

1725. December.

TENANT *against* SPREUL.

No 5.

JOHN TENANT granted a voluntary deed of interdiction to Robert Spreul, his sister's son, who was also writer thereof; and thereafter made a revocable settlement of his estate, failing heirs of his own body, to this Robert Spreul, interdictor.—In a reduction of that disposition, at the instance of the disponent's younger sisters, after his death, the LORDS found, that Spreul being the writer of the interdiction, and keeping it in his custody, could not accept of the disposition in question; although it was *pleaded*, That the interdiction was never published, and, therefore, an unfinished deed, without any effect.—See APPENDIX.

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

S E C T. II.

Virtual Interdiction.—Solemnities in publication.—Effect after publication.—Effect as to moveables or personal execution.

1582. June.

STIRLING *against* WHITE & DRUMMOND.

JAMES STIRLING pursued one White of Banachill, and one James Drummond of ———, for deliverance of a reversion to him, as lawful cessioner and assignee made to the same. Drummond *alleged*, That he ought not to be compelled to deliver the said reversion, because he was the giver of the said reversion, the lands being wadset to him; and also the said reversion was discharged to him by White, son of this White, the which son was made lawful assignee to the said reversion. To this was *answered*, by Stirling, That the said White, who was his son, had no power to make him assignee to the reversion, because he had, of long time before, made the said James Stirling assignee to the reversion. To this was *answered*, That, albeit it was so, that he made the pursuer first assignee, yet the same was never intimated, nor came he ever in possession of the said reversion; but, upon the contrary, the said Drummond, giver of the said reversion, kept it still with himself, and into his own possession, *et sic prior in possessione et potior in jure*. To this was *answered*, That the said James Drummond, who alleged him to be the second assignee, ought not to be heard to allege the same; and that he could not allege

No 6.

Disposition by an interdicted person to his own son reduced.

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