No 15.

the Lord Innerpeffer, who thereafter, as can be made appear, being conscious of the insufficiency of his right, did pay 5000 merks to the Lord Saltoun for his ratification; and, albeit the Lord Saltoun got an order from Oliver Cromwell, the Usurper, for getting access to the registers, and to take out any papers that concerned him, or the estate of Saltoun, and so the discharge of the interdiction might have been abstracted, that pretence can be of no moment; for, not only is it competent and omitted, the declaration being in the year 1661 dated, and the decreet against Park in the year 1666, but such declarations not being upon commission of the Lords, cannot make any faith, especially seeing it is very well known, that such declarations might have been procured for a little money, and the registers are extant from the year 1602, and there is no vestige of any such discharge; and, albeit James Abernethy, Saltoun's agent, does give his obligement, that Saltoun shall recover no decreets against Rothemay, whose estate fell likewise under that interdiction, yet that obligement does not at all concern Park, and that defence is expressly proponed and repelled in the decreet, and Rothemay has homologated that decreet, he having, since that time, entered into a contract with my Lord Saltoun, whereby he is obliged to denude himself of the estate of Rothemay, in favour of my Lord Saltoun, upon payment to him of the sum contained in the contract; and Park was so conscious to himself of the weakness of his right, that he has several times offered a sum of money to the Lord Saltoun, to redeem the hazard of the plea. THE LORDS found the reason of reduction relevant, and reduced the decreet, and found the interdiction was discharged.

Sir P. Home, MS. v. 1. p. 69. No. 46.

*** The case without names alluded to in page 7138, is Gordon against Gray, No 115. p. 3767.

No 16.
A sum being only moveable, the Lords found, that an interdicted person needed not the consent of his interdictors to uplift it.

1684. *January* 22.

BERNARD DAVIDSON and SISTERS *against* The TOWN of EDINBURGH.

THE case of Bernard Davidson and his three Sisters, children to Sir William Davidson, Conservator, against the Town of Edinburgh, mentioned 14th March, 1682, *voce* FOREIGN, No 9. p. 4444. was reported by Redford. This affair having been submitted, there was a decreet-arbitral, ordaining the Town to pay them L. 20,000 Scots, in full of their claim. When the discharges came to be drawn, they refused to discharge their elder brother Sir Peter's part of it, which had fallen in amongst them by his death, and alleged the L. 20,000 was decerned to them for their own parts only, seeing, by their summons, (which was the ground of their submission and decreet-arbitral,) they did not pursue for his part, not having as yet made up a title to it, by confirming executors to him, or otherwise. *Answered*, By the oaths of the arbiters and communers, it will be found, that the sum decerned was in satisfaction of the whole debt *quomodocunque* due to them. "THE LORDS found, they behoved

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 interdicters to the uplifting thereof.—See PROOF.

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

No 17.

1685. *March.*— IRVINE *against* M'BRAIR.

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

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

No 18.
The consent of the interdicters essentially requisite to warrant alienation.

1685. *December.*— RANDERSTON *against* M'INTOSH & DRUM.

THE Laird of Humbie, who had voluntarily interdicted himself to some friends, having disponed the barony of Crichton, with consent of the interdicters, 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 interdicters, Humbie's personal creditors arrested in Sir William Primrose's hand, and pursued a forthcoming.

Alleged for the defenders; That the price being moveable, it did not fall under the interdiction; and the interdicter's consent not being qualified, all creditors had equal access according to the diligence; and any consent of the interdicters, 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 interdicters may dispose of lands in satisfaction of just and necessary debts; and their disposition imports a quality, (though not expressed,)