

- No 2. husband to Horsliehill, of the lands wherein she was infest, to which she was subscribing consentor, upon this reason, That the time of her subscribing the disposition she was under the pains of child-birth, and so was not capable to consider what she was doing, and that it was represented to her that it was but a temporary right, whereas it was an absolute disposition; and she being in her pains, she could neither read it nor hear it read to her;—THE LORDS, before answer, ordained the writer and witnesses, and commoner's midwife, and others who were present at the time, to be examined upon the true matter of fact, and the way and manner of eliciting the pursuer's consent to the ratification.

Sir P. Home, MS. v. 1. No 326. p. 469.

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- No 3. 1686. December 7. A. against B.

THE LORDS found it relevant to reduce a discharge subscribed by a woman, that it was offered to be proved it was presented to her when in her child-birth pains; which the LORDS judged an unseasonable time, and that she was then *quasi in lecto, et vix satis mentis compos* to have the full exercise of her reasonable faculties; and allowed it to be proven by women witnesses, others not being allowed to be present *in puerperio*. See WITNESS.

Fol. Dic. v. 1. p. 421. Fountainhall, v. 1. p. 434.

SECT. II.

Levity.—*Æstus amoris.*

1678. July 24. GRIERSON against TELFER.

No 4.
Levity, without interdiction or fraudulent inducements, not sufficient to annul a gratuitous deed.

GILBERT GRIERSON pursues a reduction of several bonds granted by him to umquhile Telfer of Haircleugh his uncle, on these reasons, *imo*, That the pursuer was known to the defunct, who was his uncle, to be a facile, lavish, and weak person, and yet he procured from him the bonds in question, without an onerous cause, and within three days thereafter procured from him a bond of interdiction to himself, upon account of his facility and weakness. *2do*, It was offered to be proved, that these bonds were granted of the same date with the bond of interdiction, or after the same; by which interdiction the defunct became as curator to a weak or prodigal person; after which he could do no

deed, not being authorised with the consent of his interdictor, who therefore could not authorise him to his own behoof, but was *in pessimo dolo* to take bonds from him *gratis*, yea even to lend him money to squander it away. 3^{tio}, The bonds were satisfied by intromission with the pursuer's moveables and rents, whereof though he took discharge, yet after the interdiction he could not do it. —The defender *answered* to the *first*, That it is not relevant, that a person is weak or lavish, to reduce even his donations, because he is *dominus rei suæ*; but the law hath appointed a special remedy to secure persons for the future, by interdiction; nor doth it import any fraud or circumvention, to accept a donation from a lavish person, unless fraudulent inducements were condescended upon and proved. To the *second*, Though the bonds in question were of the date of the bond of interdiction, *non relevat* to annul them, because the interdiction cannot hinder the interdictor to lend money to the interdicted, wherein the interdictor's consent is implied. 2^{do}, This interdiction can have no force till it was published, for it is the authority of the Judge only that can bind up a party from acting on his own bond, or not acting, relating to no interest of the interdictor, but of the interdicted, who thereby is both debtor and creditor, and cannot be bound to himself. As to the *third*, Interdictions are only allowed *hæreditatem salvam fore*, and therefore are never extended to any moveable right; and so the discharge of his moveables is valid, though it had been after the publication of interdiction; but the date of a bond of interdiction can import nothing as to deeds posterior to the date, because such bonds are ordinarily subscribed by the interdicted, and kept by themselves till publication.

THE LORDS repelled the first reason, and found that levity, without interdiction or fraudulent inducements, could annul no deed, though gratuitous; but found the second reason relevant, That these bonds were at, or after the interdiction, being delivered to the interdictor, though it was not published; so that the interdictor accepting, could take no right from the interdicted, but upon onerous causes, and due application; but found that the interdiction in no case could reach the moveables, therefore sustained his discharge of the moveables and rents. See INTERDICTION.

Fol. Dic. v. 1. p. 421. Stair, v. 2. p. 641.

1696. July 14. CURRIER against RUTHERFORD and HYSLOP.

CROCERIG reported William Currier against Rutherford and Hyslop, being a reduction of a decret of spuilzie on sundry nullities; as that it was put up of a wrong date in the minute-book, the date of the signature of process and warrant being four days different from the date as it stands in the minute-book; and that the spuilzie was inferred, because they continued to poind after a sist of execution on a bill of suspension was presented; which was not proved by a written intimation, (as it ought to have been,) but only by witnesses present.

No 4.

No 5.

Ætus amoris
no relevant
ground of re-
duction, in so
far as thid
parties are
concerned.