

## INDIVISIBLE.

### SECT. I.

#### Decrees Arbitral.

1582. November —

LOCKHART *against* LADY POLMAISE.

**T**HERE was one, named Lockhart, that desired a decreet-arbitral, given betwixt him and the Lady Polmaise, to be registered. It was *alleged* by the Lady, That the said decreet was *ultra vires compromissi, et ideo* ought not to be registered, because it bore and expressed the consent of the Laird of Polmaise, who had neither subscribed the same, nor has nothing adenant the compromit. To the whilk was *answered*, That, in so far as concerned the Lady, it ought to be registered, because she had both compromitted, subscribed, and homologated the same, *et utile per inutile non vitiatur*. To this was *answered*, Quoad regula illa juris utile per inutile, &c. non habet locum ubi legis autoritas, vel natura rei, vel voluntas contrahentium impedimenta sunt, et in hisce casibus utile per inutile vitiatur et corrumpitur. L. 1. § 18. D. De Aqua quotidiana; et manifeste et clare. L. 8. §. 7. D. De Fidejussoribus; and so the law being manifest and plain, against the said decree that was given *ultra vires compromissi*, prout in L. 32. § 15. D. De receptis qui arbitrium, &c.; and so the Judge having decerned, and given forth his decreet *ultra vires compromissi, reddebat illum suspectum*. THE LORDS, after long reasoning among themselves, found that the decree ought not to be registered, licet bona pars Dominorum in contraria fuerunt opinione.

*Fol. Dic. v. 1. p. 462. Colville, MS. p. 339.*

No 1.

A decreet-arbitral being *ultra vires compromissi*, cannot be registered, even with respect to that part of it which is within the submission.

1594. February 18.

LIDDERDALE *against* M<sup>r</sup>LELLAN.

IN an action, pursued by James Lidderdale of St Mary Isle, against one M<sup>r</sup>Lellan, for reduction of a decreet-arbitral, given by certain Judges arbitral,

No 2.