

No 30. the said ratification and new disposition ; seeing prodigals and weak persons were not interdicted *ipso jure* by the civil law, but only *officio judicis* upon a cognition ; and our law acknowledgeth only two sorts of interdiction, viz. voluntary and judicial.

Forbes, p. 286.

1710. November 24.

THOMAS LAW, SON to WILLIAM LAW Taylor in Jedburgh *against* THOMAS TURNBULL of Firth.

No 31. IN the action at the instance of Thomas Law, against Thomas Turnbull, as representing his father, for payment of a bond granted by him to the pursuer's father ; the LORDS were clearly of opinion, that a bond granted by an interdicted person without consent of his interdictors, could not be supported as valid by their subscribing witnesses to it.

Forbes, p. 442.

1761. February 5.

DONALD CAMPBELL *against* COLIN CAMPBELL.

No 32. The Lords so far determined the question whether an interdictor can acquire rights relating to the interdicted person's estate, that they allowed a proof that he had acted under the interdiction ; which would imply that they considered interdictors in the same point of view with tutors, factors, &c.

DONALD CAMPBELL had a valuable wadset from Mr Campbell of Shawfield, the redemption of which was suspended to the term of Whitsunday 1760. He had also a tack from Shawfield which was to expire at the same time.

Being a weak facile man, he interdicted himself to some of his relations ; Colin Campbell his brother was one of them.

Twelve years before the expiry of the wadset and tack, Colin Campbell applied to Shawfield, and got from him a grant of both.

Donald, with concurrence of his other interdictors, brought an action against Colin, concluding, that the benefit of the transaction should be communicated to him.

Pleaded for Donald ; Rights acquired by tutors, curators, factors, named by them, and in general, by all factors, agents, and trustees, relating to the person's lands for whom they act, accresce to him ; and the same rules should take place with regard to rights acquired by interdictors.

Answered for Colin ; There is no general trust between interdictors and the person interdicted. The interdictors have no management of the affairs of the interdicted person ; they have no accounts to render of their administration ; the trust reposed in them reaches no further than the heritable estate ; all that is expected of them, or undertaken by them, is to adhibit their consent in token of their approbation of the acts and deeds of the interdicted person. No-

thing less than an actual fraud would be sufficient to constitute a claim against an interdictor.

In these respects there is therefore a manifest and essential difference between the case of an interdictor and the person interdicted, and the case of a minor and his curators, a constituent and his factor, the trustee and the truster, who, by the nature of their offices, or from the trust by them respectively undertaken, are bound to act in every respect in the manner most beneficial for the interest of that person whose affairs they administrate; from which the law may with reason presume, that every right acquired by them, concerning that estate under their management, was for their constituent's behoof, or acquired by his means; none of which can apply to the case of an interdictor.

There was evidence produced to the Court, that Colin knew of the interdiction; but the evidence was doubtful whether he had acted under the interdiction.

THE LORDS had assoilzied; but upon a reclaiming petition from Donald, craving diligence to recover writings to prove that Colin had acted under the interdiction, the LORDS 'granted the diligence.'

Act. *Ferguson.*

Alt. *Lockhart, Johnston.*

J. M.

Fol. Dic. v. 3. p. 336. Fac. Col. No 16. p. 28.

SECT. V.

Interdiction is reducible where destitute of a rational foundation.

1607. July 2. AUCHINBOWIE against His INTERDICTORS.

ALEXANDER BRUCE, younger of Auchinbowie, being interdicted to — Bell of Welburne, his goodfather, pursued for reduction of the said interdiction, and publication following thereupon, because it was done without any necessary cause, without any preceding trial or cognition, taken by any judge, of the said Alexander's misgovernment, to the prejudice of the said Alexander's liberty in the administration of his own affairs, and freedom to contract and bargain, to the inducing of infamy, and discredit to him, he not being a fool or waster, but a wise and provident man. Which matters being at length considered by the hail LORDS, they, for the most part, found the reasons were relevant, and thought that no interdictions should stand but such as were deduced *cum causæ cognitione*, and therefore ordained an act to be formed, and insert in the sede-

No 33.

Reduction of an interdiction was found relevant, upon this reason, that it was made immaturely without any cause, and *sine causæ cognitione*, to the discredit of the party, and prejudice of his liberty in the administration of his affairs.