

No 6. 1729. *January.* LINTON of Pendrich *against* DUNDAS of Manner.

AN infant succeeding to a burdened estate, the friends of the family sold off a part; and the purchaser applying the price for payment of debts, took a right to the same, and led an adjudication, at the same time granting back-bond to restrict the adjudication to the lands purchased by him, and also thirling the said lands to the infant's mill. After majority, the gentleman, whose lands were thus sold, took the benefit of the back-bond, by pursuing for abstracted multures, which was found to be a homologation of the sale, after which he was not allowed to quarrel the same. *See* APPENDIX.

Fol. Dic. v. 1. p. 377.

No 7. 1736. *June 17.* THOMAS BROWN *against* SAMUEL MUIR.

IN the reduction, upon the head of death-bed, betwixt these parties, of an obligation to dispone a house,

THE LORDS found the defunct's eldest son, being the writer and witness to the deed, doth import his approbation thereof; and therefore assoilzied the defender.

C. Home, No 24. p. 49.

S E C T. II.

Inchoated acts not perfected.

No 8. 1668. *July 7.* CLEIVLAND *against* LADY CAVERS.

THE Lady Cavers having granted bond to one Cleivland *stante matrimonio* for furnishing to the family, and after her husband's decease, having delivered the money to her son to pay the same, which her son did otherwise employ, the said Cleivland pursuing the Lady upon the bond, and delivery of the sum to her son, as an homologation, after the death of her husband, the Lady was assoilzied, notwithstanding thereof, the bond being *ipso jure* null, and the deli-

very of the money being only an act of her own free will, which in law could infer no obligation.

No 8.

Fol. Dic. v. 1. p. 377. Gosford, MS. No 20. p. 8.

1677. February 14.

DUKE and DUTCHESS of MONMOUTH *against* EARL of TWEEDDALE.

No 9.

A DECREE-ARBITRAL being challenged by reduction, as being to the enorm lesion of a minor, one of the parties in the submission, requisition of a sum appointed to be paid thereby, was not sustained as a homologation, seeing he stopt there, and nothing followed upon it.

Fol Dic. v. 1. p. 377. Gosford. Stair.

** See the report of this case by Gosford, No 15. p. 349. ; and by Stair, No 8. p. 2369.

S E C T. III.

In what instances silence infers consent.

1632. January 31. JOHNSTON *against* HOWIESON.

No 10.

JANET JOHNSTON, in the contract of marriage of her daughter with Robert Howieson, spouse contracted to her daughter, being obliged to pay to Robert Howieson elder, father to the husband, and to the said Robert younger, the husband, the sum of 1000 merks in tocher, (for these were the words of the contract,) ' That she was obliged to pay it to Robert Howieson elder, and to Robert Howieson younger his son, to the effect it might be employed upon land, or annualrent, to the said husband and wife, and the longest liver of them two, and the bairns of that marriage, with another 1000 merks to be paid by Robert Howieson elder, and added to the former sum by him, the time of the paying of the said tocher ;' and by a posterior clause of the contract, of this tenor, ' The said Robert elder, was obliged that after his receipt of the said sum from the said Janet, he should employ the same with his own other sum, in manner foresaid.' Upon which contract, Robert Howieson elder, having charged her to pay, she suspends, that she had paid the same to

A tocher was payable to a father and son, to be employe by the father, with so much more, on land, for the use of the son and his wife in life-rent, and their children in fee. Payment made to the son, in presence of the father, was sustained, as good to the debtors.