

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

No 31.

lace. The *first* reason of reduction was, because the submission being subscribed, and delivered to the arbiters, with a blank endurance, they had unwarrantably filled therein an endurance for three years after the submission; whereas, being blank, it doth only proport the endurance of a year; and the decret-arbitral being pronounced near three years thereafter, is *ultra vires compromissi*. 2do, The decret is null and unjust by enorm lesion, in that the pursuer is decerned in 5000 merks, without mention of any cause, but only in general; neither can there be any thing produced to instruct that he was debtor at all. It was *answered, imo*, That neither reason is relevant against an assignee, who seeing a clear decret-arbitral, which requires no formalities, nor solemnities, he was obliged to enquire no further; neither can the cedent's oath prove against him, that the submission was subscribed blank.

THE LORDS ordained the arbiters oaths to be taken, whether the submission was blank in the endurance, when it was delivered; and found, that if it was blank in the endurance, it endured but for a year: And found, that seeing it was only general, without mentioning any particular cause, that it was null, unless the defender instruct it, by proving the cause thereof.

Fol. Dic. v. 1. p. 50. Stair, v. 2. p. 77.

1724. *January 31.*

THE RELICT OF BAILIE ARCHIBALD COCKBURN *against* DANIEL EDWARD, Mason.

No 31.
Where a submission gives power to arbiters to determine betwixt and a certain day, it includes that day complete.

IN a suspension of a decret-arbitral, as being pronounced after the powers of the arbiters were expired, the question turned upon this point, Whether these words of the submission, *The Judges Arbiters are to determine betwixt and the Twenty-second Day of December*, did, in the construction of law, include the 22d Day?

The charger, in support of the decret, brought the authority of the civil law, *l. 133. ff. de V. S. l. 13. 56. § 5. l. 72. § 1. ff. de verb. ob.* and took notice of the opinion of the Lords of Session, observed by *Dirleton*, 26th *January* 1675, and *alleged*, that the common practice was to pronounce decreets-arbitral upon the last day, as in this case; all which would come to be void, if this reason of suspension was sustained.

It was *pleaded* for the suspender, That, in boundings of land, the *terminus ad quem* is never included, unless it be expressly so provided: Which should likewise hold in periods of time, especially when the term is described by these words, *betwixt and a day certain*; for it is the natural meaning of this expression, that the intermediate time is only comprehended.

And it was *answered* to the authorities brought from the civil law and my Lord *Dirleton*, That they either related to the meaning of the word *intra*, which did not agree exactly to the words in question, or else they concerned the cases of