

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 interdictors.

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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 interdictors; 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 interdictors, 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 &amp; 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

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

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goodmother, and to certain of his daughters, sisters to the said Gabriel. The reason of the summons was, because, long before the making of the said infestments and obligations, the pursuer's father, maker thereof, was interdicted at the instance of the Laird of Cowdon, by reason of a contract betwixt the said Gabriel, and his said father, on the one part, and the Laird of Cowden, and N. Spreull his daughter, future spouse to the pursuer, upon the other part; and the said interdiction was lawfully intimated and published; and so the said Gabriel, father, being interdicted and lawfully published, had no power thereafter to make any alienation or disposition of his lands in defraud of the contract, and into stopping of the heirs gotten betwixt the pursuer and his wife of the bruiking of the heritage. It was *excepted* and *answered* to the reason of the summons by the defender, Margaret Noble, That the infestment made to her of her conjunct fee, ought, on no manner of way, to be reduced, because the same was given to her in conjunct fee and liferent by her husband into the marriage, and as it was leasome unto a husband to marry and take a wife, so it is sufficient and leasome to make provision to her to have her sustentation, and to have whereupon to bring up her bairns; for, of the common law, *generalis alienationis prohibitio et interdictio nunquam includit in se alienationem necessariam*; *textus est planus in L. 13. D. Familiæ Erciscundæ*; et pro hac eadem materia doctores multas alias adducunt leges, de quibus vide Ludovicum consilio 219 figur 18, et vide etiam Joan. Pet. de ser. And also both of the common law and of the practice of Scotland, a minor who may not otherwise annalzie, yet he might give in tocher or marriage or conjunct fee to his wife, ut in *D. De Legat. 1. et C. De Donat. ante nupt.*; and so the disposition of the liferent made to the wife, notwithstanding of the general interdiction and prohibition, could never be reduced or taken away by a thing most necessary in itself, and agreeing best with good law, reason, and practice; and also it was compatible, and might stand with the first interdiction specified into the contract of marriage; because the contract bore, that the interdiction was made to that effect, and that the pursuer and his wife's heritable succession should be defrauded or prejudged, which on noways was done by the disposition of a liferent, the which expired with the person of liferent. To this was *replied* and *answered*, partly by the advocates by reasoning at the bar, and partly among the Lords themselves, that of the common law *verbum alienationis latissime patet de verb. signif. et quod prohibitæ alienationis accipienda sit, textus est apertus in L. 7. C. De rebus alien. non alienand*; Nam ut ait "Sancimus sive lex alienationem inhibuerit, sive testator hoc fecerit, sive pactio contrahentium hoc admiserit, non solum domini alienationem vel mancipiorum manumissionem esset prohibendam, sed etiam ususfructus dationem, vel hypothecam;" and so interdiction and inhibition being made, all alienation, not only heritable, but

also into liferent, was forbidden, for the pursuer was directly, by the disposition made to the wife, prejudged anent the heritable succession; for a man might happen to marry four or five wives, and having power to dispose to every one of them a liferent or conjunct fee, the hope of the succession to the heir will be of little avail to abide the said deduction of all the liferents; and also of the practice of Scotland all interdictions are *stricti juris*, and done for good considerations and causes *et secundum constitutionem nostræ republicæ* for the safety of noblemen's houses *et ad conservandam familiam*; and the present interdiction was made into contemplation of the third person, who was the Laird of Cowdon, that he had disbursed great sums of tocher with his daughter, and so the same could on no manner of way be loosed or broken *nisi cum sua factura*. THE LORDS, after long reasoning and advising, pronounced by interlocutor, that the exception was relevant, and repelled the reason of the summons. THE LORDS were moved to do the same, because the defender having a terce of the lands, and being served thereunto, was content to renounce her terce for her conjunct fee. *Nonnulli dominorum in contraria, &c.* that in respect of the interdiction, she should have neither terce nor conjunct fee, having for their ground, that *interdictiones de jure nostro sunt stricti juris*, and ought not to have been broken.

*Fol. Dic. v. I. p. 479. Colvil, MS. p. 336.*

1607. February 7. EARL ATHOLE against ———

THE Earl of Athole being warded in the castle of Edinburgh, for not exhibiting John Dow M'Gilliecalloun, having presented diverse supplications to the Council for his liberty, for obeying such charge as was used against him in his Majesty's name, for his service, and quieting the country, the same was refused, unless he would find caution for his remaining within the town of Edinburgh, and for his obedience of the said charge. At last, having named my Lord Ochiltry and the Laird of Clunie, they consented upon condition, that the Lords, by their deliverance, would provide, that the Earl of Athole's own bond for their relief, should be sufficient, notwithstanding that he was interdicted, and his interdictor had not consented thereto; whereupon, they having given in their supplication to the Lords of Session, they considered, that as the Earl had necessity to obey the said charge, and though his own bond given to the King would have been sufficient without consent of his interdictors, so his bond for relief of his cautioners was sufficient without consent of his interdictors, seeing he could not obtain his liberty, nor enable himself to obey the King's charge without caution; and thereupon the Lords interponed their authority to these cautioners' relief by their deliverance fore-

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Interdictors having refused consent improperly, the Court interponed their authority to supply the defect.