

his discourse and deportment, *rei suæ providus*; the LORDS reduced in absence, there being no compearance or opposition for the interdictors.

No 37.

Fol. Dic. v. 1. p. 481. Dirleton, No 29. p. 13.

1698. February 10.

HARY HUNTER of Kirkton *against* JOHN HUNTER of Forrester-saltcoats.

No 38.

In judging of an interdiction, the court ordered a proof *hinc inde*, and appointed the interdicted person to appear before them.

MERSINGTON reported Hary Hunter of Kirkton against John Hunter of Forrester-saltcoats his brother, for the reduction of an interdiction, whereby he had bound himself up to act solely by his advice, in respect of his lavish prodigality. The reason of reduction was, he had been wheedled to it by surprise, and when in drink, without any previous cognition or trial of his deeds of levity; and the narrative of the interdiction bearing an acknowledgement thereof, is not sufficient, as was found 20th December 1622, Campbell *contra* Glenurchie, No 35. p. 7158.; and the 4th December 1623, Gichen *contra* Hay, No 36. 7160.; where the narrative was not found probative, unless it had proceeded *cum causæ cognitione*, in regard they offered to prove they were *rei sui satis providi*. *Answered*, He had given a gratuitous discharge of his tocher, and dispooned away the seat of the church, and was unwilling to descend to other particulars that would convince the Lords there was too much ground for the interdiction.—THE LORDS considered, as the narrative of his levity was not to be wholly trusted, so neither was it to be totally discredited; but ordained the defender, before answer, to condescend and prove such acts of levity as he could, either prior to the interdiction, or subsequent; and the pursuer to elide the same, and prove his frugality and provident administration of his own affairs; and declared, at the advising, they would cause sist the young man before them and try his behaviour; though prodigals may discourse as pertinently as other men.

Fol. Dic. v. 1. p. 481. Fountainhall, v. 1. p. 822.

1699. June 23. ALEXANDER GORDON *against* SIR JAMES DICK.

No 39.

WHITELAW reported Alexander Gordon and Sir James Dick of Priestfield. The said Alexander being of a facile nature, did, a little after his majority, interdict himself to Sir James, his uncle, who had likewise been his curator, and which was duly published. Alexander being now married to Dirleton's sister, and they desiring he might have the administration of his fortune, by their advice, compears in a process of mails and duties against some of his tenants pursued by Sir James, and craves to be preferred as standing infeft in the lands. *Answered*, The rents must not be paid to you, because you stand interdicted to

A voluntary interdiction made *sine causæ cognitione*, was found reducible at the instance of the interdicted person, unless, in fortification of it, the inter-

No 39.
dictor could
prove the
narrative of
facility, &c.
on which it
proceeded.

me. He *replied* on a reduction he had raised of the interdiction, That it should be declared null on this reason, that it proceeded *sine causæ cognitione*, and every one after minority was presumed to be *rei suæ satis providus et frugalis*, unless the contrary were proven. Sir James making little or no answer to this, but carrying himself *passive*, that the interdiction might be declared null, the Lords, as tutors and patrons to all weak persons, thought themselves the more concerned to advert thereto. Some moved, that being only a voluntary interdiction, Sir James might discharge his nephew thereof; but he judged it more secure to have the Lords' authority to rescind it. Others thought he ought to insist in his reduction *via ordinaria*, and not repeat it by way of reply. Others *argued*, That it was not relevant to say it was entered into *sine causa cognita*, unless it were farther offered to be proven, that he was now prudent and capable to manage and administrate his affairs; and for that effect it was overtured, that trial should be taken of his levity or deportment. Then the question arose, how that trial should be made, whether by a probation of deeds of lavishness, facility, or prodigality, or by examining and trying him in presence of the Lords. This last was not judged sufficient, for a man can answer very pertinently, and yet addicted to gaming and many acts of facility; and this uses to be in the trying of idiots, but will not serve as to prodigals; and on such expiscations the Lords have *ex motu proprio* interdicted some, as in the case of Robertson, and Gray of Shivez, 17th February 1681, No 13. p. 7134. At last the Lords found the reason of reduction, that it was *sine causa cognita* relevant to reduce the interdiction as groundless, unless Sir James in fortification of it, would offer to prove the narrative of his levity and facility on which it proceeded.

Fol. Dic. v. 1. p. 481. Fountainball, v. 2. p. 54.

1703. December 23.

CHARLES ROW, Writer to the Signet, *against* MAJOR MONRO of Bearcroft.

No 40.
A lady entailed her estate, but without an irritancy *de non contrahendo*. She obliged herself not to alter or contract debt without the consent of certain persons, and this interdiction was regularly published. An heritable

ROBERT BRUCE of Auchinbuy having left three daughters, by his contract of marriage Janet, the eldest, succeeded without division; and she makes a bond of tailzie providing the lands to her two sisters *successive*, failing heirs-male of her own body; and, to secure the tailzie, she obliged herself not to break the same, nor to contract debt without the consent of the Laird of Kelburn, now Earl of Glasgow, and of Margaret Crawford her mother; and, on this tailzie duly registrate, letters of publication of the interdiction were raised, executed, and registrate. Janet coming afterwards to marry Captain Bruce, she, with consent of her husband, and two interdictors, makes a new bond of tailzie in 1695, renewing the former tailzie, with this variation, of assuming her husband into the conjunct-fee and liferent with herself; and on this infestment follows: