

IMPLIED OBLIGATION.

1557. February 15. LD. of COLSTON *against* HOPE PRINGLE.

ANENT the action pursued by the Laird of Colston against William Hope-Pringle, it was *alleged* by the said Laird, That the said William should cause the said Laird to be infest in certain lands of —, to be holden of the Abbot of Holyroodhouse, and Convent thereof, conform to a decreet-arbitral given betwixt the said parties.—It was *alleged* by the said William, That howbeit the said Laird should be infest as said is, the said Laird should bear the expense of the said infestment, both at the hands of the said Abbot and Convent, and seal fees; which allegiance was repelled by the LORDS, and found by interlocutor, that the said William should deliver the said infestment to the said Laird, free of all manner of expenses, unless it had been specially provided in the contrary.

Fol. Dic. v. 1. p. 440. Maitland, MS. p. 123.

1583. March. HALL *against* PEEBLES.

THERE was a contract past betwixt two parties, Hall and Peebles, whereinto the one party was bound and obliged to infest the other in certain lands, either by resignation in the hands of the superior, or by alienation, with confirmation of the superior. The party that was obliged to infest being pursued and charged, consigned an instrument of alienation to be confirmed by the superior.—It was *alleged* by the other party, That it was not enough to consign the said instrument of alienation, but it behoved him to obtain the same confirmed by the superior, upon his own charges and expenses.—It was *answered*, That that was not expressed into the contract, and he could not be bound thereto.—THE LORDS found, That he that is bound to infest another party into land, must be also obliged to make the expense, *nisi aliter per expressum fuerit actum*.

Fol. Dic. v. 1. p. 440. Colvil, MS. p. 392.

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No 1.

A party being bound to infest another, the obligant must bear the expense of the infestment, unless the contrary be specially agreed on.
See No 6.

No 2.

Found in conformity with the above.