

age part, and by reason of the devise over. By which the testator manifested his intention to impose a penalty upon such a fraudulent attempt; and not because of the other and the quaint conceit assigned as a reason, that when the legacy was once vested in the devisee over, equity could not fetch it back again. For the mixture of good and ill together makes the whole bad; the truth is obscured by the falsehood; the virtue drowned by the vice. And there are many instances both at law and in equity, where the whole of a just claim may be lost, because of a fraud against others, or the playing of a trick to come at it. (x)

Considering this decision as resting upon this ground, that the testator and the court imposed and enforced the forfeiture to prevent and punish a 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, (y) 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 colour to his claim for more than is *bona fide* due, such creditor, shall lose his debt truly due; (z) 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. (a)

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

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(x) Co. Litt. 35, a.; Hitchcock v. Sedgwick, 2 Vern. 162; Dalbiac v. Dalbiac, 16 Ves. 125; Wimbish v. Tailbois, 1 Plow. 54.—(y) 1791, ch. 73, s. 11.—(z) 1805, ch. 110, s. 12.—(a) Cooper's Bank'r Law, Adden. 12, 18; Kames' Prin. Eq. b. 3, c. 5, page 455, note 457.