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

No. 6.
Verbal submission.

CAPTAIN GARDNER having a controversy with Brown of Cairnton and Colvill of Brunton, 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 decreet, which Gardner suspended. The Lords first sustained the objection to the decreet-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 decreet-arbitral as binding on all parties. But the decreet-arbitral containing a penalty, the Lords found the penalty not due. (See DICT. No. 10, p. 627.)

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

No. 7.

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 decreet-arbitral against very plain law; the Lords not only reduced the submission and decreet, and found the arbiters liable in expense and damages, but also fined and imprisoned them for eight days.

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

No. 8.
Foreign decreet-arbitral.

DECREET-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. whether such reduction was competent here of the decreet. *Pro* were, Milton, Drummore, Kilkerran, *et ego*. *Con* were, President, Dun, Minto. But without a vote, we remitted to the Lord Ordinary to hear parties procurators on the article of enorm lesion. N. B. There had been two former submissions in the English form by bonds conditional. See FOREIGN.

1751. *June* 11. M'KENZIE of Redcastle *against* Sir THOMAS CALDER.

No. 9.
No nullity, that the award is to a certain extent *ultra vires*.

THERE being two submissions, one general of all claims excepting one particular, and thereafter a submission of that particular claim to the same arbiters, but without any general clause; the arbiters gave one decreet on both, and *inter alia*, by mistake, ordered general mutual discharges of all claims prior to the date of the second submission. One of the parties objected this as a total nullity of the decreet-arbitral, though he did not pretend to have any new claim arising after the date of the first general submission; but we thought it was no nullity in the decreet. There have been many decreets-arbitral that ordered such discharges of all claims prior to the decreet, which, though erroneous and *ultra vires* as to claims after the submission, yet were never found to annul the decreet as to the matters submitted.

See Hepburn against Hepburn, 1st December 1736, *voce* HOMOLOGATION and *voce* WRIT.

See Kerr against Clerk, 19th February 1751, *voce* BILL OF EXCHANGE, relative to a submission by mutually accepting bills.

See NOTES.