

The Confirmer to recover it as heretofore 28 June 1672 Hilgour contra
 - pries 23 Decemb-1673 Mitchel contra Mitchel. Such Confirmations
 ones using and founding on a Decree determining controverted Mat. he
 per modum litte; in Actions at his Instance and against him was found
 Homologation of a verbal Error in the Decree 11 December 1711 Waich
 contra Hamilton. Because Homologation doth regulariter import a
 sent to the Decree only as it is in rei veritate; And the using a fitted Decree
 doth not infer Homologation of Errors in calcula. Seeing nil tam constans
 contrarium est quam error; and the Truth, which is instructed by the sense
 of the Writ, is not impaired by the Error, but prevails over it. Plus valet
 quod agitur quam quod simulate concepitur. Actorum verba emendari in
 sententia peccerante, non est prohibitum. l. 46. ff. de re judic. l. 6. s. 1.
 ff. de offic. praeid. 2^o Homologation is not argued from a Decree that may
 be ascribed or attributed to another Cause 12 Decemb. 1668 Carns contra
 Young. As when a Person introuche having two Titles in his Person.
 A Minor Cautioner's paying Annualrent after Majority with the Driven
 - palls Money, and taking Discharge to him; was not sustain'd as Homologation
 of the Bond by the Taker; the Payment by the Cautioner out of his own Money
 would have been Homologation 14 Feb. 1660 McHenry contra Fairhalme
 Because to prevent Question and Trouble, one may take a Discharge of
 what he denies to be due. Nor did Payment of Annualrent by a Minor
 after Majority with his own Money to his indigent Sister, exclude Reduction
 upon Minority and Legion 28 June 1671 Hume contra Lord Justice Clerk
 Nor yet did Allowance after Majority to a Tenant in his Rent of Annual
 - rent of a Bond granted by the Minor and paid by the Tenant, bar Reduction
 of the Bond upon said Head 14 Decemb. 1675 Muir contra Macintosh. See
 the Master might have allowed to his Tenant, for shunning double Payment
 what he did not approve. Homologation of a Person's Right to the Part of a
 Sum, was not infer'd from another's accepting of a Bond jointly with him
 for the other Part 1 Feb. 1676 Vetch contra Allat and Ker. Making Payment
 of one Article of a Decree Arbitral doth not homologate others of a differ
 - ent Nature 22 November 1662 Primeroffe contra Tuij. Nor was a Super
 - rior understood to have homologated a Tenant's Right, and pass'd from a De
 - clarator against the same upon a Clause irritant, by acceptance of several
 Years Fee-duty after that Declarator, further than that no more could be de
 - manded for these years 6 June 1666 E. Caspils contra Agnew. A Minister
 receiving a Tack-duty of the Tithes of his Parish, did not hinder him to
 reduce the Tack itself, as being set without Consent of the Patron 28 Feb.
 1660 Chalmers contra Wood. Because he could get no more than the Tack
 - duty till the Tack itself, which was a standing Right, were reduced. Agnew
 Consent to a March was not concluded from the Heritor's building a L. like
 upon

upon the controverted ground, and the Silence of the Party concerned,
 who saw and knew what was doing: Because he was not oblig'd to quarrel
 it knowing that what ~~done~~ should be done on his ground would become
 his own, according to the Rule in the Indification said Edit 3 January 1663
 Nicol contra Hope. Nor was a Wife's Knowledge of his future Spouse's
 renouncing a Part of her Jointure, after the Contract of Marriage and pro
 - clamations of Bands, and going on in the Marriage, without correction, the
 same; sustain'd to infer his Acquiescence and Consent thereto 3 Jan. 1663
 1666 Lady Eute in her Husband contra Sheriff of Dale. Because she
 knew he had a legal Authority competent to his own and the Jointure
 Wife's Consent to the Minutes of her Husband's Contract of Marriage, made
 by her Husband's Agents in Scotland before the 14th of the 12th Mon.
 in Law, without reserving her consent, was found not a Consent or
 Consent to the whole Clauses of the Minutes, to extend to the rest, it
 only to infer her Consent to the Marriage. So that the Husband's
 Wife did not subscribe Consented to the intended Contract of Marriage,
 and Minutes of Contracts of Marriage, containing the Material
 agreed on; leaving the legal Formality thereof to be done by Contract.
 8 January 1679 Lady Knox contra Brethren of Knox 2^o Homologation
 is not infer'd from a necessary involuntary Act, to which a Party
 might have been compell'd by Law 9 Feb. 1672 Cockburn of Pittar
 contra Kalyburton and Birnie 20 Decemb. 1662 L. Macraem contra
 his Vassals 3 July 1660 Rae contra Houston 18 Feb. 1681 Burnett
 contra Ewen.

Quaritor if a Decree intrinsic ally null is capable of Homologation
 vid. June 1726 Harvie contra Gordon

Consent may be exhibited by Signs, as the lending a Watch to one who
 put forth his Hand for it without Words, is sufficient to oblige him to re
 - store it; tho another instantly borrow it the same Way from him in Ore
 - fence of the first Lender, who did not quarrel the second Loan; Seeing
 it was so sudden an Act as he could not quarrel it, and therefore his Si
 - lence could not be interpreted a Consent thereto 3 July 1662 L. Cowper
 contra L. Piteligo.

It is not sufficient that Parties consent in their Opinions, but they
 must consent in their Wills.

The Consent must be given anime obligandi either really or presump
 - tively, and therefore should be serious: For what is express'd in Jest, or
 in a merry Mood, doth not make an Obligation Sarr Just. Lib. 1. Tit. 10.
 s. 6. l. 18. Vers. This much in the first Place

Rights or Contracts made against Law have no Manner of Effect
 l. 5. c. de legib.

Hope