

No 33.

the extract of the decret under the clerk's hands, bearing the consent, is as sufficient as if he had subscribed the consent, and albeit it were not sufficient, yet Barry having subscribed the factory, which relates to the decret, it is a sufficient homologation and equivalent as if he had subscribed the consent. THE LORDS found that John Barry, by the granting the factory, did homologate the decret of preference, and therefore assoilzied from the reduction.

*Sir P. Home, MS. v. 2. No 87c.*

1694. January 26.

OGILVIE against SCOT.

No 34.

No homologation where there is ignorance of circumstances, which, if known, might have prevented acquiescence.

OGILVIE, relict of Scot of Brotherton, *contra* Scot of Comiston. She craved, that though the decret-arbitral did not decern Comiston to give her a real right for security of her liferent, that the Lords would supply; because if he (who was turned very infirm) died, she was loose, having renounced her jointure to her son, and he was not bound; and insisted on these two heads of fraud; *imo*, That she knew not then of her additional jointure, but that it was concealed from her; *2do*, That Comiston was denuded of the fee of his estate in favours of his nephew, Brotherton, before this decret-arbitral, and so was a mere liferenter, and this was also concealed from her; which, if she had known, she would not have submitted. THE LORDS thought it a fair offer, that Comiston was willing to reponer her against the decret-arbitral. But it was represented, *quod res non erat integra*, her bond of provision being either cancelled or discharged to her son, who was not in the process to give it back; therefore they fixed on the above mentioned points of fact, and ordained the parties, before answer, to depone thereanent.

*Fountainball, v. 1. p. 638.*

1714. July 13.

DAVIDSON against DAVIDSON and WEIR.

No 35.

An eldest son subscribed witness to his sister's contract of marriage, in which she assigned to her husband a bond of provision granted by her father, and execution was appointed to pass at the

THE deceased George Davidson, brewer in Leith, having granted an heritable bond to his three younger children for 9000 merks, George Davidson, the eldest son and heir, raised reduction of this bond *ex capite lecti* against his sister Elizabeth and her husband, whose share thereof was 3000 merks.

*Answered* for the defenders; That the pursuers had homologated the bond, in so far as he is a subscribing witness to his sister's contract of marriage with John Weir, wherein the said bond is specially assigned *nomine dotis*, and the person at whose instance execution is provided to pass for implement of the clauses in that contract.

*Replied* for the pursuer; *imo*, Homologation ought not to be sustained where it is ascribable to another cause, particularly 1st February 1676, Veitch *contra*