

marriage ; and he thought that, suppose she had rashly given her consent within that age, yet she might retract it *rebus integris*, before the *copula* followed, which was the case here.

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1756. July 16. JANET ROBERTSON *against* CLEPHAN.

IN a tack that was granted of a coal, there was a reference made to certain persons to settle some terms of the bargain that were not covenanted at the time of granting the tack, and also to determine any controversy that might arise betwixt the parties. The reference was in the style of a submission, and the referees pronounced a decret as arbiters : The question, Whether this award of the referees was a decret-arbitral, falling under the regulations of the statute 1696, or whether it was only *arbitrium boni viri*, that could be corrected by the judge, if it was manifestly iniquous ? And the President said, That the referees in this case were not arbiters, but arbitrators, according to the distinction of L. 79, *Pro Socio* ; and there was a great difference betwixt a reference of a *lis*, or subject in controversy, and a reference of a bargain not adjusted, though he observed that the writers had not any difference of style to distinguish the one from the other. This distinction, he said, was established, by a solemn and unanimous decision, in the case of my Lord Couper.

With the President the majority of the Lords agreed, and it was remitted to the Ordinary to hear parties upon the equity of the determination of the arbiters.

Some of the Lords observed that the subject of the reference was of a mixed nature, partly to adjust the terms of the bargain, and partly to determine controversies that might arise upon the bargain ; for it was a contract about a coal that was not yet discovered, so that, of necessity, many things would remain to be adjusted in the bargain, which could not be foreseen by the parties, and many controversies would arise about the execution of the agreed terms of the bargain. *Dissent.* Minto ; *Kaimes non liquet.*

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1756. July 16. BLAIR *against* HARLE.

IN this case it was unanimously determined that the purchaser of an incomplete right to lands was liable to sustain a challenge of his right, on the head of fraud and circumvention by his author. And accordingly the Lords, in this case, did reduce the right to the lands, on account of the author's having obtained it by fraud and circumvention, though that right was completed in the purchaser, by infertment, before reduction was raised.

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