

No 10. THE LORDS found the decret just, and therefore repelled the reasons of suspension and reduction.

Fol. Dic. v. 1. p. 479. Stair, v. 1. p. 96.

* * * The Court adhered to the judgments pronounced in the above cases, that interdiction has no effect as to moveables or personal execution.—20th June 1671, Crawford against Haliburton, No 78. p. 2741. *voce* COMPETITION; and 24th July 1678, Grierson against Tailzifer, No 4. p. 6298. *voce* IMBECILITY.

No 11. 1666. July 27. — against BLANTYRE.

— having intented a reduction of an interdiction, upon that reason, That Blantyre was *rei sue providus*; and that the pursuer had lent him the money due to him when he was in England, and in necessity; and being a stranger and a creditor, he ought not to be prejudged by such a voluntary interdiction; being upon a bond granted by the debtor without a previous sentence, finding Blantyre to be *prodigus*, or such a person as should be interdicted;

THE LORDS thought the case of that consequence, that they would not decide upon a report, but ordained it to be debated *in præsentia*.

Reporter, Lord Castlehill.

Dirleton, No 34. p. 14.

No 12. 1676. November 10. STEWART against HAY.

AN obligation, 'not to contract debt or dispone lands, without the consent of such and such persons,' and inhibition registered thereupon, was sustained, though not in the ordinary stile of interdiction, the person bound up being insufficient to manage his affairs, through levity and prodigality.

Fol. Dic. v. 1. p. 478. Stair. Gosford.

* * * This case is No 5. p. 3092. *voce* CONSUEITUDE.

* * * Dirleton also reports this case :

LANDS being bought after interdiction, a reduction of the said interdiction was pursued at the instance of the buyer, upon these reasons, *imo*, That interdictions, by the common law, are only of *prodigi*, and interdictors are in effect given *curatores* to them; and, by our custom, albeit interdictions are granted *sine causæ cognitione*, upon bonds granted by persons interdicted, upon that consideration and narrative, that they are persons facile, and not fit to manage their estate, whereupon the judge presumes that they are such, and upon a

bill gives warrant to publish the same; yet the interdiction in question ought not to be sustained, seeing it is not the ordinary stile of other interdictions; and the bond of interdiction bears no narrative of facility; but only that the granter, for the standing of his family, being very ancient, did oblige himself not to dispoise his estate without consent of the persons therein mentioned; and letters of publication were not raised thereupon, but inhibition was only used.

2do, That interdictions are a remedy for securing weak persons, and ought not to be a snare to others; and the law favours, and helps those that are *decepti*, and not *decipientes*; and that the pursuer was in effect circumvened, in so far as the said interdiction was not registered till the pursuer was in terms of bargaining; and they had searched the registers, and had not found any such interdiction; and the only interdictor in life was witness to the bargain, and got a part of the price; and the rest of the price was paid to creditors anterior to the interdiction; and the pursuer, relying upon the ingenuity of the dispoiser, though he might have secured himself by taking a right to the said debts, did extinguish the same, by taking discharges and renunciations.

THE LORDS being divided in their opinion, the case was not decided this day.
In presentia.

November 10.—THE LORDS sustained the interdiction above mentioned, the defenders offering to prove, that the person interdicted was not *rei suæ providus*; and found, That the person interdicted was thereby in the condition of minors; and that he and his heirs could not question any disposition or other deed done by him, upon the naked head of interdiction, unless they allege and qualify lesion; and that the pursuer of the reduction may prove that the bargain was profitably made, and that the price was *in rem versum*; and the LORDS declared, They would not be nice as to probation; but reserved the consideration of it to themselves.

It was further *replied*, That the interdiction is null, being executed by a person that was not a messenger, being deprived; which was repelled, in respect of the *answer*, That it was offered to be proved, that notwithstanding of the sentence of deprivation, he was holden and *tentus et reputatus* to be a messenger. Notwithstanding it was *triplied*, That the pursuer, in fortification of the sentence of deprivation, and his own deposition, offered to prove, that it was the common opinion of the country, that the executor was not a messenger, then being deprived, which was thought hard by some of the LORDS, being of the opinion, that at least *habitus* and *tentus et opinio* ought to have been allowed to both parties to prove; reserving to the Lords to consider the probation, and to judge according to that which should be found most pregnant.

Dirleton, No 381. & 382. p. 186.

Clerk, Hay.