

1685. February 20.

JOLLY *against* LAIRD of LAMINGTON.

No 31.

The taking a total discharge does not infer homologation. A partial discharge infers homologation as to the remainder.

WILLIAM BAILLIE of Lamington having revoked and raised reduction *debito tempore*, of a bond granted by him in minority, the process chanced to be lost, and being pursued *post annos* for payment, he procured a discharge from the creditor's assignee, which discharge being questioned by the cedent's creditor, as granted by a person whose assignation was in trust for the cedent's behoof, Lamington recurred to his revocation and reduction upon minority and lesion, and offered to prove the tenor thereof.

Against which it was *alleged*; That Lamington, who had homologated the bond not only after his minority, but even after the said pretended reduction, could not have the benefit thereof now, suppose the tenor were made up.

Answered for Lamington; That the taking a total discharge, either upon discharge or voluntary payment, *ad majorem securitatem*, cannot import homologation; though partial payments and discharges would infer homologation as to the remainder.

THE LORDS sustained the answer for Lamington, and allowed the tenor to be proven *incidenter*.

Harcarse, (HOMOLOGATION.) No 505. p. 141.

1686. January 6.

HEPBURN *against* KIRKWOOD.

No 32.

Subscribing witness held to infer consent. See No 26. p. 5646.

ESTHER HEPBURN, relict of Patrick Cunningham apothecary, pursues Margaret Kirkwood, spouse to Lindsay of Evelick, upon her ticket of 200 merks for the skaith the said Patrick suffered in 1681, when her son James Douglas put fire in Harry Graham's chamber. *Alleged*, The ticket is null, being granted by a wife *vestita viro*. *Answered*, The husband must be liable, because he is subscribing as witness, and it is a short ticket of seven lines only, and so he could not be ignorant of the substance of it. This being reported, "the LORDS found his subscription as witness in this case as equivalent to a consent."

Fol. Dic. v. I. p. 379. Fountainball, v. I. p. 389.

No 33.

Ignorantia juris, where a party subscribed a deed, found no reason for homologation.

1687. February.

CHARLES CHARTERS *against* ANDREW BARRY.

AN appriser claiming an equal share of the lands apprised with the first effectual appriser, who was more than year and day before him, upon this ground, that it was marked in the decret for mails' and duties, that the preferable appriser consented to bring him in *pari passu* with himself,