

It was *alleged* for the pursuer; That the defender had, after he was major, wrote a letter to him, excusing the not-payment of the money due by him to the pursuer; which was a clear homologation of the bond.

Answered; The letter doth not mention the bond, but debt, and there is indeed debt due; for the bond is only questioned upon the exorbitancy of accounts for which it was granted; and homologation to take (away) the privilege of minority ought to be express.

Replied; The pursuer was not furnisher of these accounts, but paid them to Mr Lants after they were examined by my Lord and his chamberlain.

THE LORDS sustained the homologation, the pursuer deponing the whole accounts were paid without any abatement.

Fol. Dic. v. 3. p. 381. Harcarse, (HOMOLOGATION.) No 509. p. 142.

* * * Fountainhall reports the same case :

Thomas Somerville, taylor in Edinburgh, his pursuit against the Earl of Annandale, on a bond of 1500 merks, is reported by Forret.

ANNANDALE had a reduction of it on minority and lesion, as having curators, and they were not subscribers; which he only repeated to the effect to quarrel the exorbitant accounts, and prices of furnishing, of which the bonds were made up. *Answered, imo*, It was all for aliment, clothes, &c. and so *in rem versum. 2do*, It was homologated in majority, by letters acknowledging the debt and partial payments.—THE LORDS sustained the bond, but ordained Thomas to give his oath on the truth and reasonableness of the articles of his account.

Fountainhall, v. 1. p. 511.

1710. July 18.

ALEXANDER GIBSON of Durie *against* JOHN TROTTER of Mortonhall, and the Executors of GILBERT CLERK of Pitteuchar.

HELEN TROTTER, with consent of John Foulis apothecary, having granted to the deceast John Gibson of Durie, in *anno* 1669, a disposition of an old apprising of the Earl of Home's estate, wherein the granters excepted from the warrandice, a disposition made by him to Mr George Trotter of Chesterhall, of the lands appraised, in so far as concerned, or might be extended to 3000 merks; and also their disposition of these lands to the executors of Mr Gilbert Clerk of Pitteuchar, in so far as might be extended to 4000 merks;—in a reduction, improbation, and declarator, at the instance of Alexander Gibson now of Dury, as having right to the disposition in favours of John Gibson his predecessor, against John Trotter of Mortonhall, as representing Mr George Trotter, and the executors of Mr Gilbert Clerk, the LORDS found the defenders obliged to take a day to produce the dispositions excepted in the warrandice of that granted to the pursuer's author;—albeit it was *alleged* for the defenders, That their rights

No 75.

No 76.

Reduction of rights excepted out of warrandice sustained, altho' acknowledged *in græmio* of the pursuer's right.

No 76. being acknowledged *in græmio* of the pursuer's, reserved and accepted out of it, he cannot quarrel or reduce the same;—in respect it was *answered* for the pursuer, That the exception in the warrandice of his right, doth not make a right to the defenders, but only secure from recourse against the granter; and so doth not hinder the pursuer to quarrel and reduce the excepted rights upon nullities, or to declare the same to be satisfied and extinct, by the receiver's intromissions with the rents of the subject disposed.

Fol. Dic. v. 1. p. 381. Forbes, p. 423.

S E C T. VII.

Taking benefit of a reducible deed, while it stands, no homologation.

1664. November 22. MARGARET M'GILL *against* RUTHVEN of Gairn.

No 77.

In a reduction of a contract of marriage, it was not sustained as homologation, that the pursuer uplifted the rents of her jointure lands, because she did not complain of what she got, but what she gave.

MARGARET M'GILL pursues a reduction of her first contract of marriage with umquhile Patrick Ruthven, younger of Gairn, upon two reasons, *1st*, because it was *post nuptias*, and so *donatio inter virum et uxorem stante matrimonio revocabilis*; *2dly*, Because she was minor, and enormly lesed, in so far as she disposed to her husband, and the heirs of the marriage, which failing, to his heirs, L. 8000 of money and above, and the half of some tenements in Edinburgh worth L. 1100 yearly; in lieu whereof, her liferent was only of eight or ten chalders of victual, and of her own tenements; but she did not retain to herself the liferent of the money, or any part of the stock; whereby she is lesed, in that, if the heirs of the marriage fail, the money and the lands go to the heirs of the husband, and return not to hers; and that her provision being worth L. 20,000, she ought at least to have had the double of the annualrent thereof in jointure. The defender *answered* to the *1st* reason, That it was no ways relevant, seeing this was expressly a contract of marriage, although after the marriage, there being no contract before, it is alike as if it had been before the marriage; and, to the *2d* reason, it is not relevant, unless it were enorm lesion; for there being no portion or rule in tochers and jointures, but that some get a jointure equivalent to the annualrent of their tocher, some half as much more, some double, and it being ordinary that tochers are provided to the heirs of the marriage, which failing, to the man's heirs, here was no enorm lesion, or any thing extraordinary, although there were an equality; the pursuer being a bur-gess' daughter, and her husband a gentleman of an ancient family, quality