

1675. December 14. MUDIE against M<sup>c</sup>INTOSH.

JAMES MUDIE having granted bond of 1200 merks in favours of Alexander M<sup>c</sup>Intosh and his children, he raiseth reduction upon minority. The defender *alleged* homologation of the bond after his majority, by an account with his tenant, whereby he allows to the tenant some annualrents paid to the defender, which did homologate the bond granted in his minority.

THE LORDS repelled the defence, and found it no homologation, because the pursuer might have allowed to his tenant, for eschewing of double payment, that which he did not approve.

*Fol. Dic. v. 1. p. 381. Stair, v. 2. p. 380.*

\* \* \* Gosford reports the same case :

JAMES MUDIE of Arbeckie being charged upon his bond granted to Alexander M<sup>c</sup>Intosh and his children for the sum of 1200 merks, did suspend, and intent reduction, upon this reason, that he was minor, and the said Alexander one of his tutors, when he granted that bond, for no sums of money applied to his use, and so ought to be reduced upon minority and lesion. It was *answered*, That the suspender could not quarrel the bond, because it was offered to be proved, that he had given order to his own tenant for payment of two years annualrent of the said sum, and, after majority, had granted a full discharge to his tenant of all that he could crave of him, there being a special article of the said account bearing payment of these annualrents, which was an homologation of the bond, and by our law did incapacitate the minor ever to reduce the bond thereafter, which hath been the constant practice. It was *replied*, That the allowance of the payment of the annualrent being only to Arbeckie's own tenant, whom he did know to have truly paid the same, and whom in conscience he could not pursue for repayment, the charger could not crave benefit thereby to preclude the suspender from reducing the bond upon minority and lesion, who had done no deeds by payment of annualrents himself, or granting any corroboration of the said bond after majority. It was *duplicated*, That in law, all deeds of homologation, whether they be direct or indirect, or by consequence, are sufficient to secure the debtor against minority, that he can never quarrel or reduce the said bond ; so that it is equivalent whether the suspender did pay the same himself, or ordered or allowed his chamberlain to make payment after his majority.—THE LORDS did sustain the reduction, notwithstanding of the alleged homologation, unless the charger could offer to prove, by the suspender's oath, or by writ, that, after majority, he gave order to his tenant for payment of the said annualrents ; for they found, that there was a great difference betwixt allowing to the tenant his payment, and his own making payment after ma-

No 72.  
Homologation of a bond granted by a minor, not inferred by allowing to a tenant, after majority, annualrent thereof, paid by the tenant to the creditor.

No 72. rity, seeing he might, out of favour, secure his tenant, and grant him a discharge, which did not preclude him to reduce a bond granted by him in his minority to his hurt and lesion, unless he had done some direct deed in favours of the creditor.

*Gosford, MS. No 818. p. 515.*

No 73.

A bond of provision granted on death-bed, was found homologated by a factor, in the heir's minority, paying the annualrents, which were sustained by the heir as articles of discharge after majority.

1683. *January.* CRAWFORD *against* CRAWFORD.

ALEXANDER CRAWFORD of Keith having pursued a reduction of a bond of provision granted by the deceast Alexander Crawford, his father, to Marion Crawford his daughter, for 3000 merks, which being granted upon death-bed, the LORDS reduced the bond; but in respect one of the witnesses, who was the pursuer's factor, has deponed, that, during the time he was factor, and intromitted with the pursuer's estate, he made payment to the defender of the annualrents of the said bond, and that the pursuer, since his majority, had granted the factor a general discharge of all his intromissions, which the LORDS found did import an homologation of the bond; therefore, they granted him a diligence against the factor for exhibiting the discharge.

*Fol. Dic. v. 1. p. 381. Sir P. Home, MS. v. 1. No 375.*

1685. *February 13.* FALCONER *against* ———.

No 74.

Found in comity with Farquhar against Gordon, No 65. p. 5685.

ONE having raised revocation and reduction of a bond wherein he became cautioner in his minority;

It was *alleged* for the defender; That the pursuer had homologated, by pursuing and recovering a decret against the principal upon a separate bond of relief, narrating the bond in question.

*Answered* for the pursuer; The pursuit and decret upon a separate bond of relief, *ob majorem securitatem*, cannot infer homologation of the debt. *2do*, The decret upon the bond of relief was procured before the revocation, which therefore cannot be said to be passed from.

THE LORDS repelled the defender's allegiance, and qualification of homologation,

*Fol. Dic. v. 1. p. 381. Huncarse, (MINOR.) No 714. p. 202.*

1688. *July 13.* DEACON SOMERVILLE *against* EARL OF ANNANDALE.

No 75.

THE Earl of Annandale having objected minority against a bond granted by him for 15,000 merks, to Deacon Thomas Somerville, on which he was pursued by the creditor,