

1672. February 27.

A. against B.

THERE being a reduction pursued of a disposition made after interdiction lawfully published, it was *alleged* for the defender, That the reason was not relevant, unless it were likewise libelled, that the party interdicted was hurt and leased. It was *replied*, that there was no necessity so to libel, seeing dispositions made by the parties interdicted without consent of those to whom they are interdicted, are *ipso jure* null, as in the case of a minor having curators, who granted a bond or disposition. It was *duplied*, That it was offered to be proved, that the sums of money for which the disposition was made, were profitably employed to the behoof of the disponent.

THE LORDS did sustain the duply, and admitted the same to probation, which is the first decision of that kind, the case of persons interdicted and minor being always before thought alike.

*Fol. Dic. v. 1. p. 479. Gosford MS. No 484. p. 254.*

No 24.

A disposition by a person interdicted was not found to be *ipso jure* null, but reducible upon lesion, and so an averment that it was for an onerous cause was admitted to probation.

1697. June 22. BOWMAN and POLLOCK against EARL of KILMARNOCK.

HALCRAIG reported John Bowman, merchant in Glasgow, and Thomas Pollock, taylor there, against the Earl of Kilmarnock, on the passive titles, for cloaths furnished to his father by the one, and made to him by the other, for several years, conform to their subscribed accounts and bonds. *Alleged*, The debt was null; and he repeated a reduction of the same *ex capite interdictionis*, in so far as he had disposed his estate to Mr Robert Stuart, advocate, in trust, for his own use, and obliged himself not to contract debt without his consent obtained, and that of other friends therein named; and which was duly executed, published, and registrated, and they were not consenters to the bonds now pursued on. *Answered*, This was not a formal interdiction, but rather a commission for managing his estate; but, *esto*, it were a valid inhibition, yet this can never restrain a man from taking of necessaries, either for aliment or habiliment, the design being to prevent the borrowing of money, as appears by the decision, Laird of Collington against Faw, No 23. p. 7148.; and Stair, 10th November 1676, Stuart *contra* Hay, No 12. p. 7132. *Replied*, If this be permitted, he may take off superfluous furnishing from many several hands, and the yearly rents ought to go towards defraying those necessary furnishings; and they should have affected the same, and not suffered him to squander and misapply them to other uses. *Duplied*, The accounts are moderate; and it is not pretended, that any other furnished him during that time; and if he had been restricted to an aliment, there might have been a pretence that they should have betaken themselves thereto; but he was still fiar, the disposition being only in trust. The first question arose, If they should be obliged

No 25.

Debts for clothes and such like not affected by interdiction.

No 25.

to prove their accounts now, *post tantum tempus*; and the Lords thought not; but they giving their oaths upon the verity of the furnishing, and that the prices set down are ordinary, the Lords sustained the bonds, and repelled the reasons of reduction founded on the interdiction, and found they could not hinder the party interdicted to contract debt for so just and necessary a cause; and such bonds and accounts were neither quarrellable nor null upon the want of the friends, to whom he was interdicted, their subscription and consent. See PROOF.

*Fol. Dic. v. i. p. 479. Fountainhall, v. i. p. 779.*

No 26.

A person interdicted, granted with consent of his interdictors bond for a sum to his brother's children, with which sum, by disposition of an estate to him, he was allowed to burden that estate. The bond, though gratuitous, was sustained.

1711. July 26.

RAE against MAXWELL.

THE deceased Maxwell of Tinwall being interdicted to friends because of his notour weakness, he grants a bond to his brother's children for the sum of 5000 merks with consent of his interdictors. Mr Peter Rae, minister, having married one of the daughters, pursues for payment of her share. Maxwell of Munches, the heir of tailzie, objects to the bond as null, bearing no onerous cause, but merely for love and favour; and though the interdictors are consenting with him, yet that can never support the bond, because that would empower interdictors to ruin the best families in the kingdom, when they fall in weak hands; for they will readily consent to gratuitous deeds, and extravagant donations in favours of their friends, which wholly evacuates the good design of interdictions for preserving the heritage from squandering and dilapidation; interdiction being a mutual compromise and paction, the weak person must do nothing without their consent, and they, from the principles of common sense and equity, are reciprocally bound to consent to no deed to his lesion, hurt, and prejudice, as all gratuitous gifts are; and if 5000 merks be sustained, why not 50,000? for *magis et minus non variant speciem*; and there is no way for trimming here. Once lay down this position, then if he can prevail with his interdictors to concur with him by consenting to gratuitous deeds, they may soon ruin the best families. And Craig is very clear on this, L. 1. D. 15: § 24. that he can do nothing to his prejudice, even with their consent: And the common law *de prodigis* (which is the like with interdicted persons) is the same; § 8. *Instit. de inutil. stipulat. l. 40. D. de reg. jur. l. 26. D. de contrah. empt.* And the French law is as clear, that they have no power to dilapidate, yea not so much as to do a single deed *in detrimentum prodigi*; else, instead of protection, it would be a snare to such unhappy people. *Answered*, Tinwall was heir of the estate, and so might do every thing with consent of his interdictors that he could have done if he had not been interdicted; their consent redintegrating his person, and putting him in a full capacity to do all rational deeds, (as this truly was.) And *esto* they should malverse and exceed in their trust, the deed is valid, but he has relief against the interdictors who

Fountainhall, in his report of this case, says the bond was sustained, because it was rational, having an antecedent cause, but that the Lords did not determine the point whether a gratuitous bond granted with consent of interdictors, is valid; but Forbes says the bond was sustained, because it was granted with consent of the interdictors.