May 19, 1815.

PARTNERSHIP.

the same in both; that there was no fraud so as to invalidate the contract; and that there was no ground to put an end to the concern on account of its being a ruinous one, or from any improper advantage having been taken of the appointment of the Respondent to the management for life. That stipulation would end with his life, and then the parties would have an opportunity to determine who should be the manager. It appeared to him then that there was no sufficient ground to reverse this judgment, and that it ought to be *affirmed*.

Judgment accordingly *affirmed*.

Agent for Appellant, RICHARDSON.
Agent for Respondent, SPOTTISWOODE and ROBERTSON.

SCOTLAND.

APPEAL FROM THE COURT OF SESSION, (2D DIV.)

SHARPE and others—*Appellants*.
BICKERDYKE and others—*Respondents*.

Feb. 20, 22, 24, 1815.

DECREET ARBITRAL—(AWARD).

WHERE an arbitrator thought it necessary before decision to have the admission of the parties in writing that they had nothing further to offer, and that they desired a decision on the case as it stood, and was led to believe that a letter to that effect signed by all the parties was in the hands of the clerk to the submission, and stated on the face of the award that he had considered that letter, and it afterwards appeared that one of the parties had made no such ad-

mission, and had signed no such letter, and had material evidence still to produce, and on that account applied to the Court to have the award set aside; held by the House of Lords, reversing a judgment of the Court of Session, that the award ought not to stand.

Feb. 20, 22, 24, 1815.

DECREET ARBITRAL—(AWARD).

THIS was a process raised in the Court of Session by Bickerdyke and others, against Sharpe and others, to recover a sum of about 2000*l.* which was alleged to have been paid by mistake, by the former to the latter, in the course of certain transactions not necessary for the present purpose to be stated. After some proceedings in the Court of Session the matters in dispute were submitted to arbitration, and the arbitrator after the case had been depending before him for about four years, pronounced his decreet arbitral (award), in which was the following passage:—"Having considered "the aforesaid depending process, whole steps and "grounds, and warrants thereof, and the memo-"rial for the said first party, answers thereto, and "whole productions by the parties, and *also the* "*letter from the parties of the* 21*st day of April*, "1805, wherein they stated, that they had nothing "further to add to the above-mentioned pleadings; "and having heard parties, or their doers, *vivâ* "*voce*, and being now with the whole matters sub-"mitted well and ripely advised," &c.

Messrs. Sharpe and Co. raised a process of suspension of the charge for implement, and then a summons of reduction of the decreet arbitral; on the ground that no such letter as that of the 21st of April, mentioned in the decreet had been signed

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by them, or any person on their behalf, and that they had not been heard *vivâ voce* before the arbitrator as erroneously stated in the decreet. The Court of Session allowed a proof as to the allegation respecting the letter. It was admitted that the arbitrator himself had never seen the letter, but had trusted to the information of the clerk to the submission. One Mathie, the agent for Messrs. Sharpe and Co., deponed "that he never, as such agent, "signed any letter or paper mentioning that they "had nothing to state in addition to what was already "before the arbiter, but he was applied to by a "clerk of Messrs. Graham and Mitchel (Mitchel "was the clerk to the submission) to sign on the "part of the Pursuers (Sharpe and Co.) a letter "which the said clerk presented to the deponent, "and which was signed by Lang and Newbigging, "writers, on behalf of the other parties, that the "import of the letter was, that the parties had "nothing further to state, and craving a decision "of the arbiter; that deponent told the person "who presented the letter that he could not sign "it, that the Pursuers had offered to adduce proof, "but had not yet had an opportunity of doing so, "that the letter presented to him was dated "17th April, 1805." Mr. Oswald, the Arbitrator, deponed "that he directed A. Mitchel, clerk to "the submission, to procure a letter from the "parties, stating that they had nothing further to "say, and stated to Mr. Mitchel that agreeably to "his uniform practice as an arbitrator, he could not "pronounce any award until he received a decla-"ration to the above effect: that in general in other

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"cases where he had frequent opportunities of "seeing the parties; he was satisfied with a verbal "declaration, but in the present instance he was "anxious to have a written declaration, particularly "from the Pursuers, that the letter 17th April, "1805, signed by Lang and Newbigging, was in "terms of the directions to A. Mitchel, that he "never saw any written declaration from the parties "in the present case, bearing that they had nothing "further to say, at least he has no recollection of "having seen any such written declaration, and he "believes he never did see any such writing: that "Mitchel repeatedly informed deponent that he "had obtained from the parties the written declara- "tion which deponent had desired him to get, and "as to that particular deponent trusted to Mitchel, "that as to the correctness and truth of what was "stated in the award relative to the letter of 21st "April, 1805, he trusted to Mitchel." Mitchel deponed "that he is satisfied that the part of the "decreet arbitral which relates to the letter of the "21st April, 1805, is correct, from his having "carefully revised the scroll of the decreet both by "himself, and along with Mr. Oswald, and from the "particular accuracy of Mr. Barrowman, and not "from recollection of having compared the draft "of the decreet with the papers therein referred "to, the deponent at this distance of time having "no distinct recollection as to that matter, but "from his general practice in such matters he has "no reason to doubt that he examined the writings "referred to in the scroll of the decreet arbitral in "question." Barrowman, Mitchel's clerk, depones

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"he cannot say from recollection at this distance "of time that he ever saw the letter of the 21st of "April, 1805, referred to, and though he thinks "he must have seen such a letter when he pre-"pared the scroll, &c., and he has farther a sort of "faint recollection of having seen such a letter, "though it is so indistinct that deponent himself "does not rely much upon it." The Court below decided that the award ought to stand, and the Pursuers appealed.

Cases cited for Appellants, *Logan v. Lang*, Fac. Coll. 15th Nov. 1798.—For Respondents, *Kirkaldy v. Dalgairns,* Fac. Coll. Dec. 1808—9, *et ib cit. Black* and *Knox v. Livingston.*—*Hardie v. Hardie,* 18th Dec., 1724, Dict. 1.—*Williamson v. Fraser,* Dict. 3.—*Hetherington v. Carlyle,* Fac. Coll. June, 1771.—And the act of *Sederunt,* or regulation of 1695, was particularly relied upon.

Romilly and *Horner* for Appellant; *Leach* and *Brougham* for Respondent.

Feb. 24, 1815. Judgment.

Lord Eldon (C.) The question was whether—if the arbitrator was of opinion that he ought to have the admission of the parties that they had nothing farther to offer, and that they desired a decision upon the case as it stood, and he expressed that opinion on the face of the award, and that the parties had stated that they had nothing farther to offer, apprehending that he had their admission to that effect when he had not, and the circumstance was material—any acts of *Sederunt* or proceedings of Court ought to prevent the award from being

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impeached; they who said that the award could not be impeached, contending that an arbitrator might say that one party should be heard throughout, and the other not at all; for to that extent the argument must in principle be pushed. But his (Lord Eldon's) opinion was, that by the great principle of eternal justice, which was prior to all these acts of *Sederunt*, regulations and proceedings of Court, it was impossible that an award could stand where the arbitrator heard one party, and refused to hear the other; and on this great principle, and on the fact that the arbitrator had not acted according to the principle upon which he himself thought he ought to have acted, even if he decided rightly he had not decided justly; and therefore the award could not stand. In order that the ground of their Lordships' decision might not be misunderstod, it would be proper to embody the principle in the judgment which they pronounced.

Judgment of reversal accordingly; the whole of the facts and circumstances being there recited, so as to prevent its being a precedent for any case differing in the facts and circumstances.

Agent for Appellants, SPOTTISWOODE and ROBERTSON.
Agent for Respondents, RICHARDSON.