

did proceed upon this ground, that the apparent heir signing witness to his predecessor's deeds, in such circumstances, as death-bed appeared to be approaching, was presumed to understand the contents, and, in the last case, it was positively alleged, that the writ was read in presence of the apparent heir, so that the apparent heir, knowing the contents and signing, was by these decisions reckoned as a consenter; in this case also the defunct appeared to be in extremity; and therefore the LORDS considered the general case, upon the supposition that the apparent heir did truly know the contents, and did determine upon that supposition, which was also expressed in the interlocutor; and did resolve to determine in the same manner in all cases of the like nature, conceiving that it was more agreeable to the analogy of law, that witnesses should be understood to be adhibited to attest the verity of the deed; and, if any speciality were intended, in that case it was thought more reasonable that the apparent heir should be expressly insert as a consenter; and that an apparent heir should not be put under any necessity to disquiet his predecessor, if he were in a dying condition, and in extremity, or disoblige him, if he were in such a condition, as it were uncertain whether he might die or recover.' See WRIT.

*Dalrymple, No 46. & 47. p. 59.*

No 55.

1728. December 20. RIDDELL against SCOT.

A HUSBAND being writer, and subscribing witness to a disposition made by his wife of her lands, found to be a sufficient consent so as to validate the disposition. See APPENDIX.

*Fol. Dic. v. I. p. 380.*

No 56.

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S E C T. VI.

Consent not presumed, when the Deed can be ascribed to another Cause.

1626. March 30. GRIEVE against CANT.

IN an action betwixt Grieve and Cant, for payment of the sum of 1000 merks, wherein the defender was obliged, by virtue of a contract of marriage, as promised for tocher, it being *alleged*, That the contract was only subscribed by one notary for him, who was obliged in that sum; and so being a matter of importance, could not be sustained to produce action thereupon, in respect of the act of Parliament. This alleageance was repelled, in respect that marriage followed betwixt the parties, according to the contract; which the LORDS found to supply that defect.

No 57.

*Act. Oliphant.*

Alt. —.

Clerk, *Hay.*

*Fol. Dic. v. I. p. 381. Durie, p. 201.*