

This does not break in at all on the principle that they might be liable personally if they homologated what had been done. But the condescendences and case carry it no further than mere presence at meetings.

July 1, 1816.

ROAD TRUSTEES.—PERSONAL LIABILITY.

I propose, therefore, that the interlocutors complained of be affirmed generally as they stand.

Judgment of the Court below *affirmed*.

Agent for Appellant, CAMPBELL.

Agents for Respondents, SPOTTISWOODE and ROBERTSON.

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SCOTLAND.

APPEAL FROM THE COURT OF SESSION.

MAULE—*Appellant*.

MAULE—*Respondent*.

SUBMISSION and decret arbitral in 1782 between A. and B.; the latter taking burden upon him for his son C., a minor, whose interest was concerned. B. dies in 1789, and C. comes of age in 1794, and does various acts under the decret arbitral, believing it to be a *bona fide* submission and award. In 1809, C. discovers the uncorrected scroll of the submission, and letters of one of the arbiters, from which it appears that the arbiters had not been left to the free exercise of their own judgment on the matters referred to them, but had been bound down by a previous agreement or compromise between the parties; so that the transaction was in reality an agreement to be carried into execution under the colour of an award. Held by the House of Lords, reversing the judgment of the Court of Session,

April 9,  
May 10, 1816.

DECRET ARBITRAL (AWARD), NOT VALID AS SUCH, IF USED AS A CLOAK FOR A TRANSACTION OF A DIFFERENT NATURE.

April 9,  
May 10, 1816.

DECREET AR-  
BITRAL  
(AWARD),  
NOT VALID AS  
SUCH, IF  
USED AS A  
CLOAK FOR A  
TRANSACTION OF A  
DIFFERENT  
NATURE.

Leases of the  
houses and  
parks of Pan-  
mure and  
Brechin.

that, under these circumstances, and upon this evidence, the transaction was not a valid decret arbitral, nor binding as such upon C.

THE estates of Panmure having been forfeited to the Crown in 1715, by the attainder of James, then Earl of Panmure, and brought to sale, were purchased by the York Building Company; and that Company, on April 23, 1724, executed a lease for ninety-nine years, of the house and parks of Panmure, to the Countess of Panmure, widow of Earl James, and her assignees whatsoever, at 100*l.* yearly rent; and a lease, of the same date, of the mansion-house and parks of Brechin to Mr. Harry Maule, brother and next heir of Earl James, and to his assignees whatsoever, for ninety-nine years from the time of his entry, which was declared to be at the determination of the said Countess of Panmure's life-rent of the subjects, for 50*l.* yearly rent.

Entail of the  
estates of  
Kellie and  
Ballumbie,  
1730.

In 1730, Sir Harry Maule, with the concurrence of his sons William and John, executed a strict entail of the estate of Kelly; and the son William, of the same date, executed an entail of the estate of Ballumbie, to which he was then entitled in possession, to the same series of heirs; and also granted an obligation to employ a sum of 9000*l.* sterling in the purchase of lands, to be settled according to the provisions of the entail, in consideration of a bond for 10,000*l.* which had been granted by the late Earl of Panmure to the Countess previous to his forfeiture, to which he, William, had acquired right. The Countess and Sir Harry, in

the same year, also executed entails of the leases of the mansion-houses and parks of Panmure and Brechin, to the same series of heirs. The destination was, after Harry Maule's decease, to William Maule, his eldest son and the heirs male of his body; whom failing, to John Maule, his other son, and the heirs male of his body; whom failing, to any other heirs male to be proceated of the body of Harry Maule; whom failing, to Dr. Henry Maule, Lord Bishop of Cloyne, in Ireland, his next heir male, and the heirs male of his body; whom failing, to James Maule, the Bishop's brother, and the heirs male of his body; whom failing, to the nearest lawful heirs male of Harry Maule; whom all failing, to his nearest lawful heirs and assignees whatsoever. The entails were never recorded.

The Countess of Panmure died in 1731, and Mr. Harry Maule in 1734; and William the eldest son, afterwards created an Irish Peer, with the title of Earl of Panmure, made up titles to the estate of Kellie upon Harry Maule's investitures, dated 1687, which did not extend the substitution to the Bishop of Cloyne. He continued to hold Balumbie on his title prior to the entails, and he possessed the mansion-houses and parks of Panmure and Brechin, without any acknowledgement of the entails of the leases, from 1734 to 1781, the period of his death, previous to which he purchased the property of the subjects of the leases.

In July, 1781, John Maule, the other son of Harry, a Baron of the Exchequer, died without issue, having bequeathed to Lieutenant Thomas Maule, grandson of the Bishop of Cloyne, and

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TRANSACTION OF A  
DIFFERENT  
NATURE.

Entail of the  
leases, 1730.

Substitution  
in the entails.

Death of H.  
Maule, 1734.  
His son Wil-  
liam possesses  
without ac-  
knowledging  
the leases.

Death of John  
Maule, 1781.

April 9,  
May 10, 1816.

DECREET AR-  
BITRAL  
(AWARD),  
NOT VALID AS  
SUCH, IF  
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CLOAK FOR A  
TRANSA-  
CTION OF A  
DIFFERENT  
NATURE.

Entail of  
1781.

Death of Wil-  
liam Earl of  
Panmure,  
1781; and  
competition  
between the  
claimants  
under the en-  
tails 1730, and  
the claimants  
under the en-  
tail 1781.

Interlocutor,  
1782, sustain-  
ing the claim  
to the leases  
under the en-  
tails of 1730.

Appeal.

Arbitration.

father of the Appellant, a bundle of papers, includ-  
ing the entails of 1730, and the obligation for  
9000*l*.

The Earl of Panmure having purchased the whole  
of the family estates in Forfarshire, including the  
subjects of the leases, in 1781 executed an entail of  
the whole to his nephew, the Earl of Dalhousie, in  
life-rent; and to his second son, and his younger  
sons, *seriatim*, in fee. The Earl died without issue  
in less than three months after executing this entail;  
and then a competition for the estates arose between  
the Earl of Dalhousie for himself, and as adminis-  
trator in law for his second son the Respondent;  
and Thomas Maule, the Appellant's father, descend-  
ant and heir male of the Bishop of Cloyne, claim-  
ing under the entails of 1730. The result was that  
the Court of Session, by interlocutor of March 1,  
1782, found that the entails, 1730, of Kelly and  
Ballumbie, had been cut off by the positive and ne-  
gative prescription, and that the obligation relative  
to the 9000*l*. was cut off by the negative prescrip-  
tion; and that the Earl had full power over these  
subjects. But with respect to the leases of the man-  
sion-houses, &c. of Panmure and Brechin, the sub-  
jects now in question, the Court found that Tho-  
mas Maule had a right to take them up.

The Earl of Dalhousie entered an appeal to the  
House of Lords against this judgment in so far as  
respected the leases. The parties then referred the  
whole matters in difference to the arbitration of Mr.  
Wight, the leading counsel for Thomas Maule, and  
named by him as arbiter, and Sir Ilay Campbell,  
leading counsel for the Earl of Dalhousie, and