

No. 4. 1738, Jan. 12. LORD LOVAT *against* FRASER'S CHILDREN.

THE question concerning the reduction of a decret-arbitral, for that all the articles claimed, were not determined, but some referred to the Judge Ordinary, seems to be of general importance. It carried by a majority to repel the reasons of reduction. What seemed to move some of the Lords was, that the submission was general, except as to one particular; and they thought, that though in special submissions, the whole particulars must be determined; yet in general submissions some articles may be determined, and others having no connection with the articles determined may be referred; and so where one particular is submitted, that one may be determined, and even others with respect to the general clause, and yet other articles having no connection with them left undetermined. *Renit.* Justice-Clerk, Drummore, Haining, Kilkerran, Leven, *et me.*

No. 5. 1738, July 13.—1741, July 10. GARDNER *against* M'ILHOSE.

THERE being an objection to the prorogation by arbiters of a submission that it wanted the writer's name; the Ordinary had sustained the nullity, but allowed a proof before answer of homologations. When the case was advised, some of the Lords doubted whether it was a nullity, but there being a proof of the petitioners compearing and giving in claims and others after the prorogation, they found the homologation relevant and proved. *2dly*, The submission being to the arbiters, and in case of variance to any one of them and the oversman, and the decret being by one of the arbiters and oversman upon the narrative of such variance; the Lords found that evidence enough of the variance, unless a proof had been offered that they did not meet, or had not finally varied; and therefore repelled the objection, that there was no reference by the other arbiter. *3tio*, The submission containing a penalty of L.100 Scots, the decret decerned a sum to be paid under L.7 of penalty, and by a separate clause decerned the decret to be performed under the said penalty in the submission of L.100 Scots. The Lords found, that both penalties could not exceed L.100, but did not find that a nullity in the decret. This second point was determined the same way, 24th February 1739, Walter Grossett *against* Colonel Erskine and Creditors of Balquhan.

No. 6. 1741, July 10. CAPTAIN GARDNER *against* BROWN, &c.

THE Lords, in respect this was a question of rights of lands, and that the submission, at least as to Burnton, was plainly no more than verbal, they found the same not binding, and therefore altered the Ordinary's interlocutor;—but 10th January 1739 they altered, and sustained the decret-arbitral.—13th July 1738.

The Lords found, that a submission not containing any penalty, nor power to the arbiter to decern in one, the penalty of L.5 in this case is not due, and found no damages or expenses due,—10th July 1741.

No. 7. 1742, Jan. 29. DALGLEISH *against* JOHNSTONS.

THE Lords fined and imprisoned arbiters for a decret-arbitral, when they saw the submission was brought about by a trick to which the arbiters were accessory, and the decret exceedingly unjust and contrary to law.