

in her favour ; but he is taken expressly bound, that, as soon as he should recover payment of the tocher thereby assigned to him, he should secure the same, to the amount of L. 500 Sterling, in favour of himself and her, and longest liver of them two, for her liferent use ;—therefore, and in respect that the tocher assigned is still *in medio*, and that her husband is insolvent, the LORDS find, That the same cannot be affected by the husband's creditors, until they find sufficient caution to her for payment of the provision, in terms of said contract, in the event of her surviving her husband, to the extent of the sums which they shall receive ; and remit to the Lord Ordinary to proceed in the cause accordingly.'

No 12.

Lord Ordinary, *Monboddo.* Act. *Ilay Campbell.* Alt. *Crosbie et Hay.* Clerk, *Orme.*
C. *Fol. Dic. v. 4. p. 13. Fac. Col. No 18. p. 34.*

S E C T. II.

Contract performable at different periods.—Effect of non-performance, and of over-performance.—If the one party repudiate, is the other free?—Whether irritancy implied by failing to perform at the day.—Effect of improper performance.—Contract for mariners wages.—Contract between master and servant.—Contract of affreightment.—Contract not signed by all parties.—Obligation *ad factum præstandum.*

1628. November 14. CUMING against CUMING.

IN an action Cuming against Cuming, the buyer of land having given a bond to pay the price thereof to the seller, and which bore the sum to be owing for the price of land ; and, at the date of the said obligation, the seller, by a back-bond, binding himself to the buyer, to ratify the alienation made by him at his perfect age, and if he fails, to pay a great sum contained in the back-bond, which exceeded far the price contained in the buyer's bond foresaid, obliged so be paid for the lands ; and the seller thereafter having made another assignee to that bond, given to him for the price of the land, which was pure and simple, and affected with no condition ; and which assignee having charged therefor ; it was found, That albeit the bond assigned was pure, yet it was affected with the condition of the back-bond made of the same date ; and it was respected as a part of the said alienation, and as if it had been inserted in the bond, and

No 13.

Process was not sustained for payment of a bond, bearing to be for the price of land, until the seller should ratify his bargain at his majority, he being then minor, in respect by a separate back bond he was bound to grant this ratification.

No 13.

was found to meet the assignee, as it would have met the cedent's self; and seeing the bond made by the buyer to the seller, which was assigned, bore to be granted for the price of the land, it was found, That the buyer could not be compelled to pay the same, before that the assignee should obtain the cedent's ratification of the alienation, done by the cedent after his majority, conform to the back-bond, or else until the time he was past the age of 25 years, and so after the years of his restitution; and which was so found, albeit the back-bond bore no clause, that the buyer should not pay the price till that were done, but only astricted the seller to pay a greater failure to the buyer, if he ratified not, which was not respected, as said is; but in the mean time, during the retention of the money, the buyer was obliged to pay profit to the assignee yearly, while the sum were paid by him.

Act. *Lawrie.*Alt. *Nicolson et Neilson.*Clerk, *Hay.**Fol. Dic. v. 1. p. 595. Durie, p. 396.*

No 14.

1663. February 12. RELICT of GEORGE MORISON *against* HIS HEIRS.

THIS relict pursues for implement of her contract.—It was *alleged* she had accepted a wadset, in full satisfaction thereof, which now being redeemed, she could crave no more, but re-employing the money to her in liferent.

THE LORDS found, That this acceptance by the wife, being *donatio inter virum et uxorem*, she might now revoke it, and therefore found the heir liable to make up what was in the contract.

Stair, v. 1. p. 177.

1663. February 13.

ELIZABETH FLEMING and SIR JOHN GIBSON *against* FLEMING and ROBERT BAIRD.

No 15.

Acceptance of full satisfaction imports an obligation to denude of what is over.

BY contract of marriage betwixt the said Robert Baird and his spouse, he accepted 12,000 merks in name of tocher, in satisfaction of all his wife could succeed to by her father, mother, sister, and brothers, and discharged his mother as executrix and tutrix thereof; yet she having formerly put more bonds in the name of Robert's wife than this sum, and there being no assignation to the remainder in the contract, pursues the said Robert and his spouse, to grant an assignation thereof, and to pay what he had uplifted of the sums more than his tocher.—The defender *alleged* the summons is not relevant, he neither obliged *ex lege* nor *ex pacto* to assign.—The pursuer *answered*, This being *bonæ fidei contractus*, the meaning and interest of parties is most to be respected; and therefore, though it contains but expressly a discharge, which cannot be effect-