

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. *3tio*, 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. *2do*, 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.

No 5.

who might readily mistake such a punctilio.—*Alleged* against Hyslop, That he could never quarrel the decret, because he had accepted of a discharge, and given a ratification of the decret.—*Answered*, Being in a communing about his marriage, the woman's friends refused, unless he got a discharge of that decret, which made him enter into that transaction, being *in actu amoris*, at which time he would refuse nothing.—THE LORDS repelled the nullities; and found the *actus amoris* might be pretended as a ground to reduce things granted to a wife or her friends, but not what was done to third parties not concerned in the treaty of marriage.

Fol. Dic. v. I. p. 421. Fountainball, v. I. p. 728.

S E C T. III.

Persons Dumb and Deaf.

1663. July 9. HAMILTON *against* A DUMB MAN in Glasgow.

No 6.

Consent of a dumb man not inferred from his subscribing a discharge by the initial letters of his name, the money for which it was granted, being delivered, not to himself, but to his sister, in his presence.

THIS dumb man having right to an annualrent of L. 20 yearly out of a tenement in Glasgow, thereupon Hamilton, his creditor, having arrested, and obtained decret for payment of this annualrent, in satisfaction of the dumb man's debt, it was *alleged* for the person whose bond was liable for the annualrents, absolvitor for five year's thereof, because he had paid these years to the dumb man's sister by his consent; in so far as he delivered the money to the sister in presence of the dumb man, and obtained her discharge thereupon in his name, subscribed also by him, with the initial letters of his name.—It was *answered, non relevat*, because the discharge bore not that the dumb man received the same, but his sister; and bears, that she is obliged to warrant it at the dumb man's hand; and his presence, and seeing of money delivered, and his subscription, cannot import his consent, because he being dumb, could not know what the extent of the sum was, nor for what years it was.

THE LORDS repelled the defence in respect of the reply.

Fol. Dic. v. I. p. 422. Stair, v. I. p. 197.

See FRAUD.

APPENDIX.