growing corn, growing trees, large trees cut down, and articles of great size, symbolical or constructive delivery has been held sufficient. Grant, 21st July 1758, M. 9561; 1 Bell's Com., p. 176. In England the same law prevails. Tansley *v.* Turner (Com. Pl.) 1835. 2 Bing. New series, p. 151.

In the Roman law *traditio longæ manus* was admitted. Dig lib. 41 tit, 2 de possess, L. 1, § 21. In France the rule is the same. "When a wood merchant, who has sold to me a great log of "wood lying in his own yard, gives me, in pointing it out, per-"mission to take it away when I please, this permission, which "he gives me, in pointing out the log, is regarded as delivery of "it. I am from that moment held to commence my possession "*oculis et affectu*, even before any one on my part set about the "removal of it."—Pothier's, *Traité du droit de Proprieté*, vol. iv., p. 419.

When an heir of entail in Scotland sells the wood upon his estate, and dies before it is cut, the purchaser's right ceases in consequence of the heir's death. Lord Cathcart *v.* Sir J. S. N. Shaw, 1 Fac. Coll. 193 (Bell's Com., p. 52). Affirmed on appeal, *vide ante*, vol. i., p. 622; Stewart *v.* Stewart, 25th June 1761, Mor. p. 5436; Veitch of Ellioch.

In the case as above reported, much discussion took place on the subject of the delivery of the wood, but ultimately it was decided on the special circumstances of the case.

[Dow., Vol. v., p. 247.]

WM. JOHNSTONE, Esq. of Lathrisk, . *Appellant;*
JOHN CHEAPE, Esq. of Rossie, and ANDREW THOMSON, Esq. of Kinloch, . . *Respondents.*

House of Lords 10th July 1817.

(Deepening Rossie Drain.)

DECREE-ARBITRAL—CORRUPTION, FALSEHOOD AND BRIBERY.—Held, that there were no circumstances stated here inferring corruption, falsehood, and bribery, to warrant the reduction of the decree-arbitral; and that any excess ought not to affect the validity of the decree-arbitral, farther than to rectify the said excess, leaving the decree-arbitral unimpeachable in all other respects.

This appeal has reference to the Rossie drain alluded to in the appeal which immediately follows this, and which belonged to the respondent, Mr Cheape.

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The respondent saw the advantage which the deepening of the Eden would have. It would give him an additional level, by means of which he would be enabled to deepen his drain, and draw off the whole water in Rossie Loch. He, therefore, proposed to the appellant, at a time when he was not acquainted with country matters, and had newly succeeded to his estate, that the deepening of the Rossie drain would be a benefit to both—the appellant's lands of Bowhouse Moss, of about sixty acres, skirting part of the drain.

Accordingly, a deed of submission was entered into in the same manner as had been done in regard to the deepening of the river Eden, between Mr Cheape on the one hand and the appellant on the other—the arbiter appointed being the other respondent, Mr Thomson. This submission bound them to deepen the drain, "and to keep the same redd and "clear, and in good order in all time thereafter, at our mutual "expense, which shall be proportioned according to the benefit "accruing therefrom to our respective properties," and the submission "empowers the arbiter to decide and determine "what proportion each of us shall pay of the expense of the "operations already executed upon the Rossie Drain," as well as "what is to be hereafter done."

Vide next Appeal.

After the submission was executed, the works were commenced, and the drain was deepened eighteen inches. When finished, the appellant heard that the arbiter was about to pronounce his award. The appellant applied to the arbiter to know if he was to communicate the notes of his opinion, and to allow parties to be heard upon the subject. The answer made was, that the arbiter meant to make no such communication.

It appeared, that the quantity of ground drained by means of the Rossie Drain, belonging to Mr Cheape, amounted to 300 acres, while the number of acres belonging to the appellant was only sixty.

There were several objections the appellant had to the items constituting the entire cost of the drain, but which the arbiter refused to give effect to. The entire expense cost £2105, 2s., and of this sum the appellant was decerned to pay £770, which was more than the due proportion estimated, according to the benefit derived by him from the drain.

On the other hand, it was proved, that the arbiter had been at much pains to satisfy himself with regard to the benefit which Captain Cheape and the appellant would derive from the operations on the drain, and weighed in his mind,

maturely, every circumstance connected with the matters submitted; and this led the arbiter to come to the conclusion, that no further proof was necessary.

But, by the submission, it appeared, that the matter of deepening the drain was confined "from the point where it "falls into the Eden, up to the march between our properties "at Bowhouse Moss." A very considerable portion of the Rossie Drain *extends beyond* the last-mentioned point; and Mr Cheape had included the expense of that part in the general account. Therefore, certain items of the account were for things done on the drain beyond the limits of the submission.

The appellant brought an action of reduction of the decree-arbitral, on the grounds of partiality, corruption, and interest, on the part of the arbiter. The respondent, Cheape, having caused a charge to be given on the decree-arbitral, a suspension was brought, and these two actions having been conjoined, the Lord Ordinary (Gillies) pronounced this interlocutor: "Having heard parties procurators in this action Dec. 17, 1813. "of reduction, and in the suspension conjoined therewith May 12, 1814. "in the reduction, repels the grounds and reasons of reduc- June 7, 1814. "tion, assoilzies the defenders, and decerns; and in the "suspension, finds the letters and charge orderly proceeded, "repels the reasons of suspension, and decerns." His Lordship afterwards refused two representations. On reclaiming petition to the First Division of the Court, they were pleased July 1, 1814. to adhere.*

Against these interlocutors the present appeal was brought to the House of Lords, the appellant pleading nearly the same reasons as in the succeeding appeal.

After hearing counsel,

The Lords spiritual and temporal in Parliament assembled, Journals of the House of Lords.

Find, that the arbiter, in this case, had no authority, according to the terms of the submission, to decern or award, that the appellant should be charged with, or pay the following sums, or charges, or any of them, viz., "Two sums contained in the accounts of John Aitken "produced in the said cause, the one being the item," "To taking out the said stream," and amounting to £31; the other, "To clearing *Eden*, from thence up to

* The Court decided against the appellant, on the ground that no decree-arbitral is reducible, except on the ground of corruption, bribery, or falsehood.

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"the mouth of the Rossie Drain," amounting to £5; or with a charge in the account of Thomas Stewart, also produced in the said cause, for having been, as stated by him in his deposition made in the said cause, "employed with twelve workmen on the Eden, in bring-"ing up the level, as above mentioned, for about three "weeks" (three days out or in) "and that the wages he "paid to those workmen were 2s. 6d. per day each, he "being allowed 4s. per day," whatever such charge may be ascertained to amount to; but this finding is to be without prejudice to any right which any party or parties may be able to establish against the appellant in respect of such sums or charges in any other mode of proceeding: and find, that this excess in the decree-arbitral ought not to be taken to affect the validity of the decree arbitral, farther than to rectify the same with respect to the said excess as to the sums aforesaid; and it is ordered and adjudged, that the cause be remitted back to the Court of Session in Scotland, to vary the interlocutors complained of in the said appeal, so far as it shall appear necessary to vary the same in consequence of this finding; and it is ordered, that the same be, and the same are hereby, affirmed in all other respects.

For the Appellant, *Saml. Romilly, Geo. Cranstoun.*

For the Respondents, *John Jardine, A. Clephane.*

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JOHNSTONE v. CHEAPE, &c.

[Dow, vol. v. p. 247.]

WILLIAM JOHNSTONE, Esq. of Lathrisk, *Appellant;*

JOHN CHEAPE, Esq. of Rosse; JAMES BALFOUR WEMYSS, Esq. of Winthank; JAMES HERIOT, Esq., W.S.; HENRY BUIST, Esq. of Lindores, Tenant in Orkie, and ANDREW THOMSON, Esq. of Kinloch. } *Respondents.*

House of Lords, 10th July 1817.

(Deepening the River Eden.)

DECREE-ARBITRAL—PROROGATION—ULTRA VIRES COMPROMISSI—CORRUPTION, FALSEHOOD AND BRIBERY.—In the reduction of a decree-arbitral. Held (1), that the decree was not inept from defect in the prorogation of the submission. (2). That the arbiter had exceeded his powers, in deciding matters not