

No 33. runt book, declaring, that they would decern after this manner in all time coming.

Fol. Dic. v. 1. p. 480. Haddington, MS. No 1377.

1618. January 30.

A. against B.

No 34.

IN an action of reduction of an interdiction pursued by John ———, the LORDS reduced *ex nulla alia causa*, but because it was *sine causæ cognitione*.

Fol. Dic. v. 1. p. 480. Kerse, MS. fol. 62.

1622. December 22. COLIN CAMPBELL against The LADY OF GLENURCHIE.

No 35.

FOUND by the LORDS, that an action of reduction of an interdiction, for redeeming of a bond of interdiction, which was made for sums of money, and whereby the party was obliged not to sell without consent of the interdictors, and if he did in the contrary, to pay a penalty of ——— merks *toties quoties*, was relevant, being founded upon this ground and reason, that the party maker was *rei suæ providus et non prodigus*, and that the bond of interdiction was *contra bonos mores*; notwithstanding it was *alleged*, that the bond was made for sums of money *ex causa onerosa*, and that the interdiction was not simple, but resolved into a penalty; and that the bond itself was not impossible *de jure, non contra bonos mores*. To the which nothing was answered; but that the confession of sums of money made it not onerous, except they would prove the real delivery of money, and this interdiction rescinded only *a tempore litis motæ*.

Fol. Dic. v. 1. p. 480. Kerse, MS. fol. 62.

* * * Durie reports this case :

IN an action pursued by Campbell against Lady Glenurchie, for reducing of an interdiction made by the said Campbell to the L. of Glenurchie, the LORDS sustained this reason of reduction, viz. that it was made by a person *satis prudens et rei suæ providus*, and without any necessity of a preceding impulsive cause, but voluntarily, and without good deed; and without any preceding trial or precognition of an ordinary judge, finding a necessary cause of interdiction, they therefore reduced it *in foro contentioso*.

Act. *Nicolson et Stuart.*

Alt. *Primrose.*

Clerk, *Gibson.*

Durie, p. 40.

* * * This case is also reported by Spottiswood :

No 35.

1622. December 21.—WHEN a man interdicts himself to another, either voluntarily for the interdictor's own good, or of necessity for his good to whom he is interdicted; as if he be obliged to him for an onerous cause; the LORDS will not sustain either of them, *quia contra bonos mores est interdicere alicui rei sue administrationem*. The last seems somewhat hard.

Spottiswood, (INTERDICTION.) p. 179.

* * * The same case is also reported by Haddington :

THE Laird of Glenurchie, elder, purchased a bond of Colin Campbell of Abruhe his brother's son, bearing, that, for sums of money paid to him by Glenurchie, he obliged himself not to annalzie any of his lands without Glenurchie's consent, under the pain of ten thousand merks. Colin pursued reduction of this bond, as containing an interdiction contrary to his natural liberty, and a penalty full of greed and injustice. It was *answered*, It was a deed voluntarily done for his own well; and that he had granted the receipt of sums of money, which were an cause onerous, and could not be impugned by a man who had confessed. The parties being removed, I proponed that no interdiction could be just and lawful, but that which was appointed by the law, which was, that a man being tried by a judge ordinary to be *prodigus et non sue rei providus*, might be interdicted at the request of his friends, and by authority of the judges; but that the voluntary interdictions were full of injustice and fraud; because they either concerned simple parties, who were commonly enticed by crafty persons to interdict themselves to such as, by mediate persons, cozened them of their whole estates, or else drew them to sell their lands at unworthy prices, to such persons as would give most broker fee to the interdictors for their consent; or else crafty persons interdicted themselves, that they might make bargain to their advantage, and might defraud such as bought from them, and steal their monies, and annul their alienations, upon pretence of interdictions, so craftily used, as they could not come to mens' knowledge. As to the allegiance of sums of money generally confessed received in the bond, no respect was to be had; because, those who had credit to obtain a man interdicted, would persuade him also to make that general confession, and to the penalty of ten thousand merks, though *turpe pactum*. In respect whereof the LORDS reduced the bond.

Haddington, MS. No 2713.