No. 8. 1748, Nov. 15. GRANT *against* OCHTERLONY.

A SUBMISSION being entered into betwixt these parties in London, but in our Scots form with a clause of registration in the Books of Session, the arbiters decerned L.200 or L.300 to be paid by Grant to Ochterlony, upon which Grant was charged; and he suspended, and raised reduction upon the head, he said, of gross iniquity;—and the question was, whether we could set it aside on iniquity, in respect that it was entered into in England, notwithstanding the regulation 1695? that is, whether it is to be governed by the law of Scotland or England, where it is supposed in this argument it might be set aside? There had been two former submissions by bonds conditional in the English form; and we were told from the Bar, that the arbiters observing that the balance would come out against Mr Francis Grant, proposed that it should have a clause of registration in Scotland; upon which the last submission was made;—and this last determined me to think the law of England should be the rule; because the general rule is, that the law of the *locus contractus* must govern all contracts; as we have often judged in the questions of the statute of limitation of promissory-notes, accounts, &c.; and though it might be reasonable to have execution in Scotland, yet I could not think the parties meant to make the award short of the balance come out against Mr Grant, but subject to review if due by Auchterlony. Dun, Minto, and President, thought the law of Scotland is the rule of judging; and the President thought that the form of the deed made Scotland the *locus contractus;* but Kilkerran and Drummore thought the law of England was the rule; and Milton wanted first to hear the iniquity; and without a vote we remitted to the Ordinary to hear them on the article of enorm lesion that he complains of, and to give in his article signed.

No. 9. 1751, June 11. M'KENZIE of Redcastle *against* SIR T. CALDER.

THESE parties entered first into a general submission of all claggs and claims, excepting one particular claim, and sometime thereafter they entered into another submission to the same arbiters of that claim, but without any general clause. The arbiters gave in their decreet on both, and ordered general discharges to be granted of all claggs and claims before the date of the last submission. Redcastle wanting to get free of this decreet-arbitral, suspended it as being *ultra vires* in ordering discharges of claims arising after the first submission, which the second submission gave them no power to do, though he owned that there were no new claims known to him. The charger *inter alia* alleged homologations, by giving up vouchers to be burnt, whereof the Ordinary allowed a proof before answer. Redcastle complained, for that the proof by witnesses to rear up claims was not competent. But we thought there was no nullity in the decreet; that though the decreet would be good only as to claims preceding the first submission, yet that was no nullity, especially since there were no new claims; as we have seen sundry decreet-arbitrals, ordering such discharges of all claims preceding the decreet erroneously, instead of preceding the submission, which was never found a nullity.