1725. *July* 7.

CHRISTIAN JOHNSTON, Relict of WILLIAM BERRY, junior, Merchant in Glasgow, *against* WILLIAM BERRY, elder, Merchant there.

No 39.
Found, that a father's subscription to his son's contract of marriage, implied his knowledge of the contents, and of consequence his consent to a provision in favour of the wife, of a certain subject belonging to himself, and which the son could not grant without his concurrence.

A FATHER having disponed to his son the fee of a tenement of land, reserving his own liferent, the son afterwards, in his contract of marriage, did provide his wife to an yearly annuity out of the subject disponed; and to this contract the father was a subscribing witness: Upon the son's death, his widow insisted in an action of mails and duties, for payment of the provision in the contract, in which she was opposed by the father, who *alleged*, that, during his lifetime, the provision could not take place, because of the reserved liferent in his disposition to his son.

It was *answered* for the pursuer, That the father having subscribed his son's contract of marriage as a witness, he thereby past from his own right of liferent, as having tacitly consented.

Replied for the father, That his signing witness to the contract was no more than witnessing the subscription of parties, but did not import his knowledge of the contents of the writ, far less his consent to them.

Duplied for the pursuer, That though this might obtain in the case of a stranger's subscribing witness, yet, in the present case, the defender could not be supposed ignorant of the contents of so solemn a contract entered into by so near a relation.

THE LORDS found the father's knowledge of the clauses of the contract presumed, therefore found his subscribing as witness to the said contract did import his consent.

N. B. There was a decision, Stewart *contra* Stewart, 25th June 1663, No 51. p. 5674. cited for the pursuer; and one for the defender, 1st February 1676, Veitch *contra* Ker, No 28. p. 5646.

Reporter, *Lord Grange.* Act. *Arch. Murray.* Alt. *Jo. Crawford.* Clerk, *Justice.*

Fol. Dic. v. 1. *p.* 379. *Edgar, p.* 185.

1735. *January* 21. TELFER *against* HAMILTON of Grange.

No 40.

A SUBMISSION entered into by a wife, with regard to her heritage, null upon the act 1681, there being but one witness to her subscription, was found homologated by her husband's appearing and pleading in her behalf before the arbiters; for the husband being administrator for his wife, his consent implies her consent. See APPENDIX.

Fol. Dic. v. 1. *p.* 383.