assoilyied from the reduction of the decreet-arbitral, (18th November 1777.) They found that there was no proper *error calculi;* that the arbiters had had the mode and extent of the measurement expressly under their consideration, and had determined upon it. Therefore any error which could be charged against them, if there was any, was not an *error calculi* but iniquity; which was clearly incompetent.

COLIN DUNLOP *against* WALTER RALSTON, &c.

IN a dispute betwixt Colin Dunlop, merchant in Glasgow, and Walter Ralston &c., in Carmyle; Mr Wallace of Cairnhill, advocate, sole arbiter, pronounced a decreet-arbitral. In the reduction, whereof it was objected that he had decerned for £40 for his own trouble, and £6 for his clerk;—it was argued, that, though an arbiter is justly entitled to a gratuity for trouble, and may even prosecute for it before the Judge Ordinary, yet it is not lawful for him to modify the extent of it himself, or to decern for it. So that, in so far, the decreet-arbitral was *ultra vires*. The fact was admitted as to the decerniture. But it was said that the scroll of the decreet had been shown to the parties' agents, and not objected to. This was refused; at least that they had not agreed to the sums awarded. The Lords, *inter alia*, repelled the objection, as it did not appear that any thing unfair was meant; and though Ralston reclaimed against the interlocutor, as to the other points, this point was not mentioned.

1777. *June* 18. WILLIAMSON of PATTERHILL *against* DINWIDDIE of GERMISTON.

SHOULD it so happen that a decreet-arbitral is so indistinctly worded as not to be intelligible, it can receive no execution, and must go for nothing;—an arbiter cannot be allowed to explain his meaning. It is the same in judicial proceedings, if a decreet is pronounced and extracted, the Judge is *functus*, and all explanation is at an end; at the same time, if the terms of a decreet-arbitral are clear, it would seem to be good, although some further steps may be necessary to give it *parata executio*. Thus should an arbiter find, that one of the parties must repair or rebuild such parts of a dike, or ditch, which he had thrown down; nothing hinders further proof to be led before a Court to ascertain this in order for execution, without infringing on the decree. This occurred in a case between *Williamson of Petershill* and *Robert Dinwiddie of Germiston*, (8th February 1775,) two heritors in the neighbourhood of Glasgow. They had quarrelled about cleaning a gott between their lands; Dinwiddie alleging that Williamson had not only cleaned it, but deepened it, and thereby damaged his property, by bringing down the sides of it in several

places. The arbiters ordained Williamson to repair those places which he had damaged, without pointing them out more minutely. And, in a suspension, the Justice-Clerk, Ordinary, appointed them to be measured and ascertained, by the oaths of the arbiters, and the parties; and held, that, notwithstanding of this, the decreet-arbitral was good; and, in a suspension of it, he found the letters orderly proceeded.

The Lords were of the same opinion; and, therefore, as Mr Dinwiddie had referred the particulars of the breaches to Mr Williamson's oath, (4th February 1777,) they pronounced an interlocutor, "Finding that Williamson was bound to implement the decreet-arbitral, and to make the repairs thereby decerned, to the extent mentioned in his deposition, on the charger's reference; to that extent therefore found the letters orderly proceeded."

Williamson reclaimed, and prayed the Court to reduce the decreet-arbitral as indefinite and unintelligible,—or at least to turn it into a libel. This last demand was treated as a novelty; and, upon advising petition and answers, the Lords, (18th June 1777,) adhered, and refused the petition. They found expenses due.

From certain decisions in the Dictionary, *voce Indivisible*, Vol. I. p. 462, it seems to have been the opinion of the Court, not to indulge with the privilege of summary diligence any part of a decreet-arbitral, where some part of it was *ultra vires;* but that it was necessary to submit the whole to the consideration of a Court of Justice, in the ordinary form, before any execution could go out upon it.

But in arguing on the cause, Cramond *against* Jack, (underwritten,) the Lords held, that, where a decreet-arbitral is pronounced *ultra vires*, yet if these parts *ultra vires* can be separated from the rest, though the decreet will be null as to these, it will stand in full force as to the rest.

1777. *March* 4. DAVID JACK *against* GEORGE CRAMOND.

IN a cause, David Jack against George Cramond, for reducing a decreet-arbitral, Lord Hailes, Ordinary, found, (19th December 1775,) "That the arbiters, by decreeing the sum of £18 : 15 : 6d. sterling to be paid for their own fees, for the fees of their clerk, and for incidents in the course of the submission, had exceeded the powers conferred on them by the submission, and did a thing of evil example, and which, if once established by authority of a Court of Justice, might tend to the grievous oppression of the lieges. But finds, That this decerniture for £18 : 15 : 6d. is totally distinct from and unconnected with the other parts of the decreet-arbitral, and could have no influence thereon; and, therefore, that the decreet-arbitral may, and ought to subsist, in all its other parts, notwithstanding this error and excess; and, therefore, sustains the reasons of reduction as to the said sum of £18 : 15 : 6d., but repels the reasons of reduction *quoad ultra*.

On a bill, and answers, the Lords adhered, (20th July 1776.)