

1815.

ROBERTSON
v.
THE DUKE OF
ATHOLL.
Dec. 11, 1810.
Jan. 11, 1811.

“ is not barred by the exceptions from the warrandice, either
“ in the articles of roup, or in the decret of sale, sustains
“ the reasons of reduction : Finds that the feu-charters granted
“ to the defenders are effectual only with regard to the houses
“ and gardens, but ineffectual as to the grass lands, and as to
“ the lands of Point, and decerns.”

On reclaiming petition, the Court adhered. And on second
reclaiming petition, the Lords adhered.

These interlocutors having been brought by appeal to the
House of Lords, their Lordships were pleased to affirm the
same.

For the Appellants, *Wm. Adam, Ar. Fletcher.*

For the Respondents, *Sir Saml. Romilly.*

NOTE.—Unreported in the Court of Session.

(Reduction of Contract and Decreet Arbitral, &c.)

Major-General ROBERTSON of Lude, . . . *Appellant* ;
JOHN, DUKE OF ATHOLL, *Respondent.*

House of Lords, 20th April 1815.

REDUCTION—DECREE ARBITRAL—RELEVANCY.—A reduction was
brought of a contract, a decree arbitral, judgment of the
Court of Session, which pronounced in terms of the decree
arbitral, and a judgment of the House of Lords. Held that
no relevant grounds in law had been stated for reducing these.

The appellant's father, it was stated, had, previous to his
death, and subsequent to the judgment in the House of
Lords in the previous appeal in reference to the same subject
of dispute (*vide ante*, vol. iv. p. 54), recovered some additional
evidence, which, as was alleged, brought more distinctly to
light the circumstances under which the deed or contract of
1716 was granted ; and he was, therefore, advised to bring a
new action of reduction of that deed or contract, and of the
decret arbitral following upon it in 1761, as well as of the
judgments of the Court of Session and House of Lords pro-
nounced thereon.

This action of reduction stated as reasons for so reducing
these, *inter alia*, that “ the said contract is not only unjust and
“ unfair in itself, but was brought about by *force* and *com-*

“*pulsion*, so as to be challengeable, *ex capite vis et metus*.
 “The said decree arbitral is not only unjust, but radically
 “defective, in respect the arbiter acted *ultra vires*, but the
 “decreet is in itself contradictory, unintelligible, and inex-
 “tricable.”

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The defences returned were in these words, “Seen and
 “returned with this defence, that no relevant reasons of re-
 “duction are libelled, and deny the libel.”

This action, after the death of his father, was revived by the
 appellant, and after various procedure had, the Lord Ordinary
 pronounced this interlocutor: “Having advised these con-
 “joined processes, and considered what passed at a very full
 “hearing of counsel thereupon, and having heard nothing
 “stated, which appears to him to possess any aspect of rele-
 “vancy for reducing the decreet arbitral, 1761, which, under
 “the judgments of this Court, and of the House of Lords,
 “forms the rule of possession of the parties, with respect to
 “the matters in dispute, of new sustains the defences pleaded
 “for the defender in the original process of reduction, and
 “now again proponed in the conjoined processes; repels the
 “reasons of reduction, whether of the said decreet or of the
 “contract, 1716, or other rights recognized by it as valid,
 “refuses this representation, and assoilzies the defender; and
 “with respect to the declaratory conclusion in the new
 “summons, being of opinion that they are either ill-founded
 “in law, or adverse to the judgments above mentioned, pro-
 “ceeding on the present validity of the said decree arbitral,
 “assoilzies the defender therefrom, but without prejudice of
 “his enjoyment and possession of the subjects in question,
 “continuing to be regulated by the said judgments, and
 “subject to the same, and under this quality decerns; finds
 “the defender entitled to expenses, and remits the account
 “thereof when put in to the auditor, and dispenses with any
 “representation, but supersedes extract during the vacation.”
 On reclaiming petitions being given in to the Court, the
 judges, adhered.

March 11, 1808.

Jan. 7, 1809.
 Feb. 2, 1809.
 Feb. 18, 1809.
 June 20, 1809,
 and July 6,
 1809.

On appeal to the House of Lords, these interlocutors were
 affirmed with £100 of costs.

For the Appellant, *Sir Saml. Romilly, John Haggart,*
Duncan M'Farlane.

For the Respondent, *Wm. Adam, Ar. Fletcher.*