

surancé, and cause *themselves*, and them, and each of them, to be insured." The *declaration* says, "It was further agreed by said deed, that in case of loss, &c. it should be lawful for the said *Graham*, his factors, servants and assigns, to sue," &c. The *policy* says, "in case of loss, &c. it shall be lawful to and for the assured, (to wit, *Hugh and William Young*,) and their factors," &c. The *declaration* says, "and so *The Maryland Insurance Company* aforesaid did bind themselves to the said *Graham* for the true performance," &c. The *policy* says, "do bind themselves to the assured, (the said *Hugh and William*,) their executors," &c. The *declaration* says, "confessing themselves paid the consideration due to them for the said insurance by the said *Graham*." The *policy* says, "by the said assured, (the said *Hugh and William*,) or their assigns." The *declaration* says, "and it was agreed by the said deed between the said *Graham* and *The Maryland Insurance Company* aforesaid, that in case of loss the said *Graham* should abate two per cent. to *The Maryland Insurance Company* aforesaid, and that such loss should be paid by *The Maryland Insurance Company* aforesaid, to the said *Graham*, in ninety days," &c. The *policy* has only these words, "and in case of loss the assured, (*Hugh and William*,) is to abate two per cent. and such loss to be paid in ninety days," &c. The *declaration* says, in case of disputes they are "to be referred to two persons, one to be chosen by the said *Graham*," &c. The *policy* only says, "one to be chosen by the assured," to wit, *Hugh and William Young*. Thus the court will perceive, that the declaration is, as if the insurance had been effected by *Graham* in his own name, but through his attorneys. Whereas the policy is entered into by *Hugh and William Young* in their own names, though for the use of *Graham*; and hence comes within the decisions referred to in *Abbott and Shepherd's Touchstone*, that though *Graham* has an equitable interest in the policy, yet the suit upon the policy must be in the name of *Hugh and William Young*. That the suit at law must be brought in the name of him who has the legal title, whoever may be interested, is so clear, that it would be superfluous to cite authorities to prove it. The court are however referred to one of a very recent date, and of high respectability, *Lewis vs. Harwood*, 6 *Cranch*, 82. In that case *Whelcroft* assigned a bond given to him by *Lewis*, to *T. & B. Harwood*, who instituted a suit

1810.

Maryland Insurance Company
vs
Graham