

Considering this decision as resting upon this ground, that the testator and the Court imposed and enforced the forfeiture to prevent and punish and fraudulent attempt to obtain a double or unjust proportion of an estate, it will be found to accord in principle with a legal provision which has received, for a length of time, the reiterated approbation of the General Assembly of this State; besides having had, in other countries, for ages past, the sanction of a very large and enlightened portion of mankind. By a provision of one of the annual insolvent laws, 1791, ch. 73, s. 11, which has been often re-enacted, and is now the standing law of the State, it is declared, that if a creditor, to whom a real debt is due, shall collude with the debtor to gain an undue preference, or for concealment of any part of the debtor's estate, or shall concert any acknowledgment of the debtor, or any kind of security, to give false color to his claim for more than is *bona fide* due, such creditor, shall lose his debt truly due; 1805, ch. 110, s. 12; evidently, as a punishment for his fraudulent and corrupt attempt to prejudice or cheat others. A similar legal provision forms a part of the Code of England, Scotland, France, Spain and Hindostan. *Cooper's Bank'r Law, Adden. 12, 18; Kames' Prin. Eq. b. 3, c. 5, page 455, note 457.*

Taking this view of the subject, it is clear, that a mere devise over will not, in all cases, cause the forfeiture to be enforced on a suit's being brought; but, it must clearly appear, from the nature of the case, that the institution of the suit can only be considered as the commencement or partial execution of a corrupt and fraudulent design to injure others, or those to whom, in such an event, the legacy is given over. For it would be a strange inconsistency

281 * to impute to any testator, that he intended to expose the object of his bounty to be disappointed by accident or caprice; or that he should seriously have intended to prohibit him from asking the aid of a Court of justice to obtain that which he had actually given him.

In this case I find it impossible to believe, that Ann Russell really intended to declare, that any one of her descendants, about whom she has manifested so much impartial solicitude, should forfeit her legacy by claiming it in any form of suit; and that it should, in such case, vest in persons toward whom she entertained no such specially kind and maternal feelings; and who too, by being nominated as the executors, arbitrators, and legatees over, were so deeply interested, and had it so much in their power to provoke a suit so as to produce a forfeiture. I therefore hold, that this clause of this will, requiring all disputes to be submitted to arbitration, is to be regarded in no other light than as a strong admonition or threat intended to preserve harmony among the various objects of her bounty.