

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

estates, such as bonds: For the Lords, *causa cognita*, might extend interdictions to the gratuitous disposal of bonds, according to the opinion of Dirleton and Sir James Stewart; *verbo* Interdictions; and nothing hinders a private person to put himself under the same restriction; and, therefore, since the Lord Arbuthnot has thought fit to restrain his own power of accounting with his chamberlain, and discharging his own rents, in order to prevent the misapplication of the rents, which had given occasion to the growth of his debt upon the estate, his Lordship's intention, in that respect, ought to be made effectual. In the next place, As the chamberlain is presumed to have been in the knowledge of this interdiction, he was in *mala-fide* to purchase to himself a liberation, by settling accounts with the person interdicted, without the advice of the interdicters.

No 19.

THE LORDS found the interdiction could not extend to moveables, nor to the bygone rents of lands, nor to the management or disposal of the said rents, during the course of the said interdiction; and, therefore, found no process as to these: But found the defenders were obliged to take a term to produce all dispositions and conveyances of lands belonging to the interdicted person; as also, all bonds and obligations, inferring a ground of debt or claim, which may be a ground of diligence for affecting the land estate, granted by the interdicted person, after the date of the interdiction, without the consent of the interdicters; as also, that the effects of the interdiction may not be eluded, by the pretence of fitting accounts for bygone intromissions with the rents of the estate, whereby balances may arise to the accountants, and so may be a ground of diligence to affect the land estate; therefore, sustained process for production of any such fitted accounts, without consent of the interdicters, to the end it might be known, whether any such balances arising might not properly fall under the interdiction; without prejudice to the defenders, after production of all their defences in support of the same; and found the defenders ought to take terms for producing such.

Act. Dum. Forbes & Ch. Erskine.

Alt. Ja. Graham, sen.

Fol. Dic. v. 3. p. 336. Edgar, p. 157.

S E C T. III.

Interdiction strikes not against onerous or rational Deeds.

1582. July.

SEMPLÉ against NOBLE.

GABRIEL SEMPLÉ of Cathcart pursued for the reduction of certain ineffectments and obligations made by his umquhile father to Margaret Noble, his

No 20.

A person interdicted may dispone a suitable life-rent or conjunct fee to his spouse.