

No 29.

1633. February 12.

FORBES *against* FORBES.

A BOND, by an interdicted person, was reduced, for want of the consent of those to whom he was interdicted, though one of them signed as cautioner, and the other promised to subscribe the bond.

Fol. Dic. v. i. p. 480. Durie.

* * * This case is No. 50. p. 5673, *voce* HOMOLOGATION.

No 30.
Voluntary interdiction falls by the death of the interdicters.

1708. December 8.

HEPBURN *against* HEPBURN.

THE Lord Justice Clerk reported Hepburn against Hepburn. Patrick Hepburn of Nunraw, having denuded himself of the fee of his estate to his eldest son John, who dying unmarried, his brother Patrick succeeds to him as heir; and, being a weak man, contracts sundry debts, and falls into other extravagancies; for which being incarcerated in the tolbooth of Berwick, his father takes a re-disposition of the estate from him in *anno* 1681; and, paying his debts, brings him out of prison; but this disposition being reduced, as then standing interdicted, and the interdicters not consenting thereto, there is a new disposition and ratification obtained from him in 1704, in favour of old Nunraw his father, who thereon makes a new tailzie of his estate, wherein he passes by his son Patrick, and his eldest son, and gives it to the second, as pleasing the grandfather best; and, failing of him, to the eldest; and, after him, to one John Hepburn of Swinton, and his heirs; and, failing them, to any the said John should nominate of the name of Hepburn under his hand. Of this tailzie young Nunraw raises a reduction, upon these reasons, that his father was notoriously known to be a weak man, and twice interdicted, and so his ratification not to be regarded; and for his grandfather's tailzie, he was evidently imposed on to pass by him, without any offence given him, (seeing exheredation should be *cum elogio*, giving a reason,) and to put the power of all in the hands of Hepburn of Swinton, a stranger, to nominate and substitute whom he pleased, is a thing that, *ex ipsa facie*, spoke a circumvention. *Answered*, It is true, Patrick was interdicted to five, whereof three were a quorum; but at this time of his ratification in 1704, the interdiction was expired and fallen, by the death of the quorum, there being only two in life, so that he was emancipated from the fetters of the interdiction, and was at absolute freedom to dispoise his estate at his pleasure, especially where it returned to his father, the source from whence it came; and *esto* he were subject to levity and weakness, he is never yet declared fatuous, furious, nor idiot; and as to the grandfather's tailzie, he being fiar, might convey it in what terms he thought fit; and John Hepburn is a relation descended of the family. *Replied*, *Esto* the interdiction had ceased by the death of the quorum, yet this did not make him one jot the wiser, but he con-