforesaid, with such stamp or seal as shall be provided by the Commissioners, for the duties on starch in England and Scotland respectively for that purpose, before any such piece of starch shall be put into the stove to dry.'

By sect. 4. the Commissioners are authorised to provide and distribute stamps or seals for the above purpose, and to vary and alter them at pleasure; and the officers are directed in using them, to do as little damage as possible to the starch, or paper inclosing it.

By sect. 13. all starch not so stamped is declared liable to seizure, and penalties are inflicted on the manufacturer or dealer in whose possession it is found.

And by sect. 14. it is declared, that if any person shall forge or counterfeit any stamp or seal which shall be provided in pursuance of this act, 'for stamping or sealing starch made and papered in Great Britain, or shall counterfeit and resemble the impressions of the same, upon the papers containing starch,