

No 23.
found not in-
ferred, altho'
the son, after
majority, had
taken dis-
charges for
annualrent
not paid by
himself.

rent, bearing deduction of the bond by his father as principal, and him as cautioner, and discharging them both; which discharges Sir George himself did receive from John Fairholm, and paid the money. Sir George *answered*, That the discharges do not bear that he paid the money, but bear that the same was paid by the principal debtor; and his receiving of a discharge, not having paid, cannot import his homologation or acknowledgment of the bond; for, to prevent question and trouble, one may take discharge of what he denies to be due, and the bond being then standing unreduced, he may well accept a discharge, not knowing the event of the relevancy, or probation of his minority.

THE LORDS repelled the defence, and found that the discharges imported no homologation, unless it were instructed that Sir George, out of his own money paid the annualrent.

Stair, v. I. p. 524.

1670. January 18.

Dr BALFOUR and His SPOUSE *against* Mr WILLIAM WOOD.

No 24.
A father-in-
law, who was
tutor to his
daughter-in-
law, gave dis-
charges of an-
nualrent as
tutor, in pre-
judice of his
own rights
jure mariti.
This having
been done by
mistake, was
found no ho-
mologation of
the pupil's
right to the
annualrent.

UMQUHLE Mr James Wood having been tutor to his wife's daughter, she being now married to Dr Balfour, they pursue Mr William Wood, as representing his father, for a tutor accompt; in which accompt, the auditors reported these points: *1mo*, The pursuer insisted for the whole sums bearing annualrent, whereof no part belongs to the wife as relict, she being excluded by the act of Parliament. The defender *answered*, That he opposed the testament and confirmation unreduced, whereby there is a tripartite division of the whole sums, and the relict has one third which belonged to the defunct tutor, her husband, *jure mariti*.

THE LORDS repelled this allegiance, and found that the error of the confirmation was corrigible without reduction.

2do, The defender *alleged* that he was not comptable for the annualrent of one of the sums acclaimed; because, by the bond, it was provided in liferent to the relict, whereto his father had right, *jure mariti*. It was *answered*, That the tutor had given several discharges of that annualrent as tutor, and not as husband, and so had homologated and acknowledged the pupil's right to the annualrent. It was *answered*, That the discharge was so granted by error and mistake, *et falsa designatio non obest ubi constat de re*, and offered to prove by the bond that the wife was liferenter.

Which the LORDS found relevant.

Stair, v. I. p. 661.