

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 allegiance 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 agritudinis*,

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 allegiance 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 life-rent 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 life-rent, 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 disposes 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 disposed belonged not to the disponent, 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-

less it were condescended and instructed that she had heritable sums, not falling within the *jus mariti* wherewith this right was acquired. It was *duplied*, That this was but a naked conjecture and presumption, which is sufficiently taken off by the husband's giving sasine as a Bailie. It was *answered*, That this was *actus officii*, which he could not refuse, but he knew that the infestment in favours of his wife, would accresce to himself.

THE LORDS repelled the reasons of suspension and reply, in respect of the answer and duply, and found that the fee of the land belonged to the wife and her daughter, and that there was no lesion in giving bond therefor.

*Fol. Dic. v. 1. p. 380. Stair, v. 1. p. 516.*

No 53.

1703. February 25.

Lady ROSEHAUGH.

THE Lady Rosehaugh being nominated both tutor and curatrix by Sir George Mackenzie, her husband, to her son, she pursues an exoneration; wherein it was *objected*, That, by her husband's testament, she was to act by the sight, advice, and approbation of five friends he named, and *ita est* they had not approved the accounts. *Answered*, They had done the equivalent, in so far as they had gone through the whole accounts of charge and discharge, and signed witnesses to her subscription; they scrupling a formal consent, lest it might infer a gestion of protutory upon them. *Replied*, The signing witness can never import a consent, seeing witnesses seldom know the contents of the paper, though it has been otherwise decided in the case of Ascog *contra* Arnholme, No 51. p. 5674, in a special case of an apparent heir's signing witness to his father's assignation on death-bed. *Duplied*, To fortify their subscription here, it was offered to be proved, the friends had revised and perused the accounts before they signed as witnesses. THE LORDS refused to sustain their subscription as witnesses to imply a consent, but allowed them yet to object against any article of the account; and referred to my Lord Tillicoultry to hear them; and in case he found all the articles sufficiently instructed, then to decern in the lady's exoneration.

*Fol. Dic. v. 1. p. 380. Fountainball, v. 2. p. 182.*

1704. January 13. JAMES DALLAS of St Martin's against WILLIAM PAUL.

MR. JAMES DALLAS of St Martin's being creditor to Alexander Paul, merchant in Elgin, and the said Alexander's father having disposed some acres and tenements in favour of William Paul, his second son, St. Martin's having adjudged the apparent heir's right of succession, pursues a reduction of that disposition *ex capite lecti*, and it being so taken out of the way, the right accresces to the eld-

No 54.

Parties interested in accounts, subscribed as witnesses to the subscription of the account. Found not to infer approbation.

No 55.

Found that the apparent heir signing as a witness, ought not to import a consent, whether he knew the