

debt; or avoiding of penalties; in both which there was a favourable dispensation with the general rule.

THE LORDS having considered, that, in many such cases, decreets-arbitral have been pronounced on the last day; therefore find these words, *betwixt and the twenty-second*, include the day.

For Mrs Cockburn, *Hay*.

Alt. *Ja. Graham, sen.*

Clerk *Mackenzie*.

*Fol. Dic. v. 3. p. 37. Edgar, p. 17.*

1796. May 18.

LADY ELIZABETH MAITLAND, and OTHERS, *against* The REPRESENTATIVES  
of WILLIAM MITCHELL and JOHN ARNOT.

DAVID GAVIN left at his death four daughters, all of them under pupillarity, to whom he named Lady Elifabeth Maitland, their mother, the Earl of Lauderdale, and others, to be tutors and curators, Lady Elifabeth and any other tutor to be a quorum.

In 1779, Lady Elifabeth and Lord Lauderdale entered into a submission with Alexander Deas, together with William Mitchell and John Arnot, as his cautioners, respecting certain claims which their pupils and Deas had against each other.

By this deed, Lady Elifabeth and Lord Lauderdale, 'as tutors, and taking burden upon them for their pupils,' on the one part, and Alexander Deas, with consent of his cautioners, on the other, obliged themselves to fulfil the award of the arbiters; and his cautioners further agreed, 'That, in case any sum shall be found due by the said Alexander Deas, the said arbiters shall discern them, their heirs and successors, jointly and severally, with the said Alexander Deas, in payment thereof.'

The submission was kept in force by repeated prorogations for 13 years; in the course of which the Earl of Lauderdale and John Arnot died, Mr Gavin's eldest daughter was married to the Earl of Breadalbane, the second to Robert Baird, and all his daughters had attained majority.

In 1793, the arbiters pronounced a decree-arbitral, finding a balance of L. 891 : 10 : 8, due by Deas; and ordaining him, Mitchell, and the representatives of Arnot, to make payment of it to Lady Elizabeth Maitland, for behoof of Mr Gavin's representatives.

Soon after the date of this award Mitchell also died.

Lady Elizabeth, with concurrence of Lord and Lady Breadalbane, Mr and Mrs Baird, and her only surviving daughter, afterwards brought an action against the representatives of Mitchell and Arnot, for payment of the sum awarded, which, in consequence of family settlements, belonged wholly to Lord Breadalbane.

In defence it was

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A submission entered into by a quorum of tutors, 'taking burden upon them for their pupils,' falls by the death of one of the quorum.—A submission entered into by the tutors of a female minor falls by her marriage, unless her husband become a party to it.

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*Pleaded: 1mo*, Lord Lauderdale, by taking burden on himself for his pupils in the submission, became a party to it, not merely as a tutor, but in his individual capacity; and therefore the decret-arbitral is void, from being pronounced after his death. Besides, as the submission was signed only by Lady Elizabeth and his Lordship, it fell at any rate by his death, there being no longer a quorum of the tutors parties to it.

*2do*, The submission fell by the Miss Gavins' attaining majority before the award was pronounced. The tutors after that had no right to appear in it for their former pupils; and as little could the Miss Gavins, or the husbands of the two who were married, appear for themselves, as they were neither original parties to the submission, nor did they afterwards accede to it.

*3tio*, John Arnot's death, before the date of the award, of itself, put an end to the submission.

*Answered*: Lord Lauderdale had no patrimonial interest in the submission, and could therefore be a party to it only in his tutorial capacity. And, as the deed of a quorum of tutors effectually binds the rest, the whole, in the eye of law, were parties to the submission; and consequently it remained in force notwithstanding his Lordships' death; 18th January 1711, Ayton, (Fount. v. 2. p. 627. *voce* SUMMAR DILIGENCE.)

*2do*, Although contracts, such as leases, entered into by tutors for behoof of their pupils, to endure for a definite period, may not, in general, be binding on the pupils beyond their majority, this will not hold with regard to a decree-arbitral, on a submission by a tutor, which is pronounced after his office is at an end. In the one case, the tutor ties up, unnecessarily, the hands of his ward; in the other, he enters into a beneficial transaction for him, which he may *bona fide* suppose will be finished during his administration, and by which the pupil, from the nature of the thing, must continue bound till it be brought to a conclusion.

*3tio*, Arnot's death can have no effect in terminating the submission. He signed it not as a party, but merely as cautioner for Deas, an obligation which he might have undertaken just as well by a separate deed.

The Lord Ordinary took the cause to report.

The Court had no occasion to judge of the defences arising from the expiration of the tutory, and the death of Arnot before the date of the award; being clear that it was null on the other grounds stated for the defenders. Lord Lauderdale (it was observed) bound himself personally, by taking burden for the pupils in the submission, and being thus patrimonially interested, it fell by his death. Besides, as Lord Breadalbane, on his marriage, obtained right to the sums claimed by the tutors under the submission, the proceedings of the arbiters, subsequent to it, were inept, from his not having been a party to them.

THE LORDS unanimously 'affoizied the defenders.'

A reclaiming petition was refused (17th June 1796) without answers. (*See* TUTOR and PUPIL.)

Lord Ordinary, *Glenlee*.

*Act. H. Erskine*

For Mitchell's Representatives, *Macnochie*.

For Arnot's Representatives, *R. Craigie*.

Clerk, *Menzies*.

*Davidson*.

*Fac. Col. No 215. p. 507.*