

No 26. there are legal rules restraining the administration of his curators ; whereas since nothing restrains an interdicted person's disposal, but his own consent, that restraint can go no further than his consent hath limited him ; which is, that he shall not have power to dispose without concurrence of the interdictors. Again, as a person inhibited may delapidate with consent of the inhibitor, what should hinder an interdicted person to do the like with consent of his interdictors? *2do*, Granting the heritable bond was but only an exercise of the faculty of disposing of the 6000 merks in favours of his own nearest of kin.

Duplied for the defender ; An interdicted person cannot do, with consent of his interdictors, whatever he could do were he not interdicted ; for a person not interdicted is at perfect liberty ; whereas after interdiction, neither he nor his interdictors are so. And though interdictors are not liable for omissions, they are liable for commissions ; and what they do unwarrantably to the prejudice of those they are bound to preserve from hurt, is reducible, *Negotiorum gestores* are liable for malversations ; and interdictors who are chosen and accept, are less favourable, when they counteract their trust. An interdicted person cannot do with consent of his interdictors, what an inhibited person could do with the consent of the inhibitor ; because, the prohibition in an interdiction is universal ; whereas the prohibition in an inhibition, hath a special regard to the inhibitor's interest. Therefore as one inhibited cannot prejudice the inhibitor, so a person interdicted cannot even with consent of the interdictors prejudice his heritage. *2do*, The faculty to burden is not positive, but only negative, that he should not be able to burden the estate with more than 6000 merks. Besides, it could not put him in a better condition than if he had had the full and free administration ; in which case he could neither burden nor alienate without an onerous cause ; the faculty could only be understood *in terminis habilibus*, as accords of the law. Again, this faculty being given when Tinwall was not interdicted, it could not be given *eo intuitu* to capacitate him when interdicted. And as Tinwall could have renounced this faculty ; so he effectually renounced it by interdicting himself.

THE LORDS sustained the bond, though gratuitous, being granted with consent of the interdictors, and repelled the defence.

Forbes, p. 528.

1749. July 12.

DINGWALL *against* MONRO.

No 27.
Interdiction strikes not a gainst ordinary acts of administration.

A VOLUNTARY interdiction, so far as it goes, has the same effect with a judicial interdiction ; but it goes no farther than it expresses ; and therefore, where by the letters of publication, which is the act that gives effect to the bond of interdiction, the will was, ' That the lieges be inhibited to take any right to the pursuer's lands, &c. or to lend him sums of money,' that was not thought to

restrain the person's ordinary acts of administration, as contracting debts for furnishing to his family, &c. and even though such furnishings should be extravagant, it was thought hard to clip the merchant's account, as it is not for him to judge to what extent furnishings were proper or necessary. It was, therefore, in this case, thought not to be a good exception to Roderick M'Kenzie's account of wine, furnished to the late Gustavus Monro of Culrain, a person interdicted from borrowing money, that above hogsheads of wine and spirits had been furnished to him in the space of eight or nine months.

No 27.

But then, all that was produced, for instructing the furnishing in this case, was a bill accepted by the late Culrain, the person interdicted, of the same date with the discharged account, found in the hands of his doer; which, though a strong circumstance, was yet thought not sufficient to support the bill, without further instruction, by proof, of the furnishing; wherefore, a proof, before answer, was allowed to either party, of all facts and circumstances which might support or invalidate the truth of the account.

Fol. Dic. v. 3. p. 336. Kilkerran, (INTERDICTION.) No. I. p. 296.

S E C T. IV.

Interdicter may not be *auctor in rem suam*.—Manner of adhibiting the Interdicter's consent.—Effect of the Death of the Interdicter.

1607. February 28. WARDLAW against WARDLAW.

No 28.

GEORGE WARDLAW pursued Robert Wardlaw upon his obligation; he *excepted* the obligation was null, because it was made by him to the said George, to whom he was interdicted at the time of the making thereof. It was *answered*, That could not come in by exception, but behoved to be reduced. THE LORDS found, that, albeit an obligation, made by a person interdicted to a stranger, was not null by exception, but behoved to be reduced; yet the nullities of an obligation, made to his own interdicter, might be received by exception, because he would qualify sufficiently *quod fuerat in rem versum*.

Fol. Dic. v. I. p. 480. Haddington, MS. No. 1340.