

DECREET-ARBITRAL.

1776. July 20. DAVID NAYSMITH *against* MAGISTRATES of GLASGOW.

ALTHOUGH, by the regulations 1695, all reasons of reduction of a decret-arbitral founded on alleged iniquity, are excluded, yet an *error calculi* is not excluded; and therefore, this day, 20th July 1776, in a reduction of a decret-arbitral pronounced on a submission between the Magistrates of Glasgow and David Nasmyth, mason in Glasgow, undertaker for building a breast-work on the Clyde, between the old and new bridge at Glasgow, wherein it was alleged by Nasmith, that the arbiters had proceeded upon a wrong measurement;—the Lords pronounced this interlocutor:—“ Adhere to the Lord Ordinary’s interlocutors so far as they find that the pursuer Nasmyth has not proved enmity, corruption, or falsehood against the arbiters; and so far as they find that it cannot be taken under consideration whether or not the decret-arbitral is iniquous. But, as the pursuer alleges an error in the measure, which resolves into an *error calculi*; before further procedure, remit to _____ to visit the work in question, and to report to this court the measurement thereof; after which they declare, that they will resume consideration of the cause.”

1777. November 18. NASMYTH *against* MAGISTRATES of GLASGOW.

DAVID Nasmyth, mason in Glasgow, having entered into a contract with the Magistrates of Glasgow, for building a bulwark along Clydeside from the new to the old bridge, and differences having happened, these were submitted to two arbiters; and they having differed, the questions came before an oversman, who pronounced a decret. Of this decret Nasmyth brought a reduction. But the Lord Kenet, Ordinary, having found that Nasmyth, the pursuer, had not proved enmity, corruption, or falsehood against the arbiters, and that it could not be taken under consideration whether or not the decret-arbitral was iniquous;—the Lords in so far adhered, (20th July 1776.) But then, it being alleged that the arbiters had proceeded upon an error in the measurement; the Lords held this to be an *error calculi*, and remitted to a person named by the Court to take the same of new, and to report. This report being made, it thence appeared probable that the arbiters had proceeded either without a measurement, or upon a wrong one. The Lords, therefore, before further procedure, ordered the Magistrates of Glasgow to produce the measurement either taken by the arbiters or upon which they had proceeded. The Magistrates did so; and, thereupon, the Lords were of opinion that the arbiters had proceeded upon an *error calculi*, and gave a deduction from the sum in the decret-arbitral. But, on a reclaiming petition, with answers, they altered, and