

charging Balfour of the annualrent only of 4000 merks, as a part of the 7000 merks, by virtue of the assignation made to her by her first husband, was a homologation of the 3000 merks left in the same assignation by her husband to David Corsar his father, and therefore restricted her; though it was alleged that homologations must be explicit and express, especially against women, *in quibus ignorantia juris excusatur*; and that her husband's heir is quarrelling that assignation in a reduction *ex capite lecti*; and if he prevail, then she may recur to her liferent of the whole 7000 merks, seeing it will be then *causa data causa non secuta*. See HUSBAND and WIFE.

*Fol. Dic. v. I. p. 383. Fountainhall, v. I. p. 471. & 485.*

No 88.

---

S E C T. IX.

Effect of Homologation.

1671. January 25. CRAIG against MONCRIEF.

A MINOR having curators, and in his minority having made a bond as principal or cautioner for sums of money, (without their consent,) after his perfect age making payment of the debt or annualrent, or any part thereof, is presumed to have ratified it, and so will not thereafter be heard to impugn it.

*Fol. Dic. v. I. p. 383. Haddington, MS. No 2119.*

No 89.

1671. June 28. HOME against LORD JUSTICE CLERK.

A CONTRACT subscribed by a minor, without consent of curators, found homologated by a decret of registration of the contract, obtained by the minor after his majority.

*Fol Dic. v. I. p. 383. Stair.*

No 90.

\* \* See this case, No 67. p. 5688.

1672. December 10. JAMES MITCHELL against MARGARET CUNNINGHAM.

MARGARET being charged to make payment of 500 merks, contained in a bond subscribed by her and her deceased husband, to James Mitchell, did suspend upon this reason, That she had subscribed the bond *stante matrimonia*

No 91.  
Payment of  
annualrent  
after viduity,

**No 91.**  
found to homologate a bond granted by a wife *stante matrimonio.*

with her husband, and so was null.—It was *answered*, That she had ratified the bond judicially, and given her great oath never to come in the contrary, as likewise had made payment of the annualrent since her widowity.—THE LORDS did find the payment of the annualrent relevant to make her liable, but did not give their interlocutor upon her judicial ratification and solemn oath never to quarrel the same. Yet it seems that the bond being for borrowed money, as it is null, so the addition will not make it valid; for women being secured *per senatusconsultum macedonianum*, are in the case of minors and pupils, who neither by their bond nor oath adjected thereto, can contract debt.

*Fol. Dic. v. 1. p. 383. Gosford, MS. No 535. p. 284.*

1711. December 1.

MR FRANCIS WAUCHOPE of Cakemuir, Advocate, *against* WILLIAM HAMILTON of Fallahall, and his Tutors.

**No 92.**  
A party using and founding on a decree, determining controverted marches, *per modum tituli*, in actions at his instance, and against him, was found no homologation of a verbal error in the decree.

IN the process of reduction and declarator at the instance of Cakemuir, against Fallahall, for ratifying a decret arbitral pronounced in anno 1608, determining the marches betwixt the lands of Cakemuir and Falla, upon this ground, That there was a literal error in the decret, *northwest* being written in place of *northeast*; the LORDS found, That the pursuer's using and founding on that decret, *per modum tituli*, in actions at his instance, and against him, was no homologation of the marches craved to be ratified; because homologation doth, *regulariter*, infer a consent to the deed only as it is in *rei veritate*; and the using a fitted account doth not infer homologation of errors *in calculo*; seeing *nihil tam consensui contrarium est quam error. Plus valet quod agitur, quam quod simulate concipitur.* And the truth which is instructed by the tenor of the writ, is not impaired by the error, but prevails over it; *actorum verba emendare tenore sententiæ perseverante, non est prohibitum, L. 46. D. de re judic. Veritas Rerum Erroribus gestarum non vitiatur, L. 6. § 1. D. de Officio Præsid.* Besides, the pursuer founded upon the decret by way of action and defence to support his claim, according as he now pretended it should have been worded; and *actus agentium non operantur ultra eorum intentionem.*

*Fol. Dic. v. 1. p. 383. Forbes, p. 551.*

**No 93.**  
Disputed whether a deed granted by a child of eleven years of age is capable of homologation.

1726. June.

KATHARINE HARVIE *against* Mr GEORGE GORDON, Professor in Aberdeen.

KATHARINE HARVIE, the youngest of five heirs-portioners, having jointly with her sisters disposed the common heritage to Mr George Gordon, took bond for the price. At that time she was only eleven years of age, and conse-