

**No 91.**  
found to homologate a bond granted by a wife *stante matrimonio.*

with her husband, and so was null.—It was *answered*, That she had ratified the bond judicially, and given her great oath never to come in the contrary, as likewise had made payment of the annualrent since her widowity.—THE LORDS did find the payment of the annualrent relevant to make her liable, but did not give their interlocutor upon her judicial ratification and solemn oath never to quarrel the same. Yet it seems that the bond being for borrowed money, as it is null, so the addition will not make it valid; for women being secured *per senatusconsultum macedonianum*, are in the case of minors and pupils, who neither by their bond nor oath adjected thereto, can contract debt.

*Fol. Dic. v. 1. p. 383. Gosford, MS. No 535. p. 284.*

1711. December 1.

MR FRANCIS WAUCHOPE of Cakemuir, Advocate, *against* WILLIAM HAMILTON of Fallahall, and his Tutors.

**No 92.**  
A party using and founding on a decree, determining controverted marches, *per modum tituli*, in actions at his instance, and against him, was found no homologation of a verbal error in the decree.

IN the process of reduction and declarator at the instance of Cakemuir, against Fallahall, for ratifying a decret arbitral pronounced in anno 1608, determining the marches betwixt the lands of Cakemuir and Falla, upon this ground, That there was a literal error in the decret, *northwest* being written in place of *northeast*; the LORDS found, That the pursuer's using and founding on that decret, *per modum tituli*, in actions at his instance, and against him, was no homologation of the marches craved to be ratified; because homologation doth, *regulariter*, infer a consent to the deed only as it is in *rei veritate*; and the using a fitted account doth not infer homologation of errors *in calculo*; seeing *nihil tam consensui contrarium est quam error. Plus valet quod agitur, quam quod simulate concipitur.* And the truth which is instructed by the tenor of the writ, is not impaired by the error, but prevails over it; *actorum verba emendare tenore sententiæ perseverante, non est prohibitum, L. 46. D. de re judic. Veritas Rerum Erroribus gestarum non vitiatur, L. 6. § 1. D. de Officio Præsid.* Besides, the pursuer founded upon the decret by way of action and defence to support his claim, according as he now pretended it should have been worded; and *actus agentium non operantur ultra eorum intentionem.*

*Fol. Dic. v. 1. p. 383. Forbes, p. 551.*

**No 93.**  
Disputed whether a deed granted by a child of eleven years of age is capable of homologation.

1726. June.

KATHARINE HARVIE *against* Mr GEORGE GORDON, Professor in Aberdeen.

KATHARINE HARVIE, the youngest of five heirs-portioners, having jointly with her sisters disposed the common heritage to Mr George Gordon, took bond for the price. At that time she was only eleven years of age, and conse-