No 49. it is thought the arbiters had no power to ordain parties to diſcharge any thing, though of the ſame kind, and of no greater moment, than what was referred to them. 2*do*, The Colonel ſubmitted only as taking burden for the creditors that came within the price; whereas he is decerned to communicate to Ochiltree all rights he ſhall acquire, whether they come within the price or not, which was plainly *ultra vires*. 3*tio*, An arbiter, that minute he gives his ſentence, is *functus*, and hath no power to meddle in the execution or implementing thereof; and indeed, the framing of the writs was a moſt material part of the tranſaction, ſuch as ſhould have been perfected before expiring of the ſubmiſſion, the whole, in effect, depending upon it. 4*to*, It is not ſufficient that there be ſuch an interlocutor or decerniture, as virtually repell or ſuſtains every intereſt, or every allegation: For indeed, a ſlump decerniture does that; but it ought to be expreſsly done. So that the argument from the method of the Lords of Seſſion, is not to the purpoſe; for indeed, they are not bound to determine point by point; but one interlocutor ſuſtaining a libel, or ſuſtaining defences in general, is ſufficient.

The Lords found, That the general diſcharge is underſtood to extend no farther than the particulars which concern the lands and eſtate of Kintardine, expreſſed in the ſubmiſſion and decreet-arbitral; as alſo, that the rights to be acquired, decerned to be communicated, are underſtood to be ſuch rights only as fall within the price of the ſaid eſtate: And repelled the reaſons founded on the prorogation; and found, That the decreet-arbitral has decerned the ſubject ſubmitted point by point *in jure*, according to the meaning of the ſubmiſſion; and therefore repelled the reaſons of reduction, and aſſoilzied.

Fol. Dic. v. 1. p. 51. Forbes, MS.

1744. Sutherland of Cambuſavie, Suſpender.

No 50.
The Court were of opinion that a prorogation of a ſubmiſſion required to be atteſted by witneſſes.

The reaſon of reduction of a decreet-arbitral, That the prorogation which continued the power of the arbiters beyond the time limited, was not ſigned before witneſſes, having been repelled by the Ordinary; on adviſing a petition, the Court were of different opinions.

Some were for refuſing; for that the proceedings upon a ſubmiſſion were *instar judicii*, and needed not the ſolemnities of private deeds; that, for example, interlocutory orders for adducing witneſſes needed no witneſſes, and that as little did prorogations.

But the more general opinion was, That it was no leſs neceſſary formally to atteſt the ſubſcriptions of the arbiters to a prorogation, than the ſubſcription of the decreet-arbitral itſelf; that there was a plain difference between interlocutory orders and a prorogation; for that the decree could ſubſiſt without theſe, but not without the prorogation. And one of the Lords remembered a caſe between the town of Ayr and Bailie Maxwell, where a decreet-arbitral was reduced on that very ground, that the prorogation had not been ſigned before witneſſes.

The petition was appointed to be ſeen; but the queſtion was afterwards ſettled by the parties. No 50.

Kilkerran, (ARBITRATION.) *No* 5. *p.* 34.

1783. *June* 20. GEORGE ROBERTSON *againſt* ALEXANDER RAMSAY.

No 51.
The award, though ſigned by the arbiters, and delivered to their clerk, may be altered by them.

ALEXANDER RAMSAY being charged on a decreet-arbitral, decerning him to pay L. 130 Scots to George Robertſon; in a bill of ſuſpenſion,

Pleaded: Before pronouncing this award, the arbiters had given a judgment, finding the ſuſpender liable only in L. 3 Sterling, which had been ſigned by them, and delivered to the clerk of the ſubmiſſion. In this manner their authority was at an end, and the rights of the parties unalterably aſcertained.

Anſwered: Till an award has been delivered to the parties, or put upon record, it may be reviſed, or altered by the arbiters, in the ſame manner as the interlocutor of a judge, before it is put into the proceſs. The clerk in a ſubmiſſion being the ſervant of the arbiters, his poſſeſſion of the ſigned award in this caſe was of no greater effect than that of the arbiters themſelves.

THE LORDS 'found the letters orderly proceeded, and expences due.' (*See* WRIT. Delivery in what caſe neceſſary.)

Lord Ordinary, *Braxfield.* Act. *Cha. Hay.* Alt. *Sir John Ramſay.* Clerk, *Menzies.*
Craigie. *Fac. Col. No* 108. *p.* 171.

1787. *January* 31.
WILLIAM DREW and PATRICK M'MILLAN, *againſt* DAVID MANSON.

No 52.
Both ſubmiſſion and decreet-arbitral may be lawfully written on the ſame ſheet of ſtamped paper.

DREW and M'Millan inſtituted againſt Manſon a reduction of a decreet-arbitral, on this ground, That it was written on the ſame ſheet of paper with the ſubmiſſion, and not on a ſeparate ſheet of ſtamped paper, in terms of the ſtatute 23d Geo. III. c. 58. which enacts, 'That for every piece of vellum or parchment, or 'ſheet or piece of paper, upon which ſhall be ingroſſed, written or printed, any 'award, there ſhall be charged a ſtamp-duty of five ſhillings.'

Pleaded for the defender: 1*mo*, A decreet-arbitral in the Scotch form is not comprehended under the word 'Award,' which is an expreſſion peculiar to the law of England; and therefore, though the thing ſignified were the ſame in both countries, ſtill the ſtatute would not reach beyond the proper acceptation of the term. This ſtrict limitation has accordingly obtained in practice with reſpect to the other ſtamp-acts. But, 2*do*, As the ſubmiſſion is written on paper paying the requiſite duty; and as both ſubmiſſion and decreet-arbitral conſtitute one individual contract, the latter has been properly ingroſſed on the ſame paper with the former; and there is no ground for the objection as to the ſtamp-duty.