

No 47. time unable to pay all his debts, may yet with the fairest intention continue his trade, in the hopes of retrieving his affairs.

But by introducing such a criterion of presumptive fraud, it surely never could be intended to preclude the interference of the Court in cases like the present, where fraud is proved to have given rise to the transaction. This must render all contracts invalid, agreeably to the rule, *quod dolus dans causam contractui, reddit contractum ipso jure nullum*. Nor can the silence of the injured party, unless continued during the period marked out by the long prescription, or explained into an homologation by the circumstances of the case, prevent the equity of restitution.

THE LORDS unanimously found, 'That the sale of the goods in question, by the petitioners to Gavin Kempt was brought about by fraud on the part of Gavin Kempt; and therefore found the same void and null; and that the petitioners were entitled to restitution of their goods.'

For the Petitioners, *Claud Boswell*. For the Creditors in general, *Dean of Faculty*.
C. *Fol. Dic. v. 3. p. 243. Fac. Col. No 278. p. 428.*

No 48.

Found in conformity with the above.

1786. June 24. JOHN LOVE *against* THE CREDITORS OF GAVIN KEMPT.

ON the eve of Gavin Kempt's bankruptcy, Mr Love was desired to furnish goods to him; which, however, he refused to do, unless Kempt's father joined in the security.

Afterwards Gavin Kempt produced, though without any authority from his father, a letter of warranty, under the signature of 'James Kempt and Son, military agents, Leith;' and the goods were forwarded.

A petition having been preferred for Mr Love, of the same purport with that occurring in the preceding case, the LORDS were unanimously of opinion, That the circumstance of the letter of warranty alone was sufficient to annul the bargain, which had thus been made under a condition which could not be fulfilled.

THE LORDS 'preferred John Love to the goods in question.'

For the petitioner, *Ro. Cullen*. For the creditors in general, *Dean of Faculty*.

N. B. Three other applications of a like nature were made at the same time, and attended with the same effect.

C. *Fol. Dic. v. 3. p. 243. Fac. Col. No 279. p. 430.*

* * * In the same manner was decided the case *Shepherd against Campbell Robertson and Company*, 28th June 1795. See APPENDIX.