

Act of Parliament, although not named in it; because the legislative enactment is only another form of effecting that which might have been done by an ordinary course of judicial proceeding. *Westby v. Kiernan, Amb.* 697.

In a case, however, where a private Act of Parliament was passed authorizing the sale of a real estate during the infancy of the heir, to pay debts, which directed that the mortgage should be first paid, and it afterwards appeared that there were judgments by which the estate was bound prior to the mortgage, it was nevertheless held, that the Act must be obeyed, and the mortgage first paid. But it seemed to be admitted, that by virtue of the general saving in the Act, the judgment creditors might make use of their incumbrances as they could at law. This determination appears to have been pronounced with some hesitation and reluctance. *Ward v. Cecil, 2 Vern.* 711. The Parliament, by thus arbitrarily altering the rights of the parties, and ordering the mortgage to be first paid, to the prejudice of prior judgment creditors, exerted a kind of supreme power, which it has been declared should never be exercised upon any occasion, and was too dangerous to be entrusted even to that body. *Kames' Pri. Eq. b. 1, p. 1, s. 4.* No Court of justice, of England, has ever ventured to assume such a power, in any form; for, as it has been said, men's deeds and wills, by * which they dispose of their estates, are laws which they **229** are allowed to make, and which are not to be altered even by the king in his Courts of law or conscience. *Cary v. Bertie, 2 Vern.* 337; *Wright v. Simpson, 6 Ves.* 731; *Kendall, Ex parte, 17 Ves.* 525; *Sumner v. Powell, 2 Meriv.* 30.

It has been held in England, that a private Act of Parliament which had been obtained by fraudulent suggestions, or by a suppression of the truth, might, on that ground alone, be relieved against by any Court of law or equity in which the fraud could be fully and clearly shewn. As was done in a case in the High Court of Chancery of England, before our Revolution, in which an Act of the Legislature of the then Province of Pennsylvania was, about the year 1725, set aside on the ground of its having been obtained by fraudulent suggestions. *Penn v. Baltimore, 1 Ves.* 454; *5 Cruise Dig. tit. 33, 5, 50. (l)* And so too, in some other cases, where

(l) Francis Fane, counsel to the board of trade, in his opinion given to that board, on the 3d of March, 1725, respecting an Act passed by the General Assembly of Jamaica to foreclose a mortgage, says: "I think, in general, that such laws would be greatly dangerous, and that the Legislature should rarely interfere in matters of private right, without the greatest necessity; but, I cannot see any great inconvenience in this case, but rather a necessity indeed, for passing the law," &c. After which he proceeds further to say, that "Mr. West, in his report upon this matter, is of opinion, that all facts alleged in the colony bills must be taken to be true. This rule may, generally, be true; but I think, in adversary bills of this nature, which are only