

I N T E R D I C T I O N.

S E C T. I.

What Effect it has before Publication.

1586. *November.*CRANSTON *against* CRANSTON.

CRANSTON, brother to the Laird of Cranston, having a tack and assedation set to him by his umquhile father of the lands of Sprouston, pursued the Laird of Cranston, his brother, for the wrongous intromitting and taking up of the duties of the said lands, and debarring the pursuer to use his tack. It was *excepted*, That the pursuer could have no action, because of the said tack, by reason there was contract of marriage betwixt his umquhile father and the Laird of Dalhousie, whereinto it was provided, that the pursuer's father should be interdicted from all alienation of any part of his lands; and this contract and interdiction was made *ex causa onerosa*, by reason of great sums that were debursed by Dalhousie, for completing the said marriage. The defender offered him to prove, that it was perfectly known to the pursuer, and so he could not but be *in dolo* to take any assignation or tack thereafter of his father of the said lands of Sprouston, which were a part of his heritage. To this was *answered*, by reply, That the allegiance was not relevant, that he had knowledge and knew of the said contract, and interdiction contained therein, except he would allege, that the interdiction was published and intimated to the pursuer; quia in hoc actu requiritur non solum simplex scientia, sed intimatio sive denunciatio, quæ est de substantia, de qua re, vide D. De diversis reg. juris, and M'Calzean against M'Calzean, No. 54. p. 854.; and so the

No 1.

Private knowledge of interdiction puts not the party in *mala fide* to contract with the person interdicted. Publication is indispensably required.

No 1. simple knowledge of the contract could not put the pursuer in *mala fide*, except sufficient denunciation or intimation of the interdiction had been made. THE LORDS, *una voce dicentes*, admitted the reply, and found, that the simple knowledge of the said contract could not put the pursuer in *mala fide* to take an assedation of his father, except they would allege an intimation to be made.

Fol. Dic. v. 1. p. 478. Colvil, MS. p. 409.

No 2.

A bond granted by an interdicted person to one of his interdicters, was found reducible, although the interdiction was not published.

1612. February 22. GRAHAM against STEWART and BALFOUR.

By contract of marriage, a simple man having interdicted himself to his goodfather, the bonds and securities made by him thereafter to his goodfather were found reducible *ex capite interdictionis*, albeit no publication had passed thereupon; because, the Lords thought publication only necessary to certify the lieges who knew not the interdiction; but those who were contractors in the contract which contained the bond of interdiction, could pretend no ignorance thereof. They found also, that, in reduction of a contract or bond made to the interdicter, the person interdicted might pursue without concurrence of the remanent persons to whom he was interdicted.

Fol. Dic. v. 1. p. 478. Haddington, MS. No. 2408.

No 3.

1621. January 19. PRINGLE against BORTHWICK.

FOUND, That the interdicter, except the interdiction be published, may acquire from the party interdicted.

Fol. Dic. v. 1. p. 479. Kerse, MS. fol. 62.

No 4.

1678. July 24. GRIERSON against TELFER.

It was found relevant to reduce, that a gratuitous bond was granted to an interdicter, after the interdiction was delivered to him, though before it was published.

Fol. Dic. v. 1. p. 478. Stair.

*** This case is No 4. p. 6298. *voce* IMBECILITY.