INDIVISIBLE.

SECT. I.

Decrees Arbitral.

1582. *November* — LOCKHART *against* LADY POLMAISE.

No 1.
A decree-arbitral being *ultra vires compromissi*, cannot be registered, even with respect to that part of it which is within the submission.

THERE 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 ado anent 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 authoritas, 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.

1594. *February* 18. LIDDERDALE *against* M'LELLAN.

No 2.

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

No 2. upon a submission of the said parties, the LORDS found, that the hail sentence fell and was null, in respect of iniquity committed by the said arbiters, and decreet given *ultra vires compromissi*.

Fol. Dic. v. 1. *p.* 462. *Haddington, MS. No* 512.

1616. *July* 25. A. *against* B.

No 3.

IN an action of reduction of a decreet-arbitral, the LORDS found, that one or two heads being *ultra vires*, the rest should fall.

Item, In the same cause, the LORDS refused to admit the exception founded upon consent of party, to be proved by the Judge, and witnesses inserted.

Fol. Dic. v. 1. *p.* 463. *Kerse, MS. fol.* 180.

1630. *March* 20. JOHN STARK *against* THUMB.

No 4.
A decree-arbitral was sustained, tho' the arbiters remitted a point in dispute to the determination of other arbiters. The point remitted was not specially mentioned in the submission.

CERTAIN special controversies betwixt these parties being particularly expressed, and therewith all other questions betwixt them generally, whatsomever they were, being submitted to arbiters; who having decerned, the decreet was quarrelled, by way of suspension, as null; because, in one article of the decreet, the Judges had referred the payment of the taxation, whether of the parties should pay the same, to the judgment of two Lawyers, one to be chosen by each party; by the which reference, they not determining upon one article controverted, the whole rest of the decreet was null; for the suspender *alleged*, That the Judge not deciding in all the questions, but remitting one to others, which they could not do, after they had accepted on them the decision of all, thereby the decreet is null; for the which he *alleged*, *L.* 19. *D. De Receptis*. And the other party *alleging*, That the decreet could not be null in all the articles, albeit it were yielded, that it were null in that head, because, *utile per inutile non vitiatur*, especially *ubi capita sententiæ sunt separabilia*, as in this case. THE LORDS found the foresaid article of the decreet, remitting to the Lawyers, to determine on the taxation, rendered not the whole decreet null; because, though the civil law and reason declare such clauses to make the whole decreet null, where any article specified in the submission particularly accepted, to be decided by the arbiters, is not decided, but referred to others, *quo casu nulla est sententia*, except by the power of the submission the Judge has warrant from the party, so to refer the same to others, et pro hoc facit, L. 32. § 16. D. De Receptis, &c. Vid. L. 19. § 1. et L. 21. § 12. D. eod. tit.; ex quibus scire licet an sententia lata super quibusdam rebus compromissis, super aliis autem non lata, valeat in iis, supra quibus lata est; but in this case question-