

thing less than an actual fraud would be sufficient to constitute a claim against an interdictor.

In these respects there is therefore a manifest and essential difference between the case of an interdictor and the person interdicted, and the case of a minor and his curators, a constituent and his factor, the trustee and the truster, who, by the nature of their offices, or from the trust by them respectively undertaken, are bound to act in every respect in the manner most beneficial for the interest of that person whose affairs they administrate; from which the law may with reason presume, that every right acquired by them, concerning that estate under their management, was for their constituent's behoof, or acquired by his means; none of which can apply to the case of an interdictor.

There was evidence produced to the Court, that Colin knew of the interdiction; but the evidence was doubtful whether he had acted under the interdiction.

THE LORDS had assoilzied; but upon a reclaiming petition from Donald, craving diligence to recover writings to prove that Colin had acted under the interdiction, the LORDS 'granted the diligence.'

Act. *Ferguson.*

Alt. *Lockhart, Johnston.*

*J. M.*

*Fol. Dic. v. 3. p. 336. Fac. Col. No 16. p. 28.*

## SECT. V.

Interdiction is reducible where destitute of a rational foundation.

1607. July 2. AUCHINBOWIE against His INTERDICTORS.

ALEXANDER BRUCE, younger of Auchinbowie, being interdicted to — Bell of Welburne, his goodfather, pursued for reduction of the said interdiction, and publication following thereupon, because it was done without any necessary cause, without any preceding trial or cognition, taken by any judge, of the said Alexander's misgovernment, to the prejudice of the said Alexander's liberty in the administration of his own affairs, and freedom to contract and bargain, to the inducing of infamy, and discredit to him, he not being a fool or waster, but a wise and provident man. Which matters being at length considered by the hail LORDS, they, for the most part, found the reasons were relevant, and thought that no interdictions should stand but such as were deduced *cum causæ cognitione*, and therefore ordained an act to be formed, and insert in the sede-

No 33.

Reduction of an interdiction was found relevant, upon this reason, that it was made immaturely without any cause, and *sine causæ cognitione*, to the discredit of the party, and prejudice of his liberty in the administration of his affairs.

No 33. runt book, declaring, that they would decern after this manner in all time coming.

*Fol. Dic. v. 1. p. 480. Haddington, MS. No 1377.*

1618. January 30.

A. against B.

No 34.

IN an action of reduction of an interdiction pursued by John ———, the LORDS reduced *ex nulla alia causa*, but because it was *sine causæ cognitione*.

*Fol. Dic. v. 1. p. 480. Kerse, MS. fol. 62.*

1622. December 22. COLIN CAMPBELL against The LADY OF GLENURCHIE.

No 35.

FOUND by the LORDS, that an action of reduction of an interdiction, for redeeming of a bond of interdiction, which was made for sums of money, and whereby the party was obliged not to sell without consent of the interdictors, and if he did in the contrary, to pay a penalty of ——— merks *toties quoties*, was relevant, being founded upon this ground and reason, that the party maker was *rei suæ providus et non prodigus*, and that the bond of interdiction was *contra bonos mores*; notwithstanding it was *alleged*, that the bond was made for sums of money *ex causa onerosa*, and that the interdiction was not simple, but resolved into a penalty; and that the bond itself was not impossible *de jure, non contra bonos mores*. To the which nothing was answered; but that the confession of sums of money made it not onerous, except they would prove the real delivery of money, and this interdiction rescinded only *a tempore litis motæ*.

*Fol. Dic. v. 1. p. 480. Kerse, MS. fol. 62.*

\* \* \* Durie reports this case :

IN an action pursued by Campbell against Lady Glenurchie, for reducing of an interdiction made by the said Campbell to the L. of Glenurchie, the LORDS sustained this reason of reduction, viz. that it was made by a person *satis prudens et rei suæ providus*, and without any necessity of a preceding impulsive cause, but voluntarily, and without good deed; and without any preceding trial or precognition of an ordinary judge, finding a necessary cause of interdiction, they therefore reduced it *in foro contentioso*.

Act. *Nicolson et Stuart.*

Alt. *Primrose.*

Clerk, *Gibson.*

*Durie, p. 40.*