No 13. the arbiter's having exceeded his power in this inſtance, affords no objection to the other parts of the decree-arbitral.'

Lord Ordinary, *Juſtice Clerk Braxfield.* Act. *Geo. Fergusson.*
Alt. *H. Erskine.* Clerk. *Home.*

Davidson. *Fac. Col. No* 82. *p.* 189.

Arbiters may be compelled to determine.

No 14.
A party ſubmitter, petitioned the Lords to compel an arbiter who had accepted, to meet and determine. There happened to be no clauſe of regiſtration; The Lords declared, if there had, the arbiter might have been charged with horning, but they would not ſupply the defect.

1699. *June* 30. CHEISLY *againſt* CALDERWOOD.

SIR ROBERT CHEISLY, late provoſt of Edinburgh, gave in a petition againſt Mr William Calderwood, advocate, complaining, That though the ſaid Mr William had accepted to be his arbiter, in a ſubmiſſion betwixt him and Cheiſly of Dalry, his nephew, he refuſed to meet, though the term prefixed was near expired; therefore craved the Lords might ordain him to meet and determine, conform to the title of the common law, *de receptis qui arbitrium in se receperunt ut sententiam dicant.*—*Answered* by Sheriff Calderwood, That the Provoſt's claim did not appear ſo clear and legal, and for that and other reaſons he reſolved to let the ſubmiſſion fall.——THE LORDS conſidered, if there had been a clauſe of regiſtration he might have been charged with horning to meet and determine; but this being omitted, the LORDS refuſed to interpoſe in this caſe, or ſupply their defect.

Fol. Dic. v. 1. *p.* 49. *Fount. v.* 2. *p.* 55.

1704. *February* 8.

WALTER CAIRNCROSS of Hillſlop *againſt* JAMES HUNTER.

No 15.
Found, that an arbiter cannot renounce a ſubmiſſion accepted of, ſince he can be charged with horning determine.

HILLSLOP having obtained a decreet againſt Hunter his tenant, for ſome rents; he ſuſpends, and when the ſuſpenſion comes to be diſcuſſed by the courſe of the roll, Hunter *alleges*, You cannot inſiſt, becauſe the affair ſtands ſubmitted.—*Answered*, One of the arbiters, by a writ under his hand, has declared he will not meddle in the concern any more, ſo it is deſerted and expired.—*Replied*, Having no definite time filled up therein, it laſts year and day from its date; and the renouncing of his arbiter, at his interpoſition and deſire, cannot make it expire; 1*mo*, Becauſe he can be charged with horning, to meet and give out his decreet. 2*do*, The other arbiter, with the concourſe of the overſman, may determine without him.—*Duplied*, The other party's deſign is not that the affair ſhould come to any ſentence or determination, but to poſtpone Hillſlop in diligence, while the tenant is *vergens ad inopiam*, and putting all his goods and ſtocking away; ſo that before the year expire, there will be nothing left to affect. ——THE LORDS found the ſubmiſſion was yet ſtanding, notwithſtanding one of

the arbiter was prevailed on to renounce it; and that the charger ſhould have adverted, that a ſhorter day was filled up in the ſubmiſſion; which he having neglected, the Lords could not help him. No 15.

Fol. Dic. v. 1. *p.* 49. *Fountainhall, v.* 2. *p.* 220.

1796. *July* 7.

ELIZABETH WHITE and HUSBAND, *againſt* WALTER FERGUS.

No 16.
One of two arbiters can neither be compelled to decide, nor to name an umpire.

WALTER FERGUS, along with another arbiter, accepted of a ſubmiſſion, to which Elizabeth White and her Huſband were parties. Mr Fergus, (who was the arbiter appointed by the other party,) finding that the matter in diſpute turned upon points of law, of which he was not qualified to judge, declined proceeding in the ſubmiſſion.

On this Elizabeth White and her Huſband brought an action againſt him, concluding that he ſhould be compelled to concur with the other arbiter, either in pronouncing an award, or in chooſing an umpire.

In defence, Mr Fergus

Pleaded: An arbiter, like a mandatary, may reſign his office at pleaſure, provided he does ſo neither *dolose* nor unſeaſonably. At leaſt it is far from being clear, either in the Roman law or our own, that even a ſole arbiter can, in any caſe, be compelled to give judgment; *l.* 48. *de recept qui*, &c. (*ff. lib.* 4. *tit.* 8.); Erſk. b. 4. tit. 3. § 30.; Fount. 30th June 1699, Cheiſly, (No 14. p. 632.); and certainly he is not obliged to do ſo, where, as in this caſe, he can ſhow a good cauſe for giving up the ſubmiſſion; *l.* 15. and 16. *de recept qui;* Gothofred. *ad leg.* 16. *h. t.*

But, at all events, it is plain, that where there are two arbiters, they can be under no obligation either to decide or to name an umpire; becauſe it may be impoſſible for them to agree in the one caſe on the ſentence, and in the other on the perſon.

Answered: An arbiter, like a tutor, after accepting, cannot reſign the office, either by the law of Rome or of this country, without ſtating a ſufficient reaſon for doing ſo; *l.* 3. § 1. *de rec. qui*; *Voet, ad h. t.* § 14.; Sir George Mackenzie b. 4. tit. 3. § 8.; Bankton, b. 4. tit. 45. § 132.; 4th December 1702, Bruce, (Fount. v. 2. p. 163, *voce* OBLIGATION;) 8th February 1704, Cairncroſs, (No 15. p. 632.); 6th July 1708, Skeen, (Fount. v. 2. p. 449, *voce* OBLIGATION;) but the cauſe aſſigned by the defender is not relevant; becauſe, although the matters at iſſue turn upon points of law, the arbiters may concur in making choice of a lawyer for their umpire. And before the defender is entitled to argue, that he and the other arbiter may not be able to fix on the ſame perſon, he muſt at leaſt name one who would be agreeable to himſelf. It will be time enough to enquire what is next to be done, when his colleague refuſes to adopt his choice.