

1668. February 27. MR WILLIAM CHALMERS *against* WOOD of Balbegno.

No 78.

Homologation of a tack of teinds not inferred from the minister receiving the duty.

MR WILLIAM CHALMERS, parson of Fettercairn, pursues reduction of a tack of the teinds of the parish, granted by his predecessors, on this ground, that it is null by act of Parliament, as wanting consent of the patron. The defender *alleged* absolvitor, because the pursuer had homologated his tack, in so far as he had received payment of the duty, conform to the tack, which was a clear acknowledgement thereof. It was *answered*, That this could only be an homologation for the years received, and could not homologate the tack itself, because the tack was a standing right, valid till it were reduced, and the pursuer could get no more than the tack duty till he should reduce the same.

THE LORDS found this no homologation to validate the tack.

*Fol. Dic. v. I. p. 382. Stair, v. I. p. 538.*

1669. July 14. JACK *against* CATHARINE JACK.

No 79.

There being a division amongst heirs portioners, of whom one was minor, it was found, that her possession of her part, after majority, was not an homologation, and that she might reduce *intra annos utiles*.

PATRICK JACK in Aberdeen having left three daughters heirs-portioners; during the minority of the youngest, there was a division made of the estate, whereby a salmon fishing fell to one John English, who had married the eldest sister, and some tenements to the rest; which fishing holding ward of the King, there was a gift of recognition obtained by the said Margaret, whereupon she pursued a declarator. It was *alleged* for the youngest sister, That the recognition could not be pursued upon the disposition of her part, because it was only made by her tutor, whereof she had intented reduction upon minority and lesion. It was *replied* for the said Katharine, and her husband, That they had homologated the said disposition, in so far as, since their minority, they had possessed their part of the division allowed to them, by uplifting of duties, and setting of tacks of the lands given them for their portion.—THE LORDS did sustain the recognition only in so far as concerned the right of the two elder sisters; but as to the said Katharine, who was youngest, they found that she might reduce upon minority and lesion, so that no recognition could follow upon her tutor's deed; as to the homologation, they found, that she possessing only a part of the whole, wherefore she was heir portioner, it could not hinder to reduce, she having intented *debito tempore*; and for trial of the lesion they ordained count and reckoning.

*Fol. Dic. v. I. p. 382. Gosford, MS. No 175. p. 70.*