

1610. July 6. MR JOHN JOHNSTON *against* WILLIAM NAPIER.

IN an action of a reduction of a decret arbitral, pursued by Mr John Johnston against William Napier, the LORDS found, that a submission might be made to judges, with power to them to decide when they please, and the submission to endure as long as they will; and sikklike, albeit, the LORDS, by their decret, had ordained the judges to proceed *secundum alligat*; anent *probatum est*; yet the LORDS would otherways astrict the said judges thereto: And last, albeit there was a partial decret given of before by the same judges, ordaining William Napier to pay a certain sum of money to Nicol Edward, who was party submitter, which was contrary to the last decret, whereby William Napier was affoilzied from all the points of Nicol Edward's claim, and also Nicol decerned to pay, to the said William Napier, the sum of 4000 merks; yet the Lords sustained the said last decret.

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A submission was sustained, where the judges were empowered to decide when they pleased, and the submission to endure as long as they chose.

Kerse, MS. (ARBITER.) fol. 180.

1612. January 31. CAMPBELL *against* CALDER.

IN an action betwixt Colin Campbell of Clunie, and Thomas Calder, the LORDS found, a decret arbitral null, because it was pronounced by the oversman *ante tempus definitum in submissione*. (See No 55. p. 655.)

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Kerse, MS. (ARBITERS.) fol. 180.

1630. February 25. JAMES HAY of Tourlands, *against* EARL of EGLINGTON.*

A DECRET of spuilzie of teinds, obtained by the Earl against James Hay, being suspended by him, upon a reason founded upon a bond of submission, made by the Earl to the Laird of Caprington; whereby he submitted to the Laird Caprington, what the said James should do to him, for the said decret; by which bond he obliged him to abide at whatsoever Caprington should decern, and declare thereanent, the submission and bond being only subscribed by the Earl, and not by the other party nor Caprington, and having no time therein-contained betwixt and which the judge was holden to decern; and he having decerned by the space of four years after the date of the said bond, at least the decret produced by the suspender in writ, being written of that date, but reporting, that the judge decerned the next morning, after the date of the submission; and that he had intenate the sentence to the party submitter at that time, which he had then put in writ, of that date whereof it was produced; whereupon the Earl proponing nullity, and having intended reduction upon that same reason of nullity, *viz.* That it was dated after year and day; and that the relation therein bearing it to be done *deb. to tempore*, ought not to be respected, being a declara-

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An arbiter may determine at any time, even beyond year and day, after the date of a submission, bearing no time within which he should determine, provided the parties submitters be alive at the time of the decret.

* By mistake in the Fol. Dic. the parties are named, *Maxwell* against *Roger*.

No 27.

tion made at that time, when the judge was *functus officio suo*, as said is, and when he had no power.—This *allegeance* and *reason* was rejected, and notwithstanding thereof the decret sustained; for this being a bond, obliging the party to abide at the judgment, and declaration of the person chosen and nominate in his bond, and he being limited to no day betwixt and which to determine; it was found, That such bonds and submissions expire not after expiring of year and day, after the date thereof, but that the same last and endure, and the judge may make his declaration at any time, so long as the party survives, at least at any time before he be charged by the parties to decret, and within a competent space, as the judge shall think reasonable to assign after the charge.

A. & Nicolson & Scot.

Alt. Stuart & Belshes.

Clerk, Scot.

Fol. Dic. v. 1. p. 50. Durie, p. 495.

No 28.

1639. March 14.

HEPBURN against HEPBURN.

A decree-arbitral was sustained, though given after the year, because the submission contained also a bond empowering the arbiter to decide, relative to a third party not subscribing, but now claiming the benefit of it. The bond contained no day nor blank, and was found to be more than a simple submission.

THE brethren and sisters of umquhile Colonel Sir John Hepburn, having submitted all questions and rights, which they might pretend to the goods, gear, and means of the said umquhile Sir John, to the Laird of Wauchtoun, and some other friends, wherein the submitters were bound, and did refer to the saids friends, to determine what proportion of the saids goods should be given to George Hepburn, the son of the eldest brother of the said Sir John, which George was then in France, the time of the making of the said submission and bond, and did not subscribe the same, nor none taking the burden for him; upon the which submission the saids friends had given their decret-arbitral. The living brethren and sisters of the said Sir John being confirmed executors to him, pursue one Beaton, factor in Paris, for payment of 20,000 pounds, addebted by him to the said umquhile Sir John, who suspending upon double pointing, as being distressed by the executors forefaids on the one part, and by the said George, the eldest brother's son, on the other part. In this process the said George *alleged*, That these executors could never be heard to claim any more of this sum controverted, but that proportion thereof, which was contained in the said decret, following upon the said submission pronounced by the saids judges: Likeas he produced both the submission and decret, pronounced by the friends conform thereto, which declares what proportion of this sum acclaimed is due to ilk one of the parties, beyond the which none of them ought to be heard to acclaim any more. And the executors *answering*, That the said decret-arbitral was null, because it was not pronounced within the year after the date of the submission; but there were more than two months more than a year intervening betwixt the date of the submission and the date of the decret, and so the same could not be found valid in law; especially where the same proceeds upon an alleged submission made, giving power to the judges to discern what proportion should be given to George of the goods controverted, which was a clause never communed on betwixt the parties, and to whom