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.

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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.)

But, on a second bill, and answers, and it appearing that, of the above £18 : 15 : 6d., twelve guineas had been stated for the arbiters,—though not paid them,—at least they so averred; the Lords found it a practice illegal and corrupt, and therefore they reduced the decreet-arbitral, and found expenses due by the party. They would have found them due by the arbiters,—but they were not parties to the process. (18th December 1776,) "Found that the arbiters decerning twelve guineas for their own trouble was illegal, and corrupt; and therefore sustains the reasons of reduction of the decreet-arbitral, and reduce, decern, and declare accordingly. Found expenses due, and ordain the pursuer to give in an account thereof."

On advising another reclaiming petition and answers; the Lords continued to be of opinion, That, although it was usual, and not unlawful for parties to give, and for arbiters to accept of a gratification for their trouble,—yet that, *de jure*, they were not entitled to any; much less could they award such in their own favours. But, as in this case, it appeared to have been done from ignorance of the law, and from *no bad* intention; it did not merit the epithet of corrupt: they therefore returned in effect to the Ordinary's interlocutor, annulling the decreet-arbitral, so far as it related to the decerniture of twelve guineas to the arbiters; but supporting it *quoad ultra*. (4th March 1777.)

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1773. *February* . EWING *against* GARDNER.

AN oversman, in a submission, cannot intermeddle,—unless the arbiters differ in opinion, and choose him to be oversman on that account. See *Gordon* against *Abernethy*, 30*th November* 1716, observed by Dalrymple. *June* 1724, *Rigg*, observed by Lord Bankton, *B. I. tit.* 23, § 9. The point again occurred, *Ewing* and *Gardner*, *February* 1773. In this last case, the oversman was appointed by an inaccurate minute signed by the arbiters, but not formally tested,—and which did not bear that the arbiters had differed. But the decreet-arbitral pronounced by the oversman bore it, and was signed by him with concurrence of one of the arbiters.

# DELINQUENCY.

1774. *July* 6. WARRAND *against* FALCONER.

FALCONER, merchant at Inverness, wrote a letter to Mr Oliphant, Postmaster-General of Scotland, accusing Mr Warrand of malversation in office. Mr Oliphant, considering the charge against Warrand to merit cognition, transmitted the letter to him, in order to give him opportunity to vindicate himself. Upon this, Warrand brought an action of damages against Falconer, who