

No 16. The Court, without entering into the question how far a sole arbiter is bound to decide, were clear on the grounds stated by the defender, that against one of two arbiters the conclusions of the action were ill-founded.

THE LORDS unanimously affoizied the defender.

Lord Ordinary, *Swinton*.

A&R. *H. Erskine, D. Catheart.*

Alt. Solicitor-General *Blair, Davidson.*

Clerk, *Pringle.*

Davidson.

Fac. Col. No 231. p. 537.

* * * See Cases on the subject of this Subdivision, *voce* OBLIGATION.

Summoning of Witnesses.

No 17.
The Lords will give warrant to arbiters, authorising them to summon witnesses.

1670. *January 6.*

KER of Cavers, and SCOT of Golden-berrie, Supplicants.

KER of Cavers, and SCOT of Golden-berrie, being arbitrators nominate by a submission, did, by bill, crave warrant from the Lords to authorise them, to summon witnesses to compare, and depone before them in the cause in which they were arbiters.

Which the LORDS granted.

Fol. Dic. v. 1. p. 50. Stair, v. 1. p. 658.

No 18.
A cause being in dependence before arbiters, the Lords granted diligence by horning, at the instance of one of the submitters, against third parties, to exhibit writs necessary.

1696. *June 26.*

WILLIAM STEVENSON *against* YOUNG of Winterfield.

WILLIAM STEVENSON, late bailie of Edinburgh, gives in a petition, representing he had a process depending against Young of Winterfield, which both parties had submitted; and for clearing the arbiters there were some papers in third parties hands, which were necessary for instructing his claim, and the passive titles; and therefore craved the Lords would grant a diligence by horning, to cause them exhibit those papers.—THE LORDS, considering that all methods should be used for facilitating the extinguishing and stopping of pleas, they granted the desire of the bill; especially seeing it is observed by Stair, that the Lords, on the 6th of January 1670, between Ker of Cavers and Golden-berrie, (No 17.) granted letters to charge witnesses to compare, and depone before arbiters; and this seems to be a case equally favourable.

Fol. Dic. v. 1. p. 50. Fountainhall, v. 1. p. 723.

1741. *July 16.*

GORDON of Troquin and NEILSON of Corfack, Petitioners.

No 19.
Diligence to cite witnesses to appear before arbiters, limited to the shire.

THE LORDS never grant diligence to cite witnesses from a different shire, to appear before arbiters, but only to cite such to appear before them as live in the same shire; and as to such as live in any other shire to appear before any com-

missioner to be named by the arbiters, and that within the shire in which the witnesses live; and in these terms granted diligence in this case.

Fol. Dic. v. 3. p. 35. Kilkerran, (ARBITRATION.) No p. 34.

No 19.

Time of Endurance.

1491. *May 17.* MARION CUNINGHAME *against* ROBERT DRUMMOUND.

GIF ony compromit be maid be certane parties, anent ony debate or contraverfie betwix thame, and ony jugeis arbireris chosen be thame to that effect, with this restrictioun and conditioun, that the saidis jugeis sall give furth thair decrete and deliverance in the said matter ather incontinent or befor ony certane day prefixt and agreit upon betwix the saidis partis, and expremitt in the said compromit; and it happin that the saidis arbireris deliver ane decrete after the said day contenit in the said compromit, na prorogatioun of the day beand maid with consent of the parties; the samen deliverance and decrete is be way of exceptioun null, and fould have na execution aganis the parties quha consentit not to the geving thairof, or to the prorogatioun of the day of the compromit.

Balfour, (ARBITRIE.) p. 414.

No 20.

A decree pronounced after the term expires is null.

1505. *March 7.*

JOHNE BONAR of Rossie *against* DAVID BALFOUR of Carristoun.

CERTANE parties beand compromittit in arbireris and amicable compositouris to ane certane day and place, gif thairafter it happinis that the saids parties continue the compromit to ane uther day, and als wa change the place thairof to ane uther place, and the arbireris give the sentence and decrete befor the day to the quhilk the compromit was continent, the said decrete obliesses not the parties, nather can have executioun aganis thame, except thay willinglie of thair awin consent obey and fulfil the samen.

Balfour, (ARBITRIE.) p. 414.

No 21.

A submission prorogated to a different day and place from those originally named, was not obligatory, if the arbiters pronounced decree before the day.

1593. *March.* L. SILLARTOWNHILL *against* PRIOR of BLANTYRE*.

IN an action betwixt the Laird of Sillartownhill, and the Pryour of Blantyre, the LORDS found, that the Pryour having submitted himself by his bond to abide at the determination of the Chancelar and the Provist of Lincluden, what right he, his airs and assignees, fould mak to my Lord Provand, his heirs and assignees, of the teinds of Provand, in all time coming; the bond being onlie maid and sub-

No 22.

A bond, wherein a man submitted himself to the determination of certain persons therein nam-

* The names are not mentioned in Fol. Dic.