

No 6. the said misknowledge of the first assignation made to the pursuer, or that it was not certified, or the same intimated to him; because he communed with the said James, anent the giving of the said reversion made to the said James, by virtue of the said assignation; and so there needed no other intimation to be made to him, *quia qui certus est, amplius certiorari non debet*. To this was *answered*, That the knowledge could be holden no lawful intimation; because that all intimation and denunciation ought to be made *solemniter, quia idem est intimare et denunciare, secundum doctores*, and all intimation and denunciation ought to be made by some open act or deed; and simple knowledge of a thing ought not to infer any open and solemn intimation. To this was *answered*, That it was of truth to such things as induced pain, as unto the offer of a party to marriage, that there ought to be a solemn intimation and denunciation, *ad evitandam pœnam legatam*; but here we were not in that case, but the knowledge and certioration of the first assignation was ay sufficient to put him in *mala fide* thereafter with the second assignation. THE LORDS, after long reasoning, found, by interlocutor, that the knowledge of the first assignation was sufficient to put him in *mala fide*, that thereafter took him to obtain any other assignation.—See No. 3. p. 1689. BONA ET MALA FIDES.

Into the same action it was *alleged* by James Stirling, That this White had no power to make any discharge, or alienation, or assignation, to James Drummond; because, he was long before interdicted, at the instance of the L. of Adie, and certain others, his friends, that he should neither sell, analzie, nor put away. To the whilk was *answered*, That the cause and effect of all them that are interdicted is for the well of them that are interdicted, and their heritable succession; and so this assignation, made after the interdiction to his own son, by whom the said James Drummond had the right, was as it had been made to himself, *qui prospicit sibi, prospicit et hæredi et contra*, an interdiction ought to be extended only *ad extraneas personas*. To this was *answered*, upon the contrary, That all manner of alienation and disposition was without any respect or distinction of persons. THE LORDS, after long reasoning, repelled the reply; and found, by interlocutor, that interdictions ought to be extended to all alienations, without respect of persons, whether they be *extranei* or *conjuncti* persons, *quia verbum, "Alienatio," latissime patet*.

Colvil, MS. p. 331.

1622. December 11.

SEATON & ELLIES *against* Creditors of AGHESON.

No 7.
Found, that,
in the publi-
cation of a
voluntary in-

IN an action of reduction, pursued at the instance of Henry Seaton and Mr Alexander Ellies, burgess of Edinburgh, as persons to whom umquhile George

Acheson was interdicted, for reduction of an obligation made by the said umquhile George, after his interdiction foresaid, and publication thereof, upon the reason of the said interdiction published before the granting of the said obligation; the LORDS found, that, in the publication thereof, no other execution was necessary, but the public and open proclamation thereof at the Market Cross, and that the said publication needed not to be made, nor intimated to the party maker of the interdiction. *Item*, THE LORDS found the reason of reduction founded upon the said interdiction published relevant, notwithstanding that it was *alleged* by the defenders, *viz.* by the relict of umquhile George Lockhart, and by Mr Alexander Cuming, her husband, to whom the bond desired to be reduced was granted, That the said interdiction ought not to be sustained, being the party's own voluntary deed done by himself, without trial of the necessity of any preceding lawful cause, which might import the same, and so not authorised by the Judge *causa cognita*; and, therefore, for the danger of the preparative, it ought not to be allowed, seeing it tended to uphold the fraud of parties, in prejudice of many who might be thereby disappointed of their true debts and contracts, made with the parties so interdicted. Likeas, this interdiction was made by the father-in-law to the sons-in-law, now pursuers, who had married his two daughters, who were his only bairns and heirs, and tended only to keep his gear to themselves, and to prejudice all other true creditors; and, by the tenor of the interdiction, the pursuers were obliged to the persons interdicted, to make count and reckoning to him of their intromission of their whole goods, whenever he required the same; which, in effect, detected the intention of fraud; in fortification whereof, the defender offered to prove, that the obligation contraverted was given for satisfying of a preceding debt, owing by the said George Acheson, in so far as, before the interdiction, the said George was owing the like sum to the defender's husband by his bond. Likeas, she being executrix to her husband, and in his confirmed testament made before his interdiction, that sum and debt being given up, the said George Acheson, after his interdiction, made this bond to the defender, executrix to her husband, confirmed of before, and then received back his prior bond, made to her husband of before, unregistered, and which she offered to prove by the notary, writer of the last bond, and witnesses inserted therein; and which allegiance the LORDS repelled, because the bond contraverted made no mention that it was given for satisfaction of another prior bond, and they would not admit the same to be proved by witnesses; and they had no respect to the testament, albeit it preceded the interdiction, seeing that testament could not bind Acheson; and, therefore, sustained the reason and interdiction.—See PROOF.

Act. Hope.

Alt. Nicolson & Aiton.

Clerk, Scot.

Fol. Dic. v. 1. p. 478. Durie, p. 38.

No 7.
terdiction, no other solemnity is necessary than proclamation at the Market Cross.