

1758. *January 20.*

M'KAY of Bighouse *against* WILLIAM FORSYTH Merchant in Cromarty.

No 44.
Found in
conformity
with the a-
bove.

To purchase goods *in actu proximo* of becoming bankrupt, without prospect or purpose to pay the price, is a gross cheat; which the court of equity in every country repairs by ordering restitution of the goods to the vender. The only thorny point is to ascertain the *animus* of the purchaser, and his intention to defraud the vender. In the case of Joseph Cave, No 41. p. 4936, the presumptive fraud was confined to three days before the *cessio bonorum*; but in that case Cave the purchaser was in good credit, till he called a meeting of his creditors in order to surrender his effects to them. There may, however, be other circumstances concurring with insolvency to enlarge this period. Gilbert Barclay merchant in Cromarty, was in labouring circumstances, and owed much more than he was worth, when he made a purchase of salmon from M'Kay of Bighouse; and, before the delivery, several of his creditors proceeded to diligence against him. A few days after delivery, he made over the salmon to William Forsyth, another merchant of the same town, in part payment of a debt due to Forsyth, who was in the knowledge that Barclay was in labouring circumstances, and that the price of the salmon was not paid. Diligence thickened more and more upon him, and he broke in ten days or a fortnight after the salmon were delivered to Forsyth. From these circumstances, the COURT presumed an intention in Barclay to defraud Bighouse; and considering that Forsyth's purchase was not made *bona fide*, they found him liable to pay to Bighouse the value of the salmon.

Fol. Dic. v. 3. p. 242. Sel. Dec. No 142. p. 198.

1765. *February 27.*

ADAM CRAWFURD NEWALL *against* HUGH MITCHELL, and Others.

No 45.
The property
of the subject
sold found not
to be transfer-
red, the pur-
chase appear-
ing to have
been made
with a frau-
dulent inten-
tion.

THE pursuer, Adam Crawford, upon the 17th of May 1763, sold to James Mitchell younger of Rigg, twenty-one black cattle, at the price of L. 57 Sterling; for which sum Mitchell granted his bill, payable against the term of Lammas thereafter. James Mitchell, upon the same day, also purchased from John Tenant in Coreton, fifty-one black cattle, for L. 147 Sterling, which were instantly delivered to him. Mitchell upon the 18th, the day after these purchases, was proceeding with the same to England, when Hugh Mitchell, and two other of his creditors, did, in virtue of letters of horning against him, at their instance, poind and carry off the cattle. The pursuer having got information of what had happened; upon the 19th of the said month, before the cattle had reached Cumnock, where the poinding was to be completed, came