

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

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 dispoier, 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*.

No 15.

sententiam dicant when they had once accepted, and that there was not *locus penitentiae*; but that law could not compel Sir William to concur with the other three in their sentiment, but only to give out his determination as he was persuaded to be just in his own conscience; so the LORDS granted letters of horning against him to this effect, that he might give his opinion as to the claim and controverted points, but nowise to oblige him to join with the other three in their decision, unless he thought it just.

The Lords of Session, and all other judges, are bound *impertiri officium suum*, and to discern when required by the parties; and by the same rule arbiters accepting are tied to do the same.

Fountainball, v. 2. p. 163.

1708. *Janaary 31.*

HAMILTON of Bangour *against* LORD and LADY ORMISTON.

No 16.

THE LORDS sustaiued a bond, although the party did therein bind his heirs and successors, but not himself, that subtilty of the common law having been repudiated by the latter constitutions, as a mere nicety.

Fol. Dic. v. 2. p. 15. Fountainhall.

*** This case is No 118. p. 5909, *voce* HUSBAND AND WIFE.

1708. *July 6.* Mr GEORGE SKEEN *against* The LAIRD of SKEEN.

No 17.

In conformity
with No 15.
P. 9435.

Mr GEORGE SKEEN of Robslaw, by a petition, represents, that a difference having emerged betwixt the Laird of Skeen and him about the succession to Sir George Skeen of Fintray; and they having submitted to arbiters, who accepted and agreed on the tenor of their decreet-arbitral, but one of them was dissuaded to sign by Skeen's influence; therefore craved horning against them to give out their decreet in what terms they pleased, without prescribing or imposing on their judgment any manner of way. *Answered*, Where arbiters had not clearness, the Lords could not compel them; and they were willing, seeing both parties did not acquiesce, to let the submission expire. *Replied* That submissions were *ab initio* before acceptance *voluntatis*, but after it *necessitatis*; and as the Lords used to give compulsitors against witnesses to compare before them for clearing points in controversy, so, to make submissions effectual *ad sopiendas lites*, they have been in use likewise to force them to emit their decreet-arbitral, but so as to leave them to God and a good conscience in their determination; and so they did lately, *Jerviswood, No 15. p. 9435.*, in ordering Sir William Bruce, one of the arbiters, to give his opinion in what