

No 70.

part of the estate, could not prejudice him to crave an account of the rest, which was never mentioned in that decret 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 obligation 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.*