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

No 52. granting the annualrents, he did peruse the same, and being major, *sciens et prudens*, did subscribe the same as witness and was thereafter silent, and did acquiesce thereto, and so did homologate the dispositions granted by the father to the defenders. THE LORDS found the allegeance proponed for the defenders relevant, that the pursuer had subscribed as witness to the disposition after he had read and considered the same; and, albeit the defender should succumb in the probation thereof, they reserved to themselves to consider what the pursuer subscribed witness should import.

Newbyth, MS. p. 68.

*** This case is also reported by Dirleton:

A SON having intented a reduction of a disposition made by his father, for provision of the rest of the children, *in lecto ægritudinis*,

THE LORDS found the defence relevant, that the pursuer had consented, in so far as the son had subscribed as witness, and knew and heard the disposition, so that he was not ignorant of the tenor of it. And it was remembered by the Lords when they were voting, that they had found the allegeance relevant, that a son and apparent heir had subscribed as witness to his father's deed *in lecto*, without that addition, that he heard it read, in the case of Stewart of Ascog, No 51. p. 5674.; it being to be presumed, that the apparent heir being of age, would not be witness to such deeds, unless he enquired and knew what they were.

Dirleton, No 40. *p.* 16.

No 53. A woman during her second marriage purchased a tenement, and took the disposition to herself in liferent and to a daughter of the first marriage in fee. The husband acted as bailie in the infeftment. Found that he thereby consented to the disposition, and that his heir could not challenge it.

1668. *January* 29. EUPHAN BROWN *against* THOMAS HAPPILAND.

MARJORY BRUCE being first married to ——— Happiland, and thereafter to Robert Brown, she acquired right to a tenement of land to herself in liferent, and Euphan Happiland, her daughter of the first marriage, in fee; which infeftment is given by the said Thomas Brown her husband, being then Bailie for the time. Agnes Happiland dispones this tenement to Thomas Brown, heir of the marriage betwixt the said umquhile Thomas Brown and Marjory Bruce, and for the price thereof gets a bond relative thereto. Thomas Brown being charged upon this bond, raises reduction upon minority and lesion. To the which it was *answered*, There was no lesion, because the disposition of the land was an equivalent onerous cause. It was *answered*, That the disposition was no onerous cause, because the lands disponed belonged not to the disponer, but to the suspender himself, in so far as they were conquest by Marjory Bruce, while she was spouse to his father, so that the money (wherewith she acquired the same) belonging to the husband *jure mariti*, the land must also be his, un-