

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-