

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.