

1741. *July 10.* CAPTAIN JOHN GARDNER *against* BROWN and COLVILL.

CAPTAIN GARDNER having a controversy with Brown of Cairnton and Colvill of Brūnton, by a missive to Brown proposed refering it to Lord Balmerino; and Brown, by his answer, agreed, and said that Colvill did so likewise, but there was no writing under Colvill's hand. Balmerino came to the ground, and having asked the parties, if there was any submission, was answered that they had bound themselves by missive letters; upon which he examined the witnesses adduced by all the parties, and gave his decret, which Gardner suspended. The Lords first sustained the objection to the decret-arbitral, that it proceeded upon a verbal submission, as to the rights of lands, so far as concerned Colvill, one of the parties, and therefore found it null. But afterwards they altered and sustained the decret-arbitral as binding on all parties. But the decret-arbitral containing a penalty, the Lords found the penalty not due. (See DICT. No. 10, p. 627.)

No. 6.

Verbal submission.

1742. *January 29.* DALGLEISH *against* JOHNSTONS.

A SUBMISSION by a poor old countryman of his right, which was without any doubtfulness in law, appearing to have been brought about by a trick, with the knowledge at least and privity of the arbiters, (also countrymen,) who thereupon gave a decret-arbitral against very plain law; the Lords not only reduced the submission and decret, and found the arbiters liable in expense and damages, but also fined and imprisoned them for eight days.

No. 7.

1748. *November 15.* MR. FRANCIS GRANT *against* OCHTERLONY.

DECRET-ARBITRAL pronounced in England by Englishmen upon a submission entered into there by Scots merchants, whereof one commonly resided in England and the other in Scotland, and in the Scots form, with a clause of registration in our books, where it was accordingly registrated, being quarrelled on the head of gross iniquity, as was pretended; and it being alledged that in England decreets-arbitral may be set aside on iniquity, though by our regulations 1695 they cannot; the Court was divided.

No. 8.

Foreign decret-arbitral.