

No 12.

debtor thereby for the value of the wines loaded upon his account, and sent home by Pallat, without relation to Williamson's letter. THE LORDS assoilzied Peter Pallat from Fairholm's declarator, and decerned Fairholm to pay the price of the wines, in regard of his missive letter, which they found to be obligatory against him in law; and found that Williamson, by transmitting the letter under his cover, had only interposed his credit as surety and cautioner for Fairholm.

Newbyth, MS. p. 25.

1665. February 22. SIR GEORGE MOUAT *against* DUMBAR of Hemprigs.

No 13.

SIR GEORGE MOUAT, as assignee to a tocher of 5000 merks, whereunto umquhile Dumbaith was contractor, pursues Hemprigs, as representing him, for payment. The clause of the contract bore, that the husband should have the tocher out of the first and readiest goods of the wife's father, and that he should have annualrent therefor, but did not expressly oblige Dumbaith to pay, and therefore he is not liable personally, unless he had intromitted with the defunct's means.

THE LORDS found the defender liable, seeing the clause being *in re dotali*, it behoved to be interpreted *cum effectu*, and if it did import only a consent, not to hinder the husband, it signified nothing; and because in cases conceived *passive*, where it does not appear who is obliged, the contractor is understood obliged.

Fol. Dic. v. 2. p. 16. Stair, v. 1. p. 274.

1667. June 14. PATRICK WATT *against* WILLIAM HALYBURTON.

No 14.
Obligation
to infest.

PATRICK WATT, as assignee by Adam Watt his father, to a disposition granted by umquhile — Halyburton to him, pursues William Halyburton, as representing him, to fulfil that part of the disposition, obliging him to procure the pursuer's father infest; and for that effect, that the defender should infest himself, and grant procuratory of resignation, for infesting the pursuer. It was *alleged* for the defender, That he was not obliged to infest the pursuer, because it was his father's fault he was not infest, seeing he had received procuratory of resignation, and precept of sasine, with which he might have infest himself; and though the granter, and he the receiver, lived for twelve or fifteen years thereafter, he was negligent; *2do*. Though the defender were obliged to enter, and denude himself, yet it must be the pursuer finding caution to warrant and relieve him of the hazard of the ward and marriage, because the lands in question being ward through the pursuer's author's fault, the defender's marriage will fall; *3tio*, The defender's father's name was only borrowed by Hallybur-

ton of Eglescairn, who acquired the rights blank, and filled up the defender's name therein, and moved him to dispoene.

No 14.

THE LORDS repelled these defences, but reserved to the defender to pursue damage and interest, for any hazard occurred by Adam Watt's fault, as being more proper against his heir, than against the pursuer his second son.

Stair, v. 1. p. 461.

. Dirleton reports this case :

JAMES HALYBURTON being infeft upon a comprising, in some acres in Dirleton, did grant a disposition of the same to Adam Watt, whereby he was obliged to infeft him by two infeftments ; whereupon the said Adam Watt his son, having right by assignation from his father, pursued William Halyburton as heir to the dispoener, for implement and obtaining himself infeft, and thereafter to infeft the pursuer. It was *answered*, That the disposition was in the hands of Adam Watt by the space of twenty years, and that he had made no use thereof ; and that the defender's father had done all that he could, for denuding himself of the said right, the said disposition bearing a procuratory of resignation ; and that the lands holding ward, if the defender should enter, his ward and marriage would fall ; so that unless the pursuer would warrant him as to that hazard, he cannot be obliged to infeft himself.

THE LORDS decerned, reserving action to the defender for damage and interest as accords.

Dirleton, No 82. p. 34.

1702. December 4.

JERVISWOOD, Petitioner.

THERE being a submission entered into betwixt Sir Alexander Bruce of Broomhall, and Alexander Bruce his son, on the one part, and George Baillie of Jerviswood, Sir George Hamilton, and others, on the second part, to four arbiters, with this express quality, that no decret arbitral should follow thereupon unless all the four agreed ; and they having gone through the whole articles, and, by signed minutes and interlocutors, having agreed thereon, when the decret comes to be extended on the back of the submission, Sir William Bruce of Kinross, one of the four arbiters, declines to subscribe it ; whereon there is a bill given in by Jerviswood and the rest, craving letters of horning to charge Sir William to give forth his sentence and determination in the case, seeing it was signed by the other three, and they could not get the submission registered to charge him on his acceptance to decern, because the decret-arbitral being extended on the back of it, could not be registered till it was perfected by all their subscriptions. THE LORDS considered, from the title in the Roman law *de receptis*, and by our practise, arbiters might be compelled *ut*

No 15.

An arbiter who has accepted can be compelled to decide, see No 17. *infra*.