

H O M O L O G A T I O N.

S E C T. I.

Deeds directly inferring consent.

1560. *July 31.* THE LAIRD OF RUTHVEN *against* the LAIRD OF BANFF.

DECRETE arbitral beand gevin betwix twa parties, gif ather of thame takis ane instrument in the handis of an notar, upon the geving and pronuncia-tioun of the samin, he thairby acceptis, affirmis, and homologatis the samin.

Fol. Dic. v. I. p. 377. Balfour, (ARBITRIE.) No 32. p. 416.

No 1.

1566. *February 23.* MONTGOMERY *against* NINIAN SEMPLE.

ANE decree arbitral beand gevin be jugeis arberis, chosin betwix twa parties, gif, efter the geving thairof, ony of thame has ressavit ony thing contenit thereintill, or done ony deid be virtue thairof, he may not thairefter reclame thairfra ; because, he homologatis and ratifyis the hail decree, be fulfilling of ony part thairof, albeit the samin be never so littill.

Fol. Dic. v. I. p. 377. Balfour, (ARBITRIE.) No 30. p. 416.

No 2.

1663. *January.* RIRES *against* RIRES.

BY contract betwixt Mary Rires and Mr William Rires, the said Mary, for the sum of 1000 merks, dispones to the said Mr William a right of wadset, which she had of the lands of Strathodie from the house of Urie, with this condition, she being then minor, if at her majority she should revoke the contract, in that case Mr William should put her in her own place, she paying to him 1000 merks. Upon this contract, and her revocation at her majority, she and Alexander Hay her husband charge Mr William, whd suspends upon diverse reasons, namely, That albeit the charger did revoke, yet after her majority and re-

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No 3.
Found a sufficient homologation of a sale, made in minority, that the seller, after majority, took payment of a part of the price.

No 3.

vocation, she and her husband have homologated the bargain, in so far as she and her husband having fitted accounts with him, they have acknowledged themselves to have received a part of the said 1000 merks.—It was *answered*, That Mary does not subscribe the accounts, and her husband's deed cannot prejudice her other heritage, to which he has no right but *jus mariti*. *2do*, Nor can it reach him, because the money was not received *animo homologandi*; but there being a submission standing betwixt them, he took a bond of borrowed money for the sum.

THE LORDS having considered the account, which expressly bears a receipt of a part of 1000 merks, and only subscribed by her husband, they found it an homologation of the bargain, so far as might take away the husband's right *quocunque nomine*, but prejudice of the wife's heritable right, if she were not denuded otherwise. The like the Lords found this same session, Straiton against Frazer and Forbes, in the case of an heritable sum belonging to the wife before in legacy by her predecessor, and homologated by her husband. See HUSBAND and WIFE.

Fol. Dic. v. 1. p. 377. Gilmour, No 72. p. 53.

1666. June 28.

THE LAIRD OF PHILORTH *against* The HERITORS of the Parish of Rathan, or
LORD FRASER.

No 4.

An action having been raised for having it declared that part of a church-yard was the property of the pursuer, it was found, that the pursuer had homologated the right of the heritors, by burying the dead of his own family in the ground disputed.

IN a declarator of property pursued by the Laird of Philorth against the Heritors of the parish of Rathan, to hear and see it declared, that the kirk-yard dyke and stile of Rathan erected therein, may be cast down upon the ground, because the foresaid kirk-yard was enlarged 18 feet outward upon the ground of the lands of Rathan, whereof he had right, and was in possession by all deeds of party, and which dyke was built without his knowledge and consent in *anno* 1636; and thereanent, and of the stile made therein, he entered action of declarator and demolition in the year 1637, which is of new again wakened.—To which it was *answered*, That the place was now *locus religiosus*, and became *sepulchrum*. *2do*, That the same hath not been quarrelled by the space of 30 years; and that this being a kirk-yard, must have the privilege of *decennalis et triennalis possessio*, whereby the right is prescribed *in favorem ecclesie*. *3tio*, That Philorth had homologated the destination of the ground, in so far as he had built a part of the dyke himself, and others at his direction; and that he caused inter his tenants there, and had been present thereat; and last of all, craved a cognition.—THE LORDS sustained the declarator, and refused, in the first place, to grant a cognition, the same being once competent, where both parties pretend to the property, which was not in this case; and found, that the right of the kirk-yard could not prescribe by 10 or 13 year's possession; and found, That Philorth had homologated the designation, in so