

to accept and discharge in satisfaction of all; and, for that effect, make up a title to their brother's part, the Town of Edinburgh always relieving them of any debt of Sir Peter's, or incumbrance that may reach or affect them, by their confirming themselves executors to him."

No 16.

1684. February 8.—IN Sir Bernard Davidson's cause with the Town of Edinburgh, (mentioned 22d January, 1684,) the LORDS, having caused some of their number try him, by converse and discourse, if he was an idiot, or furious, they found him neither fatuous nor mad, but that he is only sometimes epileptic; and found, though he was interdicted as a simple youth, yet this being a moveable sum, and no heritage, that he needed not the consent of his interdictors to the uplifting thereof.—See PROOF.

*Fol. Dic. v. 1. p. 479. Fountainhall, v. 1. p. 263. & 269.*

1685. March.—

IRVINE against M'BRAIR.

No 17.

FOUND, That interdicted liferenters may dispone their liferent, without consent of the interdictors, seeing the *jus formale* of the liferent is not disposed, but only the *ususfructus*, which falls under the party's single escheat.

*Fol. Dic. v. 1. p. 479. Harcarse, (INTERDICTION.) No. 645. p. 178.*

1685. December.—

RANDERSTON against M'INTOSH &amp; DRUM.

No 18.

THE Laird of Humbie, who had voluntarily interdicted himself to some friends, having disposed the barony of Crichton, with consent of the interdictors, to Sir William Primrose, who was obliged, by the disposition, to pay some preferable creditors, and to pay in the rest to Humbie, without any quality, that it should be disposed of by the appointment of the interdictors, Humbie's personal creditors arrested in Sir William Primrose's hand, and pursued a forthcoming.

The consent of the interdictors essentially requisite to warrant alienation.

*Alleged* for the defenders, That the price being moveable, it did not fall under the interdiction; and the interdictor's consent not being qualified, all creditors had equal access according to the diligence; and any consent of the interdictors, to prefer any one personal creditor to another, after the disposition, was *a non habente potestatem*; much less could a consent, after the diligence of arrestment, prefer another creditor, who had done no diligence.

*Answered*, The design of interdiction being for binding up the prodigal's lands, the interdictors may dispose of lands in satisfaction of just and necessary debts; and their disposition imports a quality, (though not expressed.)

No 18. that the price should be applied with consent of the interdicters, and no otherwise.

THE LORDS, in respect the interdicter's consent was not qualified, that the price should not be paid but by their advice, found, That the price was a moveable subject, and liable to the legal diligence of any creditor, though for debt contracted without consent of the interdicters; and that the consent *ex post facto* to some of the creditors, gave no preference. And it being *alleged*, That the disposition was consigned for some time, till Sir William Primrose did promise to apply the price with their consent, the LORDS found the deposition only probable *scripto*, and not by the writer and witnesses in the disposition.

*Harcarse*, (INTERDICTION.) No. 646. p. 178.

No 19.

Interdictions  
do not affect  
moveables.

1724. January 31.

JOHN ARBUTHNOT and JAMES ARBUTHNOT *against* VISCOUNT ARBUTHNOT, &c.

THE VISCOUNT, in consideration of the encrease of his debts, did, by the advice of his friends, in the year 1719, voluntarily enter into a bond of interdiction, during the space of five years, to certain of his friends, whereof the pursuers were two; and his Lordship thereby obliged himself, 'That he should not grant or subscribe any bonds, or other securities whatever, either as principal or cautioner, to any person or persons, for any sum, great or small; nor draw or accept of bills, nor dispose upon the rent of his estate; nor grant discharges to any person or persons; nor do any fact or deed, to the prejudice of his family, without the special consent of,' &c. And there is a special reservation as to 4000 merks of annuity, to which his Lordship betook himself.

The pursuers raised and executed a process of reduction, improbation, declarator, count and reckoning, whereby they meant to question all deeds done by my Lord to his own hurt, particularly all deeds and discharges made in favour of his factor, and all clearances of accounts which in any sort might obstruct the factor's coming to a fair account at the pursuer's sight.

It was *objected*, by way of defence, That the force of interdiction reached only to heritage, and not to moveables; that the rents of the estate were properly moveables, which my Lord might dispose of at pleasure, notwithstanding the interdiction; and, therefore, any account fitted betwixt him and his factor, concerning these rents, was not liable to reduction, on the head of interdiction.

It was *answered*, That though interdictions do principally affect heritage, and do not affect particular moveables or fungibles, such as horses, cattle, &c. because of the favour of commerce; yet they may secure other moveable