

missioner to be named by the arbiters, and that within the shire in which the witnesses live; and in these terms granted diligence in this case.

*Fol. Dic. v. 3. p. 35. Kilkerran, (ARBITRATION.) No p. 34.*

No 19.

### Time of Endurance.

1491. *May 17.* MARION CUNINGHAME *against* ROBERT DRUMMOUND.

GIF ony compromit be maid be certane parties, anent ony debate or contraverfie betwix thame, and ony jugeis arbireris chosen be thame to that effect, with this restrictioun and conditioun, that the saidis jugeis fall give furth thair decrete and deliverance in the said matter ather incontinent or befor ony certane day prefixt and agreit upon betwix the saidis partis, and expremitt in the said compromit; and it happin that the saidis arbireris deliver ane decrete after the said day contenit in the said compromit, na prorogatioun of the day beand maid with consent of the parties; the samen deliverance and decrete is be way of exceptioun null, and fould have na execution aganis the parties quha consentit not to the geving thairof, or to the prorogatioun of the day of the compromit.

*Balfour, (ARBITRIE.) p. 414.*

No 20.

A decree pronounced after the term expires is null.

1505. *March 7.*

JOHNE BONAR of Rossie *against* DAVID BALFOUR of Carristoun.

CERTANE parties beand compromittit in arbireris and amicable compositouris to ane certane day and place, gif thairafter it happinis that the saids parties continue the compromit to ane uther day, and als wa change the place thairof to ane uther place, and the arbireris give the sentence and decrete befor the day to the quhilk the compromit was continent, the said decrete obliesses not the parties, nather can have executioun aganis thame, except thay willinglie of thair awin consent obey and fulfil the samen.

*Balfour, (ARBITRIE.) p. 414.*

No 21.

A submission prorogated to a different day and place from those originally named, was not obligatory, if the arbiters pronounced decree before the day.

1593. *March.* L. SILLARTOWNHILL *against* PRIOR of BLANTYRE\*.

IN an action betwixt the Laird of Sillartownhill, and the Pryour of Blantyre, the LORDS found, that the Pryour having submitted himself by his bond to abide at the determination of the Chancelar and the Provist of Lincluden, what right he, his airs and assignees, fould mak to my Lord Provand, his heirs and assignees, of the teinds of Provand, in all time coming; the bond being onlie maid and sub-

No 22.

A bond, wherein a man submitted himself to the determination of certain persons therein nam-

\* The names are not mentioned in Fol. Dic.

No 22.  
ed, was found  
to last during  
the lives of  
the judges,  
and not to ex-  
pire within  
year and day,  
like an ordi-  
nary submis-  
sion.

serybit by the Pryour.—THE LORDS found; That it expired not, after year and day, as a submission, but that it was an obligation whilk would last during all the days of the judge's lifetimes.

*Fol. Dic. v. 1. p. 50. Haddington, MS. No 401.*

1563. May 14.

JOHN MACANQUAL *against* GEO. BOSWELL.

No 23.  
A submission  
is dissolved  
by the death  
of either of  
the parties, or  
of the arbiter.

THE arbiters may not be compellit to accept the compromit, because the office of arbitrie, and acceptation thereof, are voluntar.—An compromit not beand acceptit be the arbiteris, it is leafum to the parties to revoke the famin.—Compromit and arbitrie is diffolvit and endit, gif ather of the parties or arbiteris hap-penis to deceis befor the geving of the decrete.

The compromit expires, gif the sentence be not pronouncit in the cause befor the end of the day contenit in the compromit; and the air of him quha is deceist may not be compellit to fulfil or obey the decrete, except special mentioun be made in the compromit of the air. And gif na exprefs mentioun be maid of ony day in the compromit, within the whilk decrete fould be pronouncit and gevin, the compromit is ended and expyrit, gif the arbiteris pronunce not thair decrete within zeir and day efter the dait of the compromit, na prorogation thairof beand maid with consent of the parties.

*Balfour, (ARBITRIE.) p. 413.*

1610. January 12.

EARL OF LINLITHGOW *against* JOHN HAMILTON of Grange.

No 24.  
A submission  
cannot be pro-  
rogated with-  
out the ex-  
press consent  
of the parties,  
and that be-  
fore the term  
expire.

IN an action of registration of ane decreet-arbitral, pursued by the Earl of Linlithgow against John Hamilton of Grange, it was found, that the decreet-arbitral was null *ipso jure*, because it was not pronounced within the precise time contain- ed in the submission; and that, notwithstanding the submission bore to be pro- nounced with prorogation of days; and that there was a prorogation made by the judges after the term contained in the submission; and that, to supply the parties consent to the prorogation, it was offered to be proven, by the party's oath, that he consented the same should be prorogate. The reason of this decision was, because, according to the party's consent, the judges had not prorogate in due time, viz. *infra tempus compress*:

*Kerse, MS. (ARBITER.) fol. 18c.*