Millar was only what is called a *white bonnet*, viz. a person employed by the seller to raise the price without any intention of buying for himself, and secured that he should not be bound by his offer. The pursuer further alleged, that Charles Stewart was partaker of the fraud, in so far as he knew, that Millar was employed by the seller as a white bonnet. No 93.

At advising a proof in this case, it was mentioned from the Bench, that this too common practice of employing white bonnets at roups, was a manifest cheat. The person who advertises a sale by auction, pledges his faith to the public, that he is to sell to the highest bidder, and is not to buy for himself. In this case, the pursuer was really the highest offerer, seeing the offer of a white bonnet is no offer at all. That in the case of the sale of Keith, Watson *against* Maule, No. 22. p. 4892. *voce* FRAUD; the Court was clearly of this opinion upon the general point, though the decision went upon the particular circumstances of the case.

"THE LORDS found, that the offer made at the roup by James Millar, was made by him by commission from, and for the behoof of, James Grey the seller, and was illegal and fraudulent; and that therefore, Andrew Grey, the immediate preceding offerer, ought to be preferred as the highest offerer at the said roup; and found sufficient evidence, that Charles Stewart, who was present at the said roup, was partaker with James Grey of the said fraud; and therefore sustained the reason of reduction of the disposition by James Grey to the said Charles Stewart, and seisin following thereon, and reduced the same; and found the said James Grey obliged, on the pursuer's making payment to him of the price offered by him at the said roup, to dispone the lands to the pursuer in terms of the articles and conditions of roup, and found the defenders liable to the pursuer in the expenses of this process."

Act. *Borwell.* Alt. *Hay.* Clerk, *Justice.*

Fol. Dic. v. 4. *p.* 35. *Fac. Col.* No 87. *p.* 132.

1758. *July* 21.

JAMES GRANT of Delay *against* GEORGE SMITH.

No 94.
Sale of growing unripe corns, whether it transfers the property, so as to exclude the posterior diligence of other onerous creditors.

JAMES GRANT of Delay, was creditor by bill for L. 476 Scots, payable at Whitsunday 1753, to one John Cuming, tenant in Tombea of Glenlivat.

Cuming, some time before sowing the crop of that year, had contracted various debts, and become insolvent.

The only subject of any value, for payment or satisfaction to his creditors, was the corn of that year's crop. Immediately after part of the corns were sown, and afterwards, in the months of June and July, while the corns were yet green, Cuming, being pressed by sundry of his creditors, who were about to poind his effects in virtue of their diligences, agreed with several of them, and

No 94.

made partial sales to them of so much of his growing corns in satisfaction of their debts; and soon after, the defender, George Smith, who was to succeed Cuming in his farm, and consequently needed the crop for stocking it, made a second bargain with these creditors, and bought from them the particular shares which each of them had got. These sales were publicly and openly made, and the corns delivered to the buyers by a sort of symbolical delivery, on the spot, and understood to be afterwards on the risk of the buyers.

The pursuer, thinking that sales of this nature could be no bar to lawful diligence, protested his bill, and raised horning thereon; and, on the 14th and 15th days of the month of September following, when the corns were quite ready for being cut down, he proceeded to poind them as they stood upon the ground. But in the execution of this poinding, he was stopped by the defender George Smith, who had purchased these corns from the creditors, and who had begun to cut them down.

The pursuer soon after brought a process before the Court against Smith for redress, and for having it found, that he had at least an interest *pari passu* with the rest of the creditors in these subjects, which had been carried off by partial sales from the common debtor in defraud of his debt, which was the most considerable one.

Pleaded for the pursuer, The principles of equity, the genius of our law, and the practice of the Court, unite to favour the claim of a just creditor, who has been cut out from sharing, in proportion with the rest, the only fund from which an insolvent person's debts can be paid. Our law has most justly restrained the voluntary and partial deeds of an insolvent debtor; and the Court has never failed to redress this sort of wrong and inequality, by bringing in all the creditors *pari passu*, where the preference arose from a total or considerable alienation made by the debtor, and the creditor aggrieved was not *in mora* to complain. It would be of very dangerous consequence, if such partial and premature sales were to be held good, and allowed to exclude other onerous creditors, seeing the bulk of the tenants in this country, when they become insolvent, have little or no other fund for payment of their debts but their crop upon the ground; and if they may lawfully and effectually dispose upon it before it is grown, or almost existing, upon pretence of paying particular debts, the greatest injustice would often be done. When corn is just sown, and perhaps until it is cut down and reaped, the right of property is complete in the debtor's person; yet there is no known or established course in law by which the just creditor can acquire or affect that right for security or payment of his debt: Shall then the partial deeds of the debtor transfer a right which the law cannot reach? If such sales to particular creditors are to be held good, *a fortiori* a sale of growing corns for ready money, to any friend or third party, knowing the debtor's insolvency, will transfer the property; and such purchaser will be secure: And thus the debtor wilfully to disappoint his creditors, may effectually convey the only subject of their payment, before it is possible for them to affect it.

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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