

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