

No. 1. 2d Dec. 1680, Pitcairn *contra* Rose, No. 45. p. 647; 18th Nov. 1696, Watson *contra* Milne, No. 47. p. 648.

The Lords adhered.

Lord Ordinary, *Pitfour*.  
Clerk, *Kirkpatrick*.

For John Donaldson, *A. Fergusson*.  
For William Donaldson, *A. Lockhart*.

R. D.

*Fac. Coll. No. 14. p. 31.*

No. 2.

1770. February 16. STEWART *against* EARL OF GALLOWAY.

A party after bringing an action against a debtor, and raising inhibition on it, submitted the matter to arbiters. In the submission and decree-arbitral, the inhibition was not mentioned. The Court "found, that the sums awarded by " the decree-arbitral were not secured by the inhibition, without prejudice to " the Petitioner to insist in the depending process for decrees as accords."

R. H.

*Fac. Coll.*

\* \* This case is No. 62. p. 7004. *voce* INHIBITION.

1771. June 21.

RICHARD HETHERINGTON, and Others, Tenants on the estate of Killhead, *against* THOMAS CARLYLE, Factor on the sequestrated estate of Killhead.

No. 3.

Reduction of a decree-arbitral, attempted upon alleged falsehood in the decree.

An error *calculi* may be corrected without reducing the decree.

THE pursuer brought a reduction of a decree-arbitral, pronounced in a submission betwixt the above parties, upon the ground of *falsehood*, and as being *defective* and *partial*, as it had not determined the whole matters in dispute. The decree-arbitral set forth, "That the arbiters had considered the claims of " both parties, and answers thereto, with the several processes specified in the " submission, with the whole procedure, minutes, and interlocutor therein; " and particularly the process of suspension of the said Thomas Carlyle's charge " against the tenants for payment of their rents, and whole proofs led thereon, " with the tacks granted by the said Sir John Douglas, upon which the said " charge proceeded, and had met with and heard parties doers upon the pre- " misses."

The pursuers affirmed that this averment could not possibly be true; and in a condescendence offered to prove, *1mo*, That no memorial was laid before the arbiters but with respect to the case with one only of the pursuers; *2do*, That the proofs, tacks, and other writings, were so extremely voluminous, that they could not, as stated, have been perused, or duly considered by the arbiters; *3tio*, That instead of having heard parties or their doers, the arbiters had proceeded to pronounce their decree-arbitral, even after the pursuer's

agent had told one of them that he was obliged to go to the country, and insisted that none should be pronounced till the parties had an opportunity of stating their whole claims, and of being fully heard. These facts, it was said, if proved, amounted to the falsehood which was struck at by the act of sederunt 1695. The other grounds of reduction were not pressed; and the defender, of consent, admitted a small alteration to be made as to the claims of three of the parties.

No. 3.

The Court, by the first interlocutor, allowed a proof before answer; but upon advising a reclaiming petition and answers, the Judges were of opinion, That though an *error calculi* might be rectified without setting the decree aside, yet as there was no fraud alleged, there was no ground of reduction according to the regulations 1695. They accordingly “ refused to allow a proof; but remitted to the Lord Ordinary to rectify the errors in the decree-arbitral; which are acknowledged by both parties, and to proceed in the cause accordingly.” And to this interlocutor they adhered, by refusing a petition without answers.

Lord Ordinary, *Barjarg*.  
Clerk, *Tait*,

For Hetherington, &c. *Crosbie, Wight, A. Fergusson*.  
For Carlyle, *Rae, Ilay Campbell*.

R. H.

*Fac. Coll. No. 91. p. 268.*

1776. December 13:

DR. ALEX. JOHNSON, *against* PATRICK CRAWFORD of Auchinames and  
GILBERT MASON.

DR. JOHNSON, who resided at the Hague, as a military agent, had, for the course of several years, an open account with Mr. James Crawford, merchant in Rotterdam. At Mr. Crawford's death, this account stood unsettled, and at last a submission was entered into between the Dr. and Mr. Crawford's executors, upon which a decree-arbitral was pronounced by two gentlemen at Rotterdam. Action having been brought upon this decree-arbitral against the executors, by Dr. Johnson, it was on their part.

No. 4.  
A foreign decree-arbitral can be made effectual in Scotland, and is not reducible on account of iniquity or informality.

Pleaded: Even in this country, preceding the regulations 1695, it was an established point at common law, that a decree-arbitral was reducible on the head of iniquity. Balfour's Practics, C. 15. Tit. ARBITRIE, 17th March 1541, Janet Black *contra* Andro Hamilton, No. 62. p. 662. Spotiswood's Practics, *voce* ARBITER. Sir Geo. M'Kenzie, B. 4. Tit. 4. Erskine, B. 4. Tit. 3. Bank. B. 1. Tit. 28. § 21, 22. Wallace *against* Wallace, 23d February 1672, No. 80. p. 639. This being the old law, whatever changes, introduced by the regulations 1695, must be strictly interpreted, and can only affect such decrees-arbitral, as these were intended to regulate. They must be held altogether municipal, intended to regulate the acts and deeds of parties living.