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.

No 16. The Court, without entering into the queſtion how far a ſole arbiter is bound to decide, were clear on the grounds ſtated by the defender, that againſt one of two arbiters the concluſions of the action were ill-founded.

THE LORDS unanimouſly aſſoilzied the defender.

Lord Ordinary, *Swinton.* Act. *H. Erſkine, D. Cathcart.*
Alt. *Solicitor-General Blair, Davidſon.* Clerk, *Pringle.*

Davidſon. *Fac. Col. No* 231. *p.* 537.

*** *See* Caſes on the ſubject of this Subdiviſion, *voce* OBLIGATION.

Summoning of Witneſſes.

No 17. The Lords will give warrant to arbiters, authoriſing them to ſummon witneſſes.

1670. *January* 6.
KER of Cavers, and SCOT of Golden-berrie, Supplicants.

KER of Cavers, and Scot of Golden-berrie, being arbitrators nominate by a ſubmiſſion, did, by bill, crave warrant from the Lords to authoriſe them, to ſummon witneſſes to compear, and depone before them in the cauſe in which they were arbiters.

Which the LORDS granted.

Fol. Dic. v. 1. *p.* 50. *Stair, v.* 1. *p.* 658.

No 18. A cauſe being in dependence before arbiters, the Lords granted diligence by horning, at the inſtance of one of the ſubmitters, againſt third parties, to exhibit writs neceſſary.

1696. *June* 26. WILLIAM STEVENSON *againſt* YOUNG of Winterfield.

WILLIAM STEVENSON, late bailie of Edinburgh, gives in a petition, repreſenting he had a proceſs depending againſt Young of Winterfield, which both parties had ſubmitted; and for clearing the arbiters there were ſome papers in third parties hands, which were neceſſary for inſtructing his claim, and the paſſive titles; and therefore craved the Lords would grant a diligence by horning, to cauſe them exhibit thoſe papers.——THE LORDS, conſidering that all methods ſhould be uſed for facilitating the extinguiſhing and ſtopping of pleas, they granted the deſire of the bill; eſpecially ſeeing it is obſerved by Stair, that the Lords, on the 6th of January 1670, between Ker of Cavers and Golden-berrie, (No 17.) granted letters to charge witneſſes to compear, and depone before arbiters; and this ſeems to be a caſe equally favourable.

Fol. Dic. v. 1. *p.* 50. *Fountainhall, v.* 1. *p.* 723.

No 19. Diligence to cite witneſſes to appear before arbiters, limited to the ſhire.

1741. *July* 16.
GORDON of Troquin and NEILSON of Corſack, Petitioners.

THE LORDS never grant diligence to cite witneſſes from a different ſhire, to appear before arbiters, but only to cite ſuch to appear before them as live in the ſame ſhire; and as to ſuch as live in any other ſhire to appear before any com-