

No 27.

tion made at that time, when the judge was *functus officio suo*, as said is, and when he had no power.—This *allegeance* and *reason* was rejected, and notwithstanding thereof the decret sustained; for this being a bond, obliging the party to abide at the judgment, and declaration of the person chosen and nominate in his bond, and he being limited to no day betwixt and which to determine; it was found, That such bonds and submissions expire not after expiring of year and day, after the date thereof, but that the same last and endure, and the judge may make his declaration at any time, so long as the party survives, at least at any time before he be charged by the parties to decret, and within a competent space, as the judge shall think reasonable to assign after the charge.

A. &amp; Nicolson &amp; Scot.

Alt. Stuart &amp; Belshes.

Clerk, Scot.

Fol. Dic. v. 1. p. 50. Durie, p. 495.

No 28.

1639. March 14.

HEPBURN against HEPBURN.

A decree-arbitral was sustained, though given after the year, because the submission contained also a bond empowering the arbiter to decide, relative to a third party not subscribing, but now claiming the benefit of it. The bond contained no day nor blank, and was found to be more than a simple submission.

THE brethren and sisters of umquhile Colonel Sir John Hepburn, having submitted all questions and rights, which they might pretend to the goods, gear, and means of the said umquhile Sir John, to the Laird of Wauchtoun, and some other friends, wherein the submitters were bound, and did refer to the saids friends, to determine what proportion of the saids goods should be given to George Hepburn, the son of the eldest brother of the said Sir John, which George was then in France, the time of the making of the said submission and bond, and did not subscribe the same, nor none taking the burden for him; upon the which submission the saids friends had given their decret-arbitral. The living brethren and sisters of the said Sir John being confirmed executors to him, pursue one Beaton, factor in Paris, for payment of 20,000 pounds, addebted by him to the said umquhile Sir John, who suspending upon double pointing, as being distressed by the executors forefaids on the one part, and by the said George, the eldest brother's son, on the other part. In this process the said George *alleged*, That these executors could never be heard to claim any more of this sum controverted, but that proportion thereof, which was contained in the said decret, following upon the said submission pronounced by the saids judges: Likeas he produced both the submission and decret, pronounced by the friends conform thereto, which declares what proportion of this sum acclaimed is due to ilk one of the parties, beyond the which none of them ought to be heard to acclaim any more. And the executors *answering*, That the said decret-arbitral was null, because it was not pronounced within the year after the date of the submission; but there were more than two months more than a year intervening betwixt the date of the submission and the date of the decret, and so the same could not be found valid in law; especially where the same proceeds upon an alleged submission made, giving power to the judges to discern what proportion should be given to George of the goods controverted, which was a clause never communed on betwixt the parties, and to whom

they have decerned the right of the most part of all the sums truly due to the executors only, against all reason, although the said George was not then within the country, nor hath subscribed the same himself, nor no other for him, taking the burden for him, and who was then and is yet minor; and who, if he were hurt by that decret, could not be bound thereby.—THE LORDS having heard both parties, they found, that none of these parties can claim any more right to any of the sums controverted, except the proportion decerned to ilk one of them by the said decret; which decret-arbitral the LORDS sustained as lawful and valid, albeit it be not given within the year after the submission; in respect, albeit the year was long expired before the judges decerned, yet they found the decret good and sufficient, being done, and following not upon a naked submission, but the submission containing also a bond, whereby the parties gave power to the judges to determine what proportion of the umquhile Colonel his goods should be decerned by them in favours of the said George, and obliged them to abide thereat, which bond was more than a submission, and there was not any day nor time contained in the said submission and bond, nor any blank left therein, nor clause conceived thereanent, betwixt and the which the judges should decern; and therefore it was found, that upon a submission containing such a bond, and bearing no day, there was no necessity to the judges to decern within the year; neither was it respected that George was out of the country and did not subscribe it, and that he was yet minor, in respect it was a clause conceived in his favours which he did accept of, and so might thereby better his case; and therefore the LORDS repelled the allegiance proponed for the executors, &c.

No 28.

*Act. Dunlop for Beaton. Advocatus & Stuart for George.*  
Clerk, Gibson.

*Alt. Nicolson.*

*Fol. Dic. v. 1. p. 50. Durie, p. 883.*

1665. February. MENZIES against M'GRIGOR.

No 28.

IN an action betwixt Menzies and M'Grigor, the LORDS found, That a submission, bearing no day betwixt and which the arbiters should determine, expires after year and day, and is not as a bond obliging parties to a submission, which doth not so expire.

*Fol. Dic. v. 1. p. 50. Gilmour, No 140. p. 102.*

1672. February 23. WALLACE against WALLACE.

No 30.

WALLACE of Carnall pursues a reduction of a decret-arbitral, pronounced betwixt him and Captain Kennedy, by which he was found debtor to Captain Kennedy in 5000 merks; and which decret was now assigned to Edward Wal-

A submission blank, in the endurance lasts but for a