

was referred to the parties oath, the LORDS would not take the oath of the cedent in prejudice of the assigney. *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.

No 65.

of these debts; so that, if the condescence now insisted on were just and true, the arbiter had all these debts to claim as fully as before the assignation; beside the suspender could very well object against these debts.

THE LORDS found, That the arbiter could not warrantably accept of any assignation gratuitous, in whole or in part, during the currency of the submission; and that the assignation, bearing a sum of money instantly delivered, could not be construed to be granted for payment or security of the debts condescended upon, unless there had been a back-bond or discharge, or some other document declaring the cause, at the time of the granting the assignation.

*Fol. Dic. v. 1. p. 51. Dalrymple, No 129. p. 180.*

No 66.

To allege that the arbiters had decided upon grounds which were not true in fact, is no relevant ground of suspension or reduction. The exception of *falsehood*, in act 1695, regards only the falsehood or forgery of the submission or decree-arbitral.

1724. December 18.

HARDIE against HARDIE.

A decret-arbitral being suspended, upon the allegiance, that some facts mentioned in the decret, as the foundation of the decerniture, were utterly false, which was offered to be proven by the oaths of the arbiters themselves; the LORDS refused to sustain this as a reason of suspension, though it was *urged*, that the suspender was founded in the very words of the regulations 1695, allowing decreets-arbitral to be called in question, upon the head of 'corruption, bribery, and falsehood, alleged against the judges arbitrators who pronounced the same,' where the word *falsehood* being directed personally against the judges arbitrators, cannot be understood in any other sense, than their pronouncing decret-arbitral upon false suggestions.

*Fol. Dic. v. 1. p. 51.*

No 67.

A decret-arbitral reduced, because the arbiters had, before giving it out, demanded, and obtained, from one of the parties, a fee for their trouble, which they were decerned to repay to the clerk of process, to be applied to charitable uses.

1738. January 12.

BLAIR against GIB.

ARBITERS, who by the submission had a power of prorogation, having signed their decret-arbitral, refused to give the same out to the parties until they were paid for their labour and pains, and continued the submission current by prorogations, until this should be adjusted. One of the parties, who judged the decret beneficial to him, paid the sum demanded, and got the decret put into the register. In a reduction of the decret by the other party concerned, the LORDS found the reason of reduction relevant and proven, that the decret-arbitral was obtained by bribery and corruption, and therefore reduced the same; and ordained the arbiters to pay into the clerk of process the sum received by them, to be bestowed on charitable uses.

*Fol. Dic. v. 1. p. 51.*