No 50. son interdicted was known to be *rei suæ providus*, and was in use to contract in the country, and the cause of interdiction was not tried, nor allowed by the Judge, might reduce that interdiction, and his bond might stand, albeit neither the person interdicted nor his interdictors should assist the pursuit, even as a creditor may reduce an inhibition, which is but the Judge's interdiction, as the other is the party's voluntary deed. See Interdiction.

Act. *Baird.* Alt. ——. Clerk, *Gibson.*

Fol. Dic. v. 1. p. 379. Durie, p. 670.

1663. *June* 25. Stewart *against* Stewart.

No 51.
Reduction of a deed on death-bed not sustained where the pursuer was subscribing witness to it.

Ninian Stewart, as heir to his father Ascog, pursues reduction of a translation of a tack, which tack was assigned to him by his wife, and by him transferred to John Stewart, heir of a former marriage. The reason of reduction was, because the translation was on death-bed, in prejudice of the heir. The defender *alleged* absolvitor, because the pursuer is witness in the translation, which imports his consent. The pursuer *answered*, That subscribing as witness could import no more, but that the witness saw the party subscribe, but did not oblige to take inspection of the contents of the writ. 2*do*, The pursuer when he subscribed was minor. The defender *answered*, That in this case the subscribing as witness behoved to import consent, because that very subscription itself by the father, being sick, did import a deed done on death-bed; especially it not being a testament but a writ *inter vivos*; and for the minority, the pursuer was *in confinio majoris ætatis*, and suffered the defender to possess twenty years, long after his *anni utiles* were past.

The Lords found the subscription as witness in this case to import consent, and being quarrelled *inter annos utiles*, they found sufficient to a minor, though in confirmation.

Fol. Dic. v. 1. p. 380. Stair, v. 1. p. 195.

*** Gilmour reports the same case:

Ninian Stewart of Ascog, as heir to John his father, pursues the reduction of a right made by him to John Stewart of Arnhome, as being done on death-bed. It was *alleged* by the defender, That he should be assoilzied, because the pursuer is witness to the right in question. It was *answered*, That he was only witness to the subscription, and not to the deed itself, and was not obliged to know the tenor of it. It was *replied*, That he being then the apparent heir, and his father sick and on death-bed, as is acknowledged, he is presumed to have known what was in the right, at least considering his father's condition, he ought to have examined the tenor of the writ, and considered

whether it was prejudicial to him or not, which if he hath neglected *sibi imputet.* No 51.

THE LORDS found the apparent heir's witnessing is equivalent to a consent, in regard he is presumed to have known, or ought to have known the nature of the right, and they found a great odds betwixt a son subscribing and a stranger not interested.

The like found July 1666, Haliburton *contra* Haliburton, No 52, *infra.*

Gilmour, No 82. *p.* 64.

1666. *July* 4. HALYBURTON *against* HALYBURTON.

No 52.
Found in conformity with the above.

HALYBURTON pursues a reduction of an infeftment granted by his father upon his death-bed to his sisters, who *alleged* absolvitor, because he had consented to the disposition, in so far as he had subscribed witness thereto; and if need be, offered to prove that he had read the same. It was *answered, Non relevat,* because the subscribing as witness relates only to the verity of the party's subscription, and nothing to the matter therein contained, so that whether the same was read or not, it can import no probation.

THE LORDS found the defence relevant, reserving to themselves to consider what the naked subscription, without the reading of the writ, should work, in case the reading thereof were not proved.

Fol. Dic. v. 1. *p.* 380. *Stair, v.* 1. *p.* 388.

*** Newbyth reports the same case:

UMQUHILE James Halyburton writer in Edinburgh, having a son called William, and two daughters, Janet and Sarah, he provides his son to all his moveables and all sums of money resting by him, and makes a disposition thereof in favours and for his two daughters; he dispones to the eldest, Janet, an annualrent to be uplifted out of an tenement of land belonging to him lying under the Castle wall, redeemable for the sum of 3000 merks; and to the other, called Sarah, an annualrent redeemable for the sum of 2500 merks. After the two daughters were thus provided by their father, he dispones his whole moveable estate to his son, thrice as much in value as the two daughters' provisions; the father being dead, his son William Halyburton, pursues a reduction of this disposition of the two annualrents, as being made by his father *in lecto ægritudinis,* and to his prejudice being his heir. To which it was *answered,* The pursuer cannot say it was to his prejudice, because it was all the portion-natural they got from their father, and that the father assigned to the pursuer all his moveable estate, which would have belonged to them, and which would have far exceeded the annualrents they got. 2*do*, Absolvitor, because it is offered to be proved, that the pursuer being present the time of the father's