

and pay to her husband the sum of L. 1000, he being in life, and failing of him by decease, to the said Thomson, his heir, or executor. The husband dies before the term of payment contained in the bond. The relict pursues for her third, as being in *bonis defuncti* so long as he lived; likeas he might have discharged the sum in his own time, and would have fallen under escheat, and that it could not be of another nature than *donatio mortis causa*. To which it was answered, That *lex obligationis*, and the will of the defunct, the time of the making of the bond, should be more respected, who declared by the express words of the bond, that the sum of it was unpaid to him during his lifetime, should pertain to the substitute in the bond, and to no other person, whensoever he should decease; which exception, the LORDS found relevant, and that the whole sum contained in the bond should pertain to the person substituted; and ordained this decision to be observed.

Auchinleck, MS. p. 145.

1637. July II.

L. LESMORE against The LADY.

OLD LESMORE contracting with the relict of his oye, dispones certain lands to her in satisfaction of her conjunct fee, which she accepts, and in the same contract she obliges her to relieve the Laird of the teind duties, addebted and accustomed to be paid out of the said lands; whereupon she being charged to relieve the Laird of these teind duties, and for that effect to make payment of a particular quantity condescended on, as has been in use these diverse years to be paid by the tenants of these lands, before this contract; and she suspending, that albeit the tenants of these lands have been accustomed to pay the quantity charged for, yet that is not sufficient to make her obliged thereto; for that cannot be the mind of the contract, that she should pay any further for the teind duties of the whole barony, whereof these lands contained in this contract are but a part, but only that she should pay a proportion of the whole duty, effeiring to the proportion of her lands to the quantity of the whole barony; for albeit the Laird, who was heritor of the whole barony, might appoint a tenant of any part of the lands of that barony to pay the teind duty addebted for the whole, and allow that payment in the first end of the condition betwixt his tenant and him, yet that was no just cause to astrict her to do the like; neither did her obligation contained in the contract bind her thereto, she being bound to pay the teind duty addebted and accustomed; so that albeit the tenants of these lands had formally paid the whole, yet except the whole were addebted for these lands, she cannot be subject thereto, but to her proportional part only. THE LORDS found this reason relevant, and found, that these words in the contract, viz. to relieve the Laird of the teind duties addebted and accustomed to be paid, could import no further;

No 10.

No II.

If one is bound to pay the duties "addebted and accustomed," these terms must be taken conjunctly.

No 11. but that she ought to relieve him of that proportion of the duties effeiring to the quantity, with the which the whole barony is affected, and as these lands answer to the quantity of the barony, and that the custom of payment of the whole duties out of the lands, cannot burden her with the whole, except that the whole duties acclaimed were due to be paid for the said lands alone; and found, that these words, addebted and accustomed, ought not to be severally understood, but as conjoined.

Act. ———.

Alt. *Davidson.*Clerk, *Scot.**Durie, p. 851.*

No 12.

1665. February 7.

PALLAT against FAIRHOLM.

o A person receiving goods in consequence of a letter of credit, continues liable, altho' he may have reason to expect that the writer of the letter has been received as the debtor.

THOMAS FAIRHOLM, merchant in Edinburgh, having written a letter to Peter Pallat, factor at Burdeaux, to loaden him 30 tun of wine;

The tenor of the letter is, that in respect Fairholm was not acquainted with Pallat, he had written upon the credit of his brother Ninian Williamson, factor at London, who was Pallat's ordinary correspondent, to load these wines in that ship which carried the letter, upon Fairholm's account; and bore, That Williamson had provisions to satisfy the same, and that he would either remit to Pallat, or draw upon him, as he found convenient. This letter being sent under a cover of Williamson's to Pallat, the wines were sent into Scotland, and Williamson broke about a year thereafter; whereupon Pallat pursues for his money from Fairholm, who alleged *absolvitor*, because he having demanded the wines, not upon his own credit, but Williamson's, and Williamson having sent under his own cover, as Pallat's letter bears, the said order, in which there being mention, that Williamson had provisions in his hand; his sending the letter of that tenor under his own cover is an acknowledgement, that he had those provisions, and thereby he constituted himself debtor to Pallat, and freed Fairholm; likeas, Pallat acquiesced therein, and drew bills upon Williamson, which were accepted, but not paid, and was silent, never demanding money from Fairholm till Williamson was broken; so that first, Fairholm is free by the tenor of the letter; and next, though thereby he had been bound, yet the damage sustained by Pallat's silence till Williamson was broken, whereby Fairholm was hindered to draw his provisions out of Williamson's hand, and thereby lost the same through Pallat's fault, ought to compence Pallat, and exclude him. Pallat *answered* to the first, that he opened the letters, which bore expressly the wines to be sent for Fairholm's account; so that albeit it mention Williamson's credit, and that he had provisions, it makes him but *expromissor*, and liberates not Fairholm; as to the second, anent the damage, Pallat being secured, both by Fairholm and Williamson, might, at his option, take himself to either, or to both; and cannot be accounted to have done any fault