not import a consent to this right in all time coming; and though the discharge do mention this right as a tack, an erroneous designation cannot operate against the tenor of the writ; and as a superior receiving a feu-duty, may yet quarrel and impugn the vassal's right as to years subsequent, and will not be excluded by homologation upon receipt of the feu-duty, so may the pursuer quarrel this right, though she hath received two years duty. No 69.

THE LORDS found, that the two years discharges did import no homologation as to years subsequent; but as to the question, whether a tack having no other ish but till a sum were paid, should be valid against a singular successor, there were decisions produced out of Durie for either party, which seemed contrary, yet the Lords did not determine the point, but found the defender's right was no tack.

Stair, v. 2. p. 14.

1673. *February* 11.

ADAM CALDWALL *against* MARGARET CALDWALL and CHALMERS her Tutor.

No 70.
Receiving of bonds by a minor after majority and getting payment, is no homologation of a decree of exoneration at the tutor's instance, if the decree be reducible, but the tutor will be obliged to account *de novo*.

In a reduction of a decreet of exoneration obtained at the instance of Margaret Caldwall and William Chalmers her tutor, as representing her father, who was tutor to the said Adam, and died during the time of the tutory, upon this libelled reason, that the said Adam was not compearing either by his tutor or his procurator employed by them, but the said William Chalmers being tutor for the said Margaret, who, as representing her father, was liable to count and reckoning, did only give in the charge and the discharge whereupon the decreet of exoneration was founded, in which charge there being many material articles omitted, the pursuer being then minor, ought now to be reponed against the same, and the defenders ordained to count and reckon *de novo*. It was *alleged* for the defender, That reduction could not be sustained, because the pursuers had homologated the decreet since his majority, in so far as the defenders being decerned to deliver three bonds of borrowed money taken by the deceased tutor in name of the pursuer, which were found to be the only means belonging to him, he accordingly did receive the same from William Chalmers, and got payment of the sums therein contained. 2*do*, The reduction being chiefly against Margaret Caldwall, who was then an infant, and is yet under tutory, it were against law and reason to ordain her to count *de novo* for her father's intromissions, which is impossible for her to know; so that the reduction can only be sustained against Chalmers, (who had received a factory to uplift these sums of money), upon deeds of malversation alleged committed by him. It was *replied* to the *first*, That the receipt of the bonds was only from Chalmers, who had received a factory to uplift the sums of money, he having retained the same after the decreet, and the saids bonds being uncontrovertedly the pursuer's, his receiving payment after his majority, of the sums which were only a

No 70. part of the estate, could not prejudge him to crave an account of the rest, which was never mentioned in that decreet in the charge or discharge. It was *replied* to the *second*, That the said Margaret, the defender, representing her father, who was tutor, and liable in law to make a full account, the malversation of her tutor cannot hinder her from counting *de novo*, as her father would have been obliged if he had been alive.—THE LORDS did sustain the reduction, notwithstanding of these answers to the reasons, and ordained both the defenders to count *de novo*; but reserved to the said Margaret action of relief against Chalmers her tutor, in case it should be found that he had malversed, or had not made such a full account of her father's intromission as in law he was obliged to, or for which he ought to have done diligence.

Fol. Dic. v. 1. *p.* 381. *Gosford, MS. No* 571. *p.* 312.

1673. *June* 20. GEORGE DEANS *against* MARGARET CRICHTON and Spouse.

No 71.
A minor having subscribed a bond, and suspended after majority, upon a discharge granted to one who was conjunct cautioner with him, the Lords found this did not infer homologation against him to make him pay the remainder.

IN a reduction and a suspension raised at the instance of the said George, of a bond granted by him to William Lowrie, and the said Margaret, then his spouse, upon a reason of minority and lesion, he having subscribed the same when he was minor *et in familia paterna*, it was *answered*, That he had homologated the same after majority, in so far as, being charged upon the bond, he had suspended, upon payment of a part of the bond, for which he produced a discharge. It was *replied*, That the payment made by the pursuer was but by one of the cautioners, who was only bound with him, and his making use thereof could be no homologation to make him liable for the rest, seeing in law a debtor may insist upon diverse reasons, *et petere contraria*; and, notwithstanding that payment made by a conjunct cautioner might be alleged upon to free him *pro tanto*, yet that did not hinder him to reduce the obligement upon minority and lesion.—THE LORDS did sustain the reason, notwithstanding of the answer, and found, that what deeds of homologation are alleged to constitute a debtor, they ought directly to relate to the deeds done in minority, and necessarily to imply a confirmation thereof, which was not in this case. Upon the 2d July thereafter, it being *alleged*, That it was offered to be proved, that the time of the subscribing the bond he was 20 years of age, married, *et extra familiam*, and in the place of a public clerk, and he never revoked *intra annos utiles*, nor ten years thereafter, the LORDS did find it relevant to assoilzie from the reduction.

Fol. Dic. v. 1. *p.* 381. *Gosford, MS. No* 596. *p.* 341.