

# APPENDIX.

## PART I.

### ARBITRATION.

1770. January 26. JOHN DONALDSON *against* WILLIAM DONALDSON.

THESE parties, on the 7th of May 1768, entered into a submission of mutual claims; the limiting clause of which was thus expressed: "And the said arbiters are fully hereby empowered to fall about doing the business aforesaid, and that betwixt and Whitsunday next; and to give forth their decree-arbitral in a distinct manner, &c."

Upon the 24th May the parties submitters made up a minute, wherein "they declare this submission current till the 1st day of October next;" but the decree-arbitral was not pronounced or given forth till the 6th of that month; five days after the prorogation.

John Donaldson brought a reduction of this decree; on which the Lord Ordinary pronounced the following interlocutor: "Sustains the reason of reduction of the decree-arbitral, that the same was pronounced after the expiry of the time limited in the submission and prorogation thereof."

William Donaldson reclaimed, and argued; that the clause recited related not to the decree, but to the period the arbiters were to fall about doing the business, viz. inspecting the lands, valuing the crop, stocking, &c. and doing other preliminary matters, which, it was to be presumed, never could be accomplished within so short a time as betwixt the 7th of May and the term of Whitsunday; and as the submission therefore was unlimited as to time, it behoved, according to the general rule and practice, to stand in force for a year.

The pursuer answered, That the clause of limitation was express, and that it was *triti juris*, and had been often decided, that a decree-arbitral, pronounced after the term limited in the submission, was null and void: 28th Feb. 1666, Freeland, No. 44. p. 646; Jan. 1608, Hamilton *contra* Hay, No. 35. p. 643;

#### No. 1.

A decree-arbitral, pronounced after expiry of the time limited in the submission, and prorogation thereof, set aside.

No. 1. 2d Dec. 1680, Pitcairn *contra* Rose, No. 45. p. 647; 18th Nov. 1696, Watson *contra* Milne, No. 47. p. 648.

The Lords adhered.

Lord Ordinary, *Pitfour*.  
Clerk, *Kirkpatrick*.

For John Donaldson, *A. Fergusson*.  
For William Donaldson, *A. Lockhart*.

R. D.

*Fac. Coll. No. 14. p. 31.*

No. 2. 1770. February 16. STEWART *against* EARL OF GALLOWAY.

A party after bringing an action against a debtor, and raising inhibition on it, submitted the matter to arbiters. In the submission and decree-arbitral, the inhibition was not mentioned. The Court "found, that the sums awarded by " the decree-arbitral were not secured by the inhibition, without prejudice to " the Petitioner to insist in the depending process for decrees as accords."

R. H.

*Fac. Coll.*

\* \* This case is No. 62. p. 7004. *voce* INHIBITION.

1771. June 21.

RICHARD HETHERINGTON, and Others, Tenants on the estate of Killhead, *against* THOMAS CARLYLE, Factor on the sequestrated estate of Killhead.

No. 3.

Reduction of a decree-arbitral, attempted upon alleged falsehood in the decree.

An error *calculi* may be corrected without reducing the decree.

THE pursuer brought a reduction of a decree-arbitral, pronounced in a submission betwixt the above parties, upon the ground of *falsehood*, and as being *defective* and *partial*, as it had not determined the whole matters in dispute. The decree-arbitral set forth, " That the arbiters had considered the claims of " both parties, and answers thereto, with the several processes specified in the " submission, with the whole procedure, minutes, and interlocutor therein; " and particularly the process of suspension of the said Thomas Carlyle's charge " against the tenants for payment of their rents, and whole proofs led thereon, " with the tacks granted by the said Sir John Douglas, upon which the said " charge proceeded, and had met with and heard parties doers upon the pre- " misses."

The pursuers affirmed that this averment could not possibly be true; and in a condescendence offered to prove, *1mo*, That no memorial was laid before the arbiters but with respect to the case with one only of the pursuers; *2do*, That the proofs, tacks, and other writings, were so extremely voluminous, that they could not, as stated, have been perused, or duly considered by the arbiters; *3tio*, That instead of having heard parties or their doers, the arbiters had proceeded to pronounce their decree-arbitral, even after the pursuer's