

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

debt; or avoiding of penalties; in both which there was a favourable dispensation with the general rule.

THE LORDS having considered, that, in many such cases, decreets-arbitral have been pronounced on the last day; therefore find these words, *betwixt and the twenty-second*, include the day.

For Mrs Cockburn, *Hay*.

Alt. *Ja. Graham, sen.*

Clerk *Mackenzie*.

*Fol. Dic. v. 3. p. 37. Edgar, p. 17.*

1796. May 18.

LADY ELIZABETH MAITLAND, and OTHERS, *against* The REPRESENTATIVES  
of WILLIAM MITCHELL and JOHN ARNOT.

DAVID GAVIN left at his death four daughters, all of them under pupillarity, to whom he named Lady Elifabeth Maitland, their mother, the Earl of Lauderdale, and others, to be tutors and curators, Lady Elifabeth and any other tutor to be a quorum.

In 1779, Lady Elifabeth and Lord Lauderdale entered into a submission with Alexander Deas, together with William Mitchell and John Arnot, as his cautioners, respecting certain claims which their pupils and Deas had against each other.

By this deed, Lady Elifabeth and Lord Lauderdale, 'as tutors, and taking burden upon them for their pupils,' on the one part, and Alexander Deas, with consent of his cautioners, on the other, obliged themselves to fulfil the award of the arbiters; and his cautioners further agreed, 'That, in case any sum shall be found due by the said Alexander Deas, the said arbiters shall discern them, their heirs and successors, jointly and severally, with the said Alexander Deas, in payment thereof.'

The submission was kept in force by repeated prorogations for 13 years; in the course of which the Earl of Lauderdale and John Arnot died, Mr Gavin's eldest daughter was married to the Earl of Breadalbane, the second to Robert Baird, and all his daughters had attained majority.

In 1793, the arbiters pronounced a decree-arbitral, finding a balance of L. 891 : 10 : 8, due by Deas; and ordaining him, Mitchell, and the representatives of Arnot, to make payment of it to Lady Elizabeth Maitland, for behoof of Mr Gavin's representatives.

Soon after the date of this award Mitchell also died.

Lady Elizabeth, with concurrence of Lord and Lady Breadalbane, Mr and Mrs Baird, and her only surviving daughter, afterwards brought an action against the representatives of Mitchell and Arnot, for payment of the sum awarded, which, in consequence of family settlements, belonged wholly to Lord Breadalbane.

In defence it was

VOL. II.

4 M

No 31.

No 32.

A submission entered into by a quorum of tutors, 'taking burden upon them for their pupils,' falls by the death of one of the quorum.—A submission entered into by the tutors of a female minor falls by her marriage, unless her husband become a party to it.