

Ordered and adjudged that the interlocutor be, and the same is hereby affirmed.

For Appellant, *Wm. Alexander, Arch. Cullen.*

For Respondent, *John Clerk, David Cathcart.*

1805.

GLOVER

v.

GLOVER, &c.

NOTE.—Unreported in the Court of Session.

WILLIAM GLOVER, Merchant, Leith,	.	<i>Appellant ;</i>
JOHN GLOVER, Wright in Leith, and Wm.	}	<i>Respondents.</i>
KEIR, Merchant there, Oversman.		

House of Lords, 11th February 1805.

SUBMISSION—ARBITERS—POWERS TO PROROGATE—OVERSMAN.—

Disputes as to an accounting in a copartnership concern, were, after action was raised, submitted to arbitration. The submission conferred a power on the arbiters to prorogate the submission from time to time, and provision was made for an oversman in case of difference of opinion. They differed in opinion; and the matters coming before the oversman, he prorogated the submission. There was no power conferred on him to do so by the submission. In a reduction of his decree, Held, that though the submission conferred no express power on the oversman to prorogate, yet that the powers of doing so, conferred on the arbiters, must be held as having devolved on him, when they differed in opinion.

The appellant, and the respondent, John Glover, were partners in business together, which was carried on in Leith as merchants and herring-curers there. On the dissolution of the concern in October 1799, the respondent, John Glover, brought an action of count and reckoning before the sheriff, to ascertain and recover a balance alleged to be due to him upon the books of the company.

The matters in dispute were, of this date, submitted to Nov. 14, 1799. the arbitration of two arbiters, with power, in case of difference, to appoint an oversman. The arbiters proceeded, by the aid of an accountant, to investigate the books and the affairs of the company, when, having differed in opinion, the other respondent was chosen oversman in terms of the submission. The oversman's first order was, of this date, to Oct. 27, 1800. prorogate the submission, in order to keep it from expiring, which it did in the lapse of the year. And, of the same date, he ordered the appellant to deliver up all books and

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papers, &c. within a specified time. Various procedure followed, apparently resorted to for the purpose of delay. A second prorogation of the submission by the oversman took place. Interim decrees were pronounced, when, at last, the whole was brought into the Court of Session on the part of the appellant by a bill of suspension, together with a reduction of the decrees, upon the ground that the whole procedure was null, because though the arbiters had conferred upon them a power to prorogate the submission, yet as no such power was conferred on the oversman to do so, the prorogation was inept, and the whole proceedings null and void.

Feb. 21, 1802. The Court, of this date, pronounced this interlocutor:—"Repel the reasons of reduction, assoilzie the defenders, and decern; find the pursuer (appellant) liable in expenses, and allow an account thereof to be given in."

Mar. 11, 1802. On further petition, the Court adhered.

Against these interlocutors the present appeal was brought.

Pleaded for the Appellant.—In this case, the arbiters to the submission had alone power to prorogate the submission; but no prorogation was executed by them. The oversman had no powers to prorogate. The prorogation therefore executed by him without such power, and without even being consented to by the arbiters, was ineffectual. In the case referred to by the respondent, there was an express power conferred on the oversman as well as the arbiters.

Macrae's
Case Infra.

Kilker. p. 35.
Mor. p. 657.

Pleaded for the Respondents.—Whatever powers are conferred by the submission on the arbiters, mutually chosen, are held to devolve on the oversman, where provision is made for an oversman to determine in case of difference of opinion. And therefore a clause, in such a submission, empowering these arbiters to prorogate from time to time, must be held to devolve on, and be transferred to the oversman. It was so decided in the case of *Macbride v. Representatives of Macrae*, 1st July 1748.

After hearing counsel, it was

Ordered and adjudged that the interlocutors be, and the same are hereby affirmed, with £40 costs in each appeal.

For Appellant.—*Wm. Adam, John Clerk, Geo. Cranstoun.*

For Respondents.—*Wm. Alexander, Thos. W. Baird.*

NOTE.—Unreported in the Court of Session.