

No 60. In a suspension of this judgment, 'the LORDS found, That the devolution to the overfman, not being attested by witnesses, in terms of the statute 1681, was void and ineffectual.'

Lord Ordinary, *Alva.* A&t. *Little, R. Dundas.* Alt. *Maclaurin.* Clerk, *Tait.*
Fol. Dic. v. 3. p. 36. Fac. Col. No. 102. p. 195.

Reduction of Decree-Arbitral.

1540. February 11. HAMILTON against HAMILTON.

No 61.

NA exception of iniquitie, nullitie, or uther quhatfumever, may be proponit or alledgit contrare the executioun of an decrete-arbitral lauchfullie gevin : Bot the proponer thairof fould use and alledge the famin be way of actioun gif he pleifis for reduction and retractatioun of the said decrete.

Balfour, (ARBITERIS.) p. 415.

1541. JANET BLAK against ANDRO HAMILTON.

No 62.

DECRETE-ARBITRAL beand gevin be the arbiteris chofin be baith the pairties quhairby ather of the parties is heavilie and enormlie hurt in all his substance, gudis, or geir, or, in the mast part thairof, the famin decrete is of nane avail and may be reducit.

Balfour, (ARBITRIE.) p. 414.

1616. July 25. A. against B.

No 63.
 Some heads of
 a decree-arbi-
 tral being *ul-
 tra vires*, it
 fell *in toto*.

IN an action of reduction of a decreet-arbitral, the LORDS found, That one or two heads being *ultra vires*, the rest should fall. *Item*, in the same cause, the LORDS refused to admit the exception founded upon consent of party to be proven by the Judge and witnesses insert.

Kerse, MS. (ARBITERS.) fol. 181.

1617. January 7. A. against B.

No 64.

THE LORDS found a submission null, because it was subscribed only by one notar, it being about the heritable right of an acre of land; and, when the truth

was referred to the parties oath, the LORDS would not take the oath of the cedent in prejudice of the assignee. *Item*, THE LORDS, in the same cause, found a decret null for three causes, *conjunctim*, *1mo*, Because some of the submitters had not subscribed. *2do*, Because one of the Judges had not subscribed the submission, and yet had subscribed the decret. *3tio*, That the decret bore not that the Judges had received the parties claims.

No 64.

Kerse, MS. (ARBITERS.) fol. 181.

1715. January 14.

JOHN MITCHEL of Graskin, *against* JOHN FULTON, and Captain JOHN WEIR.

JOHN MITCHEL having suspended a decret-arbitral pronounced by Captain John Weir in favours of Mr John Menzies, to which John Fulton had right by progress; he insisted upon many grounds of gross iniquity; but, because iniquity is not allowed as a reason of suspension of a decret-arbitral, he *alleged* further, that the arbiter was corrupted, in as far as he had, during the dependence of the submission or prorogation, accepted an assignation to a great many debts due to Mr Menzies, without any just or onerous cause; which cannot be otherwise constructed, than as a design to corrupt the arbiter, who beside was father-in-law to the cedent; and a decret very iniquitous being pronounced, the iniquity thereof must be constructed to have been the consequence of that undue gratification; and the LORDS, before answer, ordained the charger to prove the adequate onerous cause of the assignation to the arbiter. The charger and the arbiter, for his vindication, did offer a bill, *alleging* that bribery or corruption for annulling a decret-arbitral must be direct, and not interpretative by inferences, such as accepting of a gratification; but further *does also* condescend upon several debts due by Menzies to the arbiter, which he alleged to be the true onerous cause of the assignation.

It was *answered*, *1mo*, Seeing iniquity, and all other reasons of suspension of decreets-arbitral were excluded by law, except bribery and corruption, the arbiter was under the greater obligation to acquit himself, so as to be free of the least suspicion of such enormities, and more especially to abstain from taking any gratification; and the iniquity of the decret did pregnantly load the arbiter's accepting of a gift. *2do*, As to the condescendence of an onerous cause now offered, it was good for nothing, but only to redargue the narrative of the assignation, which bears a sum of money instantly delivered; and by the condescendence it appears there was no money then delivered, nor could the condescendence and instruction of debts now produced be any instruction of an onerous cause, in as far as the arbiter does not, nor cannot allege that he gave either a back-bond, declaring these debts to be the cause of the assignation, nor did he discharge these debts, nor gave any other document to make appear that the assignation was granted for security

No 65.

A decret-arbitral reduced, because the arbiter accepted of a gratuitous assignation from one of the submitters during the submission.