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*. For Hetherington, &c. *Crosbie, Wight, A. Fergusson.*
Clerk, *Tait*. 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.

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

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

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. 30. 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 as altogether municipal, intended to regulate the acts and deeds of parties living

No. 4. and litigating within this country. This decree-arbitral, therefore, pronounced in Holland, can receive no protection from the regulations 1695, and must be reducible of consequence, on account of the gross iniquity which can be established against it.

But if these regulations do not apply to this case, neither can this decree receive execution upon the *comitas* which is due to foreign judgments. The effect of a foreign decree can be carried no farther than that it is *ex comitate* to be presumed just till the contrary appears; Voet. *De re judicata*, § 41. Case of Prescot, 1720, No. 79. p. 4535. Bank. 1. Tit. 1. § 80. B. 4. Tit. 25. § 12. And the same doctrine is to be held as to decrees condemnatory, Principles of Equity, B. 3. C. 8. § 6. Erskine, B. 4. Tit. 3. § 4. Indeed, though there were no such strong authorities for this doctrine, the simple reason of the thing would be sufficient. It is impossible to conceive that the law of any country should allow a foreign jurisdiction to be made the instrument of wrong, or that a court of justice should be found to give execution even to an unjust decree. In fact, the person who applies to the court for aid in giving effect to a foreign judgment, does by this very act virtually submit the justice of his demand to its determination. It is proper that *ex comitate* the presumption should be in favour of the judgment, but it goes no farther. Considering this decree-arbitral, therefore, merely in the light of a foreign decree, it is reducible upon proof of its iniquity. Nor can this reasoning be got the better of, by holding up a decree-arbitral as of higher authority than a judicial decree. For by the practice of foreign nations, no such pre-eminence is given to it. It is in fact the practice of most modern nations to hold decree-arbitral to be reducible on the head of iniquity, or enorm leison. Gail. Lib. I. Observ. 150. No. 1, & 9. Menochius De. Arb. Jud. Lib. 1. Quest 70. No. 16. Domat. Droit publique, Liv. 2. Tit. 7. No. 1, & 8. Huber, *De jure civitat.* And though the doctrine of the Roman law seems generally to be against the reduction of a decree-arbitral, even upon the head of iniquity, yet this proceeded from the circumstance that the sentences of the arbiters receive their force from the stipulation of the parties, and thus, like the other stipulations in that law, are considered as *stricti juris*, and therefore not reducible. But as these niceties do not take place in the practice of modern nations, the obligation arising from a decree-arbitral, whether proceeding *ex contractu* or *a re judicata*, must still be liable to reduction, and is on no better footing than another foreign decree."

It was besides contended for the defenders, that by the law of Holland, decrees-arbitral were reducible on the head of iniquity.

Answered for the pursuer:

It is by no means certain that by the antient practice of Scotland, decrees-arbitral were reducible on the head of iniquity. But whatever was the old practice, the regulations 1695, have now put the matter beyond all dispute, and there is not a more complete *series rerum judicatarum* upon any point than upon this. In particular, very soon after the regulations 1695 had been enacted, the com-

pletest effect was given to them in the case of Sir John Shaw against Sir John Houston, June 28th 1698, APPENDIX, PART II. *h. t.*; and the same doctrine is laid down by the latest writers on our law. Bank. B. 1. Tit. 23. § 22. Erskine, B. 4. Tit. 3. § 35. Indeed no single instance can be pointed out in the records of the Court, since the regulations 1695 were made a part of our law, in which any decree-arbitral whatever has been reduced merely upon the head of iniquity. No. 4.

Such being the law of Scotland, there can be no question that a foreign decree-arbitral must *ex comitate* receive the same execution in this country as if it had been pronounced at home. In the case of Laycock against Clark, 1767, No. 85. p. 4554.; this Court decerned for large costs awarded by an English decree, and refused to allow the defender to prove its alleged injustice. But if foreign decrees in general have in this manner the effect of a *res judicata*, much more ought this to hold with respect to decrees-arbitral, which are in a supereminent degree *juris gentium*, as not being the particular forms or customs peculiar to any state, but truly universal to all mankind upon the common principles of reason.

And with regard to the law of Holland, the pursuer maintained that a decree-arbitral by that law was not reducible on the head of iniquity.

The Court originally pronounced an interlocutor, Finding, "That the decree-"arbitral in question was challengable, and therefore allowed parties procurators "to be heard upon the merits thereof, but found that the pursuer was entitled "to put the said decree-arbitral into execution in the mean time, and that the "defenders must make payment to the pursuer, or his attorney, of the full "sums awarded by the said decree-arbitral, they always finding caution in the "Clerk's hands, to repeat the whole sum or such part thereof, as shall be "found by decree of this Court to have been wrongfully awarded to him by "the said decree-arbitral, and remitted to the Lord Ordinary to hear parties "procurators accordingly."

Afterward a case having been made up for the opinion of Dutch counsel, as to what was the law of Holland with regard to the privilege of challenging decrees-arbitral, and this opinion (which mentioned such decrees not to be challengeable) being laid before the Court, they pronounced an interlocutor, "Repelling the reasons of reduction of the decrees-arbitral, and assoilzing Dr. "Johnson from that process, and found the executors and trustees of Mr. "Crawford liable to him in the full sums awarded by the said decree-arbitral."

Lord Ordinary, *Gardenston.* Act. *J. Boswell.* Alt. *Solicitor Gen. Murray.*

J. W.