

No 87.

betwixt his father and his uncle in January 1686, where Balgownie's taking a discharge from one of the sisters of her part of a bond of provision, was found to homologate the bond *in toto*, though it was alleged then, that the several portions in the bond were to be considered as so many separate bonds of provision. *Answered*, An heir's paying one creditor, and refusing another, was never sustained as a passive title; and his free gratuity and bounty to one of his brethren, can never bind the rest upon him. THE LORDS at first found it relevant to make Balgownie liable, that he gave directions for framing this bond, and brought it to his father to be signed; but on a bill, the LORDS reconsidered that constructive consents might be dangerous, and that he knew not the sum to be filled up; and, he complaining it was immoderate and exorbitant, therefore they remitted it to the Ordinary to be farther heard how far it could be supported by the claim of the legitim and the mother's third; and if it was excessive, considering Balgownie's estate and burdens, or if it was only a competent and rational provision effeiring to the heritable and moveable fortune he left behind him.

Fountainball, v. 2. p. 254.

No 88.

A husband granted to his wife, not otherwise provided, a liferent provision, which was therefore found not revocable; yet having *de facto* revoked part of it, and bequeathed that part to his father, the relict discharged the debtor of an year's annualrent of the remainder. The Lords found this an homologation of her husband's revocation.

1687. July 27.

CORSAR against CARMICHAEL.

ALEXANDER CORSAR in Dysart gave in a bill against his son's relict, now spouse to George Gowan writer, pretending she liferented all his means, and craving the Lords would modify to him an aliment out of it.—*Queritur*, If the son, or the son's relict be bound to aliment her father-in-law, as parents are bound to aliment their son's?

December 1.—The case between Anna Carmichael and her husband against David Corsar, mentioned 27th July 1687, being reported by Redford; it was *alleged, 1mo*, Her liferent of 7000 merks was *donatio stante matrimonio*.—*Answered*, There was no contract of marriage, and this came in place of it; and though the husband was *dominus* of the sum, yet it was *limitatum dominium*, he could not gratuitously to her prejudice assign the annualrent of 3000 merks of it to his father. *2do, Alleged*, She had restricted herself to the annualrent of 4000 merks by a discharge.—*Answered*, Homologations must be very clear, and the discharge is opposed.—THE LORDS found, That the first liferent provision conceived in favour of Anna Carmichael, taken by her former husband, is not a revocable donation, there being no former provision or contract of marriage betwixt them; but remitted to the Ordinary to hear the parties, whether the relict got right to other debts from her deceased husband after the said liferent provision; and also to be heard upon the discharge produced, or any other ground of homologation by the relict, of her husband's assignation to David Corsar, his father. And this last point being accordingly debated, and again reported by Redford, on the 10th of February 1688, the LORDS found her dis-

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,