

less it were condescended and instructed that she had heritable sums, not falling within the *jus mariti* wherewith this right was acquired. It was *duplicated*, 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. *Duplicated*, 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