

QUOD POTUIT NON FECIT.

1559. April 10. STEWART against MOUBRAY.

ANENT the action pursued by Matthew Stewart against Moubray, brother to the Laird of Barnbogle, for removing from certain lands, upon a warning, it was *alleged* by the said Moubray, That he had the said lands annailzied to him *titulo oneroso* by his brother, A. Moubray; and, therefore, should have a day to call his warrant. It was *alleged* by the party warranting, That he ought not to warrant the said lands; because, the time he annailzied the said lands, and long before, he was interdicted, in presence of the Lords, from all alienation of his lands, without consent of certain persons, who consented not to the alienation, as was known to the pursuer. The said alienation was null in itself, and ought to have no warrandice. It was *answered* by the said Moubray, pursuer, That the said alienation was made at the free will of the warranter, and not at the instance of the party; and, therefore, he should warrant his own deed, notwithstanding the interdiction foresaid; which answer of the said pursuer was repelled by the Lords, and no warraedice of the said alienation, by reason of the interdiction foresaid.

Fol. Dic. v. 2. p. 307. Maitland, MS. p. 127.

1566. February 7.

A. against B.

IN an action, moved by A. B. against E. F. as executor and hail intromitter with the goods of C. D. for a black cloak and gown, left to the pursuer in legacy by the said —; it was *answered* by the said defender, That the gear acclaimed was no heirship, and that the defunct had no free land, but only annualrent upon land, which could not make her to have an heir. It was *replied*, That, if she had an heir, she might leave in legacy the gear acclaimed, yet the

No 1.

An interdicted person having alienated lands, warrandice was not sustained to take effect even against his person or moveables; because, if the deed was null *quoad* the granter himself, he could not be bound to warrant it.

No 2.

Legatum rei aliena.