

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:

A year after this, an heritable bond is granted to Charles Row, writer to the signet, for L. 684 Scots, whereon he is likewise infeft; but the consent of the interdictors was not obtained thereto. Charles pursuing a poinding of the ground, he is encountered with a reduction of his bond, at the instance of Major Monro of Bearcroft, who had married the second sister, the next heir substitute in the tailzie, and the two interdictors, who repeated this reason, that it is null, being granted after publication of the interdiction, and they not consenters to the bond. *Answered* for Charles Row, They have no interest, but only *jus apparentiæ*, which is not sufficient to quarrel his debt; and if they insist as donatars to Captain Bruce the husband's escheat, they can never be heard to compete with him, his bond being anterior to the denunciation and rebellion; and as to the tailzie, it cannot be transfused into an interdiction, these being quite separate and distinct securities; neither is the tailzie registrate in the register appointed for tailzies by the act 22d Parliament 1685, and the second tailzie wants that irritant prohibitory clause *de non contrahendo debitum*; neither use any to be tied up from contracting debt, except in the case of lavishness, prodigality, or facility, which cannot be subsumed in the Lady Auchinbuy's case, who manages both prudently and rationally; and the Lords, in the case Stewart *contra* Hay, 10th November 1676, No 12. p. 7132. found an inhibition served on such a prohibitory clause could not subsist, unless insufficiency or weakness of the granter were instructed, *ergo* the same should be observed *a pari* in interdictions. And the second tailzie is a clear innovation of the first; and so that clause not being repeated therein, the interdiction, if any was, falls to the ground. *Replied*, The next heir of tailzie has a sufficient interest to quarrel this bond, especially when the interdictors concur with him; and there is no need of subsuming on levity and weakness; for interdictions of consent are as strong as judicial ones; and there cannot be a better reason for an interdiction than to preserve a tailzied estate from being alienate or swallowed up; and it is sufficiently registrate in the terms of the act of Parliament 1685. And the second is no innovation of the first, which is never presumed, except when it bears to be *animo novandi, et prioris obligationis tollendæ causa*. But here the second relates to all the clauses in the first, which is all one as if they had been specially insert, and a plain confirmation thereof.—THE LORDS sustained the interdiction as valid, and found the second bond no innovation of the first, and therefore reduced Charles's debt, being contracted after the said interdiction. See PRESUMPTION.

No 40.
bond, granted
after this
voluntary
interdiction,
was reduced,
though it was
not alleged
that the lady
was either
lavish, prodigal,
or facile.

Fol. Dic. v. 1. p. 481. Fountainball, v. 2. p. 205.