

Liber FF petitioner his master, And this for the security of trade and com̄erce, It being a most necessary Law in y<sup>r</sup> Lōpps said province That debts incurr'd in the way of trade and accompts relateing to trusts in trade should be preferred to haue satisfaction before debts incurr'd which haue no relation to trade.

Thirdly As to proceedings in y<sup>r</sup> Lōpps said Court I humbly conceive the same to be wholly erroneous 1<sup>o</sup> there was an action of debt brought upon the bond mentioned in the petition which action was not com̄enced or prosecuted in the name of Margarett perry the Obligee by Gittings her Attorney as it Ought to haue been But in the name of Gittings Attorney of perry And all the proceedings even to the judgment and execution are pursuant to the first processe and declaracōn so as the recovery is not to perry but to Gittings the Attorney of perry, whereas there was nothing due to Gittings And the bond remains still in force to be Sued by perry against the execut<sup>rs</sup> of Bateman Nor can this judgment be pleaded in barr against perry or against the pet<sup>r</sup> or any Other Creditor of Bateman Because in pleading of a judgment upon execution it must be pleaded to haue bin pro vero debito due to the plaintiff or recoverer in the judgm<sup>t</sup>, which in this case there was no possibility to plead The plaintiff or recoveror in the judgment haueing nothing truly due unto him upon this Obligation For all that he could pretend was an authority to sue for and in the name of perry And he contrary to his Authority hath gained a judgment in his Owne name for himselfe 2<sup>o</sup> The action of debt if it had bin well brought in the name and at the suite of perry against the executrix of Bateman could never haue affected the lands of which Bateman dyed seized, for to affect a Free hold the Action must haue been brought against the heire and not against the executrix, And if the Court had an Opinion that the action might well lye against the said Mary to affect these lands to which they conceived she was entituled as devisee they mistooke the Law, For No action can lye for a debt of a Testator but Only against his heirs execut<sup>rs</sup> or administrators and not against any one as Devisee or Legatee Yett this action was not brought against Mary as Devisee but as executrix Notwithstanding which the Court directed the lands to be valued and at the first petition of this def<sup>t</sup> decree the Lands to her 3<sup>o</sup> The Quietus est is such a way of proceeding in a case of this nature as hath not bin heard of in England And I conceive it is wholly void as being against Reason, It is a rule in Law That an Act of parliament against Law would be void. My Reason against this Quietus est is That it is to barr all persons from suing an executrix for any debt due from the Testator, she haueing alleadged voluntarily not by way of pleading that she had fully administred And upon this Allegacōn this process was Obtained. Now the plea of fully administred may be a good plea by way of pleading against some debts where other debts which the Law preferreth are pleaded as paid But it is