

For the first two points, the same being reported, the Lords found, that the instrument was not sustainable, unless the pursuers would produce a procuratory granted to the requirer for that effect; as also, offer them to prove that the time of the said instrument he was within the country, seeing, if he had been furth thereof, he should have raised letters of supplement.

*Advocates' MS. No. 174, folio 99.*

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1671. *June 16.* THOMAS CRAWFURD, merchant, *against* JAMES HALIBURTON, sometime of Innerleith.

IN this action, FOUND that the reason of interdiction could not be received by way of exception, suspension, or reply, against a bond pursued or charged upon, but only by way of action of reduction. Also found, that an interdiction *sine causæ cognitione*, whether the party interdicted be *satis rei suæ providus* yea or no, is very quarrellable, as tending to defraud the king's lieges thereby. (See *Durie, 7th July 1625, ———— against Shaw.*) *3tio*, Found that an interdiction was a preservative from dilapidation of the heritage only, and nowise hindered a creditor contractor after the same to use what personal execution he pleased, nor to affect his moveables by poinding, arrestment, or otherwise; in this being altogether like an inhibition, which holds fast the heritage; but though there were a thousand inhibitions before my debt, they will not debar me from personal execution, nor from paying myself by his moveables the best way I can; neither is the case of a person interdicted the same with the case of a minor granting bond to his enorme lesion, (though it was alleged to be the same,) who, upon minority and lesion, can annul the bond as to all intents and purposes, so that no execution, neither personal nor real, neither against moveables nor heritage, remains; *ergo*, the same must be in an interdiction. *1mo*, This is to dispute against principles never so much as controverted before. Next, the reason why a minor gets a total restitution against deeds done by him in his minority inconsiderately, and to his prejudice, is because of an express law so commanding, which fails in the case of an interdiction. The bond charged upon was granted by the defender to Francis Cathcart, one of his interdictors, and was assigned by him to this pursuer, which I think lessens the faith of the *bond exceedingly*; yea, I am of the mind that such bonds should not at all be tolerated. See Craig, page 106, complaining exceedingly.

*Advocates' MS. No. 175, folio 99.*

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1671. *June 16.* JOHN BROWN, Factor in Edinburgh, *against* THOMAS SOMERVELL there.

THIS is an action pursued before the Town Court, Sir David Inglis in Bordeaux, draws a bill upon Mr. Somervell of 5 or 600 franks, payable to John Brown. This bill being presented was accepted; yet being pursued for the money before the

Bailies of Edinburgh, his defence was this, That with the bill he received likewise a letter of advice from Sir David, bearing that he needed not scruple to answer the said bill, in respect he would send him a parcel of good and sufficient wines, that would do more than repay him his money disbursed by accepting this bill; which was the sole motive that induced him to accept the bill. But the wines being now come home, there being nothing more rotten nor insufficient than they; and, therefore, since the only cause of his accepting that bill, was in hopes to have got good wines, which failyeing, he must be freed of the bill, at least of so much thereof as must in reason be abated of the price of the wines, by reason of their utter insufficiency. The Bailies not laying great weight upon this, Somervell advocates the cause to the Lords upon this reason, that his defence being *in ipsis apicibus juris*, and founded on the common law, *viz.* on the redhibitorian action *quanti minoris*; and that the bailies though most honest men, yet were not civilians; therefore that the question was altogether proper and competent to the Lords' cognition, and fit allenarly to be decided by them.

This being heard, it was taken to interlocutor to the Inner House; where the Lords found it was no good ground of an advocation, and therefore remitted the cause again to the baillies, *et merito*.

*Advocates' MS. No. 176, folio 99.*

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1671. June 16.

THIS day my Lord Halkerton intimated to the advocates and clerks, that the Lords would receive no reports into the Inner House, except they were brought in the very next day after the Lords' answer was craved thereupon: and this, in respect, they found these reports being brought in unduly, consumed much of their time.

*Advocates' MS. No. 177, folio 99.*

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1671. June 22. LORD BALMERINOCHE *against* ———.

A MAN grants an infeftment of annualrent, which he appoints to be uplifted out of two tenements of land, whereof he had several seasines, and of both which he was heritor. The creditor is ever in possession, use, and custom of uplifting his annualrent out of one of these tenements, and never out of the other; for though the *duo tenementa diversa* were *aliud et aliud corpus* in themselves, yet as to the *jus pignoris* constitute therein to the creditor, that was indivisible, and so it was in his option to betake himself either to the one tenement or the other. Thereafter the common owner of both the said affected tenements, sells them to sundry persons, and the right of that tenement out of which the creditor was in use to uplift his annualrent for the space of sixty years and upwards, comes in the person of the Lord Balmerinoch, who pursues the heritor of the